



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: LAW 531

COURSE TITLE: Maritime Law I

MARITIME LAW I

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MODULE 1

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Unit 1 **MARITIME LAW**

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1.0 INTRODUCTION

Shipping of all industries is the most international. Therefore, it has to be viewed against the broad sweep of world developments; after all 75% of the world's surface is covered by vast oceans. Certain elements of what today would be termed private maritime law are seen in the early eastern Mediterranean civilizations of the Phoenicians. A sketchy public law system also emerged in the form of protection by warships of merchant ships from pirates so as to enable

them to continue to trade. In short, public protection of private maritime commerce.

2.0 **COURSE OBJECTIVE**

At the end of this unit, you should be able to:

- Account for the historical background of maritime law
- Differentiate between maritime and admiralty law, though as we know it today, the two terms are used interchangeably;
- Know the maritime jurisdiction of our courts

3.0 **MAIN CONTENT**

3.1 **HISTORICAL BACKGROUND**

Maritime law is an ancient legal system deriving from customs of the early Egyptians, Phoenicians and Greeks who carried an extensive commerce in the Mediterranean Sea. Special tribunals were set up in the Mediterranean port towns to judge disputes arising among seafarers. This activity led to the recording of individual judgments and the codification of customary rules by which courts become bound

Later supremacy passed to the Greeks, and a law governing maritime law matters began to develop. This covered areas such as:

- The treatment of shipwrecked sailors;
- The jurisdiction of those courts dealing with maritime (admiralty) matters;
- The settlement of disputes arising under maritime contract;
- The role of prize courts, namely those to whom recourse could be made in the event that persons felt they had been deprived improperly of their vessels.

In time, the Island of Rhodes became the main maritime power in the Eastern Mediterranean. The Island of Rhodes evolved the first comprehensive code

which not only regulated commerce in the region for a long time but was also the foundation of the law of the sea for a very long time. It provided for exclusive jurisdiction over its own and adjacent seas. The Island of Rhodes Code was a codification of various ancient legal principles regarding navigation and commerce.

Contemporary maritime law is a mixture of ancient doctrines and new laws both national and international. Among the traditional principles of international maritime still in use today are marine insurance, general average and salvage. The welfare of the seaman, the ancient concept of maintenance and cure is also still in use. The reason for the continuation in the use of ancient principles is that the basic hazard of seafaring has not changed. In the last decades, however, naval architecture and cargo handling have changed in significant ways. The extensive use of crude oil carriers as well as carriers of liquefied natural gas has posed new hazards and new questions for liability for oil pollution and damage to the marine ecology and the shorelines.

3.2 Roman Maritime Policy

Much of it was not codified, although based on the Rhodian law. The Roman maritime law covered:

- a. **The Sea:-** It should be open, but as it was under the strict control of Romans;
- b. **The Ship:** - Ships were classified. The law dealt with the rights, obligations of those connected with the ship such as the owner, the master crew, pilot, passengers, shippers
- c. **The Cargo**
- d. **Responsibilities of those in shipping:-** which covered the rules governing chartering, the implied authority of the master, to effect urgent repairs, purchase equipment etc

- e. **Settlement of dispute:** Disputes arising under any of the above heads were subject to established rules of procedure and jurisdiction; but different procedure applied depending on whether the acts or injuries were internal; namely committed or suffered while on board, or whether they arose from external events such as collision or damage by others.

Thus, an early system of law covering maritime affairs developed.

The eventual breakdown and disintegration of the Roman Empire, the subsequent period of lawlessness and confrontation between island and Christianity, gave way to another formative period in the history of maritime affairs.

The growth of the Mediterranean littoral (coastal) states meant that there was a need for new or defined maritime laws and these were supplied by a number of city states such as Oleron (a small island off La Rochelle; in France – an important trading centre, Venice, Amalfi, Trani etc.

All these trading centers developed their own codified maritime laws; these states made a contribution towards the development of maritime law as we know it today.

3.3 Growth of English Maritime Power

It was King Henry VII of England who first introduced a flag-discriminatory law in favour of English vessels. However, the real growth of British maritime power stemmed from the strengthening of the Navigation Acts in 1651 under Cromwell, and their subsequent development and enforcement.

The effect was that the significantly expanding trade to and from British colonies had to be carried in British ships. No foreign built ships were to be used. Commodities of all sorts had to be enumerated and their carriage regulated and controlled so that no other nations could participate in their

carriage. Additionally, British ship owners were given special grants for the carriage of specified exports such as agricultural products.

After the restoration of the English monarchy in 1660, the laws were further strengthened in favour of British ships. For example, colonial ships had to be routed through English ports where a levy was imposed.

The Navigation Act also required that all British extensive possessions (i.e. newly acquired colonies such as Canada, India, Australia, New Zealand) had to be served by British ships. As a result of this, the fleet expanded and this continued until 1918.

SELF ASSESSMENT EXERCISE 1

Give a historical background of the development of the maritime industry.

3.4 Difference between Maritime and Admiralty Law

The terms *admiralty* and *maritime law* are sometimes used interchangeably, but *admiralty* originally referred to a specific court in England and the American colonies that had jurisdiction over torts and contracts on the high seas, whereas substantive maritime law developed through the expansion of admiralty court jurisdiction to include all activities on the high seas and similar activities on Navigable waters

Because water commerce and navigation often involve foreign nations, much of the U.S. maritime law has evolved in concert with the maritime laws of other countries. The federal statutes that address maritime issues are often customized U.S. versions of the convention resolutions or treaties of international maritime law. The United Nations organizes and prepares these conventions and treaties through branches such as the International Maritime Organization and the

International Labor Organization, which prepares conventions on the health, safety, and well-being of maritime workers.

The substance of maritime law considers the dangerous conditions and unique conflicts involved in navigation and water commerce. Sailors are especially vulnerable to injury and sickness owing to a variety of conditions, such as drastic changes in climate, constant peril, hard labor, and loneliness. Under the Shipowners' Liability Convention, a shipowner may be liable for the maintenance and cure of sailors injured on ship and for injuries occurring on land. Courts have construed accidents occurring during leave as being the responsibility of the shipowner because sailors need land visits in order to endure the long hours of water transportation.

Admiralty and maritime matters will always deserve laws carefully crafted to suit the complexity and urgency of maritime endeavors. The international nature of high-seas navigation and its attendant perils demand no less. Federal, state, and local control of navigable waters can affect everyone from the largest charter party to a private boat owner.

Another way to understand admiralty law -- it is the command enforcement necessary to maintain the good order and discipline on a ship, especially as a ship was operated in the mid-1700's. As the availability of crewmembers was a finite problem in the middle of the ocean, the enforcement of ship law had more to do with getting wayward crewmembers back into a state of obedience and usefulness, rather than as the imposition of lawful punishments -- the latter being the purpose of law enforcement on the land.

Maritime Law is that system of law that particularly relates to commerce and navigation. You do not have to be on a ship in the middle of the sea to be under Admiralty Jurisdiction. This jurisdiction can attach merely because the subject

matter falls within the scope of Maritime Law -- and, bills, notes, cheques and credits are within the scope of Maritime Law.

Admiralty Law grew and developed from the harsh realities and expedient measures required to survive at sea. It has very extensive jurisdiction of maritime cases, both civil and criminal. Because of its genesis, it contains a harsh set of rules and procedures where there is no right to trial by jury, no right to privacy, etc. In other words, there are no rights under this jurisdiction -- only privileges granted by the Captain of the maritime voyage.

3.5 **Maritime Jurisdiction**

Many of the peculiarities of the admiralty jurisdiction have been removed by legislation and court decisions. What remains is not simply the legacy of long history and tradition but a function of the specific needs of the maritime industry.

Actions in maritime are of two types:

- a. In personam
- b. In rem

Determining Maritime Jurisdiction

a. **Water or vessel test**

For a matter to be maritime, the waters where it takes place must be of certain type. High seas and harbours communicating with them are included but other bodies of water may or may not. For example, in the United States, the maritime jurisdiction extend to all waters, with or without tides, salt or fresh, natural or artificial, which are navigable in interstate or foreign water commerce, without regard as to whether the particular body of water is entirely within a state, and whether or not the transaction in question is confined to a single state. It follows that small bodies of water wholly within a state and not navigable in interstate or

foreign commerce do not provide maritime jurisdiction. The great lakes and Mississippi, on the other hand, are clearly within maritime jurisdiction

2. **Activity or type of lawsuit test**

In the United States, the empowerment of the courts to draw upon and administer maritime law derives from the language of the Constitution which extends the judicial power of the United States to ‘all cases of admiralty or maritime jurisdiction’.....see Section 9 of the Judiciary Act of 1789. which provides that : ‘.....the district courts.....shall also have exclusive cognizance of all civil causes of admiralty and maritime jurisdiction...saving to suitors, in all cases, the right to a common law remedy, where the common law is competent to give it.....’

The jurisdictional question, however, has become a little more complicated than Congress originally intended it to be. As of 1966, in order to invoke constitutional admiralty jurisdiction, a complaint must be filed which is formally indistinguishable from the ordinary civil complaint. When admiralty jurisdictions are invoked however, the consolidated rules still make provisions for differential treatment and handling of certain matters previously existing only in admiralty.

The following causes fall under maritime jurisdiction:

- a. Suit for contract for the carriage of goods and passengers;
- b. For repairs and supplies furnished to vessels as well as services such as towage, pilotage and wharfage;
- c. For the chartering of ships;
- d. For the services of seamen;
- e. For recovery of indemnity or premium on marine yacht insurance policies;

- f. Suits in tort for collision damage, or for any physical damage to ships or cargoes on navigable waters;
- g. For any damage caused by a vessel;
- h. For personal injuries to seamen and passengers while aboard a vessel on navigable waters.

However, suits for the sale and building of vessels, for the payment of a fee for procuring a charter; for services to a vessel out of navigation or breach of any agreement to procure insurance on a cargo do not fall under maritime jurisdiction.

SELF ASSESSMENT EXERCISE 2

Differentiate between maritime and admiralty law

3.6 Maritime jurisdiction in Nigeria.

The Federal High Court Act 1973 that established the Federal High Court vested admiralty jurisdiction in the court but failed to define or state the extent of admiralty jurisdiction. The provisions of the Act with respect to admiralty jurisdiction were reproduced in s.249 of the 1979 Constitution without any attempt at providing a definition. The constitution only gave jurisdiction to the Federal High Court in civil cases and matters of admiralty jurisdiction.

The problem arising from this is that the scope of admiralty jurisdiction of the Federal High Court was not well defined. The courts had recourse to the Administration of Justice Act 1956 of England (which came into force in 1963) where the subject matter of admiralty jurisdiction was clearly spelt out. The subject matter of admiralty jurisdiction set out in the Act however related to ship and shipping.

By section 251(i) (g) of the 1999 Constitution, Section 19 of Admiralty Jurisdiction Act and sections 7 and 8 of the Federal High Court (as amended by section 230 Act No. 107 of 1993) confer on the Federal High Court, exclusive jurisdiction in admiralty causes or matters whether civil or criminal including shipping and navigation in the Rivers Niger, Benue and their affluent and international inland waters.....and carriage by sea. State High Courts lack jurisdiction to entertain admiralty matters.

There is only one Federal High Court in Nigeria, with its jurisdiction spreading throughout Nigeria and although it has various judicial divisions for convenience, admiralty jurisdiction may be filed in any judicial divisions of the court, in which the ship or other property is located.

4.0 **CONCLUSION**

From the historical background, we can see that maritime business is one of the oldest in the world. Historically, it constitutes a major source of political power and territorial influence, because in times past, strength of a state was considered in its influence and control over its waters. Maritime is also all embracing as it covers matters relating to navigable waters, such as the sea, ocean or the navigation of commerce connected therewith.

5.0 **SUMMARY**

We have considered the evolution of the maritime world, how the courts came to administer maritime, and here in Nigeria, the jurisdiction of the courts over maritime matters.

6.0 **TUTOR MARKED ASSIGNMENT**

1. Discuss the effect of the Navigation Act of 1651 on the growth of maritime law in England.

2. Explain the exclusive jurisdiction of the Federal High Court in admiralty matters

7.0 FURTHER READING/REFERNCES

Bruce Farthing: International Shipping, 2nd Edition, Lloyd's of London Press 1993.

MODULE 1

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UNIT 2: **CARRIAGE OF GOODS BY SEA**

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 - 3.1 Voyage Charter party
 - 3.2 Terms Peculiar to Voyage Charterparty
 - 3.3 Time Charterparty
 - 3.4 Clauses in a Time Charterparty
 - 3.5 Demise Charterparty
 - 3.6 Distinction between Time and Demise Charterparty
 - 3.7 Contract of Affreightment
- 4.0 CONCLUSION
- 5.0 SUMMARY
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1.0 **INTRODUCTION**

The bulk of maritime commercial activity involves carriage of goods. The most important document used in this type of transaction is the bill of lading. There are two main types of contract which are in wide use when we speak about transportation of goods by sea; a charter party contract and a bill of lading contract.

A charter party is a contract, a private contract between two principal parties. A Bill of Lading is the best available evidence of the contract of carriage between the shipper and the carrier, and contains the contract when it reaches the hands, properly and unconditionally, of an innocent third party.

Thus, a charter party is a private agreement between two parties, individuals or corporate. Like any other contract, only those who entered into it can sue or be sued upon it. The person entitled to use the ship is the charterer and the ship is said to be under charter. Charterparties can be divided into three:

2.0 **COURSE OBJECTIVES**

Student should, at the end of this unit, be able to discuss the different types of Charterparty, the peculiarities of each of the Charterparty discussed; the distinctions between each of them; and more importantly, the clauses peculiar to each in the construction of the Charterparty agreement between the shipper and the cargo owners.

3.1 ***Voyage Charterparty:***

The voyage charter is one of the oldest forms of contract for the carriage of goods. In a voyage (trip) Charterparty, freight is paid by the charterer. The amount of freight payable can be agreed as a lump sum, but more usually depends on the quantity of cargo carried. It does not depend on the time the voyage takes. The same principle holds good for the consecutive voyage Charterparty, except that there freight is paid for a series of consecutive voyages.

The charterer pays the ship owner freight; the basis on which freight is calculated being independent of the time the voyage (or series of consecutive voyages) actually takes. Thus, the ship owner bears the risk of any delay. If the voyage takes longer than expected, the ship owner loses out: he cannot claim any extra freight from the charterer to compensate for the delay; nor can he make use of the vessel for the period to earn freight elsewhere.

3.2 Terms peculiar to voyage charters

Although many of the terms of voyage charters are similar, a number are unique to each:

- a. Voyage charters make provisions for freight , the amount of which usually depends on the amount of cargo loaded;
- b. All voyage charter parties have clauses stipulating how much cargo the charterer must load and how quickly it must be loaded and discharged
- c. To encourage as little delay as possible, all voyage charter parties have laytime and demurrage clauses, which are intended to hurry up the cargo handling process;

Laytime is the time in which (after a valid notice of readiness has been tendered) the charterer is allowed to load and/or discharge. If he exceeds the laytime allowed, demurrage becomes payable at an agreed rate.

Demurrage can be technically defined as liquidated damages for the charterer's breach of contract in not completing the handling the cargo within the laytime.

SELF ASSESSMENT EXERCISE

Discuss the various terms peculiar to a voyage charter

3.3 TIME CHARTER

A time charter party is a contract (between ship owners and the charterers) for the hire of a ship owned by the ship owners, and the services of its crew for a period of time. The contract relates typically begins with the date of the Charterparty, the names and domicile of the contracting parties, the name, present position, the description and condition of the vessel.

The charterers will have the use of the vessel for an agreed period, which is typically fixed as a number of calendar months. It is obviously difficult for the charterers to be able to predict exactly when the last voyage will be completed, so a margin is usually agreed at charterer's option to allow for the final voyage to be completed.

The consideration moving from the charterer is the payment of '*hire*'. There will be a hire clause including a withdrawal provision conferring upon the owners the right to withdraw the vessel for non-payment of hire. Hire is paid at the contract rate for the period of the Charterparty, and does not depend on the number of voyages made, or the tonnage of cargo carried. It follows that it is in the interests of the charterers to hurry, because they pay hire at the same rate however much, or little use, they make of the vessel over the charter party period. It also follows that it is the charter party who bears the risk of any delay: In other words, delay costs the charterers money, because they continue to pay hire, whereas the ship owners are entitled to the same rate of hire, however much the vessel is delayed. Although the master and crew are engaged by the owners in a time charter, the master is under the orders of the charterers and must go where the charterers direct.

3.4 Clauses in a time charter

Although many time clauses are similar to those found in voyage, because in a time charter party, the charterers bear the risk of delay, there are substantial differences between the two types of charter.

- a. The time charter party always contains stipulations as to the speed of the vessel whereas voyage Charterparties need not and rarely do. The speed of the vessel is of importance to time charterers because on it directly depends the number of voyages they can complete within the period.

- b. Since under a time charter it is in the interest of the charterer to hurry up, there is no need for laytime and demurrage provisions. On the other hand, however, there will be an off-hire clause to prevent hire continuing to be payable when the ship is unusable to the charterer e.g. due to repairs

SELF ASSESSMENT EXERCISE 2

Explain the nature of a time Charterparty between a shipper and a cargo owner.

3.5 Demise Charterparties

This is in many respects similar to time Charterparties. Demise Charterparty are also for a period, the hire payable depending upon the period, rather than the number of voyages made, or the tonnage of cargo carried.

The time Charterparty is the more modern form of agreement, the origins of the demise charter pre-dating those of time charter parties. Today the Charterparty by demise are rarely used for the general carriage of freight. Charters by demise are usually used for short term hire of passenger vessels. Recently however, longer time charter parties have become more common again, especially in the oil tanker trade.

3.6 Distinction between Time and Demise Charters

Like time charter parties, demise charters are also period charters, and many terms are equally appropriate to demise charters.

- The main distinction between the two is that under a time charter party, the ship owner provides not only the vessel itself, but also the services of the master and crew. Under a demise charter, the services of master and crew are not provided.

- Under time charter, although the master is under the directions of the charterer, the owners technically retain possession of the vessel. Demise charterers on the other hand, take full possession of the vessel.
- Under a time Charterparty, the owners remain responsible for the maintenance of the vessel, and there is also typically an off-hire clause. In a demise Charterparty, the charterers are responsible for its maintenance and there is no off-hire clause. Demise charterers are also required to take out hull insurance of the vessel, whereas time charterers are not.
- Specific performance can be awarded to enforce demise Charterparty; demise Charterparty may create the equivalent of a proprietary interest on the vessel. By contrast, specific performance is not available to enforce a time Charterparty. Time Charterparty takes effect only as contracts between the parties to the Charterparty and do not give the Charterparty the equivalent of a proprietary interest in the vessel.

3.6 *Contract of Affreightment*

The contract of affreightment (also known as a quantity contract or volume contract) is a variation on the voyage Charterparty. The Contract of affreightment arises where an interested party e.g. a pool of tonnage or an operator of a time-chartered vessel undertakes to transport a given quantity of some specified goods or general goods from place to place over an agreed period of time and on basic terms and conditions. The contract specifies only a quantity of cargo to be carried, and does not specify a particular vessel. Freight is usually agreed at the outset, so that risk of delay is on the shipowner. Usually a number of shipments are intended over a long period. A voyage Charterparty is incorporated into the contract of affreightment, the voyage Charterparty governing each individual voyage. How the task is managed is otherwise left to the carrier, the contract simply providing for the movement of the goods, the

quantity to be shipped during any set period. A carrier would be enumerated on a volume or tonnage basis, he, in turn, arranging employment of whatever ships he wishes as required.

4.0 **CONCLUSION**

The Charterparty is normally used by commercial concerns that need the whole ship. Although voyage charterers may carry their own cargo, time or demise charterers will often be trading the vessel in order to carry cargo belonging to others. The parties to the Charterparty are the charterer and shipowner. The Bill of Lading merely records a contract of carriage of goods made between a carrier and a shipper.

5.0 **SUMMARY**

We have considered the principal types of contract applicable under a contract of carriage of goods by sea; we also tried to distinguish between these type of contract so that a student is able to identify the particular Charterparty.

6.0 **TUTOR MARKED ASSIGNMENT**

- 1.** Discuss the following types of Charterparty contract, bringing out the distinctions between each of them:
 - A. Time Charterparty
 - B. Contract of Affreightment.

7.0 **FURTHER READING/REFERENCES**

- 1. Ahmed Tijjani Ramallan and Solomon Jatau:** Shipping and Maritime Operations: Mayee Press Limited (2004)
- 2. Christopher Hill:** Maritime Law – 5th Edition Lloyds Practical Shipping Guides
- 3. William V. Packard:** Sea-Trading, Volume 3 Fair Play Publications (1986)

MODULE 1

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UNIT 3 **BILL OF LADING**

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 - 3.1 Definition
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 - 3.3 The Bill of Lading under The Hague, Hague Visby and Hamburg Rules
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- 7.0 FURTHER READING/REFERENCES

1.0 **INTRODUCTION**

A Bill of Lading is literally a document that records certain goods as having been loaded on board a ship. If the carrier fails to deliver the stated quantity, there will be evidence to indicate that loss or damage occurred while the goods were in transit. In summary, a Bill of Lading issued by a carrier which acknowledges the receipt of cargo, containing terms of carriage and may operate as a document of title.

COURSE OBJECTIVE

At the end of this course, the student should have a good understanding of the importance of the Bill of Lading; the background development of the Bill, the types of Bill that we have.

3.0 MAIN CONTENT

3.1 Definition

The Halsbury's Laws of England at paragraph 1532 defines a bill of lading as:

'A document signed by the owner, or by the master or agent of the shipowner, which states that certain specified goods have been shipped in a particular ship, and which purports to set out the terms on which the goods have been delivered to and received by the ship for carriage'.

A bill of lading issued by the ship owner's agent in the absence of any contract of carriage is a nullity. The effect of a bill of lading depends on the circumstances of each particular case, of which the most important is the position of the shipper and of the holder.

It is also defined as a document issued by a carrier to a shipper, acknowledging that specific goods have been received on board as cargo for conveyance to a named place for delivery to the consignee who is usually identified. A thorough bill of lading involves the use of at least two different modes of transport from road, rail, air and sea. The term derives from the verb 'to lade' which means to load a cargo onto a ship or other form of transportation.

In the Nigerian case of **F.I. Onwadike & Co. Ltd. V. Brawal Shipping Nig. Ltd. & Ors. (1995) 5 NSC 407 at 419**, the Court of Appeal described the bill of lading as:

a document signed by the master of the ship, or by his agent and it is given to the person shipping the goods on board the vessel.....it is evidence of a contract between the shippers and the shipowner on the one other hand between the ship owners and the consignees or endorsees of the goods in the bill’.

There seems to be no complete legislative definition of a Bill of Lading. The Hague and Hague Visby Rules do not contain a definition, nor do the Carriage of Goods by Sea Act 1971, the Bill of Lading Act 1855.

The Carriage of Goods by Sea Act 1992, S.1(2) defines the bill (for the purposes of the Act) in a negative way by excluding references to a document, which is incapable of transfer either by endorsement, but does include references to a received for shipment bill.

Article 1(7) United Convention on the Carriage of Goods by Sea 1978 (Hamburg Rules) defines a Bill of Lading for the purpose of the Rules to mean

A document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier; and by which the carrier undertakes to deliver the goods the goods against surrender of the document. A provision in the document that the goods are to be delivered to a named person, or to order, or to bearer, constitutes such an undertaken.

3.1 Background Development

Historical development

Bills of lading have been known from at least the thirteenth century. At those times shippers (usually the owners of the goods) as a rule accompanied their

cargoes on the voyage to destination and bill of lading served only as an invoice of the goods shipped. Later, in the sixteenth and seventeenth centuries, when larger ships has begun to carry varied goods belonging to several shippers, this practice gradually frizzled out and it became the custom to incorporate the terms of the contract of carriage into bill of lading.

Finally to meet requirement of the businessmen who wished to sell the goods before the vessel reached its destination bill of lading extended its status to a document of title. Thus at the end of the eighteenth century, bill of lading was characterized as:

...the written evidence of a contract of the carriage and delivery of goods sent by sea for a certain freight. The contract in legal language is a contract of bailment; in the usual form of the contract, the undertaking is to deliver to the order or assigns of the shipper. By the delivery on board, the ship master acquires a special property to support that possession which he holds in the right of another, and to enable him to perform his undertaking. The general property remains with the shipper of the goods until he has disposed of it by some act sufficient in law to transfer property. The endorsement of the bill of lading is simply a direction of the delivery of the goods. When this endorsement is in blank, the holder of the bill of lading may receive the goods, and his receipt will discharge the ship-master, but the holder of the bill of lading may receive the goods and his receipt will discharge the shipmaster; but the holder of the bill, if it came into his hands casually, without any just title, can acquire no property in the goods.

In those times, carriage of goods by sea was in bigger part performed by the common carriers who agrees to carry the goods of any person who choose to employ him. A common carrier was strictly liable to the goods' owner in the

same way as a bailee for reward, i.e. he was to deliver the goods at all events, subject only to the acts of God and the King's enemies.

With the rapid growth of international trade and significant influence on the development of contract of laissez-faire ideology in the first half of the nineteenth century, the shipowners were able to take advantage of their superior bargaining power by introducing clauses into the contract of carriage, which to an increasing extent, excluded their common law liability. Thus, the ship owners to the bigger or smaller extent lost characteristic of a common carriers and became private carriers.

The central function of a Bill of Lading as a receipt is still vital today and all Bills of Lading contain spaces on their faces for details to be entered. If the carrier fails to deliver the stated quantity, there will be evidence to indicate that loss or damage occurred. However, the express terms of carriage had been agreed between the parties, the courts would imply basic obligations such as Act of God, Queen's enemies, or inherent vice. Gradually, carriers began to include express terms on the bill itself. Today, these are merely printed on the reverse of the bill, but there are still some important clauses.

The Bill of Lading is normally described as containing evidence about the terms of the contract of carriage, rather than being the whole contract. This is because the bill is nearly always issued after goods have been received or loaded and there must have been a contract entered into before this, which the bill may later record. The freedom allowed to carrier to include exemption clauses in Bills of Lading led directly to the enactment of the *International Convention for the Unification of Certain Rules Relating to Bill of Lading 1924* (Hague Rules); and its protocol of 1968 (hereinafter the amended Hague Rules or Hague Visby Rules).

Early Bills of Lading did not need to be negotiable in any sense as the shipper would only want the carrier to deliver according to its instructions e.g. to an agent at the port of discharge.

Under the Carriage of Goods by Sea Act 1924, the lawful holder of a bill will have title to sue the carrier under the contract of carriage; even though it would not normally be. The Bill of Lading is a document of great importance in international trade

3.2 The Bill of Lading under the Hague, Hague Visby and Hamburg Rules

In the 19th century, carriers began to make more use of the Bill of Lading as evidence of the contract of carriage. However, cargo owners found that they were holding Bills of Lading subject to English laws and jurisdiction, in which the carrier might exclude all liability for unseaworthiness, or for crew negligence. This is because the English courts were willing to apply *laissez faire* notions of contract that allowed ocean carriers to exclude many of the basic obligations that would have been implied at common law.

The perceived injustice created by this led a number of cargo importing countries to enact a legislation creating basic minimum obligations on the carrier and restricting their ability to exclude liabilities. The U.S. Harter Act 1893 was the most influential of the national legislation and was followed in a number of other states. Carriers realized that they would not be able to insist on wide exemptions in many trades and governments recognized that a degree of international uniformity was to be desired. Accordingly, the Maritime Law Committee of the International Law Association produced a model set of Rules at the Hague in 1921.

In general terms, the Hague Rules followed many principles pioneered by the Harter Act 1893. The carrier was given obligations to take care of cargo during

the carriage and was not entitled to exclude liability e.g. for stowage. In return, carriers were given

3.6 Legal Character of a Bill of Lading

The traditional view about the particular nature of a Bill of Lading has been explained by Mustill L.J. in *The Delfin* (1990) 1 *Lloyds' Report* 252. He stated that when the expression 'document of title' is applied to a bill of lading:

“It does not in this context bear its ordinary meaning. It signifies that in addition to its other characteristics as a receipt for the goods and evidence of the contract of carriage between the shipper and the ship owner, the Bill of Lading fulfills two other functions – as a symbol of constructive possession of the goods which can transfer constructive possession by endorsement and transfer.....2. It is a document which although not itself capable of directly transferring the property in goods.....by mere endorsement and delivery nevertheless is capable of being part of the means by which property is passed.

The Bill of Lading: a receipt, an evidence of contract and a document of title

A. As a Receipt

When goods have been loaded on board of vessel and signed bill of lading handed by the master to the shipper, such bill of lading begins its existence in a role of master's receipt for shipper's goods and not a contract as between the shipper and the shipowner.

It is a receipt for the goods, stating the terms on which they were delivered to and received by the ship, and the excellent evidence of those terms, but it not a contract. That has been made before the bill of lading was given.

It is an acknowledgement of the fact that the goods shipped had been received by the shipowner or carrier but where it is signed, on behalf of the shipowner by his agent or master, it becomes conclusive evidence of the fact that the goods contained were shipped only against the person signing it. Consequently, a shipowner who delivers goods to consignee without production of the bill of lading does so at his peril even if he does so with an indemnity agreement or letters of indemnity with or from the purchasers and their bankers – **The Settin (1889) 14 P.D. 142.**

This statement was further explained in **S.S. Ardennes (Cargo Owners) v. S.S. Ardennes (Owners) (1951) 1 K.B. 55** where, in breach of his verbal promise, the ship owner deviated from the route to London and first called at Antwerp but later, in reply to the shipper's claim for damages, contended that on the terms of bill of lading evidence of any other bargain or promise was not admissible. Lord Godard C.J in his judgment said:

The contract has come into existence before the bill of lading was signed; the latter is signed by one party only, and handed by him to the shipper usually after the goods have been put on board. No doubt, if the shipper finds that the bills contains terms with which he is not content, or does not contain some term for which he has stipulated, he might, if there were time, demand his goods back; but he is not, in my opinion, for that reason, prevented from giving evidence that there was in fact a contract entered into before the bill of lading was signed different from that which is found in the bill of lading or containing some additional terms. He is no party to the preparation of the bill of lading; nor does he sign it.....therefore, in my opinion evidence as to the true contract is admissible'

b. **Document of title**

As well as being a receipt, the bill of lading, may also act as a document of title. When issuing a bill of lading, the shipowner undertakes to the consignor to deliver the goods on presentation of an original bill of lading at the port of discharge. This undertaking is transferable to subsequent holders of the bill of lading without any further involvement of the shipowner. The use of the words 'to order' or 'to assigns' indicates the transferability of this undertaking, which is what gives the document its character as a document of title.

However, under the common law, bill of lading is transferable but not negotiable in a way as bill of exchange is. When transferred, the bill of lading operates to transfer right of possession of the goods it represents but not necessarily the ownership in the goods, which depends upon the terms of the contracts of sale and/or carriage and the intention of the parties. As a document of title, the bill of lading is unique among transport documents, enabling merchants to trade the goods, by trading the documents. Section 1 of the UK Bills of Lading Act 1855 which has been replaced by UK COGSA 1992 allows every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods mentioned passes upon or by reason of such consignment or endorsement, to have transferred to him all rights of suit and be subject to same liabilities in respect of the goods as if the bill of lading contract had been made with himself.

c. Evidence of Contract of Carriage

Being a receipt as between the carrier and the shipper, at the beginning of a maritime adventure, the bill of lading may later evidence a contract between the carrier and the person taking delivery of the goods for safe custody of the cargo. Though not in itself the contract between the shipowner and the shipper of the goods, the bill of lading can be a good evidence of the terms of contract. See *The Future express (1992) 2 Lloyd's 542*. The contract conditions in small prints at

the back of a bill of lading are construed as the terms agreed to between the shipper of the goods and the shipowner and can either be relied on by the shipper (in an action for loss or damage to his goods) to show that the ship-owner has defaulted, or relied on by the shipowner to show that he has performed his obligation or that he is not liable. See **Allied Trading Company Limited v. G.B. N Line (1985) 2 NSC 348**

3.7 **Types of Bills of Lading**

There are many documents which use the description Bill of Lading but which preface it by such words such as “ocean”, ‘Liner, or “straight.

Liner Bill of Lading:

This is a bill issued by a shipping line that usually offers a regular service, with fixed loading dates at particular ports of call;

Marine Bill of Lading or ocean Bill of Lading

This refers to a document covering the carriage of goods by sea and not by any other mode of carriage. It may be referred to on its fact as a ‘port to port Bill of Lading, indicating the general period of responsibility of the carrier.

Thorough Bill of Lading-

This has been in use since the 19th century and usually refers to a document recording transport by more than one carrier. It is normally used where there is more than one sea carrier.

Other types of bills include:

a. Straight bill of lading

This bill states that the goods are consigned to a specified person and it not negotiable free from existing equities .e. any endorsee acquires no better rights than those held by the endorser. So, if for instance, the carrier or another holds a

lien over the goods as security for unpaid debts, the endorsee is bound by the lien. Although if the endorsee wrongfully failed to disclose the charge, the endorsee will have a right to claim damages for failing to transfer an unencumbered title. This bill uses express words to make the bill negotiable i.e. it states that delivery is to be made to the further order of the consignee using words such as 'delivery to A Ltd or to orders or assigns' Consequently, it can be endorsed by A Ltd or the right to take delivery can be transferred by physical delivery of all the bill accompanied by adequate evidence of A Ltd's intention to transfer. If no transferee is named, the endorsement is called 'an endorsement in blank' and goods specified in the bill are deliverable to bearer – Sewell v. Burdick (1884) 10 AC 74 at 83

b. Bearer bill of lading

This bill states that delivery shall be made to whosoever holds the bill. Such bill may be created explicitly or it is an order bill that fails to nominate the consignee whether in its original form or through an endorsement in blank. A bearer bill can be negotiated by physical delivery.

c. Surrender bill of lading

Under a term import documentary credit, the bank releases the documents on receipt from the negotiating bank but the importer does not pay the bank until the maturity of the draft under the relative credit. This direct liability is called surrender bill of lading i.e. when we hand over the bill of lading we surrender title to the goods and all our power of sale over the goods.

Others include a sea or air waybill which is a non-negotiable receipt issued by the carrier. It is most common in the container trade either where the cargo is likely to arrive before the formal documents or where the shipper does not insist on separate bills for every item of cargo carried. (e.g. because this is one of a series of loads being delivered to the same consignee). Delivery is made to the

consignee who identifies himself. It is customary in transactions where the shipper and consignee is the same person in law making the rigid production of documents unnecessary.

A straight bill of lading or sea/air way bill is not documents that can convey title to the goods they represent. They do no more than require delivery of the goods to the named consignee and (subject to the shipper's ability to redirect the goods) to no other. This differs from an 'order' or 'bearer' bill of lading which are possessory title documents and negotiable. i.e. they can be endorsed and so transfer the right to take delivery to the last endorsee.

SELF ASSESSMENT EXERCISE

A straight bill of lading is not a document that can convey title to the goods they represent. Discuss.

Blank Bill of lading

This does not name the consignee but makes the goods deliverable to bearer or order or assigns. It may be transferred by delivery without endorsement. In **NNSL v. Owners of MV Albion 13 NSC 200 206**, the Court of Appeal stated that the words 'blank' is used in two senses : that is, so long as the goods are delivered to a name left blank.....or the endorsement is blank. By 'To a name left in blank' is meant that the name of the consignee is not inserted in the bill of lading. In that case, the holder may fill the blank in the bill against the consignee. It is akin to issuing a blank cheque where the holder is at liberty to make necessary entries'.

3.4 Electronic Bills

A number of liner companies pioneered use of computers in order to reduce or eliminate the need for documents such as Bills of Ladings. It operates like

a bill, but the system does not really require the production of any document at all. It is possible for a shipper connected to a computer to receive all the information it needs via satellite, or telephone lines. Most combined transport operators now operate their own cargo by computer.

Note that there is a difference between a paperless electronic bill and the use of electronic means to enable a paper bill of lading to be more effectively delivered to shippers.

On legal implications of paperless shipping transactions involving the transmission of data by electronic means, problems have arisen concerning the application to such transactions of Conventions and Statutes that were specifically designed for the paper Bill of Lading.

The drafters of The Hague and Hague Visby did not really have in mind the problems of paperless carriage of goods and the Rule might only apply when there is in existence the physical document. **Article 1(b) of the Hague Rules** refers to a Bill of Lading or a similar document of title. The **Hamburg Rules 1978 Article 1(7)** also requires a document, although **Article 14(3)** allows a signature to be made by electronic means. Also, the Multimodal Convention 1980 Article 1(4) refers to a (multimodal transport) document, although Article 5(4) sees to envisage the production on computer of a record containing details such as the weight and conditions of the goods.

In 1990, the Comité Maritime International agreed a set of Voluntary Rules for Electronic Bills of Lading. The basic scheme is for a shipper to give irrevocable instructions to a carrier to hold goods for the disposition of a named consignee, who would then be entitled to receive the goods at the port

of destination, solely on the basis of the instruction and without the needs to produce any document.

The Rules for Electronic Bill of Lading allow for successive transfers while the goods are in transit. Security is achieved through the issuing to each consignee of a unique “private key”, putting the holder in the same position as if it had possession of original bills. The CMI rules are consistent with various international standards.

So far as the title to sue in English law is concerned, the Bill of Lading Act 1855 requires there to be a transferable Bill of Lading in order for a third party such as a consignee to be able to sue the carrier. Under the Carriage of Goods by Sea Act 1924, right of suit has been extended to lawful holders of a variety of documents including Bill of Lading.

3.5 Standard Bill of Lading

The earliest Bill of Lading seems to have consisted of a single sheet of paper with details about the cargo and terms all contained together on one side. There are still Bills of Lading in use today which are printed on one side only. Gradually it became the practice to put the printed terms of carriage on one side and to leave the other side for the insertion of all the transport details. These details will include matters such as the names of the parties, the vessel, the ports of loading, including full description of the cargo such as the quantity and condition of the goods together with the freight payable. There will also be a place where the carrier’s name or logo would appear along with a place for signature. It is normal to describe the side of the bill containing all these extra information as ‘the face of the bill’, with the majority of the contractual terms being on the reverse side.

The last forty years have seen moves to standardize the size and layout of trade documents generally. In 1963, the United Nations Economic Commission for Europe (ECE) agreed a basic standard layout of information such as the names of the seller and buyer, and description of goods needed to initiate and complete an international document.

By 1981, the ECE agreed with UNCTAD that the standard should be referred to as the *United Nation Layout Key for Trade Documents (UN Doc ECE/Trade/137/1987)*. The 1990 CMI Rules for Electronic Bills of Lading require any document format of the contract of carriage to conform to the UN layout key.

4.0 **CONCLUSION**

The Bill of Lading has since its evolution become an important tool of maritime trade and international documentary letters of credit. From its various forms and principal characteristics, a better understanding of the bill of lading is had and from its functions the different uses to which it can be put, are appreciated and it can be seen that it has become an indispensable tool of modern commerce.

5.0 **SUMMARY**

we also looked at the different types bills of lading and their distinguishing characteristics and lastly, the nature of a bill of lading i.e. as a document of title, as a as a receipt.

6.0 **TUTOR MARKED ASSIGNMENT**

1. What are the different types of bill of lading?
2. Discuss with the aid of decided cases the legal character of a bill of lading
3. Discuss the development and applicability of the Electronic bill of lading

7.0 **FURTHER READING/ REFERENCES**

Pollock and Bruce: Law of Merchant Shipping

Brian Davenport QC: UK Carriage of Goods by Sea Act, 1924

MODULE 1

- UNIT 1 MARITIME LAW
- UNIT 2 CARRIAGE OF GOODS BY SEA
- UNIT 3 BILL OF LADING
- UNIT 4 MARITIME ORGANISATIONS

UNIT 4 **MARITIME ORGANISATIONS**

- 1.0 INTRODUCTION
- 2.0 COURSE OBJECTIVE
- 3.0 MAIN CONTENT
 - 3.1 The International Maritime Organization
 - 3.1.1 Historical Background
 - 3.1.2 Relevant Treatise/ Protocol
 - 3.1.3 Present Status
 - 3.1.4 Legal Instruments

1.0 INTRODUCTION

The world of international shipping is peopled by individuals from many professions engaged in various and diverse activities. Almost every commodity is capable of being moved by sea, and immense quantities and variety of goods are daily purchased and sold on terms which include sea borne transportation.

Maritime organizations are organizations established by national and international legislative instruments that enable them to provide policies, formulated into laws, rules, regulations, guidelines, standards, codes that are binding or obligatory on member nations internationally and domestically. There are statutory and non-statutory organizations. The non-statutory organizations are those bodies that provide input to and cooperate with the work of statutory organizations. They are usually commercial or voluntary organizations, agencies, associations, companies and groups.

2.0 COURSE OBJECTIVES

At the end of this unit, the student should be able to

- Discuss the aims, objectives and workings of the organizations discussed in this unit;
- Know the contributions of these bodies to the growth of the maritime industry.

3.0 MAIN CONTENT

3.1 THE INTERNATIONAL MARITIME ORGANISATION

3.1.1 History and Present Status

The **International Maritime Organization (IMO)**, formerly known as the **Inter-Governmental Maritime Consultative Organization (IMCO)**, was established in Geneva in 1948 and came into force ten years later, meeting for the first time in 1959. The IMCO name was changed to IMO in 1982.

With its headquarters in London, United Kingdom, the IMO is a specialized agency of the United Nations with 169 Member States and three Associate Members. The IMO's primary purpose is to develop and maintain a comprehensive regulatory framework for shipping and its remit today includes safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. IMO is governed by an Assembly of members and is financially administered by a Council of members elected from the Assembly. The work of IMO is conducted through five committees and these are supported by technical subcommittees. Member organizations of the UN organizational family may observe the proceedings of the IMO. Observer status is granted to qualified non-governmental organizations.

The IMO is supported by a permanent secretariat of employees who are representative of its members. The secretariat is composed of a Secretary-

General who is periodically elected by the Assembly, and various divisions such as those for marine safety, environmental protection, and a conference section.

The International Maritime Organization is the leading international organization in the field of maritime matters. The operations of the IMO are of a technical nature and seek to promote safety of shipping and the prevention of marine pollution.

3.1.2 Relevant Treatise/ Protocol

1. International Convention for the prevention of pollution from ships:
2. Protocol to the International Convention for the prevention of pollution from ships;
3. International Convention on Maritime Search and Rescue;
4. International Convention for safe containers;
5. London Dumping Convention;
6. International Convention on Tonnage Measurement of ships
7. International Convention on standards of training and watch keeping of seafarers;
8. International Convention on Civil liability for oil pollution damage
Convention on the International regulations for preventing collisions at sea;
9. International Convention for the Safety of Life at Sea
10. International Convention on Load Lines
11. Convention on the International Maritime Satellite Organization (Torremolinos)
12. International Convention for the Safety of Fishing Vessels
International Convention on Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel

13. International Convention on Oil Pollution Preparedness, Response and Co-operation;
13. International Convention on the Control of Harmful Anti-fouling Systems on ships.
- 14 International Convention for the Control and Management of Ship's Ballast Water and Sediments
15. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf

IMCO was formed to fulfill a desire to bring the regulation of the safety of shipping into an international framework, for which the creation of the United Nations provided an opportunity.

When IMCO began its operations in 1958 certain other pre-existing instruments were brought under its aegis, most notable the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) 1954.

Throughout its existence IMCO, renamed the IMO in 1982, has continued to produce new and updated instruments across a wide range of maritime issues covering not only safety of life and marine pollution but also encompassing safe navigation, search and rescue, wreck removal, tonnage measurement, liability and compensation, ship recycling, the training and certification of seafarers, and piracy.

In 1983 the IMO established the World Maritime University in Malmö, Sweden.

3.1.4 Contribution of IMO to Maritime Industry

IMO is the source of approximately 60 legal instruments that guide the regulatory development of its member states to improve safety at sea, facilitate

trade among seafaring states and protect the maritime environment. The most well known is the **International Convention for the Safety of Life at Sea**

IMO regularly enacts regulations, which are broadly enforced by national and local maritime authorities in member countries, such as the (COLREG) International Regulations for Preventing Collisions at Sea. The IMO has also enacted a Port State Control authority, allowing domestic maritime authorities such as coast guards to inspect foreign-flag ships calling at ports of the many port states. Memoranda of Understanding (protocols) were signed by some countries unifying Port State Control procedures among the signatories.

3.1.5 Current Issues

Recent initiatives at the IMO have included amendments to SOLAS, which upgraded fire protection standards on passenger ships, the International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW) which establishes basic requirements on training, certification and watch keeping for seafarers and to the Convention on the Prevention of Maritime Pollution MARPOL 73/78 which required double hulls on all tankers.

In December 2002, new amendments to the 1974 SOLAS Convention were enacted. These amendments gave rise to the International Ship and Port Facility, which went into effect on 1 July 2004. The concept of the code is to provide layered and redundant defenses against smuggling, terrorism, piracy, stowaways, etc. The ISPS Code required most ships and port facilities engaged in international trade to establish and maintain strict security procedures as specified in ship and port specific Ship Security Plans and Port Facility Security Plans.

The IMO is also responsible for publishing the International Code of Signals for

use between merchant and naval vessels.

The First Intercessional Meeting of IMO's Working Group on Greenhouse Gas Emissions from Ships took place in Oslo, Norway (23–27 June 2008), tasked with developing the technical basis for the reduction mechanisms that may form part of a future IMO regime to control green house gas emissions from international shipping, and a draft of the actual reduction mechanisms themselves, for further consideration by IMO's Marine Environment Protection Committee (MEPC).

Governing Bodies

The governing body of the International Maritime Organization is the Assembly which meets every two years. In between Assembly sessions a Council, consisting of 40 Member States elected by the Assembly, acts as the governing body. The technical work of the International Maritime Organization is carried out by a series of Committees. The Secretariat consists of some 300 international civil servants headed by a Secretary-General.

Technical Committees

The technical work of the International Maritime Organization is carried out by a series of Committees. This includes The Marine Environment Protection Committee (MEPC)

- The Legal Committee
- The Technical Cooperation Committee for capacity building;
- The Facilitation Committee to simplify the documentation and formalities required in international shipping.

Maritime Safety Committee

It is regulated in the Article 28(b) of the Convention on the IMO:.

“ ARTICLE 28

(a) The Maritime Safety Committee shall consider any matter within the scope of the Organization concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigation, salvage and rescue, and any other matters directly affecting maritime safety.

(b) The Maritime Safety Committee shall provide machinery for performing any duties assigned to it by this Convention, the Assembly or the Council, or any duty within the scope of this Article which may be assigned to it by or under any other international instrument and accepted by the Organization.

(c) Having regard to the provisions of Article 25, the Maritime Safety Committee, upon request by the Assembly or the Council or, if it deems such action useful in the interests of its own work, shall maintain such close relationship with other bodies as may further the purposes of the Organization”

The work of the nine sub-committees is described by their titles, as follows:

- Safety of navigation
- Radio communications and, search and rescue

- Standards of training and watch keeping
- Ship design and equipment
- Fire Protection
- Stability, load lines and fishing vessel safety
- Flag state implementation
- Dangerous goods,
- solid cargoes and containers
- Bulk liquids and gases

The sub-committees work on numerous topics, including, for example, improvements in the design of passenger ships and the requirements for the stowage and packaging of the vast range of dangerous goods carried by sea.

Resolutions

Resolution MSC.255(84)(adopted on 16 May 2008) adopts the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code)

SELF ASSESSMENT EXERCISE 1

Discuss the contributions of the International Maritime Organisation to the growth of the maritime industry.

B. United Nations Conference on Trade and Development

The **United Nations Conference on Trade and Development (UNCTAD)** was established in 1964 as a permanent intergovernmental body. It is the principal organ of the United Nations General Assembly dealing with trade, investment, and development issues.

The organization's goals are to "maximize the trade, investment and

development opportunities of developing countries and assist them in their efforts to integrate into the world economy on an equitable basis.” The creation of the conference was based on concerns of developing countries over the international market, multi-national corporations, and great disparity between developed nations and developing nations.

The United Nations Conference on Trade and Development was established in 1964 in order to provide a forum where the developing countries could discuss the problems relating to their economic development. UNCTAD grew from the view that existing institutions like GATT (now replaced by the World Trade Organization), the International Monetary Fund, and World Bank were not properly organized to handle the particular problems of developing countries. UNCTAD has 193 members.

The primary objective of the UNCTAD is to formulate policies relating to all aspects of development including trade, aid, transport, finance and technology. The Conference ordinarily meets once in four years. The first conference took place in Geneva in 1964, second in New Delhi in 1968, the third in Santiago in 1972, fourth in Nairobi in 1976, the fifth in Manila in 1979, the sixth in Belgrade in 1983, the seventh in Geneva in 1987, the eighth in Cartagena(Colombia) in 1992 and the ninth at Johannesburg (South Africa)in 1996. The Conference has its permanent secretariat in Geneva.

ACHIEVEMENTS OF UNCTAD

One of the principal achievements of UNCTAD has been to conceive and implement the Generalized System of Preferences (GSP). It was argued in UNCTAD, that in order to promote exports of manufactured goods from developing countries, it would be necessary to offer special tariff concessions to such exports. Accepting this argument, the developed countries formulated the

GSP Scheme under which manufacturers' exports and some agricultural goods from the developing countries enter duty-free or at reduced rates in the developed countries. Since imports of such items from other developed countries are subject to the normal rates of duties, imports of the same items from developing countries would enjoy a competitive advantage.

In the 1970s and 1980s, UNCTAD was closely associated with the idea of a New Economic Order (NIEO).

Currently, UNCTAD has 193 member States and is headquartered in Geneva Switzerland. UNCTAD has 400 staff members and an annual regular budget of approximately US\$50 million and US\$25 million of extra budgetary technical assistance funds.

International Chamber of Shipping (ICS)

The International Chamber of Shipping is the principal international trade association trade for shipowners, representing around 75% of the world's merchant tonnage; through membership of national shipowners' associations, concerned with all regulatory, operational and legal issues.

A major ICS activity is at the United Nations agency with responsibility for the safety of life at sea and the protection of the marine environment - The International Maritime Organization (IMO).

ICS is unique in that it unlike other international shipping trade associations it represents the global interests of all the different trades in the industry: bulk carrier operators, tanker operators, passenger ship operators and container liner trades, including shipowners and third party ship managers.

ICS has consultative status with a number of intergovernmental bodies which

have an impact on shipping, these include: the World Customs Organization, the International Telecommunications Union, the United Nations Conference on Trade and Development and the World Meteorological Organization. Another key strength of ICS is its close relationships with industry organizations representing different maritime interests such as shipping, ports, pilotage, the oil industry, and insurance and classification societies responsible for the surveying of ships.

Other bodies include :

- a. International Chamber of Shipping
- b. International Chamber of Commerce
- c. International Conference of Free Trade Unions
- d. Oil Companies International Maritime Forum
- e. World Trade Organizations
- f. United Nations Environment Program

And a host of others.

4.0 CONCLUSION

Maritime organizations are either regional or global in character. Whatever their scope of application, these organizations have in one way or the other contributed to the growth of the maritime industry. Some are formed to protect the interest of its members, such as the International Conference of Free Trade Unions, the Oil Companies International Maritime Forum. Whatever they are, they push policies which benefit its members or seek for the growth of the body to meet new technologies and current trends.

5.0 SUMMARY

We have considered some, out of the numerous maritime organizations that exist

world wide, and some of their various contributions to the maritime industry.

6.0 **TUTOR MARKED ASSIGNMENT**

What, in your opinion, is the relevance of the UNCTAD to the maritime industry?

7.0 **FURTHER READING/REFERENCES**

Ahmed Tijjani Ramallan and Solomon U. Jatau Shipping and Maritime Operations : Nayee Press Limited (2004)

MODULE 2 MARITIME ZONES AND BOUNDARIES

- Unit 1 – Territorial Sea**
- Unit 2 Exclusive Economic Zone**
- Unit 3 Continental Shelf**
- Unit 4 Contiguous Zone**

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 MAIN CONTENT

- 3.1** Definition of territorial water or sea
- 3.2** Historical Background.
- 3.3** Measurement of the territorial sea
- 3.4** Further problems as regards baseline
- 3.5** Legal character of the territorial sea
- 3.6** Rights of the coastal state

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR MARKED ASSIGNMENT

7.0 FURTHER READING/REFERENCES

1.0 INTRODUCTION

Acquiring the desired resources for survival is an underlying theme in human existence. Societies and communities have always attempted to ensure sustainable supply of food, water and shelter. Depending upon where they are located, these groups have developed codes of behavior that we today have place into law.

Water is seen as a vast reservoir of resources of both living and non-living things. It covers 71.4% of the earth. It is a source of food, serves as a means of transportation. It is also a medium of communication as well as a base for

military maneuver. Water today, has continued to gain prominence owing to the richness and wealth which it harbours.

2.0 **COURSE OBJECTIVE**

At the end of this unit, the student should be able to discuss the following:

- The historical background of the concept of the territorial sea;
- The rights of a coastal state as regards its territorial sea;
- How a territorial sea is measured;
- Problems associated with the conventional measurement of the territorial sea.

3.0 **MAIN CONTENT**

3.1 *Definition of Territorial Water or Sea.*

An analysis of the **Convention on the Territorial Sea and Contiguous Zone** seems to assume that every state necessarily has a territorial sea. Thus, Article 1 of the **Convention on the Territorial Sea of 1958** provides that states have rights amounting to sovereignty over territorial waters or sea.

Under the **1982 United Convention on the Law of the Sea**, territorial water or sea is defined as :

‘a belt of coastal waters extending at almost twelve nautical miles from the baseline (usually the mean low water mark) of a coaster state’.

The term ‘territorial waters’ is also sometimes used informally to describe any area of water over which a state has jurisdiction, including internal waters, the contiguous zone, the exclusive economic zone and potentially the continental shelf.

A state's territorial sea extends up to 12 nautical miles (i.e. 22km) from its baseline. If this would overlap with another state's territorial sea, the border is taken as the median point between the state's baselines, unless the states in question agree otherwise. A state can also choose to claim a smaller territorial sea. The territorial sea is regarded as the sovereign territory of the state.

3.2 *Historical Background.*

The United Nations Convention on the Law of the Sea (UNCLOS) also called the Law of the Sea Convention or the Law of the Sea Treaty is the international agreement that resulted from the third United Nations' conference on the Law of the Sea (III), which took place from 1973 to 1982. The Law of the Sea Convention defines the rights and responsibility of nations in their use of the world's oceans, establishing guidelines for environment and the management of marine natural resources. The Convention, which was concluded in 1982, replaced four 1958 treaties. It replaces the older and weaker freedom of the sea concept : national rights were limited to a specified belt of water extending from a nation's coastline, usually three nautical miles. All waters beyond national boundaries were considered international waters – free to all but belonging to none.

In the early 20th century, some nations expressed their desire to extend national claims: to include mineral resources, to protect fish stocks and to provide the means to enforce pollution controls.

In 1956, the United Nations held its first conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland, and this resulted in four treaties viz: **Convention on the Territorial Sea and Contiguous Zone; Convention on the Continental Shelf; Convention on the High Seas; Convention on Fishing and**

Conservation on Fishing and Conservation of Living Resources of the High Seas

Although the conference was considered a success, it left open the important issue of breadth of territorial waters.

In 1960, the United Nations held the second conference on the law of the sea but this did not result in any new agreements; and in 1973, the Third United Nations Conference on the Law of Sea was convened in New York. The Convention introduced a number of provisions the most significant of the issues covering navigation, archipelagic status. The convention set the limit of various areas, measured from a carefully defined baseline

3.3 Measurement of the territorial sea.

The baseline from which the territorial sea is measured is the low water line along the coast as marked on large scale charts officially recognized by the states.

Art 5, law of the sea convention 1982 defines it as ***“marked on large scale charts officially recognized by the coasted state.***

See also Article 3 of the Geneva Convention on the Territorial Sea and the Contiguous Zone 1958.

Because there is no uniform standard by which nation states determine this line as in situations where the geography of the state's coast will be such as to cause problems; for instance, where there are many islands running parallel to the coasts, where there exists bay, in such scenario, there will be problem in determining the baseline or the rights of the states involved.

This issue was raised in the ***Anglo-Norwegian Fisheries case KJ. Reports 1951 p. 116; 18 ILR, p.86*** where the courts held that the normal method of drawing

baselines that are parallel to the coast was not applicable in this case because it would necessitate complex geometrical constructions in view of the extreme indentations of the coastline and the existence of the series of islands infringing the coasts.

SELF ASSESSMENT EXERCISE 1

What is the statutory definition of territorial waters? Give a historical explanation of the invention of territorial waters.

Following that decision, it was accepted as law as seen in Article 4 of the Convention on the Territorial Sea 1958 which declared that the straight baseline system could be used in cases of the indented coastlines provided that the general direction of the coast was followed and there were sufficiently close links between the sea areas within the lines and the land domain.

See however *Qatar u Bahrain I C J reports 2001*, @ 212 where the courts made it clear that:-

“the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in its immediate vicinity –.

3.4 Further problems as regards baseline

- bays:- coastal states may derive title to bays as a consequence of the system of straight lines approved in the fisheries case (supra) where it is applicable.
- Bays bounded by the territory of two or more states- Art 15 Convention on the Law of the Sea 1982 provides that:-

“where the coast of two or more states are opposite or adjacent to each other, neither of the law state is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line; every point of which is equidistant from the nearest points or the baseline from which the breadth of the territorial sea of each of the two states is measured.

- **Islands** are defined as:-

‘A naturally formed area of land, surrounded by water, which is above water at high tide’ See Art 12 1(1) 1982 convention.

The same general provisions as above apply to islands

- **Groups of islands**

The Law of the Sea Convention 1982 includes a set of articles concerning this group. Art. 46-54. They are defined as:-

“ a state constituted wholly by one or more archipelagos and may include other island”.

In this case therefore, straight baselines may be employed. The state has sovereignty over the waters enclosed by the baselines subject to certain limitations such as: existing agreement, traditional fishing rights, existing submarine must be respected. ships of all states shall enjoy right of

innocent passage, ships and aircrafts are to enjoy a right of archipelagic sea lane passages.

● Reefs

In the case of reef-bound coastlines, the base is the seaward low-water line of the reef; See Art 6 Law of the Sea Convention.

● Highly Unstable Coastline

Article 7 paragraph 2 Law of the Sea Convention 1982 provides thus;

Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low water line and, notwithstanding subsequent regression of the low water line, the straight baselines shall remain effective until changed by the coastal state in accordance with this convention.

SELF ASSESSMENT EXERCISE 2

Identify the problems associated with the measurement of territorial waters;

3.5 Legal character of the territorial sea

A coastal state enjoys sovereign rights over its maritime belt and extensive jurisdictional control, having regard to the relevant rules of international law.

Art 1 and 2 Convention on the Territorial Sea as well as **Art 2 1982** Convention entrenches this right where it provides that the coastal state's sovereignty extends over its territorial sea and to the air space and sea bed and sub-soil thereof subject to the provision of the Convention.

Other rights include:-

- exclusion of foreign nationals and vessels from fishing within its territorial sea and from coastal trading
- powers of coastal relating to security and custom matters.
- Fiscal regulation
- Sanitary and health controls

However, there are limitations on these rights and we shall now consider them.

(1) *the right of innocent passage*

this principle has been accepted by customary international law. Passage is defined as :

'navigation through the territorial sea for the purpose of crossing the sea without entering internal waters or of proceeding to or from that sea without entering internal waters of proceeding to or from internal waters'.

See **Art 14** Conventions on the Territorial Sea 1958

The 1982 convention of 1982 contains a detailed definition in **Art 19** as follows:

1. passage is innocent so long as it is not prejudiced to the peace, good order or security of the coastal state;
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal state if in the territorial sea it engages in any of the following activities :
 - a. any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state, or in any other manner in violation of the principles of international law embedded in the Charter of the United Nations;
 - b. any exercise of practice with weapons of any kind;

- c. any act or claim aimed at collecting information to the prejudice of the defence or security of the coastal state;
- d. any act of propaganda aimed at affecting the defence or security of the coastal state;
- e. the launching, landing or taking on board of any aircraft;
- f. the loading or unloading of any commodity currency or person contrary to the customs, fiscal immigration or sanitary laws and regulations of the coastal state;
- g. any act of willful and serious pollution,
- h. any fishing activities;
- i. the carrying out of research or survey activities ;
- j. any act aimed at interfering with any systems of communication or any other facilities or installations of a coastal state

- Passage of warships

The controversy here arises in the issue of the passage of warships in peacetime. Is this regarded as innocent?

Art 19(2) provides that:

All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the rights of innocent passage through the territorial sea.....for which neither prior notification nor authorization is required.

SELF ASSESSMENT EXERCISE III

What circumstances would a passage of a foreign ship be regarded as prejudicial to the security and good order of a coastal state?

3.6 *rights of the coastal state*

1. The coastal state has the right to prevent a passage that is not innocent. Any ship that is passing is subject to local laws of the coastal state provided they are in conformity with international law treaty and obligation.

2. Criminals jurisdiction over ships in passage.

The coastal state has criminal jurisdiction to arrest any person or investigate any matter connected with a crime committed on board ship where:-

- (b) the consequence of the crime extends to the coaster state;
- (c) if the crime could disturb the peace of the country or the good order of the territorial sea;.
- (d) If the captain of the ship or consul of the flag country has requested the assistance of the local authorities;
- (e) If measures are necessary for the suppression of illicit traffic in narcotic drugs - See Art 27(1) 1982 convention.

3. Civil jurisdiction.

(a) person:- the coastal state does not have any right to stop or divert a foreign ship through its territorial sea in order to exercise civil jurisdiction.- **Art 28 page 1 1982 convention.**

(b) Against the vessel.

A coastal state cannot against levy execution or arrest a foreign ship for court proceedings, unless obligation or habits use by the ship itself.

4.0 **CONCLUSION**

In practical terms, the coastal state has rights and duties inherent in sovereignty, although foreign vessels have privileges, associated with the

right of innocent passage, which have no counterparts in respect of the land domain apart from special agreements or local customary rights. The coastal state may also exclude foreign vessels from navigation and trade along the coast (cabotage) (which we shall discuss in subsequent module).

5.0 SUMMARY

In this unit, we have been able to consider the definitions of territorial sea, how it could be distinguished from other boundaries of a coastal state. We also learnt the rights associated with a coastal state with reference to its territorial sea as distinguished from other states; and lastly, irrespective of its rights, we considered the rights of other states such as having the rights of innocent passage, etc.

6.0 TUTOR MARKED ASSIGNMENT

1. Discuss, in the light of statutory authorities, the rights of a coastal states vis-à-vis the rights of other state;
2. Under what circumstances would a coastal state exercise criminal jurisdiction over a foreign ship in its territorial sea?

7.0 FURTHER REFERENCES/READING

T.O. Elias: *New Horizons In International Law*, *Martinus Nijhoff Publishers, second revised edition.*

MODULE 2 MARITIME ZONES AND BOUNDARIES

- Unit 1 – Territorial Sea**
- Unit 2 Exclusive Economic Zone.**
- Unit 3 Continental Shelf**
- Unit 4 Contiguous Zone**

1.0 INTRODUCTION

2.0 OBJECTIVE

3.0 MAIN CONTENT

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- 3.2 Statutory – build-up
- 3.3 United Nations Convention on the Law of the Sea
- 3.4 Rights of the coastal state
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 - 3.5.1 Duties of the Coastal State
 - 3.5.3 Rights of other states

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR MARKED ASSIGNMENT

7.0 FURTHER READING/REFERENCES

1.0 INTRODUCTION

Control of the high seas has been a process of evolutionary development. It used to be based upon the relative power of the nation that had the strongest or most effective navy. In recent times however, these has not been so. This is because circumstances at the beginning of the 21st century have made it

imperative that maritime nations develop a approach towards jurisdiction of cash travel and resources development.

Prior to the 19th century, a nation's jurisdictions are the sea adjacent to its coastline was largely determined by the individual country's own criteria.

This was based upon the concept of "effective occupation" or what a nation was capable of enforcing with the military resources at its disposal. Military affairs are, for the most part, directly tied to a nation's daily concerns with its economic activities and in support of its economic security. The protection of ports, trade, goods and transportation services are of paramount importance. A maritime nation's economy also includes the fishing funds of the shallows waters above the conventional shelf the coast.

The concept of zone developed out of claims, particularly relating to fishing zones. Within this area, the coastal state has sole exploitation rights over all natural resources. The Exclusive Economic Zones was introduced to halt the increasingly heated clashes over fishing rights, also oil.

2.0 **COURSE OBJECTIVE**

At the end of this unit, the student should be able to know the historical background of the exclusive economic zone under the international law; the various statutory provisions for the zone; rights of the coastal state over the exclusive zone and the legal character of the state.

3.1 - ***Historical Background,***

The expression "economic zone" or exclusive economic zone' or patrimonial sea' were first used in the early 1970s in regional meetings and organizations in Latin America, the Caribbean, Asia and Africa. However,

the concept of an extended exclusive economic zone for economic purpose was already used in the late 40s and early 50s.

Exclusive Economic Zone is an area beyond and adjacent to the territorial sea.

The Exclusive Economic Zone concept arose out of an increase in claims to exclusive rights in respect of the fishes in adjacent maritime zone.

It is rooted in the 1945 Truman Proclamations (on the natural resources of the subsoil and sea bed of the continental shelf and the conservation of coastal fisheries in certain areas of the high seas), the national claims of several Latin American countries.

The second Truman Proclamation had in particular influenced ocean related policies in Latin American countries especially where it states that it is appropriate for the United States “ to establish conservative zoneswhere fishing activities have been or in the future may be developed. For sometime , coastal states with particular interest in offshore fisheries have sought means of limiting major operations by fishing fleets.

Beginning in 1946, a number of Latin American states made claims to the natural resources of a fishery conservation zone of 200 miles breadth. States like Peru had an extended territorial sea with a concession of the rights of over flight and free navigation. In the Montevideo Declaration on the Law of the Sea, a 200 mile zone was asserted by the states, involving sovereignty and jurisdiction to the extent necessary to conserve, develop and exploit the natural resources of the maritime area, but without prejudice to freedom of navigation and flight.

By 2008, 21 states had fishing zones of 200 miles. This fishery conservation zone (of 200 miles) had become established as a principle of customary international law.

3.2 Statutory – Build-up

1952 Santiago Declaration:

- Affirms in its preamble that ‘governments are bound to ensure for their people access to necessary food supplies and to furnish them with the means of developing their economy.
- Exclusive Economic Zone should extend no less than 200 miles from the coast;

1964 European Fisheries Convention

- Provided that each coastal state has the exclusive right to fish in a 6 mile belt measured from the baseline of its territorial sea;
- In the area between the mile limit and 12 miles from baselines, other states known to have fished in that area between 1953 and 1962 had the right to continue doing so.

1970 Declaration of the Latin American States on the Law of the Sea

- This added that the decision to extend the jurisdiction beyond the territorial sea limit is a consequence of ‘the dangers and damage resulting from indiscriminate and abusive practices in the extraction of marine resources ‘as well as the utilization of the marine environment giving rise to grave dangers of contamination of the waters and disturbance of ecological balance.

3.3 United Nations Convention on the Law of the Sea

Exclusive Economic Zone is defined as:

the portion of the sea and oceans extending up to 200 nautical miles in which coastal states have the rights to explore and exploit natural resources as well as to exercise jurisdiction over marine science research and environmental protection.

Therefore, a coastal state may claim exclusive economic zone beyond and adjacent to its territory sea that extends seaward up to 200 miles from its baselines.

SELF ASSESSMENT EXERCISE 1

Explain, the impact of various statutory authorities and proclamation on the evolution of concept of the concept of exclusive economic zone

3.4 Rights of the Coastal State

Article 55 of the 1982 Convention provides that the Exclusive Economic Zone is an area beyond and adjacent to the territorial sea; Under Article 56, the rights of the coastal state are provided thus:

1. Sovereign right for the purpose of exploring, exploiting and managing the natural resources of the sea bed and subsoil and the superjacent waters and with regards to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.
2. Jurisdiction as provided for in international law with regard to the establishment and use of artificial islands, installations and structures, marine scientific research, and the protection and preservation of the marine environment; and,
3. Other rights and duties provided for under international law.

3.5 Legal Regime of the Exclusive Economic Zone

Article 60 of the Law of the Sea Convention of 1982 provides (in part) as follows:

1. In the exclusive economic zone, the coastal state has the exclusive right to construct, authorize and regulate the construction, operation and use of :-
 - a. artificial islands;
 - b. installations and structures for the purpose of ...and other economic purposes;
 - c. Installations and structures which may interfere with the exercise of the rights of the coastal state in the zone.

2. Coastal states have exclusive jurisdiction over islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

3.5.1 Duties of the coastal state

In managing the living resources in the zone, the convention provides that it is the duty of the coastal state to ensure that living resources in the Exclusive Economic Zone is not endangered by Over-exploitation. This the state does through proper conservation and management measures.

- See art 61.

It also requires the coastal state to promote the optimum utilization of the living resources. It is therefore provided that the coastal state shall determine its capacity to harvest the living resources of the zone; or give other state access to the surplus, which of course, are subject to agreements and also pursuant the provisions of the convention.

- See art 62.

3.5.2 Rights of other states.

Under the Exclusive Economic Zone, all state, whether land locked or coastal enjoy the freedom of navigation and over flight and of the laying of submarine cables and pipelines. See art 58.

However, in exercising these rights, states must have the regard to the rights and Duties of the Coastal state and comply with laws and regulations by the coastal state.

In case of conflict over rights and jurisdiction within the zone, resolution shall be on the basis of equity and

4.0 CONCLUSION

As discussed earlier, the zone had developed out of tentative claims particularly relating to fishing zones and as a result of developments in the negotiating processes leading to the 1982 Convention. It marks a compromise between those states seeking a 200mile territorial sea and those wishing a more restricted system of coastal state power.

5.0 SUMMARY

In this unit, we considered the major reason for the call for a conservative region for the fishing rights of the people of a coastal right. Through various declarations and proclamations, the EEZ was carved out as this preserves the rights of the coastal people over the zone.

6.0 TUTOR MARKED ASSIGNMENT

1. Consider and discuss the various proclamations leading to establishment of an EEZ for a coastal state.
2. What are the rights and duties of a coastal state over its EEZ?

7.0 FURTHER READING/REFERENCES

1. R.W. Smith: Exclusive Economic Zones Claims: An Analysis;
2. Orrego Vicuna: The Exclusive Economic Zone, Regime under International Law, Cambridge, 1989

Module 2 **MARITIME ZONES AND BOUNDARIES**

Unit 1 Territorial Sea

Unit 2 Exclusive Economic Zone

Unit 3: Continental Shelf

Unit 4 Contiguous zone

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2.0 **COURSE OBJECTIVES**

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3.2.1 Limits on the rights of coastal states

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6 **FURTHER READING AND REFERENCES**

1.0 **INTRODUCTION**

The continental shelf is the area of the seabed and subsoil which extends beyond the territorial sea to a distance of 200 nautical miles from the territorial sea baseline and beyond that distance to the continental margins. The shelf is largely co-extensive with the exclusive economic zone within 200m from the territorial sea baselines.

It is defined as the natural prolongation of the land territory to the continental margin's outer edge, or 200 nautical miles from the coastal state's baselines, which ever is greater.

The portion of a coastal State's continental shelf that lies beyond the 200 nautical miles limit is often called the extended continental shelf.

Coastal states have rights which we shall consider in this unit, which are exclusive to it alone.

The continental shelves carry substantial oil and gas deposits and quite often, are host to extensive fishing grounds.

2.0 COURSE OBJECTIVES

In this unit, we shall consider the rights of coastal states which are exclusive to it alone, learn the measurement of the continental shelf; the extent of the rights of other states on the continental shelf of a coastal state, as well as statutory protection, if any of various conventions on the coastal states.

3.1 Historical background.

The rich mineral deposits in the sea bed stimulated a coastal state to appropriate the continental shelves to herself, from its legal states of being part of the high seas and therefore available for exploitation by all states. The first of such appropriation was an Argentine Decree which created zones of mineral reserves in 1944.

Secondly, United States, in 1945, called the Truman Declaration of 1945, which pointed to technological capacity to exploit the riches of the shelf and the need to establish a recognized jurisdiction over such resources; it also declared that the coastal state was entitled to such jurisdiction for the following reasons:

1. Utilization or conservation of the resources of the subsoil and seabed of the continental shelf depended upon cooperation from the shore;
2. The shelf itself could be regarded as an extension of the land mass of the coastal state, and its resources were often merely an extension into the sea of deposits lying within the territory.
3. The coastal state, for reasons of security, was profoundly interested in activities off its shore which would be necessary to utilize the resources of the shelf.

Following the above, United States government proclaimed that it regarded the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coast of the United States as appertaining to the United States, subject to its jurisdiction and control.

Other claims included those by Argentina and El Salvador, which claimed not only the shelf but also the waters above and the air space.

3.1.1 **Definitions.**

Art 1 of the 1958 convention on the continental shelf defined it as referring;

- a. To the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to the depth of the super-jacent water admits of the exploitation of the natural resources of the said areas;
- b. To the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

On the outer limit of the continental shelf, Article 76(1) of the 1982 convention provides that 'the continental shelf of coastal state comprises of the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental

margins or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial zone is measured where the outer edge of continental margin does not extend up to that distance.

SELF ASSESSMENT EXERCISE 1

Explain the reasons proffered by the United States for the establishment of a right over continental shelf.

3.2 Delimitation of the continental shelf

The court in the North Sea Continental Shelf case (ICJ Reports, 1969) held that :
‘the relevant rule was that the delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances in such a way as to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the others’.

However, the court have emphasized that the relevant criteria had to be essentially determined: ‘in relation to what may be properly called the geographical features of the area’.

This approach was reaffirmed by the court in *Cameroon v. Nigeria* where it noted that the applicable criteria principles and rules of delimitation concerning a line covering several zones of coincident jurisdiction could be expressed in the so called equidistant principles/relevant circumstances method. This method , the court continued, is very similar to the equidistant/special circumstances method which involves first drawing an equidistant line, then considering whether there are calling for the adjustment of that line in order to achieve an ‘equitable result’.

3.2 *Rights of the Coastal state*

- a. The coastal state exercises sovereign rights over the continental shelf for the purposes of exploring its natural resources. No other state may undertake such activity without the express consent of the coastal state. Art 2 continental shelf convention 1958 and Art 77 law of the sea convention of 1982.
Art 2(4) of the 1958 convention defined natural resources as to include 'living organisms belonging to the sedentary species, i.e organisms at the harvestable stage, either are immobile an, or under.
- b. The sovereign rights recognized as part of the continental shelf related to natural resources.
- c. Coastal states may construct and maintain installations and other devices necessary for exploration on the continental shelf and is entitled to establish safety zones around such installations to a limit of 500 meters' which must be respected by ships of all nationalities.
- d. Have exclusive right to authorize and regulate drilling on the continental shelf.

3.2.1. *Limits on the rights of coastal states.*

As a corollary of the above rights, the convention expressly states that the rights of the coastal states do not affect the superjacent waters as high seas, or that of the airspace above the waters.

Also, subject to its right to take reasonable measures of exploration and exploitation of the continental shelf, the coastal state may not impede the laying or maintenance of cables or pipelines on the shelf.

In addition, such exploration and exploitation must not result in any unjustifiable interference with navigation fishing or the conservation of the living resources of the sea.

We can thus deduce from the above, and by Art 79 of the 1982 convention, which provides that all states are entitled to lay submarine cables and pipelines on the continental shelf.

3.3 Comparison of the continental shelf and the exclusive economic zone

Firstly, it can be observed that they co-exist in the sphere of customary law and;

- They both focus upon control of economic resources and are based (though in varying degrees upon adjacency and the distance principle).i.e. the exclusive economic zone includes the continental shelf interest in the sea bed of the 200 mile zone.

Distinction

- 1) The exclusive economic zone is optional, whereas the rights to explore and exploit the resources of the shelf in the coastal state are by operation of law.
- 2) Shelf rights go beyond the limit of 200 miles from the pertinent coast where the continental and margin extend beyond that limit.
- 3) The exclusive economic regimes involve the water column; so its resources are subject to the rules about sharing the surplus of the living resources of the exclusive economic zones with other states.
- 4) The exclusive economic regime confers upon coastal states a substantial jurisdiction over pollution by ships, and a greater control in respect of marine scientific resources.

4.0 CONCLUSION

We have seen in this unit that the continental shelf is a geographical expression which refers to the ledges that project from the continental landmass into the seas and which is covered with only a relatively shallow layer of water. The vital

fact about the continental shelves is that they are rich in oil and gas resources and often host to extensive fishing grounds.

5.0 **SUMMARY**

We have again in this unit considered another of the maritime boundaries created for the coastal state; we also studied the rights of the coastal state over its continental shelf vis-à-vis the rights of other states.

6.0 **TUTOR MARKED ASSIGNMENT**

1. What are the rights of a state over its continental shelf?
2. Distinguish between the continental shelf and the Exclusive economic zone.

7.0 **FURTHER READING/REFERENCES**

Brown, International Law of the Sea; O. Connell, International Law of the Sea Vol. 1

Module 2 **MARITIME ZONES AND BOUNDARIES**

- Unit 1 Territorial Sea
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7.0 **FURTHER READING AND REFERENCES**

1.0 **INTRODUCTION**

Historically, some states have claimed to exercise certain right over particular zones of the high sea.

The jurisdiction of the coastal state has been extended into areas of the high seas contiguous to the territorial sea, for the defined purposes only. For whatever defined reasons, it enables the coastal state to protect what it regards as its vital or important interests without having to extend the boundaries of its territorial sea further into the higher. The extension of rights beyond the territorial sea has been seen as preventing the infringement of domestic laws, and also as a method

of maintaining and developing the economic interests of the coastal state regarding maritime resources.

2.0 **COURSE OBJECTIVES**

The student should be able to discuss the concept of a contiguous zone and should be able to determine its measurement on a sea belt. Other type of boundary discussed briefly is the high sea.

3.1 **The concept of the contiguous zone.**

The idea of a contiguous zone (i.e. a zone bordering upon the territorial sea) was virtually formulated as an authoritative doctrine in the 1930s.

Art 24 of the Convention provides that “in a zone of the high seas contiguous to its territorial sea, the coastal state may exercise the control necessary to:

- a) Prevent infringement of its custom, fiscal, immigration or sanitary regulation within its territory or territorial sea;
- b) Punish infringement of the above regulations committed within its territory or territorial sea.

From the above provisions, it is now settled law that a coastal state may claim a contiguous zone adjacent to and beyond its territorial sea that extends seaward up to 24 nautical miles, from its baselines.

In its contiguous zone, a coastal state may exercise the control necessary to prevent the infringement of its customs, immigration, fiscal e.t.c laws and punish infringements committed within its territory.

3.2 **Problems of enforcement**

Generally, a coastal state may take any step necessary to enforce compliance with its laws and regulations in the prescribed zones.

Other zones for special purpose:

3.3 The Regime of the High seas

Article 1 of the Geneva Convention on the High Seas 1958 defined it as all parts of the sea that were not included in the territorial sea, or in the internal waters of a state.

Article 86 of the 1982 Convention includes : all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a state, or in the archipelagic waters of an archipelagic state.

This term traditionally encompasses all parts of the seas not included in the territorial sea or in the internal waters of a state, and therefore comprehends contiguous zones and the waters over the continental shelf and outside the limit of the territorial sea.

Freedom of the high seas:

Article 87 of the 1982 Convention provides that the high seas are open to all states and that the freedom of the high sea is exercised under the conditions laid down in the Convention and by rules of international law

The essence of the freedom of the high seas is that no state may acquire sovereignty over parts of them. This general rule is however subject to the operation of the doctrines of recognition, acquiescence and prescription, where by long usage accepted by other nations, certain areas of the high seas bounding on the territorial waters of coastal states may be rendered subject to that state's sovereignty.

The high seas is open to all nations, therefore no state may validly purport to subject any part of them to its sovereignty. Freedom on the high seas is exercised

under the conditions laid down both for coastal and non-coastal states as follows

:

- freedom of navigation;
- freedom of fishing;
- freedom to lay submarine cables and pipelines;
- freedom to fly over the high seas.
- conduct of scientific research ;
- the construction of artificial islands.

These rights are to be exercised with due regard for the interests in their exercise of the freedom of the high seas, and also with due regard for the rights under the Convention regarding activities in the International Sea bed Area

There are exceptions to the principle of the freedom of the high seas thus:

1. Piracy: consisting of illegal acts of violence detention or any act of depredation, committed for private ends by the crew or the passengers of a private aircraft and directed on the high sea against another ship or aircraft, or against person or property on board such ship or aircraft;
2. Unlawful acts committed with the authority of a lawful government;
3. Politically motivated operations by organized groups;

The Doctrine of Hot pursuit

The right of hot pursuit of a foreign ship is a principle designed to ensure that a vessel which has infringed the rules of a coastal state cannot escape punishment by fleeing to the high seas. In reality this means that in certain defined circumstances, a coastal state may extend its jurisdiction onto the high seas in order to pursue and seize a ship which is suspected of infringing its laws. This right was elaborated in Article 111 of the 1982 Convention, building upon article 23 of the High Seas Convention 1958.

The pursuit commences when the authorities of the coastal state have good reason to believe that the foreign ship has violated its laws. The pursuit must start while the ship, or one of its boats, is within the internal waters, territorial waters or contiguous zone of the coastal state and may only continue outside the territorial sea or contiguous zone if it is uninterrupted.

The right may also commence from the archipelagic waters; as well as to violations in the exclusive economic zone or on the continental shelf (including safety zones around continental shelf installation) of the relevant rules and regulations applicable to such areas.

It must be noted that hot pursuit begins when the pursuing ship has satisfied itself that the ship pursued or one of its boats is within the limits of the territorial sea or, as the case may be, in the contiguous zone or economic zone or on the continental shelf

It is essential that prior to the chase a visual or auditory signal to stop has been given at a distance enabling it to be seen or heard by the foreign ship and pursuit may only be exercised by warships or military aircraft or by specially authorized government ships or planes.

Cessation of the right of hot pursuit

The right of hot pursuit ceases as soon as the ship pursued has entered the territorial water of its own or a third state.

Jurisdiction on the High Seas :

This is basically that a flag state will enforce the rules and regulations not only of its own municipal law but of international law as well. A ship without a flag will be deprived of many of the benefits and rights available under the legal regime of the high seas. Each state is required to elaborate the conditions

necessary for the grant of it is nationality to ships, for the registration of ships in its territory and for the right to fly its flag. The nationality of the ship will depend upon the flag it flies, but article 91 of the state also stipulates that there must be a genuine link between the state and the ship

4.0 **CONCLUSION**

The term high sea has traditionally encompassed all parts of the sea that are not included in the territorial sea or in the internal waters of a State, and therefore comprehends contiguous zone and the waters over the continental shelf and the outside the limit of the territorial sea.

5.0 **SUMMARY**

We looked at the regime of the contiguous zone and also considered the doctrine of hot pursuit.

6.0 **TUTOR MARKED ASSIGNMENT**

Under what circumstances a pursuit by a coastal state would be considered legal?

7.0 **FURTHER READING/REFERENCES**

Brown, International Law of the Sea; O. Connell, International Law of the Sea Vol. 1

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Unit 1 The Hague Rules

- 1.0 Introduction**
- 2.0 Objective**
- 3.0 Main Content**
 - 3.1 The Hague Rules of 1924**
 - 3.2 Objects of the Hague Rules**
 - 3.3 Duty of the carrier**
 - 3.4 Exclusion of liability of the carrier under the 1924 Rules**
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1.0 INTRODUCTION.

Under the common law, parties to a contract of carriage of goods by sea covered by a bill of lading or similar document had complete freedom to negotiate their own terms. This led the carrier to a stronger bargaining position ship owners/carriers went on incorporating exclusion clauses in the bills of lading, which provoked the cargo owners. Most shippers were expected either to ship on terms dictated by the carrier or not to ship at all.

In England, these considerations led to the promotion of model bills of lading, which attempted to achieve a fairer balance between carriers, shippers and consign.

The first codification of law concerning the carriage of goods by sea is the **Harter Act 1893 of USA**, which was followed by the Australian **Sea Carriage of Goods Act of 1904** and Canadian **Carriage of Goods by Water Act of 1910**.

At the International Conference on Maritime Law held at Brussels in October 1922, the delegates at the conference, agreed unanimously to recommend their respective government to adopt as the basis of a convention a draft convention for the unification of certain rules such as responsibilities, liabilities, rights and immunities attaching to carriers under the bills of lading. This led to the drafting of the **Hague Rules of 1924**.

2.0 **COURSE OBJECTIVE**

At the end of this unit, the student should be able to:

- discuss the provisions of the Hague Rules;
- Discuss the liabilities of the Carrier under the Hague Rules;
- Know the criticisms which trailed the Hague Rules.

3.0. **MAIN CONTENT**

3.1 **Hague rules of 1924**

The Hague Rules represented the first attempt by the international community to find a workable and uniform means of dealing with the problem of ship owners regularly excluding themselves from all liability for loss or damage of cargo.

The objective of the Hague Rules has to establish a minimum mandatory liability of carriers which could be derogated from.

At the time of its introduction, many ship owners were undertaking no liability.

3.2 **Objects of the Hague Rules**

As explained above, the rules were drafted to protect cargo owners from widespread exclusion of liability by sea carriers. This objective was achieved by incorporating standard clauses into the bills of lading, defining the risks which must be borne by the carrier and specifying the maximum protection he could claim from exclusion and limitation of liability clauses. The duty imposed by the Act on the ship owner are drained below.

(a) ***Duty to make the ship sea worthy.*** Art 111 (1)

It is the carrier's duty to make the ship worthy before and at the beginning of the voyage. The carrier will be responsible not to exercise due diligence. When any loss or damage occurred as a result of unseaworthiness, the carrier would have to prove that he has exercised due diligence to make a ship sea worthy. The exercise of due diligence is a personal obligation of the carrier and it cannot be delegated.

(ii) ***Duty to properly man, equip and supply the ship***

The ship owner is also to exercise due diligence to properly man, equip and supply the ship, and he is to ensure that he is not liable for negligence in navigation and management of the ship.

(iii) make the holds, refrigeration and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

- i. The carrier has a duty to load, handle, show, carry, keep, care for and discharge the goods carried.

To evidence the contract between the carrier and the shipper, the carrier shall issue to the shipper a bill of lading which must bear the following:

- (a) The leading marks necessary for identification of the goods in writing by the shipper before the loading of such goods start.
- (b) The number of packages or pieces, the quantity or weight, as furnished in writing by the shipper.
- (c) The apparent order and condition of the goods.

However, where the carrier suspects that the mark, number, quantity or weight provided by the carrier does not represent the goods actually received, or where he does not have reasonable means of checking he may not show these on the bill of lading.

SELF ASSESSMENT EXERCISE 1

What are the essential things that must be contained in a bill of lading?

3.3. **Exclusion of liability of the carrier under the 1924 Rules.**

(a) under article 4 (1), the carrier or the ship is not liable for loss or damage resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to the ship sea worthy and to secure that the ship is properly manned, equipped and supplied and in accordance with the duties imposed on the carrier under Article '3.

The Hague Rules did not go so far as to enact all the shipper's demand, and various significant exclusions of liability did remain in favour of the shipper's, this is most obviously seen in article IV.

The Act further puts the burden of proving the exercise of due diligence on the carrier or any other person claiming exception under this Article.

- (b) The ship and the carrier are excepted from liability arising from:

- (i) Act, neglect, or default of the master, marine, pilot or the servants of the carrier in the navigation or in the navigation or in the management of the ship
- (ii) fire unless caused by the actual fault or privity of the carrier;
- (iii) perils, dangers and accidents of the sea or other navigable waters.
- (iv) Acts of God;
- (v) act of war;
- (vi) act of public enemies;
- (vii) arrest or restraint or princes, rulers or people or seizure under legal process;
- (viii) quarantine restrictions;
- (ix) act or omission of the shipper or owner of the goods, his agent or representative;
- (x) strikes or lock outs or stoppage or restraint of labour from whatever cause, whether partial or general.
- (xi) riots and civil commotions
- (xii) saving or attempting to save life or property at sea
- (xiii) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
- (xiv) insufficiency of packing
- (xv) insufficiency or inadequacy of marks
- (xvi) latent defects not discoverable by due diligence
- (c) article 4(5) further limited the liability of the carrier or the ship to an amount not exceeding 100 pounds sterling per package or unit.

SELF ASSESSMENT EXERCISE 2

Discuss the various exceptions under which the carrier's liability is excepted under a contract of carriage of goods governed by the Hague Rules

3.5

Application of the Hague Rules

The principle regarding the applicability of the Hague rules is that they apply to contracts of carriage covered by a bill of lading or any similar document of title.

Article 2 defines “contract of carriage” thus:

‘subject to the provisions of article 6, under every contract of carriage of goods by sea, the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods shall be subject to the responsibilities and liabilities, to entitled to the rights and immunities hereinafter set forth.

More importantly, article 1(b) which states that contracts of carriage applies only to contracts of carriage covered by a bill of lading or any other similar document of title including any bill of lading.

Thus, the Hague rules was restricted to bills of lading issued in respect of outward voyages from the U.K.

- a further problem that arose in applying the Hague rules was to containers, pallets and other devices for the consolidation of goods and the rules limiting the liability of the carrier to US \$500 for the entire contents of the container.

On the other hand, it limited liability to £100 per package coupled with the provision that it was to be “gold value”.

In the case of *The Mormaclaynx (1971) 2 Lloyds report. 476*, the cargo was described in the bill of lading as one container said to contain 99 bales of leather. It was held that each bale constituted a separate package. Contrast with the case of *Standard Electrica S/A v. Hamburg Sudarmericaniche (1967) 2 lloyds report 193* where it was held that the

bill of lading referring to the container without listing its contents, the container itself was treated as a package.

Also in the case of *Kulmerland (1973) 2 Lloyds report 428* where a consignment of adding machines had been shipped inside a container in individual corrugated cartons sealed with thin paper tapes where considered as individual packaging.

3.6 *The legal duty of seaworthiness*

Seaworthiness has its roots in the law of marine insurance. To avoid liability in case of loss of the ship or cargo, the carrier has to ensure that the ship was seaworthy. There is thus a duty that the ship is seaworthy at the commencement of the risk. The carrier is under a duty to provide a good ship in such a state and condition as to be able to perform the voyage.

Definition of sea worthiness

The classic definition of sea worthiness was states in questionable form by Field J in *Kopitoff v Wilson (1875-76) L.R. 1 Q.B.D. 377*:-

“was the vessel at the time of her sailing in a state, as regards the showing and receiving reasonably fit to encounter the ordinary perils that might be expected on a voyage at that season?”

Under common law, any contract of sea carriage of the goods, whether bill of lading or charter party impliedly imposed on the carrier an absolute obligation to provide seaworthy ship at the time when loading began.

Under the Hague rules however, such absolute undertaking was replaced by the carrier's duty to exercise due diligence to make the ship seaworthy before and at the beginning of the voyage only.

The extent of the ship owner's undertaking was expressed by Diplock L.J in **Hong Kong Fir Shipping Co. Ltd v Kawasaki Kisen Kaisha Ltd (1962)** 1 All E.R 474 as follows:-

“the ship owner's undertaking to tender a seaworthy ship has, as a result of numerous decisions as to what can amount to “unseaworthiness” become one of the most complex of contractual undertakings. It embraces obligations with respect to every part of the hull and machinery, stores and equipment and the crew itself. It can be broken by the presence of trivial defects easily and remediable as well as by defects which must inevitably result in a total loss of the vessel.

SELF ASSESSMENT EXERCISE 3

Discuss the duty of seaworthiness with the aid of decided cases.

3.7 Criticisms of the Hague Rules.

(1) the Hague rules were applicable under principle of *ex proprio vigore* or by their own force, to contracts of carriage made by way of a bill or similar document. This restriction is made clear by article 1(b)

(2) the use of paramount clauses. Art 10 of the rules states that:

“the provisions of this convention shall apply to all bills of lading issued in any of the contracting states:-

This was often overruled by national implementing laws, where they were used, that required the bill of lading to contain a paramount clause expressly stipulating that the Hague rules were to govern the contract.

This was initially upheld by the privy council in the case of *Vita Food Products Inc v Unus shipping Co. Ltd*

What happens if the paramount clause is omitted?

The Vita Foods litigation occurred in Nova Scotia on a shipment out of Newfoundland, which was a convention country. The clause paramount was omitted from the bill of lading. The court held that the Hague rules are applicable even if they do not contain a paramount clause.

3. Another criticism of the rules arose from the decision of the English case of *Scruttons v Midland Silicons (1962) A.C 446* where the court held that the protection of the Hague rules did not affect stevedores, since they were not parties to the contract of carriage. So that where you could not see the carrier, you could see the stevedoring firm, and that firm could not rely on any of the limited clauses contained in the rules.

4. Another defect of rules was the result of the *Manchester Castle (1961) ac 807* which was unpopular with carriers. It was held in this case that the ship owner's duty as to due diligence in furnishing a seaworthy vessel was non-delegable. The ship owner could not say that he had exercised due diligence by appointing competent marine surveyors or repairing companies. If those organizations were themselves negligent, the ship owner would be liable.

Also was the problem regarding the package or unit limitation. The limit of 100 pounds sterling to be of gold value (art 9). This was rather vague and ambiguous and subject to different judicial interpretations. It was also unsatisfactory that there was no package or unit limitation applicable to bulk cargoes.

Further more, there was the problem of containers. Is a container a package or unit? Article 4(5).

4.0 CONCLUSION

It should be said that Hague rules were not intended to provide a comprehensive and self sufficient code, but were designed merely to define the basic obligations of the carriers. It represented a compromise between ship owners on the extent of liability to be borne by parties in a contract of carriage. On the whole, it might well appear to be in favour of the cargo, because the ship owner was not allowed to exclude his liability beyond what the rules provided. The ship owner could not exclude his liability for due diligence as to seaworthiness and care of cargo, though he had the negligence in navigation and management exception. This is to some extent, a compromise leaning in favour of cargo.

The rules are not perfect, but in spite of the problems, the frustrations and vagueness of the Rules, it is seen as being a global success.

5.0 SUMMARY

The issues of who should bear what risk and when, has been traced back to the U.S. Harter Act and has remained the foremost consideration. The issue then was that the colonies and dominions , who were primarily users and not providers of shipping services, were concerned that they could not guarantee for themselves fair contractual terms due to the stronger bargaining position of the ship owners.

6.0 TUTOR MARKED ASSIGNMENT

Identify, with the aid of statutory and decided cases, the defects inherent in the Hague Rules of 1924.

7.0 **FURTHER READING/REFERENCES**

1. M.J. Shuah **The Revision of the Hague Rules on Bills of Lading within the UN System**, published in the Hamburg Rules on the Carriage of Goods by Sea, Mankabady (Ed.)1972 Sijthoff-Leydon
2. UN Document E. 72 11.D.2 New York, 1972 report of UNCTAD Secretariat on Bills of Lading.

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Unit 2 The Hague Visby Rules

1.0 INTRODUCTION

2.0 OBJECTIVES

3.0 MAIN CONTENT

3.1 Liability of the carrier under the Hague (Visby) Rules for cargo damage by unseaworthiness of its containers

3.2 Basic Provisions of the Hague Visby Rules – Duty of the Carrier

3.3 Comparison of the Hague Rules and the Hague Visby Rules

3.3.1 Application

3.3.2 Interpretation

3.3.3 Period of Responsibility

3.3.4 Basis of Liability

3.4 Impact of Hague Visby on case law

3.4.1 The Vita Food Gap

3.4.2 The Scrutons v. Midland Silicon's

3.4.3 The Bill of Lading

3.4.4 Package or Unit

3.4.5 Bulk Cargo

3.4.6 Container

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR MARKED ASSIGNMENT

7.0 FURTHER READING

1.0 INTRODUCTION

The Hague Rules became known as the Hague-Visby Rules on the adoption of the Protocol to amend the international convention for the Unification of certain rules of law relating to bills of lading. This protocol was adopted to amend the original treaty in Brussels in 1968 and came into force on June 23, 1977.

The Hague Visby protocol is not a standalone text and only refers to and amends the older Hague rather than engage in a complete re-drafting exercise.

The Hague Visby protocol has long been regarded as commercially fair and practical trade rules that are united to and up to the task of regulating the international carriage of goods by sea.

2.0 COURSE OBJECTIVE.

At the end of this unit, you should be able to know the main features of the Hague Visby Rules; you should also be able to pin-point the improvements brought by the Rule to the Hague Rules. And lastly, know the distinction between the rules as well as the defects of the Rules.

3.0 MAIN CONTENT

3.1. Liability of the carrier under the Hague (Visby) Rules for cargo damage by unseaworthiness of its containers

The question if a carrier is liable under the Hague (Visby) Rules for cargo damage caused by the unsuitability of its container is answered differently under different legal systems. One solution was provided by the supreme court of the Netherlands (hereafter “SCN”) in the NDS Provider. The SCN held that a container owned or provided by the carrier should be cargo worthy and that therefore the duty to exercise due diligence as contained in art.III (1) of the Hague (Visby)R also applies to such containers. The SCN based its judgment on the art.III (1) of the H (V) R which provides;

The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to;

(a) Make and keep the ship seaworthy;

(b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and

(c) make and keep the holds and all other parts of the ship in which the goods are carried, including any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception carriage and preservation

3.2 **Duties of the carrier**

The duties contained in art.III (paragraphs 1 and 2) provide that;

3.2.1 **Due diligence to make the ship seaworthy**

Before and at the beginning of the voyage the carrier is required to exercise due diligence to make the ship seaworthy. The carrier is also required to treat the cargo properly and carefully. In principle these duties are non-delegable and the carrier will be responsible for errors of his servants and agents in the fulfillment of these duties.

3.2.2 **The duty regarding the cargo**

In principle article III (8) H (V) should lead to the conclusion that the requirement of proper care for the cargo cannot be delegated. However, this is not in keeping with existing practice wherein it is often agreed that the shipper will load, stow and unload the goods. Therefore under English law, third party bill of lading holders may be harmed by the existing of Under American law there is a diversity of authority.

The carrier has to properly and carefully load, handle, stow, carry keep, care for, and discharge the goods carried. Art.III (8) H (V) R is also clear it provides that; Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with ,goods arising from negligence, fault, or failure in the duties and obligations provided in these Rules, shall be null and void and of no effect. a benefit of insurance in

favor of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

3.2.3 **Overriding nature of the duties of the carrier.**

Under common law the carrier had one overriding obligation. That was to deliver the goods in the same condition in which he had received them. That concept developed into the separate overriding duties to furnish a seaworthy ship and to treat the goods properly and carefully. The expression ‘overriding obligation’ has its origin in common law. If the carrier delivered the goods in a damaged condition and the damage was due to more than one cause, one being an excepted peril and the other a non-excepted peril then the non-excepted peril is seen as the only cause. The carrier will be responsible for the whole of the damage, not merely for such proportion as must have been incurred due to the unseaworthiness.

Under English law and the H (V)R the duty to exercise due diligence to make the ship seaworthy is also an overriding obligation and the duty to handle the cargo in accordance with art.III(2) is not delegable.

SELF ASSESMENT EXERCISE I

Discuss the duty of the carrier under the Hague Visby Rules.

3.3 **Comparison of Hague and Hague-Visby Rules**

The object of Hague Rules and Hague Rules was to protect cargo owners from wide spread exclusion of liability by sea carriers. This objective was achieved by incorporating standard clauses into bills of lading, defining the risks which must be borne by the carriers and specifying the maximum protection he could claim from exclusion and limitation of liability clauses.

3.3.1 **Article 10**

Application:

The Hague Rules had a restriction on its application from the use of paramount clauses. While Article 10 of the Hague Rules states that;

The provisions of this convention shall apply to all B O L issued in any of the contracting states.

This was often overruled by national implementing laws, where they used, that required the Bill Of Lading to contain a paramount clause expressly stipulating that the Hague Rules was to govern the contract.

The Visby Rules made certain that such a possibility could no longer arise and changed the wording of Article 10 to a stronger phrase;

“each contracting state shall apply the provisions.....”

Likewise, national implementing legislations use clearer words to give the Visby rule ‘the force of law. Also, it is now clear that paramount clauses are no longer required under the Visby rules and national legislation that previously referred to such clauses could no longer do so.

Article 10 of the Hague –Visby Rules lays out the conditions for the rules to be effective .It states that the rules apply if the goods are transported between two different states and;

Art 10 (a)- a B O L is issued in a contracting state

Art 10 (b)- The carriage begins in the part of a contracting state .

Art 10 ©- the contract of carriage specifically incorporates the rules by reference.

National law can extend the application of Hague Visby to circumstances not otherwise covered by Article 10. For example, the U.K extends Hague Visby to non-negotiable receipts if they specifically refer to the rules themselves.

National law can apply the Hague Visby rules to carriage that remains solely within that nation. This is currently operated by Denmark, Finland, Norway, Sweden, and Canada under the Nordic maritime Code.

3.3.2 **–Article 3 Interpretation**

As has been explained earlier, difficulties in interpretation have severely hampered the claims of the Hague Visby rules to apply a uniform shipping law across the globe.

Also, a lot of interpretation depended on the method of incorporating the rules into national law.

If the convention was not signed but merely annexed to a national statute as a schedule, such a state was not a contracting party to the convention in international law and was not bound to interpret them according to the Vienna Convention but according to the rules of national interpretation.

3.3.3 **Article 4 –period of Responsibility**

The Hague-Visby rules rightfully placed great importance on the question of liability and it was decided as a fundamental rule that, the liability of the carrier would begin with the loading of the ship, and end with discharge from the ship. After discharge, the local law at that place would govern liability. Article 1(e) therefore provides;

“Carriage of goods covers the period from the time when the goods are loaded on to the time when they are discharged from the ship”

Complete freedom of contract is maintained for the regulation of liability before loading and after discharge.

This, in our considered opinion, is logical as the risks at sea are far greater than on land.

Also, the rules and procedures for loading and discharge are different in different countries for various reasons and it would be unwise to ignore. Also, it can be argued that the carrier has very little control over the goods while they are not aboard his ship.

3.3.4. Article 5, Basis of liability.

Article 5, provides that;

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these rules ,provided such surrender or increase shall be embodied in the B O L issued to the shipper.....”

There are three main ways of breaching a contract for the carriage of goods by sea; these are by losing or damaging the goods, delivering the goods short of their destination or these has been a delay in carriage.

Under Article 4(5) of the Hague Visby Rules, the carrier is liable for ‘any loss or damage’ to the goods. The House of Lords, in –**The Heron II,Koufes v C.Csarnikow Ltd (1954) Exch.341** stated that damages would be assessed at the difference between the market value at the time of contracted delivery and the time of actual delivery.

Article 3(1)(a)provides that the carrier must exercise due diligence in ensuring that the ship is sea worthy and, according to Article 3(2)must also exercise due care of the cargo.

As under The Hague Rules, Article 4(2) lists seventeen explains under which the carrier can contract out of his liability. These Circumstances are termed the “uncontrollable clauses “as such, the carrier will not be liable for them –sea. ***The Marine Sulphur Queen (1970)2 Lloyd’s Rep 285.***

3.4 Impact of Hague Visby on case law

It has earlier been noted that the Hague Visby are simply the Hague Rules with a fairly small number of alterations, some of them quite important but not all very conspicuous. We also said that they are Hague with certain alterations made in the interest of correcting particular difficulties perceived then as having emerged from the operation of the Hague Rules.

In pin-pointing the criticisms of the Hague Rules, we identified some main problems from case law (refer to the previous unit). We shall now go over these cases to see how the Visby Rules have either tried to cure the defects or fill the lacuna created by the Hague Rules.

3.4.1 The Vita Food Gap.

The first is the Vita food gap. The Vita Food gap was closed by means of a different technique, which depends on domestic legislation.

Article x of the Hague Visby Rules actually prescribes when the Rules apply. They apply to outward shipments from a contracting state; to bill of lading issued in a contracting state governs.

3.4.2 The Scruttons v Midland Silicons.

This relates to actions against stevedores; or if such are worth bringing, against captains or other individuals operating the ship. Are they protected by the rules?

Under the Hague Rules, these set of individuals were not protected.

However, this was dealt with under Article IV Bis 2, a whole new section put in after Article IV.

Article IV Bis 2 provides as follows;

“If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor) such servant or agent shall

be entitled to avail himself of the defenses and limits of liability which the carrier is entitled to invoke under these Rules.

3.4.3 **The Bill of Lading**

The third problem relates to the probative effects of Bills of Lading. This is dealt with by the additions of one sentence in Article III. This Article requires the carrier on demand to issue a bill of lading containing certain particulars.

Art III 4 then provides that “such a bill of lading shall be prime facie evidence of receipt by the carrier of the goods therein prescribed in accordance with paragraphs (a)(b)and (C) and that.....” “Proof to the contrary shall not be admissible when the B O L has been transferred to a third party acting in good faith”.

SELF ASSESSMENT EXERCISE 2

In the light of case law and decided authorities, discuss how Hague Visby has resolved some lacuna created in the Hague Rules.

3.4.4 **Package or Unit.**

The Hague Visby was intended to provide for the inflation problem by linking the package or unit limitation to the Poincare Franc, which is a limit of currency defined by gold content. This proved subsequently not satisfactory and the limit is in some countries defined by reference to special Drawing Rights on the International Monetary Fund. This raised the limit considerably from 100 pounds Sterling.

3.4.5 **Bulk Cargo**

This is dealt with by the addition of a problem as to weight. The Visby protocol adds an alternative under Rule IV.5 that; “.....neither the carrier nor the ship shall in any event become liable for any loss or damage to or in connection with

goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is higher.”

So an alternative is limit per kilogram gross weight, whichever is the higher.

3.4.6. **Container**

Article IV 5(d) provides

“Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose this paragraph as far as these packages or units are concerned”.

Thus, if a bill of lading refers to “one container said to contain machinery”, then that is the package or unit. If it refers to “one container containing 600 TV sets, the sets would be the packages or units.

We should however note Article 5(e) which states that; “Neither the carrier nor the ship shall be entitled to the limitation provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result”.

So the package or unit limitations broken if the carrier acts with intent to cause damage.

4.0. **CONCLUSION.**

It cannot be denied by anyone looking at this area of the law that the Hague Visby rules continue to be the governing law of the carriage of goods by sea. They shall constitute the rules that govern the vast majority of contracts globally.

5.0. SUMMARY

We have seen how the Hague Visby Rules has tried to resolve the lacuna created by the Hague Rules in this unit.

6.0. TUTOR MARKED ASSIGNMENT

1. Discuss the improvements of the Hague Visby protocol on the Hague Rules; In your opinion, has this resolved the issue of exclusive liability borne by the ship owner?

7.0. FURTHER READING

M.J. Shuah **The Revision of the Hague Rules on Bills of Lading within the UN System**, published in the Hamburg Rules on the Carriage of Goods by Sea, Mankabady (Ed.)1972 Sijthoff-Leydon

2. UN Document E. 72 11.D.2 New York, 1972 report of UNCTAD Secretariat on Bills of Lading.

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1.0 INTRODUCTION

2.0 COURSE OBJECTIVES

3.0 MAIN CONTENT

3.1 Problems identified in the existing rules

3.1.1 Steps to redrafting

3.2 Salient features of the Hamburg Rules

3.3 Comparison of the Hamburg and the Hague Visby Rules

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR MARKED ASSIGNMENT

7.0 FURTHER READING/REFERENCES

1.0 INTRODUCTION

Following the UN Regional Economic Commission on Trade and Development (UNCTAD) began that some fifty years after the ex-colonies and dominions succeeded in getting the Hague Rules negotiated despite fierce resistance from carriers and ship-owners, this time from the developing nations, were again forcing a re-negotiation of the rules. It was the same concerns that were behind the complaints; the excessive exemptive privileges of the ship-owners; exclusion from liability in key carrier operatives such as navigation and restrictive jurisdiction clauses in bills of lading were the complaints leveled at carriers and ship-owners practices.

2.0 OBJECTIVES:

At the end of this unit, you should be able to:

- Discuss the main features of the Hamburg Rules;
- Distinguish it from the Hague Visby Rules;
- Discuss its improvements on the Hague Visby Rules

3.0 MAIN CONTENT

3.1 Problems identified in the existing rules:

- Vague and ambiguous wording in the Hague Visby Rules which complicate the allocation of the liability for loss or damage to cargo.
- Conflicting interpretations and judgments by different courts jurisdictions. This reduces the value of having one set of rules regarding the global shipping industry.
- The continued use in Bill of lading of exemptions and restrictions of liability of the carrier that are invalid, or of doubtful validity according to the Hague Visby Rules.
 - Exemptions in the Hague Visby rules relating to ocean carriage such as the exclusion of liability for losses which are within the carrier's control and should therefore be borne by the carriers. These include the exemption from liability for the negligence of carrier's servants and agents in the navigation and management of the vessel, exemption from losses due to the perils of the sea.e.t.c.
- The use of un-defined and uncertain terms in the Hague Visby Rules such as reasonable deviation, due diligence, properly and carefully e.t.c
- The uncertainty of the requirements of sea worthiness of the vessels;
The low limit of merely liability for loss of the Hague Rules

3.1.1 Steps towards redrafting

The major step taken in the draft was the deletion of Article 5 of the Hague Visby Rules exceptions for negligence in navigation.

It was recognized early on the Hamburg convention contained at least five critical reforms of The Hague Visby regime that would determine its future success and effectiveness if it was to do justice to the concerns that had emerged over the past 50 years. They were;

- the basic rule on liability
- sustaining carrier liability throughout the contract of carriage;
- monetary limitation of liability
- invalid clauses
- jurisdiction clauses

3.2 **Salient features of the Hamburg Rules,**

(1) A distinction between “carrier” and “actual carrier”; one of the main features of the Hamburg Rules is to draw a distinction between a “carrier” and an “actual carrier”. The “carrier” is the person who enters into a contract of carriage with the shipper. The “actual carrier” is the person to whom the actual carriage of the goods has been entrusted.

By virtue of Article 10, the carrier remains primarily responsible for the entire carriage, notwithstanding any delegation, while the actual carrier is jointly and severally liable for part of the carriage which he undertakes.

(2) wider definition of “contract of carriage”; the Hamburg Rules are not restricted to contracts of carriage “covered by a bill of lading or other similar document of title .the Hamburg Rules are not restricted to negotiable bills of lading and may be applicable to non-negotiable bills of lading, sea way bills and electronic document.

(3) period of carrier’s responsibility is extended; the responsibility of the carrier for the goods covers the period during which he is in “charge”

- of the goods at the port of loading, during the carriage, and at the port of discharge, i.e., normally from the time he has taken over the goods from the shipper until the time he has delivered to the consignee, subject to local port regulations.
- (4) Basis of carrier's liability "presumed fault"; the liability of the carrier under the Hamburg Rules is based on the principle of "presumed fault", which means that, as a rule, the burden of proof rests on the carrier. It envisages three important points. First, the carrier is, without more, liable for loss of or damage to goods as well as for delayed deliveries if such losses, damage or delayed delivery of goods occurred while the goods are under his charge. Secondly, the carrier is absorbed from liability if he, his agents or servants have taken all which could reasonably be required of them to avoid the loss, damage or delayed delivery in question. Thirdly, in contrast to the position under the Hague Visby Rules, it is for the carrier to prove that he has not been at fault.
- (5) Abolition of "exceptions" to the carrier's liability; an important feature of the Hamburg Rules is the absence of familiar 'exceptions' to a carrier's liability contained in Art. IV rule of the Hague and Hague-Visby Rules
- (6) Liability for delayed delivery of goods; the Hamburg Rules, unlike the Hague-Visby rules, impose liability on the carrier for delayed delivery of goods unless he has taken all measures which could reasonably have been taken to avoid the delay and its consequences.
- (7) Higher limitation of liability; in respect of the carrier's right to limit his liability, the Hamburg Rules impose higher limits than those imposed under the Hague and Hague-Visby Rules. The liability of the carrier for loss of damage to goods is limited to 835 SDRs per package or other shipping unit or 2.5 SDRs per kilo of gross weight of the goods.

- (8) Jurisdiction; wider choice of courts; under the Hamburg Rules, the plaintiff is given a wide choice of courts in which to initiate judicial or arbitral proceedings. Provided that the court selected is competent in terms of its own domestic law, the plaintiff has an option of instituting proceedings in any court situated in one of the following places;
- (a) The principal place of business or, in the absence thereof, the habitual residence of the defendant; or
 - (b) The place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or
 - (c) The port of loading or the port of discharge; or
 - (d) Any additional place designated for that purpose in the contract of carriage by sea.

3.3 **Comparison of the Hague Visby and the Hamburg Rules.**

The Hamburg Rules have been given a relatively wide scope of application—substantially wider than that of the Hague Rules. The Hamburg Rules are applicable to all contracts for the carriage of goods by sea between two different states if, according to the contract, either the port of loading or the port of discharge is located in a contracting state, if the goods are discharged at an optional port of discharge stipulated in the contract and that port is located in a contracting state, or if the bill of lading or other document evidencing the contract is issued in a contracting state.

3.3.2

Unlike the Hague Rules, which apply only when a bill of lading is issued by the carrier, the Hamburg Rules govern the rights and obligations of the parties to a contract of carriage regardless of whether or not a bill of lading has been issued.

3.3.3

The Hague Rules cover only the period from the time the goods are loaded onto the ship until the time they are discharged from it. They do not cover loss or damage occurring while the goods are in the custody of the carrier prior to loading or after discharge. The Hamburg Rules apply to the entire period the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

3.3.4

The Hamburg Rules effect a more balanced and equitable allocation of risks and responsibilities between carriers and shippers. Liability is based on the principle of presumed fault or neglect. That is, the carrier is liable if the occurrence that caused the loss, damage or delay took place while the goods were in his charge. This principle replaces the itemization of the carrier's obligations and the exemption from liability under the Hague Rules, and eliminates the exemption from liability for loss or damage caused by the faulty navigation or management of the ship.

3.3.5

The Hague Rules do not cover goods carried on deck by agreement of the parties, permitting the carrier to disclaim all liability for such cargo. The Hamburg Rules take these developments into account. Firstly, they expressly permit the carrier to carry goods on deck not only if the shipper so agrees, but also when such carriage is in accordance with the usage of the particular trade or if it is required by law.

3.3.6

Hague Rules do not cover the liability of the carrier for delay in delivery.

The Hamburg Rules govern the liability of the carrier for delay in delivery in the same manner as liability for loss of or damage to the goods, in accordance with the principle of presumed fault or neglect. The Hamburg Rules limit the liability of the carrier for loss or damage to the goods to an amount equal to 835 units of

account per package or other shipping unit, or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher. The limits of liability under the Hamburg Rules are 25 percent higher than those established under the 1979 additional protocol, which also uses the SDR as the unit of account. In The Hague Rules and the Visby protocol the limits of liability are expressed in units of account based upon a certain quantity of gold because national currencies no longer have a fixed values in relation to gold, the values of those limits in national currencies vary.

4.0 CONCLUSION

From a pure legalistic view, the Hamburg rules appear to be much more comprehensive and much better in terms of giving solutions to the defects or shortcomings of the two other regimes. At the same time, when compared to either The Hague Rules or The Hague Visby Rules, the Hamburg Rules are clearly in favour of the shipper. It is therefore not surprising that the Rules have not been warmly received by ship owners and their insurers.

5.0 SUMMARY

We have studied the Hamburg Rules and also discussed the liability of the carrier under the Rules; we also considered the differences between the Hamburg Rules and the old rules.

6.0 TUTOR MARKED ASSIGNMENT

Distinguish between the Hamburg Rules on the one hand , and the Hague and the Visby Rules on the other. What improvements did the new rule bring on the existing structure in the carriage of goods as regards the following:

- a. Liability of carrier
- b. The measurement of package

7.0. FURTHER READING

M.J. Shuah **The Revision of the Hague Rules on Bills of Lading within the UN System**, published in the Hamburg Rules on the Carriage of Goods by Sea, Mankabady (Ed.)1972 Sijthoff-Leydon

2. UN Document E. 72 11.D.2 New York, 1972 report of UNCTAD Secretariat on Bills of Lading.

Module 3: International Conventions on Maritime Law.

- Unit 1 The Hague Rules**
- Unit 2 The Hague Visby Rules**
- Unit 3 The Hamburg Rules**
- Unit 4 The Rotterdam Rules**

Unit 4 The Rotterdam Rules

1.0 INTRODUCTION

2.0 COURSE OBJECTIVE

3.0 MAIN CONTENT

3.1 General Overview of the Convention

3.1.1 Exceptions

3.2 Application of the Convention

3.3 Test of Internationality

3.4 Exclusion Clauses

3.5 Liability of the Carrier

3.5.1 Period of Responsibility

3.5.2 Positive Duties

3.5.3 Basis of Enquiry

3.6 Limitation of Liability

3.7 Liability of the Shipper

3.8 Documentary Shipper

3.9 Transport Documents

3.10 Electronic Transport Documents

3.11 Rights of Controlling Party

3.12 Matters regulated by Rotterdam Rules

1.0 INTRODUCTION

In the context of English maritime law, the Hague Rules and its amended protocol of 1968 (Hague Visby Rules) have come to be regarded as the central

code defining the basic rights and obligations of the parties to a contract for the carriage of goods by sea. The reasons for the reform and replacement of the rules have been examined in the previous units.

When the task of harmonizing international maritime and trade laws began to be undertaken by the United Nations agencies, International Maritime Organization, UNCTAD and UNCITRAL, two attempts were made to introduce two new legislations governing the subject. These efforts resulted in the Hamburg Rules which entered into force in 1994.

The Comité Maritime International decided in May 1994 to set up a Working Group to consider the current disharmony in the law relating to carriage by sea. Following the adoption of the text by UNCITRAL, the draft convention was submitted to the General Assembly of the United Nations for approval. On 11 December, 2008, the General Assembly passed Resolution 63/122 by which it adopted the draft text as the **United Nations Convention on Contracts for the International Carriage of Goods wholly or Partly by Sea** and recommended the use of the short title – **Rotterdam Rules**

2.0 COURSE OBJECTIVES

At the end of this unit, the student should be able to discuss the provisions of the Rotterdam rules, improvements and/ or distinctions from the Hamburg Rules, and its applicability to the Nigerian maritime industry.

3.0 MAIN CONTENT

3.1 **General Overview of the Convention**

There is no express provision in the text relating to the obligations undertaken by contracting states by virtue of becoming a party to the convention.

- Article 89 - Contracting states which is a party to the Hague Rules, Hague Visby Rules or the Hamburg Rules must denounce these

conventions at the same time as it ratifies, accepts, approves or accedes to the Rotterdam Convention.

- Art 90 – No reservation is permitted in this Convention; otherwise, the obligations undertaken by a contracting state must be a matter of inference from the express terms of the contract;

3.1.1 **Exceptions**

The chapters on jurisdiction and arbitration are optional and will apply only to those states that ‘opt in’. A state may opt in to one of these chapters without becoming obliged to opt in to the other. The other option is exercised by making a declaration under Article 91. Such declaration may be made at any time, and once made, may be withdrawn. For those states that do not opt in, the two chapters will have no binding force on them.

The convention deals with wider range of topics than The Hague, Hague Visby Rules or the Hamburg Rule; such as delivery of goods, rights of the controlling party, and transfer of rights. The legal force of all provisions of the Convention will be dependent upon the same conditions of applicability. Article 5 states that it “applies to contracts of carriage”

3.2 **Application of the Convention**

Scope of Application

- The Convention defined contract of carriage as a contract which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other means of transport.
- The Convention applies to a carriage of goods either by sea and other means.
- The Convention covers the entire period. This is a departure from the Hamburg Rules. However, a contract which involves carriage by sea and

also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only so far as it relates to the carriage by sea = See Article 1(6). Thus, the Convention employs the notion of different modes of transport.

3.3 Test of Internationality

The Convention is intended to apply only to international carriage. Not only must the place of receipt and place of delivery be in different states, the port of loading of a sea carriage and the port of discharge of the same sea carriage must be in different states – Article 5 (1)

In contrast with the Hague Visby Rules, Article X, the intention of the Convention is that it should apply by statute both to outward cargoes from a contracting state and also to inward cargoes to a contracting state.

There is no express provision requiring states to incorporate the Convention into their national laws in such a way that the Convention applies irrespective of the proper law of the contract of carriage; but the Convention is to apply, without regard to nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties – Article 5(2).

It thus appears, to be intended that the Convention should apply irrespective of the proper law of the contract of carriage.

There is no provision requiring carrier to include a “clause paramount” in their transport documents, as was provided in the previous rules.

3.4 Exclusion Clauses

Articles 6 & 7 exclude from the Convention those contracts where there is a consensus that the parties should have autonomy to contract freely on such terms as they wish. Charterparties especially have long been regarded as the typical example of a type of contract where freedom of contract should prevail on the ground that they individually negotiated, and there is no

question arising of a need to protect a weaker party from another in a stronger bargaining position.

The Hague Rules only applied to contracts covered by a Bill of Lading or any similar document of title but they did not apply to Bill of Lading issued under or pursuant to a Charterparty. The Hamburg rules provided that the provisions of the Conventions were not applicable to Charterparty, but that 'where a Bill of Lading is annexed pursuant to a Charterparty, the provisions of the Conventions apply to such Bill of Lading if it governs the relations between the carrier and the holder of the Bill of Lading, not being the charterer.

3.5 Liability of the Carrier

The rules relating to a carrier's liability under the Conventions are, in general, mandatory – Art 79. A measure of freedom of contract is permitted in Article 12(3) which allows the parties, within specified limits, to agree on the time and location of receipt and delivery of the goods for the purpose of determining the carrier's period of responsibility.

3.5.1 Period of Responsibility

Art 12(1) States with the general rule that the period of responsibility of the carrier begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.

Under Article 12(2), if the shipper by virtue of the law or regulations of the place of receipt must hand the goods to an authority or third party from which the carrier must collect, then the period of responsibility of the carrier begins when he collects the goods.

3.5.2 Positive Duties

The carrier's obligation, as set out in Art 11, 13 & 14 are expressed in language from the Hague Visby Rules. Under the Hague Visby Rules, the 'duty lies upon

the carrier to exercise due diligence before and at the beginning of the voyage to make the ship sea worthy, and under English law, a breach will not be excused by any of the list of exceptions in Article IV (2).

Under The Rotterdam Rules, the exceptions ‘act, neglect or default in the navigation of the ship has been abolished.

The duty to exercise due diligence under article 14 is no longer restricted to the period before the commencement of the voyage; it is a continuing duty during the voyage by sea to make and keep the ship sea worthy.

Thus, if the ship becomes unseaworthy during the voyage, whether or not due to an excepted peril, the carrier will come under a duty to exercise due diligence to make her seaworthy again.

Art 13 – The obligation of the carrier to properly and carefully receive, load and deliver the goods require the carrier to do the work.

The Article provides for an enquiry into the carrier’s liability to be conducted in a number of stages, which party has the burden of proof; what needs to be proved and the consequence of doing so.

Art 14

The obligation of the carrier to ‘exercise due diligence like the Hague (Visby) Rules must be exercised through any person who is entrusted with the real works. Thus, Article 28 provides for any employees of the carrier or a performing party and any person that performs or undertakes to perform any of the carrier’s obligations under the contract of carriage to the extent that the person acts, directly or indirectly at the carrier’s request or under the carrier’s supervision or control. The obligation continues during the voyage at sea.

3.5.3 **Basis of enquiry**

Stage 1 Claimant may prove that all the loss, damage or delay took place during the period of the carrier's responsibility or that the event or circumstance that caused or contributed to it took place then.

Stage 2

Carrier may seek to be relieved. But the burden is on him to prove how the loss or damage occurred; or seek relief under excepted perils i.e. act of God, danger of the sea or navigable waters, war, hostilities, fire, wastage. – Art 17:3

Stage 3

Claimant may prove the following:

- That the fault of the carrier caused or contributed to the event or circumstance i.e. liable for all or part of the loss – Art 17:4
- May prove that an even not listed in Article 17: contributed to the loss;
- The loss was or was probably caused by unseaworthiness of the ship, improper crewing.

3.6 **Limitations of Liability**

The Convention preserves the general scheme of limitation of liability which was introduced by the Hague (Visby) Rules. The differences are that :

The Hague (Visby introduced a dual system of a limit per package on unit an a lower unit per kilo of gross weight of the goods lost or damaged and provided that 'whichever is the higher' was to apply.

Article 59 Rotterdam Rules preserves the dual system but following the Hamburg rules, 'per package or unit has been changed to 'per package or other shipping unit.

The Hague Visby Rules provide that, unless the nature and value of the goods had been declared by the shipper before shipment, and inserted into the Bill of Lading, neither the carrier nor the ship shall be liable for any loss or damage in an amount exceeding the limit.

Article 59 Rotterdam Rules widens the effect of the limit so that it applies to the carrier's liability for breaches of its obligations and not just to loss or damage to or in connection with goods.

Article 60 provides for a limit of liability to delay. Under the Hague Visby Rules there was no such but the Hamburg Rules introduced it. Article 60, compensation for loss or damage is calculated and liability for economic loss is limited to an amount equivalent to two and a half times the freight payable on the goods delayed.

3.7 **Liability of the Shipper**

The obligations imposed on the shipper are mandatory. Article 79(2)(a) renders void any term that directly or indirectly excludes, limits or increases them.

Obligation of Shipper

Article 27, 28 and 28 are the general obligations as regards delivery of the goods for carriage, cooperation with the carrier to the provision of information, instructions and documents. Article 31 relates to the obligations of the shipper to provide the information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport documents.

3.8 **Documentary Shipper**

The Convention introduces the concept of the documentary shipper and it defines it as a person other than the shipper that accepts to be named as shipper in the transport document or electronic transport record – Article 1:9

Article 53 provides that the document shipper is subject to the obligations and liabilities imposed on the shipper and also entitled to the shipper's right and defences.

3.9 **Transport Documents**

The Rotterdam Rules, unlike The Hague (Visby) and Hamburg Rules does not define labels under which the existing commercial documents are known. It defines its own terms and those terms are independent of any national law or practice relating to Bill of Lading. Article 1:14 contains a definition of transport document as a document issued under a contract of carriage by the carrier that :
'Evidences that carrier's or a performing party's receipt of goods under a contract of carriage and evidences or contains a carriage of contract

3.10 **Electronic Transport Records**

The Convention facilitated the use of electronic transport records. This it did by including in the text provision on the exercise of the right of control needed where an electronic document is issued

3.11 **Rights of the Controlling Party**

Chapter 10 introduces the concept of control of the goods, the basis of which is that through out the transit, there should be an identifiable party with the right to give instructions to the carrier in respect of the goods including delivery instructions, and to whom the carrier applies for any information, instruction or document it may require.

The concept of the controlling party is significant both in relation to giving instructions and in relation to the rights and obligations of the carrier in respect of delivery.

The rights of the controlling party are:

- to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;
- to obtain delivery of the goods at a scheduled port of call; or
- to replace the consignee by any other person including the controlling party.

3.12 Comparison of the Hague Visby Rules, Hamburg and Rotterdam Rules

1. Rotterdam Rules extend its application to the carriage by other modes if the parties so agreed
2. Under all Conventions the carriage must be international and must be linked to a contracting state. But while under the Hague Visby It is required for their application that either the Bill of lading or the port of loading be located in the contracting state, in the Hamburg Rules, the place of issuance of the Bill of Lading is rightly ignored. Therefore, the Hague Visby do not apply to a contract from a port located in a non-contracting state to a port of discharge located in a contracting state.

3.12 Matters regulated only by the Rotterdam Rules

1. **Carriage beyond the sea:** The application of the Rotterdam Rules to carriage by modes of transport other than sea results from the definition of contract of carriage;
2. **Electronic Records:** Another novelty in Rotterdam Rules is the regulation of the electronic alternative to the transport documentation. In view of the continuous development of electronic communication and the fact that so far the attempts to create a workable system allowing the replacement of paper documents by electronic records have not been successful, the provisions regulating such possible replacement have been drafted in such a way as to allow their application whatever future system may in the future be envisaged. This has been achieved through the addition of chapter 3 providing for the equal value of transport documents and their electronic equivalent, the electronic transport record, setting out the basis conditions for the use of electronic transport records and the rules governing the replacement of transport document with transport;

3. **Obligations and liabilities of maritime performing parties.** The Rules extend application to all persons providing services ancillary to the carriage by sea in the ports of loading and discharge to ensure uniformity and certainty to freedom of contract.
4. **Delivery of Goods.** No provision exists in The Hague (Visby) and Hamburg Rules in respect of the rights and obligations of the parties relating to the delivery of the goods after their arrival at destination. The Rotterdam Rules contain provision on the rights and obligations of the parties. The obligation of the carrier to deliver the goods is subject to different conditions.
5. **Rights of the Controlling Party.** The Rotterdam Rules regulate in Chapter 10 and call the rights to give instructions the controlling party.
6. **Transfer of rights.** Article 57 regulates the manner in which the holder of a transport document may transfer the rights incorporated therein.

4.0 **CONCLUSION**

The first function of a private law Convention in the maritime field is to promote uniformity. It must introduce a fair and balanced system for apportioning risk between the parties likely to be affected. A third is that it should update the law in the light of current commercial developments. And to formulate the law with reasonable certainty so that parties can ascertain their legal rights and obligations without the need of litigation.

5.0 **SUMMARY**

Having looked at the provisions of the Rotterdam Rules, its effect and impact can only be assessed after considering the applicability in the industry. Suffice it to say that the Convention has made copious improvements on the past models has put into consideration, the impact and future of technology on the industry.

6.0 **TUTOR MARKED ASSIGNMENT**

1. What are the improvements of the Rotterdam Rules over The Hague Visby and Hamburg Rules?
2. What the rights of the controlling party are as provided for in the Rotterdam Rules?

7.0 **FURTHER READING/REFERENCES**

Y. Yates: “The Rotterdam Rules” being an article published in “The Lloyds”
Publication No. 0067; February 2010.

MODULE 4

Unit 1 Marine Pollution

Unit 2 International Legislations on Pollution

Unit 3 Municipal Laws governing Marine Pollution

Unit 1 **MARINE POLLUTION**

1.0 INTRODUCTION

2.0 COURSE OBJECTIVES

3.0 MAIN CONTENT

3.1 Definition

3.2 Pollution of the Marine Environment

3.3 Sources of pollution of the Environment;

3.4 Protection of the Marine Environment

3.5 Legal Liabilities arising from Pollution

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR MARKED ASSIGNMENT

7.0 FURTHER READING/REFERENCES

1.0 INTRODUCTION

The importance of the marine environment to the survival of man cannot be over-emphasized. Apart from the fact that the world's ocean produces 70-80% of the planet's oxygen and houses almost 80% of all animals and plant life, 80% of international trade takes place over the oceans. This is so because of the cheap facilities provided by sea transportation to ferry goods from one part of the world to another. While finished goods move from the developed and developing

nations, raw materials in large quantities are transported through the sea to the industrialized nations. In the light of the importance of marine and its preservation to man, international organizations, states and regional governments have formulated policies to protect its marine environment from pollution.

2.0 COURSE OBJECTIVE

In this unit, we shall deal with the legal liabilities of vessel owners who pollute the seas and the various international and national legislations which have been enacted to cope with this problem.

3.0 MAIN CONTENT

3.1 Definition

The American College Dictionary defines pollution as:

- To make foul or unclean, dirty.....
- Pollution may be defined as the introduction of substances including energy into the environment in such a way that harm results or may results.

Article 1 (4) of the United Nations Conventions on the Law of the Sea, 1982 defined pollution as:

... the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality life for use of sea water and reduction of amenities.

- It is also defined as the ability to cause harm that differentiates pollution from contamination.

- It is an unjustifiable interference with acquired possession and/or enjoyment by land or sea.

3.2 Pollution of the Marine Environment

What is meant by pollution of the marine environment?

Art 1 of the United Nations Conventions on the Law of the Seas (UNCLOS III) defines pollution of the marine environment as:

‘the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impair most of quality for use of sea water and reduction of amenities.

3.3 Sources of Pollution of the Marine Environment

The United Nations Conventions on the Law of the Seas (UNCLOS III) defined the sources of pollutions as:

- a. Pollution from land based source
- b. Pollution from sea bed activities subject to national jurisdiction
- c. Pollution from activities in the Area
- d. Pollution by dumping
- e. Pollution from vessels
- f. Pollution from or through the atmosphere.

3.4 Protection of marine environment

Protection of the marine environment is a phrase used to describe efforts at:

- a. Preventing marine pollution
- b. Protection of marine resources, living and non-living.

Obligations of States on the Protection of the Marine Environment

Article 192 of the United Nations Conventions on the Law of the Seas (UNCLOS III) states the general obligation of party states to the convention: To protect and preserve the marine obligation

Article 193 further states that states have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duties to protect and preserve the marine environment.

The implication of this provision is that while a nation is exploiting her natural resources within jurisdiction, such activities must not pollute the marine environment.

Article 194 further states that:

1. States shall take all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, including using...the best practicable means at their disposal and in accordance with their capacities and they shall endeavour to harmonize their policies in this convention.
2. States shall take all measures to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other states and their environment and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond areas where they exercise sovereign rights in accordance with this Convention.
3. The measures taken, shall deal with all sources of pollution of the marine environment ;
4. In taking measures to prevent, reduce or control pollution of the marine environment, states shall refrain from unjustifiable interference with

activities carried out by other states in the exercise of their rights and in pursuance of their duties in conformity with this convention.

5. The measures taken in accordance with this Part shall include these necessary to protect rare or fragile ecosystems as well as the habitat or depleted, threatened or endangered species and other forms of marine life.

3.5 **Legal Liabilities arising from marine pollution**

1. Trespass

Legal authorities indicate that pollution could not be properly classified as pure trespass. At best, it could be classed as consequential interference. Similarly, pollution as a result of fire or explosion on board could be indirect or consequential.

Where trespass is alleged, two defences might be available. The first is that the discharge of oil was necessary to save the ship itself. But this defence could fail if the lives or property has been placed in jeopardy as a result of the unseaworthiness of the vessel or negligence of the owners in the first place.

In the case of *Esso Petroleum Coy v. Southport Corporation (1955) 2 Lloyd's Report 655* where an action was brought by the South port Corporation against the owners of the Liverpool and her master, seeking damages as a result of oil discharge into an estuary and subsequently fouling the environment. Allegations of negligence, nuisance and trespass were made.

At the House of Lords, it was considered sufficient to the charges of trespass and nuisance that the discharge of oil was necessary under the circumstance in the interest of the crew's safety and to lighten the ship.

In *River Wear Commissioners v. Adamson (1877) 2 App. Cases 743*, before the House of Lords, Lord Blackburn said as follows:

“The common law position is.....property adjoining to a spot on which the public has a right to carry on traffic is liable to be injured by that traffic. In this

respect, there is no difference between a shop, the railings or windows of which may be broken by a carriage on the road and a pier adjoining a harbour in a navigable river by the sea which is liable to be injured by a ship. In either case, the owner of the injured property must bear his own loss **unless he can establish that some other person is at fault and liable to make it good.** (*Emphasis mine*).

2. Public Nuisance

The tort of public nuisance must affect a sufficient number of persons to justify the description 'public' – **A.G. v. PYA Quarries (1957) 2 Q.B. 169**

An individual claimant can succeed in his claim under this cause of action provided that he can show satisfactorily that he personally suffered special damages peculiar to himself.

3. Private Nuisance

This is a wrongful interference with a person's use or enjoyment of his land or some right connected with it. Hence, it must be a prerequisite to succeed in a claim that the claimant proves the following

- That he has a proprietary interest in the land.
- He also needs to show that what he has suffered was foreseeable by the wrongdoer.

Where the above is established, the tortfeasor is left with no other recourse than to show that under the circumstances the interference was reasonable.

4. Criminal Liability

Criminal Liability is imposed by the Merchant Shipping (Prevention of Oil Pollution Regulation) 1983, and S.2 (2A) Prevention of Oil Pollution Act 1971. The Regulation which implements the United Kingdom's international obligation under the MARPOL convention of 1973 and the Protocol of 1978,

apply to all ships registered in the United Kingdom, and to foreign ships in United Kingdom territorial waters.

By S.2A which relates only to discharges landward of the line used for measuring territorial waters, applies to all ships.

The regulation prohibits the discharge of oil from tankers or other vessels. Before any discharge is permitted, the vessel must not be within certain specified areas or within a specified distance from land.

4.0 CONCLUSION

Legal authorities indicate that pollution could not be properly classed as pure trespass. At best, it could be classed as consequential interference. Similarly, pollution as a result of fire or explosion on board could be indirect or consequential.

5.0 SUMMARY

In this unit, we have considered the definition of pollution, the sources of pollution, and the legal liabilities arising from pollution.

6.0 TUTOR MARKED ASSIGNMENT

1. Discuss states obligation to the protection of the marine against pollution. What standard is required?
2. What are the legal liabilities arising from marine pollution? Discuss with the aid of decided cases.

7.0 FURTHER READING/REFERENCES

1. Schroenbaum: Admiralty and Maritime Law (2nd edition) 1994
2. Christopher Hill : Maritime Law, 5th edition Lloyds Practical Shipping Guide

MODULE 4

Unit 1 Marine Pollution

Unit 2 International Legislations on Pollution

Unit 3 Municipal Laws governing Marine Pollution

1.0 **INTRODUCTION**

2.0 **COURSE OBJECTIVE**

3.0 **MAIN CONTENT**

3.1 Definition

3.2 International Legislations

3.1 The London Dumping Convention

3.2 Various Amendments to the Convention

3.3 Permitted Dumping

3.4 International Convention on Civil Liability for Oil Pollution Damage (CLC)

3.5 Amendments and Protocols

3.6 Criticisms of the CLC

3.7 International Convention on the Establishment of an International Fund for Compensation for Oil Damage Pollution Damage 1971

3.8 Purposes of the Fund Convention

3.9 Various Amendments

3.10 Other Conventions on Marine Pollution

1.0 **INTRODUCTION**

Oil Pollution is of paramount importance in the maritime world. Oil pollution as a problem was not seriously discussed internationally until the 1950s when an international conference (1954) was held to discuss the prevention of pollution of the sea by oil. But a sense of urgency did not arise until the Torrey catastrophe of 1967. Since then, the problem of oil pollution has been a major headache throughout the world

Marine pollution is trans-boundary and not limited to national territorial waters alone but extends to the high seas used by all states and it is mainly regulated by

United Nations Convention of the Law of the Sea (UNCLOS) and the conventions and regulations of a competent international organization known as International Maritime Organization IMO.

UNCLOS and other treaties impose its member States (as a coastal, port and flag state) in respect of the pollution of the marine environment from sea bed and land based and vessels' activities and the disposition of shipboard waste, oil and garbage through reception facilities.

In preventing pollution, there are the main standards calculated to directly prevent pollution such as standards that prohibit or restrict certain types of activities or dumping of highly radioactive wastes, conducting of nuclear weapons tests in the sea and the design and maintenance of ships.

2.0 **COURSE OBJECTIVES**

At the end of this unit, the student should be able to:

- Discuss the concept of pollution;
- Know the standard required to prevent pollution;
- Critically assess the existing legislations and regulations governing pollution.

3.0 **MAIN CONTENT**

3.1 **THE LONDON DUMPING CONVENTION**

The Inter-Governmental Conference on the Convention on the Dumping of Wastes at Sea, which met in London in November 1972 at the invitation of the United Kingdom, adopted this instrument, generally known as the London Convention. When the Convention came into force on 30 August 1975, IMO was made responsible for the Secretariat duties related to it.

The Convention has a global character, and contributes to the international control and prevention of marine pollution. It prohibits the dumping of certain hazardous materials, requires a prior special permit for the dumping of a number of other identified materials and a prior general permit for other wastes or matter.

"Dumping" has been defined as ANY deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures, as well as the deliberate disposal of these vessels or platforms themselves.

Wastes derived from the exploration and exploitation of sea-bed mineral resources are, however, excluded from the definition. The provision of the Convention shall also not apply when it is necessary to secure the safety of human life or of vessels in cases of force majeure

3.2 Various Amendments to the Convention

- **The 1978 amendments-incineration**

The amendments affect Annex I of the Convention and are concerned with the incineration of wastes and other matters at sea.

Disputes

They introduce new procedures for the settlement of disputes.

- **The 1980 amendments - List of substances**

These amendments are related to those concerned with incineration and list substances which require special care when being incinerated.

- **The 1989 amendments – Adoption**

The amendments qualify the procedures to be followed when issuing permits under Annex III. Before this is done, consideration has to be given to whether

there is sufficient scientific information available to assess the impact of dumping

- **The 1993 amendments**

The amendments:

- Banned the dumping into sea of low-level radioactive wastes.
- Phased out the dumping of industrial wastes by December 1995.
- Banned the incineration at sea of industrial waste;

Although all three disposal methods were previously permitted under the Convention, attitudes towards the use of the sea as a site for disposal of wastes have changed over the years.

In 1983 the Contracting Parties to the LC adopted a resolution calling for a moratorium on the sea dumping of low-level radioactive wastes. Later resolutions called for the phasing-out of industrial waste dumping and an end to the incineration at the sea of noxious liquid wastes.

- **1996 Protocol** – (intended to replace the 1972 Convention.)

It represents a major change of approach to the question of how to regulate the use of the sea as a depository for waste materials.

One of the most important innovations is to introduce (in Article 3) what is known as the "precautionary approach". This requires that "appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects on the marine environment.

"The article also states that "the polluter should, in principle, bear the cost of pollution" and it emphasizes that Contracting Parties should ensure that the Protocol should not simply result in pollution being transferred from one part of

the environment to another.

The 1972 Convention permits dumping to be carried out provided certain conditions are met. The severity of these conditions varies according to the danger to the environment presented by the materials themselves and there is a "black list" containing materials which may not be dumped at all. The 1996 Convention is much more restrictive.

3.3 **Permitted Dumping**

Article 4 states that Contracting Parties "shall prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1." These are:

1. Dredge materials;
2. Sewage sludge;
3. Fish waste, or material resulting from industrial fish processing operations;
4. Vessels and platforms or other man-made structures at sea;
5. Inert, inorganic, geological material;
6. Organic material of natural origin;
7. Bulky items primarily comprising iron, steel, concrete and similar unarmful materials for which the concern is physical impact and limited to those circumstances, where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping;

The only exceptions to this are contained in Article 8 which permits dumping to be carried out "in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels..."

Incineration of wastes at sea was permitted under the 1972 Convention, but was later prohibited under amendments adopted in 1993. It is prohibited by Article 5

of the 1996 protocol.

SELF ASSESSMENT EXERCISE 1

What do you understand by permitted dumping? What item is(are) permitted to be dumped?

- Article 6 of the Protocol states that "Contracting Parties shall not allow the export of wastes or other matter to other countries for dumping or incineration at sea."

Article 9 requires Contracting Parties to designate an appropriate authority or authorities to issue permits in accordance with the Protocol.

The Protocol recognizes the importance of implementation and Article 11 details compliance procedures under which, no later than two years after the entry into force of the Protocol, the Meeting of Contracting Parties "shall establish those procedures and mechanisms necessary to assess and promote compliance..."

A key provision is the so-called transitional period (Article 26) which allows new Contracting Parties to phase in compliance with the convention over a period of five years. This provision is supported by extended technical assistance provisions.

2006 Amendments to the 1996 Protocol

Storage of carbon dioxide (CO₂) under the seabed will be allowed from 10 February 2007, under amendments to an international convention governing the dumping of wastes at sea.

Contracting Parties to the London Protocol, at their first meeting held in London from 30 October to 3 November, adopted amendments to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes

and Other Matter, 1972 (London Convention). The amendments regulate the sequestration of CO₂ streams from CO₂ capture processes in sub-seabed geological formations.

Parties also agreed that guidance on the means by which sub-seabed geological sequestration of carbon dioxide can be conducted should be developed as soon as possible. This will, when finalized, form an important part of the regulation of this activity. Arrangements have been made to ensure that this guidance will be considered for adoption at the 2nd Meeting of Contracting Parties in November 2007.

This means that a basis has been created in international environmental law to regulate carbon capture and storage (CCS) in sub-seabed geological formations, for permanent isolation, as part of a suite of measures to tackle the challenge of climate change and ocean acidification, including, first and foremost, the need to further develop low carbon forms of energy. In practice, this option would apply to large point sources of CO₂ emissions, including power plants, steel and cement works.

SELF ASSESSMENT EXERCISE 2

Discuss the various amendments to the London Dumping Convention.

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

Historical Background.

The Civil Liability Convention was adopted to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships.

The Convention places the liability for such damage on the owner of the ship from which the polluting oil escaped or was discharged.

Subject to a number of specific exceptions, this liability is strict; it is the duty of the owner to prove in each case that any of the exceptions should in fact operate. However, except where the owner has been guilty of actual fault, they may limit liability in respect of any one incident to 133 Special Drawing Rights (SDR) for each ton of the ship's gross tonnage, with a maximum liability of 14 million SDR (around US\$18 million) for each incident. (1 SDR is approximately US\$1.28 - exchange rates fluctuate daily).

The Convention requires ships covered by it to maintain insurance or other financial security in sums equivalent to the owner's total liability for one incident.

The Convention applies to all seagoing vessels actually carrying oil in bulk as cargo, but only ships carrying more than 2,000 tons of oil are required to maintain insurance in respect of oil pollution damage.

This does not apply to warships or other vessels owned or operated by a State and used for the time being for Government non-commercial service. The Convention, however, applies in respect of the liability and jurisdiction provisions, to ships owned by a State and used for commercial purposes. The only exception as regards such ships is that they are not required to carry insurance. Instead they must carry a certificate issued by the appropriate authority of the State of their registry stating that the ship's liability under the Convention is covered.

The Convention covers pollution damage resulting from spills of persistent oils suffered in the territory (including the territorial sea) of a State Party to the Convention. It is applicable to ships which actually carry oil in bulk as cargo, i.e.

generally laden tankers. Spills from tankers in ballast or bunker spills from ships other than other than tankers are not covered, nor is it possible to recover costs when preventive measures are so successful that no actual spill occurs. The shipowner cannot limit liability if the incident occurred as a result of the owner's personal fault.

SELF ASSESSMENT EXERCISE 2

What is the area of coverage of the CLC?

3.5 Amendments and Protocols

- **The Protocol of 1976**

The 1969 Civil Liability Convention used the "Poincare franc", based on the "official" value of gold, as the applicable unit of account. However, experience showed that the conversion of this gold-franc into national currencies was becoming increasingly difficult. The 1976 Protocol therefore provided for a new unit of account, based on the Special Drawing Rights (SDR) as used by the International Monetary Fund (IMF). However, in order to cater for those countries which are not members of the IMF and whose laws do not permit the use of the SDR, the Protocol provides for an alternate monetary unit - based, as before, on gold.

- **The 1984 Protocol**

While the compensation system established by the 1969 CLC and 1971 Fund Convention had proved very useful, by the mid-1980s it was generally agreed that the limits of liability were too low to provide adequate compensation in the event of a major pollution incident.

The 1984 Protocol set increased limits of liability, but it gradually became clear that the Protocol would never secure the acceptance required for entry into force and it was superseded by the 1992 version.

A major factor in the 1984 Protocol not entering into force was the reluctance of the United States, a major oil importer, to accept the Protocol. The United States preferred a system of unlimited liability, introduced in its Oil Pollution Act of 1990. As a result, the 1992 Protocol was drawn up in such a way that the ratification of the United States was not needed in order to secure entry into force conditions.

- **The Protocol of 1992**

The Protocol changed the entry into force requirements by reducing from six to four the number of large tanker-owning countries that are needed. The compensation limits are those originally agreed in 1984:

- For a ship not exceeding 5,000 gross tonnages, liability is limited to 3 million SDR (about US\$3.8 million)
- For a ship 5,000 to 140,000 gross tonnage: liability is limited to 3 million SDR plus 420 SDR (about US\$538) for each additional unit of tonnage
- For a ship over 140,000 gross tonnage: liability is limited to 59.7 million SDR (about US\$76.5 million)

The 1992 protocol also widened the scope of the Convention to cover pollution damage caused in the exclusive economic zone (EEZ) or equivalent area of a State Party. The Protocol covers pollution damage as before but environmental damage compensation is limited to costs incurred for reasonable measures to reinstate the contaminated environment. It also allows expenses incurred for

preventive measures to be recovered even when no spill of oil occurs, provided there was grave and imminent threat of pollution damage.

The Protocol also extended the Convention to cover spills from sea-going vessels constructed or adapted to carry oil in bulk as cargo so that it applies to both laden and unladen tankers, including spills of bunker oil from such ships.

Under the 1992 Protocol, a shipowner cannot limit liability if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

From 16 May 1998, Parties to the 1992 Protocol ceased to be Parties to the 1969 CLC due to a mechanism for compulsory denunciation of the "old" regime established in the 1992 Protocol. However, for the time being, the two regimes are co-existing, since there are a number of States which are Party to the 1969 CLC and have not yet ratified the 1992 regime - which is intended to eventually replace the 1969 CLC.

The 1992 Protocol allows for States Party to the 1992 Protocol to issue certificates to ships registered in States which are not Party to the 1992 Protocol, so that a shipowner can obtain certificates to both the 1969 and 1992 CLC, even when the ship is registered in a country which has not yet ratified the 1992 Protocol. This is important because a ship which has only a 1969 CLC may find it difficult to trade to a country which has ratified the 1992 Protocol, since it establishes higher limits of liability.

- **The 2000 Amendments**

The amendments raised the compensation limits by 50 percent compared to the limits set in the 1992 Protocol, as follows:

- For a ship not exceeding 5,000 gross tonnage, liability is limited to 4.51 million SDR (US\$5.78 million)

(Under the 1992 Protocol, the limit was 3 million SDR (US\$3.8 million))

- For a ship 5,000 to 140,000 gross tonnage: liability is limited to 4.51 million SDR (US\$5.78 million) plus 631 SDR (US\$807) for each additional gross tonne over 5,000

(Under the 1992 Protocol, the limit was 3 million SDR (US\$3.8 million) plus 420 SDR (US\$537.6) for each additional gross tonne)

- For a ship over 140,000 gross tonnage: liability is limited to 89.77 million SDR (US\$115 million)

3.6 **Criticisms of the CLC**

1. It was based on the strict liability of the shipowner for damage which is not foreseeable and, therefore, represented a dramatic departure from traditional maritime law which based liability on fault.
2. The limitation figures adopted were likely to be inadequate in cases of oil pollution damage involving large tankers.

3.7 **International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971**

Background to the formation

Although the 1969 Civil Liability Convention provided a useful mechanism for ensuring the payment of compensation for oil pollution damage, it did not deal satisfactorily with all the legal, financial and other questions raised during the Conference adopting the CLC Convention.

In the light of these reservations, the 1969 Brussels Conference considered a compromise proposal to establish an international fund, to be subscribed to by the cargo interests, which would be available for the dual purpose of, on the one hand, relieving the shipowner of the burden by the requirements of the new convention and, on the other hand, providing additional compensation to the victims of pollution damage in cases where compensation under the 1969 Civil Liability Convention was either inadequate or unobtainable.

The Conference recommended that the International Maritime Organization should prepare such a scheme. The Legal Committee accordingly prepared draft articles and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage was adopted at a Conference held in Brussels in 1971. It is supplementary to the 1969 Civil Liability Convention.

3.8 **Purposes of the Fund Convention**

- *To give effect to the related purposes set out in the Convention.*
- *To provide compensation for pollution damage to the extent that the protection afforded by the 1969 Civil Liability Convention is inadequate*

The Fund is under an obligation to pay compensation to States and persons who suffer pollution damage, where such persons are unable to obtain compensation from the owner of the ship from which the oil escaped or if the compensation due from such owner is not sufficient to cover the damage suffered.

Under the Fund Convention, victims of oil pollution damage may be compensated beyond the level of the shipowner's liability. However, the Fund's obligations are limited so that the total payable to victims by the shipowner and the Fund shall not exceed 30 million SDR (about US\$41 million) for any one. In effect, therefore, the Fund's maximum liability for each incident is limited to 16 million SDR incident (under the 1971 convention - limits were raised under the 1992 Protocol).

Where, however, there is no shipowner liable or the shipowner liable is unable to meet their liability, the Fund will be required to pay the whole amount of compensation due. Under certain circumstances, the Fund's maximum liability may increase to not more than 60 million SDR (about US\$82 million) for each incident.

With the exception of a few cases, the Fund is obliged to pay compensation to the victims of oil pollution damage who are unable to obtain adequate or any compensation from the shipowner or his guarantor under the 1969 Convention.

The Fund's obligation to pay compensation is confined to pollution damage suffered in the territories including the territorial sea of Contracting States. The Fund is also obliged to pay compensation in respect of measures taken by a Contracting State outside its territory.

The Fund can also provide assistance to Contracting States which are threatened or affected by pollution and wish to take measures against it. This may take the form of personnel, material, credit facilities or other aid.

- *To give relief to shipowners in respect of the additional financial burden imposed on them by the 1969 Civil Liability Convention, such relief being subject to conditions designed to ensure compliance with safety at sea and other conventions.*

The Fund is set up to indemnify the shipowner or his insurer for a portion of the shipowner's liability under the Liability Convention. This portion is equivalent to 100 SDR (about US\$128) per ton or 8.3 million SDR (about US\$10.6 million), whichever is the lesser.

The Fund is not obliged to indemnify the owner if damage is caused by his willful misconduct or if the accident was caused, even partially, because the ship did not comply with certain international conventions.

The Convention contains provisions on the procedure for claims, rights and obligations, and jurisdiction.

Contributions to the Fund should be made by all persons who receive oil by sea in Contracting States. The Fund's Organization consists of an Assembly of States, a Secretariat headed by a director appointed by the Assembly; and an Executive Committee

3.9 **Amendments and Protocols.**

○ **The Protocol of 1976**

The 1971 Fund Convention applied the same unit of account as the 1969 Civil Liability Convention, i.e. the "Poincaré franc". For similar reasons the Protocol provides for a unit of account, based on the Special Drawing Right (SDR) as used by the International Monetary Fund (IMF).

○ **The Protocol of 1984**

The Protocol was primarily intended to raise the limits of liability contained in the convention and thereby enable greater compensation to be paid to victims of oil pollution incidents.

But as with the 1984 CLC Protocol, it became clear that the Protocol would never secure the acceptances required for entry into force and it has been superseded by the 1992 version

- **The Protocol of 1992**

As was the case with the 1992 Protocol to the CLC Convention, the main purpose of the Protocol was to modify the entry into force requirements and increase compensation amounts. The scope of coverage was extended in line with the 1992 CLC Protocol.

The 1992 Protocol established a separate, 1992 International Oil Pollution Compensation Fund, known as the 1992 Fund, which is managed in London by a Secretariat, as with the 1971 Fund. In practice, the Director of the 1971 Fund is currently also the Director of the 1992 Fund.

Under the 1992 Protocol, the maximum amount of compensation payable from the Fund for a single incident, including the limit established under the 1992 CLC Protocol, is 135 million SDR (about US\$173 million). However, if three States contributing to the Fund receive more than 600 million tonnes of oil per annum, the maximum amount is raised to 200 million SDR (about US\$256 million).

From 16 May 1998, Parties to the 1992 Protocol ceased to be Parties to the 1971 Fund Convention due to a mechanism for compulsory denunciation of the "old" regime established in the 1992 Protocol.

However, for the time being, two Funds (the 1971 Fund and the 1992 Fund) are in operation, since there are some States which have not yet acceded to the 1992 Protocol, which is intended to completely replace the 1971 regimes.

IMO and the IOPC Fund Secretariat are actively encouraging Governments who have not already done so to accede to the 1992 Protocols and to denounce the 1969 and 1971 regimes. Member States who remain in the 1971 Fund will face financial disadvantages, since the financial burden is spread over fewer contributors. For both the 1971 and 1992 Funds, annual contributions are levied on the basis of anticipated payments of compensation and estimated administrative expenses during the forthcoming year

- **The 2000 Amendments**

The amendments raise the maximum amount of compensation payable from the IOPC Fund for a single incident, including the limit established under the 2000 CLC amendments, to 203 million SDR (US\$260 million), up from 135 million SDR (US\$173 million). However, if three States contributing to the Fund receive more than 600 million tonnes of oil per annum, the maximum amount is raised to 300,740,000 SDR (US\$386 million), up from 200 million SDR (US\$256 million).

- **The 2003 Protocol (supplementary fund)**

The 2003 Protocol establishing an International Oil Pollution Compensation Supplementary Fund was adopted by a diplomatic conference held at IMO Headquarters in London.

The aim of the established Fund is to supplement the compensation available under the 1992 Civil Liability and Fund Conventions with an additional, third tier of compensation. The Protocol is optional and participation is open to all States Parties to the 1992 Fund Convention.

The total amount of compensation payable for any one incident will be limited to a combined total of 750 million Special Drawing Rights (SDR) (just over

US\$1,000 million) including the amount of compensation paid under the existing CLC/Fund Convention.

The supplementary fund will apply to damage in the territory, including the territorial sea, of a Contracting State and in the exclusive economic zone of a Contracting State.

Contributions to the supplementary Fund

Annual contributions to the Fund will be made in respect of each Contracting State by any person who, in any calendar year, has received total quantities of oil exceeding 150,000 tons. However, for the purposes of the Protocol, there is a minimum aggregate receipt of 1,000,000 tons of contributing oil in each Contracting State.

Assessment of annual contributions

The Assembly of the Supplementary Fund will assess the level of contributions based on estimates of expenditure (including administrative costs and payments to be made under the Fund as a result of claims) and income (including surplus funds from previous years, annual contributions and any other income).

Amendments to the limits

Amendments to the compensation limits established under the Protocol can be adopted by a tacit acceptance procedure, so that an amendment adopted in the Legal Committee of IMO by a two-thirds majority of Contracting States present and voting, can enter into force 24 months after its adoption.

The IOPC funds and IMO

Although the 1971 and 1992 Funds were established under Conventions adopted under the auspices of International Maritime Organization (IMO), they are completely independent legal entities.

Unlike IMO, the IOPC Funds are not United Nations (UN) agencies and are not part of the United Nations. They are intergovernmental organizations outside the UN, but follow procedures which are similar to those of the UN.

Only States can become Members of the IOPC Funds. States should consider becoming Members of the 1992 Fund, but not of the 1971 Fund which will be wound up in the near future.

To become a member of the Fund, a State must accede to the 1992 Civil Liability Convention and to the 1992 Fund Convention by depositing a formal instrument of accession with the Secretary-General of IMO. These Conventions should be incorporated into the national law of the State concerned.

3.9 Other Conventions on Marine Pollutions are :

- **Protocol on Preparedness, Response and Co-operation to pollution incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol)**

The Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol) follows the principles of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC) and was formally adopted by States already Party to the OPRC Convention at a Diplomatic Conference held at IMO headquarters in London in March 2000.

- **International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. (MARPOL)**

The MARPOL Convention is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. It is a combination of two treaties adopted in 1973 and 1978 respectively and updated by amendments through the years.

- **Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972.**

The Convention regulates the dumping of wastes at sea. The 1996 Protocol prohibits the dumping of any wastes or other matter with the exception of those listed in an Annex.

- **International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969**

The Convention affirms the right of a coastal State to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or the threat thereof, following upon a maritime casualty. The 1973 Protocol extended the Convention to cover substances other than oil.

4.0 **CONCLUSION**

Most of the treaties are similar in nature in that many of them cover pollution from various sources. Some of the treaties actually specify the standard of the obligation and leave no discretion in determining the standard. For example, the Baltic Sea Convention lays down the standard of the measures to be taken in 'preventing and eliminating pollution by enjoining states to promote the principles of 'Best Environmental practice and Best Available Technology'.

5.0 **SUMMARY**

In recent years, almost all continents have suffered severe damage as a result of oil spills. The most known ones probably occurred in Europe. The names Torrey Canyon, Amoco Cadiz etc. still come to mind as major incidents that occurred in the 1960s and 70s.

The international body reacted soon after the Torrey Canyon incident with an International Convention on the Civil Liability for Oil Pollution Damage of 1969' and with an additional Fund Convention. The goals of these legal arrangements were to guarantee some compensation to victims of oil pollution incidents. A strict liability rule was imposed on the tanker owner and the liability was channeled to him, but strict limits on the liability applied. The new incident with Amoco Cadiz made it clear that the then existing limits did not suffice to compensate the victims and additional institutional arrangements were proposed (in the form of amendments and protocols). Notwithstanding the ever changing legal landscape (more particularly the evolving amendments to the existing conventions) the current international regime seems hardly able to provide adequate prevention of and compensation for oil spills

6.0 **TUTOR MARKED ASSIGNMENT**

1. Analyse the London Dumping Convention. Does it have any relevance to Nigeria as a nation?
2. Compare and contrast the 1969 Civil Liability Convention and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971. In what ways has the latter convention improved payment of compensation of victims of oil pollution?

7.0 **FURTHER READING/REFERENCES**

Ahmed Tijjani Famallau & Solomon U. Jatau : Shipping and Maritime Operations

MODULE 4

Unit 1 Marine Pollution

Unit 2 International Legislations on Pollution

Unit 3 Municipal Laws governing Marine Pollution

1.0 **INTRODUCTION**

2.0 **COURSE OBJECTIVE**

3.0 **MAIN CONTENT**

3.1 Definition

3.2 International Legislations

3.3 Nigerian Legislations regulating Marine Pollution

- a. Merchant Shipping Act;
- b. Oil in Navigable Waters Act
- c. Nigerian Ports Authority Act, Regulations and Bye Laws;
- d. Petroleum Act and the regulations under it namely: Mineral Oils (Safety) Regulations, Petroleum Regulation and Petroleum (Drilling and Production) Regulation;
- e. Harmful Waste (Special Criminal Provisions) Act
- f. Federal Environmental Protection Agency Act;
- g. Merchant Shipping (Training and Certification of Seafarers) Regulations of 2001.

4.0 **CONCLUSION**

5.0 **SUMMARY**

6.0 **TUTOR MARKED ASSIGNMENT**

7.0 **FURTHER READING/REFERENCES**

1. Merchant Shipping Act.

This is a major legislation on merchant shipping and matters incidental to it. Yet the only major provision it has on marine pollution prevention is as follows:

“The Minister [of transport] may make regulations generally for carrying this Act into effect, and in particular and without prejudice to the generally of the forgoing, such regulations may provide for-

(s) The prevention of pollution, by oil, of navigable waters.

It may properly be argued that these regulations for prevention of pollution of navigable waters by oil were subsequently made by the minister in 1968 and named Oil in Navigable Waters Regulations, (the salient provisions of which are considered below) and the Merchant Shipping [Dangerous Goods] Rules, 1963 which regulate inter alia the loading or discharging of cargo or fuel within Nigerian ports and territorial waters.

2. Oil in Navigable Waters Act.

This is an Act to implement the terms of the international convention for the prevention of pollution of the sea by Oil, 1954 which, Nigeria acceded to in 1968 and to make provisions for the prevention for such pollution in the navigable waters of Nigeria.

It has been described as the only Law in Nigeria’s statute books by which an international convention on maritime pollution prevention has been domesticated. The Act inter alia prohibits the discharged of crude oil, fuel oil, lubricating oil and heavy diesel oil and any other description of oil prescribed by the Minister following any subsequent Convention, from vessels into “prohibited area” although such discharges will be excused if done to safeguard any vessel or prevent damage to any vessel or cargo or to safe life. Every harbor in Nigeria in required by Section 8 thereof to have oil reception facilities to enable vessels using the harbor to discharge or deposit oil residues and the failure of any harbor to perform its duties concerning oil reception facilities attracts a fine of N20 per day.

The owner or master of an erring ship will on conviction be liable to a fine.

As can be seen from the above provisions, the penalties prescribed by the Act are too lenient to deter ship operators and harbors from violating its provisions and apart from ineffective enforcements, offenders find it cheaper to violate its provisions and pay the ridiculously low fines than avoid its violation thereby polluting the environment.

Also, the Act does not decisively deal with and penalize accidental oil discharges from ship in addition to the international discharges of certain oils into the sea which it deals with. What is more, the OILPOL 1954 which it domesticated has been superseded by MARPOL 73/78 which, Nigeria has not yet ratified. The Act could in the circumstance be said to be outdated and of little usefulness in current international legal framework for pollution prevention.

3. Nigerian ports Authority Act, 1999, Regulations and Bye- Laws.

The Nigerian ports Authority has powers to make regulations “whether by prohibition or otherwise, [for] the ...depositing of any dead body, ballast, rubbish, or other thing into the port or in the approach to any port in contravention of this [Act]...” However, under Regulation 43 of the Nigerian Ports Authority [Port] Regulations made under the Ports Act, the discharging or depositing of any ballast, dirt, ashes, bottles baskets, rubbish, oil, animal or vegetable matter or any dangerous or offensive liquid into the waters of a port from a ship or a place on land is prohibited. Under the Nigerian Ports Authority Docks and Premises Bye-Laws, the loading, landing, storage and handling of dangerous, hazardous, or poisonous goods or substances on the Authority’s quays, docks or premises, are controlled and regulated. Oil leakage, oil spillage and the loading and discharging of liquefied petroleum gas cargo are controlled

in such a way as to prevent or control pollution of the marine environment. Whenever there is oil spillage on the wharf; immediate action must be taken by taken by the person loading or discharging it onshore.

By Regulation 25 of the petroleum [Drilling and Production] Regulations of the Act, the oil exploration or oil prospecting licensee or oil mining lessee shall adopt all practicable precautions including the provision of approved up-to-date equipment, to prevent the pollution of inland waters, rivers water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred , shall take prompt steps to control and, if possible, end it. Whilst under Regulation 38, such persons must use approved methods and practices for producing crude oil or natural gas from any pools or reservoir, under Regulation 40, they must drain all waste oil, brine and sludge or refuse from all storage vessels, boreholes and wells into proper receptacles constructed in compliance with safety regulations under the Act or other applicable regulations and dispose of them according manner or applicable regulations.

The above regulations can be said to be the best national regulations adopted by Nigeria so far to prevent, reduce and control the pollution of the marine environment from sea-bed activities involved in oil prospecting and exploration as enjoined by UNCLOS.

SELF ASSESSMENT EXERCISE

Analyse the constitutional framework of the Nigeria Ports Authority in relation to prevention of marine pollution.

4. Harmful Waste [Special Criminal Provisions, etc] Act

The Act inter alia prohibits the carrying, depositing or dumping or possession of any harmful waste on any land or in any territorial waters or contiguous zone or exclusive economic zone or inland waterways of Nigeria and punishes both the offender and his conspirators with life imprisonment or forfeiture of the carrier to the government. Under certain conditions, the offender could be liable for the damage [death or personal injury] suffered by victims of the harmful wastes are bound by the provisions of the Act. As stringent as the provisions are, there are no known cases of enforcement or prosecution or punishment of violators because of a lack of the manpower and equipment to do so.

5. Federal Environmental Protection Agency Act.

The Act among other things, established the Federal Environmental Protection Agency [FEPA] which, it charged with functions including the protection and development of the environment in general, the prevention and the combating of various form of atmospheric pollution. By a combined reading of its Sections 20 and 21, owners or operators of any vessel or onshore or offshore facility from which hazardous substances are discharged into the air, land or waters of Nigeria, shall in addition to paying a fine of N100, 000, 00 or N500, 000 in the case of an individual or company respectively, be responsible for the cost of the removal, reparation to third parties and for mitigating the damage caused including immediate clean-up operations

The Federal Environmental Protection Agency Act and Harmful waste [Special Criminal Provisions, etc] Act were promulgated as a result of the dumping or toxic waste at Koko, Delta State by an Italian company in 1988, but the FEPA created by the Act, is vested with powers to protect the environment and is concerned with all form of pollution which of course include marine pollution.

Subsequently, by virtue of the **Environmental Impact Assessment Decree No.86 1992** FEPA was empowered to inter alia receive applications on proposed projects and examined the information provided on the environmental impact assessment of such projects before decisions are taken on them and before the projects are commenced and given powers to facilitate environment assessment.

One of the objectives of the environmental impact assessment is to establish before a decision is taken by any person or authority or government intending to undertake any activity, the likely or significant extent of the environmental effects of such activity. Activities in respect of which there are mandatory impact assessment or study activities include oil and gas filed development, construction of off- shore pipeline in excess of 50 kilometers in length, oil refineries and oil and gas separation, processing, handling and storage facilities, toxic and hazardous waste treatment and consideration of environmental impact assessment on certain private and public projects in order to inter alia control, reduce or prevent pollution. Penalties for the violation of the provisions of the Act are N100, 000 fines or 5years imprisonment in the case of an individual and a fine of between N50, 000 and N100, 000 in the case of a company 26.

However, FEPA has been criticized on the basis of lacking independence, conflicts in the FEPA Act and Petroleum Act as to which of FEPA and the Department of Petroleum should inspect petroleum installations and the fact that the seeming strict penalty in section 20 of the Act appears to have been eroded by section 4 of the Oil in Navigable Water Act.

- ❖ Note that the government abolished the FEPA and transferred its functions to the Federal Ministry of Environment.

SELF ASSESSMENT EXERCISE

What are the criticisms of the Federal Environmental Protection agency? Does the agency have any relevance today?

6. National Shipping Policy Act.

This Act created the National Maritime Authority [NMA] and empowered it to among other things, coordinate the implementation of the national shipping policy as may be formulated from time to time by the Federal Government and perform such other function as may be formulated by the Federal Government pursuant to the Act. It has been argued that Section 3 [g] and 3 [j] of the Act sufficiently empower the NMA to be recognized as an important stakeholder in matters of marine pollution from oil transportation at sea and should play the role of a leader in collaboration with other agencies of government, in pollution prevention. It was further argued that from the provisions which empower NMA to “offer protection to Nigerian vessels flying the nation’s flag on the high seas and world ports” and to achieve a systematic control of the mechanic of sea transportation” which includes oil transportation, NMA should be pronounced as the sole authority to look after all oil pollution at sea in Nigeria.

7. Merchant Shipping (Safe Manning Hours of Work and Watch keeping Regulations S.1. 11 of 2001 and Merchant Shipping (Training and Certification of Seafarers) Regulations S.1 12 of 2001

In July, 2001, some regulations which relate to pollution prevention were made by the Minister of Transport under statutory powers conferred on him by Section 408 of the Merchant Shipping Act.

By the provisions of the Act, a Shipping company operating a Nigeria ship shall furnish the master of its ship with written policies and procedures to be followed to ensure that before a newly employed seafarer is assigned his duties., he is

given a reasonable time to familiarize himself with safety, environmental protection and emergency procedures, which he needs to properly perform the duties assigned to him. The master may exceed or call on a seafarer to exceed the schedule's work or duty periods when the master thinks that such step is necessary to meet an emergency threatening damage to the environment. Among other things, a shipping company owner of a Nigerian registered ship shall in accordance with Section A-1/14 of **Standard Training, Certificate and Watch keeping for seafarers [STCWS]** be responsible for the assignment of seafarers for service in its ships in accordance with the STCWS and ensure that the ship's complement can effectively co- ordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention or mitigation of pollution.

There are also manning and training requirements which seafarers on vessels carrying dangerous cargo including petroleum products, chemicals and liquefied gas must meet and the Minister may allow a seafarer to work for not more than six months in a capacity for which he does not have the appropriate certificate if it does not cause danger to persons, property or the environment

4.0 **CONCLUSION**

Clearly the problems associated with pollution have the capabilities to disrupt life on the planet. Global environmental collapse is not inevitable. But the developed world must work with the developing ones to ensure that new industrialized economies do not add to the world's environmental problems. Conservation strategies have to become more widely accepted, and people must learn that energy use can be dramatically diminished without sacrificing comfort. With technology that currently exists the years of global environment can begin to be reversed. Nigeria both as a coastal and a port state has tried to regulate

marine activities in order to prevent and/or minimize pollution and its effect to the barest minimum.

5.0 **SUMMARY**

We have dwelt more on the various international and municipal laws governing marine pollution. To say that these legislations are enough to curb the various effects of marine pollution is a different subject for discussion.

6.0 **TUTOR MARKED ASSIGNMENT**

Critically analyze the municipal laws enacted for the prevention of pollution In Nigeria.

7.0 **FURTHER READING /REFERENCES**

Ogba U. Ndukwe: Elements of Nigerian Environmental Laws; published by the University of Calabar Press, (2000)