CHAPTER I

HISTORY OF WORLD MERCHANT MARINE

The earliest records of civilisation indicate that merchant vessels sailed along the coasts of China, India, Indonesia, Arabia and Mediterranean lands, carrying goods that could be traded in some distant port for profit. Although the streams, rivers, lakes and bays provided the most advantageous advances for commerce, yet it was the world ocean that has been the greatest highway of trade, carrying by ship all the commodities of the continent from one community to another, stimulating time and labour-saving inventions, while raising the living standards of human society by peaceful exchange.

Egyptian drawings show small sailboats with single masts as early as 2000 B.C. In ancient Greece merchant vessels which depended upon cheap sailpower rather than expensive rowers to make profit were differentiated from warships. Phoenicians vessels carried the timber of Lebanon to ancient Egypt and returned with wheat and barley from the Nile delta. Sea adventurers sprang from the peoples of Crete and Greece transporting olive oil, wine, cereals, cattle and other commodities across the Mediterranean. In addition to camel-caravans, bold Arab traders sailed their boats through the Straits of Hormuz to cross the Arabian Sea to trade with Ceylon and the Coromondal coast of India.

The civil wars of Rome ended under Augustus and the great empire of antiquity with a capital city of a population, then, of more than a million thrived upon peaceful marine
trade. Rome imported lead and tin from Britain; iron, copper, silver, gold, wool, honey, pitch and dyes from Spain; marble and earthenware from Greece; wax, hemp and pitch from the Black Sea provinces; and glass manufactures from Lebanon; wheat and cattle were shipped from Egypt; horses, lions and elephants from North Africa; minerals, linen, cheese and salt-meat from Gaul through Marseilles and Bordeaux to Ostia. From the East, partly by sea across Arabian Sea, partly overland to Alexandria and finally by ship came the pearls, silks, spices and perfumes for the pleasures of the Romans.

Ancient Rome therefore built large strong hulls for commercial expediency with a mainmast and foremast each with sails and a topsail to harness windpower for merchant expeditions as sea transport was discovered to be far cheaper than land transport. However, later two important technological changes in ships made world commerce possible, viz., use of lateen sail fore and aft and the stern-post rudder and it was the latter which improved the capacity for bringing the ship about in wind and steering. The thirteenth century saw the usefulness of the magnetic compass in ship and this gradually led to the recorded use of charts for navigation.

The famous voyages of Magellan, Da Gama and Columbus facilitated the European domination of America, Africa, Asia and Australia through trade backed by large sailing ships with three or four masts, improved navigational aids and religious zeal and military force. Around this time the first charts of the Trade Winds and Monsoons were found available as
were the sextant to locate the position of a place. In 1800s
the full impact of the European Industrial Revolution multiplied
ocean commerce with the increasing demand for raw products
as imports and finished products for export to places. The
need at this time was felt for a maritime law to oversee such
extensive and complex social activities.

Maritime law, though not in the present shape of develop­
ment, had a glorious beginning. Among the Greek city-states,
the Island of Rhodes was the most prosperous in the third
century before Christ. Besides prosperity, it was renowned
for its art, its philosophy and its rhetoric not to mention its
colossus. This was largely due to the extent of its commerce
by sea. Because of its location in eastern Mediterranean,
it thrived upon its trade safeguarded by its strong navy. The
crown of the Island's glory, it has been noted, was its knowledge
of equity in maritime commerce, and its maritime law. It
is evident today from historical records, that the Rhodian
maritime laws dealt with many matters that are subsumed
under admiralty law today, like for example, collisions, loss
of property at sea due to storm, shipwrecks, contracts for
the carriage of goods, and relations between the captain of
the ship, the officers, and the sailors.

The Romans so respected the Rhodian maritime law
that their principles were incorporated into Roman Law and
applied to the entire Mediterranean and Atlantic commerce
of the Empire for hundreds of years and was finally brought
out in Latin as the Rhodian Sea Law sometime between the seventh and the ninth century. With the decline of the Empire in the West, commerce eclipsed, but did not disappear. Mediterranean ports like Venice, Genoa, Amalfi, Marseilles and Barcelona regenerated trade, stimulating a host of local statues and rulings almost wholly based on the Rhodian Sea Law. These were used by the city fathers, empowered to arbitrate over litigation on merchant ships. Meanwhile in the Atlantic coast, the Island of Oleron, near Bordeaux in France, became an important commercial centre in the twelfth century due to the Crusades. The Rolls of Oleron were the judgements of its maritime court and furnished a well-ordered code that greatly influenced maritime law in France, England, Netherlands and Denmark. The Eastern Roman Empire at Constantinople had its law compiled in the seventh century for trade in the Middle East. The Assizes of Jerusalem, another collection of statutes, were the result of the courts set up by the Crusaders to deal with the sea traders and merchants from the eleventh to the fourteenth centuries. In England, the Black Book of the Admiralty, a manual for the guidance of officials assigned to judge such cases was written in the fourteenth century. This work was derived partly from the customary law of medieval English maritime boroughs which could in turn be traced ultimately to the Rolls of Oleron and the Rhodian Sea Laws.

With the foundation of dynastic states in Europe, need was felt to develop national codes in the place of local maritime laws, as mentioned above, to settle maritime disputes. The
The best known example of the comprehensive legislation enacted in the seventeenth century Europe is the *Ordonnance de la Marine* of Louis XIV of France in 1681. This established the admiralty courts, and dealt with charter-parties, bills of lading, rights and duties of passengers and crews, maritime contracts and insurance, crimes at sea, capture, prizes and other matters.

The admiralty law or maritime law of modern times is national law but these often have their origins in foreign codes and long-established principles of sea law dating back to antiquity. In admiralty law and in international law for merchant vessels, as it has developed since the seventeenth century, the legal status of the ship itself is the point of departure in rendering judgements.

Until the nineteenth century, the merchant marines of the great maritime States although spectacular in their economic performance, were limited by wood construction and windpower. Ninety per cent of the world's shipping was carried in wooden vessels. The size of the ships was thus naturally limited with the average tonnage of English trading vessels in 1800 being around 100 tons. Moreover, the fact that it took 2000 oak trees to construct say one merchant or warship created its own ecological problem.

Ships, being dependent solely on windpower, were severely limited in their performance as they were absolutely dependent
upon the vagaries of nature in providing wind. It was however in the mid-1800s that paddle-wheel steamships, awkward by modern standards, made their first appearance. Later with the invention of screw propellor, the speed and manoeuverability of the ships improved. Of course, at this time ships constructed of iron made their first appearance.

In the last quarter of the nineteenth century, the use of steel considerably reduced the thickness of hulls resulting in longer voyages being undertaken with less coal for consumption. At this time, Great Britain completely mastered the seas as commerce in larger, faster and safer ships multiplied between all the continents of the world. In 1900, fifty percent of merchant shipping afloat was under British flag i.e., about twice the amount of American and German merchant fleet combined, and about three-fourth of the British tonnage was steamships.

This great increase of ships in the world ocean from about eight million tons afloat in 1840 to about 20.5 million tons in 1900, necessitated the need for traffic rules and for signals to notify at a distance the type of vessel and the direction of its movement as the dangers of collisions increased along the coasts, in straits, open seas, especially at night or in foul weather. In 1840, the Trinity Masters of Great Britain took the lead in promulgating a set of regulations to avoid collisions and most of these were made statutory in 1846. A series of statutes in 1862 to 1880 issued regulations for prevention
of collisions, codes for maritime signals and also duties on British ships to stand by after a collision. The Merchant Shipping Act of 1894 of Great Britain made the British regulations applicable to foreign ships with the consent in the matter of prevention of collisions.

It was however with the advent of non-governmental International Maritime Committee formed in 1897, that conferences were initiated in the first three decades of this century for collisions, salvage, liability, mortgages, immunities of state vessels and bills of lading. It was in the late nineteenth century that passenger ships came to be differentiated from warships. The tragedy of the magnificent, giant ocean liner Titanic in 1912 sinking after hitting an iceberg and claiming about 1500 lives, propelled major maritime states and the first International Convention for Safety of Life at sea (SOLAS) was convened and signed in London in January 1914 by sixteen maritime states. The steps suggested were indeed positive to help ships in distress, but unfortunately the First World War intervened shelving in its wake all the measures suggested.

There was another problem for the safety of life at sea, viz., the overloading of vessels. In 1930, in London, forty states signed the British-initiated Load Lines Convention for merchant ships, both passenger and cargo. This provided for the proper survey of vessels by states and proper marking on their hulls of load lines to indicate maximum carriage at waterline.
The primary function of the merchant marine for centuries has been the carriage of goods by sea. Since ancient times, agreements and contracts have specified details about freight and its carriage aboard ships, with the right and responsibilities of the cargo-owner (shipper) and the shipowner (carrier). The key document, essentially a contract, has been the bill of lading, wherein the conditions of loading, handling, stowing and off-loading the freight were specified. As private contracts, however, the forms and terms of bills of lading differed considerably from place to place, especially as world commerce grew in tonnage and in the variety of its products, types of ships, and port loading or reception facilities.

The Brussels Convention of 1924 for the Unification of Certain Rules Relating to Bills of Lading, following the recommendations of two earlier international conferences, made it obligatory on the shipowner or carrier, who may also be a charterer of a ship, to exercise 'due diligence' in making the ship seaworthy: he must also properly man, equip and supply the ship, making sure that the holds, refrigerators or other reception facilities are fit and safe for the goods, and provide the proper and careful loading, handling, storage, keeping, care and discharge of the goods; on demand, the carrier must issue to the shipper a bill of lading showing the marks and otherwise identifying the goods actually loaded by number of pieces, quantity, weight, and so forth, as originally furnished by the shipper, testifying to the order and condition of the goods put aboard the vessel, otherwise the carrier is not liable for any damage due to fault of the master, pilot or crew or
management of the ship, or for fire, perils and accidents of the sea, Act of God, war, riot, strikes, public enemies, or measures for saving lives at sea - unless negligence, fault or failure of the carrier himself is involved. The burden of proof that the carrier has exercised due diligence in making the vessel sea worthy and has properly discharged his responsibilities lies upon the carrier. In any case, the carrier is not liable for more than £ 100 Sterling per package, unless a greater value has been declared by the shipper. For recovery of alleged damages by the carrier, the shipper must refuse to accept the goods at the port at the time of its off-loading. Where the damage may not be immediately visible, a claim must be made within three days of delivery.

There is one existing and ancient principle of maritime law which is known as the principle of 'general average'. In brief, it means that where peril threatens a ship or a cargo and where a part of the ship or the cargo must be sacrificed for the safety of the whole, the loss so incurred will be shared by all. The International Law Association held two conferences of shipowners, insurers and shippers which led to the York-Antwerp Rules of 1890 later revised and extended in Stockholm in 1924. These rules were re-interpreted in 1950 and were further simplified in 1974 and have been widely adopted into statutes by many States.

As a number of legal problems arose in suits rising from a failure of a court to recognise various hypothecations
against their worth, a Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages was signed in 1926 in Brussels. Under this, the ratifying States pledged to recognise as valid any mortgage, lien or their similar charge upon a ship that has been effected in accordance with the law of any of the other contracting states and has been duly registered in some central office or in the port of registry of the ships.

Thus gradually, an overreaching system of international maritime law was fashioned through international cooperation. Such law in turn further encouraged the development of world ocean transport, already undergoing great changes in the size and type of vessels as well as the volume and character of goods carried across the seas.

Against this background an analysis may be made of the evolution of the concept of nationality of ships. Although the high seas is that area of the world ocean not under the sovereignty of any state, the world ocean is not without a law. The identity of a ship is the basis of legal order for a vast area where no territorial jurisdiction exists. Subjects have, from time immemorial, owed allegiance to their sovereigns and in modern time this loyalty has developed to the personification of the State. The obligations of a subject extended to his property as well as his life. In this same logical manner, the merchant vessels owned by the subjects of a regent, on high seas with their captains, masters and crews were under the jurisdiction of their sovereigns.
Controversies did arise in certain cases. Thus a merchant ship owned by a French subject but manned by a crew of Dutch with a cargo bound for Italy posed problem on whether it could be considered as a legitimate prize by the English when they were at war with France. Before nineteenth century, the neutral character of a vessel was determined rather arbitrarily with few or no rules to determine the legal character of a ship. However, the Permanent Court of Arbitration in 1905, in the Muscat Dhows case between France and Great Britain held that if no constraints exist by treaty, 'it belongs to every sovereign to decide to whom he will accord the right to fly his flag and to prescribe the rules governing such grants'. The widely ratified 1958 Geneva Convention on the High Seas provides the most positive expression of international law on the matter. Article 5 of this Convention states that 'Ships have the nationality of the State whose flag they are entitled to fly'. Thus, the place of construction of the ship, ownership, and composition of crew became irrelevant as indices of nationality though not completely.

For reasons more than one, shipowners often used a flag other than their own nationality or changed the documentation of their vessels from one state to another. Thus traders in attempting to penetrate the rigidly monopolistic Spanish West Indies commerce in the seventeenth century obtained Spanish flags. During the Napoleonic Wars, British vessels

sometimes carried the standards of tiny German principalities to avoid capture, and American merchants obtained Portuguese documentation in the Wars of 1812 for the same reason. To circumvent the restrictions imposed by British legislation in nineteenth century on trawling for fish in the Moray Firth, entrepreneurial subjects of the Crown owned and operated trawlers under Norwegian flags. And in our recent times, since 1950, the phenomena of the registration of millions of tons of American vessels, under the flags of Panama, Liberia and Honduras has been noticed. This is the gradual evolution of the concept of 'flags of convenience' but more about it later.

The registration of vessels has a long and ancient history being practised as far back by the city-states of Italy in the Middle Ages. In the seventeenth century, the English Navigation Acts prescribed registration as the imprimatur of nationality to avoid the fraudulent use of the flag. The American practice since 1792, has been to register vessels engaged in foreign trade and fisheries. All modern states of today have some method of documenting the ships under their flags but the registration procedures vary considerably according to municipal laws. The place of construction of the vessel, the nationality of the owner, personal or corporate, the composition of the crew may be criteria for the issuance of documents, but these are not at all taken into account in some registrations. There has been complaints by labour unions against registration of the vessels owned by their nationals under foreign flags of
convenience primarily to avoid high wages, but from the point of view of public order in the ocean under international law, the registration of large foreign tonnage under such flags of small and weak States, has been deplored principally because such States may be unable to exercise effective control over these vessels on the high seas.