Role of the international organizations in the advancement of the third world

Luci Kitchin

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THE ROLE OF INTERNATIONAL ORGANIZATIONS IN THE ADVANCEMENT OF THE THIRD WORLD THROUGH THE PROGRESSIVE DEVELOPMENT OF MARITIME LAW

by

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Jamaica

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A paper submitted to the Faculty of the World Maritime University in partial satisfaction of the requirements of the GENERAL MARITIME ADMINISTRATION COURSE.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the UNIVERSITY.

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Date: 01 November 1985

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THE ROLE OF INTERNATIONAL ORGANIZATIONS
IN THE ADVANCEMENT OF THE THIRD WORLD
THROUGH THE PROGRESSIVE DEVELOPMENT
OF MARITIME LAW

LUCI KITCHIN
MALMÖ, SEPTEMBER 1985
This Paper has been written in the name of the continued struggle of Third World Countries towards the realization of a New International International Maritime Order - a vital element in the achievement of the ultimate goal of a New International Economic Order.

In recognition of the need to transform the existing International Maritime Order based on practices and rules created by the traditional maritime "developed" countries to perpetuate their economic development and, consequently, the continued underdevelopment of the Third World, the Paper examines the Role International Organizations have played, and continue to play, in the development process and attempts to recommend measures that should be adopted in this regard.

Many of the ideas and recommendations contained herein are not new, but often overlooked, yet are of such vital importance that they must be reiterated and emphasized until finally acted upon. It is hoped that the simple expression of ideas may make some small contribution to Third World development.

My profound thanks to Professor E. Gold for providing stimulating and helpful criticism throughout the development of the Paper, to Professor J. Mylnarzyk and Mr. C. Moreno for their invaluable assistance, and lastly, to my Malaysian colleague and his family for all their help and encouragement without which this Paper may never have been written.
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Introduction

The International Regulation of Ocean Uses

Maritime Transport has for centuries been the most important ocean use and, as a result, has traditionally been the preserve of developed countries. This is still true today, although its prominent position is being challenged, and may even be eventually replaced, by other competing, and often conflicting, ocean uses. The vital role shipping plays in the development of a country cannot be overemphasized. The very survival of a country depends fundamentally on the goods it produces and receives in exchange from other nations. A country without control over the carriage of its exports and imports cannot expect to have control over its overseas trade. It was Sir. Walter Raleigh who said at the beginning of the seventeenth century:

    Whoever commands the sea commands trade; whoever commands the trade of the world commands the riches of the world and consequently the world itself.

This statement holds true to this day when the traditional maritime countries which have always dominated international maritime transport, all belong to the developed countries of the rich "North", and the Third World countries dependent on shipping services of other nations form the bulk of the poor "South".

Shipping development can substantially contribute to the diversification of the economies of Third World countries in such areas as shiprepairing, shipconstruction, financing and banking...
services, ship classification, marine insurance etc. These industries have traditionally been dominated by the developed/industrialized countries. The marine insurance industry, for example, dominated by U.K. and U.S. markets, plays an important role both in terms of the security it provides and its cost-element in the over-all economics of running a ship or transporting goods to a country - particularly to a Third World country - with its impact on Balance of Payments positions.

Apart from shipping and its related industries, ocean resource development in the exploitation of living resources is of extreme importance to Third World development, and potentially will be a crucial factor in future years when they will desperately need the vital source of protein in the form of fish and other biological matter to feed the ever-burgeoning and starving populations in the many Third World countries of Africa, Asia and Latin America. Today the fishing industry continues to be dominated by long-distance fleets of traditional maritime nations whose advanced fishing technology has turned it into a computer-run industry using sonar and even satellite technology for spotting fish. The "vacuum-cleaner" methods of these fleets have led to massive over-fishing and, consequently, the tremendous depletion of ocean resources. A few developing countries such as South Korea and Peru have now entered this industry though their participation continues to be insignificant.

Offshore exploitation of oil and gas has become vital to the economies of many countries - including Third World countries - as
the world searches further and further into the oceans to replace the dwindling land-based reserves needed to turn the wheels of industry. The exploitation of many minerals, including manganese nodules lying on the deep sea-bed, has the possibility of becoming an extremely important industry of the future and, consequently of great value to economic growth and development.

Lastly, the preservation of the marine environment as a whole, although not regarded as an economic activity, has a major impact on the economic development of all countries. The consequences of pollution (both from land as well as vessel based sources) and destruction of the marine environment, both in terms of the invaluable resources and the destruction of coastal industries (eg. tourist industries of Third World countries) cannot be calculated.

An entire array of possible ocean uses can thus be identified which play an important or potentially role in the economic development of Third World countries. These resources are within the reach of most developing countries but, due to many factors, have somehow eluded their grasp. Being new entrants into the maritime field they naturally lack the basic factors of production such as manpower (trained and skilled), technology and financial resources. Often there is a lack of awareness about the potential of the ocean as a major resource. One of the positive areas which many developing countries tend to overlook is the presence of several international organizations established (often) with the primary aim of helping developing countries achieve progress in the maritime sector. These organizations work within the framework of an international regime of maritime law.
Most of the ocean uses described above are the subjects of international maritime law - broadly divided into private or commercial maritime law and public maritime law or law of the sea. Developing nations have to be aware of and work within the limits set by this regime of international law. This paper looks at the development of these areas of maritime law, for the most part a creation of the traditional maritime nations, designed to perpetuate their continued dominance of the international shipping industry and other industries involved in the exploitation of ocean resources. It further attempts to show to what extent the United Nations system has been successful in bringing about an equitable regime through the progressive development of maritime law.

Most of the international organizations were established with the express purpose of creating a new international economic order. Organizations such as the IMO, UNEP, UNCTAD, FAO, ILO have been active in the maritime sector. Other private organizations such as the CMI have been also productive though they were created for rather limited and specific purposes. Nevertheless, all these organizations have collectively brought about a changing legal environment in the maritime sector, an environment which will shape the manner and form of participation by developing countries. This paper analyses the role of these organizations within the context of international maritime law. It focusses on the manner in which Third World countries must utilize these organizations to serve their interests and how they can do this within the context of the progressive development of maritime law which is the key to the realization of the New International Maritime Order.
Scope and Definitions

This Part is divided into two sections tracing the separate development of the two areas of international maritime law. The first section concerns the development of private international maritime law which can be defined as relating to the commercial aspects of maritime transport, and whose development, beginning at the end of the nineteenth century, was due principally to the work of a private organization, the Comité Maritime International (CMI). Indeed, the role of the CMI was paramount in the formulation of certain rules of private international maritime law, some of which still are in force today, eg. Hague/Visby Rules on Bills of Lading which were largely accepted and introduced into national legislation. Increasingly, however, private/commercial aspects of maritime law are being dealt with in public organizations, namely UNCTAD. Whilst the mode of formulation of this area of law has changed, for the purposes of definition, international private maritime law remains as defined above.

With respect to the development of public international maritime law (international law of the sea), it did not achieve as much rapid success as did the development of the private aspects of international maritime law. Public maritime law essentially refers to the political or jurisdictional aspects of ocean use which are largely regulated by governments. Such efforts have been made through Inter-governmental organizations - particularly the U.N. system - in the development of international maritime safety legis-
lation and international maritime labour legislation for example. Through the U.N. system too, fresh efforts have been made in the unification of rules pertaining to national jurisdiction over ocean uses, namely the 1958/1960 Geneva Conventions on the Law of the Sea, culminating in the Montego Bay Convention.

A. Development of Private International Maritime Law: The Impact of the Comité Maritime International (CMI)

The origins of the CMI date back to the end of the nineteenth century during the period when Britain's prominence as the major world maritime power - virtually undisputed during the eighteenth and the beginning of the nineteenth century - was now being challenged by other emerging European maritime nations, the Scandinavians, Germans, Greeks, French, Italians and Dutch in particular, and also the U.S. This period could be described as the period of "internationalization" of the shipping industry.
### TABLE 1.

**WORLD MERCHANT FLEET IN 1900**

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>STEAMSHIPS</th>
<th>SAILING SHIPS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>British-Empire</td>
<td>10,780,000</td>
<td>2,683,000</td>
<td>13,463,000</td>
</tr>
<tr>
<td>U.S.</td>
<td>1,105,000</td>
<td>1,222,000</td>
<td>2,327,000</td>
</tr>
<tr>
<td>Germany</td>
<td>1,550,000</td>
<td>480,000</td>
<td>2,030,000</td>
</tr>
<tr>
<td>Norway</td>
<td>506,000</td>
<td>1,070,000</td>
<td>1,576,000</td>
</tr>
<tr>
<td>France</td>
<td>955,000</td>
<td>207,000</td>
<td>1,162,000</td>
</tr>
<tr>
<td>Italy</td>
<td>402,000</td>
<td>408,000</td>
<td>810,000</td>
</tr>
<tr>
<td>Spain</td>
<td>507,000</td>
<td>81,000</td>
<td>588,000</td>
</tr>
<tr>
<td>Russia</td>
<td>312,000</td>
<td>238,000</td>
<td>550,000</td>
</tr>
<tr>
<td>Sweden</td>
<td>293,000</td>
<td>230,000</td>
<td>523,000</td>
</tr>
<tr>
<td>Netherlands</td>
<td>341,000</td>
<td>93,000</td>
<td>434,000</td>
</tr>
<tr>
<td>Japan</td>
<td>405,000</td>
<td>18,000</td>
<td>423,000</td>
</tr>
<tr>
<td>Denmark</td>
<td>283,000</td>
<td>124,000</td>
<td>407,000</td>
</tr>
<tr>
<td>Rest of World</td>
<td>1,167,000</td>
<td>447,000</td>
<td>1,614,000</td>
</tr>
<tr>
<td><strong>Total GRT</strong></td>
<td><strong>18,606,000</strong></td>
<td><strong>7,301,000</strong></td>
<td><strong>25,907,000</strong></td>
</tr>
</tbody>
</table>

**SOURCE:**

British maritime and commercial law had also prospered during the eighteenth and nineteenth century, and although widely
accepted, legal disputes at the international level related to shipping were increasing. The European nations called for new approaches towards greater uniformity which would take into account legal systems in Europe.(1)

In 1863 de Courcy published his "Reformé International du Droit Maritime", revealing the fundamental identity of maritime law in most (European) countries.(2) That same year the Italian Parliament acting upon a proposal by the jurist, Mancini, "expressed the wish that the diversity in national laws be reduced by international agreement".(3) Ten years later that wish was adopted by the Netherlands Chambers.

The advantages of creating a harmonized system of maritime legislation which would serve their interests was being gradually recognized. As Gold describes:

Continental lawyers soon saw the advantages in what their jurists and governments were advocating - and not only in the maritime field. It was seen that the sacrifice of specific advantages gained from national legislation might result in a more uniform, stable and secure legal regime on a broader international level. The result was the formation, as well as the diversification, of several associations directly concerned with furthering such aims, particularly in matters relating to the sea.(4)

In 1893 the Institut de Droit International, promoter of the Hague Conventions was founded in Ghent, Belgium. In 1855 and 1858 the
Belgian Government organized Congresses in Antwerp and Brussels respectively "with the set purpose of drawing up no less than a complete international maritime code encompassing all matters to be found in maritime law, governing the nations in the whole world."(5) Needless to say, the Conferences ended without concrete results.

During this period of recognition of the need for international regulation in shipping, in 1889 the U.S. invited other European Governments to an International Marine Conference, held in Washington, to deal exclusively with questions relating to "safety of life and property at sea". The over-ambitious agenda included an item on the establishment of a permanent international maritime commission, which was finally rejected by the Conference which felt that "for the present the establishment of a permanent international maritime commission is not considered expedient."(6) The Conference thus demonstrated the unwillingness to create a body which would regulate shipping at an international or intergovernmental level.

By 1897, with the establishment and coming together of various national law associations of European countries the CMI became a reality. Its aims were described as follows:-

...to promote by the establishment of national associations, by Conferences, by publications, by any other activities or means, the unification of international maritime and commercial law and practice, whether by treaty or convention or by establishing uniformity of
Because of the nature of its membership and its basically private approach to maritime law, the Belgian Government thus provided the means of "legalizing" as it were its Conventions by creating the "Conference Diplomatique du Droit Maritime" whereby the Belgian Government agreed to accept CMI drafts, convene Diplomatic Conferences and act as depositary of the instruments of ratification.

Work of the CMI

Since its establishment, the CMI has held over thirty international conferences dealing with a variety of subjects related to private maritime or commercial law. It has adopted over twenty Conventions, many of which still govern international maritime and commercial practice, others which have been superseded by international conventions produced in other international fora or which are under review in these fora. An extensive analysis of the CMI Conventions is not possible, nor indeed called for, within the scope of this study, but it is essential to look at the nature of the most important of these Conventions to fully understand the development of international maritime law of this period.

Establishment of a Legal Regime for the Carriage of Goods by Sea

By far the most important contribution of the CMI to the development of commercial maritime law has been the institution of a legal regime governing the relations between maritime carriers and their clients. This regime incorporates the following:
- International Convention for the Unification of Certain Rules relating to Bills of Lading (Hague Rules) - 1924

- Protocol to amend the International Convention for the Unification of Certain Rules to Bills of Lading (Brussels Protocol) - 1968


These Conventions have subsequently been revised and amplified in the form of a new Convention - United Nations Convention on the Carriage of Goods by Sea (The Hamburg Rules) of 1978.

The Hague Rules - 1924

The forerunner of the Hague Rules was in fact the Harter Act of 1893 introduced by the U.S. on the demand of shippers. This Act aimed at the protection of cargo interests, prohibited clauses exonerationing the carrier or his agents from liability for faults in the care and custody of the cargo, but at the same the Act provided that the carrier was not held to be liable for results of unseaworthiness if he had exercised due diligence to make the ship seaworthy, and if the damage caused to cargo resulted from faults and errors in the navigation or management of the vessel. The Harter Act established an important principle which later inspired the Hague Rules and the Brussels Conventions, in that it settled the problem of carriers' liability by making a distinction between faults in the navigation and management of the vessel and faults in
the care and custody of the cargo.

With the introduction of the Hague Rules, the minimum obligations of the carrier, the carrier's maximum immunities, and the limit of his liability were established. Under the Rules, the carrier was not held responsible for the unseaworthiness of a ship, providing that the unseaworthiness was not caused by lack of due diligence on his part before and at the commencement of the voyage, nor for the consequences of acts, neglect or faults of the Master or his other agents in the navigation or management of the ship. The Rules then listed a series of exceptions fully exempting the carrier from liability unless proof to the contrary was provided. Finally, the Rules provided that if the carrier was held liable for cargo loss or damage, the amount to be payable was not to exceed 100 sterling (Gold Value), unless the nature and value of the packages or units had been declared by the shipper prior to loading and stated in the bill of lading. The carrier could not lessen his liabilities under the Rules but it was provided that he was free to enlarge in part or in whole, any of his liabilities.

The Brussels Protocol (1968)

The major amendments introduced to the Hague Rules by the Brussels Protocol concern:

- the limitation of the carrier's liability which provides that the weight is an alternative to package or unit as a basis of limitation, the basis giving the higher figure to be adopted. The limit of liability per package or unit is raised.
- the provision that servants and agents of the carrier will be entitled to benefit from the definitions and limits of liability available to the carrier will not be able to avail themselves of this provision if it is proved that the loss or damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly, or with knowledge that damage will probably result.

- increased security for third party to whom the bill of lading has been transferred in good faith

- extension of time-limit for claims by mutual agreement

- wider scope of application

The Protocol of 1979

The Protocol of 1979 essentially raised the limit of liability and also changed the monetary value to value based on Special Drawing Rights (SDR) for those member countries of the International Monetary Fund (IMF). A different regime is established for socialist countries and countries which are not members of the IMF.

This uniform body of maritime law has been shaped by the developed countries, in particular those with great shipping interests and thus is vested with a bias unsuitable to developing nations. To the extent that maritime law favours the carrier interests over cargo interests, it follows that it is inimical to the developing countries which do not have substantial merchant fleets.
With the aim of ensuring that law does not discriminate against cargo interests and in order to develop a system which would be more fairly balanced between cargo and carrier interests concerning how the losses arising from the carriage of goods by sea be borne, UNCTAD adopted the Hamburg Rules which attempts to bring about a more equitable system between cargo and carrier interests. These Rules will be discussed in some detail in Part II of the Paper.

Maritime Liens and Mortgages

The CMI devoted much effort in the development of this very important area of commercial law which not only conditions the building, the purchase, the operation of ships which is the very existence and the development of the world merchant marine, but also establishes a new regime for the ranking of credits concerning shipping activities.

The International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages signed in 1926 was an attempt to provide for the unification of highly technical rules relating to Maritime Liens and Mortgages and establishes a framework for:

- the registration of mortgages in a public register and the recognition of registered mortgages and hypothèques in Contracting States

- the elements of maritime liens and a list of claims giving rise to maritime liens exercisable against the vessel, freight
and accessories

- the priority among maritime liens themselves and between mortgages and other claims

- the enforceability of maritime liens against subsequent owners and to vessels under the operation of non-owners (except where the owner has been dispossessed by an illegal act)

- the termination of the maritime lien, primarily through time-limits but also on other grounds recognised by national law

- the power of national laws to grant liens in respect of claims not specified in the Convention but without altering the priority of the liens specified and mortgages

- the Convention to be applied in all Contracting states when the vessel to which the claim relates "belongs to a Contracting State" (art.14)

The 1926 Convention has however been ratified by only 26 countries (which does not include the U.S., U.K., U.S.S.R., West Germany) thus an attempt was made in 1967 to amend the Convention by introducing legislation to reduce the number of maritime liens by eliminating the claims based on contract, to change the priority between them, and to include provisions relating to the deregistration of vessels, and on termination in the event of a forced sale. The new Convention aims at more precision in its wording regarding mort-
gages, priority of maritime liens and the power of states to introduce liens not listed in the Convention. This attempt was not successful, however, as the Convention was only ratified by four countries and has not entered into force.

In view of the reception given to these Conventions and the serious objections raised on a number of their provisions, UNCTAD decided in 1969 to study the existing regime with the aim of bringing about possible reforms in the existing international regime of maritime liens and mortgages. On the recommendation that the subject should be given top priority basis, a new attempt has been made in 1985 in UNCTAD with the cooperation of IMO and CMI to recommend possible methods of reform.

International Convention on the Arrest of Sea-Going Ships (1952)

This Convention has been described as one of the most important achievements in the unification of maritime law. The arrest of vessels is a very technical procedure and illustrates the international aspect of shipping and the necessity for creditors/claimants in one state to be able to press their interests directly against the property of a debtor who is outside the claimant's jurisdiction. The former is interested in making arrests easier whereas the latter (shipowner) wishes to restrict arrest or avoid untimely arrests. At the same time both parties have an overall interest in facilitating international commercial exchange. This is reflected in various rules which organize the right to operate arrests concerning the following principles:

- that the arrest must be authorized by a Court or by any
other judiciary competent authority of the Contracting state in which the arrest is carried out

- the principle that the arrest must be lifted when the defendant furnishes an adequate bail or security

- the prohibition of the plurality of arrests for the same maritime claim and by the same claimant (unless the latter can satisfy the Court that the security previously given has been released or that there is other good cause in maintaining the arrest

- the arrest to be performed upon the allegation of the claimant of one or several maritime claims as enumerated in the Convention but not for the purpose of enforcing a judgement

- the purpose of arrest is to obtain security for the satisfaction of a future judgement and/or award

- defining which Courts should have jurisdiction to determine the case upon its merit in the event of an arrest

- definition of cases where the Court shall have jurisdiction to decide upon its merits

- the scope of the Convention is fixed - it is applicable in all Contracting states, not only to ships flying the flag of a contracting state, but also to ships of non-contracting states (whilst authorising each state to refuse wholly or partly the
advantages of the Convention to any person who has not, at the
time of the arrest, his habitual residence or principal place
of business in a Contracting state).

International Convention relating to the Registration of Rights in
respect of vessels under Construction (1967)

The purpose of the Convention was to extend registration pro-
visions for vessels under construction. It provides for the
registration of titles, mortgages and hypotheques once a contract
is executed for the building of a ship or a declaration is made by
a builder on his own account.

The effects of registration are to be governed by the law of
the country of construction and the registration is to be entered
in a public register. With the exception of priority between
rights of retention and registered rights, priority is treated as
one of the effects of registration.

Limitation of Shipowners' Liability

The problem of the limitation of liability of shipowners has
always been a source of preoccupation to legislators, having regard
to the enormous liability the operation of a ship can create, the insurance coverage of which might be too heavy a burden on the venture in the absence of a limit.

With respect to this subject, the CMI has been responsible for the following international conventions:

- International Convention for the Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-Going Vessels (1924)

- International Convention for the Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-Going Vessels (1957)


The 1957 Convention amending that of 1924 was an attempt to adapt it to present conditions by bringing the whole matter under the coverage of a simpler and more practical regime. The Convention provides for limitation of liability with respect to claims resulting from:

- loss of life, personal injury
- loss or damage to goods or property
- damage in respect of any damage (however caused) to harbour works etc.
- expenses in connection with the raising, removal or destruc-
tion of any ship which is sunk, stranded or abandonned, or of anything on board such a ship

The extent of the ship-owner's liability is calculated on the basis of the registered tonnage of the vessel. The Convention also introduces a Limitation Fund.

In order to apply the limitation of liability, the absence of owner's fault and/or privity is requested. However, negligence by the Master and/or crew in the navigation or management of the ship is covered by the Convention.

By the early 1960's, with the establishment of many intergovernmental organizations (in particular within the U.N. system) with various responsibilities in the maritime field, and in particular the creation of UNCTAD, the decline of the impact of the CMI on the development of international maritime law was assured. The purpose behind the Conventions discussed above was basically for the unification and harmonization of national laws of the maritime nations in order to allow the smooth flow of international commerce among themselves. The motivation behind most of these Conventions lay in political or economic reasons mostly in the interest of the major ship-owning nations of the developed world and to the detriment of the emerging "shipper" countries of the developing world.

Until the end of the 1960's the CMI continued to work in its "private-club environment" and it was not until the Torrey-Canyon disaster of 1967 (8) with the question of marine pollution liability that it was forced into a situation of trying to reconcile the divergencies between public and private maritime law as it worked in conjunction with the IMO on the matter. The cooperation between
the two organizations met with difficulties right from the start basically with respect to questions of private maritime law which the CMI did not consider to be in the interests of public policy.

...the cooperation between IMCO and the CMI was highly desirable and long overdue, since it at least attempted to bring private shipping and associated interests together with the public interests of a U.N. specialized agency. In retrospect it seems clear that the CMI did not, or probably could not, realize at the time that it had the opportunity either to become a viable part of an expanded international maritime law-making machinery, or to be reduced to a shipping-interest lobby par excellence. In order to achieve the former position, it would have had to accept that international maritime law making, which the CMI had been carrying out expertly for some seventy years, would also have to involve a certain amount of international maritime-law reform, considering the expansion of world states with maritime interests....(9)

Structural Reform and the New Policy Direction of the CMI

The CMI underwent structural reform in 1972, basically as a result of the loss of its legal base, the "Conference Diplomatique Maritime". Its constitution was consequently revised and now consists of:

1. the will to serve all private interests, their own personal requirements, as well as their relations with the
Governments of which they might depend

2. the desire to cooperate with the Governmental and Intergovernmental Authorities with a view to seeking and finding common objectives in the field of activities touching the maritime province and sectors connected therewith

3. an appeal and overture to all interested quarters wherever they come in any shape or form, to enable them access to an international forum where they shall be able to freely express themselves and ventilate any claims

4. the establishment of a flexible, efficient and diversified organism - the Executive Council - and the appointment of a highly qualified officer with a view to fostering and fructifying the contacts that are indispensable between the public and the private sector, with the object to serve best the entire community of maritime interests.(10)

The restructuring of the CMI may be in part an attempt to rationalize its present role in terms of its reduced influence on international maritime law development.

Criticisms of the CMI concern the conservatism of its membership of national law associations which include only a few of the associations of Third World countries.(11) It has not expanded its
membership to any great extent during its seventy years of existence, and thus is still dominated by traditional maritime interests. Nevertheless, although the CMI has lost its central international law-making role, it continues to function as an expert lobby and acts in an advisory capacity to such organizations as UNCTAD and the IMO.

Notes

3. Ibid.
4. see note 1. above, p. 127
5. see note 2. above
6. see note 1. above, p. 285
7. Ibid., p. 129
8. For details of the Torrey Canyon disaster, see Nandan "Torrey Canyon Disaster"
9. see note 1. above, pp. 290/291
10. see note 2. above, p. 106
11. Membership of the Comité Maritime International:
Africa- Nigeria;
Americas- Argentina, Brazil, Canada, Chile, Columbia, Costa Rica,
Mexico, Panama, Peru, U.S., Venezuela, Uruguay;
Asia- China, India, Israel, Japan, South Korea, Philippines;
Aust.- Australia, New Zealand;
Europe- Belgium, Bulgaria, Czechoslovakia, Denmark, Finland, France, Democratic Republic of Germany, Federal Republic of Germany, Greece, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.K., U.S.S.R., Yugoslavia.
B. Development of Public International Maritime Law (International Law of the Sea.)

Introduction

The post World War II period saw the establishment of the United Nations system and the blossoming of public international law with the increasing participation of Third World countries in decision making at the international level. With respect to the development of public maritime law through the U.N. system, there had been established, within a twenty-five year period, at least two subsidiary organs and six specialized agencies with responsibilities in this field, and two ad hoc diplomatic conferences on the Law of the Sea had been held. This chapter will highlight the major developments in public maritime law during this period.

Creation of the United Nations - 1945

...there can be little doubt that this is the golden age of international organizations and with them alone is in sight the golden age of mankind....

Nagendra Singh.

When the United Nations came into existence the majority of so-called developing or Third World states were still under the dominion of their colonial masters. Of the fifty-one "founding mothers" who signed the Charter of the U.N. on June 26 1945, estab-
lishing the International Organization, thirty-one could be consi-
dered developing - of which eighteen were Latin American, six Mid-
le Eastern, two Caribbean, three Asian and two African states.(1)

Under the Charter of the United Nations the Organization was
to be composed of the following:

1. The Principal Organs
   (General Assembly
   Security Council
   Economic and Social Council(ECOSOC)
   Trusteeship Council
   International Court of Justice (ICJ)

2. Subsidiary Organs

3. Specialized Agencies

4. ad hoc diplomatic conferences dealing with issues sing-
led out by the Organization as having particularly pressing
importance.(2)

The International Labour Organization (ILO) - The First Speciali-
zed Agency of the United Nations.

The ILO, established by the Treaty of Versailles in 1919, with
the sole object of serving international peace through the estab-

26
lishment of social justice, became the U.N.'s first specialized agency in 1946. An agreement bringing the organization into relationship with the U.N. and defining its status as a specialized agency came into force upon its approval by the U.N. General Assembly on December 14 1946.

The functions of the ILO can be defined as follows:

- the formulation of international policies and programmes to help improve working and living conditions, enhance employment opportunities, and promote basic human rights

- the creation of international labour standards to serve as targets for achievement for national authorities in putting these policies into action

- a programme of international technical cooperation to help governments in making these policies effective in practice

- training, education, research and publishing activities to help advance all these efforts.(2)

One of the ILO's oldest and most important functions is the adoption by the tripartite International Labour Conference - in which workers' and employers' representatives have an equal voice with those of governments in the formulation of its policies - of
Conventions and Recommendations which set international labour standards.

Maritime sessions of the International Labour Conference

The adoption of measures for the conditions of seafarers which emanated from the efforts of Samuel Plimsoll, became an integral part of the work of the Labour Conference from as early as 1920 when the International Seamen's Organizations requested that both a permanent General Conference for the regulation of maritime labour be set up and an international supervisory office for maritime labour controlled by a Governing Body be established. The proposal to set up a permanent bureau was rejected, but the Governing Body of the ILO, recognizing the special nature of maritime problems decided that a permanent Committee to be known as the Joint Maritime Commission should be set up and in this connection resolved as follows:

...A joint commission of 12 members should be appointed, consisting of five ship-owners and five seamen chosen by the Genoa Conference (the second International Labour Conference, and the first such conference devoted entirely to maritime questions) and two members chosen by the Governing Body. This Commission will assist the technical maritime service of the Labour Office and will be consulted on questions of maritime labour. It will meet when convoked by the Chairman of the Governing Body who will preside at its deliberations.(3)

The function of the Joint Maritime Commission is therefore to act as a preparatory and advisory body on all maritime labour que-
stions. The composition of the Commission has undergone a steady change from one session to another. The representatives of the shipowners and seafarers are elected by the respective groups of delegates to the Special Maritime Sessions of the International Labour Conference. At the fifty-fifth Maritime Session of the ILO the membership of the Joint Maritime Commission was increased from 15 to 18 regular members with five deputy members for each group, owing to the increase in the Member States of the ILO. Traditionally, membership of the JMC has been dominated by interests in the developed maritime countries, and it has been proposed that the Commission be made into a tripartite body as is the Labour Conference enabling government participation. This proposal continues to be resisted on the part of the shipowners' and seafarers' organizations.

The Joint Maritime Commission has dealt with a multitude of questions, such as minimum age for entry to employment; medical examination; articles of agreement; repatriation; holidays with pay; social security; wages; hours of work and manning; crew accommodation; identity documents; occupational safety and health; welfare at sea and in port; continuity of employment; vocational training; certificates of competency. The function of the Commission with regard to these subjects has been to prepare the groundwork and to advise the main Maritime Sessions of the ILO. The Commission, being an advisory body, makes recommendations to pave the way for the formulation of ILO Conventions and Recommendations. Of the 156 Conventions and 165 Recommendations adopted by the ILO by 1981, 26 and 21 respectively relate exclusively to the conditions of employment of seafarers.
Establishment of the Inter-Governmental Maritime Consultative Organization as a Specialized Agency of the U.N.

On March 6 1948 the U. N. Maritime Conference in Geneva (held under the auspices of ECOSOC), recognizing the need for consolidation and improvement on the forms of international cooperation in the field of shipping, opened for signature a Convention on the establishment of the Inter-governmental Maritime Consultative Organization (IMCO) as the first intergovernmental body dedicated solely to maritime matters. (5)

The Convention could only enter into force, however, after twenty-one states, seven of which had one million gross tons of shipping became parties to it.

The purposes of the organization as defined under Article 1. of the 1948 Convention were as follows:

a) to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from ships; and to deal with legal matters related to the purposes set out in this Article;
b) to encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination; assistance and encouragement given by a Government for the development of its national shipping and for the purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade;

c) to provide for the consideration by the Organization of any matters concerning unfair restrictive practices by shipping concerns in accordance with Part II;

d) to provide for the consideration by the Organization of any matters concerning shipping that may be referred to it by any organ or specialized agency of the United Nations;

e) to provide for the exchange of information among Governments on matters under consideration by the Organization. (6)

It would take some ten years after the adoption of the Convention-on March 17 1958 when Japan became its twenty-first signatory-that this Organization, the twelfth Specialized Agency of the United Nations, could come into existence. (7) The traditional
maritime nations had been fearful of the fact that they would soon face competition from the establishment of fleets in the newly emerging developing countries, and rejected totally the idea of creating an organization which would attempt to regulate international shipping in any way.

Obviously it was not in the interest of the maritime states to see a United Nations organization established that was solely concerned with international shipping and had any capacity other than a purely advisory or technical one. Some states opposed the establishment of the organization altogether and would eventually append lengthy reservations to their instruments of ratifications when IMCO was finally established. Others attempted to water down the effectiveness of the organization so that they could control its vital organs as much as possible. (8)

The traditional maritime nations had been powerful enough to confine the Organization's responsibilities to the technical aspects of Navigation, and more so to ensure that the Organization would only have a "consultative and advisory" role in the technical fields related to shipping, primarily the safety of life at sea, the efficiency of navigation and the removal of discriminatory action and unnecessary restrictions by governments.
TABLE 2
THE 1958 WORLD SHIPPING LADDER

<table>
<thead>
<tr>
<th>STATE</th>
<th>GROSS REGISTERED TONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. United States</td>
<td>25,589,596*</td>
</tr>
<tr>
<td>2. Great Britain</td>
<td>20,285,776</td>
</tr>
<tr>
<td>3. Liberia</td>
<td>10,078,778</td>
</tr>
<tr>
<td>4. Norway</td>
<td>9,384,830</td>
</tr>
<tr>
<td>5. Japan</td>
<td>5,465,442</td>
</tr>
<tr>
<td>6. Italy</td>
<td>4,899,640</td>
</tr>
<tr>
<td>7. Netherlands</td>
<td>4,599,788</td>
</tr>
<tr>
<td>8. Panama</td>
<td>4,357,800</td>
</tr>
<tr>
<td>9. France</td>
<td>4,337,935</td>
</tr>
<tr>
<td>10. Federal Republic of Germany</td>
<td>4,077,475</td>
</tr>
</tbody>
</table>

*Includes U.S. reserve and inland fleet.

It was also clear at IMCO's inception that the traditional maritime countries intended to exert their maximum influence over the Organization through the control of its organs. The 1948 Convention provided that the Organization should consist of:
- a General Assembly comprised of all the members
- an Executive Council made up of 16 members of the Assembly using the following criteria:
  4 shall be states with the largest interest in international shipping services
  4 shall be other States with the largest interest in international seaborne trade
  8 shall be States, not elected under the above, which have
special interests in maritime transport or navigation, and whose election to the Council will ensure the representation of all major geographic areas of the world.

- a Maritime Safety Committee consisting of 14 members elected by the Assembly from the Member Governments of those nations having an important interest in maritime safety, of which not less than 8 shall be the largest ship-owning nations.(10)

- any other required subsidiary organs.

The Council and the Maritime Safety Committee were clearly to be the most important organs of IMCO. By using the above formulae to decide on the composition of membership for the Council and the Maritime Safety Committee, the traditional maritime nations were assured control of the decision-making apparatus of the Organization.

Led by Great Britain, in this attempt to control the vital organs of the Organization, the traditional maritime nations wanted to block the entry of Liberia and Panama (which ranked third and eighth respectively on the World Shipping Ladder) from membership of the Maritime Safety Committee, despite the constitutional requirements of the Organization.(11) The issue was part and parcel of the on-going "Flag of Convenience" debate with the question of the "genuine link" between flag and country of registry (12), but the underlying concern of traditional maritime countries was to lessen
the influence of these countries whose fleets were in direct compe-
tition with their fleets. Furthermore, Liberia and Panama were
developing countries. The matter was finally resolved in the Inter-
national Court of Justice in favour of Liberia and Panama.(13)

Despite its inauspicious beginnings, the Organization has seen
many major changes and developments, and has undoubtedly made a
major contribution in the maritime field. In terms of its member-
ship, it has expanded from the initial 21 founding members in 1958
to over 100 members of the so-called family of nations.(14) With
respect to organizational developments over the years, IMCO effected
several structural and constitutional changes reflecting the need
to keep pace with international and other developments.

A important milestone in the history of the Organization was
the creation of a Legal Committee in 1967 in the aftermath of the
Torrey Canyon disaster to deal with the legal problems concerning
marine pollution liability which were brought to light by that
accident. The results of some of its efforts will be discussed
below.(15)

Though the functions of the Organization remain "consultative
and advisory", the words "intergovernmental" and "consultative"
were dropped from its title in 1982, and it is now referred to as
the International Maritime Organization (IMO). In terms of the sco-
pe of its work the IMO has followed closely its motto "cleaner
seas, safer oceans" with its efforts in promoting the safety of life
at sea and the preservation of the marine environment. It is responsible for the formulation of 21 International Conventions, the adoption of over 500 Resolutions and numerous Codes.(16) In Part II we shall examine the effect of IMO's formulation of International standards on Third World development.(17)


Whilst IMCO was beginning to regulate technical aspects related to shipping and the safety of life at sea through international cooperation, the other major pressing issue at hand was the economic exploitation of the oceans (by coastal states through extension of their sovereignty over large parts of their adjacent seas.) The First U.N. Conference on the Law of the Sea was held in Geneva during the period February 24 to April 29 1958, consequent on a recommendation by the U.N. International Law Commission in 1956 that the U.N. General Assembly should hold an International Conference

...to examine the law of the sea, taking into account not only the legal but also the technical, biological, economic and political aspects of the problem, and to embody the result of its work in one or more international conventions or such other instruments as it may deem appropriate....(18)
The Conference, which took place against the extension of claims of national jurisdiction by more and more coastal states over their adjacent seas, attracted representatives from 86 states - 54 of which consisted of newly-independent Asian, African and Latin American countries which had previously played no role (or possibly a very minor role in the case of Asia and Latin America) in the formulation of the law of the sea. These countries argued that the rights and duties of the coastal states needed protection in the light of technological advancements. Most coastal states demanded wider territorial waters and/or extended coastal state jurisdiction for the protection of their continental shelves, fisheries and mineral resources, but there was no agreement on the limit.

Despite the fact that the traditional maritime countries were in the minority, they dominated the Conference and used their political influence to control a majority of the votes taken and to have accepted most of the amendments proposed. The result of the Conference was the drafting of four Conventions, nine Protocols and an optional Protocol in the hope of producing a generally accepted public Code for the Oceans. This was not to be. The inequitable principles of the Codes doomed them to failure from the start! As Gold rightly comments:

It was probably a blessing in disguise that they did not succeed, as the agreements produced did not adequately reflect the equitable principles in ocean law and policy that would be required, as well as
The four Conventions adopted were:

1. **Convention on the Territorial Sea and Contiguous Zone** (21)

   The Conference was not able to define the limits of the territorial sea. No compromise could be reached between coastal states who wished to extend jurisdiction in order to protect and preserve their resources in their economic interests, and the traditional maritime nations who were defending their political interests. The Rights of Innocent Passage were however assured.

2. **Convention on the High Seas** (22)

   Agreement was reached concerning the status of the High Seas. The Convention provided that the High Seas—the area outside the boundaries of the territorial seas (not defined)—were to remain outside the sovereignty of all states. Article 2 states:

   The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal states:

   i. Freedom of navigation
   ii. Freedom of fishing;
   iii. Freedom to lay submarine cables and pipelines;
   iv. Freedom to fly over the high seas.

   These freedoms, and others which are recognized by the general principles of international law, shall be exercised
by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas.

Articles 4 and 5 on the Nationality of ships was the consequence of the on-going "flag debate" concerning the question of the use of the so-called "flags of convenience" or "cheap flags" by shipowners from traditional maritime countries (mostly the U.S. and Greece) who registered their ships in other countries - namely Liberia, Panama, Bermuda - in order to avoid high taxation, stringent labour legislation and high ship construction requirements laid down in their own countries. The opponents of this system were able to include provisions on a requirement of a "genuine link" between flag and flag state. Article 5(1) states:

Each state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship; in particular, the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

3. Convention on the Continental Shelf (23)
A definition of the Continental Shelf was provided by the 1958 Convention which also gave exclusive rights to coastal states over the exploration and exploitation of all resources on the Shelf. Article 2 gives coastal states the following rights:

i. The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

ii. The rights referred to in para.i of this Article are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal state.

iii. The rights of the coastal state over the continental shelf do not depend on occupation, effective or notional or on any express proclamation.

iv. The natural resources referred to in these Articles consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or unable to move except in constant physical contact with the seabed or the subsoil.
This Convention took account of the danger of over-exploitation of the living resources of the sea. It gave all states the right to engage in fishing activities on the high seas, but required states to adopt such measures necessary for the conservation of the high seas. Further it gave the coastal state the right to participate in any research or regulation for the purposes of conservation of the living resources of the high seas adjacent to that state even if its nationals were not engaged in fishing there. The Convention also provides for the establishment of a special Commission for the settlement of disputes which may arise.

As stated earlier, these conventions were never applied universally. Only the Conventions on the High Seas and Continental Shelf were ratified or acceded to by over fifty per cent of the nations represented at the Conference, many of which did not abide by the provisions of the Conventions. In conclusion it may be said that the Geneva Conferences "served simply as a reaffirmation of essentially traditional, but far from generally accepted, international law."

It would take another seven years for another proposal to be made for the formulation of a new International Law of the Sea based on equitable principles, taking into account the needs and aspirations of Third World countries.
By 1964 at the start of the first United Nations Conference on Trade and Development (UNCTAD I), nearly twenty years after the founding of the U.N., there were some seventy-seven Third World countries which had achieved independence. These countries which now formed the majority in the U.N. General Assembly were able to have it adopt certain Resolutions (including the Resolution on the establishment of UNCTAD) which were aimed at Third World development.

As the thrust of demands of Third World countries to have a greater share of the world's resources increased, UNCTAD was seen as providing an ideal context for the transformation of the international economic order and the development of all peoples. Third World countries were now painfully conscious of the unequal balances of trade and development between rich and poor countries, imbalances due to a decline in the terms of trade which were further aggravated by the heavy impact of rising freight rates and the inadequacies associated with the existing institutional mechanism in shipping. The approach of developing countries to shipping which was to shape events for UNCTAD I to V was based on the four policy objectives:

1. to influence the structure and the level of freight rates in order to lessen the impact of high freight rates on their traditional and non-traditional exports

2. to establish and expand their own national merchant
fleets and their rights to assist such fleets in their infant stage

3. to rewrite international shipping legislation and the basic framework of regulation

4. to create an environment conducive to the improvement of their human resources and physical infrastructure. (30)

Problems of Third World development related to the question of shipping were therefore given top priority at UNCTAD I which recognized the need for international reform of the entire shipping industry and which saw UNCTAD as the vehicle through which this could be achieved.

...The developing countries argued that the rules of international private maritime law were written by traditional sea powers (particularly the U.K.) and were unduly unfavourable to shipowners. Therefore they asked for a review of these rules and of the economic and commercial aspects of shipping legislation and practices, a review which would take account of shippers and shipowners alike. They referred primarily to these aspects of shipping legislation which had a negative effect on their trade and development, in particular bills of lading, charter parties, limitation of shipowners liability and international marine insurance. (31)
At once the traditional maritime countries registered total opposition to Third World demands and resisted placing shipping matters on the Conference agenda, charging that UNCTAD was not qualified to deal with these issues which they felt were being adequately dealt with in other fora - such as the CMI and IMCO. The developing countries were able to counter by pointing out that the CMI could never be considered as a "representative body", and was in fact, a conservative lobby reflecting the narrow and exclusive interests of a handful of maritime nations, and whose rules had now become outmoded with the dynamic changes not only in the international shipping industry, but in the international politico-economic arena as a whole. With respect to IMCO, it was seen by the developing countries as the creation of the traditional maritime states - a "shipowners' club". In their reluctance to have an international regulatory body, the traditional maritime nations had created an organization with limited responsibilities in the technical field of shipping. Although the constitution of IMCO did provide it with a mandate to explore certain economic questions related to shipping, it had failed to bring this mandate into action. (32)

Although negotiations at UNCTAD I could go no further than agreement between developed and developing nations on "Common Measures of Understanding", the Conference however recognized the need for establishing a Permanent Organ where deliberations on shipping questions could continue, and thus adopted a Resolution on April 29 1965, establishing a Committee on Shipping. (33) The Committee was given the following terms of reference:
1. to promote understanding and cooperation in the field of shipping and to be available for the harmonization of shipping policies of Governments and regional economic groupings which fall within the competence of the Trade and Development Board;

2. to study and make recommendations on the ways in which and the conditions under which international shipping can most effectively contribute to the expansion of world trade, in particular the trade of developing countries. Particular attention should be paid to the economic aspects of shipping, to those shipping matters which affect the trade and balance of payments of developing countries, and to related shipping policies and legislation of Governments on matters which fall within the competence of the Trade and Development Board;

3. to study measures to improve port operations and connected inland transport facilities, with particular reference to those ports where trade is of economic significance to the country where they are situated or to world trade;

4. to make recommendations designed to secure, where appropriate, the participation of shipping lines of developing countries in shipping Conferences on equitable terms;
5. to promote cooperation between shippers and the Conferences, and well organized consultation machinery should be established with adequate procedures for hearing and remedying complaints by the formation of shippers' councils or other suitable bodies on a national or regional basis;

6. to study and make recommendations with a view to promoting the development of merchant marines, in particular of developing countries. The question of development of merchant marines by developing countries should be decided by such countries on the basis of sound economic criteria;

7. to bring, through the appropriate channels as agreed by the Board, to the attention of Governments, the regional economic commissions or other international bodies, as appropriate, its views and recommendations as to the need for governmental or inter-governmental action, or for action on a regional level, to deal with the problems related to shipping;

8. to review and facilitate the coordination of activities other than institutions within the United Nations system and of inter-governmental organizations concerning technical assistance to developing countries in the field of shipping, port operations and facilities; and make recommendations;

9. to cooperate with appropriate international bodies with
regard to technical assistance to developing countries, in
the field of shipping, port operations and connected
inland transport;

10. to promote the systematic compilation and publication
of statistics on matters pertaining to its field of compe-
tence. etc.(34)

With the establishment of the Committee on Shipping as a per-
manent organ within UNCTAD, the Third World countries had won the
first battle in the long struggle ahead.

The Malta Declaration 1967
Third World Demands for a New Law of the Sea

While the Third World was calling for measures at the interna-
tional level to redress the inequitable situation with respect to
the commercial aspects of international maritime transport, it also
recognized the need for the establishment of a new law of the sea
to bring about an equitable regime in the area of ocean resource
development. It was against this background that on November 1
1967, Arvid Pardo, Malta's Ambassador to the United Nations, rose
in the General Assembly to make his historic request for the inc-
lusion of the following item on the agenda of the twenty-second
session of the General Assembly:
...Declaration and treaty concerning the reservation exclusively for peaceful purposes of the sea-bed and of the ocean floor underlying the seas beyond the limit of present national jurisdiction, and the use of their resources in the interests of mankind. (35)

This request took place against the background of major discoveries and technological advancements in the exploration and exploitation of resources, both living and non-living, of the oceans. The traditional ocean use, shipping, was now giving way to ocean resource development in which the developed states had made tremendous advances; it was feared that there would be a "scramble" to "carve up" the oceans as the developed countries had carved up the rest of the world in the colonial period. Further, the existing Geneva Conventions on the Law of the Sea were not only totally inadequate to deal with new developments, they were not being adhered to by the countries which ratified them—a very few of which had been Third World countries.

Pardo further proposed to the U.N. General Assembly that the ocean floor should be considered as the "common heritage of mankind" and that a treaty should be drafted embodying five basic principles:

1. that the seabed and ocean floor beyond the limits of national jurisdiction are not subject to national appropriation;
2. that the exploration of the area shall be undertaken in a manner consistent with the principles and purposes of the U.N. Charter;

3. that the use of the area and its economic exploitation shall be undertaken with aim of safeguarding the interests of mankind, and the benefits shall be used primarily to promote the development of poor countries;

4. that the area will be reserved exclusively for peaceful purposes;

5. that an international agency be created to assume jurisdiction over the area and ensure that exploration and exploitation activities conform with the provisions of the treaty.(36)

On December 18 1967, the General Assembly adopted unanimously Resolution 2340(xxii) which called for "the examination of the question of the reservation exclusively for peaceful purposes of the seabed and ocean floor and the subsoil thereof, underlying the high seas beyond the limits of national jurisdiction and the use of their resources in the interests of mankind." The resolution incorporated instructions to the First Committee to study the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction."
In 1971 the General Assembly adopted four Resolutions as follows:

1. Resolution 2749 (xxv) Declaration of Principles governing the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction.

2. Resolution 2750 A(xxx) concerning the special interests and needs of the developing countries relating to the exploitation of the seabed.

3. Resolution 2750 B(xxx) concerning the problems of land-locked countries.

4. Resolution 2750 C(xxv) records a decision to convene a Conference on the Law of the Sea in 1973 which would deal with:

   ...the establishment of an equitable regime - including an international machinery - for the area and the resources of the seabed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues including those concerning the regime of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zones, fishing and conservation of living resources of the high seas (including the question of the preferen-
tial rights of coastal states), the preservation of the marine environment (including inter alia, the prevention of pollution), and scientific research.

Third United Nations Conference on the Law of the Sea (UNCLOS III) - Conference of the Third World

It is important to note that, compared to the participation of countries in the 1958 and 1960 Geneva Conferences, participation in the Third U.N. Conference on the Law of the Sea was almost universal with 137 countries represented at the Caracas session in 1974, which increased to 156 at the New York session in 1976 and 158 in 1980. The major confrontation in the Conference since 1974 was - and still is - the opposed interests between the developed states and Third World countries.

...The former seek to maximize their benefits from the sea and the newly found seabed resources on the basis of their advanced technology, whereas the latter want, firstly, to modify and change the traditional law which, they believe, has not served them well and, secondly, to develop a new equitable law for the exploitation of the seabed resources so that they will be equal partners in the new bounty.(37)
It is important to note that at the Caracas session an agreed voting formula combined a "gentleman's agreement" that there would be no voting unless there was no other decision-making procedure left. It is also pertinent to note that, unlike the First Law of the Sea Conference in 1958 at which negotiations began with a single negotiating text prepared in advance by the International Law Commission, there was no negotiating text at the start of UNCLOS III, but proposals submitted by various countries for discussion. The Conference continued to work in the three groupings established by the Seabed Committee viz:

First Committee - Seabed Committee
Second Committee - General aspects on the Law of the Sea
Third Committee - Marine environment, scientific research and the Transfer of Marine Technology

It is not possible to outline in any detail the almost ten year history of the Conference on which volumes have already been written. It is however necessary to provide a skeletal outline of the sequence of events leading to the conclusion of the Conference in the adoption of the U.N. Convention on the Law of the Sea (herein after referred to as the Montego Bay Convention).

1975 - Geneva Session - the third session which took place from March to May 1975 resulted in the first informal treaty draft - the Single Negotiating Text (SNT)

1976 - New York - the fourth session further refined the Geneva text, producing the Revised Single Negotiating Text (RSNT)

1976 - Fifth session - impasse on Deep sea-bed mining provi-
1977 - New York - differences were narrowed to an Informal Composite Negotiating Text (ICNT)

1978 - Geneva - further consolidation and compromise on more than 300 articles in the ICNT

1979 - New York - the eighth session resulted in a completely revised text of the ICNT


1982 - Montego Bay - The historic Signing Ceremony on the new Law of the Sea Convention was held.

The Convention, which consists of 17 Parts and over 300 articles was adopted as a "Package Deal" by 130 countries, with 4 countries voting against (U.S., U.K., Federal Republic Of Germany and Venezuela), with 17 abstentions.

We will discuss in Part II the implications of the provisions
of the Convention on the development of the Third World.

Notes

2. ILO, Maritime Labour Conventions and Recommendations
3. N. Singh, International Maritime Law Conventions - British Shipping Laws - 4 Vols
4. See Appendix III for list of ILO Maritime Labour Conventions.
5. JIU/REP/84/84 "The International Maritime Organization" p. 1.
7. Founding members included Argentina, Australia, Belgium, Brazil, Canada, Chile, Cuba, Denmark, Egypt, Finland, France, Greece, India, Italy, Japan, Lebanon, Liberia, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Poland, Portugal, Sweden, Switzerland, Turkey, U.K., U.S. (Note that of these countries only eight belong to the Third World.)
8. see note 1. above

Note the Reservation of the Government of Sweden which declared:
"The Government of Sweden holds that it is the field of technical and nautical matters that the Organization can best make its contribution towards the development of shipping and seaborne trade throughout the world. If the Organization were to extend its activities to matters of a purely commercial or economic nature, a situation might arise in which the Government of Sweden would have to consider resorting to the provisions regarding withdrawal contained in Article 59 of the Convention." The other Scandinavian and other maritime countries made similar reservations.
9. IMO Convention, Art. 18
10. Ibid., Art. 28(a)


12. infra., p. 78

13. ICJ decision no

14. In 1984 IMO membership was 124 with 1 associate member.

15. infra., p. 57

16. See Appendix II for list of IMO Conventions.

17. infra., p. 57


19. Ibid., p. 185.

20. see note 1. above, p. 262


25. Art.1.2.


27. Arts. 9-12

28. see note 1. above, p. 265

29. A. Behnam, Twentieth Anniversary of UNCTAD.

30. Ibid.

31. see note 1. above, p. 279

32. IMO Convention, Art. 1(2).

34. see note 3. above

35. see note 1. above, p.311

36. Ibid.

37. see note 18 above
PART II. ROLE OF INTERNATIONAL ORGANIZATIONS IN THE FORMULATION OF INTERNATIONAL MARITIME REGULATIONS

A. The Contribution of IMO in the Technical Field

The motto of the IMO "Safer Ships, Cleaner Oceans", adequately reflects the scope of work the Organization has been carrying out in its twenty-seven years of existence. The IMO has dedicated its efforts in the development of international maritime standards in the formulation of Maritime Safety Legislation and Marine Environment Protection Legislation.

The promotion of Safety of Life at Sea has undoubtedly been the most important area of IMO activity, and the formulation of Maritime Safety Legislation is the responsibility of the Maritime Safety Committee (MSC) which is mandated by the Convention to:

...consider any matter within the scope of the Organization concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime
The MSC has been responsible for ten of the twenty-one Conventions produced by the IMO, two Protocols, and numerous recommendations and Codes dealing with Safety. Over the past few years there has been a continuous review of the International Convention on the Safety of Life at Sea (SOLAS 1974), the most important work of the MSC which is a permanent task for the Committee.

The Safety of Life at Sea (SOLAS) Convention, 1974.

The main objectives of SOLAS are to specify minimum standards for the construction, equipment and operation of ships including sub-division and stability, machinery and electrical installations, fire-protection, life-saving appliances, radiotelegraphy and radiotelephony, safety of navigation, carriage of grain and dangerous goods, nuclear ships, surveys and certificates.

(In 1978 the IMO adopted a Protocol on Tanker Safety and Pollution Prevention (TSPP) in order to strengthen the requirements of the 1974 Convention)

Tacit Amendment, Procedure

Owing to the rapid changes in technological advancements which would require constant amendment to various technical provisions of the Conventions, a system has been devised whereby amendments adopted by the MSC come into force two years after being communicated to the Contracting States unless they are rejected by one-third of the Contracting States or by Contracting States owning fifty percent of the world's tonnage of merchant shipping. This procedure has its obvious advantages and also drawbacks as it may provide the
SOLAS '74 has in fact gained wide acceptance as it attempts to bring rules into the shipping industry concerning ship construction etc., where hitherto no rules existed. This is in definite contrast to the aviation industry where the regulatory body, the International Civil Aviation Organization (ICAO), lays down stringent and uniform standards for the design and construction of all aircraft. However, the minimum standards set by the MSC might still prove too high for Third World countries trying to establish merchant fleets and being only able to purchase "cast-off" ships from developed countries which strive for more and more technologically advanced fleets, and similarly higher international standards to help provide them with a competitive edge against the threat of newcomers.

Other Maritime Safety Legislation adopted by the IMO include:

- **Laws on the Safe Navigation at Sea** viz.
  - **International Regulations for Preventing Collisions at Sea (1960 as revised 1972).** This Convention is an attempt to introduce uniform international rules for the avoidance of collisions at sea, including traffic separation schemes, traffic control systems etc.

- **International Convention on Maritime Search and Rescue-1979**
  This was the first world-wide instrument with the purpose of setting up standards for maritime search and rescue services, their organization and the cooperation among states, especially on a
Convention on the International Maritime Satellite Organization - INMARSAT - 1976. The INMARSAT system created by the Convention in 1976 was designed to improve Maritime Search and Rescue through a global distress and safety system that will operate via satellites relaying distress calls combined with an indication of the position of the unit in distress. Membership of the Organization as at January 1983 was thirty-six countries, of which only nine were Third World countries. (2)

International Convention on Standards for Training, Certification and Watchkeeping for Seafarers, 1978 (STCW)

This Convention, formulated in collaboration with the ILO, is the last major gap in maritime safety legislation. It is a fact that at least eighty-five per cent of all maritime accidents are caused by human error. Yet there have never existed any training standards for crew members. This Convention therefore which attempts to introduce international minimum standards for training, certification and watchkeeping specifies that every officer of sea-going ships of almost any size and power shall hold appropriate certificate of competency. It also lays down provisions regarding Dispensations, Equivalents, and Control. The Convention further provides basic principles in training, watchkeeping and certification for the following:

- Master - Deck Department
- Engine Department
- Radio Department

also special requirements for tankers.
The Convention, which entered into force in 1983, has been so far ratified by only forty-one states, thirteen of which are Third world states. The question why so few states, especially those from developing countries have ratified this important piece of maritime safety legislation needs to be answered. It is a fact that Third world countries are usually the suppliers of unskilled shipboard labour. For these countries to introduce legislation raising the criteria for training to meet the international "minimum" standards would require enormous expenditure for the establishment of maritime training institutes with highly sophisticated equipment, highly trained personnel etc. which no doubt will have to be imported from the developed countries.

Nevertheless we recognize the absolute necessity of having minimum international training standards in this industry of rapid technological advancements in the construction of ships and in the highly dangerous nature of cargoes being carried. It is interesting to note that in the aviation industry training has always been standardized; ICAO has laid down the highest international regulations on training (which has enabled the transfer of certificate of pilots from one country to another.)
The major Conventions relating to this area are:

2. International Convention on Civil Liability for Oil Pollution Damage, 1969. (CLC)

After the Torrey Canyon disaster of 1967, the IMO concentrated its work in the area of the prevention of pollution of the marine environment from ship-generated sources. The Torrey Canyon grounding, although a major environmental disaster, acted as a catalyst encouraging multilateral attempts to deal with vessel-source pollution. The IMO established a Legal Committee primarily to deal with marine pollution liability; the Legal Committee is responsible for three of the five Conventions listed above.

The Intervention Convention gives coastal States the right to take action where the casualty creates "grave and imminent dangers...which may reasonably be expected to result in major harmful circumstances." (Art 1(1)) Grave and imminent danger must threaten a coastal State's "coastline or related interests" (which include fisheries activities and tourism). The coastal State has the right
to take measures "as may be necessary to prevent, mitigate or elimi

The Civil Liability Convention provisions include:
- strict liability (subject to a few exceptions) on the registered owner
- new, separate limitation amount exclusively for oil pollution damage which is approximately twice the 1957 Brussels Convention limits (it is on a sliding scale related to tonnage and has a maximum which is currently around $16 mill.)
- registered owners must insure their liability
- claims can be brought in states where the oil pollution damage is suffered
However the Convention's restrictions include a monetary limit. It also does not cover oil pollution caused by bunkers in dry cargo vessels or tankers in ballast. Neither does it cover oil pollution outside territorial seas.
The Convention which entered into force on June 19 1975 has so far been ratified by 55 States, 21 of which are Third World countries. (3)

The Fund Convention sets up a body - the IOPC Fund - whose function it is to reimburse those who have suffered oil pollution damage to the extent that they have been unable to recover their loss under the CLC. The Assembly of the Fund consists of twenty-eight members only. Many States, particularly Third World countries, find it difficult to join a Convention which creates a
MARPOL 73/78 provides perhaps the most important comprehensive treaty regime ever developed in the struggle against pollution. The provisions of the MARPOL 73/78 are aimed at the prevention of pollution of the sea by:

- oil discharged from ships
- bulk liquid or dry noxious substances other than oil discharged from ships
- noxious substances in packages or containers
- shipboard sewage
- ship-generated garbage

It also aims at control of pollution through improved design, construction and equipment of tankers carrying oil and ships transporting other noxious substances in bulk.

Annex 1 of the Convention also provides for the designation of certain "Special Areas" where the discharge of oil is prohibited. The establishment of Reception Facilities are an obligation on the part of Contracting Parties which must provide adequate facilities for the reception of residues and oily mixtures at oil loading terminals, repair ports etc.

The 1978 Protocol

The Protocol made certain changes to the 1973 Convention:

Segregated ballast tanks (SBT) are required on all new tankers of 20,000 dwt. and above. Another innovation concerns crude oil washing (COW) which is a process of washing tanks with oil and not water, which makes the cleaning process far more effective than when
which led to so much of the operational pollution in the past is virtually ended. A third temporary alternative is a system whereby certain tanks are dedicated solely to the carriage of ballast water - "clean ballast tanks" (CBT).

The 1973 Convention and the 1978 Protocol were amalgamated into one single legal instrument. By accepting the Protocol, the Contracting State will undertake to implement at the same time the requirements of the Convention.

Status of the Convention

Many states, particularly Third World countries, have not ratified the Convention. A total of thirty-seven states have become Contracting Parties to the Protocol, eleven of which are developing states. (4)

Conclusions: Impact of IMO's Work/Standards on Third World development

Although the basic objective behind the development of international standards by the IMO in the technical areas of ship construction, navigation, pollution prevention etc. is aimed at the general development of the international society as a whole, it is recognized that developing countries have difficulties in attaining such standards largely created by technical expertise of the deve-
loped world. Our brief look at the substance of the most important
IMO Conventions and the consequent non-ratification / accession on
the part of most Third World countries indicates that implementa-
tion of the provisions of the Conventions by most of these coun-
tries would be extremely difficult and would tend to have serious
economic and other consequences.

Difficulties faced by developing countries with respect to the
implementation of the requirements of such international standards
are numerous: lack of economic resources; lack of technology; lack
of technical and administrative machinery; lack of legislative
machinery etc. As technology develops, IMO standards have risen to
meet new demands, making it even more difficult for developing
countries to attain these standards. (In recognition of this prob-
lem the IMO, at the twelfth session of the Assembly, adopted a
Resolution giving priority to promoting the ratification and imple-
mentation of the Conventions; and undertook to provide substantial
technical assistance to developing countries to enable them to meet
the required standards.)

Finally, are developing countries really aware of the need for
such safety standards and their importance to their economic deve-
lopment? What priority can or would a developing country accord to
maritime safety as opposed to fleet development? These questions
must be answered by each country in the light of its own develop-
ment and priorities.

Notes
1. Article 29(a), IMO Convention
2. Mankabady, Samir - the International Maritime Organization
3. IMO - Status of Multilateral Conventions in respect of which the
IMO or its Secretary-General performs Depositary or other Func­tio­ns - as at December 31 1984
4. Ibid
B. International Labour Organization - Development of International Maritime Labour Legislation

Development of International Minimum Labour Standards

The 57 Conventions and Recommendations which the ILO has developed over the years constitute a comprehensive set of standards referred to as the "International Seafarers' Code" and deal with practically all aspects of the conditions of work of merchant seafarers. Standards concern minimum age for entry to employment, compulsory medical examination prior to employment aboard ship and periodically thereafter; articles of agreement which must contain certain details and to be signed under certain conditions; repatriation, holidays with pay, social security, wages, hours of work and manning, crew accommodation, identity documents, occupational safety and health, welfare at sea and in port, continuity of employment, vocational training and certificates of competency.(1)

One of the first instruments adopted by the ILO was the Recommendation concerning the establishment of National Seamen’s Code which stated inter alia:

In order that, as a result of the clear and systematic codification of the national law in each country, the seamen of the world, whether engaged on ships of their own or foreign countries, may have a better comprehension of their rights and obligations, and in order that the task of establishing an International Seamen’s Code may
be advanced and facilitated, the International Labour
Conference recommends that each Member of the Interna-
tional Labour Organization undertake the embodiment in a
seamen's code of all its laws and regulations relating to
seamen in their activities as such. (2)

The Code has influenced both national legislation and the terms of
collective agreements laying down labour conditions for seafarers
throughout the world.

(With respect to the implementation of Conventions, a feature
of the ILO is the provisional requirements under which governments
have to report to the ILO on the measures taken to submit newly
adopted standards to the competent national bodies for the enact-
ment of legislation or other action on the position of their nation-
al law and practice with regard to unratified Conventions, and on
the measures taken to give effect to ratified Conventions.)

Substandard Ships and the Open Registry Question

This question has been a major subject of debate between the
shipowners' and seafarers' groups in the ILO. Two Recommendations
Seafarers' Engagement (Foreign Vessels) Recommendation (no. 107)
adopted by the Maritime Session of the Labour Conference in 1958
invite member States to discourage seafarers from joining vessels
registered in a foreign country unless the conditions were general-
ly equivalent to those applicable under collective agreements and
social standards accepted by bona fide organizations of shipowners and seafarers in maritime countries where such agreements and standards were traditionally observed.

The Social Conditions and Safety Recommendation (no. 108) contains recommendations that the country of Registration should accept the full obligations simplified by registration and exercise effective jurisdiction and control for the purpose of the safety and welfare of seafarers in its sea-going merchant ships.

At the 21st session of the JMC in 1972, a resolution was adopted requesting the Governing Body of the ILO:

- to include in the agendas of the proposed Preparatory Technical Maritime Conference in 1974 and the proposed Maritime Session of the International Labour Conference in 1975 the question of substandard vessels and the priorities of those countries which the study of the Maritime Transport Committee of the OECD on flags of convenience considered as providing flags of convenience facilities and in particular, of those countries which appear not to have applied Recommendations Nos. 107 and 108 with a view to the adoption of an appropriate instrument or instruments designed to ensure that the objectives of Recommendations Nos. 107 and 108 are widely attained.(3)

In 1975 a draft text of a proposed instrument on the maintenance of minimum standards on ships engaged in maritime transport by the ILO. It was decided that there should be such an instrument and, further, despite strong opposition from the shipowners' group,
that the instrument on substandard vessels should refer particularly to those vessels registered under flags of convenience.

This followed from the charge especially of seafarers that countries which offer flag of convenience facilities often do not ensure that their vessels fully comply with accepted international standards and regulations on safe operation of ships and on working conditions on board. The ILO finally decided that the proposed instrument on minimum standards should not particularly refer to ships flying flags of convenience but to all ships as its intention was to provide a means of taking action against vessels of whatever fly which imply a danger to the environment of the health or welfare of the crew.

Merchant Shipping (Minimum Standards) Convention (No. 147) - 1976

The Convention contains provisions which are considered the minimum internationally acceptable standards in relation to seafarers in the areas of minimum age, shipowners' liability (to seafarers), social security, medical examination, prevention of accidents, crew accommodation, food and catering, competency certificates, articles of agreement, repatriation, freedom of association and collective bargaining.

Prior to the adoption of the Convention, national enforcement of international rules was concerned almost solely with the condition of vessels in relation to the threat they pose to the international environment. In other words, Port States refrained from intervening in the internal affairs of ships which concerned the different aspects of crew conditions, except those with certain
safety implications. The application of Convention changes this situation as contracting States must verify that crew conditions not only on board their own but also foreign ships meet the minimum requirements established by the ILO in a number of international instruments adopted over the years.

Port State Control - The Convention empowers a State to inspect a ship suspected of violating internationally accepted standards and to take action to rectify immediately any conditions clearly hazardous to safety and health even if the ship belongs to a State which has not ratified the Convention. The adoption of this important provision has been one of the most controversial decisions taken by the Conference.

The Convention is regarded as an "umbrella" treaty. Contracting parties are obliged to have national legislation covering safety standards including standards of competency, hours of work and manning, and social security. In addition, shipboard employment and living conditions must be covered by legislation or collective agreements between shipowners and seafarers concerned or by court awards. The legislative provisions and the implementation of seafarers' conditions through agreements or court awards must be substantially equivalent to standards set by certain specified ILO Conventions, and the Flag State must exercise effective jurisdiction over its ships in all of these matters including adequate procedures for the engagement and training of seafarers. The relevant Conventions are as follows:

- Minimum Age Convention
- Shipowners' Liability (Sick and injured Seamen)
- Sickness Insurance or
- Medical Care and Sickness Benefits
- Medical Examination
- Prevention of Accidents
- Accommodation of Crews
- Food and Catering
- Officers' Competency Certificates
- Seamen's Articles of Agreement
- Repatriation of Seamen
- Freedom of Association and Protection of the Right to Organize
- Right to Organize and Collective Bargaining

Ratification of the Convention is subject to the following conditions: Contracting Parties must also be parties to the following - the IMO SOLAS Conventions (1960/74), the Convention on Loadlines, the Convention on International Regulations for Preventing collisions at sea (1960/72); or Contracting States upon ratification of the Convention must agree to fulfil the conditions for ratification of the aovementioned IMO Conventions.

The Convention has received only 17 ratifications to date, mostly from the European States which have incorporated its provisions in a Memorandum of Understanding on Port State Control.(4)

Training

An agreement between the ILO and IMO was entered into in 1959 whose aim was to facilitate the effective accomplishment of the defined objectives of both organizations. Subsequently the Organizations have formed joint committees dealing with the Training,
qualification and certification of seafarers. The efforts of the joint ILO/IMO committees resulted in the IMO Convention on Seafarers Training, Certification and Watchkeeping.

Conclusion

The contribution of the ILO to Third World development has not been as positive as it ought to have been. Its most important work, the development of a Seafarers' Code does not seem to reflect the needs of developing countries. The problem lies in the fact that the developing countries' participation in the formulation of the Code has been negligible. Further, the ILO's goal in eliminating substandard vessels by introducing the concept of Port State Control may adversely affect the development of Third World merchant fleets.

Notes

1. See Appendix III for list of ILO Conventions
2. Recommendation no. 9 (1920)
3. ILO Maritime Conventions and Recommendations - ILO
4. The Memorandum of Understanding signed in Paris in 1980 by 13 West European countries came into effect in July 1982. The aim of the "Paris" Memorandum is the undertaking by signatory states to achieve, within a period of three years from the coming into effect of the Memorandum, an annual total of inspections comprising 25% of foreign flag vessels calling at their ports. The memorandum speci-
fies that such inspections should verify the compliance of those vessels with the technical and social minimum standards laid down in the relevant international Conventions viz:

- Loadline Convention 66
- SOLAS 60/74
- MARPOL 73/78
- STCW 78
- COLREG 72
- ILO (147) Minimum Standards 83
B. THE ROLE OF UNCTAD IN THE ECONOMIC/COMMERCIAL SPHERE

The main objectives of UNCTAD's Shipping Committee during the past twenty years has been the realization of increased participation of developing countries in the carriage of world sea-borne trade, the development of their merchant fleets and reform in the invisible structure of shipping (with respect to financing, bills of lading, marine insurance etc.). To achieve these objectives, much of its work has been devoted to the areas discussed below.

Regulation of Liner Shipping

Code of Conduct for Liner Conferences -1974

The Convention on a Code of Conduct for Liner Conferences was born in 1974 (1) after strenuous effort on the part of the Committee on Shipping. The idea of promulgating such a Code emanated from the so-called Group of 77 (of Third World membership) in their attempt to curtail the existing pre-eminent and somewhat "dangerous" role which had traditionally been assumed by the developed maritime countries in the transportation by sea of the trade of developing countries. Their thesis, which underlies the Code, was that an internationally imposed and accepted regime was necessary in order to enable developing countries to participate, by means of suitable fleets in their ownership, and under their control, in the maritime transportation of their cargoes.

Thus the idea was advanced by the Group of 77 of a regulatory Convention for liner shipping services which are controlled unilaterally by the Liner Conferences themselves. The Code was therefore designed to regulate the following aspects of the Conference...
a) membership, as per stated equitable criteria;
b) shares of cargo, preserving the rights of exporting, importing and "third-flag" states;
c) freight levels determinable on the basis of publicly acknowledged criteria;
d) freight increase notifications as per specified notice periods and subject to consultation procedures;
e) the institutionalization of consultation between conferences and shippers on all major aspects of shipping services;
f) the legal recognition of shippers and shippers' organizations as consultative parties;
g) a monitoring role for government authorities;
h) a mandatory dispute settlement machinery;
i) regular public reporting of conference activities and practices. (2)

The Convention was to come into force six months after twenty-four states, owning not less than twenty-five per cent of the world's shipping tonnage, became contracting parties. After nearly ten years of great discussion and controversy it finally came into force in October 1983 when the qualifying tonnage was reached with the ratification of two EEC member countries, the Federal Republic of Germany and the Netherlands. The ratification of the EEC members was however, subject to certain reservations, referred to as the "Brussels Package" which substantially reduce the effects of the Code. (3)
Future Prospects/Impact of the Code

Although the Code is formally in effect under the terms of Articles 48-49, it is not yet in force in most trades. It is therefore too early to determine what the real impact of the Code will be, but it can be said that most developing countries have already achieved their major objective from the Code - namely substantial participation for their national lines in the Conferences serving their trades. It remains to be seen whether the results gained from the Code by developing countries will be worth the harm done to UNCTAD and to the Group of 77 over the great controversy surrounding the Code. (4)

Open Registries - Draft Convention on the Conditions of Registration of Ships

In 1978 an ad hoc Intergovernmental Working Group on the "Economic Consequences of the Existence or Lack of Genuine Link between Vessel and Flag of Registry" adopted a resolution in which it concluded that the expansion of open registry fleets had adversely affected the development and competitiveness of the fleets of countries that did not offer open-registry facilities, including those of developing countries. The system of open registries, as mentioned earlier, is a device used by some traditional maritime nations (namely U.S., Japan, Greece) to maintain ownership and control over world shipping despite the fact that they cannot operate economically under their own flags.

Up until the mid-seventies open registry tonnage increased
rapidly from 15.1% of world grt in 1965 to 26.2% in 1975, while
developing country tonnage declined from 7.4% to 6.7% in the same
period. By 1980 the figures had become 27.5% for open registries,
a decline from the 1977 high of 28.1% and 10.8% for developing
countries.

Table 3

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OR Fleet as %
of World Fleet 29.7 29.4 28.2 28.3

Source: Institute of Shipping Economics - Bremen 1983 - The Open
Registry Controversy and the Development Issue.
In 1981 the Committee adopted a resolution calling for the establishment of an Intergovernmental Preparatory Group "to propose a set of basic principles concerning the conditions upon which vessels should be accepted on national shipping registers, with a view to preparing documents for the holding of a United Nations Conference of Plenipotentiaries to consider the adoption of an international agreement."

U.N. Conference on the Conditions for Registration of Ships

Pursuant to U.N. General Assembly Resolution no. of 1982, a Conference of Plenipotentiaries was held in July 1984 to draft a Convention on the Conditions for Registration of Ships "to take into account the points of view of all interested parties". Two subsequent meetings were held in January and July of 1985. The draft Convention which will be discussed in January includes provisions on:- manning, management, equity, identification and accountability.

Multimodal Transport and Technological Developments


With the advent of containerization, efforts to promote the formulation of legal rules to regulate international multimodal transport were undertaken by the Committee on Shipping in order to correct the imbalances which existed among the interested parties in multimodal
transport and the existing unsatisfactory practices in multimodal transport operations which adversely affect the promotion of trade.

The existing regime which governs the relationship between the parties in multimodal transport is a documentary one where various bodies - namely the International Chamber of Commerce (ICC), the International Chamber of Shipping (ICS), the International Federation of Forwarders' Associations (FIATA), and the Baltic and International Maritime Conference (BIMCO) - have all elaborated standard multimodal transport documents under their own set of rules.

The UNCTAD Convention aims at establishing a new regime for multimodal transport which includes:

- Definition of the Multimodal Transport Operator (MTO) which includes freight-forwarder, broker or carrier

- Responsibility of the MTO for the performance of the contract. Article 14 strictly defines the period of responsibility

- Multimodal Contract- Contract for the procurement of Transportation on a standard international form

- Issue of multimodal transport documentation

- Basis for liability - Art. 16.2 provides that the MTO is responsible for loss, damage and delay. It also provides the first legal definition of delay in international maritime legislation.
Limitation of Liability. The Convention provides for a larger amount in compensation than under the present documentary regime.

- New system of liability - the Convention introduces a new Uniform system based on the principle of presumed fault or neglect to replace the existing Network system.

The Convention, which was adopted by consensus in 1980, has yet to come into force. Under article 36 the Convention shall enter into force 12 months after the deposit of the 30th ratification. To date it has only been ratified by three states, and it seems unlikely that it will enter into force in the near future. The main conflicts concern (a) the scope of application - developed countries favour optional application, whereas developing countries want universal application, and (b) the introduction of the system of Uniform Liability which the developed countries are against.

The developed countries in fact wish to delay the entry into force of the Convention in an attempt to defend established positions by maintaining the status quo. Many developing countries at the same time have not ratified the Convention as they may not be aware of the advantages of the Convention in the promotion of their trade.

(It is important to note that the Convention also aims at the harmonization of international transport law which is reflected in the fact that many provisions are taken verbatim from the Hamburg Rules).
Review of International Shipping Legislation:

The Activities of the Working Group on International Shipping Legislation:

The establishment of the Working Group was a landmark in the institutional restructuring of the work of the Committee on Shipping. It was mandated to review the economic and commercial aspects of international legislation and practices in the field of shipping from the standpoint of conformity with the economic developmental needs, in particular of developing countries, in order to identify areas where modifications were felt to be necessary with a view to the drafting of legislation or to other appropriate action. (6) Efforts of the Working Group have been concentrated in the areas of Bills of Lading, Charter Parties, Marine Insurance, Maritime Liens and Mortgages, Registration of Rights in Vessels under construction, Arrest of Vessels. We shall examine two major areas of International Shipping Legislation under review - Bills of Lading, and Maritime Liens and Mortgages.


This Convention was formulated in conjunction with the United Nations Commission on Trade and Law (UNCITRAL) to replace the International Convention on the Unification of Certain Rules relating to Bills of Lading (1924), and the Protocol to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading (1968). The Convention aims at redressing
the existing bias under the present international regime which favours shipowners with regard to liability for loss and damage to goods.

The main features of the Convention are:

- wider scope of application

- clearer identity of carrier. Art.1.1. defines the "carrier" as "any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper". Art. 2.1. goes further- "actual carrier means any person to whom the performance of the carriage of goods has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted."

- Liability of the carrier - Art. 4.1 on the Period of Responsibility provides that the responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge

- Basis of Liability - clearer defences for the carrier. (Navigational error is no longer available as the carrier's defence.) Art. 5.1 states that "The carrier is liable for loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the
goods were in his charge as defined under Article 4 unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences."

- With respect to Limits of Liability, the Convention provides for a higher per package limitation (Art. 6) than available under the Brussels Protocol of 1968 to account for inflation and to bring it in line with present-day values.

Behnam states that "...the Hamburg Rules establish a more equitable and modern legal regime governing the rights and obligations of both shipowners and shippers. The net effect of the changes will be reflected in the more orderly treatment of cargo claims and settlements, flowing from a regime in whose formulation shippers and shipowners from all countries have participated on an equal footing." (7)

The Hamburg Rules have not yet received the required amount of ratifications for it to enter into force.
Maritime Liens and Mortgages

(This area has been under review in conjunction with Arrest of Vessels and Registration of Rights in Respect of Vessels under Construction)

A major concern of Third World countries in their efforts to establish merchant marines, has been the need to facilitate ship financing for the acquisition of vessels. Mortgages play a key role in ship financing as well as Maritime Liens which relate principally to the safe and efficient operation of the ship. Developing countries regard the present situation with respect to maritime liens and mortgages as being characterized by an international regime which lacks the uniformity necessary to offer security to the interests associated with it. The Group of 77 found the situation particularly prejudicial to developing countries which were unable to obtain sufficient funds to finance the development of their merchant fleets, which was compounded by the lack of adequate legal rules and principles. It was therefore agreed that with respect to maritime liens and mortgages:

...there was a need for uniformity in the present-day shipping world. The many different international regimes that existed led to confusion and uncertainty as regards the ranking of the mortgagee and the lienholder, which was not only prejudicial to the developing countries but was detrimental to the interests of the developed countries as well.(8)
There are at present four International Conventions of direct relevance to the area of maritime liens, mortgages and arrest. The two directly concerned with maritime liens and mortgages are the International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, 1926, and the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967. The Convention of 1926 received 26 ratifications, while the 1967 Convention received only 4 ratifications and is not yet in force. A further Convention is the Convention Relating to Registration of Rights in Vessels under Construction, 1967. The Convention directly concerned with the arrest of vessels is the International Convention on the Arrest of Sea-Going Ships, 1952. (Review of the subject of Arrest was undertaken in view of the fact that the arrest of a vessel is the means by which maritime liens and mortgages are enforced; thus the three subjects are inextricably linked.)

In response to the Preliminary Report of the International Sub-Committee considering maritime liens and mortgages (1926 Convention) in 1969 which stated inter alia that the “fact that this Convention has been the subject of an ever-increasing number of criticisms of a varying and sometimes conflicting nature and that these criticisms are being voiced, not only in countries which did not accede to it, but also in those which became parties thereto, seems to indicate that the Convention does not meet with present day requirements” (12), a decision was taken to examine the subjects with the aim of revising the existing Conventions.
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However, since these Conventions relate not only to the economic but also to the technical aspects of shipping it was agreed that both UNCTAD and the IMO would examine the different aspects of those problems and to devise practical measures for dealing with them within the competence of both organizations. The delimitation of work was agreed upon: UNCTAD would be the most appropriate body to undertake the necessary studies to identify the problems in relation to ship financing, especially maritime mortgages which would play a key role in ship financing. The IMO, on the other hand, was the most appropriate body to undertake any studies on maritime liens as they relate to the efficient functioning of the ship.

Conclusion: The Impact of UNCTAD's Activities on Third World Development

In its twenty years of existence UNCTAD's activities have been the target of intense discussion and controversy between the developing countries in their quest for a more equitable regime in international shipping on the one hand, and by the developed countries wishing to perpetuate the existing status quo and resisting any attempt to bring about possible reform. UNCTAD's major aim - bringing about increased participation of the Third World in inter-
national shipping has met with minimal success despite the fact that
the International Development Strategy for the Third U.N. Develop-
ment calls for an increase in theses countries' participation in
world transport of international seaborne trade, through the appro-
priate structural changes, where necessary, and also calls for a 20% share of the dead-weight tonnage of the world merchant fleet for the
developing countries by the year 1990. (15) Developing countries' share of the world fleet is at present 15%, representing an approxi-
mate average annual growth rate of 13% since 1971.(16)

With respect to International Conventions formulated by UNC-
TAD, only one - the Code of Conduct for Liner Conferences - has received enough ratifications to enter into force. Since it has been in existence for little more than a year, the impact of the Convention on the economic development of Third World countries is not yet known. The Convention, however, is a major step in the attempt at reform of an inequitable international system perpetua-
ting the interests of the developed world to the economic detriment of the Third World countries. The Convention on the Carriage of Goods by Sea, the Hamburg Rules, although it has not yet entered into force, indications show that it may presently do so, thus bringing about a more equitable system between shipowners and shippers.

The success of UNCTAD, in our opinion, lies in the fact that it has been able to provide invaluable information to governments of Third World countries which were hitherto ignorant of the com-
plexities of the international shipping industry which led to their
exploitation, (and the provision of technical assistance in certain areas such as ship-financing, ports, port operations, etc.)

The lack of meaningful compromise is, however, compounded by the highly political nature of UNCTAD which is divided sharply on rigid lines - Developing (Group of 77), developed and socialist - bent more on confrontation and conflict than on compromise. Despite the major drawbacks, lack of positive results, at least what can be said is that the developing countries have a forum where they can have fruitful dialogue and negotiations in an attempt to bring about changes in the international system.

Notes

1. The Convention was adopted with 58 votes for, 7 against (U.S., U.K., Switzerland, Sweden, Denmark, Finland, Norway), with 5 abstentions.
2. A. Behnam, Twentieth anniversary of UNCTAD, p. 17.
3. The major reservations contained in the "Brussels Package" concern the disapplication of the Cargo Sharing provisions in EEC/OECD trades and the redistribution of EEC/OECD Lines' shares in trades with non OECD countries.
4. With respect to UNCTAD's efforts in establishing international regulation in Bulk Shipping, it was recognised that it would not be feasible to apply the same principles as in the liner trades because
se of the irregular nature of bulk movements. However, the de- 
veloping countries sought international recognition of their right to 
equitable participation in the regular trades.

5. see note 2. above, p. 25.

6. TD/B/C.4/ISL/48

7. see note 2. above, p. 19.


9. supra., p.

10. supra., p.

11. supra., p.


Annex containing the Strategy, para. 28.

14. see note 2 above, p.36.
D. THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA


Ocean Development and the Third World:

The Montego Bay Convention of 1982 was the final result of the Third United Conference on the Law of the Sea which was organized to regulate new uses of the sea for the vastly extended International Society. It lays down rules for all parts and virtually all uses of the ocean. It contains many new and innovative concepts of international law, "negotiated and agreed upon in response to the advancement of technology, to the demands, especially by the new nations, for greater international equity and by new uses of the sea and its resources." (1)

Legal Regime Under the Convention

Exclusive Economic Zone (EEZ)

The provisions on the EEZ are all new law which affects most activities and interests in the sea. Under the Convention every coastal State has the right to establish an EEZ seaward of its territorial sea and extending up to 200 nautical miles from its coast or baseline. Two separate sets of rights exist in the EEZ: those enjoyed exclusively by the coastal State and those that may be exercised by all States. The rights of the coastal State in the EEZ
are:
- exclusive sovereign rights for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources of both the waters and the seabed and subsoil;

- exclusive sovereign rights to control other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and winds;

- the exclusive right to control the construction and use of all artificial islands and those installations and structures that are used for economic purposes of that may interfere with the coastal State's exercise of its rights in the zone;

- the right to be informed of and participate in marine scientific research in the zone;

- the right to board, inspect, and, when there is a threat of major damage, to arrest a merchant ship suspected of discharging pollutants in the zone in violation of internationally approved standards.

The allocation of rights is accompanied by extensive duties:
- the coastal is obliged to take measures to ensure that activities under its jurisdiction or control do not cause pollution damage to other States.
It is required to ensure the conservation of living resources in EEZ waters; it must also promote their optimum utilization by determining its harvesting capacity and granting access under reasonable conditions to the surplus of the allowable catch to other States. Landlocked States, or States with small enclosed coastlines also have a right to participate on an equitable basis of an appropriate part of the surplus of the living resources of the EEZ of neighbouring coastal States. If the EEZ's of neighbouring coastal States overlap, they are to be delimited by agreement on the basis of international law in order to achieve an equitable solution.

Thus the legal regime of the EEZ ensures the development of the resources of those zones in a more orderly and equitable manner.

The concept of the EEZ should be viewed as an attempt at creating a framework to resolve the conflict of interests between the developed and developing countries in the utilization of the sea. It is an attempt to formulate a new jurisdictional basis which will ensure a fair balance between the coastal States and other users of the neighbouring waters. (2)

The Continental Shelf

The Convention permits the coastal State to establish the permanent outer limit of its Continental Shelf at either 200 nautical miles from the coast or baseline, or at the outer edge of the con-
continental margin (the submerged prolongation of the land mass) whichever is further seaward. Its elaborate criteria for locating the edge of the continental margin is designed to allocate virtually all seabed oil and gas to coastal States.

Under the Convention, the coastal State has sovereign rights over the natural resources of the seabed and subsoil of the Continental Shelf, as well as the exclusive right to authorize and regulate drilling for all purposes and the right to consent for the laying of pipelines. The sovereign rights of the coastal State are exclusive in that if the coastal State does not explore or exploit the resources of the Continental Shelf, no-one may undertake these activities without the express consent of the State.

The International Seabed Area: Deep Seabed Mining

The "Area" which comprises the seabed and subsoil "beyond the limits of national jurisdiction" (i.e. beyond the limits of the EEZ and the Continental Shelf subject to coastal State jurisdiction), and its resources (the principle resource of current interest being polymetallic nodules—composed of manganese, copper, cobalt, nickel) have been declared the "Common heritage of mankind". No State can claim sovereignty to the area or its resources, whose exploration and exploitation is to be carried out "for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or landlocked and taking into particular consideration the interests and needs of developing States." (Art. 140)
The International Seabed Authority

The Convention establishes an "Authority" to organize, carry out and control exploration/exploitation activities on behalf of the International Society and to "provide for the equitable sharing of financial and other benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis..."

Organizational Structure of the Authority

The Convention sets out detailed provisions relating to the structure and functioning of the Authority whose main organs are to include an Assembly, a Council and a Secretariat. The 36-member Council is to be composed of States which are the largest consumers of these minerals; the largest land-based producers; States whose nationals have made the largest in seabed mining; other States to be elected according to equitable geographical distribution. The powers and functions of the Council include the establishing of specific policies to be pursued by the Authority on any question or any matter within the competence of the Authority.

The main feature of the Organization will be the "Enterprise" - the Seabed Mining arm of the Authority - a commercial venture under the overall control of the Assembly and Council but with its own Statute and a Governing Board to direct its business operations. The funds required for its initial mine-site -- at least $1 billion (U.S) -- is to be loaned interest-free by States members of the Authority, while the rest is to be borrowed on the financial market with the loans guaranteed by the same States.

The proposed site for the International Seabed Authority is
Jamaica. The siting of such an important Organization in a developing country is indeed symbolic of the future role of developing countries in the development of ocean resources.

Other obligations under the Convention aimed at development include:

Protection and Preservation of the Marine Environment

The Convention creates a legal obligation on the part of all States to protect and preserve the marine environment. States are obliged to take all measures necessary to prevent, reduce and control pollution of the marine from any source using the "best practicable means at their disposal and in accordance with their capabilities..." (Art. 194) There is also a legal obligation on all States to cooperate on a global basis "directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment..." (Art. 197)

The Convention also requires the adoption of International rules and national legislation to prevent, reduce and control pollution of the marine from:

- land based sources (which account for approximately 95% of all pollution)
- seabed activities
- dumping
- vessels
- atmospheric pollution

It also contains Enforcement provisions which require States to enforce their laws and regulations and to adopt laws and regulations necessary to implement applicable international rules and standards established through "competent international organizations".

Development and Transfer of Marine Technology

Since technology transfer has been recognized as an established tool in the promotion of development, the provisions of the Convention are in line with this principle. The Convention contains general governing principles on technology which cover all ocean related technology. Its aim is to promote the use of ocean resources and accelerate the social and economic development of developing States.

States parties are required to promote certain basic objectives, such as the acquisition, evaluation, and dissemination of marine technological knowledge, the facilitation of access to such data, the development of appropriate technology, the development of necessary technological infrastructure to facilitate the transfer of marine technology, the development of human resources through training and education programmes, and international cooperative efforts at regional, sub-regional, and bilateral levels.

These goals are to be achieved through programmes, conferences, exchange of scientists, and utilization of joint ventures. The objectives of the International Seabed Authority are to be met by the employment of nationals of developing countries on the staff of the Organization; by the provision of technical documentation.
available to all States; by easing the acquisition of skills, know-how, professional training, equipment, processes, plants, and other technical know-how. Finally, these efforts are to be aided by the establishment of national and regional marine scientific, and technological centres.

Marine Scientific Research

Technological advancement and development can only be possible through the means of research. The Convention attempts to establish a regime under which developing countries will have access to marine research facilities. Although the Convention gives all States the right to conduct marine scientific research, the coastal State has the exclusive right to regulate, authorize and conduct scientific research in the territorial sea, in exercise of their sovereignty, and the right to do so in their EEZ’s and Continental Shelves.

The coastal State has the right to participate or be represented in marine scientific research projects conducted in areas within their jurisdiction, and to be provided with reports, data etc. The Convention further seeks the active promotion of the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research in particular to developing States, and the strengthening of the autonomous marine scientific capabilities of developing States through training programmes for their technical and scientific personnel etc.

Conclusions
The Montego Bay Convention which has been hailed as "one of the greatest achievements of the United Nations since its inception" will enter into force 12 months after the deposit of the sixtieth ratification. To date it has been ratified by 23 States, and indications seem to suggest that it may take several years for it to become a reality. Even then its future is uncertain, due to negative attitude on the part of certain developed States, the U.S. in particular, which, in refusing to become parties to the Convention, have demonstrated the continued reluctance of the developed world to share on an equitable basis the world's resources with Third World States.

Notwithstanding, the Convention, in its attempt at finding a just, equitable and peaceful solution for the exploitation of ocean resources, taking into account the interests and needs of all States, provides the basis of international maritime law reform.

...the basic premise of the principle is clear and beyond doubt: the sea must be used for the benefit of all and not merely for the interests of a few great Powers. Although navigation is vitally important, the sea is not merely a navigational route, as it has been for centuries, but a new rich still largely unknown world which will be the scene of the next adventure and expansion of mankind. It is generally recognized that the sea offers the greatest promise and poses the gravest threat to the world of tomorrow. It can no longer be a largely "lawless" area or vacuum". (3)
Notes

2. Ibid
3. Ibid
The development of maritime activities in many developing countries is new. In most it would be an activity entered into after independence. Their acquaintance with shipping may not even have been as long as the life-span of a ship. Their priorities would naturally be different from the traditional maritime states. Their priorities in fact may generally be the following:

- Development of merchant fleets and increased participation in world seaborne trade

- Development of maritime personnel (training of both crew and shore personnel)

- Development of a basic maritime infrastructure— to include the development of ports, agencies, insurance, banking etc.

- Development of a maritime safety framework to promote the safety of merchant fleets, seafarers and the preservation of the marine environment (the protection of the environment is also very important for those developing countries which may not have fleets but which have to ensure the protection of possible vital ocean resources e.g. fishing, and coastal activities e.g. tourism from the pollution of other ships)

- Development/exploitation of ocean resources, both living and non-living.

To what extent have international organizations met these
needs and how successful have they been in adapting and adjusting their organizational goals to these needs?

The contribution of the IMO in evolving technical standards in the field of maritime safety, and in the area of the protection of the marine environment from pollution has been essentially geared to global application. It would be only fair to say that the IMO was not established for the purpose of dealing with the specific problems of developing countries. Indeed, it has been argued that if the IMO were to set separate standards for developing countries to take into account their problems, then it would be resorting to the use of "double standards". At the same time, to set standards oblivious of the inability of developing countries to meet them would be short-sighted and admittedly a failure to meet its global approach effectively.

In fact, some of the standards developed by the IMO may not have a positive effect on the economic development of many aspiring maritime countries, and may adversely affect their development in this area, as the high standards may be in conflict with the needs of those countries establishing merchant fleets. They face the possibility of being put at a competitive disadvantage in an attempt to implement these very high standards.

The problem is not one merely of standards. IMO sets minimum standards but the tendency over the years has been to raise the levels of the standards through the application of new technologies. The basic need of developing countries in this area is the
narrowing of the technological gap between the industrialized maritime nations and the developing nations. The IMO itself has recognized this fact and has recently put a temporary halt to the production of more conventions. It has also recently focussed attention on providing technical assistance to developing countries through its Technical Cooperation Programme which has accorded top priority to the training and development of maritime personnel at all levels in developing countries both at the national and regional levels. In addition, at the global level it has started its most important project to date, the establishment of a World Maritime University to provide top-level training for personnel from developing countries who occupy senior positions in maritime administrations, maritime training institutions and shipping companies.

Although it may be too early to evaluate the results of the Technical Cooperation Programme, this may prove to be the most important contribution the IMO has made to the development of human resources of the Third World who should play an important role in the future with respect to the development of international regulations, and who, hopefully, will be able to make a positive impact and influence on international maritime law and policy, taking into account the needs of developing countries.

With respect to the development of maritime labour legislation, the most important concern for developing countries in this area relates to the question of the exploitation of Third World labour which makes up the majority of the international maritime labour force.
The ILO has set out over several years to develop a comprehensive "Seafarers Code" establishing minimum standards designed to regulate the conditions of service of seafarers - including wages, social security, accommodation etc. - the basic objective of which is to ensure the non-exploitation of seafarers. This is indeed a commendable task, but one very basic problem in this area relates to the question of who the standard-setters are, and whether the standards set are really compatible with the needs of developing countries. We have looked at the structure of and the role played by the Joint Maritime Commission which is the central policy-making body. This body consists of representatives of both the international seafarers' and shipowners' groups whose membership comes largely from the traditional maritime nations and thus cannot exactly be said to be "tuned" to the needs of developing countries. Further, their stand on the issue of Open Registries which, over the years, have been known to be the greatest exploiters of Third World maritime labour has to be questioned.

The ILO's recent attack on sub-standard ships (which include Open Registries) has led to the introduction of the concept of Port State Control under which the Port State has the right to inspect ships suspected of violating internationally recognized standards - including specified ILO and IMO conventions - even ships of those countries which are not Contracting Parties to the convention. This concept has encouraged certain European nations to adopt a mutual system of Port State Control ostensibly to ensure safety in their waters. Underlying this objective, however, is a concealed intention to reduce the competitive advantage enjoyed by fleets of developing countries with minimum standards. We must conclude therefore
that the contribution of the ILO is negligible compared to the needs of developing countries. The blame, if there is any, falls equally on developing countries who have not participated effectively in the policy-making of the organization.

UNCTAD, as we have seen, was historically created for the purpose of bringing about Third World development. The establishment of a Committee on Shipping clearly illustrates the importance UNCTAD has attached to the vital role of shipping to Third World development and which is enshrined in its basic aims and objectives. This organization, more than any other would be best placed to achieve these objectives:

- development of merchant fleets of developing countries

- increased participation of developing countries in the carriage of world sea-borne trade

- reform in the invisible structure of shipping - with respect to financing, insurance, bills of lading etc.

Achieving international accord on economic issues is always more difficult than on technical issues. UNCTAD's limited success has to be viewed in this light. In the 20 years of the Organization's existence the developing countries' share of the World Fleet has increased by 7%. At present their share stands at 15% (representing an annual growth rate of 13% since 1971). (1) It remains to be seen whether it can achieve the target set in the International Development Strategy for the Third U.N. Development
Decade which calls for a structural change in the industry and for a 20% share of world shipping by developing countries by 1990.

Although the share of developing countries of world tonnage remains incommensurate with their share of world trade, it must be said that relatively good progress has been made by the developing countries and the international shipping community both in dealing with the universal problems of the shipping industry and toward-simproving the position of developing countries.

UNCTAD's positive contribution has been in the growth of LDC fleets under the aegis of the Code of Conduct for Liner Conferences. The Conferences now normally give relatively easy membership to national fleets whereas before this it was not so.

It would be fair to UNCTAD to say that whatever success it has achieved lies not in the formal adoption of international conventions but more in tacitly changing practices by the very threat of international opinion. It has definitely made developing countries aware of the problems they face in the shipping industry and possible solutions for reform. It is in the "process" of reviewing and examining the international situation in order to inform developing countries that UNCTAD has made its most important contribution.

However, a major problem concerning the UNCTAD forum relates to the North/South confrontation. The question has been raised whether UNCTAD is indeed the right forum to discuss such matters given its organizational structure and the fact that it is fraught
with political confrontation which may not lead to satisfactory and complete results. Despite its failings, however, it remains the one hope of developing countries which at least provides them with a forum where they can air their grievances.

By virtue of the political and organizational structure of UNCTAD, and the fact that it does not have the expertise in all areas of shipping, it has to rely on outside expertise in various fields - legal, banking, financing etc. The CMI has thus been instrumental in providing such expertise by producing reports and putting forward proposals in the form of draft conventions for the acceptance and final adoption of UNCTAD (and IMO). The CMI still has an aura based on its considerable achievements in the past. With UNCTAD and IMO taking the initiative, it has in fact developed into an expert lobby at the international level. The composition of its membership appears to indicate that it still represents the interests of traditional maritime nations. The fault is not that the CMI is exclusive but that the new maritime nations appear to hesitate to join this esteemed organization. This is therefore an important area of potential for Third World expertise to ensure that their interests will be taken into account; in fact this will provide them with an additional voice. Developing countries may want to explore the possibility of becoming members of the CMI (and other important non-governmental organizations) which have some influence on international maritime law and policy.

Finally, we discussed briefly the role of UNCLOS III and the resulting Montego Bay Convention of 1982 on the Law of the Sea.
which essentially aims at giving new direction of international maritime law and policy in order to ensure the orderly development of the Third World's major resource. The Convention establishes a system of ocean management providing a mechanism whereby developing countries are ensured participation in the development of ocean resources - both the resources of the sea-bed which have been declared "the common heritage of mankind", and their own resources in laying down provisions for the prevention of their exploitation by more technologically advanced states by introducing a legal regime governing the new concept of the Exclusive Economic Zone.

The Convention further provides an "umbrella" for giving general directions and guidelines, defining new responsibilities and functions of the "competent international organizations", which will force them into some restructuring and coordination of their policies. Developing countries will therefore benefit from such coordination and cooperation of the various organizations in (inter alia) the areas of:

- navigation
- preservation of the marine environment
- marine scientific research
- transfer of technology.

The role of the competent organizations under the Montego Bay Convention will therefore be vital to Third World development. The Convention has not, however, entered into force. Developing countries should therefore realize that it is in their interests to ratify the Convention and to ensure that it comes into effect as quickly as possible.
In general, one may arrive at the final conclusion that the role and effectiveness of existing organizations may not be entirely satisfactory. Should developing countries then consider the creation of new organizations to serve essentially their interests? One is forced to answer this question with other questions. What guarantee is there that these new organizations will be more effective or representative? There appears to be little wrong with existing organizational framework. What is needed, however, is the recognition that only effective and meaningful participation by developing countries in the existing organizations will ensure the development of maritime law and policy to serve their interests. Developing nations must endeavour to work through the existing international framework and to exhaust the present avenues to achieve their goals.

Before developing countries will be able to achieve their task however, they must first attempt to "strengthen themselves". (In fact the strengthening process can be a two-way process in which the organizations can assist developing countries.) They must also be conscious of the following points:

- the vital need for international regulation of ocean uses

- the potential role of international organizations in bringing about an equitable regime to govern the orderly development of the uses of the ocean in the interests of developing countries

- the role developing countries can play in influencing inter-
national maritime law and policy to ensure their interests are taken into account.

- In order for developing countries to be able to influence international maritime law and policy, an important part of the strengthening process must include the adoption of national maritime law and policy without which they cannot hope to influence anything. Further, in order to realize the full benefits of national maritime policies, developing nations must take into account all sectors of society involved in maritime activity – which includes not only the public sector but also the private sector – shipping companies, agencies, insurance, banking etc. Developing states cannot afford to ignore any sector which can make a contribution to its policy.

- The next important stage after the development of national maritime policies is their translation into some form of regional maritime policies. Regional coordination and cooperation is an essential must for economic development as most developing countries cannot achieve this on an individual basis.

- Developing states must endeavour to participate effectively either on an individual basis if possible, or regionally, in the formulation of international maritime law and policy through the various competent international organizations if they are to achieve their economic goals.

Finally, if the present organizations have failed to meet the
needs of developing countries, then the fault is as much due to the developing countries. International organizations (or any other organization for that matter) are slaves of their active members. Ignorance is bliss but it also means underdevelopment.

Notes
1. Behnam, Awni- Twentieth Anniversary of UNCTAD
Appendix I

International Maritime Conventions

CMI Conventions

1. International Convention for the Unification of Certain Rules relating to Collisions between Vessels - 1910
2. International Convention for the Unification of Certain Rules relating to Assistance and Salvage at Sea - 1910 *
4. International Convention for the Unification of Certain Rules relating to Bills of Lading - 1924 *
5. International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages - 1926 *
7. Penal Jurisdiction in matters of Collision or Incidents of Navigation - 1952 *
8. Civil Jurisdiction in matters of Collision - 1952 *
11. International Convention on Stowaways - 1957
13. International Convention on the Liability of Operators of Nuc-
15. Protocol to amend the International Convention for the Unification of Certain Rules relating to Assistance and Salvage at Sea signed at Brussels, 1910 - 1967 *
17. International Convention relating to the Registration of Rights in respect of Vessels under Construction - 1967 *
18. Protocol to amend the International Convention for the Unification of Certain Rules relating to Bills of Lading, signed at Brussels 1924 - 1968 *

* in force
Appendix II

International Maritime Conventions

IMO Conventions

1. International Convention for the Safety of Life at Sea - 1960
2. International Regulations for Preventing Collisions at Sea - 1960
7. International Convention relating to the Intervention on the High Seas in cases of Oil Pollution Casualties - 1969
8. International Convention on Civil Liability for Oil Pollution Damage - 1969
10. Special Trade Passenger Ships Agreement - 1971
16. Athens Convention Relating to the Carriage of Passengers and their Luggage at Sea - 1974
19. Torremolinos Convention for the Safety of Fishing Vessels
Appendix III

International Maritime Conventions

ILO Conventions

1. Minimum Age (Sea) - 1920
2. Unemployment Indemnity Shipwreck - 1920
3. Placing of Seamen - 1920
4. Minimum Age (Trimmers and Stokers) - 1921
5. Medical Examination of Young Persons (Sea) - 1921
6. Seamen's Articles of Agreement - 1926
7. Repatriation of Seamen - 1926
8. Officers' Competency Certificates - 1936
9. Shipowners' Liability (Sick and Injured Seamen) - 1936
10. Sickness Insurance (Sea) - 1936
11. Minimum Age (Sea) (revised) - 1936
12. Food and Catering (Ships' Crews) - 1946
13. Certification of Ships' Cooks - 1946
14. Social Security (Seafarers) - 1946
15. Seafarers' Pensions - 1946
16. Medical Examinations (Seafarers) - 1946
17. Certification of Able Seamen - 1946
18. Paid Vacations (Seafarers) (revised) - 1949
19. Accommodation of Crews (revised) - 1949
20. Seafarers' Identity Documents - 1958
21. Wages, Hours of Work and Manning (Sea) (revised) - 1948
22. Crew Accommodation on board Ship (Supplementary Provisions) - 1970
24. Continuity of Employment (Seafarers) - 1970
25. Seafarers Annual Leave with Pay - 1976
26. Merchant Shipping (Minimum Standards) - 1976

* Freedom of Association and Protection of the Right to Organize - 1948
- Right to Organize and Collective Bargaining - 1949
- Medical Care and Sickness Benefits - 1969
- Minimum Age - 1973

* general application
Appendix IV

International Maritime Conventions

UNCTAD Conventions


* in force
Appendix V

International Maritime Conventions

First and Second United Nations Conferences on the Law of the Sea


Third United Nations Conference on the Law of the Sea

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