Today's international shipping involves people of many different nationalities with different laws, customs and institutions. Where world economies in the past were the result of empires, the present world economy grew out of relatively free exchange. Today's shipping community comprises shippers, charterers, shipowners, bankers, insurers, importers and exporters and the system designed for the transfer of goods is simple and efficient, with the sea remaining the life blood of trade. In international trade, as a matter of custom, the seller gets paid before the buyer receives the goods, as because the delivery of goods takes considerable time. The system of letters of credit involved with banks as the intermediaries has proved fruitful and documents rather than goods form the focal point of these transactions.

The simplicity of the system made it potentially efficient and is based on trust as a major factor between the contracting principals. As long as the parties to the transaction realise that trust made the simplicity of the system practicable, all parties derive a benefit. Without trust, all parties must adopt measures to inspect and verify at every stage of the transaction. Duties of enquiry would raise costs like bank charges and delay payments, with negotiations taking a much longer time. Considering the volume of transactions involved, the system would become no better than the customs
and excise system of a repressive regime, transaction costs would simply become more prohibitive for the fruitful trade.

An international marine contract therefore requires the intervention of several parties. Fraud is a very insidious crime and arises when one of the parties to the marine contract succeeds in obtaining money or goods belonging to another party connected in the carriage and financing unjustly. The threat of fraud is that it undermines the system by putting trust at risks. The simplicity of the system of international trade makes it attractive and vulnerable to forgers, scuttlers and cheats. Maritime frauds takes place when any one of the various parties involved in an international trade transaction intentionally deceives another as to some fact or circumstance in connection with maritime activities which enables him to obtain money or goods dishonestly. In some cases, several of the parties act in collusion to defraud another.

Maritime frauds, in general, occur when goods that have been shipped by sea are not where they ought to be and are subsequently never found or found in a damaged condition. The United Nation Conference on Trade and Development (UNCTAD) have divided maritime frauds into six major categories, viz:

   "Review and Analysis of Possible Measures to Minimise the Occurrence of Maritime Fraud and Piracy" page 4.
a) documentary frauds;
b) charter party frauds;
c) marine insurance frauds;
d) deviation frauds;
e) miscellaneous frauds; and
f) piracy.

However for the sake of a comprehensive analysis of the different types of frauds, they are divided principally into four types as below, as because some of the categories enumerated above overlap. These are:

a) documentary frauds where the paper work does the trick and no actual ship is ever involved;
b) Rust bucket or scuttling frauds where the ship is picked up from a junkyard with the predetermined motive to sink her after the cargo is spirited away;
c) charter party frauds where instead of ship disappearing, the charterer disappears after pocketing the freight; and
d) theft where the real cargo is criminally misappropriated by crew and others.

A. DOCUMENTARY FRAUDS

Although various documents can be used in connection with the commission of maritime fraud, the most important is the bill of lading with its well recognised functions of being a receipt for the goods by the carrier, evidence
of the contract of carriage for the goods and, most important­ly, a document of title to the goods. As with many types of commercial activities, there are 'grey areas' in the inter­national sale of goods between clearly identifiable fraud, such as would occur in the forgery of a bill of lading for non-existent goods or the shipment of rubbish in place of the goods specified in the bill of lading, and breaches of contract which border on fraud, such as would be the case in the shipment of lower quantity goods than that specified in the contract of sale.

Consequently, at one extreme, bills of lading on the standard form of well known shipping companies, or completely fictitious companies, are forged by dishonest sellers for completely non-existent goods. The vessels on which the goods are reputedly loaded may actually be in the port or it may be on the other side of the world undergoing repairs in dry docks. Alternatively, the vessel could be completely fictitious. Additional documents which normally accompany the bill of lading in any commercial transactions, such as an invoice for the sale price, a marine insurance policy, for the transport, as well as certificates of origin and inspection, are also forged. Since most of such documents are relatively simple pieces of paper without elaborate design, they are easy to forge and it is common knowledge that bills of lading forms are readily available for sale 'on the street'.
Once all the documents have been forged by the seller, the bill of lading, as a document of title for the 'goods', is sold along with the false accompanying documents to an innocent buyer who will then expect to take delivery at the intended port of destination. When the vessel fails to arrive, or does so without the goods, and the buyer discovers the fraud, the seller will have disappeared.

Alternatively, the seller may ship goods of a quality lower than that specified in the contract for sale with the buyer. If the difference in quality or quantity is such as to be noted by the shipping company on the bill of lading, then the bill is subsequently altered to conceal the fact. Usually the difference in quality or quantity is of such a nature as not to be detected by the carrier. This can frequently be the case with goods pre-packed in containers. A 'valid' bill of lading can thereby be presented to the buyer together with either perfectly 'authentic' documents, such as the insurance policy and invoice, or forged ones, such as would be the case with an inspection certificate. It is not uncommon for rubbish to be shipped in this manner to represent the goods.

These frauds are successful because of the development of a trading system which relies on a shipped bill of lading (together, accompanying documents) to represent the
goods and which enables the sale of those goods to be effected by the transfer of the documents. As it is impracticable for the buyer personally to inspect the goods before paying for them, whether at the port of loading, complicated usually by the long distance involved, or at the port of destination, often resisted by sellers who wish to receive payment before that time, payment for the goods is effected by presenting the documents. On the strength of the carrier's affirmation on the bill of lading that the goods are loaded on board his vessel and relying on the relatively superficial control of the goods effected by the carrier at the time of loading, the buyer is prepared to pay the price for the goods in exchange for the documents representing the consignment. At most, the buyer might insist on presentation of an inspection certificate, indicating that an independent inspection agency has surveyed the goods to determine the quality, quantity and, perhaps, their loading on board the named vessel.

Documentary sales of goods in international trade are frequently effected through the international banking system via the opening of a letter of credit by the buyer with a bank in his country which in turn arranges with a bank in the seller's country to pay the purchase price of the goods to the seller upon presentation of the required documents. The exact arrangement will depend on the buyer and the seller at the time of entering into the contract of sale — the name of the bank in which a letter of credit is
to be opened and to which specified documents are to be presented all being agreed upon. The documents which the buyer will require will vary according to the circumstances, but they will invariably include the bill of lading. The buyer, when requesting his local bank to open a letter of credit, will specify the exact documents required and the specifications of the sale. Pursuant to the letter of credit instructions, the bank paying on the credit in the seller's country will inspect the documents presented by the seller to ensure that they meet precisely the requirements stipulated by the buyer in the credit. The main drawback in this system is that the banks inspect the documents only and do not determine whether the goods actually exist or have been shipped.

One form of documentary fraud involves the misuse of forgery of the shipping documents by the buyer. Vessels usually arrive at their destination before the bills of lading reach the consignees. Strictly speaking, the carrier under these circumstances should warehouse the cargo until the bill of lading can be produced. However, for commercial reasons many carriers release the goods against letter of indemnity. The frauds occur when an unscrupulous buyer, having cleared his cargo against a letter of indemnity, subsequently sells the bill of lading to an innocent buyer. When the new holder of the bill of lading produces the same and demands delivery, the carrier is caught in an embarrassing position. He usually finds that the alleged consignee is un-
traceable. Subsequently, the carrier is obliged to compensate the person presenting the bill of lading.

A variant of the above type of documentary frauds occur in payment-against-documents arrangements, whereby the seller ships the goods and transmits the documents to the negotiating bank in the buyer's country for presentation against payment. In such circumstances, it is intended that after obtaining the documents, the buyer will present them to the carrier's agents and clear the cargo. However, in order to assist with the customer's formalities, sellers usually forward non-negotiable copies of the bills of lading and copies of the invoices directly to the buyers and some unscrupulous buyers simply forge originals of the bills (including forged bank stamps), present those to the carrier's agents, and clear the cargo. At a later stage, the seller realises that the original documents are still with the bank and the goods have been cleared. He promptly brings an action against the carrier for wrong delivery of cargo.

Documentary fraud involving forged letters of credit is a relatively sophisticated fraud where the buyer and the seller acting in collusion as part of a syndicate send forged letters of credit appearing to come from a bank in one country to a corresponding bank in another country. It is learnt that most syndicates do not bother producing their own letter
of credit forms, but usually obtain genuine blank forms from a bank from one of its employees. With the forms would also come details of the bank's numbering system, an essential requirement, if the corresponding bank is to accept the forgery.

The syndicate then obtains the required shipping documents mentioned in the letter of credit, either by forgery or by shipping rubbish, presents the documents to the paying bank on the letter of credit, collects the purchase price and disappears. In the meantime, the paying bank forwards the documents to the issuing bank to obtain reimbursement, only to find that there had been no valid credit. An essential element in this type of fraud is to avoid having the paying bank re-check with the issuing bank to confirm the existence of the credit. This confirmation is usually done only when the credit exceeds a certain high amount and thus this type of fraud frequently occurs for an amount slightly less than 1,000,000 U.S. dollars. It transpires that with the increased incidence of this type of fraud, banks are altering their procedures in this respect.

Another type of fraud involving false letters of credit has been known to occur where potential buyers commence normal negotiations to buy goods and then suddenly
send a forged letter of credit direct to the seller. Apparently a few sellers have been caught napping by this practice and shipped the goods before confirming the existence of the credit with the named corresponding bank. Once the fraud has been discovered by the bank's refusal to pay on the credit, the goods are on the high seas and on reaching the port of destination, the goods have frequently disappeared from the docks in spite of recovery efforts by the shipper.

B. RUST BUCKET OR SCUTTLING FRAUD

Frauds of this type involve a fraudulent misrepresentation or non-disclosure to the insurer of a material fact - usually concerning the value of the object insured but also concerning its very existence. With the occasional exception, these crimes are committed by the shipowners, and these owners fall into a clearly definable category. The essence of the fraud lies in a situation where a ship is approaching or has passed the end of its economic life, taking into account age, condition and the prevailing freight market. The crime can be aimed at the hull and its insurers alone, or against both hull and cargo. Such frauds may thus take the form of scuttling (intentional sinking) of an over-insured vessel, which benefits the shipowner in his claim for the loss from the hull insurer for more than the vessel is worth, or the scuttling of the vessel with over-insured or non-existent cargo which, in addition to the hull claim, enables the cargo owner
similarly to gain in his claim from the cargo insurer for the excess over the real value, or for the entire claim in the case of non-existent cargo.

However variations from the above scenario are numerous. Instead of involving the connivance of the assured as in the latter case cited above, the shipowner 'can use the scuttling as a means of hiding the fact that he has stolen the cargo and sold it clandestinely before the sinking', which can also be classified as a fraud involving cargo theft. In such cases the shipowner profits from the over valuation of the hull on the insurance policy as well as from the proceeds of the theft. In order for the insurer to avoid paying such claims (assuming a prima facie case has been made by the assured for loss from an insured peril), he must prove that the vessel was intentionally sunk 'as well as the complicity of the assured in the act, which is often factually a difficult task, in that evidence is frequently difficult to furnish and, in some national legal systems, legally difficult as well. Another variation of the scuttling scenario is to arrange an entirely bogus disappearance, whereby the vessel

1. This was attempted in the case giving rise to Shell International Petroleum Co. Ltd. Vs Gibbs (the 'Salem') (1982) 1 Lloyd's Rep.369; Lloyd's Law Reports Part 4 (1983) Vol.1, page 342. This case is discussed in Chapter VII of this work.

2. See sub-heading 'D. Cargo thefts' in the following pages of this chapter.
later 'reappears' under the guise of a new name and nationality.

It is well known among those who have suffered loss, and among those whose task it is to investigate suspicious losses, that there is no difficulty in obtaining men prepared to scuttle ships at a price. A dishonest owner will pay his own crew a sum to scuttle the ship during the course of a voyage, or alternatively, will hire a different crew whose task will be to sink the vessel. Divers can only operate effectively at relatively shallow depths, whereas in the oceans there are deeps or trenches whose floor is far beyond reach by ordinary means. It is usually into one of these inaccessible areas that a scuttled ship will settle but, if the scuttling crew are unable to reach a suitable place, the ship's position will be falsified in the casualty report. In any event the ship will be beyond investigation. Scuttling implies that the ship is deliberately sunk perhaps by explosives or some other method. Equally effective and difficult to prove are those instances where a ship's destruction is achieved by arson. An advantage to the criminals in arson cases is that the vessel need not even be at sea, providing of course that the port in which the 'accident' occurs has no efficient fire fighters, as a fierce fire will often destroy evidence of its origin.

1. As was attempted in the case of the vessel Starter reported sunk in the South China Sea in 1978 with a full load of general cargo but was found present a year later at the Chinese Port of Whampoa by the Far East Regional Investigation Team (FERIT).
The prerequisites for a successful scuttling fraud are a vessel subject to an insurance policy, men prepared to destroy the vessel and a dishonest owner. Analysis of casualties known or suspected to have been deliberately scuttled shows that with very little exception, they are the work of very small operators and sail under a flag of convenience.

In particular, scuttling, both real and faked, usually involve over-aged, poorly maintained ships registered in a flag of convenience country and owned by one ship newly created company with no other visible assets. The unpublished report of the Far East Regional Investigation Team (FERIT), which was established by insurance interests, particularly from London, to investigate suspicious sinkings in the Far East in the late 1970s, fully expressed and documented these characteristics in their investigation of suspect losses in Asia. In this respect, in a list of suspicious sinkings published in 1980, which it is understood included the list compiled by FERIT, at least 80 per cent of the total number of vessels for which the national registration is indicated were registered in recognised flag of convenience countries, primarily Panama. As to these ships whose age was known at the time of the loss, 68 per cent were 20 years or more and 85 per cent were 15 years or more.

1. Marine Insurance Bulletin (London) June, 1980 and paragraph 199 page 59 of UNCTAD report no TD/B/C.A/AC.A/2 dated 21.9.1983 'Review and Analysis of possible Measures to Minimise the Occurrence of Maritime Fraud and Piracy'. However the representative of Panama objected to the reference to his country in the above report as being 'effectively prejudicial to the interests of Panama' and on the ground that the report was based on an unpublished source and was more than four years old. 'Report of the Ad Hoc Inter governmental Group to Consider Means of Combating All Aspects of Maritime Fraud, Including Piracy': UNCTAD Report Nos. TD/B/985; TD/B/C.A/264; TD/B/C.A/AC.A/3 dated 18.4.1985 page 4 paragraph 16.
C. CHARTER PARTY FRAUD

Charter party fraud is either a fraud committed by the charterer against the shipowner, through non-payment of hire, or a fraud committed by the shipowner against the charterer or cargo interests by charging extortionate additional freight. The variation to this theme include a sub-charterer defrauding the time charterer, shipowner and cargo interests.

In the charterer-perpetrated frauds, a charterer time (or even bareboat) charters a vessel, where the hire is to be paid at stated intervals, and then the charterer either sub-charters the vessel out on a voyage basis as the disponent owner or opens a liner service. In either event, the charterer holds himself out as ready and willing to carry the goods of others. As a usual operating procedure, a particularly advantageous freight rate is offered to potential shippers. As soon as the cargo is loaded, the charterer issues bills of lading, collects freight and defaults on further hire payments. The usual pattern is for the charterer to disappear or to go into liquidation. By this time the vessel is loaded with cargo and the shipowner is faced with a difficult position. If the bills of lading have been signed by or on behalf of the master without any qualifications or reference to a charter party, the shipowner is obliged to deliver the cargo to its destination. Some owners manage to obtain extra
freight payments from the cargo interests whilst others are forced to absorb the loss. Further problems may occur as the fraudulent charterers usually leave a string of creditors at loading ports, whose main remedy lie in arresting the bunkers supplied by the charterers.

Some cautious owners insist on a clause in the charter party that the bills of lading will only be issued on freight-collected-terms in order to have the possibility of lien on the cargo for unpaid freight. The dishonest charterers simply substitute these bills for a fresh set market 'freight prepaid', collect the freight and disappear. This substitution is done after the vessel sails and without the knowledge of the shipowner. Only when the vessel reaches the discharge port does the master discover the switching of the bills. Moreover, most shippers are usually unaware of the existence of the charter parties whilst shipping goods primarily because the bills of lading seldom make reference to a charter party.

Frauds committed by shipowners against charterers or cargo interests are predominant in recessionary times. In such cases, a chartered vessel puts into a convenient port for alleged repairs and is subsequently arrested by an 'accommodating creditor' for unpaid bills and the vessel is sold by a court order. Since generally under such circumstances, the purchaser takes the vessel free of all encumbrances,
including contract of affreightment obligations of the previous owner even as to the cargo on board, he is thus in a position to demand additional freight from cargo interests. At a later stage, it becomes clear, tragically though, that the previous owner, the 'accommodating creditor' and the new owner are all part of a parent company\(^1\).

Another variation of the charter party fraud is the agency-perpetuated fraud. Agency frauds arise from the activities of shipping agents generally, whether acting as shipbrokers, freightbrokers, ships' agents etc. Among other activities, as intermediaries between two parties (the shipowner on the one hand and the charterer or other type of cargo owner on the other), they are in a position to enable known perpetrators of frauds to continue operating by failing to undertake adequate investigations, if not deliberately hiding their proper identities, before fixing a charter or accepting cargoes for shipment and/or prepaid freight. In this respect, they can frequently be either accomplices or unwilling pawns in the charter party frauds discussed above, where a charterer, either as disponent owner or liner operator, offers the chartered vessel to carry the goods of others, obtains prepaid freight and disappears while failing to pay charter hire to the shipowner. In additions they will frequently be the conduit for large sums of money or will be in a position to direct their disposal, whether as part of charter hire payments or, in the case of agents for a liner service, as prepaid

\(^1\) Cf. Chapter VIII of this work.
freight. In such cases, there are instances and reports of shipbrokers diverting funds and simply disappearing. In addition, frauds have occurred where persons have successfully posed as reputable and well-known shipbrokers in order to direct charter hire payments to their controlled accounts. Further, ship's agents are in a position to issue false bills of lading as well as back-dated or post-dated bills of lading.

**D. FRAUD INVOLVING THEFT OF CARGO**

Cargo theft does not mean the kind of pilferage that was and still is an inherent part of port life before containerisation. Cargo theft for the purpose of analysis of the different types of maritime frauds enumerated above means criminal misappropriation of the whole or a substantial part of a ship's cargo to the eventual detriment of insurers. A successful fraud of this type nets the criminal, insurance on both hull and cargo, with an added bonus of the value of the cargo which was secretly landed before the vessel was destroyed to erase all evidence of the crime.

This is effected in a number of ways. It starts with the shipowner deceiving the cargo owner into chartering the vessel to carry the latter's goods to an agreed destination where the goods are sold for the benefit of the shipowner. Subsequently, the vessel is either intentionally sunk (thereby
the fraud overlaps with scuttling fraud discussed above), or 'disappears' by changing its name, nominal ownership and country of registration.

Cargo thefts not associated with scuttling can be carried out in a multitude of ways, for which examples abound in insurance office files. Such thefts are more likely to happen during periods of recession and with small operators whose single ship tramps under a flag of convenience to wherever its cargo is supposed to take it. The reality sometimes is that the cargo does not arrive at its port of destination. A dishonest shipowner who has loaded valuable cargo of a kind much desired in some Third World country, may after issuing bills of lading and sailing ostensibly for the consignee's nominated port, divert the vessel to a place where cargo may be discharged and sold on the quayside. A rapid change of name, effected with a little of brushwork and paint and the ship proceeds off for its next adventure or misadventure. To avoid potential trouble, a change of flag will be made whilst the vessel is still at sea and in this way SS XYZ of Monrovia (Liberia) becomes overnight SS KLM of Panama (Panama).

This type of fraud involving theft of cargo thrives near areas where, either because of war, civil disorders,
particular political situation or economic embargoes imposed, or other factors, there are port areas not under close supervision or control, thereby permitting such illegal sales to occur without great risk of intervention. The establishment of free trade zones (FTZs) in port areas of some countries can sometimes facilitate the process to the extent that government supervision or customs control is minimised for transactions involving goods having been landed which are subsequently re-exported.

That political disorder in a country can prove to be a bonanza for fraudsters is evident from the sad plight of Lebanon. The smugglers found this country a heaven in the 70s at the height of the Lebanese civil war, when the main port of Beirut was under heavy shelling from the rebels. Illegal ports were established along the northern coast and Lebanese entrepeneurs who were left with few legitimate opportunities in a devasted economy, had drifted into illegal activities. The Greeks, among others, took advantage of the situation and bought old vintage freighters and contracted to carry cargo that was paid for and fully insured. They sold many ships in transit and changed their names, registry

1. As was done in the Salem case where crude oil was clandestinely pumped into and sold in a South African port.
and flags, detoured them to Lebanon, and sold the cargo to Lebanese businessmen at cut rate prices, thereby clearing several million dollars with each transaction. The ships were then either scuttled at sea or sold for the junkyards. The original purchasers of goods were content with collection of claim money from their insurance companies.

In the above analysis, maritime fraud involving piracy is deliberately omitted as because it is not relevant to the study in this work and also because the loss from the same is insignificant as compared to the loss suffered from any of the other heads of frauds analysed here.

The brief analysis of maritime crimes should be regarded as a mere outline of crimes possible under the four noted headings. The list cannot be considered closed nor should it be believed that no new classifications may arise in the future. There will be in general a strong element of one kind of crime in any given situation, but as instances will show that there will almost certainly be elements of one or more others as well. In other words, a particular fraud may be interlinked with the others. A documentary credit fraud will usually involve loss of cargo by theft, a scuttling fraud will usually involve theft as either a primary
or secondary object and may also be aided in its commission by false documents of one kind or another. Chartering frauds will sometimes include both documents and theft classification in some measure when an analysis of the crime is made. By no means is a maritime fraud unlikely which encompasses documents, charter, theft and scuttling in equal measure. Thus it can be visualised a case where a ship starts sailing off with genuine cargo, but with forged documents, with the charterer disappearing mid-voyage and the shipowner misappropriating the cargo and thereafter sinking the over-insured vessel to destroy all evidence of the crime.

A general study of the frauds reported reveals that most of the vessels involved in maritime frauds were either:

a) single vessel ownership; or
b) with hardly any asset and balance sheet reflecting a very alarming feature; or
c) which underwent a series of ownership changes, with all the owners being name-plate companies in flag of convenience countries; or
d) over 15 years of age; or
e) on a single voyage charter; or
f) had a complicated network of owners, operators, managers, charterers, sub-charterers etc.

The 'contribution' or involvement of flag of con-
venience to maritime fraud is thus: the vessel may be either flying such flag and committing the fraud, when the same may be labelled as a 'direct' contribution or involvement, or the vessel may be flying some other flag, but at the precise moment the fraud is contemplated either by the charterer or shipowner, the vessel undergoes a series of rapid change of owners and equally rapid change of flags mid-voyage with all the owners being name-plate companies in flag of convenience countries. In such cases, the 'contribution' or involvement may be labelled as 'indirect'.

In another variation, the seller of the goods contracted for sale may be a name-plate company in some flag of convenience countries, formed for the purpose of opening a letter of credit with a bank and disappearing without any trace after encashing the same. In many cases, it has been found that in most charter party frauds, the charter parties or the sub-charterers or operators were such name-plate companies.

In all the above cases involving flag of convenience, the victims became rudely aware of the crime only when the goods promised to be delivered disappeared mid-voyage, and when repeated letters to the registered offices of these 'sellers' or 'charterers' or 'sub-charterers' or 'operators' came back to the, victims unanswered and enquiries revealed that the companies had gone out of effective existence. It may also be mentioned here that such companies are formed overnight with hardly any financial assets and wound up after a voyage or two.