CHAPTER X

SOME PREVENTIVE MEASURES TO MINIMISE THE OCCURRENCE OF MARITIME FRAUD

Various suggestions have been made for combating maritime fraud in innumerable seminars and in various organisations. The creation of the International Maritime Bureau (IMB) is itself a fruition of one such suggestion. Others, particularly those involving international action, have not been developed in any degree of detailed and still less ever been implemented. Some of the suggestions deserve further consideration, while others, after analysis, are found to be either unrealistic or ineffective in achieving their intended goals. These suggestions are examined below under the proper headings.

A: DOCUMENTARY FRAUDS

(a) Precaution by buyers of goods

It is an admitted fact and it has been pointed out in various fora that buyers of goods do not take sufficient precautions in international sales transactions to avoid being victims of frauds. Besides suggestions for developing educational programmes for traders to highlight the dangers involved in international sales transactions, it has also been urged that banks involved in opening letters of credit should take a greater initiative in advising their clients on necessary precautions.
Examples of 'successful' documentary frauds show that the victimised buyers of goods failed in many respects among which is their failure to make reasonable checks on the reliability of the seller, either to ascertain whether the vessel on which the goods were to be loaded was anywhere near the loading port, or whether it was capable of carrying the intended cargo, and also in their failure to insist in the letter of credit for documentation. In view of this, it is necessary to encourage a greater awareness on the part of potential buyers of the precautions needed to be taken when dealing with sellers or intermediaries with whom they are not familiar.

The IMB along with other similar bodies have been making constructive efforts in this direction through seminars and publications providing the type of precautionary measures to be taken compulsorily by the buyers to ascertain the reliability of sellers via local chambers of commerce of the country concerned. The IMB publication ICC Guide to Prevention of Maritime Fraud$^1$ is an invaluable guideline in this respect. However, the IMB has itself admitted in the same that,

1. ICC Publication 370, (1980)
'Not all parties, particularly the smaller traders, have the necessary degree of sophistication to fully protect their own interests. It is not easy to discover the reliability of all commercial parties and transporters'.

It is, therefore, necessary to maximise the possible safeguards in letter of credit transactions by requiring the appropriate type of documents, and also to develop a readily available advisory service to small traders to ensure that they have undertaken the appropriate steps to protect their interests. Since banks play a central role in international trade, they are the most suitable entities to provide such an advisory service, whether as issuing bank acting at the request of a client to open a letter of credit or as the bank paying on the credit against presentation of documents. As an entity which buyers must inevitably contact to open a letter of credit, banks are best placed to advise the applicant for the credit on necessary safeguards, whether involving necessary documents to be required in the credit or concerning appropriate independent enquiries to be made on the reliability of the trading partner.

1. Ibid. p. 8.
For those who would object that it is not necessary for the banks to perform such functions, it may also be argued that banks do have certain moral obligations, as providers of the letter of credit system, to ensure that proper documents are required by the buyer to ensure the reasonable likelihood that the payment in the credit will be payment for the goods specified. Since banks receive commission for services rendered in the letter of credit system, it is in the bank's interests to ensure that an environment of commercial confidence ensues in the procedure.

The International Maritime Committee (CMI) in their 'CMI Colloquium on Bills of Lading' held in Venice, May 30 to June 1, 1983, in their Recommendation No.7 suggested such a role for the banks. This recommendation subsequently approved by the CMI Assembly, States that:

'Banks should be encouraged to warn their customers of the risk of fraud under documentary letters of credit and advise them on suitable precautions'.

The banks in developed countries are better placed in this respect than their counterparts in the developing countries, as they already provide advice on anti-fraud measures on an ad hoc basis. Such expertise in international shipping and trade matters is not fully developed in developing countries, and this drawback appears to be confirmed by the large number.
of reported frauds committed in developing countries on the basis of letters of credit opened with local banks lacking the adequate documentary safeguards.

It is therefore suggested that the Intergovernmental Group (IGG) formulate a set of guidelines for banks to refer to when accepting applications to open letters of credit. Such guidelines would greatly assist banks having insufficient experience or expertise in the type of transaction with a view to advising their clients on necessary safeguards.

(b) A 'secure' bill of lading

Although bill of lading are documents of title for the goods, enabling the consignee (buyer) to obtain possession of the goods from the carrier and the consignor (seller) to obtain payment on letters of credit opened up by the buyer, they are considered to be very easy to forge as they are usually printed on blank papers and are readily purchaseable in blank form 'on the street'. The suggestion is therefore for reducing the possibilities for forging bills of lading¹.

¹. E.g. 'Shipping companies ... should lighten up their bill of lading department and consider the use of an embossed coded number on each bill of lading at least for high-valued or parcels of cargo'. Ellen and Campbell, 'International Maritime Fraud' pp117 - 118.
(i) IMB bill of lading

The IMB is considering proposals to develop a 'difficult-to-forge' bill of lading which will be subject to controlled circulation. It has suggested that the format of the proposed 'secure' bill of lading would consist of:

(a) watermarked paper with motif;
(b) synthetic coloured fibres distributed over the whole sheet;
(c) a sensitising treatment, equivalent to a typical cheque standard, to prevent alterations, and serving as an authentication device; and
(d) a unique serial number.

It is envisaged that the exact specification of the document could be altered to suit requirements of a particular trade. Printing and circulation of the bills would be controlled by one single body as the local chambers of commerce. The bills would be issued to shippers, upon application and against receipt and the serial numbers would be recorded upon distribution. Banks would be intimated about the system and would also be provided a sample format. As a result, banks would be in a position to verify the authenticity of the form and by enabling the identity of the purchaser to be traced in the event of a fraud, the system would offer a reasonable deterrent against forgery of bills of lading.
The key to the success or failure of this system will depend in the degree of control of the distribution of the document to ensure the identifiability of the purchaser. However, as the document may be issued to individuals or firms who are not fully known or identifiable, the risk will exist that its circulation becomes 'uncontrolled'. A further fact that of onward and thus uncontrolled transfer of a blank form of the bill of lading to another person before being used or misused for a shipment is also likely. There will therefore be bound to arise practical problems in the control of the distribution of the bills of lading which will have to be determined together with the obtaining of the acceptance of the shipowners of such bills of lading.

If the above practical problems can be overcome, there is no reason to doubt that the IMB bill of lading can provide some sort of deterrent to the commission of maritime fraud by requiring the potential perpetrators of fraud to expose their identities while obtaining the necessary documents. The IMB bill of lading is intended to act as an optional document for use when the buyer is not well acquainted with the seller and wishes to protect himself against the risk of fraud by presenting such a deterrent. In such cases, he would require from the seller as part of the sale that the goods are shipped on the IMB bill of lading form and it would be a required part of the sale and required as one of the documents for presentation by the seller in order to obtain payment
under the letter of credit.

(ii) Improved stamping procedures

Since the master's or agent's signature is of limited use as an authorisation device for bills of lading, it has been suggested to improve the sophistication of stamping procedures as an alternative mode of authorisation. In this respect, multicoloured and 'difficult-to-forge' stamps may be developed. Such a suggestion would be useful in facilitating the task of the various agencies of each shipping line in verifying the authenticity of that line's own bills presented for delivery of cargo and in a way would prevent frauds perpetrated by buyers. However, it is doubtful if such a procedure can prevent seller frauds. Another difficulty with the system is that unless it is applied universally on an obligatory basis, the seller could always utilise a non-participating shipping line. This can, however, be overcome by the buyer specifying in advance that only a 'participating' line could be used. However, unless the stamps are actually 'difficult-to-forge', such advance specification is of little value.

A big drawback in this system can be caused by the theft of the stamping apparatus, thereby rendering the entire system useless. A second-line system of alternate stamps may be provided -- only to be rendered useless by the next theft.
Where the shipping line's vessels are chartered under a charter party giving the charterer's agents power to sign the bills of lading on behalf of the master, suitable steps may be ensured to see that the bills of lading thus signed are authenticated by the shipping line's owners or agents to offset the 'loaning' of the stamping apparatus to such charterers. This will prevent fraud via the creation of 'name-plate' charterers.

There is another suggestion by the IMB to see that the buyers of cargo obtain in advance a specimen signature of the person signing the bill of lading and have the same included in the letter of credit. This is not practicable as it is difficult for buyers to do so in advance and if it is obtained through the seller, it would be an open invitation of documentary fraud. A further difficulty in the recommendation is the frequent change of masters or agents often during the passage of the voyage.

(c) Other suggestions

Experts in the field of anti-fraud measures have made various suggestions to help buyers avoid being victimised by maritime fraud. Some have been found to be practicable while others utopian. Thus, it is frequently advised that buyers must ensure that the letter of credit requires
presentation of a full set of original bills of lading (usually three in number) and to ensure that additional documents be required that are not otherwise issued by the seller. The first is designed to avoid presentation by the seller of only one original to the bank while simultaneously negotiating the others with different buyers. This, however, does not provide any protection against the ample risk of a duplicate set of originals being forged and negotiated, in the case of ordinary bills of lading. This problem can be prevented to a large extent if the proposed IMB bills of lading are introduced in the international shipping trade. As to requiring additional documents in the letter of credit not emanating in the normal course of business from the seller, not much protection is normally provided against a seller prepared to forge the necessary documents, though such risks can be reduced greatly if such documents are in parts -- one with buyer and the other with seller and the concerned banks by comparing both can decide for themselves whether these are 'in order'.

The proposal for the arrangement of a revocable credit calling for part shipment to be made in stages has also been mooted. If the initial consignment does not meet the buyer's requirements, the credit can be cancelled. It has been argued against that fraudulent sellers will usually establish first an image of respectability before committing a large fraud with a later shipment.
Our own suggestion here concerns the payment against the letter of credit after all the documents have been found to be 'in order'. Assuming the possibilities of both a 'clean' shipment as well as a potential fraud in the transaction, we suggest that the paying banks transfer the payment receivable by the seller, into an escrow account. This amount would only be paid to the seller only when the paying bank receive intimation from the buyer and the issuing bank, that the goods have actually been received in order by the buyer. This will no doubt cause genuine hardship, if not undue harassment, in many cases, but to make life safe for international trade, no sacrifice is too small especially if one bears in mind that in today's world of shipping, such procedures would take only a few weeks of 'anxious' waiting. Furthermore, by this method, the fraudulent sellers can be easily exposed as because in case of non-shipment or shipment of substandard goods or rubbish in the place of goods, the fraudsters would be the first to do the vanishing trick without getting a brass farthing for their efforts or pains.

B: CHARTER PARTY FRAUDS

This type of fraud usually involves deceit and dishonest acts by carriers, being shipowners or charterers, against cargo interests as shippers or consignees of goods.
The ICC Guide to Prevention of Maritime Fraud, in particular reference to the shipowners and charterers, presents certain advice before entering into a charter party. These are:

'The best way for vessel owners and charterers to avoid their involvement in incidents of fraud is to make the necessary enquiries so as to satisfy themselves as to the standing and integrity of the parties they are dealing with prior to entering into any binding commitments. The following recommendations are made in this respect:

(a) owners should seek advice on time charterers before agreeing to a charter. Only reputable shipbrokers should be used.

(b) owners should check on the financial status of a charterer and in certain circumstances should demand that a bank guarantee covering estimated hire by delivered to them on signing the charter-party.

(c) owners should very firmly resist requests from unknown charterers for the inclusion of a clause in the time-charterers or their agents the right to sign bills of lading on behalf of the master.

(d) charterers should know the disponent owners or be able to check on their record'.

From the cargo-owner's point, the general information needs will be divided between information relating to the ship and information relating to the parties connected with the ship. The first would include the name of the ship; technical details concerning its type, size and carrying capacity; its age, its casualty history etc. In addition, in view of the use of chartered vessels to commit frauds, via the disappearance of the charterer after having collected prepaid freight from other cargo owners, information concerning whether the ship is on charter is of critical importance. Further, in view of the tendency for ships involved in other types of maritime frauds, like deviation and scuttling, to undergo frequent name, ownership and nationality changes, a complete history of these items would be highly relevant.

Regarding the information relating to the parties connected with the operation of the ship, a cargo owner, whether entering into a charter party or engaging in a 'liner' service, will wish to know whether the person he is dealing with is reliable and financially sound so that he may be able to ascertain whether the goods will be transported to the agreed destination. Of particular concern in this latter context is whether the vessel is on time or voyage charter, and in such a case it would be necessary to know the reliability of financial standing of the actual ship owner as well. The identity of the ship owner is very important as also that
of the charterer and the relevant shipping agents. However, in view of the ability for known perpetrators of frauds to operate behind corporate shields, the identity of the beneficial owners should be known. In the case of potential complexity of intercorporate relationships, by use of trusts for shareholding interests, the full disclosure of such details may not be possible and in such cases, the identity of major shareholders or parent corporations may be ascertained. Also in the case of shipowners, the names of other ships currently or previously owned, and in the case of charterers offering a chartered vessel for carriage of goods, the previous chartering history are relevant. It may be mentioned here in the passing, that although a newly created corporation, as well as a corporation with no previous ship owning or chartering history and which is not a part of a corporate structure with shipping experience, may not necessarily indicate fraudulent intent, it may be a good ground for making further investigations.

At the present, information concerning controlling interests, or concerning parent company and directors is inadequate. Lloyd's Shipping Information Service (LSIS) provides information only for ships above 1,000 gross tons, thus leaving uncovered vessels in the 100 to 999 gross ton category. Moreover, some national ship registries list only the name
and address of the registered owner and company registers
do not reveal shareholding interests and this does not at
all help identify the controlling interests behind the registered
owners. Countries such as the flags of convenience and tax
havens, are notorious for enabling identities to be disguised
behind corporate entities\(^1\). It has been submitted in this
respect that countries of convenience, where offshore companies

\(^1\) E.g. as is stated in respect of Liberian law: 'Anonymity is easily
preserved since: (a) all or part of the stock issue may be in the form of
registered or bearer shares; (b) after incorporation any change of officers
and directors need not be recorded in a public register; (c) the Resident
Business Agent is not required to file any reports with the Government regard-
ing corporate activities'.

Also in the case of a corporation formed under the laws of Vanuatu, 'it is
usually 'exempted', which means it does no business in Vanuatu and is pro-
tected by the strict secrecy provisions of the law. This law prescribed a
criminal penalty if the confidential information which must be revealed to
the Company Registrar upon incorporation is told to others. Companies may
be formed locally by Trust Companies or Attorneys. For shipping purposes,
companies may be formed... by telex in a matter of about two days. There
are no restrictions on the Nationality of Shareholders, officers or directors,
beneficial ownership of the company must be declared to the Company Regis-
trar, but local nominees may be used as shareholders'. Vanuatu - Vessel
Registry and Financial Center, publication by the Office of the Deputy Commis-
sioner of Maritime Affairs (New York, USA).
are allowed to operate under exempt status, provide a perfect cover for fraudsters.

Complicating the above task is the ability for vessels to be registered in certain countries without a deregistration certificate from the previous country of registry. This enables a dual registration of ships and facilitates such frauds involving disappearance of vessels and deviation frauds involving theft of cargo.

In view of the above discussion, an analysis of possible remedies is detailed below.

(1) Licensing of carriers

In view of the significant role played by the 'fly-by-the-night' operators in maritime frauds, whether using time, voyage, or bare-boat chartered vessels, or offering their own vessels out for time or voyage charters, the absence of easy and effective means to ascertain the reliability of carriers offering their services, particularly in the light of the difficulty of determining whether a vessel is chartered and who its real owners are, the UNCTAD have suggested that consideration should be given to the establishment of a register of ocean liners. Whether established on an international scale or nationally with internationally agreed uniform standards, such a register could list individuals or entities, whether charterers or shipowners, who were ready and willing
Considerable thought has been dedicated here whether some sort of international licensing system would be effective in combating maritime fraud and practically feasible to implement. Certainly, a licensing system could reduce various types of maritime frauds like deviation, scuttling as well as charter party involving misconduct by shipowner against cargo owner. However, the type of maritime fraud involving a charterer acting as a carrier i.e. offering the chartered vessel to carry the goods of someone else, would not necessarily be affected other than to change the form in which it appears. Thus, instead of acting as a carrier, collecting prepaid freight, failing to pay the charter hire and disappearing, a charterer wishing to commit this type of fraud need only load his own goods on the chartered ship, sell them c.i.f., stop paying the charter hire and disappear. Since the charterer loaded his own goods, there was certainly no obligation to be licensed at that stage. At the time of sale, depending on with whom the contract of affreightment is deemed to be concluded, the charterer is either just a seller of goods under a contract of transport with the ship owner, for which no license would be required, or the contract of transport would be with him, thus implying that at the conclusion of the sale he is transporting the goods of someone else i.e. the buyer and therefore in need of a license.
A practical difficulty in the implementation of such a system involves a determination of the requirements which need to be met in order to obtain a license. Professional requirements as years of experience of the carrier's personnel, absence of criminal records etc. would serve a useful purpose. In addition, identification of the beneficial owners of the carrier would inhibit the current practice of well-known perpetrators of frauds from hiding behind name-plate companies established to effectuate their frauds. Also such identification would complicate the current ability of perpetrators of frauds to hide their identity in order to disappear after the crime.

However, considering the fact that seemingly reputable companies suddenly commit a maritime fraud, it would appear that for any licensing system to be truly effective in preventing maritime fraud, a system of performance bond would have to be posted. To offset the potential gain from major frauds, such bonds would have to be several million dollars in size -- a fact which will in itself eliminate smaller operators -- fraudulent or genuine -- from the market and in a way adversely affect the developing countries and would not be in the overall interests of the international shipping community.

In spite of the prospective problems, the licensing
system would be advantageous as because with the increased identification of the beneficial owners of the shipping companies, charterers etc., the reliability of the carriers can be effectively investigated.

(2) Improvements in the international collection and dissemination of information

In the light of the inadequate amount of readily available information concerning shipowners and charterers, which hinders investigations by interested parties, efforts should be made to increase the available information. It has been observed that the increasing use of computers has led to an increase of information being made available on at least many aspects of shipping operations. Thus, further enquiry in this field should be directed to determining what additional information should be made available, what measures should be taken to increase the reliability of the information now being made available and whether the organisation of the current information dissemination is satisfactory or whether a more centralised system is desirable.

National ship registries in many countries of today present at best only a formalistic range of information concerning the owner of record and technical details of the ship. It is therefore suggested that from the perspective of com-
bating maritime fraud, additional reporting and disclosure requirements are needed, for example concerning charter fixtures, ship agency agreements, parent company relationships among others. Although such information need not necessarily be incorporated into the national ship register, it should at a minimum be centralised at the national level and presented for each ship registration for ease in collection and analysis.

Centralisation at the national level would assist the undertaking of enquiries as well as the data collection of the various private information agencies. However, it will be necessary here to institute new mandatory reporting requirements for certain types of information determined to be necessary for fraud prevention. At the international level, the current situation is based on a passive availability of information. Information is available at the national level, and individuals or information agencies wishing to obtain the same must actively collect it.

An alternative approach would be to institute an active reporting requirement at the international level, i.e. from a centralised information point in each country to a central registry of information. The advantage of this would be the increased speed with which information is made available. Here information which is only passively collected must be collected and this usually can only be arranged as
a practical matter at certain intervals of time. Information for which there is an active reporting requirement would be reported as soon as it is recovered, thereby rendering it available at the international level more quickly.

A centralised organisation would have to be agreed upon as the repository of such information, although it may not be possible for governments to unanimously select a particular commercial organisation to fulfil the international information dissemination role. An alternative would be to create an intergovernmental information agency to collate and make available ship-related information relevant to maritime fraud enquiries.

The IMB's data bank on maritime fraud provides a complementary pool of information, and in this respect, if some sort of centralised information agency is established as an independent organisation, there would be certain advantages, from a fraud prevention viewpoint, in establishing a special link-up with the IMB data bank to correlate information. In this respect, seemingly innocuous information, when matched with the information in the IMB files, could well reveal the potential for maritime fraud to occur.

Another related point to bear in mind is that in
receiving and collating information at the international level, the ability to match up information internationally will inevitably result in information coming to light that reveals the possibility of some sort of misconduct occurring, such as dual registration, mis-statements or omissions which are revealed by information received from other sources. In whatever arrangement is decided upon at the international level, some sort of arrangement should be made to ensure that such relevant information is communicated to the relevant international or national bodies, such as Interpol, the IMB or national governments, which are in a position to take the necessary preventive measures.

From the above it is clear that it is unlikely that all the information possibly relevant to maritime fraud investigations can practically be centralised, collated and presented in an organised form at the international level without computers. The tremendous advantages of computerisation should be utilised by the nations for a successful implementation of the proposals mooted above. Further considerations would have to be given to the needs of developing countries in both the adaptation to and acquisition of computers in the field of shipping.

(3) Other suggestions

The ICC Guide to the Prevention of Maritime Fraud,
advises that the master should ensure that the cargo signed for is on board, that the bills of lading are signed only by authorised personnel and are authenticated and that the master should whenever possible exercise his power to sign the bills of lading. This advice is mainly directed to the risk of bills of lading being signed by the charterer's agent, on behalf of the master, for cargo not in fact loaded.

The problem arising from charter-parties granting the right of charterers or their agents to sign bills of lading on behalf of the master are frequently cited in instances of maritime fraud, whereby bills of lading are issued which do not conform to the mate's receipt or are issued on a freight prepaid basis when the charter party had stipulated only freight payable bills. The difficulty with the above is that the charterer can still substitute these bills of lading for his own which can be drawn up in contravention to whatever stipulations exist in the charter party. Only a world-wide abolition of charterer-signed bills of lading, which may be impracticable, in conjunction with greater identifiability of the various entities involved in offering a transport service could effectively reduce the incidence of this particular type of charter party fraud. However, even then there would still be the risk of forged bills of lading being issued.

There is also the suggestion that three months of
charter hire to be paid in advance, or held in escrow, as a means to reduce the occurrence of this type of charter party fraud. It would seem that only sufficient freight to cover the voyage for which cargo is loaded need to be received in advance, or deposited in escrow, in order to reduce the attractiveness of this type of fraud. However, the ability of shipowners, or disponent owners, to obtain such an arrangement depends very much on market conditions. Only an internally applied mandatory requirement that arrangement be made could be truly effective. Nevertheless, such an arrangement might legitimately pose cash flow problems for some charterers — until the prepaid freight has been received, unless bank guarantees can be arranged at reasonable rates. Alternatively, the mandatory abolition of all freight prepaid bills of lading could serve the same purpose of eliminating the attractiveness of certain types of charter party frauds. Without the ability of collect the freight in advance, there would no longer be any advantage for fraudulent charterers to cease paying the charter hire and disappear. By being internationally applied on a mandatory basis, innocent buyers would no longer be victimised since they would notice that bills of lading on a freight prepaid basis would be illegal. However, such a suggestion would have significant economic implications, would profoundly restrict flexibility in commercial arrangements, and might not be warranted by the extent of the problem being experienced.
Vis-a-vis the commercial complexities of this particular field, particularly in relation to charter parties, the usefulness of greater identifiability of parties, and their inter-relationships, through improved availability of information becomes an increasingly attractive anti-fraud measure. The availability of information does not by itself totally eliminate the risk of fraud, but it certainly reduces it by permitting the various parties to be better informed about the vessel concerned and the other parties with which they are dealing.

**C : THEFT OF CARGO**

This type of fraud is always accompanied by the deviation of the ship from the route it was to take. The *modus operandi* for such type of fraud (as well as the related fake 'sinkings' for hull insurance purposes) depends on the ability of the vessel to 'disappear' after the event. This is usually accomplished via one or more name, nominal ownership and nationality changes. To this extent the process is facilitated by the ease of establishing new corporate identities permitted by many national laws, behind which may be masked beneficial ownerships. More importantly, the ease with which vessel national registrations may be changed from country to country with little or no direct contact or control over the ownership and operations of the vessels concerned certainly provides ample scope for effecting quick vessel disappearances. In this respect an analysis of a number of
frauds involving non or misdelivery of cargo has revealed that 54 per cent of the cases concerned vessels from three flag of convenience countries\(^1\).

The situation is further complicated by the fact that certain countries do not require a deletion certificate from the previous country of registration when accepting new vessels on their own registry. Thus, it is frequently the case that vessels have simultaneously more than one certificate of nationality thereby enabling such vessels to effectuate rapid changes of identity with proper identification papers, merely by painting over their name under one nationality with that of another under another nationality and raising the new flag\(^2\).

(a) Registration of ships

It has been recommended on more than one occasion by international organisations which have considered the problem, that traders should avoid using vessels flying a flag of convenience\(^3\). It has also been said in respect of flags

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3. E.g. resolution adopted by the First Conference of Transport Ministers, 1-2 May, 1982 of the Gulf Co-operation Council and recommendation adopted by the Economic and Social Arab Council, at its thirty-first session, June 2-6, 1982 of the League of Arab States.
of convenience that 'in the context of maritime fraud, certain flags of convenience, due to their lax rules on registration and effective control over offences, act as a contributory factor .... Host governments of flag of convenience should be persuaded to exercise more stringent controls over manning, registration and administration of vessels'. In this connection, the UNCTAD secretariat had observed previously that

'Owners of open-registry ships are less accountable than owners of other ships, partly because they are often identifiable and can change their nominal identities, and partly because even when identified they, their managers and their key shipboard personnel reside outside the jurisdiction of the flag State. The difficulties which open-registry countries encounter in controlling shipping operations under their flags stem directly from the lack of economic linkage, and consequently it is impossible to tackle the question of substandard shipping operations without tackling the question of the economic linkage between a vessel and the flag State'.

1. 'Fraud and the International Maritime Bureau' by E. Ellen, Director, IMB, presentation at the BIMCO General Meeting pp. 7720-21.
2. 'Open-registry fleets', reports by the UNCTAD secretariat, TD/B/C.A/244 para. 102.
Consequently, the work now going on within the UNCTAD and conditions for the registration of ships form an indispensable part of any set of measures to be adopted to combat maritime fraud. Thus resolution 144 (VI), unanimously adopted at UNCTAD VI, meeting in Belgrade from 6 to 30 June 1983, urged:

'the expeditious completion of the work on conditions for the registration of ships, including particularly the establishment of a genuine link between the vessels and flag States, taking into account paragraph 1(b) of the resolution adopted by the Ad hoc Intergovernmental Working Group on 'Economic Consequences of the Existence or Lack of a Genuine Link between Vessels and Flag of Registry', at its first session and including the need for the flag States to exercise effectively their jurisdiction and control over the ships'.

It may be mentioned here that the draft text on identification and accountability of owners and operators drafted by the Intergovernmental Preparatory Group (IPG) on 'Conditions for Registration of Ships' provides that in-

1. Liberia reserved its position on this paragraph.
2. UNCTAD Report on its second session TD/B/935-TD/B/AC.34/8 Annex II.
creased information will be available as a result of this work, thereby rendering it more difficult for fraudulent operators to disappear after illegal acts.

The above IPG text enumerates, in a section, entitled 'Register of Ships', information that should appear on a shipping register, including 'previous registry, if any, date of deletion or suspension of previous registry'. Firstly, although this is not as yet an agreed text, it is recommended that it be adopted in order to eliminate the possibility of dual registration of vessels. Secondly, although the quoted text implies the need to submit a certificate of deregistration in order to establish the required facts it is recommended that such a requirement be expressly included in principle, as is done for bareboat charters, in order to reduce the risk of misrepresentation.

As regards the problem of dual nationality of vessels in the occurrence of maritime fraud, the IMB has suggested for governmental action that,

'An international register be maintained where all changes in vessels' flags and mortgages are recorded. With a total of 80,000 or so vessels in the world, this is a feasible proposition. Each flag State should agree to inform all changes in registrations to a
centralised body. This would be an effective countermeasure to the problem of multiple nationality of vessels\(^1\).

Thus with the establishment of a centralised ship information register at the international level, and the use of an international ship identification number, such dual nationality would immediately be revealed by such a register.

(b) Monitoring ship movements

The ICC Guide to the Prevention of Maritime Fraud recommends cargo owners that the master radio his position at certain periods of the voyage and, for valuable cargoes, be required to report to Lloyd's Agents at each port of call, giving his estimated time of arrival at the next port. However, as shipowners in deviation frauds report engine trouble as justifiable reasons for delays in arrival, some more additional monitoring of the vessel's position is necessary if this type of fraud is to be avoided.

The IMB offers a monitoring service of a vessel's voyage. This is done by requiring the contract of carriage to contain a stipulation obligating the master to cable his

\(^1\) 'A Profile on Maritime Fraud', IUMI Cargo Workshop, 1982, page 12.
noon position daily to the IMB. The voyage will also be monitored by independent sources at certain points in the voyage. By such measures, any deviation will be detected early enough to prevent any unauthorised discharge of cargo.

As to the practicability of establishing such a ship movement monitoring scheme on a world-wide basis, the Director of the IMB specified that 'it would be relatively simple, and not terribly expensive, to set up a system constantly monitoring ships' movements via satellite communications and shipboard 'black boxes' 1. It is understood that Lloyd's Register of Shipping have plans to install a prototype 'black box' in ships, although this is primarily designed to report on technical and safety related details and is not believed to include a ship locating function. Various satellite-based communication schemes are being implemented to provide facilities for instant world-wide ship-to-shore communications and emergency ship position location capabilities in the event of ships being in distress.

On the basis of the above projects, it is anticipated that the expected advance in communications will eventually

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1. 'Data Bank May Solve Ship Fraud Problem' *Journal of Commerce* 16 February 1982, page 24B.
result in a global ship movement monitoring capability. If these are combined with an obligation for ships to report their voyage destinations and estimated times of arrival (ETA) upon leaving port, vessel deviation frauds would be eliminated. Although the financial investment necessary for such an automatic ship monitoring capability exceeds the benefits to be derived from reducing the occurrence of this type of maritime fraud, nevertheless such a capability when instituted for other purposes such as safety and traffic controls, could also have beneficial consequences for fraud prevention.

(c) Ship identification

In one of their reports, the UNCTAD secretariat suggested that consideration should be given to establishing an international obligation to carry a serial number on all vessels, which could not be changed during the life of the vessel regardless of the change of nationality and which would have to be clearly displayed at all times directly under the vessel's name. It is felt that this would make it more difficult for a vessel's identity to be disguised.

The ease with which vessel names have been changed

1. 'Future Work' Td/B/C.A/244.
is well documented. When combined with the likelihood of confusion with similarly named vessels from other national registries, it is felt that vessel identification by use of names has outlived its utility and should be now discarded. It is therefore preferable to develop an international system of identification based on the serial number allocation as discussed above which would apply to vessels from construction to destruction -- something like the engine numbers of motor vehicles. This would be similar to Lloyd's Register identity number system and should be subject to government sanctions for non-compliance. Although it would still be possible to change the serial number fraudulently, such an act would, by international agreement, be made an offence punishable in any jurisdiction where the offenders are located.

(d) Other suggestions

In order to limit the ease with which cargoes can be legally disposed of in some countries, government should, where possible, tighten national laws concerning sale of goods by shipowners through court proceedings to ensure that fully adequate notice and opportunity to appear have been granted, to the cargo owners. Here the port authorities should be empowered to adopt a vigilant attitude to ensure that the goods are not spirited away under the cover of the dark for sale to bonafide purchasers for value. A close co-ordination between port and custom authorities should be established
in this respect. Governments should ensure that the establishment of free trade zones (FTZ) does not provide opportunities for illicit activities, in particular the importation, illicit sale and re-exportation of goods. In this respect, in relaxing fiscal controls for such areas, particular care should be taken to ensure that adequate law enforcement and security measures are taken, keeping in mind the tendency for such areas to attract illicit activity.

D: SCUTTLING FRAUDS

This type of fraud -- both real and faked -- usually involve over-aged, poorly maintained ships registered in a flag of convenience country and owned by a one ship newly created company with no other visible assets.

The role of substandard ships in the commission of maritime has been recognised within IMO while adopting resolution A.504 (XII) on 'Barratry, Unlawful Seizure of Ships and their Cargoes and other forms of Maritime Fraud', wherein it states,

'The Assembly,

Recognises that the ratification and effective implementation of IMO's conventions and other appropriate international instruments relating to maritime safety, in particular those dealing with the training and certification of seafarers
and the procedures for the control of substandard ships adopted with a view to the eventual elimination of such substandard conditions, can make a contribution to the prevention and control of maritime fraud, and accordingly invites Governments to give renewed consideration to the ratification of the Convention and instruments and application of the resulting procedures;'

As discussed earlier, increased internally available information on ships, their owners, charterers, corporate history, etc. could facilitate the task of insurers in assessing the risk of scuttling before accepting a risk or before paying a claim. Although insurers in London are believed to have access to substantial information not otherwise available to the public through the United Kingdom Salvage Association and the Confidential Lloyd's Index of Lloyd's Register of Shipping, it is believed that with the establishment of a centralised international organisation the volume of such information could increase and be made available to traders.

Also the ability for ships to disappear in connection with faked scuttlings would be made more difficult by the elimination of covert dual registrations. Such dual registrations could be eliminated either by the universal adoption by States of a requirement of a deregistration certificate from the previous registry in order to register a ship or as a result of the establishment of a reporting requirement
to the proposed centralised international information organisation of relevant information concerning ships on its register, including the proposed international ship identification number.

**Cargo insurance suggestions**

As a measure to minimise the extent of exaggerated or fraudulent cargo insurance claims, insurers are advised to cross-check the accuracy and validity of all supporting documents with the appropriate surveyors and port authorities in cases where there are grounds for suspicion as to certain claims as well as to enforce applicable policy clauses requiring immediate notification of loss of damage. Additionally, insurers should ensure that their surveyors receive adequate guidelines for the preparation of their reports.

Besides the IUMI published brochure entitled 'Cargo Loss Prevention Recommendations'\(^1\), two studies captioned 'Loss prevention in fire and marine insurance'\(^2\) and 'Cargo loss prevention: suggestions for a domestic policy in developing countries'\(^3\), have been submitted to the UNCTAD Committee on Invisibles and Financing related to Trade\(^4\)

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2. TD/B/C.3/162.
4. At its ninth (2nd part) and tenth (first part) sessions.
concerning recommended procedures and policy measures to minimise cargo loss claims. There is a suggestion in these recommendations for cargo insurers to establish a special agency, in active collaboration with port authorities, to undertake the supervision of cargo loading, unloading, shifting and storage operations at the port.