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## National maritime legislation and the shipping industry in Tanzania

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MALMÖ, SWEDEN

THE NATIONAL MARITIME LEGISLATION  
AND THE SHIPPING INDUSTRY IN TANZANIA

by

C.J.G. NDALAMA

A Dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of M.Sc. Degree in the Course of General Maritime Administration.

The contents of this Dissertation reflect my own personal views and are not necessarily endorsed by the World Maritime University or the International Maritime Organization.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Dissertation directed by:  
Professor G. Stubberud  
The World Maritime University

For many years the international maritime and shipping community has noted and recognized that the achievement and successful development of the maritime sector and international trade of the developing partners requires appropriate and adequate national maritime legislation. It has also been realized that in most developing maritime countries the existing maritime legislation is outdated and therefore not capable of meeting the requirements of development of international trade and the maritime sector. Like many other developing countries, Tanzania inherited its maritime laws of its former colonial power, and considering that since that time many developmental changes have taken place in the maritime industry, these now outdated laws have not been adequate to promote the vital formulation of appropriate national shipping policy and development of the national merchant marine.

My aim has been to try to highlight the general overview of the maritime and shipping industry of my country with a particular reference to the national maritime legislation which I consider to have a vital role in the development of the maritime sector and the international seaborne trade of Tanzania. Together with the development of national maritime legislation is the development of a well-defined national maritime policy upon which the legislation should be based and reflecting present international law and practices.

In looking at the national legislation and the development of the shipping industry in Tanzania, which is the theme of this thesis, attention should not only be confined to national shipping activities and related matters. Since shipping and maritime activities are international in nature, our attention should be drawn to this area, its influence on national activities and the national level of participation in the shipping and maritime community. Maritime law originates to a great extent from international law that is both customary and conventional. In this case it would not be possible to discuss national maritime legislation without discussing some aspects of international law, the related conventions and their role in national maritime legislation, at least to a limited extent.

This thesis is divided into five chapters. Chapter I examines the international place of Tanzania, and its role in the international

maritime and shipping industry. Chapter II examines Tanzania's position in respect to international law and maritime legislation. Chapter III tries to make a brief case study on the national maritime legislation; the Tanzania Merchant Shipping Act, 1967 being the main point of reference. Chapter IV will examine the present maritime administrative framework and the administration of the Merchant Shipping Act. Finally, Chapter V will try to summarize our findings and make some recommendations where required.

Whatever is not contained in this work is not omitted deliberately but is rather due to many factors, among them the distance from home, inadequate time for research, lack of enough material in the University library, which is in the process of being equipped, just to name a few factors and I hope my compatriots or any other scholar will be able to fill the gaps should there be such need.

Lastly, the accomplishment of this thesis could not have been possible without the wise supervision and guidance of my Course Professor, G. Stubberud and that of Professor E. Gold of Dalhousie Ocean Studies Programme, Canada, who during his professorial visits had given me some initial guidance; my profound gratitude to both of them.

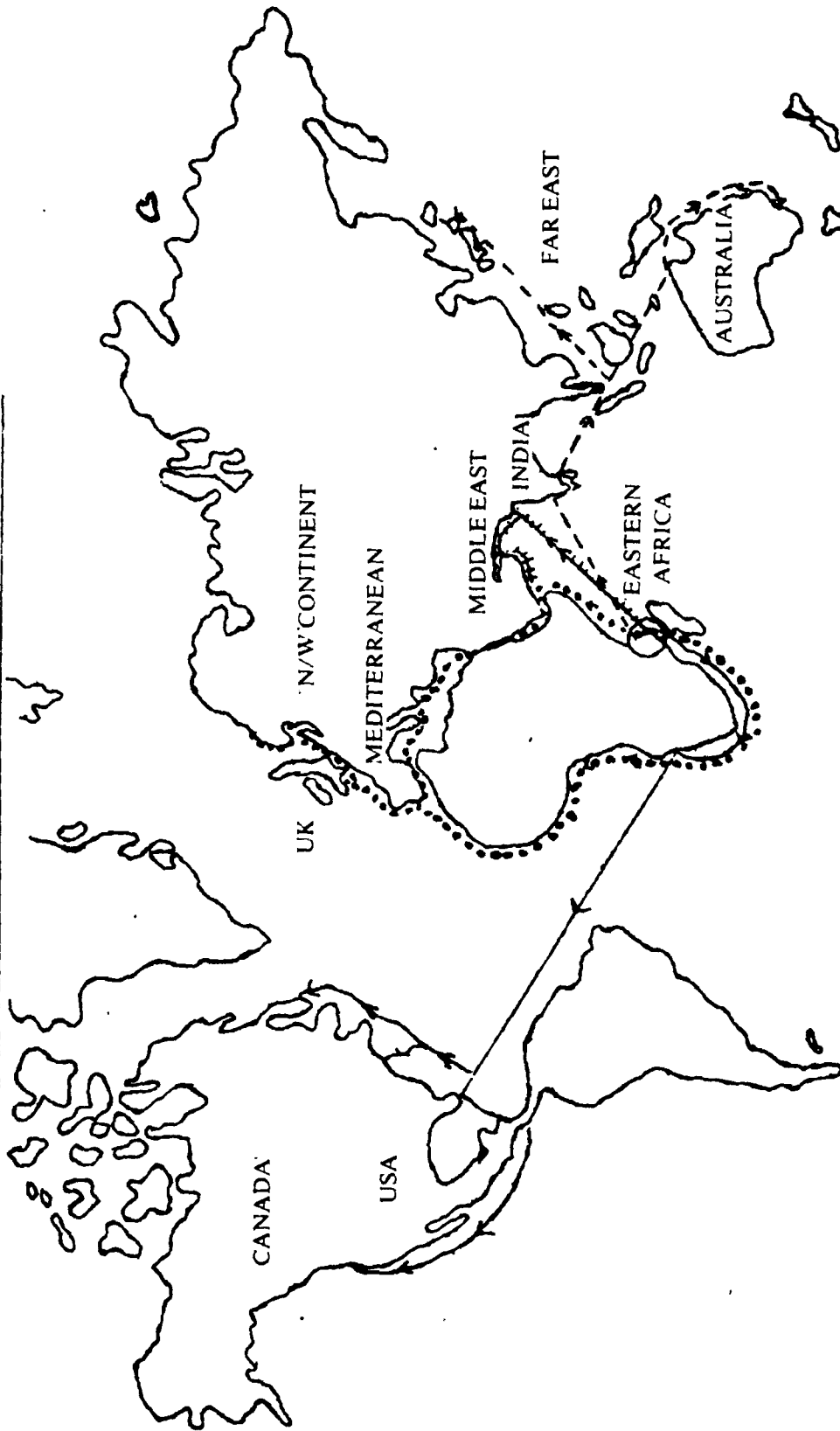
I would also like to thank all persons and institutions who contributed to the accomplishment of this work.

C.J.G. NDALAMA

THE WORLD MARITIME UNIVERSITY

30 April 1985

**MAJOR TRADE ROUTES FROM EASTERN AFRICA**



**KEY**

- ..... EA—UK/NW Continent Route
- EA—INDIA/Far East/Australia Route
- EA—USA/Canada Route
- //// EA—Middle East Route

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ABBREVIATIONS

IMO	International Maritime Organization
UNCTAD	United Nations Conference on Trade and Development
GATT	General Agreement on Tariffs and Trade
GROUP OF 77	Third World Countries, originally 77, now numbering more than 117
SINOTASHIP	Chinese-Tanzania Joint Shipping Company
ISCOS	Inter-Governmental Standing Committee on Shipping
UN	United Nations
CFB	Central Freight Bureau
TOSCO	Tanzania Ocean Shipping Company
EASCO	East African Common Services Organization
EAR&H	East African Railways and Harbours Corporation
UDI	Unilateral Declaration of Independence
EAHC	East African Harbours Corporation
TAZARA	Tanzania <sup>ZAMBIA</sup> Railway Authority
UNCLOS	United Nations Conference on the Law of the Sea
IOPC FUND	International Oil Pollution Compensation Fund
ILO	International Labour Organization
SADCC	Southern Africa Development Co-ordination Conference
SATCC	Southern Africa Transport and Communications Commission

RESEARCH PROPOSAL - SYNOPSIS

## TOPIC

THE NATIONAL MARITIME LEGISLATION  
AND THE SHIPPING INDUSTRY IN TANZANIA

This Dissertation will try to examine the national maritime legislation in view of the development of the shipping industry in Tanzania, the international place of Tanzania and its role in the international maritime industry, as well as Tanzania's position in international law and maritime legislation. A brief case study will also be made on the national maritime legislation, the Tanzania Merchant Shipping Act, 1967 being the main reference instrument; an examination of the present maritime administrative framework and the administration of the Merchant Shipping Act. Finally there will be a brief summary of findings and some recommendations, where appropriate.

The Dissertation will be divided into five main chapters, as follows:

Introduction	Part A and B
Chapter I	Tanzania and its international place in the shipping industry
Chapter II	International law and maritime legislation
Chapter III	The national maritime legislation: A case study on the Tanzania Merchant Shipping Act, 1967
Chapter IV	The administrative framework and the administration of the Merchant Shipping Act
Chapter V	Summary and recommendations

## INTRODUCTION - PART A

### TANZANIA

Tanzania comprises the mainland territory of Tanganyika and the islands of Zanzibar and Pemba. The coast of Tanzania is about 500 miles in length and extends from the mouth of the River Ruvuma in the south to the mouth of the River Yimbo in the north. The country is bounded on the south by Mozambique, on the south-west by Malawi and Zambia, on the west by Zaire, Burundi and Rwanda and to the north by Uganda and Kenya.

### History

The East African coast is known to have been visited by Arab and Indian traders from very early times in history. As a result of these links there grew up between the 12th and 15th centuries many Swahili city states trading in gold, ivory and slaves from the interior of the country.

The arrival of the Portuguese at the beginning of the 16th century resulted in protracted rivalry between them and the Arabs. The Portuguese took possession of the islands of Zanzibar and Pemba in 1505 and subsequently established forts on the mainland in order to gain control of the coastal trade. In 1698, however, the inhabitants of Zanzibar drove out the Portuguese with the assistance of the Arabs of Oman, who later sent a Governor to Zanzibar. In 1832 the Sultan of Oman transferred his capital to Zanzibar and by the year 1935 a large strip of the coast of East Africa from the vicinity of Cabo Delgado to Lamu in Kenya was effectively under the rule of the Sultan of Zanzibar, during which period trade, particularly in slaves and ivory, flourished. These first African Dominions of Oman became independent under the Sultan of Zanzibar in 1856.

In 1890 the Sultanate of Zanzibar became a British Protectorate and almost at the same time, the mainland possessions of the Sultan, forming part of what are now Tanganyika, Kenya and Somalia, were ceded respectively - Tanganyika to Germany, Kenya to Great Britain and Somalia to Italy.

From 1891 to the end of the First World War of 1918, Tanganyika remained a German Protectorate. It was afterwards administered by Great Britain under the League of Nations and later, under the United Nations Mandate until gaining independence in 1961. On 9 December 1962 Tanganyika became a Republic within the British Commonwealth. In 1963 the Sultanate of Zanzibar became independent, but on 12 January 1964 the Sultan was overthrown and on 26 April 1964 Zanzibar and Pemba united with Tanganyika to form the United Republic of Tanzania.

#### Population and area

The Tanzanian mainland has an area of about 3,652,820 square miles, the island of Zanzibar about 640 square miles and Pemba 380 square miles. By 1978 the total population of Tanzania was estimated to be more than 17 million people, of whom about 410,000 lived on the islands of Zanzibar and Pemba.

#### Language

Swahili is the official language and English is considered to be the second official language.

#### Government structure

The United Republic of Tanzania is a one-Party State. The President is nominated by the ruling Party and elected by the National Referendum. He is thus Executive Head of State. A National Assembly, comprising elected and nominated members, legislates, but presidential assent is necessary before any Bill becomes Law. The Vice-President of the United Republic is also the Head of the Executive in Zanzibar. The Prime Minister is also Leader of the National Assembly. Dodoma, situated about 278 miles west of Dar-es-Salaam, is the country's new capital, but Dar-es-Salaam remains the main business centre of the country.

#### The main physical features

The coast of Tanzania mainland is low plain composed of coral partly covered with sand or with rich alluvial soil and dense bush or mangroves

with a width of 10 to 40 miles. Beyond this plain the country rises to a plateau of the hinterland which falls sharply from a general level of about 1,200 miles to the levels of Lake Tanganyika (789 miles) and Lake Nyasa (490 miles), lying in the Rift Valley, a deep and narrow gorge which traverses the plateau. Lake Tanganyika, the median line of which forms the western boundary of Tanzania, is 350 miles long with the greatest width of 45 miles; its greatest depth is approx. 1,277 metres. Lake Victoria, situated in the north west part of the country, has an area of about 27,000 square miles and is the second largest fresh water lake in the world. Mount Kilimanjaro, situated in the north east of the country has the highest peak of about 5,974 metres; it is snow-capped and is the highest peak in Africa. In the south-west of the country the Livingstone Mountains rise to a maximum height of 2,700 metres.

#### Rivers

The largest rivers are Ruvuma and Rufiji, both of which rise in the central plateau. River Pangani rises on the slopes of Kilimanjaro. Among other rivers there are Ruvu and Wami. All the rivers are shallow and scarcely navigable..

#### Trade and industry

Tanzania is mainly an agricultural country. Its economy is mainly based on the production and export of primary products and the growth of foodstuff for local consumption. The principal crops are sisal, cotton, coffee, cashew nuts and oil seeds. Diamonds are the most important mineral. There is also a large number of cattle, so hides and skins are valuable exports. Sardines and turna are caught and exported.

The industrial sector is mainly concerned with the processing of raw material for either export or local consumption, but cigarettes, leather and rubber footwear, razor blades and textiles are manufactured.

Zanzibar is the main producer of the world's supply of cloves. At least three-quarters of the output is grown on the island of Pemba. Cloves and clove oil form more than half the exports of the two islands. The second major cash crop is coconuts which are grown on both islands. The principal food crops are rice, bananas, maize and sorghum.

The principal imports of Tanzania are machinery, manufactured goods, food, mineral oil, lubricants, chemicals and fertilizers.

### Transport and communication

#### Sea

Tanzania has four principal ports at Dar-es-Salaam, Tanga, Zanzibar and Mtwara. Between the mainland and the islands of Zanzibar and Pemba there are regular steamer services.

#### Rail

There are two main railway administrations in the country:

- 1 the Tanzania Railway Corporation (TRC) which operates mainly a single-track network linking the main centres of the Tanzanian mainland from Dar-es-Salaam to Mwanza and Kigoma. The Tanzania Railways Steamer Services operate on Lakes Tanganyika, Victoria and now Nyasa.
- 2 the Tanzania-Zambia Railway Authority (TAZARA) system links the port of Dar-es-Salaam with Kapiri Mposhi in Zambia. This railway is the main backbone for the transportation of Zambian cargo.

#### Air

Tanzania has two international airports situated in Dar-es-Salaam and Kilimanjaro. There are also all-weather airports on the islands of Zanzibar and Pemba. Air Tanzania Corporation operates internal services linking the main centres of the country.

#### Road

All the main centres on the mainland are connected by all-weather roads and on the islands of Zanzibar and Pemba, there are also adequate all-weather roads.

INTRODUCTION - PART B

For the development of any country, its economic structure has to be geared towards a specific objective, for example, in trade and industry. The external trade of an individual country has imports and exports and these activities determine the balance of payments of a country. To ensure the success of these activities, it also entails specialized areas.

Shipping, as an important sector to the economic development of a country, has an important role to play. Thus for the success and efficiency of the maritime industry, developing countries have been called upon to adhere to the following:

- a to join IMO and other United Nations related bodies;
- b to prepare and implement a Merchant Shipping Legislation;
- c to develop maritime administration, including maritime safety administration;
- d to develop maritime training facilities;
- e to develop ports administration infrastructure;
- f to develop shipping companies infrastructure;
- g to ratify the Law of the Sea Convention and other related Conventions.

The shipping industry is considered today as one of the most international of all industries. Upon its efficiency and standard of service depends the ability of the nations of the world to maintain smooth and advantageous trade relations with each other. Inextricably bound up with this basic premise is the equally vital factor that there must be mutual understanding between nations, particularly on legal issues, the rights, obligations, immunities and benefits arising from the innumerable and diverse situations occurring during the course of day-to-day operation of ships.

IMO membership provides to Member States a forum where they can exchange their ideas and thoughts, such as the transfer of technology by means of exchange of experts, training and also seminars and conferences. By so doing they also take note of internationally agreed standards. Therefore it becomes increasingly important that the right representatives from the developing countries participate fully in all the meetings and conferences. Members of the developing countries make known their limitations and what assistance they would need. In most cases they



would let their colleagues from the developed world know and understand their problems. Articles 57 and 68 of the United Nations Convention that establishes IMO provides for the procedures that have to be followed by a country in order to gain IMO membership. Fortunately the United Republic of Tanzania is already a member of IMO.

### The Merchant Shipping Legislation

This is usually a body of Laws adopted by a country to control and regulate the maritime activities. This also depends on many factors, for example the degree of maritime activities of a country and/or the ✓ consciousness of a country to maritime activities. The basis of maritime laws is the international nature of the maritime industry, however the national nature is also paramount.

The enactment of maritime legislation will always depend upon the legal structure of an individual country, although there are certain areas which will be the major items to be considered. For example: ship ownership and registration, transfer of ownership, mortgages, crew matters (that is masters and seamen), enquiries and investigations of shipping casualties, pilotage, lighthouses and other navigational aids, enforcement procedures, including detention of ships for not complying with international standards of seaworthiness, extension of jurisdiction to national courts in the case of foreign-going vessels, international safety conventions including Safety of Life at Sea, 1974 and the International Convention on Loadlines, marine pollution conventions including MARPOL 73/78, Examination and Certification of Seafarers, etc.

### Maritime administration

The main objective of maritime administration or organization within the framework of a country's overall maritime activities is to provide the Government with the machinery which will enable it to satisfactorily and efficiently undertake those functions which are embodied within the country's shipping legislation. These functions will naturally include all the rules and regulations.

In such development of maritime activities, an efficient machinery will be required to advise the Government on various maritime aspects, for

example, its international obligations after the ratification of certain conventions. Thus before the ratification of any convention a Government has to carefully examine it to see whether it will be able to comply with the provisions of such convention, and the advantages and disadvantages of being a party to it. The Ministry of Communication and Transport, or any other Government Authority dealing with maritime and shipping affairs, is therefore duly bound to provide and organize the appropriate facilities for the survey of ships, training, examination and certification of seafarers.

In addition to those areas indicated under the Merchant Shipping Laws, other areas have to be equally taken into account. For a sound maritime administration, any maritime country which is serious about its maritime activities has to give due thought to all major conventions for future adoption. An important example is the International Convention for the Safety of Life at Sea, 1974, and the Protocol of 1978 relating thereto, and the First and Second Set of Amendments to SOLAS 1974; the Convention on the International Regulations for Preventing Collisions at Sea, 1972; the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto; the Convention on Facilitation of International Maritime Traffic, 1965, as amended, and so on.

On the other hand, as much as most developing countries would like to adopt these Conventions, as may be amended, they are limited by economic constraints. It should be noted that most of these Conventions have requisites for either the installation of new sophisticated equipment or at least for updating what is currently available. The international community is certainly aware of this situation, and that is why there are international fora in order to understand each other's problems and if possible to assist one another.

As has been noted earlier, the development of training facilities is very important. Maritime training institutions have to be set up to train the local manpower and the setting up of shipping companies, whether private or public, is necessary to absorb the locally trained manpower.

It is an established fact that in the movement of commodities, the maritime industry is considered to be a major link and ports therefore

play a great role. Thus to ensure a smooth movement of goods, ports should be properly and efficiently developed, both in terms of adequately qualified manpower and equipment.

In order to establish a port, the following determining factors ought to be observed:

- a the geographical location, both in the country and in relation to international and national traffic;
- b the types of cargo to be handled; and
- c the types of ships the port is intended to serve.

Apart from the above-mentioned, adequate and correct facilities will also be needed for the handling of different types of ships and cargo. An example is the Roll On/Roll Off (RoRo) vessels, container vessels, conventional vessels, etc. It should also be noted that the administration of ports will always vary from country to country and location to location, depending on the objective of setting up such a port.

The overall port operation will generally include the cargo sheds, the working schedule and also the maintenance of the cargo handling equipment. The movement of ships in the port will always require careful planning that will include berthing and unberthing of ships, as well as pilotage. For a port to operate smoothly, sound port control and safety are a necessity. This will also include a well-organized stevedore system, allocation of safe anchorage of ships, port labour industrial relations in order to avoid labour disputes that could lead to strikes or slowdowns. Also a well-organized cargo claims system is required.

Generally there must be observance of regulations for the carriage, handling and storage of dangerous goods, as provided by the International Convention for the Safety of Life at Sea, 1974, as amended, and the International Maritime Dangerous Goods Code, 1965, as may be amended (IMDG Code). Furthermore, a port has a duty to facilitate the International Maritime Traffic Convention, 1965, as amended; marine pollution prevention and control, as provided for by MARPOL 73/78 and the maintenance of navigational aids.

Last but not least, a port has to be marketed. It must be borne in mind at all times that the business and commercial world is very highly competitive. Port Administrators have to market their port to the outside world to ensure that it has a steady flow of cargo at both levels - the export and the import. They can only do so by assuring

exporters and importers of the efficiency and security of their port, which of course will be determined by a sound organizational structure.

The importance and role of ports for the economic advancement of developing countries, and even the developed ones, is quite clear. To develop a modern port, heavy and high technology are required. In this case it will be an intensive capital investment. There are three major ways of establishing a port infrastructure. A port can be owned by the Government; it can be owned partly on a private basis and partly by the Government (joint ownership); or it can be completely under private ownership. This applies to shipping companies too. Some developing countries depend on foreign ships for the facilitation of their shipping industry, while others have seen the importance of establishing a local shipping company. Amongst the advantages of establishing a local shipping company is the saving of freights paid to foreign companies, and naturally the creation of employment. With a shipping line of its own a country would also find it advantageous to try to implement the UNCTAD Code for Liner Conferences, which entered into force on 1 October 1983. This is based on the principle of 40-40-20 cargo sharing.

For most developing countries it has been quite difficult for them to find enough funds for the investment in such challenging economic investment ventures. Some countries have tried to do it through private entrepreneurs, and others through joint ventures with well-developed maritime nations. According to the survey by UNCTAD only three developing maritime countries have been able to make rapid development of their shipping industries, i.e. Brazil, China and India. It is noted that their success has been possible, first of all, because their Governments took a leading role in the whole venture and secondly, because they are large countries and could gather enough funds for the project. It can be clearly seen that on the basis of various considerations, the decision usually and definitely lies with an individual Government.

#### Ship ownership and operation

This usually entails a series of technical, operational, legal and many other detailed studies. This will enable an aspiring country to

decide on what to undertake and the kind of feasibility study at least to establish the viability of ship ownership. These studies would include the type of cargo to be carried, the quantities of cargo, the trade route, the proposed schedule of operation, the projection of additional routes it may operate, projection of additional cargo, the levels of freight rates to enable the revenue at least to cover the capital costs.

The types and sizes of ships to meet the needs should also be considered. The source of supply of the vessels, whether a new ship will be economical to purchase, or whether a secondhand ship should be acquired, or even whether vessels should be chartered are factors for consideration, and the source of financing the acquisition of vessels should be well known beforehand. The facilities for loans and their terms for repayment must be thoroughly investigated, scrutinized and properly worked out before commitments can be made.

The structure of a shipping company should be properly formulated, e.g. the management, operations, technical aspects, etc. The availability of qualified and experienced personnel, both shore and ashore, to run the company must be well prepared. The administrative and operational costs of shore and floating units must be carefully estimated. Some developing countries begin by registering a company locally and then charter vessels to get adequate experience, while at the same time training its personnel. The purchase of ships follows, after the acquisition of experience.

Developing countries should take great consideration of these practical aspects, before making a decision to establish their own shipping industries.

Lastly, but not least in importance, it should be noted that maritime transportation is just one area in the whole network of transportation. Air transport, surface (rail and road) and also inland water transport systems should be considered as forming part of the whole complicated transport network.

## CHAPTER I

## TANZANIA AND ITS INTERNATIONAL PLACE IN THE SHIPPING INDUSTRY

For many years the shipping industry has been dominated by the developed maritime nations of the world. Because of this dominance Sir Walter Raleigh once stated "Whosoever commands the sea commands trade; whosoever commands the trade of the world commands the riches of the world, and consequently the world itself!"<sup>1</sup> Due to this position the developing countries have been either wholly or to quite a great extent dependent on these nations for the shipment of their foreign trade.

After the attainment of their political independence, developing countries, realizing this deficiency, are now in the process of trying to gain economic independence for which shipping has an important role to play. Tanzania like any other developing country has suffered the same experience despite the fact of its long-time contact with some of the maritime nations. To date Tanzania is still a small shipping country; but it is also important to note that Tanzania is at present a very important coastal and Port State. Because of this position Tanzania has to live according to the dictates of the international environment and also its own environment. It has a long coast of about 500 miles and has landlocked neighbours who route their foreign trade (cargo) through its ports. A combination of both factors, and of course the strengthening of its own foreign trade, forces Tanzania to actively become involved in shipping since it is both a coastal Port State as well as a developing shipping nation.

As stated earlier on, like most developing countries, Tanzania's participation in the shipping industry is very minimal and has to depend upon the industrialized countries for its needs within the whole spectrum of activities covering what is involved in ocean transportation. The areas of a national shipping industry include the activities of shipbuilding, ship repair, coastal transportation and ocean transportation, exploitation of marine resources, maritime training and also working on the markets to maximize benefits to the nation from the transportation of cargoes generated by the country's foreign trade.

Until now none of the above-mentioned areas is adequately provided for and some are not provided at all. But despite this inadequacy, Tanzania is trying to foster its image on the international shipping community by, first of all, becoming a member of various international organizations dealing with various aspects of shipping, like the International Maritime Organization (IMO), the International Labour Organization (ILO), the United Nations Conference on Trade and Development (UNCTAD), the General Agreement on Tariffs and Trade (GATT), the Lome Convention, the Group of 77, etc. These organizations provide Member States with a forum for an exchange of ideas and the chance to understand each others problems. Secondly, actual participation in the activities of these international organizations is afforded. Just how active Tanzania has been in these Organizations will be discussed at a later stage. However, in all the above cases, there will always be obligations in terms of joint efforts in tackling common problems or achieving common, desired goals. The fact that Tanzania is an independent Sovereign State which is endowed with a long coastline and beautiful harbours means that these natural assets must be fully explored and utilized for the benefit of its people and the international trade.

#### Shipping in Tanzania - historical perspective

The shipping industry has historically played a vital role in the development, expansion and consolidation of colonialism throughout the world. The colonial powers since the 18th century could be directly correlated with the might of their merchant navy. In this respect, even their decline could be shown to correspond with the increased sea power of their various rivals. With the consolidation of the colonies and the development of commercial agricultural production for the sustenance of the industries in the so-called "mother countries", shipping assumed an even greater significance for the colonial powers. Shipping lines became increasingly organized into "Conferences", shipping cartels, syndicates, consortia or joint ventures, with specific objectives, mainly to protect their trading interests in particular areas and generally to ensure the maximization of their profits through various fixing mechanisms.

This position should be looked at even with the historical wind of change and the resultant independence movement, shipping assumed the mask of a neo-colonial arrangement affecting former colonies, vis-a-vis their respective metropolises. Independent countries of this developing world are still heavily dependent on foreign shipping monopolies to service their external seaborne trade.

Tanzania's shipping pattern should therefore be viewed in the historical context of the evolution of her economic system and its casual links with the international economic and commercial system. In the colonial scheme, shipping and ports were intended to play a basic role in the overall exploitation of the country's wealth. Thus, the intensified pattern of shipping bears the characteristics of its basic objective. It is marked by a very strong vertical integration with an obvious absence of historical links within the country and between Tanzania and other African countries. As with most developing countries, Tanzania, as stated earlier, has no shipping industry to speak of and therefore has to rely for most of her needs in this industry on the developed countries for the supply of ships, spare parts, maintenance, repair facilities, training facilities, etc.

In 1961, when Tanzania attained Independence, the shipping industry was one of the fields which should have received priority attention in order to institute corrective measures such as to gradually transform it into an economically beneficial activity for the country's development as opposed to being a drain on her meagre resources. It is a fact that though action was taken in the field of shipping operations, such action was either very late in coming or very weak in impact on the general national shipping industry that existed. The absence of a comprehensive review of the entire shipping sector ensured from the start that action was taken on an ad hoc basis: for example the establishment of two joint shipping ventures - the Chinese-Tanzania Joint Shipping Company (SINOTANSHIP) and the East African National Shipping Line, which was established by two East African coastal States - Tanzania and Kenya - and two landlocked States - Uganda and Zambia. Unfortunately this joint venture collapsed in 1978. There was also the establishment of the Inter-Governmental Standing Committee on Shipping (ISCOS) of which membership comprised Tanzania, Kenya, Uganda and Zambia; and finally the nationalization of all the private shipping agency business.



It is also important to note that however important these areas may be, it is also a fact that they are all the same peripheral to the central issue, which is the lack of an integrated approach to the establishment of a national shipping industry that would embrace shipbuilding, ship repair, coastal and oceanic transportation, exploitation of marine resources, maritime training, protection and preservation of the marine environment, safety of navigation (Safety of Life and Property at Sea, etc.).

It is the view that such action as has so far been taken merely impinges on the basically colonial structures established well before Independence. It should be well understood that as long as the terms of trade of the terms of shipment are controlled from elsewhere, as long as Tanzania has to depend on the maritime nations for the acquisition, maintenance and repair of ships, etc., the country's position will continue to be weak. This position is well illustrated by the fact that Tanzania, like most developing countries, is a mere user rather than a provider of shipping services. On general examination, the shipping industry has not been accorded the priority and level of attention which it deserves, especially considering the fact that over 90% of Tanzania's foreign trade is seaborne. Worse perhaps is the fact that over 90% of this seaborne trade is carried by foreign ships, involving all the implications in terms of dependency, the outflows of foreign exchange, thus affecting the country's balance of payments, etc. Conservatively it was estimated that Tanzania spent about Tshs 1.5 billion in freight during the year 1975 alone.

Fundamentally, it is not possible to isolate the position of shipping from the general socio-economic policies of a country, particularly the country's commercial and trading activities. This is even more surprising for Tanzania not to have pursued more rigorously her shipping aspirations since all the other major areas of the country's economic life were nationalised in 1967. Probably this could be attributed to its participation in the first East African Common Services Organization and later the East African Community under whose auspices Ports and Railways were administered. Though shipping was not directly a community affair the Government in good faith seem to have surrendered some of the initiatives in shipping to an Organization which had its own specialized field to look after and also with limited powers in policy matters.

### The International Scene

In most developing countries including Tanzania, the structure, system and direction of their international seaborne trade were established long ago by the developed world. Most such countries are trying to change this established system. It is a well-known fact that the price of commodities exported by developing countries is set by the buyers. So it is the ocean transportation cost which in one way or another is paid by the developing exporting countries. The same applies to the price of their imports and the cost of transporting them.

The situation is certainly undesirable and most developing countries have been and are still fighting for a change in the entire system of international trade, including the pricing system and the cost of transportation, in order to at least bring a fair equitable situation.

The international development strategy for the second United Nations Development Decade set the target of 10% as the ultimate share of developing countries in the world merchant tonnage. By the end of the decade the share of the developing countries was less than 9%. Unfortunately this is despite the fact that developing countries export at least 61% of the world seaborne cargo es. A major course for concern to Tanzania and indeed to other developing countries is the level and unstable nature of freight rates. Any increase in freight rates means both paying more for imports as well as a reduction in receipts for exports. Therefore, high freight rates invariably have an adverse effect on Tanzania's balance of payments. That is to say that the continued use of foreign shipping services accentuates these unfavourable conditions.

### Tanzania and the liner conference system

Over 90% of Tanzania's seaborne cargo and that of the other East African countries is carried by shipping lines which are members of one conference or another. This condition does not differ much in most of the developing countries. These liner conferences are conservative to anything that threatens their monopolistic status against a particular trade.

Most of the developed shipping countries preach about the concept of "free competition", but it has been noted from experience so far gained on the operation of conferences that such "free competition" is acutely restricted, both in extent and effect. The liner conference system has enabled these monopolies to hold to ransom most developing countries including Tanzania, in terms of the provision of shipping services and their costs. Worse still, freight rates are fixed sometimes without any reference to the actual conditions of the economies of these countries and without any proper consultations. Several excuses and justifications are given to enable the Conferences to maximise their earnings. An example is freight surcharges, congestion surcharges, inflation factors, bunker surcharges, etc.

It is also a fact that as a result of an elaborate system of loyalty arrangements which bind shippers to a conference, there is usually very little possibility of price competition between conference and non-conference lines. On the other hand, due to lack of co-ordinated organization on the part of shippers, it is generally true that shippers have a weak bargaining power as against shipowners. It is therefore very important to note that in the absence of positive action to protect its overseas seaborne trade, Tanzania may find itself accepting a situation where inefficient and uneconomic operations persist in which the costs of shipment continue to rise, perhaps to the point of pricing some of its products out of the world market.

It has once been stated by UNCTAD that a country which does not exert a degree of influence over its own overseas shipping cannot expect to influence its overseas trade. Tanzania and various developing countries have approached the problems of shipping in different ways with different degrees of success. But in their totality however, these problems remain to quite a large extent unresolved. In the last fifteen years or so, developing countries have repeatedly sought a more concerted approach to these problems through the United Nations and their appropriate regional economic and political groupings.

There have been several actions intended to rectify this situation, but the most important international action with particular reference to developing countries was the adoption by the United Nations General Assembly of a Resolution under which was promulgated the International

Strategy for the Second United Nations Development Decade, particularly paragraph 53 on Shipping and Ports.<sup>2</sup> The main objective was that developing countries should have an increasing and substantial participation in the carriage of maritime cargoes. The target of 10% as the ultimate share of developing countries in the merchant world tonnage was established. However at the end of the decade the share was less than 9%. One of the major problems in this respect has been the high cost of ship financing and/or unfavourable loan terms. This is in spite of the call on developed countries to give favourable terms to developing countries in the purchase of ships and other matters related to shipping.

Similarly it does not appear that the Programme of Action on the Establishment of a New International Economic Order<sup>3</sup> has had much salutary impact in this respect. The reluctance of developed countries is perhaps understandable. On the one hand it would mean the end of their strong monopolistic status in the field of international shipping, but on the other hand it is perhaps the failure of developing countries to provide a healthy climate in terms of their laws related to shipping investment and political stability to attract more favourable loans from the developed countries.

#### Tanzania and the United Nations Convention:

##### A Code of Conduct for Liner Conferences

One of the most important contributions of the international community to rectify the above situation in favour of the developing countries was the adoption in 1974 at Geneva of the United Nations Convention on a Code of Conduct for Liner Conferences. The main objective of the Code is to regulate liner conference practices relating to membership requirements to enable developing country shipping lines to participate more easily, stabilization of freight rates, the establishment of a framework for consultation between conferences and the users of their services, greater participation by developing countries in the carriage of their own seaborne trade; thus the 40-40-20 cargo-sharing formula. Generally the provisions of the Code are quite beneficial to developing countries both in terms of their right to control cargoes generated by their foreign trade, as well as in the potential expansion of their own

merchant fleets. In order for the Code to come into force, two conditions were to be fulfilled. These are: "not less than 24 States, the combined tonnage of which amounts to at least 25% of the world tonnage, have become Contracting Parties to the Convention".<sup>4</sup> However despite some opposition to the Code by some major maritime nations, the Code finally met the requirements and entered into force on 1 October 1973.

It is important to note that one of the objectives in adopting the Code was to ensure a regulated system of liner shipping in order to avoid possible chaos if each country, and particularly developing countries, were to institute unilateral protectionist measures, including reservation or flag prescription measures.

Tanzania acceded to the Code on 3 November 1975 and since then efforts have been made to ensure the implementation of the Code's provisions. As a member of the United Nations, Tanzania participated fully in the formulation of the Code. In this respect, therefore, Tanzania has established a national machinery to ensure the implementation of some of the provisions of the Code. The Central Freight Bureau (CFB) was established by the Act of Parliament No. 3 of 1981. The Central Freight Bureau Act establishes the Bureau as a body corporate with the primary goal of enabling Tanzania to exercise control over the cargoes generated by her foreign trade and ensuring that all matters relating to their conveyance, and therefore the Nation's interests, are protected. Its role, functions, powers and responsibilities, include inter alia the following:<sup>5</sup>

Provision of machinery for allocating freight and shipping space on any ocean-going vessel in respect of Tanzania's exports and imports.

Rationalizing the frequency of calls and ensuring the availability of vessels for the carriage of Tanzanian exports and imports.

Ensuring the aggregation of goods with a view to providing economic loads to ocean-going vessels carrying Tanzanian exports and imports.

Arranging for the carriage of Tanzanian exports and imports.

Facilitating improvements of port performance, that is the loading and unloading rate in Tanzanian ports, the handling of cargo and other related matters.

Fostering development of the national merchant fleet.  
Obtaining the most favourable freight rates and other terms for the carriage of goods in order to ensure that the costs incurred by shippers are kept at a minimum.

However, for the Bureau to accomplish the foregoing objectives, the Act vests it with the following general powers:<sup>6</sup>

To centralize the booking of freight or cargo space in respect of goods intended to be shipped from any port outside Tanzania to any destination in Tanzania or from any port in Tanzania to any destination outside Tanzania.

To determine the vessels on which the cargo of Tanzanian exports and imports shall be shipped.

To allocate cargo on ocean-going vessels in such a manner as to safeguard and promote the national interest in trade and shipping.

To negotiate with shipping lines and shipping conferences on matters relating to freight rates, surcharges, adequacy, frequency and efficiency of shipping services and other related matters.

To undertake the chartering of ships.

To enter into agreements with shipowners and shipping lines, individually or collectively, either on its own or on behalf of shippers and arrange for the carriage of Tanzanian exports and imports.

To develop works and conveniences as may be necessary to facilitate improved performance in the handling of cargo at Tanzanian ports, in consultation with the Tanzanian Harbours Authority, established under the Tanzania Harbours Authority Act, 1977 - Act. No. 12.

To provide or arrange for transport and storage of goods.

To conduct research into all matters relating to shipping services and freight rates.

For the Bureau to discharge its cargo-booking functions, certain measures were to be instituted. These measures related mainly to the need of

specifying areas, routes, commodities, etc., coming under the Bureau's jurisdiction and to ensure that the transportation aspect of foreign trade is placed under the country's control and also to abolish all existing cargo shipping agreements and arrangements in order to pave the way for the Central Freight Bureau to assume the rights of exclusivity in making cargo and shipping space bookings in areas within its jurisdiction.

In that regard the Minister of Communications, Transport and Works, for the time being responsible for shipping matters, has already made an Order under Section 23 of the Central Freight Bureau Act<sup>7</sup> specifying the Bureau's jurisdiction and certain trade routes. The Order gives the Bureau, effective 1 May 1983, exclusive rights to book cargo and shipping space in respect of all Tanzanian cargo on the Tanzanian-Western Europe route, both northbound and southbound. It also gives exclusive rights to the Central Freight Bureau (hereinafter referred to as the Bureau) to arrange the shipping of all crude petroleum, petroleum and related products imported into Tanzania.

In order to enable the Bureau to control the freighting aspect in Tanzania's foreign trade, the Order further directs Tanzanian importers to ensure that orders placed with suppliers abroad are on the basis of "free on board" (FOB) port of shipment. The Order also directs exporters to sell goods moving on routes under the Bureau's jurisdiction. Lastly, the Order requires the Bureau to take disciplinary action against any shipper who violates the exclusivity provisions.

The afore-mentioned powers therefore place the Bureau in a central position, giving it more responsibility than most other organizations in implementation of the national policy regarding the ocean transportation of Tanzania's foreign trade cargoes. The national policy aims at achieving three major objectives:

First: to ensure that a fair share of Tanzania's foreign trade is carried by vessels flying the National Flag.

Second: striving to achieve minimum or reasonable cost in moving cargo carried by other Flags, and

Third: securing regular calls at Tanzania's ports to ensure the smooth flow of trade for both Tanzania and the landlocked countries served by Tanzanian ports, such as Zambia, Burundi,

Rwanda, Malawi and Zaire (i.e. Zaire's cargo routed through the East African coast) and Zimbabwe has now expressed an interest.

In discharging its responsibility and its successful functioning, the Bureau needs to co-operate and work very closely with the institutions participating in the carriage of Tanzania's cargoes on ocean-going vessels, such as shippers, shipowners, shipping agents, port authorities, banks, customs authorities, clearing and forwarding agents, national insurance corporations, transporters and any other related institutions. It should also be ensured that the above-mentioned institutions work together smoothly, for it is only through their close co-operation that the basic goal of moving Tanzanian cargoes expeditiously and at the lowest cost can be achieved.

It is further observed that since the setting up of the Bureau was intended to facilitate a realization of the advantages of a centralized cargo booking system, in the course of its operation, the Bureau should also make sure that there is no bureaucratic "red tape" to slow down the flow of the country's foreign trade. The Bureau should also endeavour to identify other potential or existing problems in the present cargo booking system and procedures in order to solve them before it is too late. Considering the nature and functions of the Bureau in the shipping industry of the country, which is highly complex, the Bureau must be staffed with personnel possessing skill of a high degree, and with an extensive knowledge of the freight markets.

In order to ensure an equitable participation in the carriage of its seaborne trade, Tanzania should, with the help of the Bureau, increase its carrying capacity with the ultimate aim of being able to carry up to 40% of such cargoes. To achieve the 40% carrying capacity Tanzania has to expand its national merchant fleet which at present stands at only 10 registered vessels above 1000 GRT with 48,407 gross tonnage and 623,487 deadweight tonnage. This is only 3.65% of the African fleet.<sup>8</sup> In this case, Tanzania should explore the possibilities of increasing its participation in joint ventures and other shipping co-operation with other countries to foster and strengthen a practical expression of Third World solidarity and collective self-reliance. Tanzania still retains her interest in the Chinese-Tanzania Joint Shipping Company and also has the basis for further expansion through the Tanzania Ocean Shipping Company (TOSCO).



It is further observed that efforts are being made to set up a Shippers' Council. It is the opinion that such a Council should be a very dynamic institution formed to embrace all importing and exporting organizations. The Council should also be based on a legal instrument which should specify amongst other things the functions, responsibilities and powers of the Council. It should also work very closely with the Bureau in order to achieve the national goal since it has to be understood that "the existence of a well-organized Shippers' Council, backed by the State, can look after the interests of shippers concerning the services offered".<sup>9</sup>

As pointed out earlier, the Central Freight Bureau was established as a body corporate and it is empowered, in broad functional terms, to coordinate and control the movement, terms and conditions of ocean transportation of Tanzania's exports and import cargoes. However, like most legislation, the Bureau's Act is general in scope and nature, outlining only the role and functions of the organization and leaving out the details of interpretation and implementation, which are to be taken care of by the Bureau itself in the course of its operation.

The establishment of the Bureau does not perhaps impress most shipping nations. Apart from its activities of monitoring the country's imports and exports the Central Freight Bureau type of organizations are already well-established in the People's Republic of China, Sri Lanka, the Republic of Senegal, Gabon, the Ivory Coast, and the United Republic of Cameroon. That is to say that Tanzania is not introducing something new to the world shipping industry, especially after recognizing the Third World plight in the shipping area.

#### Ports and their role

After realizing the importance of ports to the shipping industry, many projects are being undertaken to improve their working capacity in most developing countries. But while the schemes proposed might seem to remedy many of the problems existing in most of the ports in developing countries, it would appear that very few are likely to achieve their goals in the near future with the present economic climate.

In most such ports, feasibility studies are geared towards improving port facilities, but closer inspection may reveal that while such

studies are complete many still are in abeyance because of finance. It seems that commercial and development banks want to see some evidence of a turn-round in world trade before releasing money for port development as there is concern that additional facilities might end up under-utilized, at least in the short-term. On the other hand, port consultants point out that these schemes must be viewed in the context of prospects for increased seaborne trade in the future. Since shipping is a capital-intensive industry, without the financial assistance from such finance houses and development banks, most earmarked projects are unlikely to take off and very few developing countries can stand on their own in this respect.

To create an efficient, reliable port physical development alone is not enough but a complete reassessment of current procedures is needed; shippers and liner operators share this view. They are mostly concerned that although some port work needs to be carried out, greater emphasis must be given to management. Shipping companies maintain that port authorities have yet to grasp fully that inconsistent customs behaviour, bureaucratic documentation requirements and low productivity among waterside workers, undermine shippers' confidence. Theft and fraud are also a shipper's nightmare, and although containerization seems to have relieved some small-scale pilferage, crime remains one of the main hazards of marine trading with most developing countries.

As stated earlier in this Chapter, although Tanzania is not a major shipping nation, it is an important coastal port state nation. Because of this position Tanzania therefore has to play a significant role in the shipping industry, not only for its own economy but also for that of its landlocked neighbours who depend on its ports for their seaborne trade. Both the physical and managerial aspects of port development are of great importance. However, as stated above, as much as Tanzania is aware of its responsibility and would like to improve its port services, it also suffers from similar problems like other developing countries.

#### Historical background

In order to understand the present port structure and its problems in Tanzania, it is important to first examine briefly its historical background.

Upon taking over Tanganyika from Germany (hereinafter referred to as Tanzania mainland) as a League of Nations Mandated Territory, after the First World War, and as a result of the damage caused by the war to the economy, the British had to embark on a programme of economic reconstruction. In May 1921 a Law was passed to make provision for the control of shipping and management of the ports.<sup>10</sup> The general control, management and superintendence of the ports was, by this Ordinance, vested in the "Chief Port Authority" which was also the General Manager, Tanganyika Railways. The Governor was vested with various powers such as the establishment of ports and the making of regulations and appointments of port officers. Although the control and management of the ports was different from that of the Railways under a different Ordinance, direction through the Chief Executive ultimately led to fusion, though distinction was always retained for internal accounting purposes. After the British gained the mandate of Tanganyika, with a Protectorate in Uganda and Zanzibar, and a Colony in Kenya, the whole of East Africa was now under their control. By 1924 it was clear that there was a need for a closer union between the three East African countries. A Commission was appointed in 1924 to visit East Africa. After its visit the Commission reported that, among other things, there was a strong need for a united control of the railways, harbours and inland water transport systems in East Africa. It also advocated avoidance of competition between railways lines and concentration of development schemes on selected ports.

In 1927 a second Commission was appointed to draft a scheme for closer union. The scope of the Commission's inquiry was to find out whether, either by federation or by some other form of closer union, more effective cooperation might be secured. Under the Chairmanship of Mr. Hilton Young, this Commission published its Report in 1929. The Report said that the common factor of British Administration in all the territories ought to be utilized not only to avoid wasteful competition and duplication of effort in serving the joint hinterland, but also to secure such advantageous results as may be achieved by inter-territorial trading. Bearing this in mind, the Commission therefore recommended, inter alia:

- (a) the development of ports to the extent necessary to serve the territories efficiently, and concentration of large development schemes on selected ports rather than a multiplicity of small ports;
- (b) the prevention of wasteful competition between ports;
- (c) the amalgamation of the two railway systems under one management.

For a long time the recommendations for closer union in East Africa were discussed, both in East Africa and Britain. While common services were being provided in certain spheres like posts, telecommunications, some research services, etc., it was not until after the Second World War that a positive step was taken with regard to ports.

In 1947 the Legislatures of Tanganyika, Kenya and Uganda accepted in principle the proposals in Colonial Paper No. 210 under which a complete amalgamation of the railway and port services of the three territories had been proposed. The Paper substantially formed the basis on which the East African High Commission and the East African Central Legislative Assembly were established on 1 January 1948.<sup>11</sup> It also provided for the Kenya-Uganda Railways and Harbours, and the amalgamated Tanganyika Railways and Ports Services to be combined into one system to be called the East African Railways and Harbours Corporation.

After the coming into force of the High Commission Order in Council on 1 January 1948, the railways and ports systems were amalgamated on 1 May 1948.<sup>12</sup> The integrated railways and harbours system was administered under the provisions of the East African Railways and Harbours Act.<sup>13</sup> Under this new system the Executive Management was vested in the Commissioner for Transport. His statutory duty was to provide within the territories a coordinated transport system of rail and inland water transport system services, harbour facilities, auxiliary road and coastal transport services. The Commissioner was assisted by a General Manager.

At this juncture it is important to note that although the Act embodied some special provisions relating to harbours, these provisions dealt mainly with pilotage, health, levying of rates and other matters related to port operations, much of it related to railway management. The Ports were, therefore, administered as an integral part of railway operations.

Internally, coastal ports administratively fell under an officer called the Chief Ports Manager, resident at Mombasa, Kenya.

From this time, port development was in accordance with the recommendations of the Hilton Young Commission, that is to say, more concentration on "selected" ports. In effect, this meant that favoured development and growth of Mombasa to the detriment of the ports of Dar-es-Salaam and Tanga in Tanganyika.

Although Tanganyika attained her Independence earlier than its two partners - Kenya and Uganda - the arrangements existing under the East African High Commission continued to operate. After the Independence of the other two countries, they agreed to continue to operate their common services under a new body called "The East African Common Services Organization" (EACSO).

At this point, the operation, management and control of the East African Railways and Harbours Administration (EAR&H) did not experience much change; even the name of the organization was retained. The Executive Management was, by amendment, vested in the General Manager. The Authority comprising the three Heads of State of the three countries replaced the High Commission in broad matters of policy. A Communications Ministerial Committee composed of Ministers responsible for communications in the three States was introduced, this Committee giving direction to the General Manager, and the Central Legislative Assembly also being retained for matters relating to finance and budget approval for the Administration. The East African Common Services Organization existed until 1967 when a new era was entered with the Treaty for East African Cooperation, setting up the East African Community. At this point the East African Railways and Harbours Administration was split into two statutory corporations - the East African Railways Corporation and the East African Harbours Corporation - each with its own Board of Directors<sup>14</sup> and management, as well as having powers provided for in separate Acts of the Community.

Though the Treaty came into force on 1 December 1967, the East African Harbours Corporation did not fully come into operation until 1 June 1969. In the interim, operations continued under transitional arrangements.

In broad terms, the Harbours Corporation was a body corporate, established to provide a coordinated system of harbours and facilities related thereto and, as such, to maintain, operate, improve and regulate the major ports of Dar-es-Salaam, Mombasa, Tanga, Mtwara and Zanzibar in addition to the smaller ports on the East African coast. Although Zanzibar and Pemba ports are "scheduled ports" under the Act, their administration and development remained under the Government of Zanzibar.

Under the East African Harbours Corporation Act, the Corporation was essentially managed, controlled and supervised by four main organs: The Director General, the Board of Directors, the Communications Council and the Authority (comprising the three Heads of State of the three countries), each charged with specific functions. Although under the Law, the entire responsibility for port development, operation and management rested with the Corporation, for various reasons the handling of cargo was delegated by the Corporation to its subsidiary, the East African Cargo Handling Services Co., a body incorporated in Kenya and registered in Tanzania.

X In the early stages of the development of the ports in Tanzania, the handling of cargo had been undertaken by private companies. During the German period, the handling of cargo was a monopoly of a private firm called Han Sing and Company. After the British took over the administration of Tanganyika, several small companies, notably the East African Wharfage Company, the East African Lighterage and Stevedoring Co. Ltd., and the Tanganyika Boating Company, handled cargo at the ports under various contracts. But during the late 1920's and early 1930's, following investment by the British Government into port services, it was becoming gradually apparent that the services of these private firms should be utilized to best advantage in the public interest. By the 1950's, success was limited to having a single company, the Landing & Shipping Company, which dealt with shore handling operations. Stevedoring operations still remained in several private sectors. In May 1962, the Government of Tanganyika and the then East African Railways and Harbours Administration invited Mr. Amos Landman, the then Port Manager of Haifa, to study cargo handling operations and organization in the ports of Tanganyika. His Report recommended, among other things, that there should be one publicly-controlled cargo handling organization

to provide services for all handling operations in the ports. This recommendation was accepted by both the Government and the East African Railways and Harbours.

As a result of the above recommendation, stevedoring and shore-handling operations were integrated in 1964 under the control of the East African Railways and Harbours. At that time, East African Railways and Harbours already held about 70.6% of the shares in the Landing and Shipping Company. The remaining share capital was held by Messrs. African Wharfage Company, Lighterage and Stevedoring Company of East Africa, and by Tanganyika Boating Company. Following negotiations between these parties, a new company, known as the East African Cargo Handling Services Ltd. (EACHS) was eventually incorporated in Kenya. It took over the functions of the small companies then operating in Kenya and Tanganyika, and signed contracts for port operations with East African Railways and Harbours, which continued progressively to acquire more shares in the Company.

The above-mentioned re-organization was based on various considerations including:

- (a) the view that establishment of a sole cargo handling organization was the most appropriate approach at East African ports;
- (b) that integration of the activities of existing shore handling and stevedoring companies, together with craneage, was practical and beneficial;
- (c) that a reconstructed Landing and Shipping Company, with responsibility for both stevedoring and shore handling, would provide a sound basis and interim organization for a future public-owned company;
- (d) that public control of cargo handling should be secured through majority shareholding by the Port Authority, initially in the reconstructed Landing and Shipping Company, and later in the Cargo Handling Services Limited.

At the time of the split of the East African Railways and Harbours Administration into two corporations in 1969, the day-to-day handling of cargo by East African Harbours Corporation continued under the agency of East African Cargo Handling Services, which still remained

jointly owned by the East African Harbours Corporation and the East African Railways Corporation at 83.3% and 16.7% respectively. This was the position up to the break up of the East African Harbours Corporation.

Basically, the provisions of the Treaty for East African Cooperation represented a set of compromises between the Partner States; but despite this fact, the implementation of the Treaty provisions had its difficulties and complications, culminating with the break-up of the Community in 1977. Unfortunately, it is not the intention to discuss the problems and reasons leading to this break-up and subsequently the East African Harbours Corporation, due to the nature of the matter.

By March 1977 it was clear to the Government of Tanzania that the financing of the East African Harbours Corporation operations was running into trouble. The bank accounts of the Corporation Headquarters, which was based in Dar-es-Salaam, were therefore frozen on 12 March 1977, resulting in the cessation of the Headquarters operations. The assets and operations of the East African Harbours Corporation in Tanzania were then vested, under a Court Order, in the Public Trustee.

The break-up of the Community was, and still is, lamentably a sad experience, but it should also be understood that during all this time port development policy formed part of the East African Shipping Development Policy, which meant that no individual State could undertake any development by itself without informing the other States, and if possible securing their approval. Therefore lack of a national shipping policy had its effects on the future problems in terms of the port development, administrative and legal framework. In principle, it cannot be said that the East African cooperation was bad. On the contrary, regional cooperation should also be encouraged and it was most unfortunate that the earlier attempt did not work as was intended. In a way, it provides experience which could enable the East African States to avoid making similar mistakes in future regional cooperation in the shipping industry, which regional cooperation is inevitable.

#### A National Ports Authority

The break-up of the East African Harbours Corporation brought up a new problem to Tanzania, even though the Tanzanian Government could not afford to delay taking any immediate action. It was under these



circumstances, therefore, that the Government decided to appoint a "Task Force" to study the structure and operations of East African Harbours Corporation and East African Cargo Handling Services Ltd., and to recommend a suitable structure for future operations under a national institution. After a careful study of the two institutions, the Task Force recommended setting up a public corporation which would carry out the functions of Port Development and Administration.

Following these recommendations, the Government of Tanzania established the Tanzania Harbours Authority under the provisions of the Tanzania Harbours Authority Act, 1977.<sup>15</sup> The Act established the Harbours Authority as a body corporate and under the provisions of Section 6 of that Act, the functions of the Authority are:

- (a) to establish and operate a coordinated system of harbours;
- (b) to provide facilities relating to harbours and provide harbours services and services ancillary thereto;
- (c) to develop, improve, maintain, operate and regulate harbours;
- (d) with the approval of the Minister, to construct and operate new harbours;
- (e) to construct, operate and maintain beacons and other navigational aids;
- (f) to carry on the business of stevedore, wharfinger or lighterman;
- (g) to act as warehouseman and to store goods, whether or not the goods have been, or are to be, handled as cargo or carried by the Authority;
- (h) to consign goods on behalf of other persons to any place either within or outside the United Republic;
- (i) with the approval of the Minister, to act as carriers of goods or passengers by land or sea;
- (j) to provide amenities or facilities which the Authority considers necessary or desirable for persons making use of the services or the facilities provided by the Authority.

The Authority is also authorized, subject to approval of the Minister, to:

- (a) construct any wharf, pier, landing stage, road, bridge, building or any other works required for the purposes of the Authority;
- (b) clean, deepen, improve or alter any harbour or the approaches to any harbour;
- (c) provide and use, within harbours and elsewhere, ships for:
  - (i) the towage, protection or salvage of life or property;
  - (ii) the carriage of goods and passengers;
- (d) appoint and license pilots and regulate their activities;
- (e) control the erection and use of wharves in any harbours or the approaches to any harbour;
- (f) operate trains and road transport for the purposes of the Authority;
- (g) carry on any business including land development necessary or desirable to be carried on for the purposes of the Authority and so act as agent for any services of the Government in the provision of any agreed functions;
- (h) acquire, construct, manufacture, maintain or repair water-works or electric generating plants or any other works, plant or apparatus necessary or desirable for the supply or transmission of water or electric energy for the purposes of the Authority;
- (i) determine, impose and levy rates, fares, charges, dues or fees for any service provided by the Authority or for the use by any person of the facilities provided by the Authority or for the grant to any person of a licence, permit or certificate;
- (j) prohibit, control and regulate:
  - (i) the use by any person of the services or the facilities provided by the Authority, or
  - (ii) the presence of any person, ship, vehicle or goods within any harbour or on any premises occupied by the Authority for the purposes of the Authority.

The above name only a few, but Section 6(3) of the Act also provides that no harbour shall be constructed by the Authority unless, prior to the construction, a report of the proposed undertaking with advantages and disadvantages of any alternative undertaking, has been made by the Board to the Minister with the approval of the President signified. Section 6(5) provides further that "In the exercise of the powers conferred on the Authority under this Section to construct or improve any harbour, the Authority may construct or execute any works necessary on land vested in the Authority or on land placed at its disposal by the Government for the purposes of the Authority; or in the case of land not so vested in or placed at the disposal of the Authority, only with the agreement of the owner of the land on which the works are to be constructed or executed, and where any land is required by the Authority for the purposes of the Authority, the Authority shall make representation to the President, who may proceed to acquire the land in accordance with the provisions of any written law relating to the acquisition of land for public purposes". Although the Tanzania Harbours Authority Act came into force in November 1977, the Authority did not formally start its operation until 1 July 1978. This was due to many reasons but mainly operational and administrative, which had to be finalized.

Before examining other issues related to the Ports of Tanzania, after the establishment of the Tanzania Harbours Authority, a brief return to the historical must be made to examine some port developments that had taken place in the course of time. Apart from the initial investment at the Ports of Tanga and Dar-es-Salaam, lighter quays under the German Administration, it can be noted that no serious port expansion was undertaken during the colonial period. Only after the Second World War and the subsequent formation of the East African Railways and Harbours Corporation was consideration given to some development. Due to the ill-fated Tanganyika Groundnuts Scheme in Nachingwea, the late 1940's saw planning and development of the Port of Mtwara in the south of the country. Transition to Independence in East Africa between 1961 and 1963 did not only leave port development in the East African Railways and Harbours Administration, but also emphasized avoidance of competition between the Ports of Dar-es-Salaam in Tanzania and Mombasa in Kenya. Until Tanganyika's Independence in 1961, and up to 1965, the Port of Dar-es-Salaam consisted of the main quay with three

deep water berths 1800 feet long, and a lighterage wharf of 1900 feet, which was equivalent to two deep water berths. At this juncture it should be understood that during this period these facilities seemed adequate for the traffic offering at that time. However, due to many factors, this situation could not last for a very long time. The main reason was the sudden diversion of Zambia traffic to Dar-es-Salaam in 1966, following the 1965 Unilateral Declaration of Independence (UDI) in Rhodesia by the minority whites and the subsequent closure of the Zambia/Rhodesia borders. Unfortunately this was at a time when Tanzanian ports were unprepared for such sudden high traffic. As a result the facilities became grossly inadequate. Faced with this situation it was therefore necessary to institute additional investment in port infrastructure and ancillary facilities.

The first major port of Dar-es-Salaam expansion programme had been started by East African Harbours Corporation in 1969/71. Berths Nos. 4-8, with all related facilities including sheds and yards, were constructed. But again, on completion of the Tanzania-Zambia Railway (TAZARA) in 1975 and the continued growth of traffic from Zambia, it was realized that the facilities at the Port of Dar-es-Salaam could not cope. Therefore, in 1972, a second programme was launched. This was aimed at the construction of three deep water berths - Nos. 9, 10 and 11, including other port facilities and modernization of certain existing berths. These new measures resulted in transforming the Port of Dar-es-Salaam into a relatively larger port with a reasonable increased capacity. As a conventional port, the Port of Dar-es-Salaam has an annual rated capacity of about 2.5 million tons.

It is noted that between 1975 and 1982 the Dar-es-Salaam port handled the following tonnages:

1975	1,917,457
1976	2,184,522
1977	2,347,511
1978	2,120,558
1979	1,674,792
1980	1,859,000
1981	1,706,000
1982	1,815,000

The Port of Dar-es-Salaam also handled the following vessels per year:

1975	1017
1976	1033
1977	1077
1978	957
1979	850
1980	808
1981	803
1982	860

These vessels included general cargo vessels and tankers.<sup>16</sup>

In the course of time it was also realized that in spite of these improvements in facilities mentioned above, it was still obvious in the mid 1970's that the ports would require additional facilities in order to cope with the situation, particularly at Dar-es-Salaam and Tanga ports. Traffic to Tanzania and the hinterland continued to grow. There were also technological changes in the handling of cargo, particularly the introduction of containers and other unit loads which brought on the scene new types of vessels which required modernized types of port facilities, including deep water berthing, handling equipment and also a container terminal. Shipping by nature being a capital intensive industry, the technological changes, particularly the container system, added a new problem to the already existing problems mentioned in the foregoing.

This Chapter has endeavoured mainly to state facts about the shipping industry in Tanzania, setting the general scene of the state of affairs and thus relating same to the present conditions and problems being experienced. It is the opinion that the heavy responsibility with which Tanzania is faced within the sub-region in respect of its own seaborne trade and that of its landlocked neighbours, should be clearly made known to all the parties concerned. It should be clear that in all transit corridors for landlocked countries, the outlets to the sea which are the seaports seem to attract the most attention. Whatever happens in the corridor is attributed to the ports. It is often the ports of each corridor that get into disrepute for shortcomings. The efficiency of a transit corridor depends upon the

performance of a large number of varied elements: the national shipping policy, legal and administrative framework, political stability, etc.

In this case efforts undertaken by various institutions like the Tanzania Harbours Authority in trying to improve port facilities and handling techniques should always go hand-in-hand with planning programmes for Tanzania and the ports' hinterland. It would be useless for the Tanzania Harbours Authority to provide say a container terminal and container handling equipment at the port if containers cannot be handled at destinations due to lack of proper equipment. Equally it serves no purpose for the Ports Authority to provide a wagon-loading facility at the port if the transporting agencies and consignees at destinations do not have the necessary equipment to handle such cargo upon arrival.

It is therefore necessary that local road transporters, the Tanzania-Zambia Road Services, the Tanzania Railways Corporation and others adapt to change in the cargo handling methods. It is also necessary for the authorities responsible for the transportation systems like the Ministries of Transport in Rwanda, Burundi, Zaire, Tanzania, Uganda, Zambia and Malawi to institute measures that would compliment efforts being undertaken at the ports. In this case, consideration should be given to setting up of inland container depots suitably equipped to handle the containers.

A good example is an inland container terminal set up at Embakasi, Nairobi in Kenya. With equal importance, grain handling and storage facilities should be provided at destinations.

At the port and other border points, customs formalities should be simplified to enable faster and smoother movement of cargo flow. The transport infrastructure, all-weather roads, and rail systems to the hinterland connecting the ports should also be modernized and properly maintained, where required. A close working relationship among the institutions involved in shipping is of utmost importance.

These observations are not made without due regard to cost involved, which is the chronic illness of developing countries, and for Tanzania

is no exception. It is also necessary that some more positive policy is required to encourage some form of consultation between the landlocked countries and Tanzania in matters pertaining to port usage which is extremely vital to both Tanzania and its landlocked neighbours.

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## CHAPTER II

## INTERNATIONAL LAW AND MARITIME LEGISLATION

Chapter I, as stated, basically introduced Tanzania and its role in the complex and competitive international shipping industry. This scene-setting Chapter endeavoured to show Tanzania's shipping industry by highlighting the historical development and the present conditions in order to appreciate the existing problems and efforts that are made to solve them.

Since shipping is an international industry, to which all countries - developed and developing, participate in one way or another, the ability of the globe to maintain smooth and advantageous trade relations depends on the efficiency and standard of the service with each other.

Bound up with this basic premise is the equally vital factor that there must be mutual understanding between nations, particularly of the legal issues, the rights, obligations, immunities and benefits arising from the innumerable and diverse situations occurring during the course of the day-to-day operation of the ships. It is a historical fact that the general development of the shipping industry cannot in any way be separated from the development of the Law related to it. The two have always co-existed. It is shipping Law that provides the machinery for the smooth running of shipping activities, the one being complementary to the other. As shipping grew, shipping Law developed alongside it, while on the other hand shipping looked to the Law to lay down a code of conduct to be observed by those engaged in the business of shipping.

In order to achieve these objectives, throughout the history of shipping, the activities have been regulated by the rule of Law emanating from various international instruments. At this juncture it is important to understand that all Laws, whether municipal or international, do not grow up in isolation, but rather mould and are moulded by the economics, policies and the features or the geography of the world to which they apply. Once Briefly put it as follows: "Law can only exist in a society and there can be no society without a system of law to regulate the relations of its members with one another."<sup>1</sup>

Usually the Law aims to provide a stable framework, within which rights and duties of states, organizations and individuals, can be defined so that each may enjoy and plan to exercise individual rights in the confident expectation that there will be no interference from others. Therefore, since international law for its very efficacy and naturally its very existence depends upon its acceptability to the community of nations, the Law should also secure at least some measure of justice in the allocation of rights and duties.

However, it should be borne in mind that whilst stability, predictability and justice may be the enduring goals of the Law, in any developing society, changes in the nature and extent of the interests which the Law seeks to regulate will inevitably require changes in the substantive rules of the Law. For example, the actual content of the Law of the Sea at any given time will, in any case, be a reflection of the underlying pattern of interests in the uses of the seas at that particular time. Equally pressures normally will arise for changes in those rules as new uses of the sea will emerge and the balance in the importance of the existing uses shifts.

It is therefore upon the above arguments that Tanzania, as a growing shipping nation and as a coastal Port State should, as of necessity, get itself involved in formulating international instruments which in one way or another will affect her shipping, or will be called upon by the international community to enforce them. At this juncture, Tanzania's position in International Law could be questioned, particularly considering its position in the maritime shipping industry. The Laws emanating from it will naturally take an international nature in the form of Conventions, Resolutions or Recommendations adopted by the international community in order to regulate the daily activities of the maritime industry. These international instruments become national Laws only if the contracting parties have adopted them in their municipal laws in order to provide them with a legal force through a national legislation. To understand Tanzania's position in International Conventions, its participation, interests and obligations imposed by such Conventions to Tanzania and how Tanzania has reacted, or how it should, is something that needs to be examined by looking into some few key maritime conventions in this Chapter.

### The Law of the Sea

The idea that oceans, which cover about 70% of the earth's surface, are not only highways for transportation of men and materials, but also a reservoir of valuable resources, came to be firmly accepted by the time of the first United Nations Conference on the Law of the Sea in 1958 (hereinafter referred to as UNCLOS I).

A large number of developing States did not participate in UNCLOS I because of their colonial status. The Conference was attended by 86 States, and was dominated by the maritime powers. It yielded four Conventions which in a way sought to safeguard the economic interests of the maritime states to the detriment of the developing ones. Tanzania, like several developing countries, is not a party to any of the four Conventions. It is also important to note that none of the four Conventions dealt with the Exclusive Economic Zone, which the International Law has dealt with in the 1982 Law of the Sea Convention. Before proceeding, it is important to at least mention the four offspring of the United Nations Conference on the Law of the Sea held in Geneva in 1958. This Conference resulted in the adoption of the following Conventions:

- the Convention on the Territorial Sea and the Contiguous Zone;<sup>2</sup>
- the Convention on the High Seas;<sup>3</sup>
- the Convention on the Continental Shelf;<sup>4</sup> and
- the Convention on Fishing and Conservation of the Living Resources of the High Seas.<sup>5</sup>

It is noted that the 1958 Conference (UNCLOS I) concentrated mainly on producing a framework of rules governing the rights and duties of States in the territorial sea, continental shelf and the high seas, and it is further noted that most of the recent international instruments have been concerned not with particular zones, but with particular uses of the seas, such as pollution, fishing, which was in fact also the subject of one of the Conventions produced at the 1958 Conference, and navigation.

It is also important to note that the 1958 Conventions provided some basic framework for most of the Law of the Sea, though in some way they have been replaced by the 1982 Law of the Sea Convention. Although that Convention will not enter into force until it is ratified by 60 States, all the 117 States which have so far signed it, Tanzania being one of them, are nevertheless obliged to refrain from acts which would defeat its object and purposes, unless they make it clear that they do not intend to proceed to ratify.<sup>6</sup> States intending to ratify will generally tend to conform to its terms or, at least its spirit, before it enters into force. Furthermore, some parts of the Law of the Sea Convention have already passed into customary law and as such may bind States, whether party to it or not, and regardless of whether the Convention has entered into force.

States who are parties to the 1958 Conventions will become parties to the new Convention, which is expressly stated to prevail over the 1958 Conventions;<sup>7</sup> but until that time, though their hands may be tied by the old rules, their attention should be drawn to the new. As stated above, since Tanzania is not a party to the 1958 Conventions, then its attention should be placed on the new Convention. In addition to the basic conventional framework pointed out above, rules of customary law, such as those concerning historic bays, and other International Conventions concerning pollution and navigation are, and in fact will continue to be, of enormous importance in determining the detailed rights and duties of States.

For many years Tanzania has recognized the importance of shipping and navigation as the backbone of international commerce. Both the 1958 Conventions and the 1982 Law of the Sea Convention also recognized navigation as one of the freedoms of the high seas. This freedom of navigation however cannot be thus confined to the high seas. The Right of Innocent Passage in the Territorial Sea,<sup>8</sup> transit over straits and archipelagic waters, the freedom of navigation in the exclusive economic zone are all areas which are broad components, as well as safeguards of the freedom of navigation. It should be noted too that in the spheres of maritime transportation and commerce, it is becoming increasingly necessary to meet the fast-growing interdependence of the world in trade. Therefore, the sea as a medium of communication, brings nations together and fosters global cooperation. As recognition of this,

during UNCLOS III, Tanzania stressed the importance of adequately safeguarding the freedom of navigation for commercial and peaceful purposes.<sup>9</sup>

It was pointed out earlier that most of the developing countries, particularly the African States including Tanzania, did not take part in the previous 1958 and 1960 Conferences on the Law of the Sea, so they did not participate in devising a new regime which would sufficiently reflect their interests. Now that Tanzania has actively participated in the intensive negotiations of UNCLOS III, which gave birth to the present Law of the Sea Convention, it is therefore its duty to demonstrate to the international community that the seriousness and commitment it had shown at the negotiating table is put into reality by ratifying the same. In order to understand the importance of the 1982 Law of the Sea Convention, it will be appropriate to highlight a few areas of the Convention, at least briefly.

The Law of the Sea Convention is a very complex Treaty, which is in fact a set of compromises between the interests of different States having different levels of interests in particular maritime activities. For example, some States may have large merchant or even fishing fleets, while others have very small ones. Others may have great mineral wealth in their continental shelves, and others nothing at all. Some countries may have the technological know-how while others do not. Landlocked and geographically disadvantaged states also have their own particular interests. All these diverse interests will determine the attitudes of States to the Law of the Sea. Despite all these different levels of interest, the Law not only needs to accommodate uses of the sea, but it also needs to resolve conflicts, at least one would say to better provide a framework for avoiding conflicts of any nature between users. Due to the nature of the Convention, many issues will be involved that will raise constitutional, political, financial and economic problems for Tanzania, and similar problems vis-a-vis other parties and non-parties to the Convention. It is even a fact that Tanzania's interest is also a compromise between various conflicting national demands.

As a coastal and Port State, this Convention provides Tanzania with a base for certain rights and responsibilities: Part II of the Convention, for example, provides for a coastal state to exercise sovereignty over

their territorial sea of up to 12 miles in breadth, but foreign vessels would be allowed "Innocent Passage" through these waters for purposes of peaceful navigation. This part also provides for a contiguous zone. Before UNCLOS III Conference, the breadth of the territorial sea was, however, far from settled in international law. In the 17th Century some of the exotic forms of limit included the range of vision on a clear day and the range of a cannon on shore! Around 1793 the so-called cannon shot mile came to be accorded a standard value of one marine league, or roughly three miles. The "three-mile rule" did have some adherents, mostly maritime states, but it never could attract wide support which was necessary to transform it into a rule of international law.

In fact, both UNCLOS I in 1958 and UNCLOS II in 1960 failed to prescribe any limit to the breadth of the territorial sea. During this period it would appear that a coastal state was free to fix any limit to the breadth of its territorial sea, subject of course to the requirement of "reasonableness" which in itself was debatable. However, some maintained that delimitation of a territorial sea partakes international aspects and hence it could not be dependent on the will of the coastal state alone. Thus the International Law Commission (ILC) suggested that the issue of breadth be settled through an international conference. UNCLOS III has achieved this. As far as Tanzania is concerned, it claimed 12 miles of territorial sea in 1963, but ten years later in 1973 it extended it to 50 miles to, inter alia, keep the foreign fishing vessels away. Article 15 of Part II of the Law of the Sea Convention, 1982 provides for the delimitation of the territorial sea between States with opposite or adjacent coasts, like Tanzania and Kenya to the north and Mozambique in the south. Tanzania needs to establish this very clearly so that its neighbours know its limits, and this would minimize any future possibility of misunderstanding between Tanzania and its neighbours.

Part V of the Convention provides a coastal state with sovereign rights in a 200 mile Exclusive Economic Zone with respect to natural resources and certain economic activities, and certain types of jurisdiction over scientific research and environmental protection, as provided by Article 56 of the Convention. All other states will have freedom of navigation and overflight in the zone, as well as freedom to lay submarine cables

and pipelines. Article 74 provides for the delimitation of the exclusive economic zone between states with opposite or adjacent coasts.

With the present technological advancement, Tanzania needs to make a clear delimitation of its economic zone and make it known to the international community by publication of up-to-date charts and geographical co-ordinates to avoid present and future misunderstanding with its neighbours and also the international community which might be interested for the same. The northern and southern parts of Tanzania are known to be rich in fisheries and might cause friction if clear delimitations are not drawn and made known. Ratification of this Convention will help Tanzania to provide itself with a clear perception of the priorities in marine affairs which will enable overall national planning and marine policies to be combined together.

It is also important to note that while this is necessarily a national issue, priorities have also to take account of the obligations assumed under the Convention and the rights of other users attached to it. In the ratification of this Convention, Tanzania must reconsider seriously the overall relationship between the landlocked states and itself as a coastal or transit Port State, as provided by Part X of the Convention.

The problems of Tanzania's neighbouring landlocked States like Zambia, Malawi, Rwanda, Burundi and Uganda are known to be very genuine and pressing. In the interest of regional solidarity and cooperation, Tanzania will be called upon to work out speedily the modalities of the right of access to and from the sea, and particularly the right to share in the exploitation of the living resources of the exclusive economic zone, as provided for by Article 69 of the Convention.

Ways and means of establishing joint ventures between Tanzania and its landlocked neighbours in the exploitation of the living resources of the exclusive economic zone should be explored with great caution.

As a coastal State, ratification of this instrument will help Tanzania to call for its sovereignty and sovereign rights in its territorial sea, contiguous zone, continental shelf and exclusive economic zone, in conformity with the provisions of the Convention and international law. Given Tanzania's past and present experiences, the economic, political and security interests of the country might be muzzled by foreign economic and military activities. Therefore defence and



enforcement measures in the exclusive economic zone will have to be understood, undertaken and provided for in the planning and management of the exclusive economic zone. However, due to the extensive areas to be brought under patrol and the expenses involved in this kind of operation, a national approach might be inadequate. All marine scientific research in the exclusive economic zone and on the continental shelf would be subject to the country's consent, but Tanzania shall have to guard and protect it against violators of Tanzania's right, by providing clear Regulations to that effect.

Considering the nature and broad requirements of the Convention, a regional or sub-regional approach in the ratification and implementation of the Convention is emphasized. There might be a need to pool resources, to establish common services and marine institutions and, where possible, joint exploitation of resources, defence and enforcement; matters related to the protection and preservation of the marine environment, as provided by Part XII of the Convention.

It should be noted that offshore of the East African coast is one of the main routes for oil tankers from the Gulf States proceeding to Europe via the Cape of Good Hope, thus rendering the East African coast highly vulnerable. Better understanding with other states, and political leverage in dealing with non-African States and international institutions dealing with marine affairs would accrue from regional or sub-regional cooperation. There would also be scientific and technical assistance advantages, as provided by Article 202 of the Convention, as well as a benefit from the transfer of technology from the Area, as provided by Article 144 of the Convention, to a State party. Furthermore, as a State party, Tanzania will enjoy the benefit of access to the institutions of dispute settlement, as provided by Part XV of the Convention.

Lastly, but not least in importance, should Tanzania decide to ratify this Convention, which it undoubtedly should, then it will have to renounce the 50 nautical mile claim of its territorial sea and draw back to 12 nautical miles, as provided by the Convention. Otherwise, maintaining the same will be incompatible with the provisions of the Convention. The signing of the 1982 Law of the Sea Convention by Tanzania is in itself a good indication. Tanzania is therefore very likely to revert to its pre-1973 territorial sea limits.<sup>10</sup>

### IMO Conventions

After highlighting the general principles of International Law and in particular principles related to the Law of the Sea, we also feel obliged to try to highlight a few IMO Conventions; Tanzania's participation and those she is a party to; its obligations and interests related to the same.

### Ratification, acceptance of IMO Conventions

To date Tanzania is a party only to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW 1978), to which it acceded on 27 October 1982.

### Participation in conferences and other meetings

The Government of the United Republic of Tanzania, which became an IMO Member on 8 January 1974, has participated in a number of conferences and other meetings organized under the auspices of the Organization, and in particular in:<sup>11</sup>

- (a) The International Conference on Safety of Life at Sea, 1974, which adopted the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974); and
- (b) The International Conference on Marine Pollution, 1973, which adopted the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 1973).

In addition it has nominated national officials to attend a number of seminars, symposia, etc. organized by IMO, and in particular:

- (a) The African Regional Seminar on "Maritime Safety Administration" (Abidjan, 17-24 September 1979);
- (b) The African Regional Seminar on "Tanker Safety, Pollution Prevention" (Nairobi, 9-13 February 1981); and
- (c) The IMO/UNDP/USSR Global Seminar on "The Main Functions of Maritime Safety Administration in the light of IMO Conventions" (Odessa, 2-15 September 1983).

National Seminar on Marine Pollution Prevention, Control and Response

At the invitation of the Government of Tanzania, a National Seminar on Marine Pollution Prevention, Control and Response was held in the United States Information Services Auditorium in Dar-es-Salaam from 6-11 December 1982. The Seminar was jointly sponsored by the Ministry of Communications and Transport and IMO. Financial assistance was provided by the Swedish International Development Authority (SIDA) and the United Nations Development Programme (UNDP).

IMO missions to Tanzania

IMO, acting within its Technical Assistance Programme, has inter alia the following missions to Tanzania:

- (a) Three missions of the Inter-Regional Adviser in Maritime Legislation, 20 March to 3 April and 26 September to 17 October 1976; and 6-18 April 1980;
- (b) A mission of the Inter-Regional Consultants in Maritime Training (Deck and Engineering), 13-21 January 1982;
- (c) A mission of the Inter-Regional Consultant in Maritime Safety Administration (13-20 January 1982); and
- (d) A mission of the Inter-Regional Consultant in Marine Pollution (22 May 1982).

The International Maritime Organization's important and progressive work is best illustrated by a brief outline of the Conventions.

Though we have selected just a few Conventions under the auspices of the Organization, this should not mean that the other Conventions are considered less important. Much as we would like to at least highlight all the Conventions under the auspices of IMO, it seems impracticable due to their number and many other factors.

International Convention for the Prevention of Pollution from Ships, 1973 as amended by the 1978 Protocol (MARPOL 1973/78)

The MARPOL Convention was adopted in 1973 and is basically intended to deal with all forms of international pollution of the sea from ships, other than dumping. In this Convention, detailed pollution standards are set out in five annexes. These are concerned with oil, as provided by Annex I, noxious liquid substances in bulk, Annex II, harmful

substances carried by sea in packaged form, Annex III, sewage, Annex IV and garbage, Annex V. The acceptance of Annexes I and II is obligatory for all contracting parties, but acceptance for the remaining Annexes is optional. Due to the nature and complexity of the Convention, by 1978 the Convention had not received the necessary number of ratifications to enter into force, mainly because of the considerable economic cost and technical difficulties of complying with its provisions. In an effort to speed up ratification, a Protocol to the Convention was adopted at IMO's Conference on Tanker Safety and Pollution Prevention, held in February 1978. The effect of the Protocol is mainly to provide that a State may become a party to the MARPOL Convention initially by accepting only Annex I. That is to say, Annex II will not become binding until three years after the entry into force of the Protocol, or such longer period as may be decided by the parties to the Protocol. Nevertheless, in spite of the adoption of the Protocol, the MARPOL Convention in this modified form did not enter into force until 2 October 1983.

The detailed regulations dealing with oil pollution contained in Annex I, of course as amended by the 1978 Protocol, are similar to those described in the 1954 Oil Pollution Convention, as amended in 1962 and 1969, but with some significant additions. The most important of these modifications are: the reintroduction of Special Areas - the Mediterranean, the Baltic, the Black and Red Sea, and the Gulf areas. The areas are not the same as those which had been deleted by the 1969 Amendments to the 1954 Oil Pollution Convention, where no discharges at all are permitted, even by tankers operating the load-on-top system; the requirement for ships other than tankers to be fitted with oily water separating or filtering equipment and adequate sludge tanks; the requirement for most tankers to be fitted with segregated ballast tanks<sup>12</sup> and for crude oil washing,<sup>13</sup> and for new non-tankers over 40,000 GRT to be fitted with segregated ballast tanks; and finally, making the obligation on parties to provide reception facilities more effectively.

Due to the complexity of the remaining Annexes to MARPOL, we do not intend to discuss them in detail, but we shall try only to summarize them in brief. Under Annex II the discharge of residues containing noxious liquid substances must be made to a reception facility,

unless they are adequately diluted, in which case they may be discharged into the sea in accordance with the detailed regulations as provided by the Annex. The Annex also under Regulation 13 provides for minimizing pollution in the event of an accident. Annex III seeks to prevent or minimize pollution from harmful substances carried in packaged forms, by laying down regulations concerning packaging, marking, labelling, documentation, stowage and quantity limitations. Annex IV prohibits the discharge of the sewage within four miles of land unless a ship has in operation an approved treatment plant. Between four and twelve miles from land, sewage must be comminuted and disinfected before discharge. Finally, Annex V sets specified minimum distances from land for the disposal of all the principal kinds of garbage, and prohibits the disposal of all plastics. Furthermore, for the substances covered by Annexes II, IV and V, all contracting States are obliged to provide adequate reception facilities in their ports.

X Although it is the responsibility of flag states to ensure that ships flying their flags always comply with the provisions of the Convention, it may sometimes be difficult for flag states to exercise full and continuous control over these ships. In order to supplement these functions of flag states, MARPOL, SOLAS and the LOAD LINE Conventions provide for certain procedures for the control of ships to be exercised by Port States.

In discussing this question of Port State Control, we feel it is essential to understand certain distinctions. At this point it is first of all necessary to distinguish between a State's competence to prescribe legislation for vessels; that is to say legislative jurisdiction and its competence to enforce such legislation, thus prescribed, that is enforcement jurisdiction. Here enforcement jurisdiction can be sub-divided into competence to arrest, which is arresting jurisdiction and the competence of the Courts to deal with alleged breaches of the Law, thus judicial jurisdiction.

Secondly, the legislation or enforcement jurisdiction that a State has in respect of a particular vessel varies depending on whether it is a Flag State or Port State. Just to remind ourselves, a Flag State is a State whose nationality a particular vessel has. A

\* Coastal State is the State in one of whose maritime zones a particular vessel is located. A Port State is the State in one of

whose ports a particular vessel is located. As far as legislative jurisdiction is concerned, under customary international law a Flag State can prescribe anti-pollution rules applicable to its vessels, wherever in the world such vessels might be. Both the 1954 Convention, under Article III and IV and the MARPOL Convention, under Articles 3 and 4, oblige Flag States to apply their pollution standards Under the Territorial Sea Convention<sup>14</sup> and customary international Law, a coastal state may prescribe any legislation relating to pollution that it wishes for foreign vessels in its territorial sea, provided that such legislation does not have the effect of hampering innocent passage. On the other hand, parties to the MARPOL Convention are obliged to prescribe provisions for all vessels in their territorial sea as provided by Article 4(2). There is no corresponding obligation in the 1954 Convention, although Article XI makes it clear that coastal states may prescribe provisions for their territorial sea if they so wish. As regards Port States, under customary international law, a state can adopt anti-pollution legislation for foreign vessels in its ports and even make the observance of such legislation or particular international convention a condition of entry to its port, although it may have to ensure such legislation conditions are not discriminatory.

As far as enforcement jurisdiction is concerned, under customary international law a flag state can exercise judicial jurisdiction in respect of violations committed by its vessels. The flag state can arrest its vessels when they are on the high seas or in its territorial sea or ports. Where the vessel is in the territorial sea or port of another state, the flag state cannot make an arrest but may nevertheless institute criminal proceedings against it before its own courts provided the shipowner is within, or the vessel returns to, the flag state.

Under the MARPOL Convention, Articles 4(1) and 6(4), a flag state is obliged to institute criminal proceedings against any of its vessels suspected of having violated the Convention. A similar obligation is implied under the 1954 Convention, Article X(2). Article 19 of the Territorial Sea Convention, and customary international law, permit a coastal state to enforce violations of its pollution legislation committed in its territorial sea by foreign ships by arresting suspected vessels and instituting legal proceedings against them.<sup>15</sup>

Under the MARPOL Convention, a coastal state party to the Convention which is obliged to prescribe the Convention's provisions for foreign ships in its territorial sea, is under the further obligation either to take legal proceedings itself against a ship which has violated the Convention's provisions in its territorial sea, or to forward to the authorities of the flag state such information and evidence as it has that a violation has occurred. Where they have sufficient evidence the flag state authorities must bring legal proceedings against the vessel concerned as soon as possible, as provided by Articles 4(2), 6(3) and (4). There are no corresponding obligations in the 1954 Convention, but equally nothing can be seen for a coastal state to be prevented from the exercise of its rights under customary international law or the 1958 Territorial Sea Convention from taking enforcement action against foreign vessels violating the Convention in its territorial sea.

A port state in this case can exercise enforcement jurisdiction against a foreign vessel violating its anti-pollution legislation in one of its ports or its territorial sea,<sup>16</sup> but it cannot take any action in respect of violations committed before the ship enters its territorial sea. However, both the 1954 Convention and the MARPOL Convention give port states some role in law enforcement. Under the former, the authorities of the port state may inspect the Oil Record Book of a foreign vessel in one of its ports. If this inspection or other factors give the port state reason to think that the vessel has violated the Convention, such state must forward its evidence of a violation to the flag state authorities and later shall, if there is enough evidence, take legal action against the vessel, as provided by Articles IX(5) and X. ✓

While under the MARPOL Convention the port authorities may inspect a foreign vessel, and where the condition of the vessel warrants it, they may detain the vessel until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment, additionally where the inspection indicates a violation of the MARPOL Convention, the authorities of the flag state shall be informed and again must take legal proceedings if there is enough evidence as provided by articles 5(2), 6 and 7.

Under both the 1954 Convention, as per Articles X(2), XII and the MARPOL Convention, as per Articles 4(3), 6(4) and 11, flag states must inform IMO of the enforcement action they take against their vessels, whether acting on their own, or as the result of information provided by other states.

Finally, it is important to observe that the MARPOL 73/78 Convention was designed to replace the International Convention on Oil Pollution of the Sea Water, 1954 (OILPOL 54). Where the OILPOL Convention dealt only with the operational discharge of certain types of oil, the new Convention covers every aspect of pollution likely to be caused by ships, and especially the means of preventing or reducing this. As indicated above earlier on, Tanzania is not a party to the 1954 Convention, nor to the MARPOL 73/78 Convention.

The International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) and its 1978 Protocol

The Convention consists of 13 Articles, and also contains a large number of complex Regulations laying down various standards relating to the construction of ships, fire-safety measures, life-saving appliances, the navigational equipment on board and other aspects of the safety of navigation, the carriage of dangerous goods and special rules for nuclear ships. The Regulations laying down various standards appear under the following Chapters:

Chapter I	provides for the general provisions;
Chapter II-1	construction - subdivision and stability, machinery and electrical installations;
Chapter II-2	construction - fire protection, fire detection and fire extinction;
Chapter III	life-saving appliances;
Chapter IV	Radiotelegraphy and radiotelephony;
Chapter V	safety of navigation;
Chapter VI	carriage of grain;
Chapter VII	carriage of dangerous goods;
Chapter VIII	nuclear ship, and

finally, there is an Appendix providing for certificates.



The standards mentioned above are to be prescribed by contracting states for their vessels. Enforcement of these standards therefore lies largely with the flag state but port states have a limited degree of control under the provisions of Port State Control. These port states are entitled under the Convention to see that ships of other contracting parties in their ports have on board valid certificates of the kind required by the Convention. Where "there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of any of the certificates", or where a certificate has expired or where the ship and its equipment do not comply with the provisions of Regulation 11 of Chapter I of the 1974 Convention, which required the condition of a ship and its equipment to be maintained after survey, the authorities of the Port State shall take steps "to ensure that the ship shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard without danger to the ship or persons on board", as provided by Chapter I, Regulation 19, as amended.

In 1978, at an IMO Conference on Tanker Safety and Pollution Prevention, a Protocol to the SOLAS Convention was adopted which makes the use of inert gas systems, additional radar and emergency steering gear mandatory on all ships above a certain size, and also improves procedures for the inspection and certification of ships. The Protocol came into force in 1981. In addition to that various Amendments were made to the Regulations contained in the Convention in November 1981. These Amendments were expected to enter into force in September 1984. A second set of Amendments was adopted in May 1983.

It may now be worth mentioning that there are three other IMO Conventions which are concerned with the seaworthiness of ships. The International Convention on Load Lines, 1966 deals with the problem of overloading, often the cause of casualties to ships, by prescribing the minimum freeboard or the minimum draught to which a ship is permitted to be loaded. Enforcement measures of the Convention are very similar to that of the SOLAS Convention, i.e. including the power of Port States to detain ships which lack an appropriate and valid certificate.

The 1971 Agreement on Special Trade Passenger Ships, together with its Protocol of 1973, deals with the safety of ships carrying large

numbers of unberthed passengers in special trades, such as the pilgrim trade, while the 1977 International Convention for the Safety of Fishing Vessels, lays down Regulations governing the construction and equipment of fishing vessels.

In addition to SOLAS and the other Conventions mentioned above, IMO has also adopted a number of recommended Codes of practice relating to the seaworthiness of ships, e.g. Codes for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk, 1971 and of ships carrying Liquefied Gas in Bulk, 1975. These Codes are generally adopted in the form of resolutions of the IMO Assembly and therefore, as such, are not legally binding, but at the present time IMO is trying to incorporate those into SOLAS so that in future they will also bind all parties to the Convention. Even though they are widely observed and some states have even incorporated them into their national legislation in order to provide them with a legal force.

To date Tanzania is not yet a Party to the SOLAS Convention. In order to be able to draw up the necessary legislation on safety, it is necessary among other important aspects to have good understanding of the different requirements contained in the Convention. In this case either the SOLAS requirements will have to be incorporated in the law itself, to incorporate the requirement in one or more special regulations based on an umbrella Maritime Law, or lastly, just to make a reference to the SOLAS Convention requirements in the Law or Regulations. This means that in the last case the Convention itself will be an integrated part of the national Maritime Legislation. However, before this is done the Convention has to be ratified as a first step.

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.

The International Maritime Organization, as a United Nations specialized agency on maritime affairs, has since its inception in 1959 endeavoured not only to improve the safety of ships and their equipment, but also has tried to raise the standards of crews who man these vessels. In the 1960 International Conference on Safety of Life at Sea, an important Resolution was adopted, calling upon governments to take practical steps to ensure that the education and training of seafarers using aids

to navigation, ship's equipment and devices, was sufficiently comprehensive, and up-to-date with latest developments. The Resolution further called upon cooperation between IMO and ILO, together with governments, in trying to achieve these objectives.

Between 1960 and 1977 the international community has done a great deal to achieve these aims. For example the governing body of IMO, and ILO's Maritime Safety Committee established a joint committee on training. At the first meeting of the committee in 1964, the Document for Guidance 1964 was prepared, giving guidelines on training and education of masters, officers and seafarers in the use and operation of ship's equipments.

In 1971 the IMO Council requested the Maritime Safety Committee (MSC) to give consideration to international standards of training, watch-keeping and certification with the sole purpose of trying to improve standards which would finally contribute to the improvement of safety at sea. After preparatory work was completed, the Conference met in 1978 and adopted the Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978). The Convention basically prescribes minimum standards which countries are obliged to meet or exceed. The Convention is in two parts, that is the Articles and the Annex, plus an Attachment 2 which comprises Resolutions adopted by the Conference. It is important to note, however that these Resolutions are not part of the Convention; they are recommendations which may be adopted by governments if they wish, and it considered highly advisable to do so. The Articles contain the legal provisions of the Convention, while the Annex incorporates the technical content of the Convention. The entry into force provisions, amendment procedures, denunciations and other general matters, are dealt with in the Articles.

As mentioned earlier, Tanzania is a party to this Convention, to which it acceded on 27 October 1982. Though much has not been done in implementing the provisions of this Convention, due to many factors, being party to it is a step forward in itself and we look forward to more measures to be taken in the near future. It is most important to understand Tanzania's responsibilities and interests to the international maritime community, and its own vital national interests since ratification is a step forward but will be meaningless unless the requirements of the Convention are implemented.

The International Oil Pollution Compensation Fund (IOPC Fund)

After examining the various Conventions, particularly MARPOL 73/78, we feel it is important to highlight this area which is equally vital insofar as Tanzania is concerned, particularly as a growing maritime state and a coastal and port state.

After the Torrey Canyon disaster in March 1967 a quadruple legal system was set up, its purpose to ensure that victims of pollution damage are compensated by a specific mechanism. The International Oil Pollution Compensation Fund was established by the aims of a Convention adopted under IMO's auspices in 1971. This was one of a number of measures taken by the Organization to establish a legal regime, as stated above, for the provision of compensation to the victims of oil pollution disasters. The Convention establishing the IOPC Fund entered into force in 1978.

The international legislation on civil liability for oil pollution damage consists of two entirely separate schemes, one being the system of civil liability and compensation set up by international conventions adopted at various conferences, and the other being a system of voluntary agreements concluded by the industry. At this point it is important to note that although these two schemes are entirely separate in their application, they are very much alike and as such they complement each other. In those countries which are not a party to the Conventions, the voluntary scheme provides for compensation for oil pollution victims.

Both systems follow a similar pattern and in fact consist of two different parts, namely regulations providing for shipowners' liability and additionally a fund providing for supplementary compensation. This fund is financed by the oil industry. Under the IMO scheme (i.e. based on international conventions), the shipowner's liability is dealt with under the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CIVIL LIABILITY 69) and the additional compensation provided for by the oil companies is dealt with in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND Convention).

On the other hand, the corresponding voluntary agreements are the Tanker Owners Voluntary Agreement concerning Liability for Oil

Pollution Damage (TOVALOP), providing for compensation of the victim paid by the shipowner and the Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL), providing for compensation of the victim paid by the cargo owners.

In simple terms this system of the four different instruments is illustrated in the following form:

	Shipowners' Liability	Additional compensation provided for by the oil industry
IMO scheme (Based on international conventions)	CLC	FUND Convention
Voluntary industry schemes	TOVALOP	CRISTAL

It is not the intention to discuss the provisions of these Conventions in depth, however it is felt necessary to at least point out the reasons why the Convention is considered to be important for Tanzania. As we have already seen in respect of other conventions, the obligations laid on Tanzania as a coastal state, a port state and also an aspiring maritime nation, in connection with the preservation of the marine environment and also on the safety of life at sea, requires adequate training of seafarers to enable compliance with the international standards. Tanzania is of course interested in ensuring that its marine environment is clean and safe from pollution. The whole of the East African coastline, which includes that of Tanzania, is considered highly vulnerable due to the fact that off the East African coast is the main tanker route to and from the Gulf, via the Cape of Good Hope to Europe and America. In the event that an incident of the Torrey Canyon or Amoco Cadiz-type should occur, the whole, or parts of the East African coast will be grossly affected and the ultimate effect is unthinkable. The fishing industry, which is at present expanding rapidly, would be severely affected, as would tourism, which is an important foreign-currency earning industry, not to mention other marine effects.

Since Tanzania is not a member of the IOPC Fund, membership of it would provide the country with several advantages such as being provided with rapid compensation for oil pollution damage at low cost, due to the claim settlement procedures developed by the IOPC Fund. It should be noted that with regard to catastrophic disasters, only an international scheme can provide sufficient compensation for loss or damage caused by such incidents. It should further be noted that the enormous financial and economic consequences of such a disaster exceed the financial resources of many countries and require a spreading of risks on a wider basis, and this can be achieved through the FUND.

In settling claims the IOPC Fund cooperates very closely with all the parties concerned, such as shipowners, pollution liability insurer (which is normally a P & I Club). For the survey of the incident and the clean-up operations, as well as legal advice on claims, surveyors and lawyers are usually engaged by both the P & I Club and the IOPC Fund. Identification of the advisers allows claimants to submit their claim only once, instead of submitting it separately to the shipowner's insurers and the IOPC Fund, which would cost time and money. It further ensures that the decisions regarding a claim under the CLC and the Fund Convention are not contradictory. This close cooperation between the P & I Clubs and the IOPC Fund is laid down in a Memorandum of Understanding of 5 November 1980 and it ensures a quick and smooth process of claim settlement.

In order to mitigate undue financial hardship to victims of pollution incidents, Regulation 8 of the Internal Regulations allows the Director of the IOPC Fund to make provisional payment of compensation even before the claim is settled in its entirety when necessary.

The Fund Convention also contains provisions to enable the IOPC Fund to assist a country whose financial, material or human resources are not sufficient to take adequate pollution prevention measures. For Tanzania, which is in fact suffering from an acute shortage of financial and technical resources, large-scale oil spill would cause a lot of damage to its natural resources, as a result of inadequate prevention or clean-up measures. As such, at the request of a member country, the Director of the IOPC Fund can assist such a country in obtaining personnel, material and services for preventive measures, which means that without being a member Tanzania can never enjoy the benefit of such provisions.

Regulation 12 of the Internal Regulations provides that the IOPC Fund may provide credit facilities to a country in order to enable it to take adequate preventive measures.

Though it is our opinion that membership of the IOPC Fund has its advantages, particularly considering Tanzania's location, we do not close our eyes to the financial implications involved in it, especially in terms of membership annual contributions. What is important, however, is to examine both the advantages and disadvantages, at the same time looking at future considerations.

As this work is being prepared, the present compensation conventions are considered out of date due to various maritime developments which have taken place over the years, and therefore revisional meetings have been taking place to try to up-date them. Under the auspices of IMO there has been a Diplomatic Conference in May 1984 in London which adopted two Protocols, one to the CLC Convention and the other to the FUND Convention. Should Tanzania wish to become party, which the writer feels it should, it is therefore recommended that it does so now in order to keep up to date with the new Protocols, thus keeping its national legislation updated accordingly.

#### The International Labour Organization (ILO) and the maritime industry

In discussing the work of the International Maritime Organization (IMO), one cannot avoid discussing the role played by the International Labour Organization (hereinafter referred to as ILO). Since 1919, ILO has played a very significant role in trying to improve the working conditions of the seafarers who are always exposed to various hazards and conditions in the course of their work, by preparing a number of international conventions in this area of the law.

For the effective fulfilment of its work, ILO has all along worked very closely with IMO and other related bodies involved in the maritime industry. One of the most important ILO Conventions is the Merchant Shipping (Minimum Standards) Convention, 1976, No. 147, which provides for the level of safety, social security and shipboard conditions of employment, below which a ship will be considered substandard. This Convention also provides for a port state responsibility, which empowers and obliges a ratifying port state, as provided by Article 4 of the Convention, to inspect ships calling

at its ports which are suspected of violating internationally accepted standards as set by the Convention, even if the ship belongs to a country which has not ratified the Convention.

The Convention came into force in November 1981 and the member countries account for more than 50% of the total world shipping tonnage. It is noted that some developed maritime countries have already set up control procedures based on the terms of this Convention No. 147. In this case it is very likely that these controls will affect ships from Tanzania and of course other developing countries visiting such ports. Therefore it is worthwhile for Tanzania as a developing maritime country, to consider a gradual improvement in its maritime safety and labour legislation as laid down in the standards set by this Convention, certainly including ratification of same.

Convention 147 applies to every seagoing ship, whether publicly or privately-owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose. It also applies to seagoing tugs. It is thus left to national laws or regulations to determine when ships are to be regarded as seagoing ships for the purposes of the Convention. The Convention further provides that its provisions do not apply to:

- (a) ships primarily propelled by sail, whether or not they have auxiliary engines;
- (b) ships engaged in fishing or in whaling or in similar pursuits;
- (c) small vessels and vessels such as oil rigs and drilling platforms when not engaged in navigation. The decision as to which vessels are covered by this subparagraph must be taken by the competent authority in each country in consultation with the most representative organizations of shipowners and seafarers.

Article 2 of the Convention also requires, inter alia, that each member which ratifies the Convention undertakes:

- (a) to have laws or regulations laying down, for ships registered in its territory:
  - (i) safety standards, including competency, hours of work and manning, so as to ensure the safety of life on board ship;
  - (ii) appropriate social security measures;



- (iii) shipboard conditions of employment and shipboard living arrangements, insofar as these, in the opinion of the member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned; and to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or articles of Conventions referred to in the Appendix to the Convention;
- (b) to exercise effective jurisdiction or control over ships which are registered in its territory in respect of matters concerning a seafarer;
- (c) to satisfy itself that measures for the effective control of other shipboard conditions of employment and living arrangements, where it has no effective jurisdiction, are agreed between shipowners or their organizations and seafarers' organizations constituted in accordance with the substantive provisions of the Freedom of Association and Protection of the Right to Organize Conventions, 1948, and the Right to Organize and Collective Bargaining Convention, 1949;
- (d) to ensure that adequate procedures exist for the engagement and training of seafarers.

Both as a developing maritime nation, and as a port state, Tanzania has an obligation towards the welfare of seamen. This obligation is also both national and international. The lead role and primary responsibility in harnessing the human resources and utilizing it appropriately to the national advantage in the maritime field, including benefits to the national seafarers themselves and the national shipping industry, have to be assumed by the Government. Tanzania is not yet a member of Convention No. 147, which is the most relevant among the ILO Conventions. We consider it necessary to adopt this Convention; the provisions of the Convention itself can be embodied in the primary legislation, while those in the Appendix may be implemented either by primary or secondary legislations.

### Conclusion

The fact that Tanzania has not ratified more than 95% of the International Conventions would automatically lead one to imply that even its Merchant Shipping Act, which is supposed to be an umbrella law for maritime activities in the country, is out-of-date and therefore inadequate to cope with the present trend of maritime development. It is not the intention to discuss the Act at this time since we intend to do so in Chapter Three.

Since maritime law emanates from international conventions, due to the fact that by nature the maritime shipping industry is international, then ratification and adoption of such Conventions into the municipal law is extremely important. In order to succeed in the maritime industry a country has, apart from the technological development, to keep itself abreast of the international conventions which would also involve updating of its national laws. Since these international conventions lay down the requirements, rights, interests and obligations of a maritime state, we have tried to highlight just a few conventions to show how far behind Tanzania is in terms of ratification and incorporation of their requirements into the national law. Of the Conventions which have been highlighted, Tanzania is a party to only one, despite the fact that its interests and obligations are quite clear.

## REFERENCES: CHAPTER TWO

- 1 BRIEFLY, J.L., The Law of Nations, 6th Ed. (Ed. Waldock), Oxford, 1963, p.41.
- 2 The Convention on the Territorial Sea and Contiguous Zone, 1958.
- 3 The Convention on the High Seas, 1958.
- 4 The Convention on the Continental Shelf, 1958.
- 5 The Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958.
- 6 The Vienna Convention on the Law of Treaties, 1969, Article 18.
- 7 Article 311, 1982, the Law of the Sea Convention.
- 8 Article 14, 1958, Convention on the Territorial Sea and Contiguous Zone, 1958.
- 9 Statement by the United Republic of Tanzania, UNCLOS III, Official Records, Vol. II, Third Committee, 41st Meeting, p.320, para. 64.
- 10 Tanzania's Attorney General, J. Warioba's statement, UNCLOS III, Official Records, Vol. II, p.182.
- 11 Information provided by IMO in a letter dated 21 May 1984.
- 12 i.e. Tanks used for ballast water must be kept separate from tanks carrying oil.
- 13 A method of cleaning cargo oil tanks by using crude oil instead of water.
- 14 1958, Territorial Sea Convention.
- 15 Note: The MARPOL Convention does not use the term "territorial sea" but "jurisdiction". "Jurisdiction" clearly includes the territorial sea, and may even include the EEZ - Art. 9(3) of the MARPOL Convention which states that the term "jurisdiction" shall be construed in the light of international law in force at the time of application or interpretation of the Convention.
- 16 IMO Assembly Resolution A.212 VII (the Code is currently being revised).
- 17 IMO Assembly Resolution A.328 (IX).
- 18 It is planned, however, to incorporate the two Codes mentioned here into the SOLAS Convention, thus making their observance mandatory.
- 19 The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).  
- The appendix to the Convention contains 15 instruments.

## CHAPTER III

## THE NATIONAL MARITIME LEGISLATION:

## A CASE STUDY ON THE TANZANIA MERCHANT SHIPPING ACT, 1967

Chapter One was a scene-setting introduction, relating Tanzania to the international maritime industry. Chapter Two has tried to highlight some aspects of international law and maritime legislation, with particular reference to a few basic international instruments/conventions and Tanzania's legislative position related to the same. In this regard it is strongly desired to examine an instrument which regulates the maritime affairs of Tanzania, its shortcomings and problems.

The basic statute by which the maritime affairs of Tanzania are regulated is the Merchant Shipping Act of Tanzania, which came into force in November 1967. This statute derived from, and in fact superseded, the then East African Merchant Shipping Act, 1966 which in turn derived from the most current, at that time, British Merchant Shipping Act. Before proceeding, it is important to note at this juncture that irrespective of the Act's background, this Act provides for a good legislative framework for the maritime law of Tanzania. As in most maritime developing nations, the maritime administrative and legal structure however do require substantial revision and development to cope with the present developments of the industry.

It is also important to note that, as with any sub-system of law, the maritime law of a country must be in accord with the basic notions of justice as provided by the country's constitution, the legal system and also the economic needs of that country. But in addition, which is peculiar to this area of the law, is that it must take account of the country's particular perception of its role in maritime affairs. To this level, the maritime law of any country will have to contain within it a number of provisions which may be to some extent unique to that country. Therefore, notwithstanding the highly desirable current trend to harmonize certain areas of maritime law, it must be kept in mind that there are a number of matters where purely national considerations will control policy choices. There are several examples to be cited in this respect, but just to name a few: vessel registration requirements, ownership of vessels, maritime administrative

structure, details relating to the transfer of vessel ownership, maintenance on board, discipline, regulation of purely national trade, and equally important, particular provisions concerning the relationship of the administrative and judicial institutions of the country.

But on the other hand, as a counterpoint against the purely national policy considerations, it should be recognized that unlike most areas of domestic law, there is a very high degree of constraint on domestic maritime legislative policy which is imposed by international conventions, customs and practice. This constraint usually takes several forms, but there are three most important ones:

- (a) There are quite a number of matters which have been addressed in international fora as recommended practices or have been the subject of international custom or practice for some time. These particular matters are not necessarily binding on a country's maritime legislative policy, however they represent in large measure internationally acceptable norms to which countries aspiring to recognized maritime status should give careful consideration in the development of their maritime legislative and administrative policy. To name a few of such matters, codes relating to the handling and stowage of cargo, the provision of maritime services such as aids to navigation and rescue operation services, and seamen's welfare protection services and marine environment protection.
- (b) Another area of international constraints are those which deal primarily with private or commercial law considerations. These deal with matters which parallel non-maritime areas of contract or tort law within a country, but which, since shipping is to a large extent a trans-national affair, must be dealt with in as nearly as consistent a manner as possible by the various countries which take part in this activity, whether developed or developing. While a number of constraints in this area have been addressed in conventions, their true binding force comes from a recognition that it is highly desirable to assume that the expectations of persons involved in international shipping, and maritime affairs in general, be given substantial weight, without regard to their nationality, the geographic locations of events which affect their relations

with others or the nationality of the vessels upon which such events occur. A few examples of such legislative policy areas which are subject to this form of international constraints are: shipowner liability limitations, salvage rights, carriage of goods by sea and maritime liens.

- (c) The final area of international constraints on national maritime legislative policy involves international conventions which impose administrative obligations and substantive standards on the countries which adopt them.

As with any of the foregoing areas of international constraints, a country need not adopt the standards and degree of control imposed by these conventions. However, it is important to note that if a country does not do so, those countries who are parties to the conventions may, or indeed in some cases are required by their agreement under the conventions, to take action which places non-party maritime activities, particularly shipping in a no more favourable position. A few examples of this form of international constraint on national policy are: vessel safety, which involves Safety of Life at Sea and Load Lines Conventions; and marine environmental protection and damage compensation, involving the Civil Liability for Oil Pollution Damage and Marine Pollution Conventions. All of the above-mentioned Conventions have already been discussed at length in the previous chapter.

- (d) Another important additional factor is that there must be in existence the political will to dedicate some level of financial, physical and human resource capability to the modernization of the maritime legislation and to the creation of the necessary administrative structure to implement the legislation.

#### The Merchant Shipping Act, 1967 and its analysis

In view of what we have briefly tried to examine, let us now try to analyse the National Maritime Legislation in relation to the maritime and shipping activities of the country.

At present the responsibility for registering all vessels and craft of Tanzanian nationality is vested in a single governmental unit and that is the Ministry of Communications and Works; the licensing functions are vested in the governmental units administering the activity in which the vessels are to be used. For example, the Fisheries Division for coastal and foreign-trade use, subject where necessary to endorsement by the Customs Authorities.

It has been noted however that a somewhat confusing situation exists respecting the two concepts, that is the registration and licensing of vessels. Registration in its true sense concerns the process by which a vessel is identified by its size and type, its owner and, as appropriate, its master. This is a process under which nationality is accorded to a vessel and by which a record is maintained of its identifying particulars, together with its legally recordable encumbrances. Licensing, on the other hand, is the process by which a vessel may be accorded the right to engage in a particular activity.

Under the Merchant Shipping Act, provision is made for registration "registration and licensing" of ships, Part II of the Act. The function performed under these provisions is essentially a registration function, the distinction between "registration" and "licensing" being to a large extent based on the size of the vessel. Ships (vessels of any description not propelled by oars) which are greater than 25 net register tonnage, unless exempted by the Minister, must be registered if they are owned by persons qualified to be owners of a Tanzanian ship; these include Tanzanian residents, corporations incorporated under Tanzanian law whose principal place of business is in Tanzania, or the Tanzanian Government, as provided by Clause 3 of the Act. By regulation the Ministry may exempt from registration any class of ship which does not exceed 125 net registered tons. On the other hand, every vessel or boat, including presumably those propelled by oars, which is owned by a Tanzanian resident or by a corporation incorporated in Tanzania or having its principal place of business in Tanzania, must be licensed if it is not required to be registered and is used for gainful employment within Tanzania's waters and proceeds beyond the limits of any port, Clause 76 refers. While in the latter case the trade in which the vessel is to be employed is specified in the license (Clause 77) there is no prescription against, or penalty

prescribed for its use otherwise than so specified. Generally, one would note that the provisions relating to "licenses" are less detailed than those relating to "registration", and certificates of registry. Two other factors of procedural nature distinguish the two categories. "Licenses" must be renewed annually, certificates of registry do not. Vessels required to be "licensed" must be found to be seaworthy before the license will be issued, whereas "registration" is not conditioned upon the state of the vessel. The master's name is not required to be entered in either a "license" or registrar's register book, but must be entered on the certificate of registry maintained on board a "registered" ship.

At this juncture it is important to note that the whole process of vessel registration, licensing and safety regulations is quite intricate; but considering the nature and sensitivity of the activity it is important that the procedure be simplified. Now that the vessel registration has been centralized and placed into the hands of the Ministry of Communications and Works, it is assumed that the overlap and gaps in vessel registration responsibilities which had existed before, has been sealed off. In spite of this, there are also other areas which need to be well-established. For example, the establishment of a more clearly delineated use-licensing system; the establishment of a base for a simplified overall system of vessel safety regulations and also the creation of an authority under which vessel trade regulation may be imposed.

Though the vessel registration has been centralized, the Merchant Shipping Act would have to be amended to provide the Minister for the time being responsible for Communications with authority to establish classes and sub-classes of vessels, based on vessel size, means of propulsion and whether a vessel is to be used solely for pleasure purposes or gainful purposes, and necessary preconditions to registry should be attached; license the vessels, as appropriate, for the coastal or foreign trade.

On the other hand, Section 7(2)(e) of the Fisheries Act, as it relates to the registration of fishing vessels and their gear, would require amendment, but this amendment will probably only be to replace the term "registered" with "licensed". However, the requirements of the vessel registering regulations, as provided in Part II of the Fisheries (General) Regulations, should be integrated into the Merchant Shipping



Act and the uniform regulations should be promulgated thereunder. But the provisions of Part III (a) relating to vessel licensing need not be changed.

#### Harmonization and coordination of maritime legislation

As a coastal and Port State, Tanzania shares a lot of common shipping and maritime interests with neighbouring states, and in this case it is desirable, at least to a certain extent, to find some way by which its maritime legislation may be coordinated and harmonized with that of its neighbours. After the demise of the East African Community and its institutions, at least the coordination that had existed through the various institutions like the East African Harbours Corporation, the East African Railways Corporation, the East African Inland Water Transport Act, etc. also ceased to exist and therefore no official coordination of a similar structure existed any more. With those countries whose coastline is adjacent to that of Tanzania, like Kenya to the North and even Somalia and Mozambique to the South; also those countries opposite to Tanzania and particularly the Indian Ocean islands off the East African Coast who also share common shipping and maritime interests with Tanzania, this coordination could be in matters relating to safety of navigation, maritime services (such as aids to navigation), towage, marine pollution, etc. and coastal maritime trade. There could be the creation, support and maintenance of regional institutions by which the above-mentioned maritime legislative matters could be coordinated and harmonized; certainly such integration might increase some amount of efficiency to the present navigational set-up of the East African Coast, which is quite vulnerable as far as the traffic is concerned. During the existence of the East African Community, the East African Harbours Corporation was charged with the provision of certain maritime services for the partner States of the Community (for example, aids to navigation, etc.), but this Institution no longer exists and therefore each individual State is responsible for its own affairs. In Tanzania, the Tanzania Harbour Authority is now performing most of the activities initially performed by the East African Harbours.

Regulation 14 of Chapter V of the International Convention for the Safety of Life at Sea, 1974, as amended, provides for some form of governmental control over the provision of these services. The Regulation provides thus: "The contracting Governments undertake to arrange for the establishment and maintenance of such aids to navigation, including radio beacons and electronic aids as, in their opinion, the volume of traffic justifies and the degree of risk requires, and to arrange for information relating to these aids to be made available to all concerned." The same is provided by the International Convention for the Safety of Life at Sea, 1960.

Therefore, this question of providing maritime services should be handled from two angles concurrently. While on the one hand, the maximum centralization of the provision of services will most likely yield the most efficient services required, on the other, control over the provision of these services should be attached to the governments of the countries of whose coasts they are to be provided.

Coordination in maritime services will have several advantages to the coastal States concerned. It will enable the countries to develop joint ventures in the development and provision of maritime services. It will also enable them to make joint requests to organizations such as IMO, and developed maritime nations, for the provision of experts, provision of training for the local manpower, etc.

In addition, legislation respecting both vessel on-board and navigational safety should be uniform to the maximum extent possible for those countries who share inland waters of Tanzania's of major navigational significance, for example Lake Nyasa with Malawi and Mozambique; Lake Victoria with Kenya and Uganda; Lake Tanganyika with Zaire, Burundi and Zambia. The former East African Inland Water Transport Act used to serve this purpose to a certain extent, particularly in respect of Lake Victoria. With the demise of the East African Community, this Act no longer exists and instead each State has its own Inland Water Transport Act. It is also felt desirable that Tanzania's Merchant Shipping Act be applied to the inland waters lying within Tanzania, especially on safety and navigation. This is required in order to permit the implementation of a uniform Tanzanian legislative and regulatory policy for its maritime activities.

Legislative provisions concerning maritime liens and shipowner liability limitation

Though Tanzania is not yet one of the big maritime nations, it is a fact that its shipping activities are increasing. This means that the opportunity for the incursion of liability by its shipowners will increase. According to the standard maritime law and practice, this liability incursion will often carry with it the creation of maritime liens to the benefit of claimants as rights in rem against the vessel concerned or sometimes other vessels of the same owner. It is important to note that while these in rem rights and their enforcement are well recognized and highly developed in trans-national maritime law, it is also a fact that the legal principles relating to them are very sophisticated and very complex also. It is for this reason that most maritime nations, some of which from the "common law" system have found it desirable to deal with at least the basic rules of this area of the law through legislation, one of the main reasons being the necessity to assure compatibility with laws on the matter in other maritime countries. Considering the desired need for trans-national compatibility in this field, international conventions on the subject were prepared first in 1926, the International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, 1926, and again in 1967, The Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967, though these Conventions are not yet in force.

\* Currently the Tanzania Merchant Shipping Act, 1967 does not address itself to this very important area of the law. In view of this vacuum in the Act, it is our opinion that there be included in the Tanzania Merchant Shipping Act provisions relating to maritime liens, their priority and manner of enforcement. As another option, the matter could be left to judicial determination, but assuming that the courts of Tanzania have enough experience in this field of admiralty and maritime law in general. At this juncture we also tend to share the above opinion on maritime lien with that of the Inter-Regional Adviser in Maritime Legislation (IMO), as expressed in his Final Report - Project No. INT/73/022 - to Tanzania - 20 March to 3 April and 26 September to 17 October 1976. In his report the Adviser went further to prepare a Working Draft of Statutory Provisions Respecting Maritime Liens. Due to the importance of this area of the law, and

after an examination of the Draft, we have decided to reproduce the same, refer Appendix A. Though the 1967 Convention might be revised, the proposed Draft which is based on it can still provide for a working base while at the same time incorporating the amendments, where necessary. For the time being it is a subject of discussion in the International Shipping Legislation Working Group of UNCTAD and the Legal Committee of IMO.

In addition to maritime lien, consideration should also be given to the adoption of the International Convention relating to the Limitation of Liability of Owners of Sea-going Ships, and also Tanzania's active participation in the work of the Legal Committee of IMO relating to the modification and adoption of Conventions. In November 1976 a new Convention respecting general liability limitation was adopted at a conference convened in London by IMO, the Convention on the Limitation of Liability for Maritime Claims, 1976. Upon its entry into force, this Convention will replace and abrogate the 1957 Convention (as well as the former 1924 Convention on the same subject) between those States which are parties to it. It is contended that the 1976 Convention radically increases the limits of liability, but makes the right to limitation almost "unbearable", that is to say, it is available even if the loss resulted from the "personal act or omission" of the person seeking limitation, unless it was "committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result".

Under this Convention, the right to limit liability in the courts of States who were parties to the Convention (Art. 15) is granted to certain persons, notably shipowners, salvors and their insurers (Art. 1). Article 2 of the 1976 Convention sets out the kinds of claims that can be limited. Annex B consists of a working draft of statutory provisions as proposed by the above-mentioned Adviser in his Final Report referred to above. These provisions are designed to implement provisions of the 1976 Convention, should Tanzania decide to ratify and adopt the same. In this case clauses 273 through 280, with the exception of clause 276 of the Merchant Shipping Act, would be affected, should the approach suggested in that draft be adopted.

Legislation respecting marine pollution control,  
regulation and liability

As shipping activities increase in Tanzania, the need for additional legislation in the field of marine pollution is also becoming urgent. It was shown in Chapter II that Tanzania is not yet party to the principal International Conventions on marine pollution, particularly: The MARPOL 1973/78 Convention, the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION); Civil Liability Convention, 1969 (CLC 1969), and the FUND Convention, 1971.

Some time at the beginning of 1980 a 110,000 ton Liberian-registered tanker, the Albalaa B, which was returning empty after discharging a cargo of Saudi Arabian oil in Durban, South Africa, blew up about 200 miles off the Tanzanian coast. Fortunately the tanks were empty at the time of the explosion but even so, what is important to note is that an incident such as this, or even of a worse kind, could happen again. On the same day another Liberian-registered tanker, the Mycene, sank off the West African coast. It is therefore natural in these circumstances that the Tanzanian authorities should be concerned to ensure that, should an accident of this type happen again, resulting in damage to the country's interests, such as the fishery industry, tourism, etc., they have adequate legal powers as well as expertise and equipment to minimize pollution damage to Tanzanian waters and beaches.

To date Tanzania has, as yet, neither enacted any comprehensive national legislation concerning marine pollution of navigable waters by ships nor, as pointed out earlier, become party to any International Conventions relating to pollution of the sea. The present legal powers to deal with marine pollution are derived from Part IX, particularly Clause 309, of the Merchant Shipping Act, but considering the increase in size of the sea-going vessels, especially oil tankers and the vulnerability of the East African Coast to marine pollution, it is the opinion of the writer that these provisions are grossly inadequate.

In view of Tanzania's long coastline, about 800 kms, and its vulnerability as stated earlier, National Marine Pollution Legislation should be enacted as soon as possible. This legislation should cover an

area of both domestic application and also there should be provisions that are designed to implement the principal marine pollution conventions. Certainly, it is of course a matter of policy as to which course is to be adopted by Tanzania. That is to say, even if Tanzania does not regard itself ready, as yet, to become a party to the international marine pollution conventions due to the cost element involved in some of the Conventions, i.e. MARPOL 1973/78, etc., and of course many other factors attached to them, it is felt that consideration should be given to incorporating implementing legislation in the national marine pollution legislation, thus leaving it open to the Minister responsible to bring these parts into operation at a later date when Tanzania accedes to the Conventions. ✓

Due to the technicalities involved in formulating this type of legislation, there are several ways and means in which policymakers and legislative draftsmen can avail themselves of, for example, comparable legislation already existing in other Commonwealth countries and non-Commonwealth countries such as the United Kingdom, Canada, India, Norway, the Netherlands, etc. and this legislation may well serve as a useful model in formulation of Tanzania's own legislation. Though styles and techniques of legislative drafting sometimes differ from country to country, yet there is a growing acceptance in most countries, at least in the English-speaking countries, of a basic approach to legislation of this kind and on this basis it would in any case be possible to set out the broad scope of a national anti-pollution statute for the country.

The proposed legislation will deal in broad terms with all aspects of marine pollution and particularly oil pollution of all kinds, for example spillage of oil by discharge or escape. Legal rules for the construction of oil tankers and also rules permitting Tanzania to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to its coastline or related interests from pollution, or following upon a maritime casualty which may reasonably be expected to result in major disaster. It is important to note here that the right of intervention referred to here should only be exercised in accordance with the principles of the International Convention.

In order to adequately deal with the situation, the proposed legislation should in the first place make an oil spillage and other types of pollution an offence in certain circumstances and, in addition, legislation should enable the victims of pollution damage to be compensated. For example, to discharge crude, fuel, lubricating or diesel oil, or a mixture of any of these, from outside Tanzanian registered waters, including inland waters navigable by vessels, should be an offence punishable by an adequate fine. Those punishable should also be specified and should include the owner and/or master of the vessel. It should also be possible, under the legislation, to charge those responsible for the discharge of oil from any ship, wherever registered, inside Tanzanian territorial waters, including inland waters navigable by vessels. The law should further deal with discharges of oil into Tanzanian waters from a place on land, and into any part of the sea from a pipeline or as a result of any operation for the exploration of the sea bed and sub-soil, or the exploitation of their natural resources in a designated area.

Further, it is our opinion that together with the preparation and enactment of the national legislation on marine pollution control, the Government should also take steps to formulate and set up an adequate and efficient national pollution defence programme - like a well-designed National Contingency Programme. An agreement has been concluded between eight East African States with a view to setting up a regional cooperation in taking measures against pollution of the seas of the East African coasts and waters. These States are Tanzania, Kenya, Somalia, Mozambique, Comoros, Seychelles, Mauritius and Madagascar. This is to be seen as an encouraging sign. It is expected that a legal instrument providing for the same might be signed sometime at the end of this year, 1984.

### Conclusion

Finally, it should also be noted that the regulation of a national maritime transport is supposed to reflect a policy on the sea-borne transport of a country's foreign trade. It is also important that before drafting any maritime legislation, and especially its administrative aspects, all relevant policy should be clearly defined and brought into line. This kind of procedure will enable policy makers to set priorities and sometimes even setting a hierarchy of

policy objectives, thus securing the necessary consistency of both policy and law. As a developing maritime/shipping nation, the primary objectives of its Merchant Shipping Act need to be developmental, regulatory and also in conformity with the relevant international law and Conventions. But in addition to this, the Act ought to be clearly and precisely worded to avoid ambiguity, and also with effective sanctions and capable of promoting better law-abiding environment. Also during the whole drafting process of such legislation, both lawyers and policy makers should be actively involved. This helps to ensure that a clear policy objective is the basis for the legislation, as stated above. This would prevent the legislation being drafted in a policy vacuum, not sufficiently accommodating the actual needs of the country.



## REFERENCES: CHAPTER III

National legislation

- 1 The Merchant Shipping Act - Act of the United Republic of Tanzania - Number 43 of 1967.
- 2 The Inland Water Transport Ordinance - Act of Tanganyika - Number 5 of 1965.
- \* 3 The East African Inland Water Transport Act - Chapter 42, Laws of the Community.
- 4 The Fisheries Act - Act of the United Republic of Tanzania - Number 6 of 1970.
- \* 5 The East African Harbours Corporation Act - Chapter 19, Laws of the Community.
- 6 The Tanzania Harbours Authority Act, 1977 - No. 12 of 1977.
- 7 The Tanzania Railways Corporation Act, 1977 - No. 11 of 1977.

International Conventions

- 8 International Convention for the Safety of Life at Sea, 1974, as amended by the 1978 Protocol.
- 9 The International Convention for the Safety of Life at Sea, 1960, as amended.
- 10 The Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967.
- 11 The Convention on the Limitation of Liability, for Maritime Claims, 1976.
- 12 International Convention for the Prevention of Pollution of the Sea by Oil, 1954.
- 13 International Convention for the Prevention of Pollution from Ships, 1973 and the 1978 Protocol thereto.
- 14 The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969.
- 15 The Civil Liability Convention (CLC), 1969.
- 16 The FUND Convention

Mission Reports

- 17 IMO mission report of the Inter-Regional Adviser on Maritime Legislation - Tanzania - 6-18 April 1980.
- 18 IMO mission report of the Inter-Regional Consultant on Marine Pollution - Tanzania - 22-28 May 1982.
- 19 IMO mission report of the Inter-Regional Consultant on Maritime Safety Administration - Tanzania - 13-20 January 1982.

- 20 IMO mission report - Final report of the Inter-Regional Adviser in Maritime Legislation - Project No. INT/73/022 - to Tanzania 20 March to 3 April and 26 September to 17 October 1976.
- 21 IMO mission report - Tanzania National Seminar on Marine Pollution Prevention, Control and Response - 6-10 December 1982.
- 22 United Nations Economic and Social Commission for Asia and the Pacific - Guidelines for Maritime Legislation, June 1982.

#### Articles

- 23 The 17th Law of the Sea Institute Conference, 13-16 July 1983 - Oslo, Norway - the Environmental Rights of Coastal States and Freedom of Navigation, by Ambassador Helge Vindenes.
- 24 MOORE, Gerald: National Legislation for the Management of Fisheries under extended State Jurisdiction: Journal of Maritime Law and Commerce, Vol. II, No. 2 of January 1980.
- 25 DIXJHOORN, O.J.H.: GAOCMAO Seminar on MARPOL 73/78, Manama, Bahrain - 24-25 September 1984 - Port State Control.
- 26 SCHOLZ, Wesley: International Law and National Legislation: Marine Policy, April 1980.

#### Foreign legislation

- 27 Protection of the Sea (Powers of Intervention) Act, 1981 - No. 33 of Australia.
- 28 Canada Shipping Act: S 9-1970.
- 29 The Maritime Areas Act, 1983, Act. No. 15 of 1983 of Saint Vincent and the Grenadines.

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\* NOTE:

These are Legislation made during the East African Community With the demise of the EAC they are no longer applicable in Tanzania, but they are important documents for reference purposes.

- A -

WORKING DRAFT OF STATUTORY PROVISIONS RESPECTING MARITIME LIENS

Comment - This draft is, for the most part based on the 1967 Brussels International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages. The principles set forth in that convention are generally applicable to the law of maritime liens. In the provisions which follow, the language which might be included if Tanzania chooses to adopt this Convention are set off in brackets.

Section 1 - Application

The claims set forth in section 2 shall be secured by maritime liens on any seagoing vessel and any other vessel registered in Tanzania within a class designated by the Minister for that purpose.

Source - Article 12.1 of the Convention

Comment - The Convention applies only to seagoing vessels. However, this provision has been drawn to provide the Minister with authority to extend maritime liens to vessels operating on inland waters as well.

Section 2 - Claims Secured by Maritime Liens

(1) Subject to the provisions of subsection (2) of this section the following claims shall be secured by maritime liens:

- (a) wages and other sums due to the master, officers and other members of the vessel's complement, in respect of their employment on the vessel;
- (b) port, canal and other waterway dues and pilotage dues;
- (c) claims against the owner in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the vessel;
- (d) claims against the owner, based on a wrongful act and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the vessel; and
- (e) claims for salvage, wreck removal and contribution in general average.

(2) No maritime lien shall attach to a vessel to secure a claim under paragraph (c) or (d) of subsection (1) of this section where such claim arises out of or results from the radioactive properties (or a combination of the radioactive properties with toxic, explosive or other hazardous properties) of nuclear fuel or of radioactive products or waste.

(3) For the purposes of this section the term "owner" shall include the owner, charterer, manager or operator of the vessel. A claim shall be secured by a maritime lien when the claim is against any one of these persons.

Source - Draft      Convention

- (a) Subsection (1) - Article 4.1
- (b) Subsection (2) - Article 4.2
- (c) Subsection (3) - Article 4.1 and 7.1

Comment - This is the basic provision of the draft. It specifies the sorts of claims which will (and will not) result in the creation of maritime liens, i.e. in rem rights which may be prosecuted directly against the vessel as well as against the persons against whom the claims arise.

Section 3 - Nature of Maritime Liens

- (1) Subject to the provisions of section 7 no maritime lien securing a claim set forth in section 2 shall be affected by a change in the ownership or registration of the vessel to which it attaches.
- (2) The assignment of subrogation to a claim set forth in section 2, shall simultaneously assign or subrogate the maritime lien by which it is secured.

Source - Draft      Convention

- (a) Subsection (1) - Article 7.2
- (b) Subsection (2) - Article 9

Comment - These provisions set forth two basic principles applicable to maritime liens. The first provides the tie between the vessel and the maritime lien. The second ties the lien to the claim itself.

Section 4 - Priority of Maritime Liens as between Themselves

- The maritime liens set forth in subsection (1) of section 2 shall:
- (a) rank in the order set forth therein, except that maritime liens securing claims for salvage, wreck removal and contributions in general average which arise from operations conducted after any other maritime lien has attached shall take priority over that maritime lien;
  - (b) in the case of claims arising under either clauses (a), (b), (c) or (d) of that subsection, rank pari passu among themselves;
  - (c) in the case of claims arising under clause (e) of that subsection, rank in the inverse order of the time when the claim secured thereby

accrued; and for this purpose claims for salvage shall be deemed to have accrued on the date on which the salvage operation was terminated, and claims for general average shall be deemed to have accrued on the day on which the general average act was performed.

Source - Draft Convention

- (a) clause (a) - Article 5.2
- (b) clause (b) - Article 5.3
- (c) clause (c) - Article 5.4

Comment - These three clauses set the priority which should be given to the various maritime liens. The basic rule is that the order in which the maritime liens are set forth in subsection (1) of section 2 is the order of their priority. There is however an exception to that rule. Maritime liens for salvage, wreck removal, and general average which arise from operations which are more recent than the attachment of any other maritime lien regardless of its category will take priority over that maritime lien. As between maritime liens arising from any single category of claim, except those securing claims described in clause (c), there is no priority. Liens arising from clause (c), however, take priority in reverse order, the latter in time preceding the former.

Section 5 - Priority of Maritime Liens with respect to other Encumbrances

- (1) All liens, mortgages, and preferential rights authorized under this or any other law of the United Republic to secure claims against a vessel shall rank in the following order:
  - (a) first, maritime liens to secure claims set forth in section 2;
  - (b) second; preferential possessory rights referred to in subsection (2) of this section;
  - (c) third, mortgages and other preferential rights referred to in subsection (3) of this section; and
  - (d) fourth, all other liens and encumbrances.
- (2) Preferential possessory rights under any law of the United Republic to
  - (a) a ship builder, in order to secure claims for the building of a vessel in his possession, or
  - (b) a ship repairer, in order to secure claims for the repair of a vessel in his possession, which repairs were effected during that possession,shall rank in priority as specified in clause (b) of subsection (1) of

this section. However these rights shall be extinguished when the vessel ceases to be in possession of the ship builder or ship repairer.

(3) Mortgage and other preferential rights which are registered in accordance with the provisions of Part II of the Merchant Shipping Act or, with respect to a vessel registered in the territory of a State which is a Party to the 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, mortgages and other preferential rights registered in accordance with the law of that State, which registration meets the requirements of Article 1 of that Convention<sup>7</sup>, shall rank in priority as specified in clause (c) of subsection (1) of this section.

Source - Draft                      Convention

- (a) Subsection (1) - Articles 5.1, 6.2 and 6.1
- (b) Subsection (2) - Article 6.2
- (c) Subsection (3) - Article 1

Comment - Subsection (1) sets the priority of maritime liens in general vis-a-vis all other in rem rights against the vessel. Subsections (2) and (3) describe two other in rem rights which may attach to the vessel. It should be noted that "other preferential rights" if registered under the Merchant Shipping Act share priority with mortgages which are so registered. Note should also be taken of the bracketed language in subsection (3). This language would be included if Tanzania becomes a Party to the Convention. It would grant equal priority to mortgages and other preferential rights which are registered under the law of other Parties to the Convention.

Section 6 - Extinguishment of Maritime Liens

(1) Subject to the provisions of subsection (2) of this section, a maritime lien which secures a claim set forth in section 2 shall be extinguished one year from the date on which the claim arose unless prior to that time, the vessel has been arrested and, following upon that arrest, sold at a forced sale.

(2) If during the one year period referred to in subsection (1) of this section the claimant is, at any time, legally barred from arresting the vessel, the maritime lien securing his claim shall be extinguished one year from the date on which the claim arose plus a period of time equal to the period he was so barred unless, prior to that total time, the vessel has been arrested and, following upon that arrest, sold at a forced sale.

(3) Neither the one year period referred to in subsection (1) of this section nor the combined period referred to in subsection (2) of this section shall be subject to suspension or interruption pursuant to any other law.

<u>Source - Draft</u>	<u>Convention</u>
(a) Subsection (1)	- Article 8.1
(b) Subsection (2)	- Article 8.2
(c) Subsection (3)	- Article 8.2

Comment - Note that maritime liens are of relatively short duration. They are extinguished after a single year. This means that a claim which gave rise to a maritime lien may still be enforceable in personam after the maritime lien securing it has been extinguished. Note also that only a legal bar to its enforcement will delay the extinguishment of a maritime lien. This provision encourages the prompt enforcement of maritime liens.

Section 7 - Forced Sale of Vessel subject to Encumbrances

[(1) Prior to the forced sale of a vessel pursuant to any law of the United Republic, [the officer of the court executing the sale] shall give or cause to be given at least thirty days written notice of the time, date, and location of the sale to:

(a) all holders of mortgages and other preferential rights against the vessel registered in accordance with the provisions of Part II of the Merchant Shipping Act [or, with respect to a vessel registered in the territory of a State which is a Party to the 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, mortgages and other preferential rights registered in accordance with the law of that State, which registration meets the requirements of Article 1 of that Convention] which have not been issued to bearer;

(b) all holders of mortgages and other preferential rights against the vessel registered in accordance with the provisions of Part II of the Merchant Shipping Act [or, with respect to a vessel registered in the territory of a State which is a Party to the 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, mortgages and other preferential rights registered in accordance with the law of that State, which registration meets the requirements of Article 1 of that Convention] which have been issued to bearer, where the

officer has notice of the current bearer;

(c) all holders of maritime liens on the vessel securing claims set forth in section 2, where the officer has notice of the current holder; and

(d) the Registrar at the port of registration of the vessel.]

(2) The forced sale of a vessel

(a) within the jurisdiction of the United Republic by a Tanzania Court [or]

[(b) within the jurisdiction of a State which is Party to the 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages by a Court of that State] shall cause all mortgages and other preferential rights, except those assumed by the purchaser with the consent of their holders, and all liens and other encumbrances of whatever nature to cease to attach to the vessel. However a forced sale which is not conducted in accordance with the applicable law [and the 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages] shall not cause those mortgages, other preferential rights, liens and other encumbrances to cease to attach to the vessel.

(3) The proceeds of a forced sale of a vessel shall be paid out in the following order to the extent necessary to satisfy the awards and claims specified:

(a) first, to pay the costs -

(i) awarded by the Court,

(ii) arising out of the arrest and subsequent sale of the vessel, and

(iii) arising out of the distribution of the proceeds themselves;

(b) second, to satisfy the liens, mortgages, and other preferential rights and encumbrances for which priority is prescribed under section 5, in accordance with the priority prescribed in that section and section 4; and

(c) third, to the owner of the vessel prior to the sale.

(4) No charter party or contract for the use of the vessel shall be considered to be a lien, preferential right, or encumbrance for the purpose of this section.



<u>Source - Draft</u>	<u>Convention</u>
(a) Subsection (1)	- Article 10
(b) Subsection (2)	- Article 11.1
(c) Subsection (3)	- Article 11.2
(d) Subsection (4)	- Article 11.1

Comment - This section deals with the procedures which should apply in enforcing in rem rights against any vessel. Note that subsection (1) in its entirety is included in brackets. This provision deals with the necessary notice which must be given prior to a forced sale. If existing law of the United Republic allows for equal or greater notice to be given to the persons indicated, there will be no need for this provision.

Note also that the language "the officer of the Court executing the sale" is also within brackets. This language should be replaced with the title of the official who performs this function.

Note the bracketed language included in subsections (1) clauses (a) and (b), and (2) referring to the Convention. This language would be included if the Convention were to be adopted by the United Republic.

#### Section 8 - Certificate of Forced Sale

(1) When a vessel registered in the United Republic or the territory of any State which is a Party to the 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages<sup>7</sup> has been sold at a forced sale, the officer of the Court executing the sale shall at the request of the purchaser and on being satisfied that

(a) the provisions of subsections (1) and (2) of section 7 have been complied with, and

(b) the proceeds of the forced sale have been either distributed in accordance with subsection (3) of that section or deposited with the person appointed by the Court to distribute them, issue a Certificate of Forced Sale.

(2) A Certificate of Forced Sale, in a form prescribed by the Minister, shall certify that the vessel has been sold free of all mortgages and other preferential rights, except those assumed by the purchaser, and all liens and other encumbrances.

(3) When presented with a Certificate of Forced Sale respecting a vessel registered in the United Republic or a similar certificate issued by a Court or other competent authority of a State which is

a Party to the 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages/ the Registrar shall, according to the case,

(a) delete from the register of that vessel all mortgages and other preferential rights, except those assumed by the purchaser, or

(b) issue a Certificate of De-registration for the purpose of re-registration.

Source - The entire section is drawn from Article 11.3 of the Convention.

Comment - The draft would create a Certificate of Forced Sale. The Convention does not refer to the required certificate by that name; it is used here for purposes of convenience.

Note the bracketed language in subsections (1) and (3) which would be included if the Convention is to be adopted by the United Republic.

WORKING DRAFT PART OF THE MERCHANT SHIPPING ACT TO IMPLEMENT THE CONVENTION  
ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Comment - The provisions of this working draft are intended to illustrate a possible legislative format for the implementation of the 1976 Convention on Limitation of Liability for Maritime Claims. If this Convention were to be adopted by Tanzania, clauses 273 through 280, except clause 276, would have to be replaced by provisions such as those which follow. Clause 276, relating to the limitation of liability of dock, canal and harbour owners, deals with a subject not covered and hence not affected by the Convention.

Section 1 - Who May Limit Liability

(1) The Liability of:

- (a) a ship owner, including, inter alia, the liability of his ship in an action brought against it;
- (b) a salvor; and
- (c) any other person for whose act, neglect or default a shipowner or salvor is responsible

respecting any cost, loss, damage or injury specified in any claim subject to limitation under section 2 of this Part which has been made against him, may be limited in accordance with the provisions of this Part. However no liability may be limited under this section if it is proved that the relevant cost, loss, damage or injury resulted from the liable person's act or omission committed with the intent to cause it or recklessly and with knowledge that it would probably result.

Source - Articles 1.1, 1.4, 1.5 and 4 of the Convention

[(2) Notwithstanding subsection (1) of this section

- (a) no person other than one who, at the time, has his habitual place of residence or place of business in Tanzania or a Convention country, and
- (b) no ship other than one which, at the time, either is a Tanzania ship or flies the flag of a Convention country

shall be entitled to the liability limitation provided for therein.

[However, the court before which a claim otherwise subject to limitation has been presented may allow liability to be limited in accordance with this Part upon a determination that the overall interests of the parties to the action would benefit therefrom.]

Source - Article 15.1 of the Convention

Comment - Article 15.1 of the Convention permits a State Party to exclude partially or wholly persons and ships of countries which are not Parties to it from its application. The option to allow such persons and ships to be covered is also available.

Should Tanzania wish to allow full coverage to all persons and ships, this subsection would be excluded in its entirety. On the other hand, should the intent be to exclude all "non-Conventions" persons and ships, this subsection would be included with the exception of the last sentence, as shown by the enclosing brackets. However if a partial exclusion is desired the last sentence offers a possible means by which this choice may be implemented.

(3) An insurer of any liability which may be limited under subsection (1) of this section shall be entitled to the benefits of this Part to the extent that the person for whom he provides insurance is so entitled.

Source - Article 1.6 of the Convention

(4) The act of invoking limitation of liability under this Part shall not constitute an admission of liability.

Source - Article 1.7 of the Convention

## Section 2 - Claims Subject to Limitation of Liability

(1) Except to the extent that claims specified in subsection (2) of this section are involved, and subject to subsection (3) of this section, liability may be limited for any cost, loss, damage, or injury for which the following claims may be made:

- (a) claims in respect of loss of life as personal injury or damage to property, including, inter alia, damage to harbour works, basins and waterways, and aids to navigation occurring on board or in direct connection with the operation of the ships or with salvage operations and consequential loss resulting therefrom;
- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers, or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ships or salvage operations;
- (d) claims in respect of the raising, removal, destruction, or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including, inter alia, anything that is or has been on board the ship;
- (e) claims in respect of the removal, destruction, or the rendering

harmless of the cargo of the ship; and

(f) claims in respect of

- (i) measures taken in order to avert or minimize loss for which liability may be limited under this Part, and
- (ii) further loss caused by those measures, except where made by the person liable for the loss.

Source - Article 2.1 of the Convention

(2) Liability may not be limited under this Part respecting any:

(a) claim for salvage or contribution in general average;

/(b) claims for oil pollution damage subject to the provisions of /the United Republic's implementing legislation for the Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969, or any amendment or Protocol thereto which is in force/

/(c) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969, or of any amendment or Protocol thereto which is in force/;

(c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(d) claims against the ship owner of a nuclear ship for nuclear damage; or

(e) claims by a servant of the shipowner or salvor whose duties are connected with the ship or salvage operation, including inter alia claims of his heirs, dependants, or other persons entitled to make them, if the contract of service between the ship owner or salvor and the servant is governed by the laws of a country other than Tanzania and that law allows no limit to that liability, or allows a limit to that liability greater than that provided for in section 3 of this Part.

Source - Article 3 of the Convention

Comment - Alternative formulations are offered for clause (b). The first would be used if Tanzania adopts and enacts implementing legislation for the 1969 Convention. The second would be used if there is no implementing Tanzania legislation extant for that Convention.

(3) The right to limit liability under subsection (1) of this section shall exist regardless of the form of the action in which a claim is brought, including, inter alia, recourse or indemnity under a contract or otherwise. However, this right shall not exist where a claim falling within the classes specified in clauses (d), (e) and (f) of that subsection relate to remuneration under a contract with the defendant.

Source - Article 2.2 of the Convention

Section 3 Limits on Liability [Units of Account]

Comment - Under the Convention there are two methods of expressing the liability limitation: by "units of account" which correspond to Special Drawing Rights of the International Monetary Fund, as well as by "monetary units" which correspond to the more traditional gold franc.

The former alternative has been provided as a measure to allow for a more accurate reflection of modern currency fluctuations so that the limits established will have a constant real value. However, since some countries do not accept the Special Drawing Rights, an alternative specification of the limits in gold francs has also been provided.

Since the adviser is unaware of the position of Tanzania respecting the International Monetary Fund and its Special Drawing Rights, alternative drafts for sections three and four have been provided. Those draft sections which are identified by [Units of Account] would be used if Tanzania is in a position to utilize the Special Drawing Right formulation, while the draft sections identified by [Monetary Units] would be used if Tanzania is to utilize the gold franc formulation.

(1) For the purposes of this Part, the limits on liability in respect of claims other than those specified in subsections (2) and (3) of this section, arising on any distinct occasion, shall be calculated as follows:

(a) claims involving loss of life or personal injury -

(i) 330,000 units of account for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess of 500 tons, add to the amount specified in sub-clause (i) of this clause

- for each ton from 501 to 3,000 tons, 500 units of account,

- for each ton from 3,001 to 30,000 tons, 333 units of account,

- for each ton from 30,001 to 70,000 tons, 250 units of account,

- for each ton in excess of 70,000 tons, 167 units of account, and

(b) any other claims -

- (i) 167,000 units of account for a ship with a tonnage not exceeding 500 tons,
- (ii) for a ship with a tonnage in excess of 500 tons, add to the amount specified in sub-clause (i) of this clause
  - for each ton from 501 to 30,000 tons, 167 units of account,
  - for each ton from 30,001 to 70,000 tons, 125 units of account,
  - for each ton in excess of 70,000 tons, 83 units of account.

Source - Article 6.1 of the Convention

(2) In respect of claims arising on any distinct occasion for loss of life or personal injury brought by or on behalf of any person

(a) who was carried on a ship under a contract of passenger carriage, or

(b) who, with the consent of the carrier accompanied a vehicle or live animal carried on a ship under a contract for the carriage of goods,

the limit of liability of the ship owner shall be calculated by multiplying 46,666 units of account by the number of passengers it was authorized to carry at the time as specified in its Safety Convention or equivalent certificate. However, in no case shall the limitation of liability calculated in accordance with this subsection exceed 25,000,000 units of account.

Source - Article 7.1 of the Convention

(3) in respect of claims arising on any distinct occasion brought against a salvor who, at the time

(a) was not operating from any ship, or

(b) was operating solely on the ship to, or in respect of which he rendered salvage services, the limit of liability of the salvor shall be calculated in accordance with the provisions of subsection (1) of this section, assuming a tonnage of 1,500 tons.

Source - Article 6.4 of the Convention

(4) Where the amount calculated in accordance with clause (a) of subsection (1) of this section is insufficient to pay the claims involving loss of life or personal injury in full, the amount calculated in accordance with clause (b) of that subsection shall be available for the payment of unpaid balance of those claims. This unpaid balance shall rank rateably with all other claims.

Source - Article 6.2 of the Convention

[(5) (a) Where the amount calculated in accordance with clause (b) of subsection (1) of this section is insufficient to pay all claims, including any unpaid balance of claims involving loss of life or personal injury for which that amount is made available by subsection (4) of this section, priority among all claims other than those involving loss of life or personal injury shall be given to claims in respect of damage to harbour works, basins and waterways, and aids to navigation in accordance with paragraph (b) of this subsection.

(b) After deducting from the amount calculated in accordance with clause (b) of subsection (1) of this section, any rateable amount available by reason of subsection (4) of this section for claims involving loss of life or personal injury, the amount which shall be available for claims in respect of damage to harbour works, basins and waterways, and aids to navigation shall be the greater of:

- (i) the rateable amount of those claims; or
- (ii) the amount of those claims up to [one-half] of the amount remaining after that deduction has been made.]

Source - Article 6.3 of the Convention

Comment - Article 6.3 of the Convention provides for an option allowing for a special priority which may be given to claims respecting damage to harbour works, basins and waterways, and aids to navigation. Subsection (5) above provides a mechanism by which such a priority might be handled.

There are two options involved here. First, a decision should be made as to whether Tanzania would wish to avail itself of this option at all. Second, the form that the priority may take within the constraints specified in Article 6.3 may vary. One form which might be used is set out in paragraph (b) of this subsection.

(6) For the purposes of this Part, the tonnage of a ship shall be its gross tonnage calculated in accordance with the ..... Schedule to this Act.

Source - Article 6.5 of the Convention

Comment - The Convention specifies that the rules set out in Annex I of the International Convention on Tonnage Measurement, 1969, are to be used to determine the tonnage figure used in the liability limit calculation.



Accordingly the "..... Schedule" reference in this subsection would be the schedule of the Act in which these rules appear. If the 1969 Convention enters into force for Tanzania, this Schedule would be that generally applicable to vessel measurement under the Merchant Shipping Act. If not, a special schedule will have to be prepared.

Section 4 - Value of Account [Units of Account]

(1) The Minister shall, for the purposes of determining the shilling value of the liability limits specified in section 3 of this Part, upon the request of a court before which such a limit is in question, declare the shilling value of a unit of account.

Comment - There is no comparable provision in the Convention. This subsection merely provides a mechanism by which the Unit of Account Value for the Liability Limit in a given case may be calculated.

(2) In making a declaration pursuant to subsection (1) of this section, the Minister shall calculate the shilling value [in accordance with] [taking full account of] the method of valuation applied by the International Monetary Fund in effect on the date:

(a) that the limitation fund referred to in section 6 has been constituted; or

[(b) that the [petition] for limitation of liability giving rise to the question referred to in subsection (1) of this section was filed with the court in a case where no limitation fund has been constituted.]

Source - Articles 8.1, 8.4 and 10.1 of the Convention

Comment - Two comments should be made in connection with this subsection. First, it should be noted that Article 8.1 applies two rules in the manner of calculating the value of units of account: for those countries which are members of the International Monetary Fund, the calculation must be "in accordance with" the IMF method; for those which are not, the method is determined by the State itself. In the latter case, however, Article 8.4 of the Convention requires a calculation resulting in as near to the real value as possible. Accordingly, if Tanzania is a member of the IMF the "in accordance with" alternative should be used; if not, the choice would be the "taking full account of" formulation.

The second point concerns clause (b). Article 10.1 allows a Party to the Convention to permit limitation of liability even where a limitation fund is not constituted. If Tanzania should choose to permit this option to shipowners and salvors, this clause should be included; if not, it should

not be used

Section 3 Limits on Liability [Monetary Units]

Comment - see comment under "Section 3 - Limits on Liability [Units of Account]".

(1) For the purposes of this Part, the limits on liability in respect of claims other than those specified in subsections (2) and (3) of this section arising on any distinct occasion shall be calculated as follows:

(a) claims involving loss of life or personal injury -

(i) 5,000,000 monetary units for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess of 500 tons, add to the amount specified in sub-clause (i) of this clause

- for each ton from 501 to 3,000 tons, 7,500 monetary units,

- for each ton from 3,001 to 30,000 tons, 5,000 monetary units,

- for each ton from 30,001 to 70,000 tons, 3,750 monetary units,

- for each ton in excess of 70,000 tons, 2,500 monetary units, and

(b) any other claims -

(i) 2,500,000 monetary units for a ship with a tonnage not exceeding 500 tons,

(ii) for a ship with a tonnage in excess of 500 tons, add to the amount specified in sub-clause (i) of this clause

- for each ton from 501 to 30,000 tons, 2,500 monetary units,

- for each ton from 30,001 to 70,000 tons, 1,850 monetary units,

- for each ton in excess of 70,000 tons, 1,250 monetary units.

Source - Article 8.2(a) and (b)

(2) In respect of claims arising on any distinct occasion for loss of life or personal injury, brought by or on behalf of any person

(a) who was carried on a ship under a contract of passenger carriage, or

(b) who, with the consent of the carrier, accompanied a vehicle or live animal carried on a ship under a contract for the carriage of goods,

the limit of liability of the shipowner shall be calculated by multiplying 700,000 monetary units by the number of passengers it was authorized to carry at the time as specified in its Safety Convention or equivalent certificate. However, in no case shall the limitation of liability calculated in accordance with this subsection exceed 375,000,000 monetary units.

Source - Article 8.2(c)

Subsections (3), (4), (5) and (6) are the same as those corresponding subsections in "Section 3 Units of Account"

Section 4 - Value of Monetary Unit Monetary Units

(1) The Minister shall, for the purposes of determining the shilling value of the liability limits specified in section 3 of this Part, from time to time declare by regulation the factor to be used for the conversion of monetary units to shillings.

Comment - This provision corresponds to that found in subsection (1) of section (4) Units of Account. Note should be taken of the slightly different mechanism employed.

(2) In making a declaration pursuant to subsection (1) of this section, the Minister shall, to the extent possible, declare a factor which will result in a shilling value for the liability limits expressed in Units of Account under Articles 6, 7 and 8 of the Convention.

Source - Article 8.4 of the Convention. See the comment on the first point raised under subsection (2) of section 4 Units of Account.

Section 5 - Aggregation of Claims and Counter-claims

(1) The limits of liability determined in accordance with subsection (1) of section 3 of this Part shall apply to the aggregate of all claims subject thereto which arise on any distinct occasion against:

(a) (i) the persons who are shipowners of a particular ship, and  
(ii) any person for whose act, neglect, or default the persons referred to in sub-clause (i) of this clause are responsible; or

(b) (i) the persons who are shipowners of a particular ship which rendered salvage services from that ship,  
(ii) the salvor who operated from that ship,  
(iii) any person for whose act, neglect or default the persons or salvors referred to in sub-clauses (i) and (ii) of this clause are responsible; or

(c) (i) the salvor who did not operate from a ship or operated solely on the ship to, or in respect of, which the salvage services were rendered, and

(ii) any person for whose act, neglect, or default those salvors are responsible.

Source - Article 9.1 of the Convention

(2) The limits of liability determined in accordance with subsection (2) of section 3 of this Part shall apply to the aggregate of all claims subject thereto which arise on any distinct occasion against

(a) the persons who are shipowners of a particular ship, and

(b) any person for whose act, neglect or default the persons referred to in clause (a) of this subsection are responsible.

Source - Article 9.2 of the Convention

(3) Where a person entitled to limit his liability in respect of a claim under this Part has a counter-claim against the claimant arising out of the same occasion, the counter-claim shall be set off against the claim. The balance resulting from that set off shall be subject to the limitation of liability applicable to the greater of the claim or counter-claim. There shall be no liability in respect of the lesser of the claim or counter-claim so set off.

Source - Article 5 of the Convention

Section 6 - Constitution and Distribution of the Limitation Fund

(1) In order to limit his liability in accordance with this Part, a person against whom any claims subject to limitation have been brought must A person against whom any claims subject to limitation have been brought may constitute a fund with the court in which proceedings have been instituted in respect of the claim. The fund shall be constituted in an amount equal to the total of the liability limits specified in section 3 of this Part applicable to the claims which have been brought and interest on each claim from the date of the occasion from which it arose until the date of the constitution of the fund. This fund shall be available only for the payment of claims and the relevant interest in respect of which liability may be limited.

Source - Articles 11.1 and 10.1 of the Convention

Comment - The option which is provided, as indicated by the two alternative sets of language set off within brackets, reflects the option which Article 10.1 provides, as noted in the comment under subsection (2) of section 4. Units of Account. Should Tanzania wish to allow limitation of liability without the constitution of a limitation fund, the second alternative may be used. However, should the constitution of such a fund

be a condition on the right to limit liability, the former alternative should be used.

(2) (a) Subject to paragraph (b) of this subsection, a fund may be constituted either by the deposit of a sum equal to the amount referred to in subsection (1) of this section or the presentment of a guarantee which:

(i) complies with [applicable United Republic fiscal legislation]; and

(ii) is considered to be adequate by the Court to assure the payment of claims for which the fund is available.

(b) Any claimant may present against the fund a claim arising on the same occasion and in respect of which liability it was constituted. Any sum deposited or guarantee presented under paragraph (a) of this subsection must be actually available and freely transferrable in respect of all claims presented against it, notwithstanding any other law of the United Republic which would otherwise impose any restrictions on its availability or transferability.

Source - Articles 11.2 and 13.3 of the Convention

(3) A fund constituted by one of the persons referred to in either clause (a), clause (b) or clause (c) of subsection (1) of section 5 or by subsection (2) of that section or by the insurer of such a person shall be considered to have been constituted on behalf of all persons referred to in that particular clause or subsection.

Source - Article 11.3 of the Convention

[(4) Subject to the provisions of section 3 of this Part, the fund shall be distributed among the claimants in proportion to their established claims.]

[(4) Subject to the provisions of section 3 of this Part

(a) the fund shall be distributed, or

(b) where no fund has been constituted, the liability of the defendant shall be allocated among the claimants in proportion to their established claims.]

Source - Articles 12.1 and 10.1 of the Convention

Comment - The alternative provisions for this subsection reflect the option made available under Article 10.1 of the Convention. See the discussions of this option under subsection (2) of section 4 [Units of Account] above. The first alternative should be used if constitution of a limitation fund is to be a condition on the right to limit liability, whereas the second alternative might be used where there is no requirement to constitute the fund.

Section 7 - Subrogation

[(1) If, before the limitation fund has been distributed, the defendant or his insurer has settled a claim against that fund, he shall acquire by subrogation all rights under this Part of the claimant compensated, up to the amount which was paid in that settlement.]

[(1) If,

(a) before the limitation fund has been distributed,  
or,

(b) where no limitation fund has been constituted, before final settlement of all claims against the defendant which are subject to limitation,

the defendant or his insurer settles a claim subject to limitation, he shall acquire by subrogation all rights under this Part of the claimant compensated up to the amount which was paid in that settlement.]

Source - Articles 12.2 and 10.1 of the Convention

Comment - The alternative provisions for this subsection reflect the option made available under Article 10.1 of the Convention. See the discussion of this option under subsection (2) of section 4 [Units of Account] above. The first alternative should be used if constitution of a limitation fund is to be a condition on the right to limit liability, whereas the second alternative would be used where there is no requirement to constitute the fund.

Note should be taken of Article 12.3 of the Convention which allows other forms of subrogation. No draft provision has been provided for this insofar as it will be governed by the general law of Kenya.

(2) Where the defendant or any other person proves that he may be compelled to pay, at a later date, any compensation with regard to which he would have enjoyed a right of subrogation pursuant to

subsection (1) of this section or any other provision of law had the compensation been paid before the distribution of the limitation fund, he shall be entitled to a conditional right of subrogation against a portion of the undistributed fund with respect to that compensation. In such a case the Court may order that that portion be set aside and that that right may be enforced against it in accordance with such other terms and conditions considered appropriate by the Court.

Source - Article 12.4 of the Convention

Section 8 - Restrictions on Related Actions

(1) Where a limitation fund has been constituted in accordance with section 6 of this Part or in a court of a Convention country pursuant to legislation providing the same rights to claimants as are afforded under this Part, no person who claims against that fund may enforce any right in respect of any claim arising out of the same occurrence against any other assets of any person on whose behalf the fund was constituted.

Source - Article 13.1 of the Convention

- (2) (a) After a limitation fund has been constituted in the manner referred to in subsection (1) of this section,
- (i) any ships or other property, belonging to a person on whose behalf the fund has been constituted, which has been arrested or attached for a claim which may be raised against the fund, or
  - (ii) any security given to obtain the release of a ship or other property referred to in clause (i) of this paragraph may, on petition of that person, be released by order of the Court having jurisdiction over the arrested or attached ships, other property or security.
- (b) The Court referred to in paragraph (a) of this subsection shall order the release of the ship, other property, or security referred to therein if the fund has been constituted:
- (i) at the port where the occasion from which the claims which may be brought against the fund arose occurred;
  - (ii) at the first port of call after the occasion referred to in clause (i) of this paragraph, where it occurred out of a port;

(iii) at the port of disembarkation when the claim for which the arrest or attachment was made involved loss of life or personal injury;

(iv) at the port of discharge when the claim for which the arrest or attachment was made involved damage to cargo; or

(v) in the United Republic.

Source - Article 13.2 of the Convention

[(3) (a) No person other than one who, at the time, has his habitual place of residence or principal place of business in the United Republic or a Convention Country may avail himself of the rights accorded under subsections (1) and (2) of this section to persons on whose behalf a limitation fund has been constituted.

(b) No ship which is not, at the time, either a Tanzania ship or a ship flying the flag of a Convention Country may be released pursuant to subsection (2) of this section.]

[(3) (a) A person other than one who, at the time, has his habitual place of residence or principal place of business in the United Republic or a Convention Country may avail himself of the rights accorded under subsections (1) and (2) of this section to persons on whose behalf a limitation fund has been constituted only when the Court, having jurisdiction, determines that the overall interests of the parties to the action would benefit therefrom.

(b) A ship which is not, at the time, either a Tanzania ship or a ship flying the flag of a Convention Country may be released pursuant to subsection (2) of this section only when the Court having jurisdiction determines that the overall interests of the parties to the action would benefit therefrom.]

Source - Article 15.1 of the Convention

Comment - As noted in the comment to subsection (2) of section 1 above, the Convention leaves the question of the application of its benefits to persons and ships of non-Party States to the States Party themselves. Should Tanzania wish to apply the provisions of this section to every case, even those where a person or ship of a non-Party State seeks it, there would be no need for subsection (3) in either form. However, should Tanzania wish to deny this application in cases of persons or ships of non-Party States, the first alternative should be used. A partial application, also allowed by the Convention, is provided in the second alternative.



Section 9 - Interpretation

The terms listed herein shall be interpreted in the manner prescribed for the purposes of this Part.

- (1) "Carrier" means the shipowner who has agreed under the contract for the carriage of goods to transport the vehicle or live animals in question.

Comment - This term is not defined in the Convention, even though it appears in Article 7.2(b). It is the adviser's view that a definition would be helpful. The definition suggested above is intended to fit the sense of clause (b) of subsection (2) of section 3 of the draft, the provision in which it is used.

(2) "Convention" means the Convention on Limitation of Liability for Maritime Claims, adopted in London on 19 November 1976.

(3) "Convention Country" means a country, other than the United Republic, which is a party to the Convention.

[(4) "Monetary Unit" is a unit of monetary value corresponding to sixty-five and a half milligrams of gold of millesimal fineness nine hundred.]

Source - Article 8.3 of the Convention

Comment - This subsection would of course only be used if the "Monetary Units" alternative to sections 3 and 4 are adopted. See the comment under Section 3 - Limits on Liability [Units of Account].

(5) "Salvage Operations" includes, inter alia:

(a) raising, removal, destruction or the rendering harmless of a ship, or anything on board a ship, which has been sunk, wrecked, stranded or abandoned;

(b) removal, destruction, or the rendering harmless of the cargo of a ship; and

(c) measures taken in order to avert or minimize loss, for which liability may be limited under this Part, if performed by a person other than the one liable for the loss.

Source - Articles 1.3 and 2.1(d), (e) and (f) of the Convention

(6) "Salvor" means any person rendering services in direct connection with salvage operations.

Source - Article 1.3 of the Convention

(7) "Ship" includes all seagoing ships of 300 tons or greater not intended for navigation on inland waterways. However, it does not include:

(a) air-cushion vehicles;

(b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or its subsoil; and

(c) ships constructed for, or adapted to, and engaged in drilling.

Source - Articles 1.2 and 15.2, 15.4 of the Convention

Comment - Three options are included in this subsection. Article 15.2 of the Convention allows a State Party to exclude ships of less than 300 tons and ships intended for inland navigation. If Tanzania wishes to avail itself of either or both of these options, the respective bracketed language would not be included in this definition.

The third option relates to drilling ships. In accordance with Article 15.4 the Convention does not apply to these vessels where: a higher liability limitation pertains to them under the legislation of a State Party or where a State Party is also Party to a Convention which regulates a system of liability applicable to them. Should either of these provisions pertain to Tanzania, clause (c) of the subsection above would not be included.

(8) "Shipowner" includes the owner, the charterer, the manager and the operator of a ship.

Source - Article 1.2 of the Convention

(9) "Unit of Account" means the Special Drawing Rights as defined by the International Monetary Fund.

Source - Article 8.1 of the Convention

## CHAPTER IV

THE ADMINISTRATIVE FRAMEWORK AND THE ADMINISTRATION  
OF THE MERCHANT SHIPPING ACT

Though Tanzania has been very keen to develop its maritime industry, this desire has always been hampered by various factors, most of which are beyond its own control and a few within its control. Whatever the case, the maritime/shipping industry is there to stay in Tanzania and its importance will increase day after day; this is a central point of agreement which can hardly be disputed. In order to achieve this intended goal, an effective maritime administration framework is of paramount importance. That is to say, whatever the problems affecting the relations between the maritime industry as a whole and the Government, the existence of a suitably organized administrative apparatus to look after the problems of the merchant marine is a vital part of the infrastructure.

The first chapter has highlighted Tanzania and its place in the international maritime structure; both as a coastal and Port State nation Tanzania has every reason to develop this industry, partly as a national obligation and also as an international obligation. Chapter Two, on the other hand, has looked into international law and maritime legislation, particularly the International Conventions, and the role played by Tanzania in respect to the adoption of such Conventions. Chapter Three has looked into the Tanzania Merchant Shipping Act, 1967 as the main instrument regulating the activities of maritime affairs in the country. Considering what has been observed above, the success or failure of the maritime industry in Tanzania cannot be separated from the administrative infrastructure that exists.

Existing infrastructure

At present in Tanzania, there are several Ministries and parastatal Corporations involved in the administration of its maritime law and policy. However the dominant organs are the Ministry of Communications and Works and the Tanzania Harbours Authority. Also performing an ancillary role are the Fisheries Division of the Ministry of Agriculture, Tourism and Natural Resources and the Tanzania Railways Corporation for the inland water transportation. It is also worthwhile pointing out

that the administration of the maritime and shipping affairs of Zanzibar is conducted by the Zanzibar Government. The two Governments are closely in touch with each other on maritime affairs in general.

#### The Ministry of Communications and Works

Under the Merchant Shipping Act, 1967, this Ministry has authority to carry out the major portion of Tanzania's maritime administration. Its responsibilities under this Act are quite extensive, dealing among other things with vessel registration, measurement and safety and also with merchant vessel personnel management and passenger and coastal service regulation. Therefore, each of these functions requires a substantial administrative capacity at all levels and skills: the proper maintenance of records, files and other valuable documents; the determination of regulatory policy of shipping and maritime affairs; the preparation and promulgation of regulations and forms to implement this policy; the application of the regulations to equipment (including vessels), personnel and other activities; and the supervision of these activities. In order to provide an effective maritime administration, the Ministry must establish the administrative capabilities to perform all these functions and must provide effective mechanisms of coordination and control between the various administrative levels and organs involved in the administration of maritime affairs.

But unfortunately it is noted that the current administrative arrangements appear to be inadequate to the task which is growing in volume and complexity. The main problem is in essence inadequate specialized staffing, such as safety administration specialists and other related specialities. Within the Ministry, a Directorate of Shipping has been established a long time ago to address the problems associated with maritime and shipping administration. The professional staff of the Directorate includes a Director, who is also head of the Directorate, and five assistants who are in fact not able to cover all aspects of the industry. Although the officials of the Directorate are quite highly qualified and dedicated to their work, the lack of sufficient specialized staff in this administrative area makes it quite difficult for the Ministry to formulate and implement a coordinated maritime regulatory policy under the Merchant Shipping Act. As a result of this situation, the predominant amount of

regulatory policy formulation and implementation is being carried out by an official filling the position of the Merchant Shipping Superintendent, as provided by Clause 312 of the Merchant Shipping Act. Under the Act, the Merchant Shipping Superintendent is seen as an official of the Ministry, charged with the primary responsibility to apply and carry out its regulatory policy as expressed in its regulations. This is a statutory allocation of responsibility which it is felt makes quite some sense. Unfortunately the reality is not the same as provided for by the statutory conception. In reality the post and the individual holding the post are not controlled by the Ministry, but instead by the Tanzania Harbours Corporation, which is a parastatal body under the Ministry. This means therefore that this Corporation carries out this function as a service for the Ministry.

From the above-stated position, one is bound to feel that the administration of the Merchant Shipping Act in Tanzania suffers from several deficiencies and just to name a few: the formulation of regulatory policy under the Act, and its implementation through the preparation and promulgation of regulations is hampered by the lack of sufficient specialized staff at the Ministry; and, the institutional ties between the position of the Merchant Shipping Superintendent and the Harbours Authority are stronger than the ties to the Ministry of Communication and Works, which is responsible for administering the Act.

In addition to the administration of the Merchant Shipping Act, the Ministry of Communications and Works is also responsible for the administration of the Inland Water Transport Ordinance and its subsidiary legislation, the Inland Water Transport (Special Provisions for Lake Nyasa) Rules. The former establishes a use-licensing system for ships carrying goods or passengers upon the inland waters of Tanzania. The latter establishes a vessel safety scheme tied to the licensing system.

During the existence of the East African Community there was an Act providing for the administration of the inland water transport, known as the East African Inland Water Transport Act. Among other things this Act provided for a legislation respecting both vessel onboard and navigational safety for those countries who share the waters of navigational importance, such as Lake Victoria. This was a

step upon unification of such legislation which had an administrative and policy importance. Though the East African Community is no longer in existence, for the benefit of all the countries which share the important navigable waters with Tanzania, it is necessary that a uniform legislative and administrative policy be adopted. Certainly the defunct East African Community appeared to have been an ideal institutional framework upon which the necessary legislative and administrative co-ordination and uniformity could be maintained for the body of inland waters within Tanzania which were subject to the above Act. Not only the inland water transport system, but this institutional framework, could have played a role of equal importance to the entire maritime industry insofar as the legislative and administrative coordination is concerned.

Tanzania's inland water transport is mainly concentrated in three major Lakes, which it shares with other countries. Lake Victoria, the biggest, Tanzania shares with Kenya and Uganda; Lake Tanganyika with Zaire, Burundi and Zambia; Lake Nyasa with Malawi and Mozambique. Apart from transportation, all the countries sharing the waters of the Lakes are also actively involved in other maritime activities which require both a coordinated legislative and administrative framework. The success of all this depends on the availability of adequate skilled administrative resources, which is lacking in most developing countries including Tanzania, as stated earlier.

Turning to the Merchant Shipping Act, it may be seen that the provisions of Part II of this Act are drawn in considerable detail, particularly several matters which relate to purely administrative procedures. This area also requires some modification. An alternative approach would be to provide the maritime administrator with authority to prescribe these administrative details by regulation, because the flexibility provided by this latter approach would be particularly desirable for the development of the maritime administration of Tanzania. It is felt that the development of Tanzania's maritime administrative procedures should follow the particular needs and constraints which pertain in the country, which will be revealed as time passes and experience is gained. Since the Government Administration not only is in the best position to be aware of the needed changes and modifications, but also has the predominant authority

and expertise in this field, the better choice would be to provide the greatest possible authority to the Administrator during this period so that he may meet and deal with the problems involved in the Administration of vessel ownership, registration, licensing, marine pollution, marine accidents and other related matters as they may arise.

It is important to note, therefore, that shipping law cannot fulfil its functions if there is no administrative back-up. Safety laws for example cannot be implemented without an adequate enforcement machinery. The same arrangements apply to other parts of shipping laws. The lack of adequate enforcement machinery of these shipping laws may lead to a search for methods to alleviate administrative procedures or do away with them altogether. Any meaningful implementation of shipping law should therefore also address itself to the enforcement possibilities. In practice the above will require very detailed studies of law enforcement, the setting up of administrative agencies or legal provisions designed to minimize administrative bureaucracy.

#### The National Shipping Policy and Maritime Legislative Work

It is noted that most developing countries, including Tanzania, suffer from the lack of a well-defined shipping and maritime policy objective. A well-defined shipping and maritime policy will result in securing the necessary consistency of both policy and law, which is vital. Thus, adopting a proper legislative framework on joint ventures, repair yards, shipping companies and other maritime activities.

One of the basic functions of a governmental maritime organization should be to implement policy decisions and, at the same time, to assist policy-makers in developing a well-defined maritime policy.

In order to implement a national maritime policy a number of policy instruments may vary according to the subject of the decision to be effected. Here we can distinguish at least three types of instruments: Rules and Regulations; Financial and tax incentives; and persuasion. It is always very important to note that in applying any of these instruments, consultation about intended objectives, application and practical consequences with all interested parties like shippers, shipowners, trade associations, port authorities and other governmental bodies is a pre-requisite for the effectiveness

and acceptability of the instruments. In this case, the existence of formal and informal relations and consultations between a maritime administration and all parties mentioned, and others involved in the maritime industry, is of great importance to the successful implementation of a maritime policy formulated.

The development of a sound national maritime policy is not an easy task since many considerations have to be taken into account and its preparation makes specific demands on the Administration. In spite of this, however, the greatest asset of a well-organized maritime administration is that, as a result of its internal division of responsibilities and its organizational structure, all aspects and consequences of a policy decision can be dealt with in a balanced way. That is to say, the advice normally put forward includes qualitative and quantitative analysis of direct relevance to a specific division. Such advice could be presented in the form of alternative scenarios, thus offering a clear-cut option for the solution of problems or even the achievement of policy objectives adopted.

As pointed out earlier, the existence of a well-defined maritime policy may considerably improve the effectiveness of decision-making. This will enable an administration to prepare itself well for decisions which follow logically from a certain course of action. That is to say it gives the Administration time to prepare to answer complex questions and collect relevant data.

It is further very important for the Administration to be able to consider all aspects of policy decisions. For example, if a Government is of the opinion that a certain growth of its national merchant fleet is desirable and decides to accelerate growth figures, a great number of subsequent and inter-dependent decisions should be taken, related to questions such as: what arrangements should be made for funding of the new acquisition; what type of new tonnages are required; whether there is sufficient manpower available for manning and management of new tonnage; whether training facilities should be expanded and whether development of new international relations is required to safeguard the employment of new tonnage.

In practice, more than often, the list provided above will be much more extensive, but in any case the examples illustrate the fact that in one major decision such as the expansion or creation of a national



fleet, several aspects should be taken into account for a viable decision to be made. Certainly, there will be no advantage in spending time, money and effort on the acquisition of new tonnage if it is uncertain whether sufficient manpower is available to man and manage the vessels, or whether sufficient employment is expected, both for the nationals and the vessels. Therefore, a well-organized administration should be aware of such inter-dependencies and be able to give policy-makers a full picture of all consequences relating to the implementation of a policy decision. But at the same time the Administration should be able to translate policy objectives into feasible proposals for action required to be taken.

As we have pointed out earlier, one of the major tasks of any maritime administration is to develop an up-to-date maritime legislation. In doing so it should always be noted that the development of maritime legislation may be influenced by two main factors:

- (a) International conventions, agreements and practices will have an impact on a country's maritime legislation. This is because as we very well know, shipping is an international activity and a government could harm its maritime industry by exposing it to a legal regime which substantially differs from that which is generally accepted world-wide. This is especially true with regard to technical, nautical, safety aspects of shipping, and preservation of the marine environment; and
- (b) the specific economic circumstances of a country may require that legislation in the field of shipping and maritime activities be developed in the interest of national economic policy. Such legislation does not always necessarily have to be in accordance with legislation that has been developed elsewhere.

However, it is worthwhile noting that if national legislation is substantially different from foreign legislation, conflicts could arise between States as a result of the application of different legal regimes to their respective shipping interests.

With respect to legislative work by a maritime administration, some conclusions and recommendations may be drawn from the foregoing:

- (i) a wide knowledge of international conventions, agreements and legal practices is required to keep national legislation in line with international legislation and practices;
- (ii) the personnel of an administration concerned with legislative work should be aware of national policies and interests and the changes thereto, whenever they occur;
- (iii) since maritime/shipping industry is international in nature, in drawing up legislation, the Administration should be aware of possible conflicts with foreign or national interests which may arise from the introduction of national legislation; policy-makers should be advised as to the consequences whenever necessary;
- (iv) should it be seen that it is likely that the introduction of legislation may lead to conflicts with other countries, it may be necessary to consult directly affected trade partners before actually introducing such legislation. Note that such consultation will not be for them to decide as to whether such legislation should be introduced or not, but rather to permit them to express their opinion to assist in the formulation of such legislation.

It has been attempted so far to highlight, at least briefly, in the previous chapters the conventions providing for technical, nautical, economic and safety aspects of shipping. Therefore if, for instance, international standards require vessels to be fitted with certain costly equipment, this has an economic consequence. The same applies to such subjects as registration, manning regulations and safety standards and measures. Consequently, an administration which is faced with legislative work in such areas should be aware of the economic implications of actually introducing legislation in those fields. It should be noted that such consciousness can only be achieved if close working relations are established between units of an administration which are entrusted with legal work and units dealing with technical, nautical, safety, economic and political aspects of maritime/shipping. From an organizational point of view,

this implies that legislative work within a maritime administration should not be carried out in isolation from work in other divisions within such administration, and also from other divisions of other ministries involved in certain aspects of the maritime industry.

That is to say, a clear distinction should be made between responsibilities of various divisions within a maritime administration and also between it and other ministries/administrations involved in various aspects of the maritime industry. This distinction must also be made between responsibilities at the national and international levels. In view of the specialized nature of the maritime industry, such distinction of responsibilities in our opinion is very necessary. The same would apply to legal matters and, therefore, responsibilities in this field should also be separated from other responsibilities. However, as stated earlier, in practice the legal division would be required to service the other divisions, which is to say the legal officers would have to cooperate closely with other officers of the economic and political divisions in matters such as the conclusion of shipping/maritime agreements with other countries and the development of national maritime law. Therefore, in this case, the services of the legal division would also be extended to the nautical and technical divisions; in which case a more central position in the maritime administration is more appropriate.

Depending on the size and structure of an administration, and even in the Tanzanian shipping administration, small though it is, it is of great importance to include an information/documentation sub-division or unit. The main purpose of such a unit would be to collect information on shipping for dissemination among officers of the maritime administration. This would keep them informed of national and international developments in their respective fields of responsibility and thus enable them to assist effectively in policy-making. An example can be drawn from the Directorate General of Shipping and Maritime Affairs of the Netherlands, which maintains such a unit and provides quite a significant service to the administration in terms of the collection of information on shipping and maritime affairs.

Although Tanzania has not yet developed its own shipping and maritime policy, the Inter-Governmental Standing Committee on Shipping, hereinafter referred to as ISCOS which includes Tanzania, Kenya, Uganda and Zambia in its membership, has prepared a proposed draft for a Common Shipping Policy for its four member countries. The ISCOS is based in Mombasa, Kenya and protects the shipping interests of the four member countries. The proposed draft is to be presented before the ISCOS Ministerial Meeting, which will deliberate on the proposal and decide its fate. Although the proposal has not yet been adopted, the positive steps taken towards cooperation should be considered as serious and vital to the shipping industry of each of the four member states of this sub-region.

ISCOS presented nine points in the draft for consideration covering the general spectrum of the shipping industry. The Draft is as follows:

"Common Shipping Policy of the ISCOS Member Governments for consideration by the member Governments of Kenya, Tanzania, Uganda and Zambia.

1. To provide the Eastern African Sub-region with maritime transport services that are adequate, economical, efficient and safe.
2. To form cargo aggregating machineries in the Member States to support the envisaged National Shipping Lines.
3. To encourage the establishment of National Shipping Lines in the Member States in order to reduce the over-dependence on foreign shipping lines.
4. To formulate training schemes for local shipping personnel to manage and operate ports and the envisaged National Shipping Lines.
5. To develop a system of selling exports c.i.f. and buying imports f.o.b. in order to increase Governments' responsibility and control over cargo.
6. To continue guaranteeing landlocked Member States access to the sea.

7. To undertake to ratify international conventions which are germane to shipping.
8. To pass identical legislation in the Member States to enable the Governments to institute control of activities of both foreign and local shipping lines in accordance with the sub-regional requirements.
9. To undertake any other measures as far as shipping is concerned that will protect the economic interests of the Member States."

The basis on which the above draft Common Shipping Policy has been formulated is that a guideline to any policy formulation should, among other things, attempt to identify the existing problems which the intended policy should rectify. It is our hope that with problems clarified it becomes easier to determine the type of policy measures that are to be formulated and subsequently the kind of law to be adopted in order to bring about positive changes to the shipping and maritime sector of Tanzania.

Tanzania's desire to develop its shipping and maritime sector is not doubted; it has been involved in many international forums related to shipping and maritime affairs. Apart from its membership to ISCOS, Tanzania is also a member of the Southern African Development Co-ordination Conference, hereinafter referred to as SADCC. The other members are Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe. The Conference is composed of several specialized commissions, one of which is the Southern Africa Transport and Communications Commission, hereinafter referred to as SATCC, with its headquarters in Maputo in Mozambique. In order to advance the cooperation among member states in the field of shipping, SATCC has initiated the project "Regional Cooperation in Shipping". The aim of the project is to define the various areas of shipping where cooperation by way of pooling resources available in the region would be an expedient means to achieve maritime services adapted to the specific needs of the region, and indicate ways and means of attaining such cooperation.

Both initiatives by ISCOS and SADCC (SATCC) are considered positive, but might not achieve their intended goals if there is no comprehensive

national and regional shipping and maritime policy. Several developing maritime nations have developed, or are in the process of developing, their own policies. Nigeria is a good example, which formulated its shipping policy in 1981. It is through such policy that the compatibility between the law and such policy will be ensured and therefore, the efficient administration of the Merchant Shipping Act can only be achieved if it is supported as stated earlier on by such well defined policy which stipulates a clear direction and objectives at the national, regional and international level.

### Conclusion

At this juncture it is important to note that the complementary machinery needed for the enforcement and administration of the merchant shipping legislation, is legal and administrative, and as stated earlier, they must be backed by a clearly defined policy. The problem of enforcement of the rules and regulations which establish a legal regime is indeed basic, because if the machinery for the enforcement of the law is weak and defective, it is quite clear that the necessary respect for the law would tend to be undermined and the legal regime would at once face irregularities and illegalities to rectify, for which there may be neither sanctions nor remedies. In such circumstances, the legal regime would tend to wither away. Therefore it is necessary to examine the instrumentalities for the enforcement and administration of the law on which the regime comes to rest. This in turn would depend on the nature, extent and limits of the legal regime.

It should be further noted that as a State has sovereignty over its own territories only, the legislation of a country is primarily territorial. This leads us to the general rule that the laws of a nation apply to all things and acts within its territories, including its waters and ships of its flag on the high seas and foreign ships within its territorial waters. Therefore this confers jurisdiction on municipal courts of the coastal states, such as Tanzania, even in relation to ships flying foreign flags when in national or territorial waters. But this rule of international law has to be clearly brought out in the National Merchant Shipping Act. It would thus be clear that municipal law can be effectively enforced by municipal courts not only in relation to nationals and their ships but

also in relation to foreign flag vessels when in national or territorial waters. The municipal judicial mechanism of a littoral State has, therefore, a proper and effective lever for the enforcement of its national law in relation to all those who have dealings with it by way of trade and enter its territorial limits. This is what furnishes the basis of a competent and effective jurisdiction.

As to the enforcement of international law through municipal courts, in such cases partial enforcement can only be done in respect of States that have ratified and accepted a convention. Though not all conventions can be ratified by a State like Tanzania, at least consideration should be given to those conventions considered primary in the maritime industry (some of which have already been indicated in other chapters) in order for the administration of the Merchant Shipping Act to be in line with the development of the new maritime international legal regime.

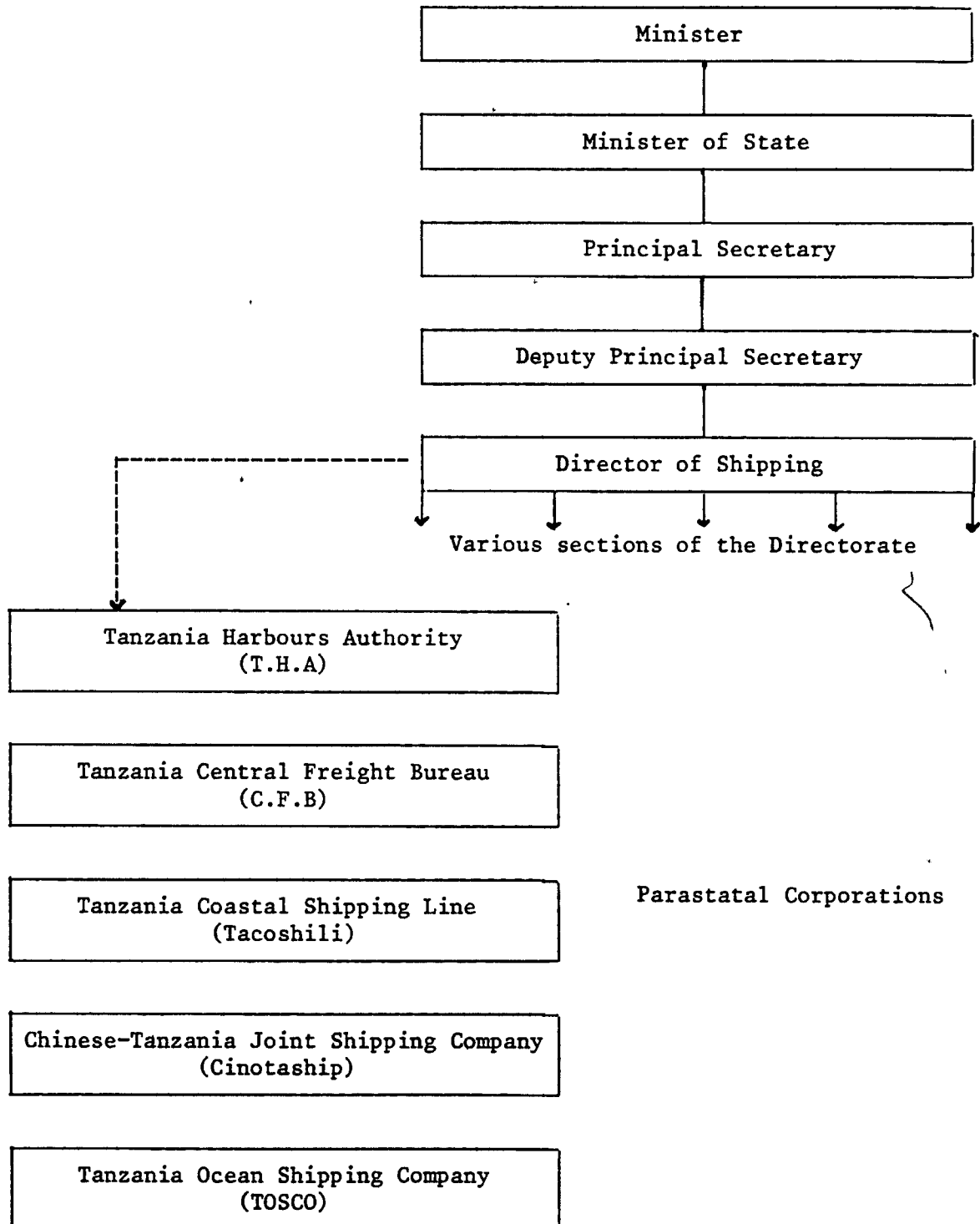
APPENDICES

- Appendix A: Gives an outline for the Tanzania maritime administration
- Appendix I: Gives an outline for a model maritime administration
- Appendix II: Contains an organization chart of the Ministry of Communications of China, relating to maritime administration.
- Appendix III: A and B:  
Give an outline of the Norwegian Maritime Directorate
- Appendix IV: Contains an outline of the Ministry of Transport and Public Works in the Netherlands

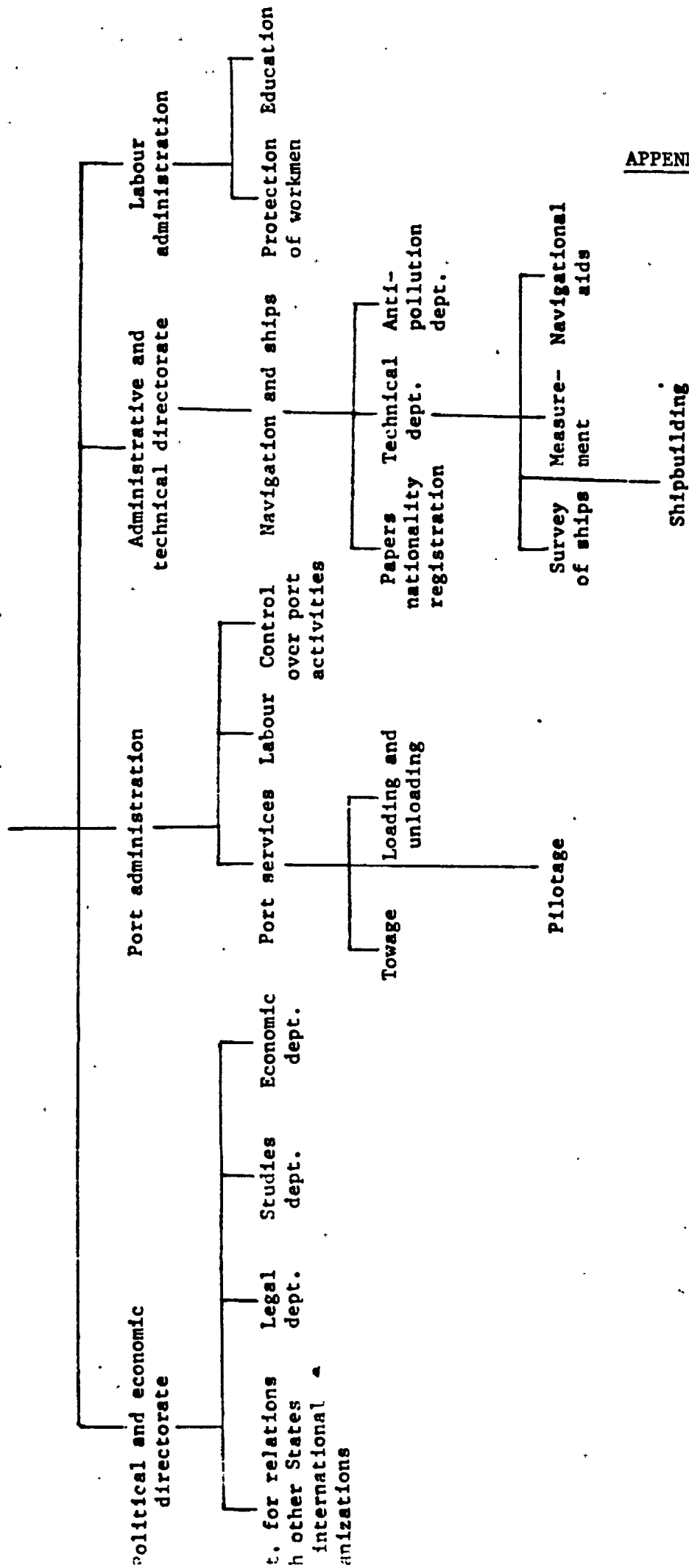


APPENDIX A

THE MINISTRY OF COMMUNICATIONS AND WORKS  
ORGANIZATION RELATING TO MARITIME ADMINISTRATION  
OF TANZANIA



MARITIME ADMINISTRATION (GENERAL MODE)

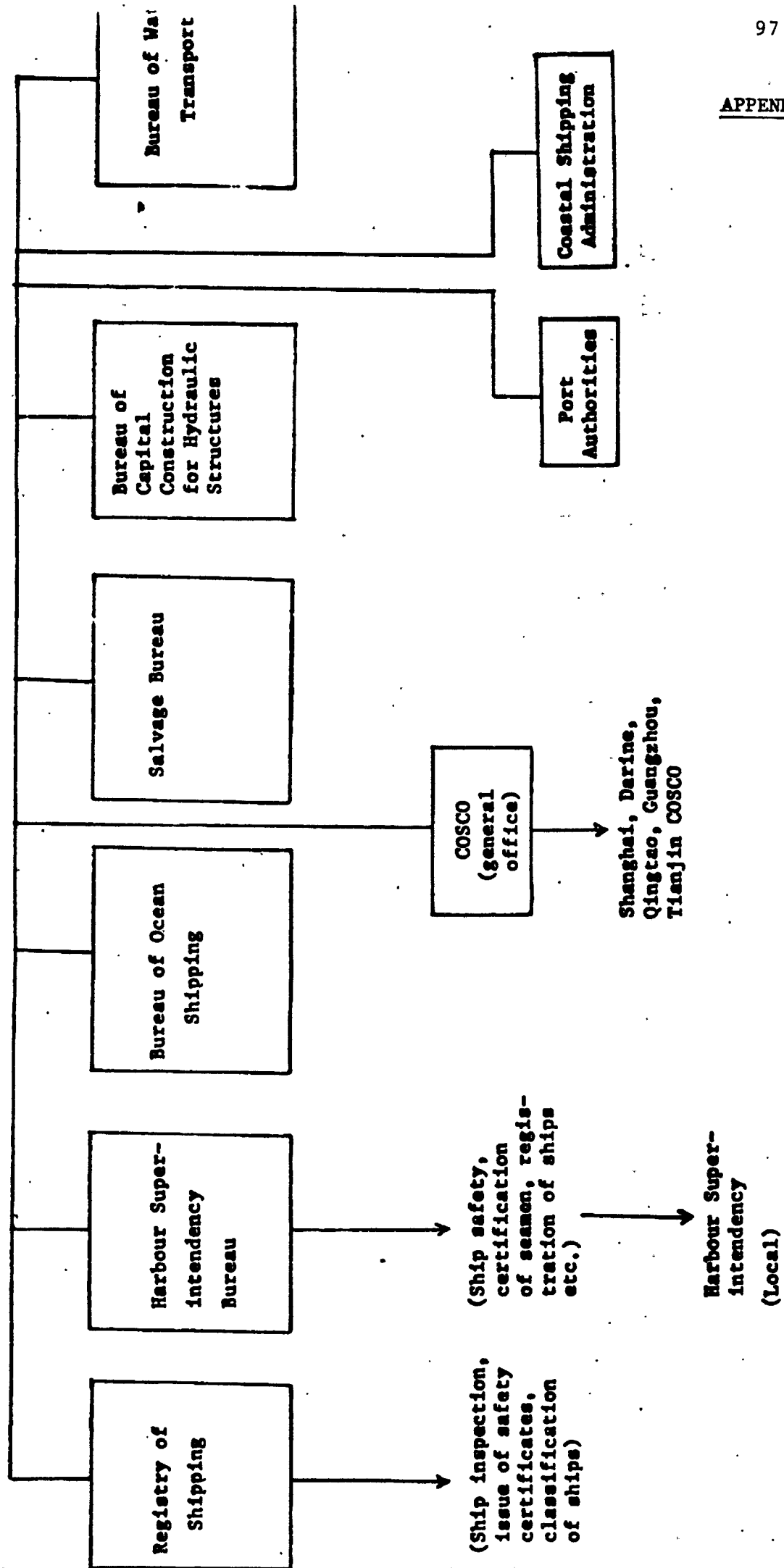


APPENDIX I

Source:

United Nations Economic and Social Commission for Asia and the Pacific: Guidelines for Maritime Legislation, 1982.

MINISTRY OF COMMUNICATIONS, CHINA  
 (Organizations relating to maritime administration)



Source:  
 United Nations Economic and Social Commission for Asia and the Pacific: Guidelines for Maritime Legislation, 1982.

NORWEGIAN MARITIME DIRECTORATE

DIRECTOR GENERAL OF SHIPPING & NAVIGATION  
DEPUTY DIRECTOR GENERAL

PLANNING & DEVELOPMENT DIV.

LEGAL-ADM. DEP.

1. LEG. DIV.

2. LEG. DIV.

1. ADM. DIV.

2. ADM. DIV.

TECH. DEPT. HULL-MACH OFFSHORE

1. MAR. TECH.

2. MAR. TECH.

MACHINE-TECH. DIV.

TONNAGE DIV.

OFFSHORE SUB-DEP.

1. OFFS. DIV.

2. OFFS. DIV.

DEP. OF SHIP OPERATIONS & EQUIPMENT

1. NAUT. DIV.

2. NAUT. DIV.

TECHNICAL DIV.

OPERATION-SAFETY DIV.

SHIP COMPLEN. SUB-DEP.

MANNING DIV.

VEH. / EO. DIV.

FISHING-FLEET SUB-DIV.

DEP. OF SHIP CONTROL STATIONS

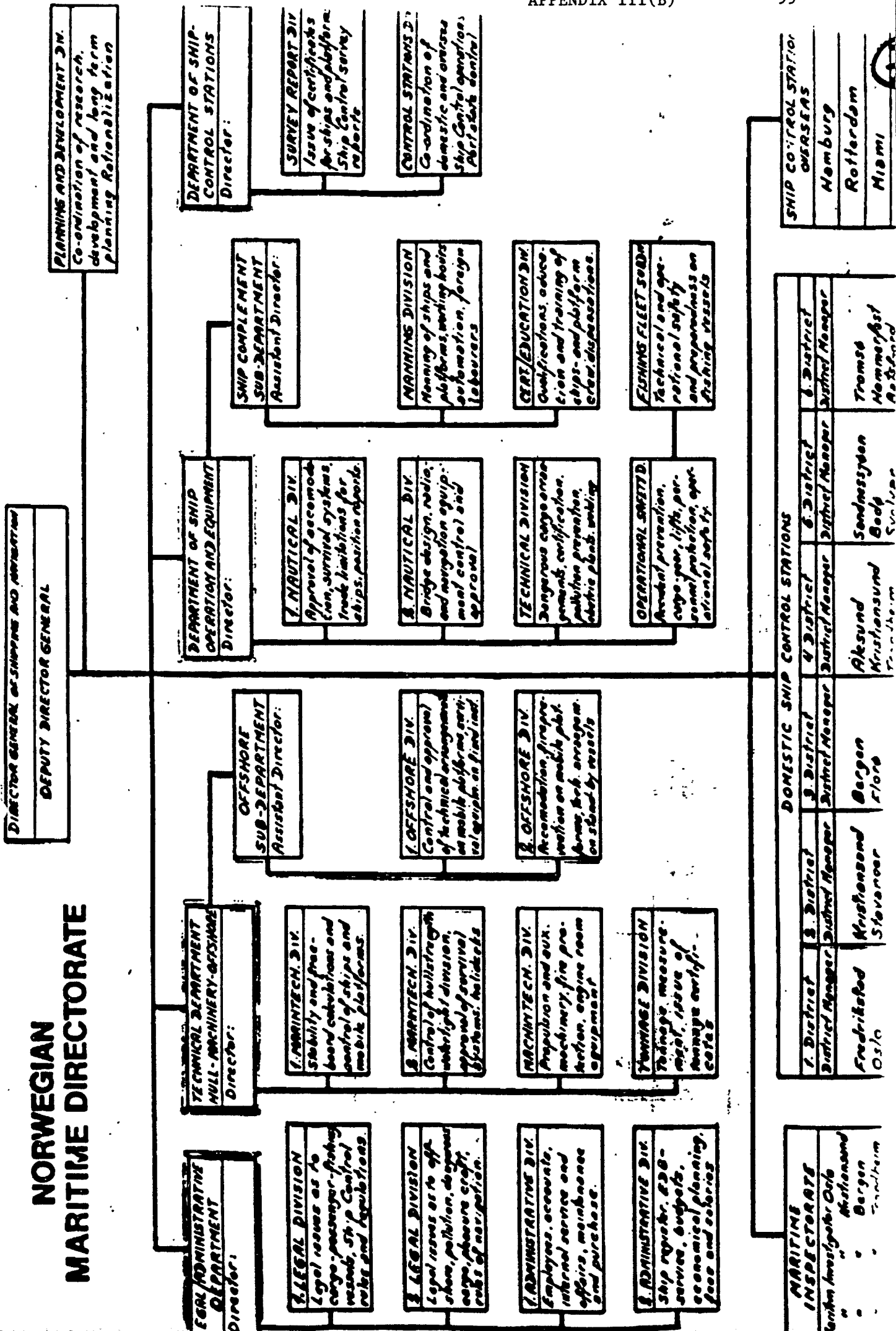
SURVEY REP. DIV.

CONTROL STATIONS DIV.

6 MARITIME INSPECTORS

[ DOMESTIC AND OVERSEAS SHIP CONTROL STATIONS ]

# NORWEGIAN MARITIME DIRECTORATE



Ministry of Transport and Public Works

Minister

Secretary of State

Secretary General

Secretariat attached to the Directorate

Councillor research

Directorate-General Shipping and Maritime Affairs

Principal Director Maritime Traffic

Principal Director Shipping Policy

Director Materials and logistics

Director Shipping and Maritime Policy

Director Nautical and Technical Affairs

Four Maritime Districts:

North

IJmond

Rijnmond

Scheldemond

Director Legal Affairs

Shipping Inspection

Division for international maritime policy  
 Division for economic and political affairs  
 Division for social affairs and education  
 Civil emergency planning division -

Division for Nautical and General Affairs  
 Division for Inland Waterways (technical equipment)  
 Division for IMO Co-ordination  
 Division for Navigation and Communication  
 Division for Marine Environment

Division for Shipbuilding  
 Division for Shipaccidents  
 Principal division Technical Affairs  
 Division for Shipsmeasurement  
 Division for mechanical engineering

Staff divisions:

Personnel  
 Financial Affairs  
 Internal Affairs

Source:

The Directorate General of Shipping and Maritime Affairs of the Netherlands, Rijswijk.

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- 2 The Inland Water Transport Ordinance - Act of Tanganyika - Number 5 of 1965.
- 3 The Inland Water Transport (Special Provisions for Lake Nyasa) Rules.
- 4 The East African Inland Water Transport Act - Chapter 42, Laws of the Community.
- 5 The Fisheries Act - Act of United Republic of Tanzania - Number 6 of 1970.
- 6 The Tanzania Harbours Authority Act, 1977 - No. 12 of 1977.
- 7 The Tanzania Railways Corporation Act, 1977 - No. 11 of 1977.
- 8 ISCOS - Document 45/82 - December 1982 - Brief for Ministers on the Draft Common Shipping Policy.
- 9 Southern Africa Transport and Communications Commission: Regional Cooperation on Shipping - Project No. 3.0.1, Lusaka, March 1983.
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## CHAPTER V

## SUMMARY AND RECOMMENDATIONS

Although Tanzania is not yet a big maritime nation, it is a fact that increasingly it is becoming an important coastal and Port State nation while at the same time it is in the process of building up its maritime sector. Building a maritime industry at this time is not an easy task, especially considering the complexity and the international nature of the industry, and particularly bearing in mind the present global economic recession.

As has been attempted to highlight in Chapter One, Tanzania's international place in shipping and the maritime industry, its development and the present position, shows that there is a need for more work to be done in order to develop the industry to a much higher standard and level of profitability. Regardless of what has to be done however, it is important to look at the industry in totality, and not to isolate one area from another. All aspects which have a role to play in the development of the industry must be taken into account, such as the legal aspect, political aspect, economic aspect, social aspect and training, just to name a few. All these areas have to be combined with a well-defined policy which will lay down all the required guidelines in that the regulation of the maritime industry is supposed to reflect a policy on the seaborne transportation of Tanzania's foreign trade.

X It is important to understand that whether or not Tanzania chooses to carry its foreign trade on its own national vessels (which are at present in insufficient numbers to carry the trade), it still will have an interest and obligation to ensure that the actual transport is carried out smoothly and satisfactorily to the cargo owners. For that purpose, therefore, it is very important for Tanzania to increase its pace in the adoption of latest Conventions providing for the laws on the carriage of goods by sea, marine insurance, general average, charter parties, contracts with agents, stevedoring, freight forwarding, limitation of liability and arrest or detention of ships. In most of the above-mentioned areas there are international conventions and other legal instruments, to some of which reference has already been made in previous chapters. Together with the above-mentioned



areas, the adoption of up-to-date port regulations is equally recommended.

Due to the international nature of the maritime transport industry it is very important for a developing maritime nation like Tanzania to follow international law and practices to the maximum extent possible in order to avoid being isolated from the international norms and practices. To run an effective maritime transport sector requires efficient and safe ships. In order to achieve such efficiency and safety, national laws pertaining to construction and safety at sea serve the objective of fostering maritime transport. Here it is important to note that not only national laws pertaining to construction and safety at sea are required, but to add to that such laws should be in line with the up-to-date international conventions and regulations. Part V of the Tanzania Merchant Shipping Act<sup>1</sup> provides for safety. Although Tanzania is not a party to either the International Convention for the Safety of Life at Sea, 1960<sup>2</sup> (SOLAS 1960) or the International Convention Respecting Load Lines, 1960<sup>3</sup>, the provisions of Part V of the Merchant Shipping Act are nevertheless based on the two Conventions. Both the Conventions have been replaced by newer Conventions, i.e. SOLAS 1974<sup>4</sup>, as amended and the Load Lines Convention, 1966<sup>5</sup>. The fact that Tanzania has incorporated the provisions of the above Conventions in its national legislation is a good sign of its desire to develop its national legislation and such provisions provide for a good base or starting point for any revision, which the writer feels should be done.

As a port and littoral state, Tanzania has an interest in ensuring that all ships, domestic and foreign-going, operate safely. Equally, Tanzania is bound to protect its environment from pollution which is increasingly becoming a hazard. To achieve the above objectives, together with such laws providing for safety, manning of ships, salvage and collision rules, there should also be some laws on traffic schemes if necessary, and pollution. Part IX of the Merchant Shipping Act provides for pollution of the sea, but it is our opinion that the provisions are grossly inadequate and that this part needs to be revised or a new legislation or set of regulations respecting pollution of the sea needs to be made. In this respect, major

contributions have been made by international law-making institutions. There are several important IMO Conventions which lay down the basic rules, such as the MARPOL Convention 73/78<sup>6</sup> and several others, some of which have already been discussed in previous chapters. Further relevant international rules are found in the Law of the Sea Convention, 1982<sup>7</sup>, particularly Part II, dealing with Territorial Sea and Contiguous Zone, Part VII dealing with the High Seas and Part XII dealing with the protection and preservation of the marine environment. Whatever type of legislation is made, the main aspects to be taken into consideration for the elimination of marine pollution and preservation of the marine environment are as follows:

- (a) a good national legislation for the protection of the marine environment, and combat of marine pollution;
- (b) well-trained personnel on board the vessels - i.e. the national merchant marine academy should provide adequate training according to the international standards as laid down in the STCW Convention, 1978;<sup>8</sup>
- (c) there should be an effective Port State Control, as provided by the relevant international conventions such as MARPOL 73/78;
- (d) training of ship inspectors and surveyors to provide them with the expertise to execute Port State control;
- (e) the national administration responsible for shipping and maritime affairs to inform the shipping industry (shipowners) what requirements are applicable to them, thus timely information in order for them to prepare for dry-docking of their vessels, upgrading, etc. All this should be done in order to achieve environmentally-friendly ships;
- (f) the formulation of a national standpoint (policy). A national committee involving all interested parties like shipowners, representatives of chemical and oil industries such as Esso, Shell, Total, etc. The same industries should be made to provide adequate reception facilities. Others to be included in the Committee should be members of the Defence, members from all Government ministries involved in shipping and maritime affairs, Port Authority officials and other concerned public corporations.

- (g) a national contingency programme which should also work closely with other regional contingency programmes.

What is to be understood here from the legislation point of view is that maritime law is intended to serve the basic objectives of a country like Tanzania as a Port and Littoral State.

On the social aspect, the International Labour Organization (ILO) has been active as far as social aspects of seafarers are concerned and in this case reference has already been made on Tanzania's adoption of The Merchant Shipping (Minimum Standards) Convention, 1976, No. 147<sup>9</sup>, together with the Appendix to the Convention containing fifteen instruments. This Convention is considered to be the most relevant among the ILO Conventions. Should Tanzania decide to ratify and adopt this Convention, then the provisions of the Convention itself can be embodied in primary legislation while those provisions which may be found in the Appendix may be implemented either by primary or secondary legislation, which has to be done in accordance with the nature of the requirements.

In addition to what we have stated above, it is also important to mention that the maritime law of Tanzania should serve the various economic objectives of the country, which is the reason for repeatedly stressing the importance of having a defined shipping and maritime policy on which all the national maritime laws will be built. Among the major maritime policy objectives of Tanzania may be the need to expand the country's merchant fleet, whether in the carriage of national ocean trade or in cross-trading. With regard to the regulation of liner trades, Tanzania is a party to the Convention on the Code of Conduct for Liner Conferences, 1974<sup>10</sup> and a law implementing the Code has been enacted, i.e. The Central Freight Bureau Act, 1981 (TCFB)<sup>11</sup>. Although the enactment of the Central Freight Bureau has been heavily criticized by most Western European Maritime Nations on the grounds that such law is deviating from the provisions of the UNCTAD Code, several other countries, both in Asia and Africa, have set up similar institutions. Even though Tanzania has ratified the Code, the application will require, in addition to the Laws enacted to effect the Code, the expansion of its own fleet, well qualified technicians and administrators to manage, administer and operate the country's shipping services. It is worth noting also that the setting up of a maritime transport

enterprise equipped with a fleet and technical and administrative personnel requires a very substantial investment, among other things the profitability of such an enterprise depending also on how it is managed and the volume of cargo transported. Therefore the pooling of resources between countries in the region or sub-region of East Africa, or Southern Africa, in order to broaden the basis for a shipping service as well as cargo quantities to be carried, should be considered as a practicable way. Such consideration should however be taken very cautiously.

In brief, therefore, it should be the declared goal of Tanzania's National Shipping Policy or even Sub-regional Common Shipping Policy to effect the development and maintenance of national merchant marine capable of promoting Tanzania's domestic and international commerce. It should also be the aim of such a policy to ensure that Tanzania benefits from the fruits of her external trade. Therefore the goal for Tanzania's Merchant Marine should be:

- (a) sufficient to carry the country's domestic and international sea-borne trade;
- (b) owned and operated by Tanzanians, bearing the Tanzanian flag as far as practicable;
- (c) equipped and maintained within the ambit of international safety standards;
- (d) if possible such a Merchant Marine should be supplemented by efficient facilities for shipbuilding and repair.

Whereas Chapter One has tried to provide for a shipping and maritime scenario of Tanzania, and a little bit of its historical development, Chapter Two has basically dealt with some aspects of international law with specific reference to some key international conventions related to the maritime industry, including the Law of the Sea Convention, 1982. Further, Chapter Two has also tried to show Tanzania's participation and its position in ratifying and adopting such Conventions in its municipal law. What we have seen here is that although Tanzania has an important role to play in the shipping and maritime industry, it has been quite slow in ratifying and adopting these international conventions into its national legislation and to a certain extent its participation, especially at IMO Committee level,

such as the Marine Environment Protection Committee (MEPC), the Legal Committee, etc. has not been consistent. Certainly this observation is not made without taking note of the economic implications involved by ratifying some of the Conventions. For example the provision of reception facilities as required by MARPOL 73/78 involves substantial financial investment.

The Law of the Sea Convention, 1982, is considered to be the umbrella law regulating the activities of the seas by the international community. Tanzania is not yet a party to this Convention, though it is a signatory. Considering the active role it has played in the adoption of this Convention, it is hoped that Tanzania is soon going to ratify this Convention. This Convention has been discussed in detail in Chapter Two and it is mentioned again here to emphasize that it will be extremely difficult for Tanzania to remain outside the Convention, however powerful it would have been. In view of this, the opinion is held that the delimitation of the Exclusive Economic Zone and the Continental Shelf between Tanzania and its opposite and adjacent neighbours should be effected by agreement in such a manner that an equitable result is achieved. This means of achieving such an equitable result can be agreed upon. But the basic questions should be to select the circumstances and factors which should be taken into account and to determine the weight to be attached to said circumstances and factors.

So far among Tanzania's neighbours, only Kenya which is adjacent to Tanzania to the North, has already declared a 200-mile Exclusive Economic Zone (EEZ).<sup>12</sup> Its proclamation included the terms of the agreed maritime boundary with Tanzania. This agreement, which is based on the median line principle, came into force on 9 July 1976 and was registered with the United Nations Secretary-General.<sup>13</sup> As a result of this agreement, no further delimitation of the maritime boundary between the two States will be required if and when Tanzania declares its own Exclusive Economic Zone. It is also important to note that the agreement is also significant in that it constitutes a legal recognition, as between the two countries, of the established baselines and in particular of the baselines enclosing the Pemba Channel as Tanzania's internal waters. It further contributes to what one would call the evolution of State

practice in terms of fixing maritime boundaries by agreement, based on the principle of the median or equi-distant line.<sup>14</sup>

On the other hand, available records show us that Mozambique, which is adjacent to Tanzania to the South, declared an Exclusive Economic Zone of 200 miles in 1976.<sup>15</sup> It is not clearly known whether the declaration has been registered with the Secretary-General of the United Nations or not. In this case, therefore, it is not possible to ascertain whether the proclamation settles the question of the delimitation of the maritime boundary with Tanzania. To the best of our knowledge, it appears there is no delimitation agreement similar to that between Kenya and Tanzania. It is therefore very important that an agreement to this effect between the two countries would be necessary should Tanzania declare an Exclusive Economic Zone. This would also simplify the enforcement of other regimes such as that of the territorial sea, the contiguous zone and the continental shelf.

Seychelles is an Island State in the Indian Ocean, part of which is opposite the Tanzanian coastline. The ocean space between the two countries is less than 400 miles in some areas. So far no delimitation agreement has been concluded between the two countries. However, the document of 1978<sup>16</sup> describing the limit of the Seychelles Exclusive Economic Zone, which was adopted under the Maritime Zones Act 1977, provides inter alia for a unilateral determination of the boundary. It is our hope that this boundary might not be objected to by Tanzania in view of the fact that the latter also recognizes the median line principle.<sup>17</sup> What it is felt remains necessary, however, is an agreement on the boundary coordinates between the two countries for the purpose of better identification. Such coordinates and the straight lines connecting them have to be fixed on a chart forming part of the agreement between the two countries, and published for the information of all sea users and also for application by law-enforcement authorities of the two countries.<sup>18</sup>

It is equally important that a thorough geological survey be made in determining the outer boundary of the continental shelf, if the continental margin extends beyond the 200 nautical mile limit and if the method based on sediment thickness is used for delimitation. The new issuance of new and up-to-date charts with scales as required by the Convention is of primary importance for drawing accurate base-

lines and determining the outer boundary of the territorial sea, the contiguous zone and the exclusive economic zone.

On marine pollution, as stressed earlier, the implementation of the Law of the Sea Convention, 1982 provisions will require a substantial legislative effort. Therefore priorities should be established. The existing national legislation should be checked for the purpose of harmonization with the provisions of this Convention, and other related Conventions mentioned earlier. The question of regional cooperation for control of pollution, protection and preservation of the marine environment should be promoted, where appropriate, within the framework of the United Nations Environment Programme's (UNEP) Regional Seas Programme.

In addition to what has been observed and recommended above, it is also the view that the following areas are in particular also identified as deserving attention in exploring the possibilities for future development, cooperation and much legislative effort by Tanzania:

- (a) training and education in fisheries management, and legislation;
- (b) drafting of a new fisheries legislation as made necessary by the Law of the Sea Convention, 1982;
- (c) drafting of legislation in respect of marine scientific research as made necessary by the Law of the Sea Convention;
- (d) drafting of legislation in respect of transfer of technology and training in the area of offshore mining operations and other activities.

Although Tanzania is not a rich and large nation, it has interests to defend and also obligations to the international community. Therefore its ratification and adoption of the Law of the Sea Convention, 1982, together with the other key international conventions as stated in Chapter Two, will contribute and provide a good basis and a comprehensive tool to help promote peace, good order and prosperity for mankind.

Chapter Three has mostly concentrated in examining the Tanzania Merchant Shipping Act, 1967 which is in fact considered to be the basic statute under which the shipping and maritime affairs of Tanzania are regulated. The most important work that is required to be done

for this very important legislation is to revise and update it, at least to enable it to cope with the recent developments in the shipping industry. It is therefore recommended that:

- (a) The Merchant Shipping Act, 1967 and other related legislation be revised;
- (b) vessel inspection regulations be established;
- (c) the following mission reports be restudied and where necessary some of the recommendations be adopted and implemented:
  - (i) IMO mission report of the Inter-Regional Adviser on Maritime Legislation - Tanzania - 6-18 April 1980;
  - (ii) IMO mission report of the Inter-Regional Consultant on Marine Pollution - Tanzania - 22-28 May 1982.
  - (iii) IMO mission report of the Inter-Regional Consultant on Maritime Safety Administration - Tanzania - 13-20 January 1982;
  - (iv) IMO mission report - Final Report by the Inter-Regional Adviser in Maritime Legislation - Project No. INT/73/022 - to Tanzania - 20 March to 3 April and 26 September to 17 October 1976;
  - (v) IMO mission report: Tanzania National Seminar on Marine Pollution Prevention, Control and Response - 6-10 December 1982.

Most other recommendations related to the Merchant Shipping Act, 1967 can be found in Chapter Three itself.

Chapter Four tried to look into the administrative framework of Tanzania and the administration of the Merchant Shipping Act and related legislation. What has been clearly noted here is that the Directorate of Shipping of the Ministry of Communications and Works, which is responsible for the administration of shipping and maritime affairs, is inadequately staffed, especially the technical staff, compared to the amount of work that is to be done, at least in the near future. Although the present staff of the Directorate is well-qualified and highly dedicated, to increase its efficiency for the



administration of the Merchant Shipping Act and related legislations, adequate technical staff is also needed. Therefore in addition to the above views, the following recommendations are proposed for consideration:

- (a) a centralized administrative capacity be developed in the Ministry of Communications and Works, particularly the Directorate of Shipping, to provide for the development, formulation and legislative implementation of Tanzania's maritime regulatory policy, to be exercised under the Merchant Shipping Act and related legislations;
- (b) duties and responsibilities of the various ministries and other institutions involved in shipping and maritime affairs should be worked out and clearly defined;
- (c) a closer working relationship between the various ministries and other institutions involved in shipping and maritime affairs should be strengthened;
- (d) duties and responsibilities of the various units and departments within the Directorate of Shipping, such as the Marine Technical Unit, Ports Unit, Services Unit, the Legal Unit, etc. should be clearly defined;
- (e) the Dar-es-Salaam Maritime Training Unit (DMTU) should be developed to a full-fledged maritime academy, which should be coupled with the strengthening of the services of the Sea Service Committee which should be given a greater role in promoting the training of the country's seafarers;
- (f) the role of the Port Advisory Council should be increased to make it more active and an important organ for the improvement of the efficiency of the ports;
- (g) a well-defined national shipping and maritime policy should be formulated.
- (h) a closer follow-up of all international shipping and maritime activities by attending all important conferences, seminars and if possible Tanzania should consider having a Permanent Representative to IMO.

It should be noted that most of the recommendations have been made before in one way or the other by various experts as mentioned in their mission reports. Some recommendations have not been mentioned before and some have been repeatedly mentioned in this dissertation, partly as a gesture of emphasis, but what is important is that some more vigorous positive measures should be considered. Finally, it is therefore recognized that for the successful development of the maritime industry and international trade of Tanzania, appropriate and adequate national maritime legislation is very essential. As stated before, it has been found that the existing maritime legislation is largely outdated and inadequate to meet the needs of development of the maritime industry and international trade of Tanzania. Tanzania, like most other developing nations, inherited the maritime laws of its former metropolitan country and such legislation is considered not conducive to the development of national merchant marines and formulation of appropriate shipping and maritime policies. But this process will involve, as always, an examination of policy as well as obligations under international law.

## REFERENCES: CHAPTER V

- 1 Tanzania Merchant Shipping Act, 1967.
- 2 International Convention for the Safety of Life at Sea, 1960.
- 3 International Convention respecting Load Lines, 1960.
- 4 International Convention on Safety of Life at Sea, 1974.
- 5 The Load Line Convention, 1966.
- 6 International Convention for the Prevention of Pollution from Ships, 1973, amended by the 1978 Protocol.
- 7 Law of the Sea Convention, 1982.
- 8 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.
- 9 The Merchant Shipping (Minimum Standards) Convention, No. 147 of 1976.
- 10 Convention on the Code of Conduct for Liner Conferences, 1974.
- 11 Tanzania Central Freight Bureau Act, No. 3 of 1981.
- 12 Proclamation of the President of the Republic of Kenya of 28 February 1979.
- 13 UNLS Ref. St/Leg./Ser.B/19 at p.406.
- 14 E.E.E Mtango and Friedl Weiss, The Exclusive Economic Zone and Tanzania: Considerations of a Developing Country - Ocean Development and International Law, Vol. 14, number 1, p.21.
- 15 FAO Legislative Series No. 21 on Coastal State Requirements for Foreign Fishing, FAO 1981 at p.331. Decree Law No. 31/76, 11 August 1976.
- 16 SINO 23 of 1978, Supplement to Official Gazette 22.2.78, pp.51-52 "... the boundary is formed by the median line equidistant between the Republic of Seychelles and the Malagasy Republic, Iles Glorieuses, Mayotte Island, Iles Comores and Mafia Island (Tanzania)."
- 17 See Kenya/Tanzania Agreement, 17 December 1975, published in UN Legislative Series, National Legislation on Treaties relating to the Law of the Sea, Doc. No. St/LG/SE.B/19, p.406.
- 18 Ibid, article 2(e).

OTHER REFERENCES:

- 19 Protection of the Sea (Powers of Intervention) Act, No. 33 of 1981 of Australia.
- 20 Canada Merchant Shipping Act, 1970.
- 21 The Maritime Areas Act, No. 15 of 1983 of Saint Vincent and the Grenadines.

## THE MERCHANT SHIPPING ACT, 1967

## ARRANGEMENT OF CLAUSES

## PART I

## PRELIMINARY

*Clause*

1. Short title and commencement.
2. Interpretation.

## PART II

## REGISTERING AND LICENSING

*Registering Ships*

3. Qualification for owning Tanzanian ships and compulsory registration of ships so owned.
4. Unregistered ships unless exempt from registration not recognized as Tanzanian ships.
5. Exemption from registry.
6. Registrars of Tanzanian ships.

*Procedure for Tanzanian Registry*

7. Register Book.
8. Survey and measurement of ship.
9. Marking of ship.
10. Application for registry.
11. Declaration of ownership on registry.
12. Evidence on first registry.
13. Entry of particulars in Register Book.
14. Documents to be retained by registrar.
15. Port of registry.

*Certificate of Registry*

16. Certificate of registry.
17. Use of certificate.
18. Penalty for use of improper certificate.

*Clause*

19. Provision for loss of certificate.
20. Endorsement of change of master on certificate.
21. Endorsement of change of ownership on certificate.
22. Delivery up of certificate of ship lost or ceasing to be a Tanzanian ship.
23. Provisional certificate for ships becoming Tanzanian ships.
24. Temporary passes in lieu of certificates of registry.

*Transfers and Transmissions*

25. Transfer of ships or shares.
26. Declaration of transfer.
27. Registry of transfer.
28. Registered ship or shares not to be transferred to unqualified person.
29. Transmission of property in ship on death, bankruptcy, marriage, etc.
30. Order for sale on transmission to unqualified persons.
31. Transfer of ship or sale by order of court.
32. Power of court to prohibit transfer.

*Mortgages*

33. Mortgage of ship or share.
34. Entry of discharge of mortgage.
35. Priority of mortgages.
36. Mortgagee not treated as owner.
37. Mortgagee to have power of sale.
38. Mortgage not affected by bankruptcy.
39. Transfer of mortgages.
40. Transmission of interest of mortgagee on marriage, death, or bankruptcy.

*Certificates of Mortgage and Sale*

41. Powers of mortgage and sale may be conferred by certificate.
42. Rules as to certificates of mortgage.
43. Rules as to certificates of sale.
44. Revocation of certificates of mortgage and sale.

*Name of Ship*

45. Rules as to ships names.

*Registry of Alterations, Registry Anew and Transfer of Registry*

46. Registry of alterations.
47. Alterations noted on certificate of registry.

*Clause*

48. Provisional certificate and endorsement where a ship is to be registered anew.
49. Registry anew on change of ownership.
50. Procedure for registry anew.
51. Transfer of registry.
52. Wrecked ships may be registered.

*Incapacitated Persons*

53. Provision for cases of infancy or other incapacity.

*Trust and Equitable Rights*

54. Notice of trusts not received.
55. Equities not excluded by Act.

*Liability of Beneficial Owner*

56. Liability of owner.

*Managing Owner*

57. Ships managing owner or manager to be registered.

*Declarations, Inspection of Register and Fees*

58. Power of registrar to dispense with declarations and other evidence.
59. Inspection of register and documents admissible in evidence.
60. Fees.

*Forms*

61. Forms of documents.
62. Instructions to registrars.

*Forgery and False Declarations*

63. Forgery of documents.
64. False declarations.

*National Character and Flag*

65. National character and flag of ship to be declared before clearance.
66. National colours.
67. Penalty.

*Forfeiture of Ship*

68. Proceedings on forfeiture of ship.

*Measurement of Ship and Tonnages*

69. Rules for ascertaining tonnage.
70. Allowance for engine room space in steamships.
71. Additional allowances.

*Clause*

72. Measurement of ships with double bottoms.
73. Tonnage once ascertained to be tonnage of ship.
74. Tonnage of ships of foreign countries adopting tonnage regulations.
75. Surveyors for measurement of ships.

*Licensing of Unregistered Vessels*

76. Licences for certain unregistered ships.
77. Provisions as to licences.

## PART III

## MASTERS, OFFICERS, SEAMEN AND APPRENTICES

*Certificates of Officers*

78. Ships to be provided with certificated officers.
79. Grades of certificates to be granted.
80. Examinations for certificates and licences.
81. Offences relating to certificates and licences.

*Shipping Masters*

82. Appointment.
83. Business.
84. List of deserters.
85. Fees.

*Apprenticeship to the Sea Service*

86. Execution of contracts and indentures.
87. Records at office of shipping master.

*Engagement of Seamen*

88. Agreement with crew.
89. Particulars of agreement with crew.
90. Agreements with crew of foreign-going ship.
91. Crew lists for small vessels.

*Certificates from Shipping Master*

92. Changes in crew.
93. Certificate as to agreement with crew.
94. Display of and alterations to agreement with crew.
95. Engagement of seamen outside of the United Republic.

*Employment of Children and Young Persons as Seamen*

96. Employment of children and young persons on board ship.

*Certification of Seamen*

97. Certification of seamen.

*Discharge of Seamen**Clause*

- 98. Discharge before shipping master.
- 99. Certificate of discharge.
- 100. Report of seaman's character.

*Payment of Wages*

- 101. Time and manner of payment.
- 102. Master to deliver account of wages.
- 103. Deductions.
- 104. Decision as to wages by shipping master.
- 105. Shipping master may require ship's papers.
- 106. Rates of exchange.

*Advance and Allotment of Wages*

- 107. Advance notes restricted.
- 108. Allotment notes.
- 109. Master to give facilities to seamen for remitting wages.
- 110. Right of suit on allotment notes.

*Rights of Seamen in respect of Wages*

- 111. Right to wages, etc., when to begin.
- 112. Right to recover wages and salvage not to be forfeited.
- 113. Wages not to depend on freight.
- 114. Wages when termination of service by reason of unfitness or loss of ship.
- 115. No wages for refusal to work.
- 116. Forfeiture if illness caused by default.
- 117. Costs of procuring conviction deducted.
- 118. Compensation where improperly discharged.
- 119. Attachment or sale of wages to be invalid.

*Mode of Recovering Wages*

- 120. Seaman may sue for wages before magistrate.
- 121. Restriction on suits for wages before court.
- 122. Master's remedy for wages.

*Power of Court to Rescind Contracts*

- 123. Power of court to rescind contracts.

*Property of Deceased Seamen*

- 124. Property of deceased seamen.
- 125. Delivery of property to shipping master.
- 126. Master accountable to the Minister.
- 127. Recovery of wages of seamen lost with ship.
- 128. Delivery of property of seamen dying in the United Republic.



*Clause*

- 129. Disposition of property by Minister.
- 130. Forgery of documents to obtain property of deceased seamen

*Provisions, Health and Accommodation*

- 131. Complaints as to provisions or water.
- 132. Allowance for short or bad provisions.
- 133. Weights and measures on board.
- 134. Regulations in respect of medical examination, etc.
- 135. Regulations respecting crew accommodation.
- 136. Steamships to carry certificated cooks.
- 137. Regulations respecting scales of medicines.
- 138. Inspection of medical stores and facilities.
- 139. Expenses of medical attendance in cases of injury or illness.
- 140. Carriage of medical practitioners.

*Facilities for Making Complaints*

- 141. Facilities for making complaints.

*Protection of Seamen from Imposition*

- 142. Assignment or sale of salvage invalid.
- 143. Seaman's debts.

*Provisions as to Discipline*

- 144. Misconduct endangering life or ship.
- 145. General offences against discipline.
- 146. Conviction not to affect other remedies.
- 147. Desertion and absence without leave.
- 148. Improper negotiation of advance note.
- 149. Withholding of certificate of discharge.
- 150. False statement as to last ship or name.
- 151. Arrangements as to deserters from foreign ships.
- 152. Entry of offences in official log-book.
- 153. Proof of desertion in proceedings for forfeiture of wages.
- 154. Application of forfeitures.
- 155. Questions of forfeiture decided in suits for wages.
- 156. Deduction of fines from wages.
- 157. Enticing to desert and harbouring deserters.

*Official Log-Books**Clause*

158. Official log-books.
159. Entries in official log-book.
160. Delivery of official log-book to shipping master.
161. Disposition of official log-book on transfer of ownership, etc.
162. Penalty for improperly kept official log-book.

*Return and Delivery of Documents*

163. Lists of crew and particulars.
164. Transfer of ownership or change of employment of ship.
165. Delivery of ships documents by master to consular officer or shipping master.
166. Documents to be handed over on change of master.
167. Returns relating to births and deaths.

*Conflict of Laws*

168. Law of port of registry governs failing this Act.

*Provisions as to Relief and Repatriation of Distressed Seamen and Seamen left behind abroad*

169. Owner to be responsible for repatriating seamen left behind out of the United Republic.
170. Dealing with wages and effects of a seaman who is left behind out of the United Republic.
171. Sanction required for discharge of seamen out of the United Republic.
172. Certificate of discharge abroad.
173. Repatriation of seamen on termination of service at foreign port.
174. Discharge of seamen on change of ownership of ship at a foreign port.
175. Certificate required when a seaman is left behind in a foreign port.
176. Account of wages in case of seamen left behind on ground of unfitness or inability to proceed to sea.
177. Payment of wages of seamen left behind on ground of unfitness or inability to proceed to sea.
178. Application of payments on account of wages of seamen left behind.
179. Relief of distressed seamen.
180. Repayment of expenses of relief and repatriation.

*Clause*

181. Forcing ashore.
182. Proper return port.
183. Provision for return of seamen.
184. Decision of questions as to return of seamen.
185. Assistance to distressed seamen.

## PART IV

## PASSENGER SHIPS

186. Regulations by Minister as to passenger ships.
187. Offences in connexion with passenger ships.
188. Tickets to be issued for passages.

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*Surveyors*

189. Appointment of surveyors.
190. Surveyor's rights of inspection.
191. Record of inspections and certificates.

*\* Application of Safety and Load Line Conventions*

192. Definitions.
- \* 193. Regulations to give effect to the Safety Convention and Load Line Convention.
194. Countries to which Safety or Load Line Conventions apply.

*Inspection for Safety*

195. Initial and subsequent surveys of ships.
196. Surveyor's report to Minister.

*Safety Regulations*

197. Safety Regulations by the Minister.

*Issue of Certificates*

198. Issue of certificates to passenger and cargo ships.
199. Local safety certificates.
200. Posting of certificates.
201. Issue of certificates by other governments.
202. Issue of certificates to ships that are not Tanzanian ships.

*Proceeding to Sea**Clause*

- 203. Production of certificate.
- 204. International voyages from the United Republic by ships to which Safety Convention does not apply.

*General Safety Precautions and Responsibilities*

- 205. Crew to be sufficient and efficient.
- 206. Obligation to notify of hazards to navigation.
- 207. Signals of distress.
- 208. Obligation to assist vessels in distress.

*Prevention of Collisions*

- 209. Method of giving helm orders.
- 210. Observance of collision regulations.
- 211. Duty of vessel to assist the other in case of collision.
- 212. Collisions to be entered in official log-book.
- 213. Report to Minister of accidents to Tanzanian ships.

*Load Lines and Loading*

- 214. Application
- 215. Load Line Rules.
- 216. Marking of deck line and load lines.
- 217. Submersion of load lines.
- 218. Alteration or defacement of marks.
- 219. Issue of Load Line certificates and effect thereof.
- 220. Certificates may be issued by corporation or society for the survey of shipping.
- 221. Duration, renewal and cancellation of certificates.
- 222. Ships not to proceed to sea without certificates.
- 223. Publication of Load Line certificate.
- 224. Insertion of particulars as to load line in agreement with crew.

*Special Provisions as to Load Line Convention Ships Not Registered in the United Republic*

- 225. Load Line certificates of Convention ships not registered in the United Republic.
- 226. Inspection and control of Convention ships not registered in the United Republic.
- 227. Certificates of Convention ships to be produced to customs.

*Loading of Timber*

- 228. Carriage of timber deck cargo.

*Carriage of Bulk Commodities**Clause*

229. Carriage of bulk commodities.

*Dangerous Goods*

230. Regulations to dangerous goods.

*Ships alleged to be unseaworthy*

231. Obligation to secure seaworthiness of ship.  
232. Unseaworthy ships to be detained.  
233. Complaint to be in writing.  
234. If complaint of a trivial nature.  
235. Regulations for protection of workers against accidents while loading or unloading ships.  
236. Marking of heavy packages or objects.

*Special Applications and Exemptions*

237. Special application of Part.  
238. Minister may relieve ships from compliance with this Part.

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WRECKS, SALVAGE AND INVESTIGATION INTO SHIPPING  
CASUALTIES*Receivers of Wreck*

239. General superintendence of Commissioner for Customs.  
240. Fees and expenses of receiver.  
241. Duties of receiver.  
242. Powers of receiver.  
243. Passage over adjoining lands.  
244. Immunity of receiver against certain suits.  
245. Offences.

*Dealing with Wreck*

246. Duty of persons finding wreck in the United Republic.  
247. Procedure in case of concealment of wreck.  
248. Notice of wreck.  
249. Owner may claim wreck within six months.  
250. Sale where for general advantage or owing to nature of goods.

*Unclaimed Wreck*

251. Sale of unclaimed wreck.  
252. Discharge of receiver.

*Removal of Wrecks**Clause*

- 253. Removal of wreck by harbour authority.
- 254. Removal of wreck by Minister.

*Salvage*

- 255. Reasonable salvage payable.

*Procedure in Salvage*

- 256. Disputes as to salvage.
- 257. Cases where receiver determines amount of salvage.
- 258. Costs.
- 259. Valuation of property.
- 260. Seizure and detention of property liable for salvage.
- 261. Sale of detained property by receiver.
- 262. Voluntary agreement to pay salvage.
- 263. Limitation of time for salvage proceedings.

*Shipping Casualties and Accidents on Ships*

- 264. Shipping casualties.
- 265. Appointment of officer to hold preliminary inquiry.

*Formal Investigations into Casualties*

- 266. Commissioner for formal investigations.
- 267. Powers of court.
- 268. Power of court of investigation as to certificates.
- 269. Delivery up and disposition of certificates.
- 270. Re-hearing of investigation.

*Inquiries as to the Competency and Conduct of Officers*

- 271. Inquiry into conduct of certificated officer.

*Removal of Master by Court*

- 272. Removal of master by admiralty court.

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## LIMITATION AND DIVISION OF LIABILITY

*Limitation of Liability*

- 273. Limitation of liability of ship owners.
- 274. Power of court to consolidate claims.
- 275. Extension of limitation of liability.
- 276. Limitation of liability of dock, canal and harbour owners.
- 277. Tonnage of small vessel.
- 278. Calculation of tonnage.

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## THE UNITED REPUBLIC OF TANZANIA



No. 43 OF 1967

I ASSENT

J. K. NYERERI,  
President

27TH NOVEMBER, 1967

**An Act to make provision for the Control, Regulation and Orderly  
Development of Merchant Shipping**

[1ST DECEMBER, 1967]

ENACTED by the Parliament of the United Republic of Tanzania.

## PART I

## PRELIMINARY

1. This Act may be cited as the Merchant Shipping Act, 1967, and shall come into operation on the 1st December, 1967.

Short title,  
commence-  
ment and  
application

2.—(1) In this Act, except where the context otherwise requires—

Interpretation

“apprentice” means an apprentice to the sea service;

“coasting ship” means a ship employed solely in the coasting trade;

“coasting trade” means the carriage of goods or passengers on a sea voyage solely from any place on the coast of the United Republic to any other place or places on the coast of the United Republic or to other places on the coast of Eastern Africa between the limits of Mogadiscio in the north and Ibo in the south;

“collision regulations” means the International Regulations for Preventing Collisions at Sea, 1960, together with such revisions thereto or substitutions therefor as the Minister may, by order in the *Gazette*, declare to be in effect;

“consular officer” means a consular officer of the United Republic and such other officers as are recognized as consular officers by the Government of the United Republic;

“contravention” includes, in relation to any provision, failure to comply with that provision and “contravene”, with its grammatical variations, shall be construed accordingly;

- "customs officer" means an officer of the East African Customs and Excise Department and any person, other than a labourer, for the time being performing duties in relation to the Customs;
- "dangerous goods" or "goods of a dangerous nature" means goods that by reason of their nature, quantity or mode of storage are either singularly or collectively liable to endanger the lives of or hazard the passengers or imperil the ship, and includes all substances specified by the Minister by regulations made pursuant to section 230 to be dangerous goods;
- "deck line" means a mark on each side of a ship indicating the position of the uppermost complete deck as defined by the Load Line Rules;
- "detaining officer" means a person appointed under section 300 (1);
- "foreign-going ship" means a ship employed in voyages beyond the limits of a coasting trade voyage;
- "foreign country" means any country or place other than the United Republic, and "foreign ship" shall be construed accordingly;
- "Government service ship" means a ship or vessel in the police or military service of the United Republic or any other state or used in the customs service of the East African Community;
- "harbour" includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter, or ship and unship goods or passengers;
- "harbour authority" means the body or authority responsible for the provision of harbour services and facilities;
- "legal representative" means any person constituted executor, administrator, or other representative of a deceased person;
- "Load Line Convention" means the International Convention respecting Load Lines 1930 together with such revisions thereto or substitutes therefor as the Minister may, by order in the *Gazette*, declare to be in effect;
- "master" includes every person (except a pilot) having command or charge of a ship, or having command or charge of a seaplane or other craft when it is on or in close proximity to the water;
- "Merchant Shipping Superintendent" means the officer to whom the Minister may delegate his powers under section 312;
- "Minister" means the Minister for the time being responsible for communications;
- "owner" as applied to unregistered vessels means the actual owner and as applied to registered ships means the registered owner;
- "passenger" means any person carried on a ship other than—
- (a) the master or an apprentice or a member of the crew or a person employed or engaged in any capacity on board the ship on the business of the ship;

- (b) a child under one year of age; or
  - (c) a person carried on the ship in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstances which neither the master nor the owner nor the charterer, if any, could have prevented or forestalled;
- "passenger ship" means a ship carrying or capable of carrying more than twelve passengers;
- "pilot" means any person not belonging to a ship who has the conduct thereof;
- "port" means a place, whether proclaimed a harbour or not, and whether natural or artificial, to which ships may resort for shelter or to ship or unship goods or passengers;
- "ports manager" means a port manager appointed to take charge of a harbour;
- "proper officer" means any officer appointed to perform a certain duty or function when engaged on the performance of that duty or function;
- "Register Book" means the book required to be kept by a registrar pursuant to section 7;
- "registrar" means a registrar of ships and a deputy registrar;
- "sailing ship" means a ship having sufficient sail area to be capable of being navigated under sail alone, whether fitted with mechanical means of propulsion or not;
- "seaman" includes every person (except masters, pilots and apprentices duly contracted or indentured and registered) employed or engaged in any capacity on board any ship;
- "ship" includes every description of vessel used in navigation not propelled by oars;
- "shipping master" includes a deputy shipping master;
- "steamship" means any ship propelled by machinery and not coming within the definition of sailing ship;
- "surveyor" means a person appointed a surveyor pursuant to section 75 or section 189;
- "Tanzanian ship" means a ship registered or licensed under the provisions of this Act at a port in the United Republic;
- "vessel" includes any ship or boat, or any other description of vessel used or designed to be used in navigation;
- "wages" includes emoluments;
- "wreck" includes flotsam, jetsam, lagan and derelict found in or on the shores of the sea or of any tidal water, the whole or any portion of a ship lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of such ship, and any portion of the personal property on board such ship when it was lost, stranded, abandoned or in distress.

(2) This Act shall not apply to the regulation of inland water transport.

## PART II

## REGISTERING AND LICENSING

*Registering Ships*

Qualification for owning Tanzanian ships and compulsory registration of ships so owned

3.—(1) A ship shall be deemed to be a Tanzanian ship if, and only if, it is owned wholly by persons qualified to be owners of a Tanzanian ship, namely—

- (a) a person who is resident in the United Republic;
- (b) a body corporate, incorporated under and subject to the laws of the United Republic and having its principal place of business in the United Republic;
- (c) the Government of the United Republic.

(2) Every ship of 25 tons net register tonnage or over that is so owned by persons qualified to be owners of Tanzanian ships shall unless exempted be registered as a Tanzanian ship, but no obligation shall arise under this subsection to register a Government service ship.

Unregistered ships unless exempt from registration not recognized as Tanzanian ships

4.—(1) Notwithstanding that an unregistered ship is owned wholly by persons qualified to be owners of Tanzanian ships, that ship (unless she is exempted from registry or is not required to be registered by this Act) shall not be recognized in the United Republic or for the purposes of this Act as being entitled to the rights and privileges accorded to Tanzanian ships.

(2) Any Tanzanian ship whatever unless exempted from registry under this Act may be detained until the master of the ship, if so required, produces the certificate of registry of the ship.

Exemption from registry

5. The Minister may, by notice published in the *Gazette*, exempt certain classes of ships, not exceeding 125 tons register, to be designated by him, from registry under this Act.

Registrars of Tanzanian ships

6. The Minister may, by notice published in the *Gazette*—

- (a) declare any port in the United Republic to be a port of registry; and
- (b) appoint registrars of Tanzanian ships and deputy registrars at such ports of registry.

*Procedure for Tanzanian Registry*

Register book

7. Every registrar shall keep a book to be called the Register Book, and entries in that book shall be made in accordance with the following provisions—

- (a) the property in a ship shall be divided into 64 shares;