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COURSE CODE: JIL808

COURSE TITLE: INTERNATIONAL LAW OF THE SEA II

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JIL808– INTERNATIONAL LAW OF THE SEA II

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INTRODUCTION

Generally, international law of the sea regulates the rights of States, international actors as well as individuals regarding the use of the seas and exploitation of the resources therein. The present regime of the sea, including the United Nations Convention on the Law of the Sea (UNCLOS), 1982 set boundaries in the sea, identifying various juridical zones in relation to States' jurisdictions.

Our discussion in this semester will focus on land-locked states' rights of access to the high seas and sea ports under international law of the sea. we will also examine the regime of ship, crew, passengers and cargo and the legal rules of safety at sea. it discusses the international maritime organisation and its functions as well as settlement of disputes

The jurisdiction of States on various zones of the sea will be well covered with reference to relevant international treaties and the laws.

Course Learning Outcomes

By the end of this unit, you will be able to:

1) Explain the meaning in main essence if the law of the sea
2) Explain why States develop interests in the sea and the reason for the regulation of state conducts in the sea
3) Understand and appreciate various provisions of the law of the sea.

WORKING THROUGH THIS COURSE

To complete this course, you are advised to read the study units, recommended books, relevant cases and other materials provided by NOUN. Each unit contains a Self-Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course should take you about 11 weeks

to complete. You will find all the components of the course listed below. You need to make out time for each unit in order to complete the course successfully and on time.

COURSE MATERIALS

The major components of the course are.

a) Course guide.
b) Study Units.
c) Textbooks
d) Assignment file/Seminar Paper
e) Presentation schedule.

STUDY UNITS

The discussion in this course is broken down to 20 (twenty) study units that are broadly divided into SEVEN modules as follows –

Textbooks/References

International law of the sea by Yoshifunmi Tanaka

REFERENCES / FURTHER READING

Certain books have been recommended in the course. You should read them where so directed before attempting the exercise.

ASSESSMENT

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work that you submit to your tutor for assessment will count for 30% of your total score.

Tutor Marked Assignment

There is a self-assessment exercise at the end for every unit. You are required to attempt all theassignments. You will be assessed on all of them, but the best three performances will be usedfor assessment. The assignments carry 10% each. Extensions will not be granted after the duedate unless under exceptional circumstances.

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FINAL EXAMINATION AND GRADING

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit and taking the examination to revise the entire course. You may find it useful to review yourself assessment exercises and tutor marked assignments before the examination.

COURSE SCORE DISTRIBUTION

The following table lays out how the actual course marking is broken down.

Assessment	**Marks**
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four counts at 30% of course marks.
Final examination	70% of overall course score
Total	100% of course score.

HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, you study units provide exercises for you to do at appropriate times. Each of the study units follows the same format. The first item is an introduction to the subjectmatter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should beable to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self-Assessment Exercises are interspersed throughout the units. Working through these tests

will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self-Assessment Exercise as you come to it in the study unit. Examples are given in the study units. Work through these when you have come to them.

TUTORS AND TUTORIALS

There are 11 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group. Your tutor will mark and comment on your assignments. Keep a close watch on your progress and on any difficulties you might encounter. Your tutor may help and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Please do not hesitate to contact your tutor by telephone or e-mail if:

- You do not understand any part of the study units or the assigned readings.
- You have difficulty with the self-assessment exercises.
- You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

SUMMARY

Each of these Modules is a distinct topic, and each should be completed before you start on another. Although you will already have met some of the matters examined in this course, each Module is designed to provide both a method of approach in dealing with the provisions in question and a framework within which to build your existing and a good deal of new knowledge.

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All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a commontheme. You will gain more from them if you have first carried out work on the law of sea. You will then have a clearer picture into which to paint these topics. Subsequent units are written on the assumption that you have completed previous units.

Each study unit consists of one week's work and includes specific Learning Outcomes, directions for study, reading materials and Self-Assessment Exercises *(SAE)*. Together, these exercises will assist you in achieving the stated Learning Outcomes of the individual units andof the course.

MODULE 1: ACCESS TO THE SEA BY LANDLOCKED STATES

Introduction

Traditionally, landlocked States are placed in some disadvantageous positions both politically and economically. Being landlocked cuts a nation off from important living and non-living resources of the sea such as fishing and mining of seabed mineral resources. It impedes or prevents direct access to maritime trade, which is a crucial component of economic and social development. Consequently, coastal regions, or inland regions that have access to the World Seas are prone to be wealthier and more heavily populated than inland regions that have no access to the Seas. Although, the present legal regime of the sea grants all States whether coastal or land-locked Sates access to the high seas and its resources, landlocked States still do not have direct access to the seas as they have to transit through their neighbouring coastal states.

Unit 1: Use of Seaports and Maritime Zones by Land-locked States

1.1 Introduction

In customary international law, territorial sea means that area of the sea immediately adjacent to the shores of a state up to12 Nautical miles from the baseline and subject to the territorial jurisdiction of that State. Territorial seas are thus to be distinguished on the one hand from the high seas, which are international waters common to all countries, and on the other from internal or inland waters, such as lakes or rivers wholly surrounded by the national territory. The law grants coastal States sovereign rights over their territorial seas which rights are only qualified by a right of innocent passage. Likewise, in customary international law, ships do not have automatic right of entry to the port of another State as the invariably forms part of the State's inland waters.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Define and know the types of ports
ii. Understand the right of landlocked States to use ports and maritime zones.
iii. Explain what land-locked States are

1.3 Definition and Types of Ports

Ports is generally defined as a town or city with a harbour or access to navigable water where ships load or unload. A port refers to a location on a coast or shore containing one or more harbors that enable ships to dock and transfer people or cargo to or from land. Port locations are selected to enhance access to land and navigable water, for commercial demand, and for shelter from wind and waves. Ports with deeper water are rarer, but can habour larger, more economical ship.

In consideration of a variety of factors such as location, depth, purpose, and ship sizes, ports are categorized into various types such as:

i. **Inland Ports**

these are ports built on comparatively smaller water bodies such as rivers or lakes. They can either be for cargo purpose or for passengers or for both. Conventionally Inland Ports are constructed or naturally maintained ports at the coastline of small waterways like lake, river or estuaries and rarely seen at sea coasts too.

Some of these inland ports can have access to the sea through the help of a canal system. As such ports are built on inland waterways they usually behave like

normal seaports but are not able to allow deep draft ship traffic. Certain inland ports can also be specifically made for recreational purpose allowing only small-sized vessels or can be used just for ferrying people and fishing activities.

ii. **Fishing Ports**

Fishing ports are largely related to the commercial sphere as they participate in fishing. The fishing activities can also be treated as a mode of recreation. The existence of a fishing port entirely relies upon the availability of fishes in that region of the ocean. A fishing port can be an inland port or a seaport.

In many cases, fishing ports are marketable port which is generally used for recreational purposes or aesthetics. These are the ports which permit controlled and disciplined fishing to their customers. These are the highest revenue-generating ports when properly operational.

iii. **Dry Ports**

Dry ports are defined as inland terminals that can be interconnected with a seaport via road or rail transportation facilities, and they usually act as centres of multimodal logistics. A dry port provides useful avenue in the trade of importing and exporting cargo and can help to lessen the inevitable congestion at a nearby seaport. Its functions are very similar to that of a seaport, with the only difference that is not situated near the coastline.

These are specifically employed for transhipment of cargo to inland destinations. It is a trans-shipment port which is connected to a seaport and manages intermittent operation like billing and managing co-ordination between importer and exporters

iv. **Sea Ports**

Seaports are the most common types of ports around the world and are used for commercial shipping activities. These ports are built on sea locations and enable the accommodation of both small and large vessels. A number of seaports are situated along the coastline and handle the ongoing cargo transactions. A seaport can be further classified into cargo port or cruise port. Certain old seaports are still used for recreational and fishing purpose.

Self-Assessment Exercise

1. Succinctly discuss the rights of land-locked to access the high sea.
2. Examine the position of land-locked States with regard to the right to access ports.
3. Differentiate between Territorial sea and other maritime zone with regard to land-locked State right of use

1.4 Meaning and Example of Land-Locked States

A landlocked State is a State or country that does not share or have a territory connected to an ocean or whose coastlines lie on endorheic basins. There are about 44 landlocked states around the world and 5 partly recognized landlocked states. In 1990, there were only 30 landlocked countries in the world. However, with the breakup of Yugoslavia; the dissolutions of the Soviet Union and Czechoslovakia; the independence referendums of South Ossetia, Eritrea, Montenegro, South Sudan, and the Luhansk People's Republic; and the unilateral declaration of independence of Kosovo and the Donetsk People's Republic created 15 new landlocked countries and 6 partly recognized landlocked states while the former landlocked country of Czechoslovakia ceased to exist on 1 January 1993. Generally, being landlocked creates some political and economic handicaps which the principle of equal access to international water tries to resolve. For this reason, every nation, large and small throughout history have sought to gain access to open waters by all means available.

1.4.1 Access to the Sea by Land-locked States

Article 124 (1) (a) of the 1982 United Nations Convention on the Law of the Sea, defines the term land-locked State as ‘a State which has no sea-coast’. In other words, land-locked state means a state which has no sea-coast or coastline instead it depends on its neighbouring State(s) for access to the sea. The general implication is that land-locked state relies on transit state which is ‘a state with or without a sea-coast, situated between a land-locked state and the sea, through whose territory traffic in transit passes (*Article 124 (1, b)* of UNCLOS. Thus, land-locked States are those States which can gain access to the sea

only through the territory of their neighbouring states known as transit states (E Bayey, 2015).

To pass persons, baggage, goods, and other, a landlocked state must freight through the land of transit states. For instance, India and Bangladesh are transit states for Nepal, Senegal is transit state for Mali, Argentina together with other South American states is transit state for Bolivia (Rana, 2010). In the same way, Djibouti is also the most important transit state to Ethiopia. Thirty-seven nations of the world are land-locked states (Uprety, 2003).

1.4.2 The Rights of Land-Locked States in Relation to the sea

Right of Access

Land-locked States enjoy access to the sea through the territory of their neighbouring transit States based on the provisions of the UNCLOS. Thus, 1982 the United Nations Convention on the Law of the Sea provided rights for landlocked States in relation to the sea. More so, the Convention confers on them with the right of access to and from the seas and freedom of transit. Pursuant to *Article 125 paragraph 1*of the Convention, *Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport*. However, the Convention makes such rights subject to the agreements to be made by landlocked and transit states when it provides that: *The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, sub regional or regional agreements* (Art. 125[2] of UNCLOS). This in effect makes the rights dependent on the prevailing relations between the States concerned. Where there exist no cordial relations between the two, the transit states may not be willing to negotiate and thereby put impediments on the landlocked states' free transit which invariably affects its rights of access to the sea. Thus, the political will and commitment of transit states is highly a determining factor for the actualization of the rights of landlocked states to access any part of the sea including the territorial sea of their neighboring States. The denial of free transit, in turn, affects the rights of landlocked states on the different maritime regimes. One can conclude from the above knowledge that landlocked states have no absolute right of access to and from the seas and freedom of transit. This is more so, bearing in mind the provision of *Article125 (3)* of the Convention which states that *Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities*

provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

The deduction from the above provision is that land-locked states have the right of access to and from the sea and freedom of transit to enjoy rights conferred on them by the Convention. Their right of access to and from the sea as well as freedom of transit has equally been reaffirmed by **UN GA Res. 46/212 of 20 December 1991** (Malanczuk, 1997).

1.5 Right to use Maritime Zones

In order to appreciate the rights of land-locked states in relation to the seas, it is worth examining their rights on the different maritime zones. Land-locked states are conferred with several rights with which they can exercise in various maritime zones.

i. Territorial Sea

Pursuant to the relevant provisions of the Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea *(Article 17)* and freedom of navigation in the waters beyond the territorial sea *(Article 38 (1).* Hence, land-locked states have the right of innocent passage, a passage which according to *Article 19 (1)* of the Convention is the one *"not prejudicial to the peace, good order or security of the coastal state"*. Coastal States other than the one to which the territorial belongs have no more rights to use the territorial than right of innocent passage as applicable to the land-locked States.

ii. Exclusive economic zone

Article 57 of the Convention extends exclusive economic zone up to 200 nautical miles from the baselines. *Article 58 (1)* provides thus:

> In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

Additionally, *Article 69 (1)* of the convention also provides that "*land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States"*

iii. High seas

Article 86 of the Convention defines the high seas as "*all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State"*. Just like other maritime zones, land-locked states are allowed to exercise considerable rights in the high seas subject to the same rules as applicable to all States. The high seas are beyond the limit national jurisdiction of any state and therefore all States enjoy equal rights in this zone. For example, *Article 89* of the Convention underscored that no state can claim sovereignty over the high seas. *Article 87 (1)* also states that, "*the high seas are open to all States, whether coastal or land-locked"*. The Convention under the same provision provided for all states:

> ..... (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines, subject to Part VI; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the conditions laid down in section 2; (f) freedom of scientific research, subject to Parts VI and XIII.

In effect therefore from the foregoing, it is evident that land-locked states are conferred with equal rights on the high seas as with coastal states. Thus, *Article 90* of the Convention further allows land-locked States to equally sail ships flying their flags on the high seas as coastal states. After all, the high seas are free maritime zone where no State is allowed to exercise exclusive jurisdiction or claim.

iv. The Area/ Seabed regime:

Pursuant to *Article 136* of the Convention the Area and its resources are the common heritage of mankind; where no State can claim or exercise sovereignty or sovereign rights. See also *Article 137 (1).* More importantly, *Article 148* of the Convention promotes the effective participation of land-locked states in the activities of the area having due regard to their special need and geographical condition. The implication from the above discourse is that, in the maritime zone beyond the limits of national jurisdiction, the coastal states and Land-locked States enjoy equal rights. However, the

fact that land-locked States experience hurdles accessing the sea to realize their rights remains a state of concern.

1.5.1 Use of ports by Land-locked States

The right of access to ports is the corollary of a foreign flagged vessel to enter into the ports of another State which is completely under the control of port State. It should be noted that the principle of freedom of the high seas under *Article 87* of UNCLOS does not apply to ports, hence the several attempts to establish a right of access of foreign flagged vessels to ports (A. O. Abdulrazaq and S. Z. A. Kader, 2012). *The 1923 Convention on the International Regime of Marine Ports* was the first treaty to deal with this issue and it provides for reciprocity by states to the convention allowing access to vessels of all member states

There is however, a general presumption in international law that all ports used for international trade are open for all merchant vessels. This presumption is however, a practice only based upon convenience and commercial interest (L. D. Fayette, 1996). Ports are situated in a State's internal waters which in effect, forms part of its territory and subject to its territorial sovereignty. As a result, there can be no presumption of a limitation of a State's sovereignty within its own territory (L. D. Fayette, 1996). In the exercise of their sovereign rights therefore, coastal States have absolute control over access to their ports. The only exception is for vessels in distress, which have a right to enter and take refuge in the nearest port. The port/coastal state therefore has the right to designate only certain ports as being open to foreign or visiting vessels, or can impose certain conditions upon entry.

Moreover, fishing vessels are never part of the above presumption that ports are open to trade. They are rather exempted specifically from the freedom of access to the ports as contained in the bilateral and multilateral conventions. The right of the port States to refuse entry of foreign ships and or to impose conditions upon entry can be applied *mutatis mutandis* to foreign vessels whether of a neighbouring coastal State or land-locked State. Pursuant to *Article 131* of the UNCLOS, ships of land-locked states are accorded treatment equal to that of other foreign ships in maritime ports.

1.6 Summary

From the discourse we find that being landlocked is one of major development "traps" by which a country can be held back (P. Collier, 2007). It is evident that when a neighboring country experiences better growth, it tends to spill over into favorable development for the country itself. For landlocked countries, the effect is particularly strong, as they are limited

in their trading activity with the rest of the world. Paul argues this way, "If you are coastal, you serve the world; if you are landlocked, you serve your neighbors." (P. Collier, 2007).

In this unit, we discussed: Rights of land-locked States to access the sea (various maritime zones) and Rights of land-locked States to access ports.

1.7 References/Further Readings/Web Resources

1. Rana, Ramesh Kumar "Right of access of land-locked state to the sea by the example of bilateral agreement between land-locked state- Nepal and port-state – India", (2010) *Master's Thesis, University of Tromsø.*

2. Paul Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It (New York: Oxford University Press,* 2007) p.66.
3. Louise de la Fayette, "Access to Ports in International Law", (1996) *International Journal of Marine and coastal Law,* Vol. 11. N0. 1.
4. Abdulkadir O. Abdulrazaq and Sharifah Zubaidah Syed Abdul Kader, "Right of Ship Access to Port State under International Law: All Bark with No Bite", *(2012) Australian Journal of Basic and Applied Sciences, 6.*

1.8 Possible Answer to Self-Assessment Exercise

1. Land-locked States have equal right of access to and from the high sea just like every other State. In fact, the Convention *article 125 paragraph 1*confers on them with the right of access to and from the seas and freedom of transit to be able to enjoy the general principle of the freedom of the high seas. *Paragraph 2* however, makes such rights subject to the agreements to be made by landlocked and transit States. It therefore implies that the land-locked State right to access the sea is not automatic but depends largely on its relationship with the transit State neighbour.

2. The principle of freedom of the high seas as enunciated under *Article 87* of UNCLOS does not apply to ports, hence separate attempts are made to establish a right of access of foreign flagged vessels to ports. For instance, the *1923 Convention on the International Regime of Marine Ports* provides for reciprocity by states to the convention allowing access to vessels of all member states. Ports are situated in a State's internal waters and forms part of its territory and subject to its territorial sovereignty. In the exercise of their sovereign rights therefore, coastal States have

absolute control over access to their ports and can refuse foreign vessels entry to its ports or grant it subject to conditions. But whatever measures adopted would apply *mutatis mutandis* to foreign vessels whether of a coastal State or land-locked State in line with A*rticle 131* of the UNCLOS.

3. In the territorial sea land-locked States enjoy only the right of innocent passage just like other States in accordance with article *17*
   -Land-locked States enjoy the freedom of navigation in the waters beyond the territorial sea in line with *(Article 38 (1) of* the UNCLOS.
   -In exclusive economic zone, land-locked State have the right to participate, on an equitable basis, in the exploitation *the resources on equitable basis in accordance with Article 69 (1)* of the UNCLOS.

Unit 2: Rights to sail Ships on the High seas

2.1 Introduction

It should be re-amphasised here that no State may validly purport to subject any portion of the high seas to its sovereignty. ***Article 87*** of the United Nations Convention on the Law of the Sea, stipulates that the high seas are open to all States, whether coastal or land-locked and freedom of the high seas including freedom to sail ships by all States is exercised under the conditions laid down by the Convention and by other rules of international law. Every State therefore, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas (Article 90 of UNCLOS).

2.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Appreciate the rights land-locked States have to sail ships on the high seas.
ii. Explain the rights of Coastal States on the high seas

2.3 Rights to Sail Ships on High Seas by Land-locked States

During the first two decades of the 20th century, there had been some confusion as to whether a land-locked state could register maritime ships and authorise them to sail under its flag: France, the United Kingdom, and Germany had argued that such a right could not exist because it would place a land-locked state in the position of being unable to control the behavior of ships bearing its flag owing to the state's inability to unreservedly access ports and the sea. This position existed until *The Declaration recognising the Right to a Flag of States having no Sea-coast in* 1921. The Declaration was multilateral treaty which legally recognised that a land-locked state could be a maritime flag state implying that a land-locked state could register ships and sail them on the sea under its own flag. The Declaration states that: *The undersigned, duly authorised for the purpose, declare that the States which they represent recognise the flag flown by the vessels of any State having no sea-coast which are registered at someone specified place situated in its territory; such place shall serve as the port of registry of such vessels.* Moreover, the present legal regime of the seas (*Article 90 of the Convention*) recognises the right of any state to sail ships on the sea under its own flag. Today, land-locked states which have merchant vessel fleets include Austria, Azerbaijan, Bolivia, Ethiopia, Hungary, Laos, Luxembourg, Mongolia,

Moldova, Paraguay, Slovakia and Switzerland, though among these, only Ethiopia, Laos, and Mongolia have no river/sea port from which the high sea can be connected.

Self-Assessment Exercise

Although the high seas are open and free for all States, the rights of land-locked states to sail ships on high seas can in no way be equaled to those of coastal states. Discuss.

2.4 Rights of Coastal States to sail ships on the high sea

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas. 1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag.

The coastal state has the right to both prevent and punish infringement of fiscal, immigration, sanitary, and customs laws within its territory and territorial sea. Unlike the territorial sea, the contiguous zone only gives jurisdiction to a state on the ocean's surface and floor.

2.5 Freedom of the High sea to Coastal States

Article 3: *1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea coast should have free access to the sea. To this end States situated between the sea and a State having no sea coast shall by common agreement with the latter, and in conformity with existing international conventions, accord: (a) To the State having no sea coast, on a basis of reciprocity, free transit through their territory; and (b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports. 2. States situated between the sea and a State having no sea coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea coast, all*

matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

Article 4 concerns the "*flag state*" and states that "*Every State, whether coastal or not, has the right to sail ships under its flag on the high seas*". Let's recall that the flag state of a merchant vessel is the jurisdiction under whose laws the vessel is registered or licensed, and is deemed the nationality of the vessel. A merchant vessel must be registered and can only be registered in one jurisdiction, but may change the register in which it is registered. The flag state has the authority and responsibility to enforce regulations over vessels registered under its flag, including those relating to inspection, certification, and issuance of safety and pollution prevention documents. As a ship operates under the laws of its flag state, these laws are applicable if the ship is involved in an admiralty case.

2.6 Summary

The United Nations Convention on the Law of the Sea contains several provisions relating to the maritime rights of land-locked states. For example, ***Article 17*** of the Convention affirms that ships flying the flag of land-locked states enjoy the right of innocent passage through the territorial sea of other states in the same manner as those of coastal states. ***Article 90*** of the Convention also provides for the rights of the land-locked states to sail ships flying their flags on the high seas. This equality between the land-locked and coastal states had already been articulated in the erstwhile 1958 Geneva Conventions on Territorial Sea and Contiguous zone and on the High Seas, and forms part of customary international law.In this unit, we discussed:

Rights of land-locked States to sail ships on the high seas

Self-Assessment Exercise

Although the high seas are open and free for all States, the rights of land-locked states to sail ships on high seas can in no way be equaled to those of coastal states. Discuss.

2.7 References/Further Readings/Web Resources

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2.8 Possible Answer to Self-Assessment Exercise

The rights and freedom enshrined in *Article 87*of the UNCLOS which enable States to freely use the high seas for any lawful purpose accrue to coastal and land-locked States alike. *Article 90* recognises the rights of all States including land-locked States to sail ships flying their flags on the high seas. Despite the above recognition, the problem with land-locked States is how to access the high seas. Although *article 125 paragraph 1*of the UNCLOS grants land-locked States the right of access to and from the seas and freedom of transit, this right is conditioned on the agreement between it and its coastal State neighbour. In this sense, the chance of land-locked states to sails on the high seas is narrower in relation to the coastal States.

MODULE 2: THE LEGAL REGIME OF SHIP

Introduction

The crucial question of jurisdiction has become increasingly complex as ships daily ply seas and visit ports of different countries. Many of these ships are actually subject to the exclusive jurisdiction of States with which they have no connection and which have limited incentives to regulate. The legal concept of jurisdiction, nationality and registration of ships has been controversial throughout its existence *(E Powell, 2013)*. This ambiguous legal situation in the maritime field seems to have persisted even in nowadays. For instance, open registration regime has been criticized based on a number of important reasons including the legislative framework, safety, security, and employment. On the other hand, close registries, which employ stringent regulations concerning ownership, manning, management and administration and involve a genuine connection by virtue of national, economic and social ties among the ship-owner and its State, has been widely adjudged to be efficacious.

Unit 1: Nationality of Ships and Flags of Convenience

1.1 Introduction

The concept of the freedom of the high seas remains one of the most important principles within the realm of the public international law. Accordingly, State vessels have unrestricted rights to navigate upon the waters beyond the national jurisdiction of any coastal State. However, in order to prevent the disorder and misuse the exercise of this freedom may generate, *a structure of regulatory instruments which authorizes the sovereign States to ensure the compliance of these regulations in respect to the applications of these freedoms by their national vessels is established in the international law* (E Xhelilaj and K Krisafi). Such regulatory instrument became necessary for the prevention and monitoring of the maritime accidents and the suppression of seas crime such as piracy. Accordingly, States have been compelled to restrict their authority over ships, which subsequently created a sense of balance among the freedom of navigation and the maintenance of the law and order on the high seas. All vessels accessing the high seas must therefore possess a national character and every State has exclusive jurisdiction and control

over their national vessels. The failure to comply with these rules can lead to a stateless vessel which has no protection in international law.

1.2 Learning Outcomes

At the completion of the unit, you are expected to be able to:

i. Appreciate the concept of nationality of ships
ii. Explain the term ‘flag of convenience’
iii. Discuss the position of the law on registration of ships

1.3 Nationality of ships

Ships are physical assets and legal entities as far as maritime law is concerned. A ship is recognized as a legal entity distinct from its owners. For a ship to be able to enjoy the concept of the freedom of the seas thereby sail freely on the high seas, such ship must possess a national identity or simply put, a nationality. Ships have the nationality of state whose flag they are entitled to fly, symbolising the ship's nationality. Nationality of ships enables them to engage in trade, to enter ports and deal with authorities of other States.

The nationality of a vessel involve method adopted to assign any ship or vessel to a certain national legal statute or jurisdiction of a concrete state under whose laws the vessel is registered or licensed. Ships therefore bear the nationality of the State whose flag they are entitled to fly. This invariably makes flag states one of the most important instruments in International Maritime and Admiralty Law. The procedure of granting the nationality of the ship starts with the recording and registration in the ship´s registry and once this is done the vessel has the obligation and the right to fly the state flag.

Self-Assessment Exercise

1. Why is the concept of nationality of ships important in international maritime law?
2. Briefly discuss the term, *flag of convenience*.
3. Show why you think that the flag of convenience systems should be discouraged

The flag state is the administrative authority with the responsibility to ensure the effective compliance and application of all kind of regulations on the vessels registered under its flag including:

a. Labour relationships between owner and crew members,
b. Technical inspection or survey,
c. Certification,
d. Classification, and
e. Safety and environmental prevention issues.

International law of the sea has always tried to establish clear rules and regulations on the nationality of the vessels that ply the seas, through international conventions. For example, earlier in 1921 the Flag Right Declaration recognised that all states have a right to be a flag state. The 1958 Geneva Convention on the High Seas and the United Nations Convention on the Law of the Sea, 1982 respectively prescribed that the ships have the nationality of the State that has granted the right to fly his flag by having fulfilled the administrative requirements for its recording in the correspondent national Ships 'Registry.

In any case, there must be an authentic and real relationship between vessel and state whose flag it flies. Accordingly, Article 91(1) of the 1982 United Nations Convention on the Law of the Sea, states that *every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag*. The Convention further maintained that Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship and States are enjoined to issue to ships to which it has granted the right to fly its flag documents to that effect. There must exist a so-called "*genuine link*" between the State and the ship. Unfortunately, the Convention neither defines the term genuine link nor stipulate what consequences (if any) will follow where no genuine link exists.

It should be noted that globalization of the shipping industry in the 20th century has inevitably led to a good number of vessels sailing on the high seas in order to carry out their various tasks. This development came with several legal implications regarding the regulation of these ships and their activities in high seas. This is especially so because the high seas are considered *mare liberum,* i.e. common heritage of the mankind and no State has jurisdiction over it. It is common knowledge that in their national waters every State has the right to exercise jurisdiction over the vessels, but if these vessels are navigating in high seas, then it appears that they are floating in a legal vacuum (P. K. Mukherjee, 2007). Nonetheless, the unique character of the vessel which implies a legal personality is recognized by national laws worldwide (Pamborides, 1999). For these reasons, a legal

regime became necessary in order to regulate the relationship among the crew on board as well as the legal situations resulting from international relation with other entities. Without the nationality therefore, it will be impossible for a vessel to have the legal right to engage in many activities such visiting foreign ports, engage in international trade, and in event of dispute involving private parties, resolution would rather prove difficult (Sohn & Noyes, 2004).

1.4 Registration of Ships

Pursuant to *Articles* 2 and 4 of the *United Nations Convention on Registration of Ships 1986*, every ship must be registered under one national legislation. In compliance with this provisions of the convention regarding the compulsory registration of ships, under Nigerian legal system, *section 19* of the *Merchant Ship Act (MSA) 2007* requires that whenever a ship is owned wholly by persons qualified to own a registered Nigerian ship, the ship shall be registered in Nigeria in the manner provided in the Act or in any other country in accordance with the laws of that country, unless the ship is exempted from registration under the Act.

Sections 20-41 of the Act outline the procedure for registration of ships in Nigeria. They include the following:

a. An Application for registration of a ship in Nigeria to be made formally in writing to the Registrar at a port of registry in Nigeria. In the case of an individual be made by the person requiring to be registered as owner or by one or more of the persons so requiring, if more than one, or by his or their agent; and in the case of a corporation, by its agent.

b. The authority of an agent shall be testified by writing, if appointed by an individual, under the hands of the appointors, and if appointed by a corporation, under the common seal of the corporation.

c. Before proceeding with the registration of a ship, the Registrar shall be furnished with the following information and documentation such as:

    i. the full names, addresses and occupations of the purchaser or purchasers of the ship;
    ii. evidence of ability or experience of the purchasers to operate and maintain the vessel; the ownership of shares in the company applying to register the ship;
    iii. in the case of a ship with a previous registration, a bill of sale with warranty against liens and encumbrances from the sellers;

iv. the log-book of the ship for inspection by the Registrar; evidence of financial resources sufficient for the operation and maintenance of the ship; and
v. the certificate of incorporation and Articles of Association of the company.

d. The owner of a ship or an applicant who is applying for the registration of a ship shall on or before making the application, cause the ship to be surveyed by a surveyor of ships and the tonnage of the ship to be ascertained in accordance with the Tonnage Regulations made under the MSA 2007.

e. Every ship in respect of which an application for registration is made shall, before it is registered, be marked permanently and conspicuously to the satisfaction of the Minister as follows: the name of the ship shall be marked on each of its bows, and the name of the ship and the name of the ship's port of registry shall be marked on the stern of the ship, on a dark ground in white or yellow letters, or on a light ground in black letters, such letters to be of a length not less than four inches and of a proportionate breadth.

f. A declaration to be made by a person or on behalf of a corporation as owner.

g. A certificate of registration to be issued by the Registrar upon the completion of registration.

Registration of ships is important because of it perform numerous essential functions. Such functions include the following:

a. Allocation of a vessel to particular state and its subjection to a single jurisdiction.
b. Conferment of the right to fly the national flags.
c. The right to diplomatic protection and consular assistance by the flag state.
d. The right to naval protection by the flag state.
e. The right to engage in certain activities within the territorial waters of the flag state-for example, cabotage.
f. In case of war, for determining the application of the rules of war and neutrality to a vessel.
g. The protection of the title of the registered owner.
h. The protection of the title and the preservation of priorities between persons holding security interests over the vessel, such as mortgages.

1.5 Flag of convenience

This can be defined to mean *a flag of a country under which a ship is registered in order to avoid financial charges or restrictive regulations in the owner's country*. It includes flag registries that do not have nationality requirements for the shipping companies that use their flag usually due to the fact that they do not have any shipping companies incorporated and that provide financial benefits, such as lower taxes. It entails a business practice by which a ship's owners register a merchant ship in a ship register of a country other than that of the ship's owners, and the ship flies the civil ensign of that country, called the flag state. (*D'Andrea, Ariella November 2006).* In international law, each merchant ship is required to be registered in a registry created by a country (D. K.Vicki 2007), and a ship is under the jurisdiction and subject to the laws of that country, which are applied also if the ship is involved in a case under admiralty law. A ship's owners may choose to register a ship in a foreign country which enables it to circumvent the regulations of the owners' country which may, for example, have stricter safety standards. To do so, a ship owner will select a nation with an open registry. They may also select a jurisdiction to reduce operating costs, bypassing laws that protect the wages and working conditions of mariners. The term "flag of convenience" has been used since the 1950s. A registry which does not have a nationality or residency requirement for ship registration is often described as an open registry. Panama, for example, offers the advantages of easier registration (often online) and the ability to employ cheaper foreign labour. Furthermore, the foreign owners pay no income taxes.

The modern practice of ships being registered in a foreign country began in the 1920s in the United States when ship owners seeking to serve alcohol to passengers during Prohibition registered their ships in Panama. Owners soon began to perceive advantages in terms of avoiding increased regulations and rising labor costs and continued to register their ships in Panama even after Prohibition ended. The use of open registries steadily increased, and in 1968, Liberia grew to surpass the United Kingdom with the world's largest ship register. Open registries have been criticised, mainly by trade union organisations based in developed countries, especially those of Europe.

1.5.1 Criticisms of flag of Convenience Systems

Countries with open registries are criticized for operating substandard regulations. For example, many ship owners are permitted to remain legally anonymous in open registry systems, making it difficult to identify and prosecute legal actions (whether civil or criminal) against the offenders. Ships with flags of convenience easily engage in criminal activity, offering substandard working conditions, and spewing pollution into the environment or illegally fishing. As a result, ships flying under these flags are now targeted

by other nations for special enforcement when they make call in one of the host nation's ports.

The argument is that ship owners who want to hide their ownership may select a flag-of-convenience jurisdiction which enables them to be legally anonymous. Some ships with flags of convenience have been found engaging in crime, offering substandard working conditions, and negatively impacting the environment, primarily through illegal, unreported and unregulated fishing.

Prior to the implementation of the *International Convention on Tonnage Measurement of Ships, 1969,* ship owners may have selected a jurisdiction with measurement rules that reduced the certified gross register tonnage of a ship, to reduce subsequent port of call dock dues.

1.6 Summary

The concept of nationality of ships acts as a legal bond between ship owners and the State of origin or flag state. Due to the fact that the high seas where the ship ply is under international law, an area beyond national jurisdiction, the concept of the nationality of ships becomes important on different grounds. A ship without nationality or national identity is said to be stateless and enjoys no protection at all in the high seas. Nationality is also required to enable ships engage in international trade and do order legitimate businesses in the seas. In this unit, we discussed: Nationality of ships and Flag of convenience

1.7 References/Further Readings/Web Resources

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10. Eric Powell, "Taming the Beast: How the International Legal Regime Creates and Contains Flags of Convenience", (2013) *Annual Survey of International & Comparative Law, Vol. 19 Issue 1*.

1.8 Possible Answer to Self-Assessment Exercise

1. The Concept of nationality of ships is important in international maritime law because:

   i. Ships can only enjoy the concept of the freedom of the seas and sail freely on the high seas, when they possess a national identity/a nationality.
   ii. The nationality of ships enables them to engage in trade, to enter ports and deal with authorities of foreign States.
   iii. Flag state will shoulder the responsibility to ensure the effective compliance and application of all kind of regulations on the vessels flying their flags
   iv. It helps in maintaining law and or order and suppression of crimes in the seas

2. Flag of convenience is the choice to fly a flag of a country under which a ship is registered instead of the home state, in order to avoid financial charges or restrictive regulations in the owner's country. This arises where a ship's owners choose to register a ship in a foreign country which enables it to circumvent the regulations of the owners' country which may, for example, have stricter safety standards.

3. Flag of convenience system is bad and has been criticized for operating substandard regulations. Also, ships flying flag of convenience are prone to committing crimes and breaching of international shipping regulations. It should therefore be discouraged.

Unit 2: Warships and other Government-owned Ships of non-commercial service

2.1 Introduction

The United Nations Convention on the Law of the Sea, 1982 has defined warship as *a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.* A *warship* or combatant ship is a naval ship that is built and primarily intended for naval warfare. Usually they belong to the armed forces of a state. *Warships* are designed to withstand damage and are usually faster and more manoeuvrable than merchant ships. Unlike a merchant ship, which carries cargo, a warship typically carries only weapons, ammunition and supplies for its crew. Warships usually belong to a navy, though they have also been operated by individuals, cooperatives and corporations.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Define warships and government-owned ships, and
ii. Appreciate the immunity they enjoy in international relations

2.3 The Definition of Warships

Article 29 of the Convention on the Law of the Sea **1**982 defines warships in the following words:

> For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

The above definition is drawn from *Article 8*, paragraph 2, of the 1958 Convention on the High Seas which defines warships in thus:

> For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing war-ships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Self-Assessment Exercise

1. In your own words, define warship
2. Discuss the issues relating to the immunity of warships

Like its predecessor, UNCLOS does not require that a ship be armed to be regarded as a warship (R H Oxman, 1984**).** The most significant change is that a ship no longer need belong to the "naval" forces of a State, under the command of an officer whose name appears in the "Navy list" and manned by a crew who are under regular "naval" discipline. The more general reference to" armed forces" is designed to accommodate the integration of the different branches of the armed forces in various countries, the operation of seagoing craft by some armies and air forces, and the existence of a coast guard as a separate unit of the armed forces of some States. This definition is of importance only when the Convention distinguishes between rules applicable to warships and rules applicable to other ships. Warships are a special subclass of government ships operated for noncommercial purposes, which are themselves a subclass of ships.

Whether or not the definition in *Article 29* of the Convention is a functional one, what can be understood from it is that a warship is regarded as a political and military instrumentality of the State (R H Oxman, 1984**).** *To the extent the Convention contains special legal rules affecting warships as distinguished from other ships we would expect these rules to deal with:*

i. the political or military activities of one State directed at another;
ii. the law enforcement activities of one State directed at the nationals of another; and

iii. the immunity of the political and military instrumentalities of a State from the jurisdiction of any other State (R H Oxman, 1984).

2.4 Immunity of Warships and other Government-Owned Ships

The question of what vessels are immune, what immunity do they enjoy, what powers do coastal states have in relation to such vessels and what responsibilities rest on the flag state of the immune vessels is provided for by the United Nations Convention on the Law of the sea and more broadly in international law respecting the jurisdictional immunities of States.

Under the rule of customary international law, no sovereign State has authority over another sovereign State and all States are equal. This is the core of the concept of sovereign immunity. Sovereign immunity in international law therefore, makes one State's property immune from interference by another State in two important ways:

a. First is jurisdictional immunity, which restricts the adjudicatory power of national courts against a foreign State.

b. Secondly, is an enforcement immunity, which limits the taking of or interference with State property by executive authorities of foreign nations.

Under customary international law as well as international agreements, sovereign immunity for vessels owned or operated by a State and used in governmental, non-commercial service has been recognized. Thus, in ***The Schooner Exchange v. McFaddon***, the United States Supreme Court acknowledged in 1812 that *U.S. courts have no jurisdiction over military vessels in the service of another sovereign State, as warships are regarded as political and military instruments of the State.* Customary international law norms in relation to State-owned vessel and warship immunity are also reflected in various international conventions including *the United Nations Convention on the Jurisdictional Immunities of States and Their Property, (New York, 2 December 2004), the International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Vessels, (Brussels, April 10th, 1926)* and *the United Nations Convention on the Law of the Sea, (UNCLOS) 1982.*

For example, ***Article 29*** of the United Nations Convention on the Law of the Sea defines a warship as:

> "A ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its

equivalent, and manned by a crew who are under regular naval discipline."

Under this definition, a ship does not need to be armed in order to be considered a warship. The Convention recognizes the complete immunity of warships and other government ships operated for non-commercial purposes on the high seas. *Article 95* stipulates that, *Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.* Under its *Article 96,* it provides that *Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State*. Concerning the territorial sea of a coastal State, *Article 32* reaffirms "*the immunities of warships and other government ships operated for non-commercial purposes"*, but a coastal State may ask a warship to leave its territorial waters if the warship does not comply with the laws and regulations of the coastal State (when consistent with international law) concerning innocent passage and disregards any request for compliance made to it. *Article 30* of the Convention provides that, *if any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately*.

Also, pursuant to the provisions of *Article 236 of the Convention, it is clear that* any rule regarding the protection and preservation of the marine environment do not apply to warships.

In line with United States policy and the United States interpretation of international law regarding sovereign immunity, full sovereign immunity means immunity from arrest and search in national or international waters, foreign taxation, foreign state regulation requiring flying the flag of foreign State, and exclusive control over persons and acts performed on onboard *(*U.S. Navy, U.S. Marine Corps & U.S. Coast Guard*).* Sovereign immune vessels cannot be required to consent to onboard search or inspection, and police and port authorities may only board with permission of the commanding officer or master. Neither can sovereign immune vessels be required to fly a host State's flag in port or when transiting a territorial sea. Concerning taxes and fees, if port authorities or husbanding agents attempt to assess fees such as a port tax, port tariff, port marine pass, or tolls on vessels with sovereign immunity, the vessel's captain should request an itemized list of all charges and explain that sovereign immune vessels cannot be charged port fees. However, all goods and services provided by port authorities can be paid for.

2.5 Summary

In customary international law, States are equal and no state may exercise any form of jurisdiction over another. The implication is that states are immune to foreign jurisdiction. This invariably applies to State property such as warships and other government-owned ships used for non-commercial services. In this unit, we discussed: Warships and other government-owned ships and Immunity of warships

2.6 References/Further Reading/Web Resources

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3. Bernard H. Oxman, The Regime of Warships Under the United Nations Convention on the Law of the Sea (1984) *24Va. J. Int'l L.809.*

2.7 Possible Answer to Self-Assessment Exercise

1. -Warships are a special subclass of government ships operated for noncommercial purposes.

   -According to *article 29* of the UNCLOS, warship is a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.
   -Warship in any case represents a political and military instrumentality of the State.

2. In international law, a State's property is immune from interference by another State. such immunities are in two ways:

   i. Jurisdictional immunity, and

   ii. Enforcement immunity

   Warships enjoy such immunity. The UNCLOS as well as other international instrument recognize the complete immunity of government-owned vessels operated for non-commercial purposes. Article 95 of the UNCLOS states that *warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.* Read also, article 96 of the UNCLOS.

Unit 3: Government-owned Merchant Ships

3.1 Introduction

A ship denotes any large floating vessel capable of crossing open seas, as opposed to a boat, which is generally a smaller craft. The term formerly was applied to sailing vessels having three or more masts; in modern times it usually denotes a vessel of more than 500 tons of displacement. Government-owned merchant ships sometime referred to as *merchant marine* are the commercial ships of a nation, whether privately or publicly owned. The term merchant marine also indicates that it is civilian-manned vessel. This implies that the personnel that operate such ships, are distinct from the personnel of naval vessels

3.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Be acquainted with government-owned merchant ships

ii. Know their duties and uses

iii. Discuss the issue of civil jurisdiction in relation to foreign ships

3.3 Merchant Shipping: Meaning and Uses

Merchant shipping is the activity of carrying goods or passengers by ship. It comprises of cargo ships, passenger ships, and tankers. Cargo ships can be either liners, which travel on designated routes at regular intervals between specified ports; or tramps, which otherwise take cargo where and when it offers and to any port. Merchant ships are used to transport people, raw materials, and manufactured goods during peacetime. However, in time of war, they can be used as an auxiliary to the navy and can be required to deliver troops and supplies for the military. Merchant fleets are veritable economic assets for nations that have limited natural resources or a relatively small industrial base. Merchant fleet can engage in the carriage of the commerce of other nations on the seas, thereby contributing to its home nation's foreign-exchange earnings, promote trade, and provide employment for the nationals.

Some more recent types of cargo ships are bulk carriers, which transport ores or other dry cargoes in bulk; container ships, which handle standardized containers in a highly mechanized fashion; and roll-on, roll-off ships, which handle cargoes through their bow or stern ports. Passenger ships include ocean liners (which have now largely been supplanted

by jet aircraft for transoceanic travel), cruise ships, and ferries. Tankers are used to transport crude oil, oil-based fuels, and natural gas.

Most nations of the world operate fleets of merchant ships. However, because of the high costs of operations, today these fleets are in many cases sailing under the flags of nations that specialize in providing manpower and services at favourable terms. The Flags under this arrangement is referred to as *flags of convenience*.

Self-Assessment Exercise

1. What is ship?
2. Briefly explain the term *merchant shipping*
3. Discuss the rules applicable to merchant ships and Government-owned ships used for commercial purposes.

3.4 Rules Applicable to Merchant Ships and Government-owned Ships used for Commercial Purposes

i. Criminal jurisdiction of coastal States on board a foreign ship

Generally, with regard to any crime committed on board a foreign ship passing through the territorial sea of a coastal State, the coastal state cannot exercise criminal jurisdiction by way of arresting any person or conducting investigation in connection to the crime except in the circumstances allowed by the law. For criminal jurisdiction on board a foreign ship, see generally the provisions of *Article 27* of the Convention below:

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

    (a) if the consequences of the crime extend to the coastal State;

    (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;

(c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or

(d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

ii. Civil jurisdiction in relation to foreign ships

With regard to civil jurisdiction, the position of the law is that *the coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship*. The coastal State also may not levy execution against or arrest the ship for the purpose of any civil proceedings, except only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its passage through the waters of the coastal State.

The foregoing however does not prejudice the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters. See *Article 28* of the Convention generally.

3.5 Duties of the Flag State

In the sea generally, the State whose flag the vessels in the seas fly has numerous obligations regarding the enforcement of the state laws and international rules and standards. These duties are clearly articulated in *Article 217* of the United Nations Convention on the Law of the Sea, 1982. It provides as follow:

1. States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

2. States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels.

3. States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.

5. Flag States conducting an investigation of the violation may request the assistance of any other State whose cooperation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.

6. States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available

to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.

7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.

8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

3.5.1 Immunity of ships used only on government non-commercial service

Article 96 of the United Nations Convention on the Law of the Sea provides for the immunity of government-owned merchant ships used for non-commercial services. It states that: *Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.*

3.6 Summary

A merchant ship is a government or privately owned ship used for the transport of goods, cargos and civilian persons. It must not carry out acts of hostility, and may not be attacked. A merchant ship is, however, subject to visit, to search, under reasonable ground, and in case of capture to confiscation. If it is the property of the enemy State, it is treated to some extent as a warship and may accordingly be confiscated without due process of any kind. In this unit, we examined what is Government-owned merchant ship, explained the meaning and uses of merchant ships. We also discussed the rules applicable to merchant ships and Government-owned ships used for commercial purposes stated the duties of flag-state as contained in the Convention.

3.7 References/Further Readings/Web Resources

1. Barbara Spicer, Sovereign Immunity of Foreign Merchant Vessels - Flota Maritima Browning v. Motor Vessel Ciudad, 24 Md. L. Rev. 340(1964)

2. Frederic Rockwell Sanborn, The Immunity of Merchant Vessels When Owned by Foreign Governments *(*1926) *St. John's Law Review St. John*, vol. 1.

1.8 Possible Answer to Self-Assessment Exercise

1. A ship means any large floating vessel capable of crossing open seas, contrary to a boat, which is generally a smaller craft. The term ship formerly was applied to sailing vessels

having three or more masts; in modern times it usually refers a vessel of more than 500 tons of displacement.

2. The activity of carrying goods, passengers or cargo by ship is referred to as merchant shipping. Merchant ship comprises of:

i. Cargo ships which can be either liners traveling on designated routes at regular intervals between specified ports;
ii. Passenger ship responsible for carrying people, and
iii. Tankers or tramps, which otherwise take cargo where and when it offers and to any port.

Merchant ships are used to transport people, raw materials, and manufactured goods during peacetime. However, in time of war, *they can be used* as an auxiliary to the navy and can be required to deliver troops and supplies for the military.

3. i. Generally, a coastal State has no ***criminal jurisdiction*** over a merchant ship or government-owned ship used for commercial purposes passing through its territorial sea except under the circumstance that the crime extended to the coastal State, the crime affected the peace of the coastal state, the assistance of the local authority has been sought, or such jurisdiction is necessary to suppress illicit trafficking. See article *27* of the UNCLOS

ii. With regard to ***civil jurisdiction*** the requirement of the law is that *State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.* This is also subject to series of exceptions as you can see in *Article 28* of the UNCLOS

Unit 4: Stateless Ships and Private Ships

4.1 Introduction

The recent years have recorded several incidences of ships without nationality sailing and fishing on the seas in contravention of international conservation and management measures. For example, 1998 four vessels registered to Sierra Leone were seen fishing on the high seas in the Northwest Atlantic Fisheries Organization (NAFO) regulatory area. These vessels had been acknowledged throughout the international community to be flying "*flags of convenience"* having only the most tenuous link to their flag state. At the end, due to heavy direct diplomatic pressure, Sierra Leone repudiated the ships' registration which automatically rendered them stateless and, therefore, subject to the jurisdiction of any state that approached them on the high seas. Such situations are becoming more common resulting in the increase in the number of stateless ships in the world seas. However, and unfortunately, the international community does not seem to have effective tools at its disposal to adequately deal with stateless vessels fishing illegally on the high seas.

4.2 Learning Outcomes

At the completion of the unit, you are expected to be able to:

i. Understand the meaning of Stateless ship/vessel

ii. Appreciate the implication/consequences of statelessness

4.3 Meaning of Stateless and Private Ships

In customary international law, a ship is stateless if it lacks proper registration or is not entitled to fly the flag of a recognized state. The United Nations Convention on the Law of the Sea under its *Article 91* which provides for vessels that does not have a genuine link to the flag state seems to have opened a further possibility of another type of stateless vessel or ship. This requirement, however, is not yet reflected in customary international law. The general rule still remains that a ship is not stateless if it is registered with a recognized state, no matter how tenuous its connection to that state may be (K Canty, 2000). Private ship per se does not have many explanations. It is simply defined as a term used in the Royal Navy to describe that status of a commissioned warship in active service that is not currently serving as the flagship of a flag office. The fact is that whether a ship is government-owned or privately-owned, according to customary international law, it must operate in the seas subject to the law of the State whose flag it flies. In general, however, the concept of statelessness is associated with private ships as against government-owned ships which usually bear the identity of the State.

Subject to the principle of the freedom of the high seas, ships on the high seas are subject only to the exclusive jurisdiction and authority of the state whose flag they lawfully fly pursuant to *Articles 17-19* of the UNCLOS. This principle of exclusivity of flag state jurisdiction is firmly rooted in the order of freedom of the high seas. The international community has traditionally regarded a fishing vessel as a floating piece of the territory of the State whose flag it flies (K Canty, 2000). It therefore follows that in customary international law, except in exceptional circumstances, a flag state has the same exclusive right to exercise legislative and enforcement jurisdiction over its vessels on the high seas as it does over its territory (R. Canty, 1998).

The exclusivity rule was enunciated in the Permanent Court of International Justice in the Case of the *S.S. Lotus* and was later codified in the High Seas Convention, and re-codified in UNCLOS. The *S.S. Lotus* case states that:

> Vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of the freedom of the seas, that is to say the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels upon them.

Nationality of ships is the basis upon which order of the high seas is maintained. Absence or lack of nationality by a vessel due to inability to identify or link the vessel to any state makes the vessel stateless. The elaborate system of rules established for the high seas is meaningless unless a ship lawfully sails under the flag of a recognized state. This in essence underscores the seriousness of statelessness of ships on the seas.

Self-Assessment Exercise

1. Define the term *stateless* and briefly discuss any incidence of stateless vessel in the sea you know
2. Discuss the legal consequences of a ship being stateless.

4.4 Legal Consequence of Stateless ships

The International Law Commission has stated that *"the absence of any authority over ships sailing the high seas would lead to chaos. One of the essential adjuncts to the principle of*

the freedom of the seas is that a ship must fly the flag of a single State...." Therefore, according to both international and domestic law, all vessels must have a nationality (H. E. Anderson, 1996). Although statelessness per se does not violate or repugnant to the law of nations, in order to protect the international regime of the high seas, stateless vessels are generally subject to the jurisdiction of all nations. It therefore follows that the primary consequence of a ship being stateless is the loss of protection accorded to all other vessels in the high seas. A stateless vessel enjoys the protection of no state, implying that if jurisdiction were asserted over such a vessel no state would be heard to complain. Consequently, public ships of every state may approach any private vessel encountered upon the high seas to ascertain her identity and nationality (*Molvan v. A.G. for Palestine, 81 L.I.L. Rep. 277 (1948*)).

In the event of reasonable suspicion producing a ground of doubt regarding the identity or nationality of a private vessel, the United Nations Convention on the Law of the Sea grants any public ship the right to board the suspect vessel and investigate its right to fly its flag (Art. 110 of the Convention). If after a due examination of the vessel's papers and documentation, the original suspicion is discharged, the vessel may then proceed on its way. However, where the examination reveals that the vessel is without nationality and thereby stateless, the investigating ship has the right to search the suspect vessel to discover evidence that would confirm its original suspicions. If such evidence is found, the investigating ship may subsequently arrest the suspect vessel and place it under the jurisdiction of the investigating ship's flag state (R. Canty, 1998).

4.5 How a Registered Ship can become Stateless

There is only one way as at present through which ships properly registered with a state may be rendered stateless. The Convention states that *"a ship which sails under the flags of two or more states, using them according to convenience, may not claim any of the nationalities in question with respect to any other state, and may be assimilated to a ship without nationality."* See *Article 92 (2)* of the UNCLOS. As we noted earlier, order on the high seas depends on the existence of a flag state competent to ensure that ships under its flag adhere to international law rules and standards A vessel that uses two or more flags "according to convenience" therefore contravenes the customary international law regarding the use of the high seas to the same extent as one with no flag at all. Thus, a vessel may use no more than one flag at a time.

4.6 Summary

In the general rule of international law, vessels in the seas are under the exclusive jurisdiction of the State whose flag they fly. No State therefore in accordance with the principle of the freedom of the high seas and exclusive jurisdiction of the flag-state can assert jurisdiction over a vessel flying the flag of another sovereign state. This rule does not apply to a stateless ship or vessel. Where a vessel has no nationality and stateless it cannot enjoy the protection of any state. Any State public ship may approach it, investigate and arrest it for subsequent prosecution and no state may be heard to complain. In this unit, we discussed: Meaning of stateless and private ship, Consequences of being stateless and means of becoming stateless.

4.7 References/Further Readings/Web Resources

1. Deirdre M. Warner-Kramer & Krista Canty, *Stateless Fishing Vessels (2000) The Current International Regime and A New Approach, 5Ocean &Coastal L.J*

2. Rachel Canty, *Limits of Coast Guard Authority to Board Foreign Flag Vessels on the High Seas, 23 TUL. MAR. L.J. 123, 125 (1998)*

3. *"Lotus"(Fr. v. Turk.), 1927P.C.I.J. (Ser. A) No. 10, at25.*

4. *Report of the International Law Commission to the General Assembly, 11 U.N. GAOR Supp. (No. 9) art. 30, comment(l) at 25, U.N. Doe. A/3159 (1956), reprinted in 1Y.B. INT'L L. COMMISSION, 253, 279, U.N. Doe. A/CN.4/SER.A/1956/Add.1.*

5. H. Edwin Anderson, *III, The Nationality of Ships and Flags of Convenience: Economics, Politics, and Alternatives, 21 TUL. MAR. L.J. 139, 141 (1996) (*citing David Matlin, Note, Re-evaluating the Status of Flags of Convenience Under International Law,23 VAND. J. TRANSNAT'L L. 1017, 1019 (199 1)).

4.8 Possible Answer to Self-Assessment Exercise

1. A stateless ship under international law is a ship that lacks proper registration or is not entitled to fly the flag of a recognized State. There have been recent incidences of ships sailing without nationality and fishing on the seas in contravention of international conservation and management measures. The 1998 four vessels registered to Sierra Leone that were seen fishing on the high seas in the Northwest Atlantic Fisheries Organization (NAFO) regulatory area present an example. These vessels had been acknowledged throughout the international community to be flying "*flags of convenience"* having only the most tenuous link to their flag state. At the end, due to heavy direct diplomatic pressure, Sierra Leone repudiated the

ships' registration and they were rendered stateless and subject to the jurisdiction of any state on the high seas.

2. According to both international and domestic law, all vessels must have a nationality. The International Law Commission has warned that the absence of any authority over ships sailing the high seas would lead to chaos. The legal consequence statelessness is that a stateless ship is subject to the jurisdiction of all States. Therefore, a stateless has no protection whatsoever accorded to all other vessels in the high seas

Unit 5: Collisions, Wreck and Salvage

5.1 Introduction

Ship collision generally refers to the physical impact that occurs between two ships resulting in a damaging accident. Collision can also occur between a ship and a stable or a floating structure like an offshore drilling platform or an ice berg or even a port. In most cases impact resulting from collision is so devastating that the damage that cannot just be measured in terms of costing or money. Today, there is a persisting increase in the traffic on the high seas and the technological advancements in the marine engineering which paved the way to the development of heavy and huge ships with great speed. All these have invariably increased the risk of collision incidents in the high seas. Marine salvage entails the process of recovering a ship and its cargo after a shipwreck, collision or other forms of casualty at sea. Salvage may encompass towing, re-floating a vessel, or effecting repairs to a ship. Before the invention of radio, salvage services would be given to a stricken vessel by any ship that happened to be passing by. Today, most salvage is undertaken by specialist salvage firms with dedicated crew and equipment.

5.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Define collisions, wreck and salvage
ii. Discuss causes of collisions and law relating to their prevention
iii. Appreciate the legal implication of salvage, and
iv. The conditions for successful claim of salvage

5.3 Collisions in maritime Transport

Before the establishment of a single set of international rules and practices governing navigations, there had existed separate practices and various conventions and informal procedures in different parts of the world, as initiated by different maritime States. This had led to a lot of inconsistencies in practices and procedures and even contradictions that resulted in many avoidable collisions. For instance, *vessel navigation lights* for operating in darkness as well as *navigation marks* also were not standardised, giving rise to dangerous confusion and ambiguity between vessels and increased the risk of collision.

However, with the development of steam-powered ships in the mid-19th century, conventions for sailing vessel navigation had to be supplemented with conventions for

power-driven vessel navigation. Sailing vessels are limited in terms of manoeuvrability in that they cannot sail directly into the wind and cannot be readily navigated in the absence of wind. On the other hand, steamships can manoeuvre in all 360 degrees of direction and can be manoeuvred irrespective of the presence or absence of wind. This situation also helped in managing the possibilities of collision at sea.

i. **Causes of Maritime Collision**

Collision can be caused by various factors both natural and manmade factors. Some of these factors are:

a. **Human error:** this can be due to carelessness or negligence on the part of crewmembers. Also, confusion arising from differences in maritime traffic schemes across different regions, akin to driving on the wrong side of the road while visiting another country. Human error is the most common cause of maritime collisions.

b. **Weather**

Weather conditions when so bad can result in maritime accidents. Fog obstructing vision, high winds exerting force on vessels, ice flows colliding with vessels all fall under this category. In several occasions, weather is usually a contributing factor in a collision. Although in many cases after a thorough investigation of a weather-related collision, it's often discovered that negligence also played a significant role in collisions.

c. **Equipment failure**

When an engine fails, maneuvering capabilities are lost, or other equipment essential to the operation of the ship suddenly malfunctioned this can lead to collision.

d. **Infrastructure problems**

Stable objects in the sea or if something on land is out of position, such as a draw bridge dropping prematurely, it can cause collisions.

Self-Assessment Exercise

1. Briefly discuss the laws on prevention of maritime collisions
2. What can be proved to establish a claim of salvage?
3. Two major factors are responsible for maritime collisions. Identify them

5.4 Legal Regimes on Collision

The United Nations Convention on the Law of the Sea made provision concerning maritime collisions and other incidents of navigation. Under its *Article 97*, the Convention provides that:

> In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

Paragraph 2 states that:

> In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or license shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

1 Prevention of Collisions at Sea

On the measures for preventing accidents and maritime casualty, the Convention also made different provisions concerning safety and safe navigation at sea. This is provided in *Article 94 para.3* and *4* of the Convention.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:

   (a) the construction, equipment and seaworthiness of ships;

   (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments

   (c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

   (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on

board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;

(b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

Also, ***Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG),*** provides variously on the prevention of collision at sea. The 1972 Convention was adopted on the 20th of October, 1972 and came into force on the 15th of July, 1977 and was designed to update and replace the *Collision Regulations of 1960* which were adopted at the same time as the 1960 *Safety of Life at Sea* (SOLAS) Convention. One of the most important advancements in the 1972 COLREGs was the recognition given to traffic separation schemes - *Rule 10* gives guidance in determining safe speed, the risk of collision and the conduct of vessels operating in or near traffic separation schemes. Although the Convention has international application, it is subject to variations of local laws of the nation giving effect to them. Pursuant to *Rule 3 of COLREGS*, of the Convention, it was established to regulate and prevent collision of ships or vessels, regulate the conduct of vessels in sight of one another, and the conduct of vessels in restricted visibility, sailing and steering.

The COLREGs contains 38 rules divided into five sections:

Part A - General;
Part B - Steering and Sailing;
Part C - Lights and Shapes;
Part D - Sound and Light signals; and
Part E- Exemptions

Some selected rules are provided here thus,

Rule 5 states that "every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

Rule 6 is concerned with safe speed. It requires that: "Every vessel shall at all times proceed at a safe speed...". The Rule describes the factors which should be taken into account in determining safe speed. Several of these refer specifically to vessels equipped with radar. A safe speed is a relative term requiring various factors to be taken into account, while an unsafe speed involves a speed that is slow as well as one that is excessive.

The importance of using "all available means" is further stressed in ***Rule 7*** which deals with the issue of risk of collision, which warns that "assumptions shall not be made on the basis of scanty information, especially scanty radar information".

Rule 8 is concerned with action to Avoid Collision. It provides that action to be taken to avoid collision shall be positive, made in ample time and due regard to observance of good seamanship and the provisions of regulation 5 and 6 shall be observed in avoiding collision.

Rule 9 provides for narrow channels. A vessel proceeding along the course of a narrow channel or fairway is obliged to keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable. The same Rule prevents a vessel of less than 20 metres in length or a sailing vessel from impeding the passage of a vessel which can safely navigate only within a narrow channel or fairway.

Rule 13 covers overtaking Situations. This rule provides that the overtaking vessel should keep out of the way of the vessel being overtaken, while regulation 14 gives the guidelines when vessels are on a head on situations, whereupon each shall alter her course to starboard so that each shall pass on the port side of the other.

The Nigerian Shipping Act, 2007 also makes provisions on collision. For instance, ***section 265*** of the Act provides to the effect that the Minister is empowered under the Act to make collision rules with respect to ships and to aircraft on the surface of the water, for the prevention of collision. The rule shall contain such requirement necessary to implement the provisions of the international treaties, agreements and regulations for the prevention of collisions at sea that are for the time being in force. The collision rules, together with the provisions of this part of this Act relating to those rules or otherwise relating to

collisions, shall apply to all ships and aircraft which are locally within the jurisdiction of Nigeria.

Every owner, master of ship and owner and person in command of an aircraft is under strict obligation to obey the collision rules, and shall not carry or exhibit any light or shapes, carry or use any means of making signals, other than those which are required or permitted by the collision rules to be carried, exhibited or used.

Under ***section 266(1) and (2)***, where an infringement of the collision is caused by the willful default of the owner or master of a ship, as the case may be, of the owner of any aircraft or of the pilot or other person on duty in charge of any aircraft, that person commits an offence and on conviction is liable to a fine not less than five hundred thousand Naira or to imprisonment for a term not less than two years or to both.

In event of collision between two ships, the master or person in charge of each ship shall, if he can do so any of the following without danger to his own ship, crew and passengers:

> (a) render to the other ship, its master, crew and passengers, if any, such assistance as may be practicable and necessary to save them from any danger caused by the collision, and shall stay by the other ship until he has ascertained that there is no need of further assistance; and
>
> (b) give to the master or person in charge of the other ship the name of his own ship and of the port at which the ship is registered or to which it belongs and also the names of the ports from which it comes and to which it is bound

Section 268(2) and *(3)* provide specifically that, if the master or person in charge of a ship fails, without reasonable cause, to comply with this section, he commits an offence and on conviction is liable to a fine not less than *Five Hundred Thousand Naira* or to imprisonment for a term not less than two years or to both. However, the failure of the master or person in charge of a ship to comply with the provisions of this section shall not raise any presumption of law that the collision was caused by his wrongful act, neglect or default.

5.5 Wreck and Salvage at Sea

i. Definition of Wreck:

A shipwreck is the remains of a ship that has wrecked, which are found either beached on land or sunken to the bottom of a body of water. It involves the destruction or damage of

ship in the sea due to collision or accident. Collisions as discussed above can lead to the wreck of the ships involved.

1.5.1 Definitions of Salvage

a. Marine salvage involves the process of recovering a ship and its cargo after a shipwreck or other maritime casualty.
b. It means a voluntary successful service to save maritime property which is in immediate or forthcoming danger at sea. Salvage may include towing, re-floating a vessel, or effecting repairs to a ship.
c. Salvage is a right in law, which arises when a person, acting as a volunteer without any pre-existing contractual or other legal duty so to act preserves or contributes to preserving any vessel, cargo, freight or other recognized subject of salvage at sea from danger.
d. It is a voluntary services and assistance rendered towards the preservation of any vessel, cargo, freight or other recognized subject of salvage from the form immediate or forthcoming peril of the sea.
e. Compensation given to those who voluntarily save a ship or its cargo

1.5.2 Historical Origin of Salvage

The concept of salvage had existed in ancient legal systems perhaps from mid-16th century. However, the fundamental principles of the concept of salvage were established in the early part of the 19th century. The *Brussels Convention 1910* became the first known attempt to unify the principles on the law of salvage under the auspices of the *International Maritime Organization (IMO).* This first Brussels Convention was amended by the Brussels Convention on Salvage of Aircraft 1938 which intended to extend the law of salvage to salvage by or to seaborne aircraft.

The limitations associated with the inadequacy of the 1910 Convention necessitated a draft convention which was prepared by the committee Maritime International (CMI) in 1981, and by 28 April 1989, the new Salvage Convention 1989 was concluded. This repealed the Brussels Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, 1910. The 1989 Convention became effective internationally on 14 July 1996. The Nigerian Merchant Shipping Act of 2007 under Part XXVII domesticated the provisions of the law relating to salvage. By virtue of *section 387* of the Act, the provisions of the International Convention on Salvage, 1989 shall apply in Nigeria.

5.5.3 The legal implication of salvage

The implication is that a successful salvor is entitled to a reward, which is a proportion of the total value of the ship and its cargo. In accordance with *Articles 13* and *14* of *the International Salvage Convention of 1989*, the amount of the award is determined subsequently at a hearing on the merits by a maritime court. The law of salvage is a principle of maritime law by which any person who helps recover another person's ship or cargo in peril at sea is entitled to a reward commensurate with the value of the property salved. Also, *Article 98* of the Convention requires that assistance be rendered to other ships their crews and passengers which are in distress or danger at sea.

5.5.4 Conditions for Claim of Salvage

Certain conditions must be fulfilled to enable a *salvor* claim salvage. The following elements or factors are therefore important for successful claim of salvage:

i. Peril or Danger

The vessel must be in peril, either immediate or forthcoming. There must be some real danger which may expose the vessel to destruction or damage. There must be a state of difficulty and reasonable apprehension even though there is no absolute danger. See the following, The Phantom (1866) LR 1 A & B 58, P 60, The Charlotte (1848) 3 W Rob 68, The Helenus (1582) 2 Lloyd's Rep 261. The danger may be future or contingent. There would be a reasonable future apprehension of danger even when the swing of the ship by the wind had stopped temporarily. The existence of danger is objective as a question of fact. The master's decision that the ship is in danger must be reasonable otherwise, there would be no danger for salvage. See The Aldora (1975) 1 Lloyd's Rep 617.

ii. Voluntary services

The *salvor* must be acting voluntarily and under no pre-existing contract. This means that the services must not have been rendered under a pre-existing agreement or under official duty, or purely for the interests of self-preservation (The Sava Star (1995) 2 Lloyd' Rep 134). A salvor is person who without any particular relation to a ship in distress, renders useful service and gives it as a volunteer adventurer without any pre-existing covenant connected with the duty of employing himself for the preservation of the ship (The Neptune (1824) 1Hagg 227).

iii. Consent

Salvage may, be performed under an oral or written contract, but it must nevertheless be voluntary. If the master of the salved vessel or her owners refuse the salvor's offer of services, no salvage remuneration is payable. The refusal, however, must be express and reasonable. On the other hand, no consent is necessary when an abandoned vessel is salved. However, to avoid the requirement of voluntariness, it must be shown beyond doubt that there existed a duty to render the services wholly and completely and, secondly, that the duty was owed to the owners of the saved vessel. Pursuant to *section 388* of the Merchant Shipping Act 2007, the master of a vessel is granted the right to conclude contracts for salvage operations on contract, on behalf of the owner of the vessel. In respect of the property on board, the master or owner of a vessel has authority to conclude salvage contracts on behalf of the owner of any property on board his vessel. An agreement for assistance or salvage entered into at the moment and under the influence of danger may at the request of either party to the agreement, be annulled or modified by the court if;

a. it considers that the conditions agreed upon are not equitable,
b. it is proved that the consent of one of the parties to a salvage agreement is vitiated by fraud or concealment, or
c. the remuneration is, in proportion to the services rendered in an excessive degree too large or too small,

Such agreement may be annulled or modified by the court at the request of the affected party.

iv. Success

The salvage operations must be successful for there to be a salvage reward. For instance, *section 389 (1)* of the Merchant Shipping Act 2007 stipulates that every act of assistance or salvage which yields a useful result gives a right to amount of reward. It should be noted that payment or reward shall not be made to a salvor if salvage operations do not yield any beneficial results. On this see the following: The Cheerful (1855) 11 PD 3.In the Melaine v The San Onofre (1925) AC 246. The Killeena (1881) 6 PD 193. It should be noted in accordance with *section 389* (3) of the Merchant Shipping Act 2007, that a person who takes part in salvage operations against the express and reasonable prohibition on the part of the vessel to which the services were rendered, shall not be entitled to receive a reward. Please note that a tug shall not receive reward for assistance rendered to or for salvage of the vessel or the cargo of the vessel the tug tows unless it

renders exceptional services which cannot be considered as rendered in fulfillment of the contract of towage (section 389 (4) of the Merchant Shipping Act 2007. *See section 389 (5)* of the Merchant Shipping Act 2007 which states that the amount of reward to be paid for salvage shall be fixed by agreement between the parties and, where there is no agreement between the parties by the court.

5.5.5 The Determination for Salvage Reward

Certain criteria are necessary for the determination of the reward for salvage operations. Such criteria are contained in *section 391 (1)* of the Merchant Shipping Act 2007. They include:

a. the salved value of the vessel and other property;
b. the skill and efforts of the salvors in preventing or minimizing damage to the environment;
c. the measure of success obtained by the salvor;
d. the nature and degree of the danger;
e. the skill and effort of the salvors in salving the vessel, other property and life;
f. the time spent and expenses and losses incurred by the salvors;
g. the risk of liability and other risks run by the salvors or their equipment;
h. the promptness of the services rendered;
i. the availability and use of the vessels or other equipment intended for salvage operations.
j. the state of readiness and efficiency of the salvor's equipment and the value thereof; It should be noted that maritime law is inherently international law however salvage laws vary from one country to another. That account for our discussion of the Nigerian Merchant Ship Act which domesticated the international salvage law.

5.6 Summary

Ship collision implies the structural impact between two ships or one ship and a floating or stable object such as an iceberg. Ship collisions are of particular importance in marine accidents. They can be a major cause of shipwreck. The law particularly, the Convention requires assistance to be rendered the ships in distress and danger including their crews and passengers. A person who rendered a selfless assistance to any ship in danger or peril shall go with a reward so far the operation is successful and other conditions fulfilled. In this

unit, we discussed: Collisions, their causes, Legal regime on maritime collisions Prevention of marine collisions and Wreck and salvage.

5.7 References/Further Readings/Web Resources

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5.8 Possible Answer to Self-Assessment Exercise

1. i. the UNCLOS did specifically provide for collision under *article 94*, the provision of the article was directly partly towards prevention of maritime collisions. The article is concerned with safety of life at sea by taking measures with regard to the construction, equipment and seaworthiness of ships, manning of ships, training of crews, use of signals, prevention of collisions etc.

   ii. *Convention on the International Regulations for Preventing Collisions at Sea, 1972 also established rules meant to* regulate and prevent collision of ships. Particularly, *Rules 3, 5 and 8 of the convention* made provisions aimed at preventing and regulating collisions at sea.

   iii. ***The Nigerian Shipping Act, 2007*** also makes provisions on collision. S***ection 265*** of the Act provides to the effect that the Minister is empowered under the Act to make collision rules with respect to ships and to aircraft on the surface of the water, for the prevention of collision.

2. For a successful claim of salvage reward the following conditions must be fulfilled:

   i. That the ship was in peril or danger immediate or forthcoming

   ii. That the *salvor* acted acting voluntarily and without a pre-existing contract

   iii. The master of the salved vessel or her owners did not object or refuse the *salvor*'s offer of services.

   iv. The salvage operations was successful and worthy of reward

3. i. Natural factor

ii. Manmade factor

MODULE 3: THE LEGAL REGIME OF CREW, PASSENGERS AND CARGO

Introduction

The shipping industry is a highly professional line of work with set rules and guidelines in relation to the personnel that serve on ships, the management of goods and services as well as the operation of the ship itself. To have a standardized system of working on board such as safety of the crew members, passengers and cargo, the presence and implementation of rules and regulations are extremely imperative. It is for this reason that shipboard operations are directly mandated and under the ambit of Conventions and Regulations in national and international levels. As an extremely professional line of work, shipping industry ensures that all operations pertaining to seafaring are bound by the presence of an agreement upon framework in order to maintain legal operating condition of ships, shipping operator or company as well as the ship's crew.

Unit 1: Jurisdiction and Conditions of Labour

1.1 Introduction

It is a common knowledge today that the shipping industry is a highly globalised sector connecting trade and business all over the world with particular concern on the welfare and safety of seafarers-crew members and passengers, cargo as well as the goods and services undertaken. Seafarers are one of the most mobile workforces (*Alderton, 2*004). For example, a Nigerian seafarer works on board a ship that is registered in Ghana and owned or operated by an American shipping company that navigates between Europe and American ports. Such a situation makes the employment relation in the maritime industry fragmented one, thus making the beneficial ship owner's domicile, the site of ship operation, and the workplaces and residences of seafarers subject to different jurisdictions. Consequently, once labour complaints or disputes arise, the determination of jurisdiction and the applicable law becomes a complicated issue. The jurisdictional problems and Flag State responsibility have been topics of concern for this sector since the 1950s (C. D. Henry *et al*, 2006). Four choices of applicable laws and jurisdictions are relevant with maritime labour disputes, namely;

i. the Flag State
ii. Port Sate,
iii. Labour Supplying State, and

iv. the State of Ship owners where the ship owner is domiciled or operates business.

Jurisdiction is the state power to exercise authority over all persons and entities within its territory, of which there are three dimensions: prescriptive, enforcement and adjudicative. The prescriptive jurisdiction (legislative powers) is the power to create, amend and repeal legislation. The enforcement jurisdiction is the power to enforce laws through administrative agencies. Meanwhile, the adjudicative jurisdiction is the supremacy of the courts and arbitration tribunals in hearing and resolving disputes (G. Chen and D. Shan, 2016).

1.2 Learning Outcomes

At the completion of the unit, you are expected to be able to:

i. Discuss International regulations for ships
ii. Jurisdiction over maritime labour matters
iii. Discuss the International Maritime Organisation Codes for Ships and Companies
iv. Appreciate the Labour conditions for seafarer

1.3 International Jurisdiction over Ships, Crews, Passengers and Cargo

International jurisdiction over ships sailing, trading or operating in the seas including the crew members, passengers and cargoes can be exercised using international instruments and their regulatory codes. Shipping industry no doubt is one of the most heavily regulated industries and amongst the first to adopt widely implemented international safety standards.

Regulations relating to shipping are developed at the international level. Because shipping is inherently international, it is imperative that shipping is subject to uniform regulations on matters such as construction standards, navigational rules and standards of crew competence, as well the safety of seafarers. In the absence of this, there would be a plethora of divergent national regulations resulting in commercial distortion and administrative confusion which would seriously disturb the efficiency of world trade.

Generally, The International Maritime Organisation (IMO) is responsible for the implementation and amendment of different codes relating to types of ships, goods or cargoes, Cargo operation, maritime security, shipbuilding, the safety of the crew, training

etc. Failure to comply with such codes renders any shipboard operation to some legal liabilities.

Self-Assessment Exercise

1. Discuss the conditions of labour for seafarers
2. What is the *International Ship and Port Facility Security* (ISPS) Code all about?
3. Who has jurisdiction over maritime labour matters

1.4 The International Maritime Organisation Codes for Ships and Companies.

Some of the codes formulated by the IMO which regulate the activities of ships and companies are as stated hereunder:

MDG Code *(International Maritime Dangerous Goods)*

The International Maritime Dangerous Goods (IMDG*)* Code was adopted in 1965 as per the SOLAS (Safety of Life at Sea) Convention of 1960 under the International Maritime Organisation. The IMDG Code was formed to prevent all types of pollutions at sea. The Code is concerned with carriage of dangerous cargo through sea transport. This Code is in place to regulate the carriage of international guideline to the safe transportation or shipment of dangerous goods or hazardous materials by water on the vessel. The IMDG code also ensures that the goods transported through seaways are packaged in such a way that they can be safely transported. The dangerous goods code is a uniform code. The implication of this is that the code is applicable to all cargo-carrying ships around the world.

Shipping dangerous goods is a very problematic business. Therefore, in order to avoid complications or problems while categorizing the aspect and level of danger; there is a set of classification for dangerous goods. There are nine clauses under which the dangerous goods are classified. The dangerous goods labels and dangerous goods certificate for the cargo are issued as per the nine clauses which are discussed as follows:

Classification 1 is for explosives. This classification contains further six sub-divisions for materials which pose a high explosive risk, low explosive risk, etc.

Classification 2 is for gases. This clause has three sub-categories relating to gases that are highly inflammable, that are not inflammable and gases that neither inflammable nor toxic

Classification 3 is for liquids and without sub-divisions

Classification 4 is for solids. There are three sub-categories that deal with highly combustible solids, self-reactive solids and solids that when interacts with water could emit toxic gases

Classification 5 is for substances that have the chances of oxidisation

Classification 6 concerns all kinds of substances that are toxic and that could prove to be infective

Classification 7 deals specifically for materials that are radioactive

Classification 8 concerns materials that face the threat of corrosion and erosion

Classification 9 is for those substances that cannot be classified under any of the above heads but still are dangerous goods

IMSBC Code ***(International Maritime Solid Bulk Cargo Code)***

The International Convention for the Safety of Life at Sea, 1974 (SOLAS Convention), as amended, regulates various aspects of maritime safety and contains, in its chapter VI, the mandatory provisions regulating the carriage of solid bulk cargoes. These provisions are extended in the International Maritime Solid Bulk Cargoes Code (IMSBC Code). The code is a mandatory regulation for carrying solid cargo in bulk form. This replaces the BC Code and ensures safe stowage and shipment of solid bulk cargoes. The IMSBC Code was adopted on 4 December 2008, by resolution MSC.268 (85), and entered into force on 1 January 2011, from which date it was made mandatory under the provisions of the SOLAS Convention. Since then, the Code has been amended by resolutions MSC.318 (89), MSC.354 (92) and resolution MSC.393 (95). The primary aim of the code is to facilitate the safe stowage and shipment of solid bulk cargoes by providing information on the dangers associated with the shipment of certain types of solid bulk cargoes and instructions on the procedures to be adopted when the shipment of solid bulk cargoes is contemplated.

IGC Code ***(International code for construction and equipment of ships carrying liquefied gases in bulk)***

This code gives guidelines to gas tankers on operational, construction and safety aspects. As with the other forms of cargo and their respective codes, this code is specific to the carriage of LPG?LNG cargo. It applies to gas carriers constructed on or after1 July 1986 with purposes of providing an international standard for the safe transport by sea in bulk of liquefied gases and certain other substances, by prescribing the design and construction standards of ships involved in such transport and the equipment they should carry so as to minimize the risk to the ship, its crew and to the environment, having regard to the nature of the products involved.

International Grain Code

This code is applicable to all ships carrying grain in bulk. The term "grain" covers wheat, maize (corn), oats, rye, barley, rice, pulses, seeds and processed forms thereof, whose behavior is similar to that of grain in its natural state.

IBC Code ***(International code for construction and equipment of ships carrying dangerous chemicals in bulk)***

This code deals with the carriage of chemicals in bulk and the design, construction, equipment with respect to the ship and the cargo. The IBC Code provides an international standard for the safe carriage by sea of dangerous and noxious liquid chemicals in bulk.

ISPS Code ***(International Ship and Port Facility Security code)***

The **International Ship and Port Facility Security** (**ISPS**) **Code** is an amendment to the Safety of Life at Sea (SOLAS) Convention (1974/1988) on minimum security arrangements for ships, ports and government agencies. The code came into force in 2004, and it prescribes responsibilities to governments, shipping companies, shipboard personnel, and port/facility personnel to *detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade.* According to IMO**,** "The International Ship and Port Facility Security Code (ISPS Code) is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States".

ISM Code ***(International Safety Management Code)***

This is one of the most important codes, one that is used in the day to day functioning of the ship it is in place for the safe operation of the ship for the purposes of pollution prevention. The purpose of the International Safety Management (ISM) Code is to provide an international standard for the safe management and operation of ships and for pollution prevention. The Code's origins go back to the late 1980s, when there was mounting concern about poor management standards in shipping. The Code establishes safety-management objectives and requires a safety management system (SMS) to be established by "the Company", which is defined as the owner or any other organization or person, such as the manager or bareboat charterer, who answerable for operating the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code.

INF Code ***(International code for Safe Carriage of Packaged Irradiated Nuclear Fuel)***

Plutonium and High radioactive waste on board ship is a complete guideline for all ships including cargo ships of 500GT and above carrying INF listed cargo.

IS Code ***(International Code for Intact Stability)***

This code gives the construction guidelines to vessels to maintain the stability of the ship at all working conditions. The **International Code** on **Intact Stability**, 2008 (2008 IS **Code**) presents mandatory and recommendatory **stability** criteria and other measures for ensuring the safe operation of ships, to minimize the risk to such ships, to the personnel on board and to the environment.

TDC Code ***(Code of safe practices for ships carrying Timber Deck Cargo)***

gives complete guidelines for loading, stowage, construction, and equipment. This code came about as a revision to the code adopted in 1991.

Casualty Investigation Code

Shipboard can be hazardous and the nature of the work can, under unfortunate circumstances, result in a casualty onboard. This code is used to solve or to study the casualty happened on board with the ship or with its crew.

CSS Code ***(Code of Safe Practice for Cargo Stowage and securing)***

This *gives* a guideline for onboard staff to store and secure the cargo as per the requirement.

STCW Code ***(Seafarer's training, certification and Watch keeping)***

This code provides a guideline for producing competent seafarers all over the world. This code has recently been amended in 2010 at Manila and the revised version will enter from 1st Jan 2012. Read more about STCW 2010. Note that this is one of the most important codes and every aspiring and existing seafarer must be thorough with the provisions of this code

OSV Code ***(Code of safe practices for Offshore Supply Vessel)***

This is a set of complete guideline for offshore vessels carrying supply cargo and personnel in coastal operations.

LSA Code ***(International Life Saving Appliances Code)***

This code comes under SOLAS which deals with the safety equipment in terms of construction, operation and other requirements for well being of crew onboard ship. Note that this code is imperative in the procuring, application and maintenance of all lifesaving appliances on board. It provides international standards for the life-saving appliances required by the SOLAS Convention.

FSS Code ***(International Fire Safety System Code)***

This also comes under SOLAS. It deals with all the firefighting appliances, measures, and system to be used onboard to detect, notify and extinguish any kind of fire in sea going vessel. Note that this code is imperative in the procuring, application and maintenance of all fire-fighting equipment on board.

1.4.1 Jurisdiction over Maritime Labour Matters

Maritime labour disputes arise when the labour or living conditions of seafarers do not comply with international labour standards and employment agreements. When this occurs, seafarers are entitled to raise complaints or disputes regarding their employment agreements. Generally, due to the mobility of seafarers' working environment on board, maritime labour matters usually involve various jurisdictions of different States. Issues

relating to maritime labour condition are governed by the *Maritime Labour Convention (MLC) 2006.* This is an international agreement of the International Labour Organisation (ILO) which sets out seafarers' rights to decent labour conditions. It is sometimes called the 'Seafarers' Bill of Rights'. It applies to all seafarers, including those with jobs in hotel and other passenger services onboard ships and commercial yachts. The Convention states that a member state should exercise its jurisdiction over maritime labour matters; however, it did not address matters of maritime labour jurisdiction comprehensively. Rather, the Convention leaves the adjudicative jurisdiction to the discretion of member states. For instance, the provisions (of Title 5) do not determine legal (adjudicative) jurisdiction or a legal venue (forum) (G. Chen and D. Shan, 2016).

In the global governance frameworks however, various jurisdictions have connections with disputes arising from seafarers' labour matters. For example, the Flag-State is primarily liable to exercise both enforcement and adjudicative jurisdictions over the ship and seafarers on board. Based on this understanding, seafarers are entitled to raise complaints or claims to the authorities within the jurisdiction of the Flag-State. However, due to the prevalence of open registries, it has become difficult for seafarers to access the jurisdictions of Flag-States, such as those in *Panama, Bahama or Liberia* (G. Chen and D. Shan, 2016). When a ship calls at a foreign port, the authority of the Port State is responsible to inspect the labour conditions according to the Maritime Labour Convention (C–Varotsi, 2002). However, whether the Port State allows foreign seafarers to access its judicial jurisdiction is unclear. As the country of origin, Labour Supplying States have the authority to exercise adjudicative power over the complaints of seafarers, which can make it a convenient jurisdiction for seafarers.

The *Maritime Labour Convention* requires every member state to exercise its jurisdiction over seafarer recruitment services within their territory. In the case of European Union, the inspection and monitoring system of recruitment and placement services are established to protect seafarers' rights (A. B Maria *Progoulaki, 2*015). If the agencies infringe seafarers' rights under the Convention or local labour laws, seafarers will have access to the enforcement or adjudicative jurisdiction of the Labour Supplying States.

In addition to the states mentioned above, the State of Ship owner is considered as having competent jurisdiction, notwithstanding that the Convention has not stated an explicit obligation over these States. However, at the domicile of defendants, (in the States of Ship owners), the adjudicative decision is very well enforceable. In accordance with the provisions of the Convention, it is compulsory to conclude a Seafarers' Employment Agreement (SEA) in written form between seafarers and ship owners, which proves that there exists an employment relationship between the seafarer and ship owner. Based on

this relationship, a seafarer is entitled to institute an action against the ship owner in a court in the state where the ship owner is domiciled. The employment relationship therefore provides a sufficient link to ascertain adjudicative jurisdiction between the State of Ship owner and that of the seafarer. On this note, the State of Ship owner is responsible for exercising the jurisdiction over maritime labour matters.

From the foregoing, it means that four jurisdictions can actually adjudicate maritime labour matters. They include:

a. the Flag State,
b. the Port State,
c. the Labour Supplying State, and
d. the State of Ship owner.

1.5 Right to Exercise Jurisdiction

In theory, these four states are supposed to assert their jurisdiction to correct violations of seafarers' rights. It should be pointed out however that the Convention did not create any obligation to adjudicate seafarers' complaints or disputes as a conventional obligation, but rather entitles member state with discretion to decide on whether or not to entertain maritime labour disputes according to domestic laws. But with regard to enforcement jurisdiction, *Article 94* of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) requires that, 'every flag-State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag'. Also, Article *5* of the Maritime Labour Convention sounds mandatory on exercise of enforcement jurisdiction. It states that, *Each Member shall implement and enforce laws or regulations or other measures that it has adopted to fulfill its commitments under this Convention with respect to ships and seafarers under its jurisdiction.* Paragraph 2 emphasizes that, *Each Member shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention, including regular inspections, reporting, monitoring and legal proceedings under the applicable law*s. The Convention enjoin States to ensure that ships that fly its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by this Convention. *Article 5 paragraph 5* of the Labour Convention provides that *Each Member shall effectively exercise its jurisdiction and control over sea-farer recruitment and placement services, if these are established in its territory.* Today the scope of 'matters' has even extended to the public management of maritime safety, pollution prevention, and labour protection.

It should be pointed out however, that some Flag States lack the will or capacity to exercise the enforcement jurisdiction. Subject to the principle of *pactasunt servanda*, all member States are required to perform their conventional obligations. But, in most cases, the 'flags of convenience (FOC)'states, may 'market' themselves to ship owners through their lenient regulatory requirements (N Lillie, 004). Consequently, these ships may 'race to the bottom' as far as ship maintenance and operations, and seafarers' working conditions are concerned (F Peniella *et al*, 2013). These substandard vessels pose huge threats to maritime safety and seafarers' lives. Although there is an international mechanism to ensure compliance to the *Flag-State Implementation* (FSI), the supervision over sovereignty is somewhat restricted. This was also the major limitation of the previous International Labour Organisation maritime labour standards which became fragmented and ineffective. Although international registry is not entirely differentiated from open registries in the maritime industry, generally speaking there is a genuine link between the state and the ships. Therefore, the Flag State conducts strict inspections and controls over the ships of international registry, while international navigated ships also enjoy the same rights as those of close registry except cabotage. These states exercise an effective jurisdiction over the ships of international registry, since there are genuine links between the State and the ship (G. Chen and D. Shan, 2016).

1.5.1 Choice of Jurisdiction by Seafarers

It seems possible for seafarers to choose any connected jurisdiction to file a complaint or dispute. Nonetheless, different states hold different attitudes towards mobile migrant labour matters. For instance, some states are unwilling to address these disputes. To ascertain the jurisdiction over seafarers' labour matters remains a challenging issue following the entry into force of the Maritime Labour Convention.

1.5.2 Seafarers Rights/Conditions of Labour

The labour conditions of seafarers are adequately provided for by the relevant articles of the Maritime labour Convention, 2006. *Article 4* of the Labour Convention provides in the following terms:

1. Every seafarer has the right to a safe and secure workplace that complies with safety standards

2. Every seafarer has a right to fair terms of employment.

3. Every seafarer has a right to decent working and living conditions on boardship.

4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.

5. Each Member shall ensure, within the limits of its jurisdiction, that the sea-farers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

1.6 Summary

Shipping industry is a globalised sector connecting trade and business. The global nature of shipping sector makes it necessary for a uniform rules to regulate the issues affecting ships, seafarers and cargo although various states with interests in the shipping operation may have jurisdiction in the event of maritime case. The International Maritime Organisation Codes and various articles of the Maritime Labour Convention are all important concerning the jurisdiction and labour conditions of seafarers. In this unit, we have discussed variously on the jurisdiction over maritime matter, examined the positions of flag-state, state of supply, ship owner state and state of domicile. We looked into the labour condition of seafarer.

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1.8 Possible Answer to Self-Assessment Exercise

1. Issues on maritime labour condition are governed by the *Maritime Labour Convention (MLC) 2006* which is an international agreement of the International Labour Organisation (ILO) that sets out seafarers' rights to decent labour conditions. It is commonly referred to as 'Seafarers' Bill of Rights'. *Article 4* of Convention provides variously for seafarers' labour conditions. These include right to safe and secure workplace, right to fair terms of employment, decent working and living conditions, right to medical care, welfare and social protection.

2. *The International Ship and Port Facility Security* (ISPS) Code is concerned with the minimum security arrangements for ships, ports and government agencies. The code came into force in 2004, and it prescribes responsibilities to governments, shipping companies, shipboard personnel, and port/facility personnel to *detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade.*

3. The requirement of the *Maritime Labour Convention* is that member states should exercise their jurisdiction over maritime labour matters. However, the Convention did not address matters of maritime labour jurisdiction comprehensively. Rather, it leaves the adjudicative jurisdiction to the discretion of member states. For instance,

the provisions of *Title 5* do not determine legal (adjudicative) jurisdiction or a legal venue (forum). In the international governance frameworks however, various jurisdictions have connections with disputes arising from seafarers' labour matter but, the Flag-State has primary duty to exercise both enforcement and adjudicative jurisdictions over the ship and seafarers on board.

Unit 2: Consular Jurisdiction over Seamen Aboard

2.1 Introduction

The need for sovereign States to communicate and interact with each other and with various international organisations in a peaceful and an organized manner led to the need for diplomatic staff who actually represent their respective nations in various ways, taking heed to, as well as benefiting from the legal principle of State sovereignty. Diplomatic relations among sovereign States have traditionally been conducted through the medium of ambassadors and their staffs, however with the growth of trade and commercial intercourse the office of consul was established. Diplomacy is an age-long institution which constitutes one of the earliest expressions of international relations while international legal provisions governing its manifestations are the result of centuries of state practice. The codification of this States practice resulted in the formation of the *Vienna Convention on Consular relations* (1963) which contain some Articles with direct bearing on the Seamen.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Define and know who a consul is
ii. Know who is a seaman, and
iii. Appreciate the consular jurisdiction over seamen aboard

2.3 Defining a Consul

A consul in the modern international relations is an official representative of the government of a State in the territory of another State, who normally act to assist and protect the citizens of his own country, and to facilitate trade and friendly relations between the citizens of the two countries. A consul is different from an ambassador, in the sense

that an ambassador is a representative from one head of state to another. However both of them enjoy a form of immunity. There can be only one ambassador from one country to another, representing the first country's head of state to that of the second, and their roles are concerned with diplomatic relations between the two countries. In the case of consul, there may be several of them, one in each of several major cities, providing assistance relating to bureaucratic issues to both the citizens of the consul's own country traveling or living abroad and to the citizens of the country in which the consul resides who wish to travel to or have commercial intercourse with the consul's own country. The *Article 2* of the *Vienna Convention on Consular Relations* states that *the establishment of consular relations between States takes place by mutual consent.*

The office of a consul is referred to as consulate which is usually subordinate to the State's main representation in the capital of that foreign country/host State, usually an *embassy* or between Commonwealth countries *high commission*. Like the terms embassy or high commission, consulate may refer not only to the office of consul, but also to the premises/building occupied by the consul and their staff. The consulate may share premises with the embassy itself.

Self-Assessment Exercise

1. Who is a consul?
2. With the aid of the law state the function and authority of a consul over seamen

2.3.1 Duties of a Consul

Consuls are of different ranks and may have specific legal authority for certain activities, such as:

a. Notarizing documents.
b. Receiving consular letters patent (commissions).
c. Aside from those outlined in the *Vienna Convention on Diplomatic Relations,* there are other few formal requirements outlining what a consular official must do. For example, for some countries, consular officials may be responsible for the issue of visas.

d. For some countries, they may limit "consular services" to providing assistance to compatriots;
e. Legalization of documents, etc.

Activities of a consulate are many such as protecting the interests of their citizens temporarily or permanently resident in the host country, issuing passports; issuing visas to foreigners and public diplomacy. However, the principal role of a consulate lies traditionally in promoting commercial intercourse, assisting companies to invest and to import and export goods and services both inwardly to their home country and outward to their host country. Consulates, like embassies, may also gather intelligence information from the assigned country, a role which has not been widely or publicly admitted. See generally, *Article 5* of the Vienna Convention.

2.4 Who is a Seaman?

A seaman also variously known as a *sailor, mariner*, or *seafarer* is a person who works aboard a watercraft as part of its crew, and may work in any one of a number of different fields that are related to the operation and maintenance of a ship. Under the Maritime law, seaman is defined as *someone who is a captain or other crew member aboard a vessel in navigation. In legal terms, this means the boat or ship is afloat, in operation, and in a condition in which it can move. The vessel must also be located on navigable waters.*

Seamen hold a variety of professions and ranks, each of which carries unique responsibilities which are contributory to the successful operation of a ship sailing the sea. **A ship's crew can generally be divided into four main categories:**

a. the deck department,
b. the engineering department, the steward's department, and
c. others.

Although the *Jones Act of 1920* which provides for the qualities of a seaman did not define the status of a seaman, this can be seen in case laws which have sought to clarify the legal definition of a seaman or crew member. In two cases, ***Harbor Tug and Barge Company v. Papai*** **(1997) 520 US 548** and in ***Chandris v. Latsis*** **(1995) 515 US 347,** The U.S. Supreme Court decided that to be classified as a seaman or crew member and be covered by the Jones Act, the plaintiff must meet two essential requirements:

The first requirement is plain and self-explanatory. It explains that every vessel that navigates the water does so with a mission, whether recreational, scientific, or commercial.

The mission might be to transport passengers from one port to another or it may be to transport cargo. Every seaman constantly aboard the vessel contributes to the fulfillment of the vessel's mission. That is, everyone working aboard a vessel is contributing in some way to a vessel's mission or they would not be aboard. The cook, the waiter, the cleaner, the navigator, the ship's doctor, the engineer are all contributing in their own way to the fulfillment of the vessel's mission. It implies that any of the workers so-mentioned so long as his work contributes to the mission of the vessel qualifies as a seaman and can be entitled to be so treated if the need arises.

It is with the second requirement that things start looking a little problematic, and this is why it is important that in the event of an injury that the concerned party should contact a maritime lawyer. This is because while you might meet the first requirement, you may not necessarily meet the second requirement, and if you do not, you may not qualify to file a claim under the *Jones Act.*

The second requirement for defining and determining a seaman or crew member has two parts:

a. The plaintiff must work on a "*vessel in navigation*" and his contribution or work is "*substantial in terms of both its duration and its nature*". To qualify as a seaman or crew member, a maritime worker must work most of his time on a vessel that is in navigation. And it is the "*in navigation*" bit that is important. For a vessel to meet this definition it must meet the following criteria:

i. The vessel must operate on navigable waters, which are waters that the vessel can travel across to reach the United States or another state within the Union. Navigable waters could be an ocean, or a large river, or an inland lake.
ii. The vessel must be capable of moving under its own power.
iii. The vessel must not be permanently anchored to the sea floor.

Since the *Jones Act* does not explicitly define the term seaman or crew member, under the law, case law has been used to give the term "*seaman*" a legal definition. However, since the legal definition is not exactly *cut and dry* and due to the variety of vessels in operation today, as well as the slew of maritime-related jobs that exist, it is important that a maritime worker seek legal counsel in the event of an injury to determine if he qualifies as a seaman or crew member under the *Jones Act* before instituting any legal actions for redress.

2.5 Consular jurisdiction over seamen aboard

The rights, functions and jurisdiction of consular over seamen aboard can be discussed under two conventions. These include the *United Nations Convention on the Law of the Sea,* 1982 and the *Vienna Convention on Consular Relations* 1963.

i. The United Nations Convention on the Law of the Sea, 1982.

The UNCLOS provided for the criminal jurisdiction of consular over a vessel especially where such crime was committed on board the ship which will likely spread to a third State.

As a general rule, where foreign ships are in passage through the territorial water enjoying the right of innocent passage provided under international law, the coastal State may have criminal jurisdiction with regard to arrest of any person or investigation of any matter relating to a crime committed on board ship only under the circumstances prescribed by law. To this effect, the UNCLOS under its *Article 27* copiously provides that:

> 1.The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed onboard the ship during its passage, save only in the following cases:
>
> (a) if the consequences of the crime extend to the coastal State;
>
> (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
>
> (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or *consular* officer of the flag State; or
>
> (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.
>
> 2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.
>
> 3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular

officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters

The necessary implication of the above provisions particularly, *paragraph 1(c) of Article 27* regarding consular jurisdiction over seamen on board a vessel is that a consular has jurisdiction or authority where criminal offence have been committed by any of the seamen on board a vessel and the crew master thereafter sought for assistance from the local authorities. A good example is where a crime of piracy or terrorism has been committed or is being committed by a seaman on board a vessel and has accordingly been reported to the consul, the consular has jurisdiction as the representative of the flag state to request for the assistance of the local authorities to wield into the situation where the situation is beyond its control or very likely to be.

ii. The Vienna Convention on Consular Relations 1963.

This Vienna Convention provides for consular functions and jurisdiction over seamen on board even foreign seamen. *Article 5* of the Convention, particularly paragraph 1(k**)** and (L) State that Consular functions consist in:

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(L)extending assistance to vessels and aircraft mentioned in subparagraph (k) of this article, and to their crews, taking statements

> regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State.

Article 6 provides for the exercise of consular functions or jurisdiction outside the consular district. It states that *a consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.*

Article 7 provides for consular jurisdiction or function in a third state. It provides as follow: *The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.*

It is a generally recognized norm today that consuls are expected to exercise rights of supervision and inspection provided in the laws and regulations of the sending States regarding the vessels used for marine or inland navigation which bear the nationality of the sending States including aircraft registered in that State and their crews.

One of the known major functions of consul regarding shipping is the extension of assistance to vessels and boat with the nationality of the sending State together with their crews. This function is laid down in *paragraph l of Article 5* of the Vienna Convention and in the exercise of this function, a consul may personally go on board a vessel once it has been admitted, to practically examine the papers, take relevant statement in connection to the voyage, the destination of the vessel and any incidents which had occurred at the course of the voyage. The consul also helps to facilitate the entry of the ship or boat into the port and its departure.

Consular has other function such as receiving protests, draw up manifests, and, conduct investigations into any incidents which occurred by interrogating the master and the members of the crew. The Consul or a member of the consulate may appear before the local authorities with the master or members of the crew to render to them any assistance, and especially to obtain any legal assistance they may require, to act as interpreter in any business they may have to transact or in any applications they have to make, for instance, to local courts and authorities.

Consular may as well take action to enforce the maritime laws and regulations of the sending State. They also play an essential role in the salvage of

vessels and boats of the sending State. If such a vessel or boat runs aground in the territorial sea or internal waters of the receiving State, the competent authorities would simply inform the consulate nearest to the place of the incidence without delay, in accordance with *Article 37* of the Convention. If the owner, manager, operator or master for any reason could not take the necessary steps, consuls are authorised, pursuant to the provision of *paragraph (L)* of this article, to take all necessary steps to safeguard the rights of the concerned persons.

2.6 Summary

One of the main functions of a consul is to facilitate trade or business relations between the sending State and the receiving State even with a third State as we have seen in the relevant articles of the Vienna Convention on Consular Relations. Pursuant to the provision of the UNCLOS and the Vienna Convention consuls are vested with several functions and rights including supervisory role over seamen. Such rights can be exercised even in a third state.

In this unit, we endeavoured to examine who a consul is, defined the term *seaman,* outlined the duties of a consul discussed consular jurisdiction over seamen aboard.

2.7 References/Further Readings/Web Resources

1. Lee, L. T. & Quigley J., *Consular Law and Practice*, Third Edition (Oxford: Oxford University Press, 2008)

2. Garbesi**,** George C., *Consular Authority over Seamen from the United States Point of View*, (Netherlands: Springer Netherlands, 1968).

2.8 Possible Answers to Self-Assessment Exercise

1. In the modern international relations a consul is a person who officially represents the government of his/her State in the territory of another State. a Consul normally act to assist and protect the citizens of his own country, and to facilitate trade and friendly relations between the citizens of the two countries. Unlike the case of Ambassador who can only be one from one country to another, there may be several Consuls one in each of several major cities of a State. According to *Article 2* of the *Vienna Convention on Consular Relations the establishment of consular relations between States takes place by mutual consent.*

2. The function and authority of a Consul can be found in two laws.

i. The *UNCLOS* 1982: the UNCLOS particularly *paragraph 1(c) of Article 27* is to the effect that as a representative of the flag State, a consular has jurisdiction or authority where criminal offence has been committed by any of the seamen on board a vessel and the crew master thereafter sought for assistance from the local authorities.

ii. The *Vienna Convention on Consular Relations* 1963: The functions and jurisdiction of the consul with regard to seamen on board are outline in *article 5* particularly paragraph *1*of the Vienna Convention to include supervision, inspection and giving assistance to vessels having the nationality of the sending State.

Unit 3: Functional Protection of Seamen

3.1 Introduction

Protection papers, also variously referred to as "Seamen Protection Papers," "Seamen Protection Certificates," or "Sailor's Protection Papers", were issued to American seamen during the last part of the 18th century through the first half of the 20th century. The certificates were issued under *an Act for the **Protection** and Relief of American **Seamen**, 1796* which provided certificates for the protection of American seamen from the threat of *impressment* by the Royal Navy. These papers provided a description of the sailor and showed American citizenship. They were issued to American sailors to prevent them from being impressed on British men-of-war, during the period leading to and after the War of 1812. The certificates could be issued for a fee of like 25 cents, and required proof of citizenship, although this was later changed to require only a notarized affidavit of citizenship. Subsequent to the above Act, there are other international regimes on the protection of seamen and we will endeavour to have a brief peep at them in this unit.

3.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Gain knowledge and understanding of regimes on the seamen protection
ii. Appreciate the provisions of the Maritime Labour Convention on the above

3.3 Legal Regimes on the Protection of Seamen

It is a common knowledge that the nature of seamen has made them a politically, legally and economically weak group in society both in the national and international level. This situation sets them distinctly apart from other group of worker (K. X. Li and J.M. Ng, 2002). Accordingly, it has become imperative and pressing to provide special protection to seamen owing to the unique hazards attendant to the particular nature of their maritime employment and their exposure to various jurisdictions (D. Fitzpatrick & M Anderson, 2005), and one essential way of giving functional protection is to enact laws and regulations that would safeguard their human rights and welfare need. Fortunately, there are many international conventions and other instruments covering a variety of issues relating to seamen which have been adopted under the auspices of different national and international bodies and entities such as the *Seamen Protection Act of 1980*, the *International Maritime*

Organization (IMO), *International Labour Organization (ILO)*, and other subsidiary bodies of the United Nations (UN).

Self-Assessment Exercise

1. Who is a seaman according to the *Seamen Protection Act*?
2. Explain how Maritime Labour Convention contributes to the protection of seamen.

3.3.1 Seamen Protection Act 19 TTC 1980

The Seaman's Protection Act (SPA) prohibits persons from retaliating against seamen for engaging in certain protected activities done in compliance with maritime safety laws and regulations, including reporting maritime safety issues to the U.S. Coast Guard or any other federal agency. The interpretation section of the Act defines a seaman to mean *any or all members of a crew and officers other than the master and pilots, employed or engaged in any capacity on board any vessel*.

i. Protection of seaman against Discrimination

s. 2114 paragraphs1-3 of the Act provides for the protection of seaman against discrimination in the following words:

1) A person may not discharge or in any manner discriminate against a seaman because:

   (A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred;

   (B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public;

   (C) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;

(D) the seaman notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman;

(E) the seaman cooperated with a safety investigation by the Secretary or the National Transportation Safety Board;

(F) the seaman furnished information to the Secretary, the National Transportation Safety Board, or any other public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; or

(G) the seaman accurately reported hours of duty under this part.

(2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer.

(3) To qualify for protection against the seaman's employer under paragraph (1)(B), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

3.3.2 Maritime Labour Convention (MLC)

The Maritime Labour Convention is an agreement of International Labour Organization, number 186, established in 2006 as the fourth pillar of international maritime law and incorporates all modern standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles contained in other international labour Conventions. The treaties apply to all ships entering the harbours of parties to the treaty (port states), as well as to all states flying the flag of state party (flag states).

The convention consists of sixteen articles containing general provisions as well as the **Code**. The Code consists of five **Titles** with specific provisions.

- Title 1: Minimum requirements for seafarers to work on a ship
- Title 2: Conditions of employment
- Title 3: Accommodation, recreational facilities, food and catering
- Title 4: Health protection, medical care, welfare and social security protection

- Title 5: Compliance and enforcement

i. Explanation of the Titles

Title 1: Minimum requirements for seafarers to work on a ship

The minimum requirements stipulated by this section of the code are divided into 4 parts and are examined below:

i. *Minimum age requirements*: the minimum age is 16 years (18 for night work and work in hazardous areas).
ii. *Medical fitness*: workers should be medically fit for the duties they are assigned to perform. Countries should issue medical certificates as defined in the STCW (or use a similar standard).
iii. *Training*: Seamen should be trained for their duties as well as had personal safety training.
iv. Recruitment/placement services located in member states or for ships flying the flag of member states should have *inter alia* proper placement procedures, registration, complaint procedures and compensation if the recruitment fails.

Title 2: Employment conditions

This title lists conditions of the contract and payments including the working conditions on ships.

i. *Contracts*: the contract should be clear, legally enforceable and incorporate collective bargaining agreements where such exists.
ii. *Payments*: Wages should be paid at least every month, and should be transferable regularly to family if so desired.
iii. *Rest hours*: this must be implemented in national legislation. The maximum hours of work in that legislation should not exceed 14 hours in any 24-hour period and 72 hours in any seven-day period, or: at least ten hours of rest in any 24-hour period and 77 hours (rest) in any seven-day period. Furthermore, the daily hours of rest may not be divided into more than two periods and, at least six hours of rest should be given consecutively in one of those two periods.
iv. *Leave*: Seafarers or seamen have a right to annual leave as well as shore leave.
v. *Repatriation*: Returning to their country of residence should be free.
vi. *Loss*: If a ship is lost or foundered, the seafarers have a right to unemployment payments.

vii. *Manning*: Every ship should have a sufficient manning level.
viii. *Development and opportunities*: Every seafarer has a right to be promoted during his career except in cases where there is a violation of a statute or code of conduct, which inevitably hinders such promotion. Also, skill development and employment opportunities should be made available for each and every seafarer.

Title 3: Accommodation, Recreational Facilities, Food and Catering

The title contains specific rules detailed rules for accommodation and recreational facilities, as well as food and catering.

i. *Accommodation*: Accommodation for living and/or working should be "promoting the seafarers' health and well-being". Detailed provisions concerning rules and guidelines provide minimum requirements for various types of rooms (mess rooms, recreational rooms, dorms etc.).
ii. *Food and Catering*: Both food quality and quantity, including water should be regulated in the flag state. Furthermore, cooks should have proper training.

Title 4: Health Protection, Medical Care, Welfare and Social Security Protection

Title 4 contains 5 regulations about Health, Liability, Medical care, Welfare and Social security.

i. *Medical care on board ship and ashore*: Seafarers should be covered for and have access to medical care while on board; in principle at no cost and of a quality comparable to the standards of health care on shore. Countries through which territory a ship is passing should guarantee treatment on shore in serious cases.
ii. *Ship owners' liability*: Seafarers should be protected from the financial effects of "sickness, injury or death occurring in connection with their employment". This includes at least 16 weeks of payment of wages after start of sickness.
iii. *Health and safety protection and accident prevention*: A safe and hygienic environment should be provided to seafarers both during working and resting hours and measures should be taken to take reasonable safety measures.
iv. *Access to shore-based welfare facilities*: Port states should provide "welfare, cultural, recreational and information facilities and services" and to provide easy access to these services. The access to these facilities should be open to all seafarers irrespective of race, sex, religion or political opinion.

v. *Social security*: Social security coverage should be available to seafarers (and in case it is customary in the flag state: their relatives).

Title 5: Compliance and Enforcement

This Title provides standards to ensure compliance with the convention. The title distinguishes requirements for flag state and port state control.

i. *Flag states*: Flag states are required to ensure implementation of the rules on the ships that fly its flag. Detailed inspections result in the issue of a "Certificate of Maritime Compliance", which should always be present (and valid) on a ship. Ships are required to have decent complaints procedures in place for its crew and should institute investigations in case of casualties.
ii. *Port States*: The inspection in ports depends on whether a Certificate of Maritime Compliance is present (and thus a flag is flown of a country which has ratified the convention). If the Certificate is present, compliance is to be assumed in principle, and further investigations only take place if the certificate is not in order or there are indications of non-compliance. For ships that don't have the certificate, inspections are much more detailed and should ensure -according to a "no more favorable treatment principle"[6] that the ship has complied with the provisions of the convention. The convention is thus -indirectly- also valid for ships of non-member countries if they plan to call to ports of a member state.
iii. *Labour agencies*: Agencies supplying on maritime workers to ships should also be inspected to ensure that they apply the convention among others the regulations regarding to social security.

3.3.3 International Maritime Organisation

The International Maritime Organization (IMO) was known as the Inter-Governmental Maritime Consultative Organization (IMCO) until 1982. The organization is a specialised agency of the United Nations responsible for regulating shipping. The IMO was established following agreement at a UN conference held in Geneva in 1948 (H Michael, 1948). The primary aim of IMO is to develop and maintain a comprehensive regulatory framework for shipping which covers the area of safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. Its regulatory provisions are germane to the protection of seamen.

3.4 Summary

The rights and protection of seamen are set out majorly in the *International Labour Organisation's Maritime Labour Convention of 2006*. The Convention establishes minimum requirements for almost all aspects of working conditions for seamen/seafarers, including conditions of employment, hours of work and rest, repatriation, shore leave, accommodation, recreational facilities, food and health protection. In this unit, we discussed the protection of seamen under different legal regimes

3.5 References/Further Readings/Web Resources

1.Benedict Chigara, J. Patrick Kelly, and Annika Rudman eds, 'The protection of Seafarers: State Practice and the emerging new International regime', (2015) *State Practice & International Law Journal (SPILJ),* Vol. 2 Number 1.

2. K. X. Li and J.M. Ng; 'Article entitled International Maritime Conventions: Seafarers' Safety and Human Rights' (July 2002) *33 JMARLC 381; Journal of Maritime Law and Commerce, Jefferson Law Book Company.*

3. Deirdre Fitzpatrick & Michael Anderson, *Seafarers' Rights,* (Oxford: Oxford University Press, 2005) p. 3.

4. Hubilla, Maria R. S. B., "An analytical review of the treatment of seafarers under the current milieu of the international law relating tomaritime labour and human rights"(2009) *World Maritime University Dissertations. 249*

3.6 Possible Answer to Self-Assessment Exercise

1. Seamen, according to the *Seamen Protection Act,* 1980 refers to *any or all members of a crew and officers other than the master and pilots employed or engaged in any capacity on board any vessel.*

2. The Maritime Labour Convention is an agreement of International Labour Organization, established in 2006 as the fourth pillar of international maritime law.

The convention consists of sixteen articles containing general provisions as well as the **Code**. The Code consists of five **Titles** with specific provisions.

The MLC contributes immensely to the welfare and protection of seamen. For instance, the various provisions of the Titles of the Code were geared toward the protection of seamen. These include the minimum age of recruitment, personal safety training, and proper placement for services, all under **Title 1**; Good working conditions and payment including leave, rest hour and development opportunities for seamen, all under **Title 2**;

Accommodation, recreational facilities, food and catering under **Title 3**; Health, liability, medical care, welfare and social security for seamen under **Title 4**; and Requirement for compliance to the convention by flag and port States. All these provisions are in place to protect the interest of seamen.

3.

Module 4: RULES OF SAFETY AT SEA

Introduction

The rules of safety at sea are designed to eliminate or at least, minimize some hazards or risks that cause the death or injuries of seaman. The International Convention for the Safety of Life at Sea (SOLAS) which is an international maritime treaty sets minimum safety standards in the construction, equipment and operation of merchant ships. The Convention requires signatory flag states to ensure that ships flying their flag comply with the set standards. SOLAS in its successive forms has been generally accredited as the most important of all international treaties concerning the safety of merchant ships and their crews.

Unit 1: Prevention of Collisions at Sea

1.1 Introduction

The effort to prevent collisions at sea is an aspect of the general move to ensure safety of life at sea. The topic of collisions prevention is regulated by the International Regulations for Preventing Collisions at Sea 1972 (COLREGs) published by the International Maritime Organization (IMO). The regulations have set out, among other things, the "rules of the road" or navigation rules to be followed by ships and other vessels at sea to prevent collisions between two or more vessels.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Define the term ‘ship collision’
ii. Appreciate the provisions of the law on prevention of collisions at sea

1.3 Definitions of Sea Collision

A collision is an incident in which two or more bodies exert forces on each other in about a relatively short time. It refers to incidents in which two or more objects *collide* with great force. Our particular concern here is ***Ship collision*** which means the structural impact

between two or one ships or between a ship and a floating or stationary object such as an iceberg. Sea collisions are classified into various types depending on where and how they hit each other. We have:

a. Side collision, one ship hits another ship on its side.
b. Stern collision, one ship runs into the back end of another.
c. Bow-on collision, two ships are struck by each other on their front ends, much like a head-on collision in a car.
d. Allision, which is when one ship hits an object that isn't moving, such as a bridge

Self-Assessment Exercise

1. State any four types of collision you know
2. Under which Rule of the *Convention on the International Regulations for Preventing Collisions at Sea, 1972* do you find the requirement that action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. Briefly discuss the Rule.
3. Identify the two conventions that come into mind as a result of the advent of steam-powered ships.

1.4 Prevention of Collisions at Sea

Efforts have been taken internationally to prevent accidents involving ships at sea generally known as collision. The major international instrument in this regard is the *International Regulations for Preventing Collisions at Sea* 1972 (COLREGs). The Regulations are a publication of the International Maritime Organization (IMO) and set out, among other things, the "rules of the road" or navigation rules to be followed by ships and other vessels at sea to prevent collisions between two or more vessels.

The International Regulations for Preventing Collisions at Sea of 1972 can also refer to the specific political line that divides inland waterways, which are subject to national navigation rules, and coastal waterways which are subject to international navigation rules. The COLREGs are derived from a multilateral treaty called *the Convention on the International Regulations for Preventing Collisions at Sea.*

Although rules for navigating vessels inland may differ, the international rules require that they should be as closely in accord with the international rules as possible.

1.5 Historical Issues

Prior to the development of a single set of international rules and practices, there existed a great deal of differences pertaining to practices and various conventions and informal procedures in different parts of the world, as advanced by various maritime States. This situation resulted in gross inconsistencies and even contradictions that led to unintended collisions. Vessel navigation lights for operating in darkness as well as navigation marks also were not standardised, occasioning dangerous confusion and ambiguity between vessels at risk of colliding.

The advent of steam-powered ships in the mid-19th century, made it necessary for *conventions for sailing vessel navigation* to be supplemented with *conventions for power-driven vessel navigation*. Sailing vessels are limited as to their manoeuvrability in that they cannot sail directly into the wind and cannot be readily navigated in the absence of wind. On the other hand, steamships can manoeuvre in all 360 degrees of direction and can be manoeuvred notwithstanding the direction or availability of wind.

The *International Regulations for Preventing Collisions at Sea* was adopted as a convention of the International Maritime Organization on 20 October 1972 and became effective on 15 July 1977. They were designed to update and replace the Collision Regulations of 1960, particularly as it concerned Traffic Separation Schemes (TSS) following the first of these, introduced in the Strait of Dover in 1967.

Specific Provisions of Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) **Pursuant to *Rule 1*** the rules will apply to all vessels upon the high seas and all waters connected to the high seas and navigable by seagoing vessels.

Rule 5 requires that "every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

Rule 6
Safe speed:

> Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions. In

determining a safe speed, the following factors shall be among those taken into account:

(a). By all vessels:

(i) the state of visibility;
(ii) the traffic density including concentrations of fishing vessels or any other vessels;
(iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
(iv) at night the presence of background light such as from shore lights or from back scatter of her own lights;
(v) the state of wind, sea and current, and the proximity of navigational hazards;
(vi) the draught in relation to the available depth of water.

(b). additionally, by vessels with operational radar:

(i) the characteristics, efficiency and limitations of the radar equipment;
(ii) any constraints imposed by the radar range scale in use;
(iii) the effect on radar detection of the sea state, weather and other sources of interference;
(iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;
(v) the number, location and movement of vessels detected by radar;
(vi) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity

Rule 7
Risk of collision:

(a). Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

(b). Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.

(c). Assumptions shall not be made on the basis of scanty information, especially scanty radar information.

(d). In determining if risk of collision exists the following considerations shall be among those taken into account:

(i). such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;
(ii). such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

Rule 8
Action to avoid collision:

(a). Any action to avoid collision shall be taken in accordance with the Rules of this Part and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b). Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

(c). If there is sufficient sea-room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d). Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(e). If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

(i). A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea-room for the safe passage of the other vessel.
(ii). A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.

(iii). A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this part when the two vessels are approaching one another so as to involve risk of collision

Rule 9

Narrow channels

(a). A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.

(b). A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.

(c). A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.

(d). A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.

(e). In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her intention by sounding the appropriate signal prescribed in Rule 34(c)(i). The vessel to be overtaken shall, if in agreement, sound the appropriate signal prescribed in Rule 34(c)(ii) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34(d).

(f). This Rule does not relieve the overtaking vessel of her obligation under Rule 13. (f). A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e).

(g). Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

1.6 Summary

Maritime or sea collisions usually occur with heavy consequential losses in terms of human life, financial and economic loss, loss of employment and means of livelihood. As we have seen earlier in this work, there are many causes of sea collisions most of which are human

factors. This led to the need to put in place international regulations the will serve as guideline to the vessels on the seas. This need necessitated the establishment of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs), to prevent or at least minimize collisions in the world seas. In this unit, we discussed collisions prevention steps as provided by the relevant laws especially the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs), to prevent collisions in the world seas. Defined collision and stated they types.

a) Identify the two conventions that come into mind as a result of the advent of steam-powered ships.

1.7 References/Further Readings/Web Resources

a. Malcolm N Shaw, *International Law*, 5th Edition, (Cambridge: Cambridge University Press, 2**005**) p. 552.

Acejo, I. et al, "The causes of maritime accidents in the period 2002-2016", (2018) *Seafarers International Research Centre.*

1.8 Possible Answer to Self-Assessment Exercise

1. Types of collisions are:

   i. *Side collision*: one ship hits another ship on its side.
   ii. *Stern collision*: one ship runs into the back end of another.
   iii. *Bow-on collision*: two ships are struck by each other on their front ends, much like a head-on collision in a car.
   iv. *Allision*: this is when one ship hits an object that isn't moving, such as a bridge

2. ***Rule 8*** **of** the *Convention on the International Regulations for Preventing Collisions at Sea, 1972: Rule 8* of this Convention is concerned with the *action to avoid collision.*

-*Paragraph A* is to the effect that any action to avoid collision must be positive, made in ample time and with due regard to the observance of good seamanship.

-*Paragraph B* any alteration of course and/or speed to avoid collision shall be large enough to be readily apparent to another vessel observing visually or by radar and a succession of small alterations of course and/or speed should be avoided.

-*Paragraph D* requires that action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance.

Paragraph E requires that to avoid collision if necessary, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

3. i. Conventions for sailing vessel navigation and
   ii. Conventions for power-driven vessel navigation

Unit 2: Assistance at Sea

2.1 Introduction

In customary international law, the shipmaster is under an obligation to render assistance to those in danger or distress at sea without regard to their nationality, status or the circumstances in which they are found. This is a longstanding maritime tradition as well as an obligation enshrined in international law. Compliance with this obligation is essential to preserve the integrity of maritime search and rescue services. It is a requirement by both UNCLOS and SOLAS that:

> Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
> a. to render assistance to any person found at sea in danger of being lost;
> b. to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him."

2.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Explain the obligation to render assistance at sea
ii. Appreciate the requirement of the relevant laws to that effect

2.3 Obligation to render assistance at sea

In international law of the sea, shipmasters have certain mandatory duties that must be carried out in order to provide for safety of life at sea, preserve the integrity of global search and rescue (SAR**)** services of which they are part, and to comply with humanitarian and legal obligations. In order to contribute more effectively to safety of life at sea, ships are urged to participate in *ship reporting systems* established for the purpose of facilitating SAR operations.

The master of a ship at sea which is in a position to render or provide assistance on receiving information from any source that persons are in distress at sea, has an obligation

to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so. This obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found. If the ship receiving the distress call is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, the master must enter in the log-book the reason for the failure to proceed to the assistance of the persons in distress, taking into consideration the recommendation of the Organization, to inform the appropriate search and rescue service accordingly (Regulation 33- Distress Situations: Obligations and Procedures**)**

In customary international law therefore, there is a long-recognized affirmative obligation for mariners to render assistance to persons in distress at sea to the extent they can do that without serious danger to their ship, crew, or passengers. This long-standing custom is codified in a number of international treaties adopted under the auspices of the IMO, as well as the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea (UNCLOS**)**

Self-Assessment Exercise

1. What is the scope of the application of the obligation to provide assistance at sea?
2. Make specific reference to the requirement of the UNCLOS and SOLAS
3. The obligation to provide assistance at sea is an absolute one. Comment

2.4 Requirements of the UNCLOS

The United Nations Convention on the Law of the Sea, 1982 requires that States should ensure the master of the ship that fly their flag renders assistance to persons in danger or distress at sea so longer as doing this would not dispose their own ship, crews or passengers to any serious injuries. *Article 98* of the Convention provides accordingly that:

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him . . . .

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

The above provision is identical with the requirement in *Article 12* of the 1958 High Seas Convention which provides that:

1. Every State shall require the master of a ship sailing under its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers:

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, insofar as such action may reason-ably be expected of him.

UNCLOS however makes it clear that nothing in the Convention is intended to "alter the rights and obligations of States Parties which arise from other agreements compatible with the UNCLOS and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under the Convention (Art. 311 of UNCLOS**).**

The duty to provide assistance is however not, absolute one from the above provisions. The master is only required to act when doing so would not place the ship or its crew and passengers in "serious danger." *Article 12* of the High Sea Convention further requires coastal States to "promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

2.5 Requirement by the International Convention for the Safety of Life at Sea (SOLAS) 1974.

The International Convention for the Safety of Life at Sea (SOLAS) is an international maritime treaty which provides minimum safety standards in the construction, equipment and operation of merchant ships. It requires signatory flag States to ensure that ships flying their flag comply with these standards. The Convention also imposes an obligation on masters of vessels who are in a position to provide assistance to ship and persons in danger to do so.

Chapter 5, Regulation 33 paragraphs 1-6 provides copiously on the obligation. It states as follow:

1. The master of a ship at sea which is in a position to be able to provide assistance on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so. This obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found. If the ship receiving the distress alert is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress, taking into account the recommendation of the Organization, to inform the appropriate search and rescue service accordingly.

    1.1 Contracting Governments shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships' intended voyage, provided that releasing the master of the ship from the obligations under the current regulation does not further endanger the safety of life at sea. The Contracting Government responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation

occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular circumstances of the case and guidelines developed by the Organization. In these cases the relevant Contracting Governments shall arrange for such disembarkation to be effected as soon as reasonably practicable.

2. The master of a ship in distress or the search and rescue service concerned, after consultation, so far as may be possible, with the masters of ships which answer the distress alert, has the right to requisition one or more of those ships as the master of the ship in distress or the search and rescue service considers best able to render assistance, and it shall be the duty of the master or masters of the ship or ships requisitioned to comply with the requisition by continuing to proceed with all speed to the assistance of persons in distress.

3. Masters of ships shall be released from the obligation imposed by paragraph 1 on learning that their ships have not been requisitioned and that one or more other ships have been requisitioned and are complying with the requisition. This decision shall, if possible be communicated to the other requisitioned ships and to the search and rescue service.

4. The master of a ship shall be released from the obligation imposed by paragraph 1 and, if his ship has been requisitioned, from the obligation imposed by paragraph 2 on being informed by the persons in distress or by the search and rescue service or by the master of another ship which has reached such persons that assistance is no longer necessary.

5. The provisions of this regulation do not prejudice the Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, signed at Brussels on 23 September 1910, particularly the obligation to render assistance imposed by article 11 of that Convention.

6. Masters of ships who have embarked persons in distress at sea shall treat them with humanity, within the capabilities and limitations of the ship.

2.5.1 Requirement by International Convention on Maritime Search and Rescue (SAR) 1979.

Chapter 2.1.10 of the Convention requires that States Party to the Convention should ensure that assistance is provided to any person in distress at sea, "*regardless of the nationality or status of such a person or the circumstances in which that person is found*".

2.6 Summary

The position of treaty law regarding the obligation to render assistance is a general reflection of customary international maritime law. Consequently, masters of vessels flying the flag of non-signatory States are also required to render assistance if it is within their ability and it is safe to do so. On this basis therefore, States, both signatories and non-signatories to these conventions, are duty bound to ensure that assistance are provided to those in distress at sea on a non-discriminatory basis. In this unit, we discussed the obligation laid on the shipmasters to render assistance to persons and vessel at sea where this will not expose them, their own vessels, crews and passengers to serious injuries. We examined the provisions of various laws including the United Nations Conventions on the Law of the Sea, the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue.

2.7 References/Further Readings/Web Resources

1. John Murray, A challenge for the Shipping Industry<www.unhcr.org ›
2. Daniel Shepherd Blog: UNCLOS and the Duty to Render Assistance (2015) <www.maritime-executive.com *› blog › blog-unclos-and>*
3. Itamar Mann, "The Right to Perform Rescue at Sea: Jurisprudence and Drowning", (2020) *German Law Journal 21*, pp. 598–6

2.8 Possible Answer to Self-Assessment Exercise

1. The obligation to provide assistance at sea applies to all persons regardless of the nationality or status of such persons or the circumstances in which they are found. The master of a ship at sea which is in a position to render or provide assistance on receiving information from any source that persons are in distress at sea, has an obligation to

proceed with all speed to their assistance not minding their nationality. *Read Regulation 33- Distress Situations: Obligations and Procedures.*

2. i. *Article 98* particularly *paragraph 1*of the UNCLOS requires that master of a ship to render assistance to any person found at sea in danger of being lost and rescue of persons in distress at sea, if informed of their need of assistance in so far as he can do so without serious danger to the ship, the crew or the passengers.

ii.*Chapter 5, Regulation 33 paragraph 1*of SOLAS also requires that the master of a ship at sea which is in a position to be able to provide assistance on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance.

3. No. The above obligation is not an absolute one. The relevant laws imposing this obligation make it subject to the ability of the shipmaster to render the assistance and the fact that doing so would not expose his ship, crew or passengers to serious danger.

Unit 3: Load-Line Conventions

3.1 Introduction

Ship Load-line has been defined as a special marking position amidships which depicts the draft of the vessel and the maximum permitted limit in different types of waters to which the ship can be loaded. Owing to the numerous maritime accidents that have occurred at sea due to over-loading of vessels, the need for having an international standard maximum limit for ships has become apparent for so long. However, it took quite long since the beginning of shipping industry, to have an International agreement for the universal application of Load lines.

3.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Know the meaning and purpose of Load-Line
ii. Appreciate the obligations under the Load-Line Conventions
iii. Have understanding of the requirements of the Conventions

3.3 Meaning and Purpose of Load-Line

Load-line as noted earlier is a special marking position amidships which depicts the draft of the vessel and the maximum permitted limit in different types of waters to which the ship can be loaded. It has long been recognized in international maritime law that limitations on the draught to which a ship may be loaded make a significant contribution to its safety. These limits are given in the form of freeboards, which constitute, besides external weathertight and watertight integrity, the main objective of the Conventions on load-lines. The rationale behind the establishment of a Load Line is to allot a maximum legal limit beyond which a ship cannot be loaded by cargo. The establishment of such limits will help to reduce the risk of having the vessel sailing with inadequate freeboard and buoyancy. A ship is meant to have sufficient freeboard at all times any exceptions made will result in insufficient stability and excessive stress on the ship's hull. This is where load

lines play a significant role, as it makes the task of detecting whether the vessel is over-loaded and its freeboard tremendously easy.

Self-Assessment Exercise

1. The introduction of Load-Line in maritime industry has some reasons. What are they?
2. What is the purpose of load-line conventions?
3. Certain classes of ships are exempted from the provisions of the International Load-line Convention 1966.

3.3.1 Load -Line Conventions

The development of the International Convention on Load Lines (ICLL) can be traced to the United Kingdom as far back as 1870s when efforts were made to prevent merchant ships from being overloaded. Minimum freeboard requirement was established for its classed ships. Other maritime nations also implemented various but similar load line regulations until these various regulations were standardized in the ***Load Line Convention of 1930.*** So, in essence, the first International Convention on Load-Lines was adopted in 1930, which also was based on the principle of reserve buoyancy. It was widely recognized then that the freeboard should also ensure adequate stability and avoid excessive stress on the ship's hull as a result of overloading.

3.4 International Convention on Load Lines (LL Convention) 1966 In 1966 the International Maritime Organisation (IMO) adopted a new load-line convention, determining the freeboard of ships by subdivision and damage stability calculations. The *International Convention on Load Lines 1966* applies to all vessels engaged in international trade and determines the permitted draft/freeboard for a vessel in different climate zones and seasons, which are defined in a special international load line zones and areas map. The preamble to this convention provides that the purpose of the convention was to establish uniform principles and rules with respect to the limits to which ships on international voyages may be loaded having regard to the need for safeguarding life and property at sea. The 1966 Load-line Convention came in to force in 1968. The Convention contains 34 Articles and 3 Annexes providing variously on definitions, application, exceptions and so on.

Article 1

The general obligation under the Convention provides that:

1. The Contracting Governments undertake to give effect to the provisions of the present Convention and the Annexes hereto, which shall constitute an integral part of the present Convention. Every reference to the present Convention constitutes at the same time a reference to the Annexes.

2. The Contracting Governments shall undertake all measures which may be necessary to give effect to the present Convention

In its general provisions, under *Article 3***, the Convention provides that:**

1. No ship to which the present Convention applies shall proceed to sea on an international voyage after the date on which the present Convention comes into force unless it has been surveyed, marked and provided with an International Load Line Certificate (1966) or, where appropriate, an International Load Line Exemption Certificate in accordance with the provisions of the present Convention.

2. Nothing in this Convention shall prevent an Administration from assigning a greater freeboard than the minimum freeboard determined in accordance with Annex I.

3.5 Application of the provisions of the Convention

Article 4 enumerates the classes of ship to which the Convention shall apply and states that:

1. The present Convention shall apply to:
   (a) ships registered in countries the Governments of which are Contracting Governments;
   (b) ships registered in territories to which the present Convention is extended under Article 32; and

(c) unregistered ships flying the flag of a State, the Government of which is a Contracting Government.

2. The present Convention shall apply to ships engaged on international voyages.
3. The Regulations contained in Annex I are specifically applicable to the new ships.
4. Existing ships which do not fully comply with the requirements of the Regulations contained in Annex I or any part thereof shall meet at least such lesser related requirements as the Administration applied to ships on international voyages prior to the coming into force of the present Convention; in no case shall such ships be required to increase their freeboards. In order to take advantage of any reduction in freeboard from that previously assigned, existing ships shall comply with all the requirements of the present Convention.
5. The Regulations contained in Annex II are applicable to new and existing ships to which the present Convention applies.

ii. Exceptions from the provisions of this convention:

The provisions of the Convention however, do not apply to certain classes of ship which include the following:

a. ships of war;
b. new ships of less than 24 metres (79 feet) in length;
c. existing ships of less than 150 tons gross;
d. pleasure yachts not engaged in trade; and
e. fishing vessels.

The Convention does not apply to ships solely navigating:

(a) the Great Lakes of North America and the River St. Lawrence as far east as a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island, and, on the north side of Anticosti Island, the meridian of longitude 63ºW;

(b) the Caspian Sea;

(c) the Plate, Parana and Uruguay Rivers as far east as a rhumb line drawn between Punta Norte, Argentina, and Punta del Este, Uruguay.

Also excepted according to ***Article 6*** are:

1) Ships when engaged on international voyages between the near neighbouring ports of two or more States may be exempted by the Administration from the provisions of the present Convention, so long as they shall remain engaged on such voyages, if the Governments of the States in which such ports are situated shall be satisfied that the sheltered nature or conditions of such voyages between such ports make it unreasonable or impracticable to apply the provisions of the present Convention to ships engaged on such voyages.
2) The Administration may exempt any ship which embodies features of a novel kind from any of the provisions of this Convention the application of which might seriously impede research into the development of such features and their incorporation in ships engaged on international voyages. Any such ship shall, however, comply with safety requirements, which, in the opinion of that Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the ship and which are acceptable to the Governments of the States to be visited by the ship.

3) The Administration which allows any exemption under paragraphs (1) and (2) of this Article shall communicate to the Inter-Governmental Maritime Consultative Organization (hereinafter called the Organization) particulars of the same and reasons therefore which the Organization shall circulate to the Contracting Governments for their information.

4) A ship which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage may be exempted by the Administration from any of the requirements of the present Convention, provided that it complies with safety requirements which, in the opinion of that Administration, are adequate for the voyage which is to be undertaken by the ship.

See generally ***Articles 5,*** **6** and ***7*** of the Convention for exceptions.

Article 12 provides that:

1. Except as provided in paragraphs (2) and (3) of this Article, the appropriate load lines on the sides of the ship corresponding to the season of the year and the zone or area in which the ship may be shall not be submerged at any time when the ship puts to sea, during the voyage or on arrival.

2. When a ship is in fresh water of unit density the appropriate load line may be submerged by the amount of the fresh water allowance shown on the International Load Line Certificate (1966). Where the density is other than unity, an allowance shall be made proportional to the difference between 1.025 and the actual density.

3. When a ship departs from a port situated on a river or inland waters, deeper loading shall be permitted corresponding to the weight of fuel and all other materials required for consumption between the point of departure and the sea.

3.6 Summary

International Load-line Conventions are a comprehensive set of regulations to determine the minimum allowable freeboard and defines conditions of load line assignment. The Conventions establish uniform principles and rules with regard to the limits to which ships on international voyages may be loaded having due regard to the need for safeguarding life and property at sea. In this unit, we discussed international Load-line Conventions, especially of 1966 and the requirements therein. We also endeavoured to examine the purpose of the load-line conventions.

3.7 References/Further Readings

The International Convention on Load Lines (CLL), 1966 and its 1988 Protocol as revised in 2003

3.8 Possible Answer to Self-Assessment Exercise

1. The reasons for the introduction of the concept of load-line are based on its relevance. Load-line helps:

   i. in setting legal maximum limit in different types of waters beyond which the ship cannot be loaded,

   ii. to reduce the risk of having the vessel sailing with inadequate freeboard and buoyancy,

iii. to make the task of detecting whether the vessel is over-loaded and its freeboard very easy.
iv. in over all to reduce the risk of collision at sea

2. The core purpose of Load-Line Conventions is to prevent merchant ships from being overloaded.

3. The Convention does not apply to:

i. Ships of war
ii. New ships of less than 24 metres (79 feet) in length
iii. Existing ships of less than 150 tons gross
iv. Pleasure yachts not engaged in trade; and
v. Fishing vessels

Unit 4: Pollution

4.1 Introduction

One of the biggest threats to our oceans is man-made pollution. It comes in the form of discarded plastics and other residential waste discharge from pesticides and industrial chemicals which eventually find their way into the sea with devastating consequences for marine life and the habitats they depend on. Shipping accidents and oil spills add additional toxins to the mix and pollute the seas.

4.2 Intended Learning Outcomes (ILOs)

At the completion of the unit, you are expected to be able to:

i. Define marine pollution
ii. State the types and sources of marine pollution
iii. Appreciate the effects of marine pollution, and
iv. Understand the provisions of the law regarding marine pollution

4.3 Defining Marine Pollution

Pollution generally is described as *the occurrence and inputs of wastes and the impact of these wastes on the environment*. Marine pollution is therefore can be defined as "The introduction by man, directly, or indirectly, of substances or energy to the marine environment resulting in deleterious effects such as: hazards to human health, hindrance to marine activities, impairment of the quality of seawater for various uses and reduction of amenities" (UN definition).

It is referred to as *direct or indirect introduction by humans of substances or energy into the marine environment (including estuaries), resulting in harm to living resources, hazards to human health, hindrances to marine activities including fishing, impairment of the quality of sea water and reduction of amenities* (Glossary of Environment Statistics, 1997).

Marine pollution signifies the entry of chemicals, particles, industrial, agricultural and residential waste, noise, or the spread of invasive organisms, into the ocean.

It is a combination of chemicals, debris and trash, mostly from land sources washed, blown or dumped into the ocean. This pollution results in damage to the environment, to the health of all organisms, pose challenge to navigation operations and the global economic structures.

Self-Assessment Exercise

1. Marine pollution has two broad sources/types. Identify and briefly explain them
2. What is the core objective of the ***International Convention for the Prevention of Pollution from Ships (MARPOL) 1973?***
3. The above Convention makes regulations for the Prevention of Pollution by Oil. Identify and briefly discuss it.
4. What is the aim of ***The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972***;

4.4 Types and Sources of Marine Pollution

Many of human waste products eventually end up in the sea by one means or the other and then can move through the ocean, endangering marine life through entanglement, ingestion and intoxication. The following are the main sources/causes of marine pollution. Marine pollution is broadly classified into two:

a. **Point source pollution**- this type of pollution occurs when there is a single, identifiable and localized source of the pollution. A good example is directly discharging sewage and industrial waste into the ocean. Pollution such as this occurs particularly in developing nations.

b. **Nonpoint source pollution**- this occurs when the pollution results from non-defined and diffuse sources such as agricultural runoff and wind-blown debris which can be difficult to regulate.

Types and Sources of pollution according to the *World Watch Institute* include the following:

i. **Oil Pollution:** This pollution come from cars, heavy machinery, industry, other land-based sources; oil spillage from oil tanker operations and other shipping; from accidents at sea; also offshore oil drilling and natural seepage.
ii. **Nutrients Pollution:** The primary sources of this pollution are the runoff from sewage, forestry, farming, and other land use. Also airborne nitrogen oxides from power plants, cars etc.
iii. **Sediments Pollution:** This pollution comes from erosion from mining, forestry, farming, and other land-use; coastal dredging and mining
iv. **Pathogens:** This comes from Sewage and livestock.
v. **Persistent Toxins** (PCBs, Heavy metals, DDT etc: This results from industrial discharge; wastewater discharge from cities; pesticides from farms, forests, home use etc.; seepage from landfills.
vi. **Plastics:** Fishing nets; cargo and cruise ships; beach litter; wastes from plastics industry and landfills.
vii. **Radioactive substances:** Discarded nuclear submarine and military waste; atmospheric fallout; also industrial wastes.
viii. **Thermal:** Cooling water from power plants and industrial sites
ix. **Deep-Sea Mining:** The seabed is a valuable source of gold, silver, copper, and zinc. Therefore, mining under the sea is a major source of pollution. Sulfide deposits created when these substances are drilled can have marine environmental impacts.
x. **Noise:** This comes from supertankers, other large vessels and machinery

4.4.1 Effects of Marine Pollution

Marine pollutions have some negative impacts on both marine habitats and on humans. Some of the environmental effects of marine pollutions include:

i. **Depletion of oxygen:** High concentration of nitrogen and phosphorous can lead to depletion of oxygen which is so dangerous for the survival of marine life
ii. **Debris**: Pollutions in form of debris in water are hazardous and can kill marine life.
iii. **Navigation hazards:** Debris when too much can cause navigation hazards

iv. Spilled oil can cover the feather of birds and the gills of fishes
v. There can be reproductive system failure from exposure to poisonous industrial and agricultural chemicals

4.4.2 Provisions on Maritime Pollutions

Several conventions have been established under the auspices of the International Maritime Organisation which conventions aimed at the safety of life at sea. Some of these conventions directly deal with the issue of marine pollution. These include:

i. ***The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972***.

This Convention is one of the first global conventions to protect the marine environment from human activities and has been in force since 1975. Its primary aim is to promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter. 87 States are currently signatories to this Convention.

It should be noted however, that in 1996, the "*London Protocol*" was agreed to further modernize the above Convention and, eventually, replaced it. Under the Protocol *all dumping is prohibited, except for possibly acceptable wastes on the so-called* "reverse list". The Protocol entered into force on 24 March 2006 and there are currently 53 Parties to the Protocol.

Objective of the Convention and its Protocol

-*The objective* of the London Convention and Protocol is to promote the effective control of all causes/ sources of marine pollution. For instance, ***Articles I*** and ***II*** of the Convention and ***Article 2*** of the Protocol provide to the effect that contracting Parties shall take effective measures to prevent pollution of the marine environment caused by dumping at sea.

-*The purpose* of the London Convention is to control all causes and sources of marine pollution and prevent pollution of the sea by regulation of dumping into the sea of waste materials. A so-called "black- and grey-list" approach is applied for wastes, which can be considered for disposal at sea according to the hazard they present to the marine environment. Under *blacklist items* dumping is prohibited. Dumping of the grey-listed materials requires a special permit from a relevant national authority under strict control and provided certain conditions are met. All other materials or substances can be dumped after a general permit has been issued and obtained.

-*The purpose* of the Protocol is also in line with that of the Convention. However, the Protocol is more restrictive in the following ways: application of a "precautionary approach" is included as a general obligation; a "reverse list" approach is adopted, which implies that all dumping is prohibited unless explicitly permitted; incineration of wastes at sea is prohibited; export of wastes for the purpose of dumping or incineration at sea is prohibited. Extended compliance procedures and technical assistance provisions have been included, while a so-called transitional period allows new Contracting Parties to phase in compliance with the Protocol over a period of five years, provided certain conditions are met.

ii. ***The International Convention for the Prevention of Pollution from Ships (MARPOL) 1973.***

This is the main international convention regarding prevention of pollution of the marine environment by ships from operational or accidental causes.

The MARPOL Convention was adopted on 2 November 1973 at IMO but its Protocol was adopted in 1978 in response to a spate of tanker accidents in 1976-1977. As the 1973 MARPOL Convention had not yet entered into force, the 1978 MARPOL Protocol absorbed the parent Convention. The combined instrument entered into force on 2 October 1983. However, in 1997, a Protocol was adopted to amend the Convention and a new Annex VI was included which entered into force on 19 May 2005. MARPOL has been subsequently updated by amendments through the years.

4.5 Objective of the Convention

The Convention includes regulations with the objective of preventing and minimizing pollution from ships - both accidental pollution and that from routine operations. It currently includes six technical Annexes. Special Areas with strict controls on operational discharges are included in most Annexes.

Annex I concerns *Regulations for the Prevention of Pollution by Oil* (entered into force on 2 October 1983).

This Annex relates to the prevention of pollution by oil from operational measures as well as from accidental discharges; the 1992 amendments to Annex I made it mandatory for new oil tankers to have double hulls and brought in a phase-in schedule for existing tankers to fit double hulls, which was subsequently revised in 2001 and 2003.

Annex II deals with *Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk* (entered into force 2 October 1983)

This covers the discharge criteria and measures for the control of pollution by noxious liquid substances carried in bulk; some 250 substances were evaluated and included in the list appended to the Convention. The discharge of their residues is allowed only to reception facilities until certain concentrations and conditions (which vary with the category of substances) are complied with. In any case, no discharge of residues containing noxious substances is permitted within 12 miles of the nearest land.

Annex III regulates *the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form* (entered into force 1 July 1992)

This Annex contains general requirements for the issuing of detailed standards on packing, marking, labeling, documentation, stowage, quantity limitations, exceptions and notifications.

For the purpose of this Annex, "harmful substances" are those substances which are identified as marine pollutants in the International Maritime Dangerous Goods Code (IMDG Code) or which meet the criteria in the Appendix of Annex III.

Annex IV concern the *Prevention of Pollution by Sewage from Ships* (entered into force 27 September 2003)

States the requirements for the control of pollution of the sea by sewage; the discharge of sewage into the sea is prohibited, except when the ship has in operation an approved sewage treatment plant or when the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land. Sewage which is not comminuted or disinfected has to be discharged at a distance of more than 12 nautical miles from the nearest land.

Annex V deals with the *Prevention of Pollution by Garbage from Ships* (entered into force 31 December 1988)

This covers the different types of garbage and specifies the distances from land and the manner in which they may be disposed of; the most important feature of the Annex is the complete ban imposed on the disposal into the sea of all forms of plastics.

Annex VI regulates the *Prevention of Air Pollution from Ships* (entered into force 19 May 2005)

The Annex provides limits on sulphur oxide and nitrogen oxide emissions from ship exhausts and prohibits deliberate emissions of ozone depleting substances; designated emission control areas set more stringent standards for SOx, NOx and particulate matter. A chapter adopted in 2011 covers mandatory technical and operational energy efficiency measures aimed at reducing greenhouse gas emissions from ships.

4.6 Summary

Marine pollutions come from various sources and can result in severe damages to the marine the environment, cause the health of all organisms, disturb navigation operations and eventually affect global economic structures. Many international conventions have been established with the aim of bringing solution to the menace of marine solution. In this unit, we discussed defined marine pollution, stated its types and sources, examined the effects of marine pollutions and the laws regarding their control and prevention.

4.7 References /Further Reading/ Web Resources

1. Lucian Georgescu, Mirela Voiculescu, "Implementing A Sea Pollution and Safety Management System in The Navigation Companies*", (2*008) *Environmental Engineering and Management Journal vol.7, N*0. 6.
2. Al Fartoosi, Farhan M., "The impact of maritime oil pollution in the marine environment: case study of maritime oil pollution in the navigational channel of Shatt Al-Arab" (2013). *World Maritime University Dissertations. 318.*
3. *Glossary of Environment Statistics, Studies in Methods, Series F, No. 67, United Nations, New York, 1997.*

4.8 Possible Answer to Self-Assessment Exercise

1. i. **Point source *pollution*:** this is a kind of single, identifiable and localized type/source of the pollution. A good example is directly discharging sewage and industrial waste into the ocean. Pollution such as this occurs particularly in developing nations.

   ii. ***Nonpoint source pollution*:** this occurs when the pollution results from non-defined and diffuse sources such as agricultural *runoff* and wind-blown *debris* which can be difficult to regulate.

2. To prevent and minimize pollution from ships - both accidental pollution and that from routine operations.

3. The regulation for the prevention of pollution by oil is covered by *Annex I* of the Convention. This Annex relates to the prevention of pollution by oil from operational measures as well as from accidental discharges. The Annex makes it mandatory for new oil tankers to have double hulls.

4. To promote the effective control of all causes/ sources of marine pollution

Unit 5: The Safety of Life at Sea

5.1 Introduction

One of the most important pursuit and concern of the international community and maritime industry in particular is to ensure the safety of personnel and prevent marine pollution for smooth and safe navigation operations at sea. To achieve this, the International Maritime Organization (IMO) depends on its two very strong pillars: SOLAS Convention and MARPOL – The International Conventions for safeguarding human life and marine environment from all kinds of pollutions and accidents.

5.2 Learning Outcomes

At the completion of the unit, you are expected to be able to:

i. Gain knowledge from relevant convention relating to safety of life at sea
ii. Appreciate the objectives of the International Convention for the Safety of Life at Sea (SOLAS), 1974

5.3 International Convention for the Safety of Life at Sea (SOLAS), 1974.

The ***SOLAS*** Convention is foremost of the international conventions concerning the safety of life at sea. The first version of the Convention was adopted in 1914, in response to the Titanic disaster, the second in 1929, the third in 1948, and the fourth in 1960. The 1974 version includes the tacit acceptance procedure - which provides that an amendment shall enter into force on a specified date unless, before that date, objections to the amendment are received from an agreed number of Parties.

Self-Assessment Exercise

1. What is the concern of the International Convention for the Safety of Life at Sea?
2. The Convention makes regulation for nuclear-powered ships and is concerned with radiation hazards. Identify the chapter

5.4 The Objective of the Convention

The leading objective of the SOLAS Convention is to regulate by specifying minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag States are therefore required to ensure that ships under their flag comply with its requirements, and a number of certificates are prescribed in the Convention as proof that this has been done. *Control provisions* also allow Contracting Governments to inspect ships of other Contracting States if there are clear grounds for believing that the ship and its equipment do not substantially comply with the requirements of the Convention - this procedure is known as *port State control*. The present *SOLAS* Convention includes *Articles* that set out general obligations, amendment procedure and etc. the Convention comprises of 14 chapters and each chapter has its own set of regulations. The chapters prescribe the requirements which all merchant ships of any flag State are required to comply with the minimum safety norms as contained in the chapters.

Chapter I – General Provisions:

This chapter covers *inter alia* the regulations concerning the survey of the various types of ships and the issuing of documents signifying that the ship meets the requirements of the Convention

Chapter II-1 – Construction – Subdivision and stability, machinery and electrical installations:

The chapter deals with the subdivision of passenger ships into different compartments such as watertight compartments which must be such that after assumed damage to the ship's hull the vessel will remain afloat and stable. Requirements for watertight integrity and bilge pumping arrangements for passenger ships are also laid down as well as stability requirements for both passenger and cargo ships.

Chapter II-2 – Fire protection, fire detection and fire extinction:

This chapter covers detailed fire safety provisions for all ships and specific measures for passenger ships, cargo ships and tankers.

Chapter III – Life-saving appliances and arrangements:

The Chapter covers the requirements for life-saving appliances and arrangements, including requirements for life boats, rescue boats and life jackets according to type of ship. The International Life-Saving Appliance (LSA) Code gives specific technical

requirements for LSAs and is mandatory under Regulation 34, which states that all life-saving appliances and arrangements shall comply with the applicable requirements of the LSA Code.

Chapter IV – Radio-communications

Under this chapter, the *Global Maritime Distress and Safety System* (GMDSS) is incorporated. All passenger ships and all cargo ships of 300 gross tonnage and upwards on international voyages are required to carry equipment designed to improve the chances of rescue following an accident, including satellite *Emergency Position Indicating Radio Beacons* (EPIRBs) and *Search and Rescue Transponders* (SARTs) for the location of the ship or survival craft.

Chapter V – Safety of navigation:

The chapter specifies certain navigation safety services which should be provided by Contracting Governments and laid down provisions of an operational nature applicable in general to all ships on all voyages. This specification is however in contrast to the Convention as a whole, which only applies to certain classes of ship engaged on international voyages.

Chapter VI – Carriage of Cargoes:

This chapter defines storage and securing of different types of cargo and containers, but does not include oil and gas cargo.

Chapter VII – Carriage of dangerous goods:

This chapter provides for the International Maritime Goods Code for storage and transportation of dangerous goods.

Chapter VIII – Nuclear ships:

The chapter provides basic requirements for nuclear-powered ships and is particularly concerned with radiation hazards. It refers to detailed and comprehensive Code of Safety for Nuclear Merchant Ships which was adopted by the IMO Assembly in 1981

Chapter IX – Management for the Safe Operation of Ships:

The chapter makes mandatory the International Safety Management (ISM) Code, which requires a safety management system to be established by the ship owner or any person who has assumed responsibility for the ship (the Company).

Chapter X – Safety measures for high-speed craft:

The chapter provides for the mandatory International Code of Safety for High-Speed Craft (HSC Code).

Chapter XI-1 Special measures to enhance maritime safety

The chapter specifies requirements regarding the authorization of recognized organizations (responsible for carrying out surveys and inspections on administrations' behalves); enhanced surveys; ship identification number scheme; and port State control on operational requirements.

Chapter XI-2 – Special measures to enhance maritime safety:

Special and enhanced survey for safe operation, other operational requirements are provided under this chapter.

Chapter XII – Additional safety measures for bulk carriers:

Deals with safety requirement for above 150 meters' length

Chapter XIII – Verification of Compliance

The chapter makes mandatory from 1 January 2016 the IMO Member State Audit Scheme

Chapter XIV -Safety Measures for Ships Operating in Polar Waters

This chapter makes mandatory, from 1 January 2017, the Introduction and part I-A of the International Code for Ships Operating in Polar Waters (the Polar Code)

5.5 Summary

International Convention for the Safety of Life at Sea of 1974 is adjudged the foremost of all conventions relating to safety of life at sea. Its chapters contain rules and regulations which are germane as far as safety of life at sea is concerned. The Convention for the Safety of Life at Sea is an international maritime treaty which laid down the minimum safety standards in relation to the construction, equipment and operation of merchant ships. The Convention in its preamble therefore enjoins all Contracting Governments to ensure that the provisions of the Convention are meticulously observed. In this unit, we discussed safety of life at sea explaining the provisions of the convention for the safety of life at sea.

5.6 References/Further Readings

1. *The International Convention for the Safety of Life at Sea (SOLAS), 1974*
2. International Maritime Organization (IMO), *Major changes made to SOLAS as May 1994 amendments enter into force*
3. Wonham J. *Some recent regulatory developments in IMO for which there are corresponding requirements in the United Nations Convention on the Law of the Sea. A challenge to be met by the States parties*, (London: Butterworth-Heinemann Ltd, | London, 1996.

5.8 Possible Answer to Self-Assessment Exercise

1. The Convention is primarily concerned with the regulation, by specifying minimum standards for the construction, equipment and operation of ships, compatible with their safety.

2. Chapter XIII

MODULE 5: MARITIME LAW IN TIME OF WAR

Introduction

Maritime law also referred to as Admiralty law is a body of law that governs nautical affairs and private maritime disputes. Maritime law consists of both domestic law on maritime activities, and private international law governing the relationships between private parties operating or using ocean-going ships. Although under maritime law, every legal jurisdiction usually has its own legislation governing maritime affairs, the international nature of the of maritime issues and the need for uniformity has, for long, led to considerable international maritime law developments in the form of various multilateral treaties.

Unit 1: Prize Law and Prize Court

1.1 Introduction

During time of war private enemy ships and neutral merchantmen carrying contraband are subject to a chase and seizure. If a privateer or naval vessel sighted a tempting ship, whatever flag it flies or as is often the case flying no flag at all, they can give chase. However, upon capture, title to such vessels and their cargoes does not immediately pass to the captor state as, under international law, it must be adjudicated by the captor state's prize court, which may condemn them as lawful prizes. Enemy warships, enemy public ships including prison ships, and neutral ships participating in hostilities, on the other hand, are subject to capture. Title in them passes immediately to the captor state and is not subject to condemnation by a prize court.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Gain knowledge and understanding of what prize law is, and
ii. Appreciate the meaning and function of prize court

1.3 Meaning of Prize Law

To understand the term prize law, we will by explaining the term *prize* in the context it is used here. Prize here is a term used in maritime law to refer to equipment, vehicles, vessels,

and cargo captured during war or armed conflict. The most common use of prize in this sense is the capture of an enemy vessel and its cargo as a prize of war. In the past, the capturing force would commonly be allotted a share of the worth of the captured prize. In practice, sovereign States often granted letters of *marque* that would authorise private parties to capture enemy property, usually ships. Once the ship was secured on friendly territory, it would be made the subject of a prize case, an *in rem* proceeding in which the court would determine the status of the condemned property and the manner in which the property was to be disposed of.

In times of war or armed conflict States involving in the hostility may interfere with maritime trades to prevent ships from carrying goods that will aid the war effort of an opponent. When such ships are captured and the vessels are often brought to a friendly port and a local tribunal known as a *Prize Court* will determine the legality of the seizure or the destruction of the vessel and cargo if the vessel cannot be sailed to a friendly port. The body of Customary International Law and treaties that governs this procedure applied in the determination of the appropriateness of such actions is what is referred to as Prize Law.

The development of prize law has not been completely consistent due to the fact that the tribunals that rule on the appropriateness of the capture of the vessel are national tribunals which will very likely reflect the interests of the opponent state to thwart the enemy war efforts. It has been argued that *the expanding scope of warfare and the concept of total war have also blurred the distinction between vessels subject to capture as a prize of war and those that are exempt* although some basic rules still remain. All vessels of an enemy State are subject to seizure at any time by a hostile State. Warships may be sunk immediately, and private merchant ships are to be taken to a friendly port, if possible, for adjudication by a prize court. A neutral vessel on the high seas or found within the territorial waters of a hostile State may be stopped and searched, if it is suspected of carrying contraband, and may be condemned as a prize of war.

Self-Assessment Exercise

1. Define *prize*
2. Explain the position of prize law in the operation of international law rules
3. Why do you think that decisions of prize-courts have lacked uniformity internationally?

1.4 Meaning of Prize Court

A *prize court* means a court, which in some cases can even be a single individual, such as an ambassador or consul, authorized to determine the appropriateness of the seizure of prizes (enemy equipment, vehicles, and especially ships), deciding whether a ship has been lawfully captured or seized in time of war or under the terms of the seizing ship's letters of *marque* and reprisal. Prize Courts are tribunals possessing jurisdiction to decide disputes about captures made on the high seas during times of war and to declare the captured vessel as a prize if it is lawfully subject to that sentence. A prize court may order the sale or destruction of the seized ship and the distribution of any proceeds to the captain and crew of the seizing ship. A prize court may also order the return of a seized ship to its owners if the seizure was unlawful, such as if seized from a country which had proclaimed its neutrality. *Article 3* of the ***Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War*** The Hague, 18 October 1907 provides that:

> When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew. If the prize is not in the jurisdiction of the neutral Power, the captor Government, on the demand of that Power, must liberate the prize with its officers and crew.

1.5 Jurisdiction of Prize Court

Although prize courts are municipal courts, and their composition and character are thus determined by national tradition and law, they however apply customary and conventional international law. It has been a long standing recognized state practice that belligerents, at the outbreak of war, enact prize law through statutory legislation, which enactments are presumed to be declaratory of international law but are, in any event, binding on the courts.

Although belligerents are acting under international law rules when conducting seizures, the prize courts themselves are national instruments. Their composition, rules of procedure, and means of disposition of the prizes emanate from municipal law. They may apply the principles of international law in the determination of the validity of seizures and the liability to condemnation, but in many cases the rules of international law are applied by reason of their adoption by the national legal system or incorporation into it. State

enactments and regulations may also modify prize courts. Based on the above, prize-court decisions have lacked uniformity globally, and have not always reflected a high degree of recognition of, and respect for, international law regarding seizure and condemnation. In the United States, jurisdiction in prize matters belongs to the federal district courts, with the right of appeal to the circuit court of appeals and ultimately the Supreme Court. The municipal courts have the authority to appoint special prize commissioners to act abroad. An international prize court has never been established

1.6 Summary

The name *Prize Courts* was derived from the function the courts perform which is to decide the validity and disposition of "prizes," a term referring to the seizure of a ship or its cargo by the maritime, not the land, forces of a belligerent. Prize courts' Jurisdiction to make pronouncements have expanded the definition of lawful capture of vessels at sea to include the territorial waters and navigable rivers of occupied enemy territory and have accepted as legitimate the seizure of vessels in dry docks, ports, and rivers. Under the *U.S. Prize Act of 1941,* the seizure of aircraft may also fall under the jurisdiction of Prize Courts. In this unit, we defined prize as a term used to describe the equipment, vehicles, vessels, and cargo seized during war or armed conflict. We examined the meaning of prize law and discussed the meaning and jurisdiction of prize court in international law and in relation to national legal systems.

1.7 References/Further Readings/Web Resources

1. *British Prize Court Decisions: The Zamora (Oct., 1915),* *The American Journal of International Law* *Vol. 9, No. 4, pp. 1005-1015*
2. *Hershey, Amos S., "An International Prize Court" (1907) Articles by Maurer Faculty, 1960*
3. *James L. Tryon, "The International Prize Court and Code" (1911) Yale Law Journal*

1.9 Possible Answer to Self-Assessment Exercise

1. Prize is a term used in maritime law to refer to equipment, vehicles, vessels, and cargo captured during war or armed conflict. During war, an enemy vessel and its cargo can be capture as a prize of war

2. Prize law is the body of customary international law and treaties that govern the procedure applied in the determination of the appropriateness of the seizure of enemy vessel *the prize*. Although belligerents act under the principle of international law rules when conducting seizures, the rules of procedure, and means of disposition of the prizes emanate from municipal law.

3. Although prize courts apply the principles of international law in the determination of the validity of seizures and the liability to condemnation, these rules of international law are applied by reason of their adoption by the national legal system or incorporation into it. Moreover, State enactments and regulations may even modify prize courts accounting for the lack of uniformity.

Unit 2: Rules of Maritime Neutrality

2.1 Introduction

Neutrality in general is the legal framework that governs the relationships between states that are engaged in war and those that are not. Under the general customary international law rule, ship of war may not depart from a neutral port any time less than twenty-four hours after the departure of an enemy warship. The one entering first shall depart first, and unless it is in such condition as to warrant extending its stay. Neutrality refers to *the legal framework that governs the relationships between states that are engaged in armed conflict and those that are not part of the war*. The law of maritime neutrality was mainly developed during the 19th century. One of the most important factors in its development was the two Armed Neutralities of 1780 and 1800, the attitude of the United States towards neutrality, the permanent neutrality of Switzerland and Belgium and the Declaration of Paris of 1856.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Appreciate the rules of maritime neutrality and the conventions thereto
ii. Discuss the San Remo Manual on International Law in relation to armed conflict at sea

2.3 Rules of Maritime Neutrality

The international rule of *stay in a neutral port*, that is, a port of a State not party to an armed conflict, of warships of a Party to an international armed conflict is subject to a series of well-established prohibitions and restrictions. This is in accordance with the provisions of *Articles 9 to 20* of the *1907 Hague Convention (XIII) on Neutral Powers in Naval War.* Under international law rule of maritime neutrality, the stay of warships of a Party to an international armed conflict in a neutral port is well regulated one. Such regulation on the one hand, seeks to prevent such Party from taking advantage of the protected status of neutral territory, and, on the other hand, to prevent a neutral State from favouring one Party to the conflict to the detriment of another.

Self-Assessment Exercise

a) Under the principle of maritime neutrality, a neutral power must be impartial to both belligerents. Discuss.
b) Under what circumstances are belligerents granted the right to act in self-defense in neutral waters?
c) How important is *The San Remo Manual on International Law Applicable to Armed Conflicts at Sea of 1994* in the application of the rule of maritime neutrality?

In the consideration of the rule of maritime neutrality, we will briefly consider the following:

I. Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War. The Hague, 18 October 1907

The rules of maritime neutrality traditionally deemed applicable to armed conflict at sea were first comprehensively codified in the *1907 Hague Convention XIII* (Hague XIII) a Convention Concerning the Rights and Duties of Neutral Powers in Naval War established in Oct. 18, 1907. These rules have however undergone some refining probably as a response to the experiences of the two World Wars. Some key rules of neutrality affecting the use of sea areas for the conduct of war are based on the relevant articles of the Convention as follows:

a. Prohibition from Violation of Neutrality

Article 1: *Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality*.

In the first place, although belligerents are prohibited from acts of hostility in a neutral State's waters and are forbidden to use those waters as a base of naval operations, the neutral State may, on an equitable ground, allow mere passage of belligerent war-ships through its "ordinary territorial sea"(H A Bruce, 1984).

b. Prohibition from Acts of Hostility in the Neutral Territorial Waters

Another obligation that must be observed by belligerents towards the neutral territorial water is that inland waters and territorial sea, including the archipelagic water and straits which are used for international cruise, are not to be used for hostile operations.

On the other hands, the neutral states are obliged to take measures to prevent the breach of the principle of neutrality by the belligerents.

c. Acts of Hostility Constitute Violation of Neutrality

Article 2: *Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.* It should be noted that although the general practice has been to prohibit belligerent submarines in the territorial sea, a neutral Party may, on a nondiscriminatory basis, allow them surface passage or even sub-merged passage (R Tucker. 1955).

d. Neutral State's Duty to Release Prize

Article 3 is to the effect that *when a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew. If the prize is not in the jurisdiction of the neutral Power, the captor Government, on the demand of that Power, must liberate the prize with its officers and crew.*

e. Prohibition from use of Neutral Port as a Base for Naval Operations

Article 5 states that *belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea*

f. Freedom to Transit Arms

Article 7 permits a neutral power to grant the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

g. Rule of Impartiality

Pursuant to ***Article 8***, a neutral power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes. Nevertheless, a neutral power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or roadsteads.

Note that belligerents are granted the right to act in self-defense when attacked while in neutral waters, or when attacked from neutral waters or airspace.

When a neutral power is unable or unwilling to prevent abuse of its neutrality by a belligerent, that belligerent's adversaries may take action against the offending vessel or aircraft.

In the case of *rule B* above, when a naval commander is faced with the possibility of opponent attack from neutral waters, it would be immaterial whether the neutral power is incapable of preventing such abuse of its waters or is actually unwilling to do so, since the naval commander will suffer the same harm whatever be the case. However, some writers have sought to impose a higher standard of restraint on belligerent self-help against enemy neutrality violations in cases where a neutral power is willing but ineffective neutrals, than in cases of unwilling neutrals, on the premise that the ineffective neutral, unlike the unwilling neutral, has discharged its duty by employing the "means at his disposal" in accordance with *Article 25) of the Hague Convention*, to prevent such violations (R. Tucker, **1**955), "to prevent an enemy from gaining a material advantage". However, in reality of the practical equivalence of the harm suffered in either event, the rationale behind the different standards may properly be questioned. Thus Official U.S. publications do not recognise such a distinction.

II. Convention on Maritime Neutrality at Havana 1928, in force: 1931

The Convention has only 29 Articles and was divided into four sections to include:

Section I - Freedom of commerce in time of war
Section II - Duties and rights of belligerents
Section III - Rights and duties of neutrals
Section IV - Fulfillment and observance of the laws of neutrality
For the convenience of the students and other readers, we deem it necessary to replicate the Articles of the Convention here:

Section I - Freedom of commerce in time of war
Article 1

The following rules shall govern commerce of war:

1. Warships of the belligerents have the right to stop and visit on the high seas and in territorial waters that are not neutral any merchant ship with the object of ascertaining its character and nationality and of verifying whether it conveys cargo prohibited by international law or has committed any violation of blockade. If the merchant ship does not heed the signal to stop, it may be pursued by the warship and stopped by force; outside of such a case the ship cannot be attacked unless, after being hailed, it fails to observe the instructions given it.

   The ship shall not be rendered incapable of navigation before the crew and passengers have been placed in safety.

2. Belligerent submarines are subject to the foregoing rules. If the submarine cannot capture the ship while observing these rules, it shall not have the right to continue to attack or to destroy the ship.

Article 2

Both the detention of the vessel and its crew for violation of neutrality shall be made in accordance with the procedure which best suits the state effecting it and at the expense of the transgressing ship. Said state, except in the case of grave fault on its Part, is not responsible for damages which the vessel may suffer.

Section II - Duties and rights of belligerents

Article 3

Belligerent states are obligated to refrain from performing acts of war in neutral waters or other acts which may constitute on the part of the state that tolerates them, a violation of neutrality.

Article 4

Under the terms of the preceding article, a belligerent state is forbidden:

a. To make use of neutral waters as a base of naval operations against the enemy, or to renew or augment military supplies or the armament of its ships, or to complete the equipment of the latter;

b. To install in neutral waters radio-telegraph stations or any other apparatus which may serve as a means of communication with its military forces, or to make use of installations of this kind it may have established before the war and which may not have been opened to the public.

Article 5

Belligerent warships are forbidden to remain in the ports or waters of a neutral state more than twenty-four hours. This provision will be communicated to the ship as soon as it arrives in port or

in the territorial waters, and if already there at the time of the declaration of war, as soon as the neutral state becomes aware of this declaration.

Vessels used exclusively for scientific, religious, or philanthropic purposes are exempted from the foregoing provisions.

A ship may extend its stay in port more than twenty-four hours in case of damage or bad conditions at sea, but must depart as soon as the cause of the delay has ceased.

When, according to the domestic law of the neutral state, the ship may not receive fuel until twenty-four hours after its arrival in port the Period of its stay may be extended an equal length of time.

Article 6

The ship which does not conform to the foregoing rules may be interned by order of the neutral government.

A ship shall be considered as interned from the moment it receives notice to that effect from the local neutral authority, even though a petition for reconsideration of the order has been interposed by the transgressing vessel, which shall remain under custody from the moment it receives the order.

Article 7

In the absence of a special provision of the local legislation, the maximum number of ships of war of a belligerent which may be in a neutral port at the same time shall be three.

Article 8

A ship of war may not depart from a neutral port within less than twenty-four hours after the departure of an enemy warship. The one entering first shall depart first, unless it is in such condition as to warrant extending its stay. In any case the ship which arrived later has the right to notify the other through the competent local authority that within twenty-four hours it will leave the port, the one first entering, however, having the right to depart within that time. If it leaves, the notifying ship must observe the interval which is above stipulated.

Article 9

Damaged belligerent ships shall not be permitted to make repairs in neutral ports beyond those that are essential to the continuance of the voyage and which in no degree constitute an increase in its military strength.

Damages which are found to have been produced by the enemy's fire shall in no case be repaired.

The neutral state shall ascertain the nature of the repairs to be made and will see that they are made as rapidly as possible.

Article 10

Belligerent warships may supply themselves with fuel and stores in neutral ports, under the conditions especially established by the local authority and in case there are no special provisions to that effect, they may supply themselves in the manner prescribed for provisioning in time of peace.

Article 11

Warships which obtain fuel in a neutral port cannot renew their supply in the same state until a period of three months has elapsed.

Article 12

Where the sojourn, supplying, and provisioning of belligerent ships in the ports and jurisdictional waters of neutrals are concerned, the provisions relative to ships of war shall apply equally:

1. To ordinary auxiliary ships;

2. To merchant ships transformed into warships, in accordance with Convention VII of The Hague of 1907.

   The neutral vessel shall be seized and in general subjected to the same treatment as enemy merchantmen:

   (a) When taking a direct part in the hostilities.

   (b) When at the orders or under direction of an agent placed on board by an enemy government;

   (c) When entirely freight-loaded by an enemy government;

   (d) When actually and exclusively destined for transporting enemy troops or for the transmission of information on behalf of the enemy.

   In the cases dealt with in this article, merchandise belonging to the owner of the vessel or ship shall also be liable to seizure.

3. To armed merchantmen.

Article 13

Auxiliary ships of belligerents, converted anew into merchantmen, shall be admitted as such in neutral ports subject to the following conditions:

1. That the transformed vessel has not violated the neutrality of the country where it arrives;

2. That the transformation has been made in the ports or jurisdictional waters of the country to which the vessel belongs, or in the ports of its allies;

3. That the transformation be genuine, namely, that the vessel shows neither in its crew nor in its equipment that it can serve the armed fleet of its country as an auxiliary, as it did before.

4. That the government of the country to which the ship belongs communicate to the states the names of auxiliary craft which have lost such character in order to recover that of merchantmen; and

5. That the same government obligate itself that said ships shall not again be used as auxiliaries to the war fleet.

Article 14

The airships of belligerents shall not fly above the territorial waters of neutrals if it is not in conformity with the regulations of the latter.

Section III - Rights and duties of neutrals

Article 15

Of the acts of assistance coming from the neutral states, and the acts of commerce on the part of individuals, only the first are contrary to neutrality.

Article 16

The neutral state is forbidden:

a. To deliver to the belligerent, directly or indirectly, or for any reason whatever, ships of war, munitions or any other war material;

b. To grant it loans, or to open credits for it during the duration of war.

   Credits that a neutral state may give to facilitate the sale or exportation of its food products and raw materials are not included in this prohibition.

Article 17

Prizes cannot be taken to a neutral port except in case of unseaworthiness, stress of weather, or want of fuel or provisions. When the cause has disappeared, the prizes must leave immediately; if none of the indicated conditions exist, the state shall suggest to them that they depart, and if not obeyed shall have recourse to the means at its disposal to disarm them with their officers and crew, or to intern the prize crew placed on board by the captor.

Article 18

Outside of the cases provided for in Article 17, the neutral state must release the prizes which may have been brought into its territorial waters.

Article 19

When a ship transporting merchandise is to be interned in a neutral state, cargo intended for said country shall be unloaded and that destined for others shall be transshipped.

Article 20

The merchantman supplied with fuel or other stores in a neutral state which repeatedly delivers the whole or part of its supplies to a belligerent vessel, shall not again receive stores and fuel in the same state.

Article 21

Should it be found that a merchantman flying a belligerent flag, by its preparations or other circumstances, can supply to warships of a state the stores which they need, the local authority may refuse it supplies or demand of the agent of the company a guaranty that the said ship will not aid or assist any belligerent vessel.

Article 22

Neutral states are not obligated to prevent the export or transit at the expense of any one of the belligerents of arms, munitions and in general of anything which may be useful to their military forces.

Transit shall be permitted when, in the event of a war between two American nations, one of the belligerents is a Mediterranean country, having no other means of supplying itself, provided the vital interests of the country through which transit is requested do not suffer by the granting thereof.

Article 23

Neutral states shall not oppose the voluntary departure of nationals of belligerent states even though they leave simultaneously in great numbers; but they may oppose the voluntary departure of their own nationals going to enlist in the armed forces.

Article 24

The use by the belligerents of the means of communication of neutral states or which cross or touch their territory is subject to the measures dictated by the local authority.

Article 25

If as the result of naval operations beyond the territorial waters of neutral states there should be dead or wounded on board belligerent vessels, said states may send hospital ships under the vigilance of the neutral government to the scene of the disaster. These ships shall enjoy complete immunity during the discharge of their mission.

Article 26

Neutral states are bound to exert all the vigilance within their power in order to prevent in their ports or territorial waters any violation of the foregoing provisions.

Section IV - Fulfillment and observance of the laws of neutrality

Article 27

A belligerent shall indemnify the damage caused by its violation of the foregoing provisions. It shall likewise be responsible for the acts of persons who may belong to its armed forces.

Article 28

The present Convention does not affect obligations previously undertaken by the Contracting Parties through international agreements.

Article 29

After being signed, the present Convention shall be submitted to the ratification of the Signatory States. The Government of Cuba is charged with transmitting authentic certified copies to the governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, the Union to notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications. This Convention shall remain open to the adherents of non-Signatory States.

2.5 The San Remo Manual on International Law Applicable to Armed Conflicts at Sea of June 1994

The Manual was adopted by the International Institute of Humanitarian Law in June 1994 sequel to a series of round table discussions that took place between 1988 and 1994 by diplomats and naval and legal experts. It is "the only comprehensive international instrument that has been drafted on the law of naval warfare since 1913. The manual is a legally recognized document although not yet binding on states. It is a codification of customary international law, an integration of existing legal standards for naval conflict with the Geneva Conventions of 1949 and Protocol I of 1977. The Manual is divided into six parts with each part discussing a different section of the law.

Article 28 of the Manual provides that belligerent and neutral surface ships, submarines and aircraft have the rights of transit passage and archipelagic sea lanes passage through, under, and over all straits and archipelagic waters to which these rights generally apply. Neutral States may not suspend, hamper, or otherwise impede the rights of transit passage, nor the right of archipelagic sea lanes passage in accordance with *Article 29* of the Manual.

In all, the rule under *Article 30* of the Manual is germane here. It states that "a belligerent in transit passage through, under and over a neutral international strait, or in archipelagic sea lanes passage through, under and over neutral archipelagic waters, is required to proceed without delay, to refrain from the threat or use of force against the territorial integrity or political independence of the neutral littoral or archipelagic State, or in any other manner inconsistent with the purposes of the Charter of the United Nations, and otherwise to refrain from any hostile actions or other activities not incident to their transit. Belligerents passing through, under and over neutral straits or waters in which the right of archipelagic sea lanes passage applies are permitted to take defensive measures consistent with their security, including launching and recovery of aircraft, screen formation steaming, and acoustic and electronic surveillance. Belligerents in transit or archipelagic sea lanes passage may not, however, conduct offensive operations against enemy forces, nor use such neutral waters as a place of sanctuary or as a base of operations".

2.6 Summary

The rules of maritime neutrality concern international rules which tend to regulate or govern the activities of belligerents and neutral States during international armed conflict. The rule has not developed in pace with the development of international law. This is because, as we noted above, since 1913, the most comprehensive codification on this rule

is the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* which was adopted in June 1994 but not yet binding on States. In this unit, we discussed the rule of maritime neutrality especially as provided in The Hague Convention of 1907, Convention on Maritime Neutrality of 1928 and the San Remo Manual on International Law Applicable to Armed Conflicts at Sea of 1994.

2.7 References/Further Readings/Web Resources

1. James Farrant, "Modern Maritime Neutrality Law" (2014) *International Law Studies*, Vol. 9**0**

2. Maja Sersic, Neutrality in international Armed Conflicts At Sea

3. Harlow, Bruce A. "The Law of Neutrality at Sea for the 80's and Beyond"(1984) *Pacific Basin Law Journal*, 3(1-2)

4. Salah El-Din Amer, *San Remo Manual on International Law Applicable to Armed Conflicts at Sea, adopted in June 1994, Explanation, in Louise Doswald-Back., p. 95.*

5. Wolff Heintschel von Heinegg, "The Law of Naval Warfare and International Straits" (1998) *International Law Studies*, Vol. 71

2.8 Possible Answer to Self-Assessment Exercise

1. The rule of impartiality is one of the cardinal principles of the maritime neutrality. *Article 8* of the *Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War* 1907 demands that a neutral power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes. There is an exception where a belligerent vessel has failed to conform to its orders and regulations made by it, or has violated neutrality.

2. i. When attacked while in neutral waters, or

ii. When attacked from neutral waters or airspace

3. The manual is the legally recognized document with regard to maritime neutrality although not yet binding on states. It is a codification of customary international law, an integration of existing legal standards for naval conflict with the Geneva Conventions of 1949 and Protocol I of 1977.

Module 6: INTERNATIONAL MARITIME ORGANISATION (IMO)

Introduction

The International Maritime Organization (IMO) is a specialized agency of the United Nations charged with the responsibility for ensuring improved standards for safety and security of international shipping, created to develop international conventions and other mechanisms on maritime safety, to discourage discriminatory and restrictive practices in international trade and unfair practices by shipping concerns; and to prevent or reduce maritime pollution. It oversees every aspect of global shipping regulations, including legal issues and shipping efficiency.

Unit 1: Functions of the IMO

1.1 Introduction

Due to the persistent limitations regarding international cooperation in maritime matters, the international community felt the need for an international organization that would develop and coordinate international maritime cooperation. This need was expressed by President Woodrow Wilson of the United States, who solicited for "universal association of the nations to maintain the inviolate security of the highway of the seas for the common and unhindered use of all the nations of the world." However, the establishment of such international organization was not realised, till after the creation of the United Nations.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Know the brief history of the IMO
ii. Gain the knowledge of its functions, and
iii. Activities of the Organisation

1.3 Historical Background of IMO

Since ancient times, the concept of freedom of the seas has too often been a theoretical ideal rather than a reality. In each historic era, the great maritime nations have tended to use their naval prowess to dominate parts of the sea. Some of those nations, while serving their own interests, served the world as a whole, in terms of the discovery and explorations

of continents unknown hitherto. Many sought to use the waters for purely national interests, especially as it relates to matters affecting straits and other narrow waterways. Private shipping interests, often supported by their national governments, have been even more competitive, and international cooperation in maritime matters has been evasive. The general belief has been that the best way to improve safety at sea is by developing international regulations to guide shipping industry and from the mid-19th century a number of such treaties were adopted. There were calls for the establishment of a permanent international body to carter for the promotion of maritime safety in more effective manners. However, this was not until the establishment of the United Nations itself that these hopes were realized. In 1948 an international conference in Geneva adopted a convention formally establishing International Maritime Organisation (IMO) which was originally named the *Inter-Governmental Maritime Consultative Organization*, (IMCO). The name was changed in 1982 to IMO).

The convention establishing the International Maritime Organization originally called the *Inter-Governmental Maritime Consultative Organization* was drawn up in 1948 by the UN Maritime Conference in Geneva, though the convention only came into effect after ten years. The conference concluded that the International Maritime Organisation's success would depend on participation by most of the nations with large merchant navies, and it decided that the organization would come into being only when 21 states, including seven having at least 1 million gross tons of shipping each, had become parties to the convention. On 17 March 1958, the convention came into effect. The first IMO Assembly met in London in January 1959. The relationship of the IMO to the UN as a specialized agency was approved by the UN General Assembly on 18 November 1958 and by the IMO Assembly on 13 January 1959.

Self-Assessment Exercise

1. The foremost object of IMO is to achieve safety of life at sea but another problem latter emerged.
2. What two words can be used to summarise the functions of IMO as set forth in the convention establishing it?
3. What action did IMO take to tackle maritime pollution issues?

1.4 Purpose/Functions of the IMO

The purposes of the Organization, as contained in *Article 1(a)* of the establishing Convention, are:

> *to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships.*

The functions of the IMO as set forth in its convention are "consultative and advisory" and the organization is vested with the authority to deal with administrative and legal matters related to these purposes.

The purposes of the IMO, as set out in the convention, are as follows:

i.to develop and maintain a thorough regulatory framework for shipping

ii.to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation, and the prevention and control of marine pollution;

iii.to facilitate cooperation among governments on technical matters of all kinds affecting shipping engaged in international trade;

iv.to consider any matters concerning shipping that may be referred to the IMO by any UN organ or specialized agency.

v.to consider matters concerning unfair restrictive practices by shipping concerns; and

vi.to encourage the removal of discriminatory action and unnecessary restrictions by governments engaged in international trade, so as to promote the availability of shipping services to world commerce without discrimination;

1.5 Activities of the IMO

The foremost task of the International Maritime Organisation was to adopt a new version of the International Convention for the Safety of Life at Sea (SOLAS), the most important of all treaties dealing with maritime safety. This was achieved in 1960 and IMO then focused its attention to such matters as the facilitation of international maritime traffic, load lines and the carriage of dangerous goods, while the system of measuring the tonnage of ships was revised.

-But although safety of life at sea was and still IMO's foremost responsibility, new problem created by pollution began to gain attention in the activity of IMO. The continuous increase in the amount of oil being transported by sea and in the size of oil tankers was of particular concern and the **SS Torrey Canyon Oil Spill of 1967** with attendant disaster, in which 120,000 tonnes of oil was spilled, demonstrated the scale of the menace the new maritime issue presented.

-Following the incidence, IMO within the next few years introduced a series of measures designed to prevent tanker accidents and to reduce their consequences. It also tackled the environmental threat caused by routine operations such as the *cleaning of oil cargo tanks* and the *disposal of engine room wastes* - in tonnage terms a bigger menace than accidental pollution.

-As a measure to tackle maritime pollution issues, IMO established the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). The Convention and its Protocol cover not only accidental and operational oil pollution but also pollution by chemicals, goods in packaged form, sewage, garbage and air pollution.

-IMO also undertook the task of establishing a system for providing compensation to those who had suffered financial loss resulting from pollution. To this end, two treaties were adopted: the *1969 Civil Liability Convention,* and that of 1971, which enabled victims of oil pollution to obtain compensation in a simpler and quicker manner than had been the case in the past. Both treaties were amended in 1992, and again in 2000, to increase the limits of compensation payable to victims of pollution.

-A global search and rescue system was also initiated under the auspices of IMO in 1970s, with the establishment of the *International Mobile Satellite Organization* (IMSO), which has greatly improved the provision of radio and other messages to ships.

-The *Global Maritime Distress and Safety System* (GMDSS) was equally adopted in 1988 and began to be phased in from 1992. In February 1999, the GMDSS became fully operational, so that at present, a ship that is in distress anywhere in the world can be virtually guaranteed assistance, even if the ship's crews do not have time to radio for help, as the message will be transmitted automatically.

On 1 July 1998 the International Safety Management Code entered into force and became applicable to passenger ships, oil and chemical tankers, bulk carriers, gas carriers and cargo high speed craft of 500 gross tonnage and above. It became applicable to other cargo ships and mobile offshore drilling units of 500 gross tonnage and above from 1 July 2002.

-On 1 February 1997, the 1995 amendments to the *International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978* entered into force. These greatly improved seafarer standards and, for the first time, IMO arrogated to itself the powers to check Government actions with Parties required to submit information to IMO as it concerns their compliance with the Convention. A major revision of the STCW Convention and Code was completed in 2010 with the adoption of the "Manila amendments to the STCW Convention and Code".

-Several new conventions relating to the marine environment were adopted in the 2000s, including one on *anti-fouling systems* (AFS 2001), another on *ballast water management* to prevent the invasion of alien species (BWM 2004) and another on ship recycling (Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009).

-During the 2000s there was a new focus on maritime security, with the entry into force in July 2004 of a new, comprehensive security regime for international shipping, which includes the *International Ship and Port Facility Security* (ISPS) Code, made mandatory under amendments to SOLAS adopted in 2002.

-In 2005, IMO adopted amendments to the Convention for the *Suppression of Unlawful Acts* (SUA) Against the Safety of Maritime Navigation, 1988 and its related Protocol (the 2005 SUA Protocols), which introduced *inter alia*, the right of a State Party desires to board a ship flying the flag of another State Party when the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in the commission of an offence under the Convention.

1.6 Summary

The International Maritime Organization is the United Nations specialized agency saddled with the responsibility for ensuring the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. To achieve this aim, the Organisation has undertaken several activities by which many international treaties have been adopted under its auspices. The creation of the IMO was aimed at enhancing the international cooperation in the international maritime trade and entire shipping sector. In this unit, we discussed the international maritime Organisation, its history, purpose/function and activities.

1.7 References/Further Readings/Web Resources

1. *https://www.nationsencyclopedia.com/United-Nations-Related-Agencies/The-International-Maritime-Organization-IMO-ACTIVITIES.html#ixzz6R7RxB7FD*
2. Kitack Lim, "The Role of the International Maritime Organization in Preventing the Pollution of the World's Oceans from Ships and Shipping", (2017) UN Chronicle, Vol. 1
3. Leepakshi Rajpal, International Maritime Organisation & Its Importance, (2017)

1.8 Possible Answer to Self-Assessment Exercise

1. Although safety of life at sea was initially the IMO's foremost responsibility, new problem created by pollution eventually gained serious attention in the activity of IMO. The continuous increase in the amount of oil being transported by sea and in the size of oil tankers became of particular concern especially with the event of **SS Torrey Canyon Oil Spill of 1967** with attendant disaster.
2. *Consultative* and *Advisory*
3. As a measure to tackle pollution problems:
   i. IMO established the *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the Protocol of 1978 which regulate both accidental and operational oil pollution as well as pollution by chemicals, goods in packaged form, sewage, garbage and air pollution.

   ii. It also established a system for providing compensation to those who had suffered financial loss resulting from pollution by adopting the *1969 Civil Liability Convention*, and that of 1971.

Unit 2: Organisation and Jurisdiction of the IMO

2.1 Introduction

agency for the maritime industry with an international mandate for securing safer shipping and cleaner oceans. The Organisation pursues that mandate by adopting international maritime rules and standards as are contained in the various Conventions which are then implemented and enforced by Governments in the exercise of flag, port and coastal State jurisdiction. These set rules and standards are recognised and accepted by Governments and the global shipping industry because they provide a uniform and universal framework governing maritime affairs.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Gain knowledge concerning the structure of the IMO
ii. Appreciate the jurisdictional scope of the IMO

2.3 International Maritime Organisational structure

The International Maritime Organization's structure consists of an Assembly, a Council and five main Committees including the Maritime Safety Committee; the Marine Environment Protection Committee; the Legal Committee; the Technical Cooperation Committee and the Facilitation Committee and a number of Sub-Committees that offer support to the work of the main technical committees. We intend to give a brief summary of the IMO structure here.

Self-Assessment Exercise

1. What is the place of the *council* in the organizational structure of the IMO
2. As a member of the Council, identify the Category to which Spain currently belongs.
3. Briefly and summarily state the reason for the creation of International Maritime Organisation.

The Assembly is the highest governing body of the Organisation, composed of all the Member States. The Assembly determines the work programme and votes on the budget to which all members contribute and determining the financial arrangements of the Organization. It meets once every two years in regular sessions, but may also convene an extraordinary session if necessary. The Assembly also elects the Council.

b. *Council*

The Council is the Executive Organ of IMO and is responsible, under the Assembly, for supervising the work of the Organization. Between sessions of the Assembly, the Council performs all functions of the organization except that of recommending the adoption of maritime safety regulations which is a prerogative of the Maritime Safety Committee pursuant to *Article 15 (j) of the convention*. The Council also has an important policymaking role. Draft of international instruments and formal recommendations must be approved by the Council before they can be submitted to the Assembly.

Council also performs the following functions:

(i) harmonise the activities of other organs of the Organization;
(ii) consider the draft work programme and budget estimates of the Organization and submit them to the Assembly;
(iii) receive reports and proposals of the Committees and other organs and submit them to the Assembly and Member States, with comments and recommendations as appropriate;
(iv) appoint the Secretary-General, subject to the approval of the Assembly;
(v) conclude agreements or arrangements concerning the relationship of the Organization with other organizations, subject to approval by the Assembly.

2.4 Council members for the 2020-2021 biennium

Category (a) *10 States with the largest interest in providing international shipping services:*

China, Greece, Italy, Japan, Norway, Panama, Republic of Korea, Russian Federation, United Kingdom, United States.

Category (b) *10 States with the largest interest in international seaborne trade:*

Argentina, Australia, Brazil, Canada, France, Germany, India, the Netherlands, Spain and the United Arab Emirates.

Category (c) *20 States not elected under (a) or (b) above, which have special interests in maritime transport or navigation and whose election to the Council will ensure the representation of all major geographic areas of the world:*

Bahamas, Belgium, Chile, Cyprus, Denmark, Egypt, Indonesia, Jamaica, Kenya, Kuwait, Malaysia, Malta, Mexico, Morocco, Peru, the Philippines, Singapore, South Africa, Thailand and Turkey.

c. ***Maritime Safety Committee (MSC)***

The MSC is the highest technical body of the Organization and comprises all Member States. The functions of the Maritime Safety Committee include the consideration of *any matter within the scope of the Organization concerned with aids to navigation, construction and equipment of vessels, manning from a safety standpoint, rules for the prevention of collisions, handling of dangerous cargoes, maritime safety procedures and requirements, hydrographic information, log-books and navigational records, marine casualty investigations, salvage and rescue and any other matters directly affecting maritime safety.*

The Committee is also required to provide machinery for performing any duties assigned to it by the IMO Convention or any duty within its scope of work which may be assigned to it by or under any international instrument and accepted by the Organization. It is saddled with the responsibility for considering and submitting recommendations and guidelines on safety for possible adoption by the Assembly.

The expanded MSC embraces amendments to conventions such as SOLAS and includes all Member States as well as those countries which are Party to conventions such as SOLAS even if they are not IMO Member States

d. ***The Marine Environment Protection Committee (MEPC)***

The Committee comprises all Member States and has the power to consider any matter within the scope of the Organization as it relates to the prevention and control of pollution from ships. Its particular concern is in the adoption and amendment of conventions and other regulations and measures to ensure their enforcement.

e. ***Legal Committee***

The Legal Committee considers any legal matters within the scope of the Organization. The Committee consists of all Member States of IMO. It was established in 1967 as a subsidiary body to deal with legal questions which arose in the aftermath of the **Torrey Canyon** oil spill disaster.

The Legal Committee also has the power to undertake and perform any duties within its scope which may be assigned by or under any other international instrument and accepted by IMO.

f. *Technical Cooperation Committee*

The Technical Cooperation Committee is empowered to consider any matter within the scope of the Organization concerned with the implementation of technical cooperation projects for which the Organization acts as the executing or cooperating agency and any other matters related to the Organization's activities in the technical cooperation field.

g. *Facilitation Committee*

The Committee was created as a subsidiary body of the Council in May 1972, and became fully institutionalised in December 2008 following an amendment to the IMO Convention. It comprises all the Member States of the Organization and deals with IMO's work relating to the elimination of unnecessary formalities and "red tape" in international shipping by implementing all aspects of the Convention on Facilitation of International Maritime Traffic 1965 and any matter within the scope of the Organization concerned with the facilitation of international maritime traffic. Lately, the Committee's work, in accordance with the wishes of the Assembly, has been to ensure a regular maintenance of the right balance between maritime security and the facilitation of international maritime trade.

h. *Secretariat*

The Secretariat of IMO consists of the Secretary-General and some 300 international personnel based at the headquarters of the Organization in London.

Sub-Committees

The work of the MSC and MEPC are supported by a number of sub-committees which are also open to all Member States. These sub-committees are:

Sub-Committee on Human Element, Training and Watch-keeping (HTW);

Sub-Committee on Implementation of IMO Instruments (III);

Sub-Committee on Navigation, Communications and Search and Rescue (NCSR);

Sub-Committee on Pollution Prevention and Response (PPR);

Sub-Committee on Ship Design and Construction (SDC);

Sub-Committee on Ship Systems and Equipment (SSE); and

Sub-Committee on Carriage of Cargoes and Containers (CCC)

2.5 IMO's Jurisdiction/Mandate

Shipping industry is truly an international industry. This is because over 90% of the world's trade is by cargo transportation and other merchant ships that move round the continents cleanly and cost-effectively. These ships spend most of their times at sea between various jurisdictions so that any particular ship can be governed by a management chain that spans many nation states. As a result of this, the international community felt the need at the beginning of the 20th century for the creation of a universal governing body that would lay down rules and standards to regulate the shipping operations and the industry globally. That is why the International maritime organization was established.

The jurisdiction of the organization is not quite distinct from its roles or functions which can be manifested in the various international conventions adopted under its auspices. The Organisation has the jurisdiction to undertake several roles. Its jurisdiction covers the power to:

a. set up safety standards for ships and other vessels including design, construction and materials for the member states to abide by,
b. maintain and ensure adherence to the established treaties of safety and security at sea,
c. facilitate technical co-operation among Member States,
d. set up an audition and monitoring scheme for these rules,
e. set up standards and monitoring liabilities and compensation in case of violation of any of the regulations.
f. organize events and awards to increase awareness about the maritime industry and recognise those who have made a significant contribution
g. engage in Port State Control (PSC) for the promotion of effective enforcement by flag States of internationally agreed safety, labour and pollution standards, as well as maritime security regulations including the integration and harmonization of port State control activities.

2.6 Summary

The international Maritime Organisation as a specialized agency of the United Nations is the global standard-setting authority for the safety, security and environmental

performance of international shipping industry. Its mandate revolves around the establishment of a regulatory framework for the shipping industry that is fair and effective, universally adopted and internationally implemented. In this unit, we discussed the IMO, its structure and jurisdiction/mandate

2.7 References/Further Readings/Web Resources

1. Rosalie P. Balkin, "The IMO and Global Ocean Governance: Past, Present, and Future" (July 2018) *Oxford Public International Law.*

2. Heike Hopper, 'Port State Control: An Update on IMO's Work' (2000) *1 IMO News.*

3. Reynolds, George S., "The regulation of international shipping: systematic issues facing states in the administration of maritime affairs and the eradication of substandard shipping" (2000). *World Maritime University Dissertations.* 84.

2.8 Possible Answer to Self-Assessment Exercise

1. The *Council* is the Executive Organ of IMO and is responsible, under the Assembly, for the supervision of the work of the Organization.

2. Spain belongs to *Category (b) being among 10 States with the largest interest in international seaborne trade under* the 2020-2021 biennium Council membership.

3. Ships spend most of their times at seas among various jurisdictions so that any particular ship can be governed by a management chain that spans many nation states. This makes shipping industry truly an international industry. As a result of this, the international community felt the need at the beginning of the 20th century for the creation of a universal governing body that would lay down uniform rules and standards to regulate the shipping operations and the industry globally. That led to the creation of the ***International maritime organization***.

Module 7: SETTLEMENT OF DISPUTES

Introduction

Disputes are an inevitable outcome of international relations and it is apparent today that, among international disputes, territorial and territorial-related disputes are the most complicated ones constituting the primary source of the increasing tension in State relations. Territorial disputes may degenerate to armed conflicts when they are not settled peacefully. However, the 1982 United Nations Convention on the Law of the Sea which regulates virtually all aspects of the law of the sea and ocean affairs contain detailed and complex provisions in relation to settlement of disputes arising from the sea. The United Nations Charter Particularly *Articles 1* and *2* requires all States to settle their international disputes by peaceful means in such a manner that international peace and security are not endangered. The *United Nations Convention on the Law of the Sea* therefore builds on this commitment by providing a compulsory and binding framework for the peaceful settlement of all related disputes.

Unit 1: Dispute Settlement Mechanisms under the Law of the Sea

1.1 Introduction

The 1982 United Nations Convention on the Law of the Sea has established a dispute settlement system aimed at promoting compliance with its provisions and to ensure that disputes are settled by peaceful means in accordance with the Charter of the United Nations. The system applies to disputes between States and, with respect to deep seabed mining, to disputes between States or miners and the Authority. States are under obligation to settle any dispute between them concerning the interpretation or application of the United Nations Convention on the Law of the Sea by peaceful means in accordance with Article 2, paragraph 3, of the United Nations Charter and, to achieve this, they are advised to seek a solution by the means indicated in Article 33, paragraph 1, of the UN Charter. It should be noted that where the parties to a dispute fail to reach a settlement by peaceful means of their own choice within a reasonable period of time, they should as a matter of obligation resort to the compulsory dispute settlement procedures provided under the Convention which lead to binding decisions, though subject to certain limitations and exceptions.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. discuss the various modes of settlement of sea dispute.

1.3 Mechanisms for Dispute Settlement

Part XV of the United Nations Convention on the Law of the Sea introduced a very innovative system for the settlement of disputes. *Section 1* provides non-compulsory dispute procedures and encourages States to adopt negotiations, mediation, or conciliation in the attempt to settle their disputes. If these methods fail to solve the dispute, *Section 2* sets forth the compulsory dispute procedures which include the *International Tribunal for the Law of the Sea* (ITLOS) under Annex VI, the *International Court of Justice* (ICJ), the creation of an Arbitral Tribunal under Annex VII, and the creation of a Special Arbitral Tribunal formed as a panel of experts, not necessarily lawyers, to deal with a dispute arising out of a particular area such as fisheries, marine environment, scientific research, navigation and so on.

The mechanisms for settlement of dispute under the Convention include the following:

i. Negotiation
ii. Mediation
iii. Conciliation
iv. Arbitration
v. Judicial Settlement
vi. Commission on Continental Shelf

i. Negotiation

Negotiation is a process where two parties in a dispute through discussion between themselves reach a settlement on terms they agree on as favourable to both of them. Negotiations are reached through discussions made between the parties or their representatives without an involvement of the third party. It is the most important and peaceful means to settle any bilateral or multilateral dispute including maritime boundary delimitation disputes.

Negotiation is specifically provided for by the UNCLOS and, several factors including,

a. the detailed rules under the Convention,
b. the growing interest in exploiting resources of the sea, and
c. the threat of compulsory dispute settlement mechanisms with binding outcome have encouraged States to enter into negotiations in settlement of their disputes.

Article 283 of the Convention provides that:

> 1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
> 2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement

Negotiations sometimes lead to the resolution of the dispute in the form of a treaty or to other forms of dispute resolution mechanisms. Negotiation is by far the method of dispute settlement preferred by States and other avenues are considered only when negotiations fail. Although, negotiations may not always be successful, studies have however reported that out of 16 negotiations from 1994 to 2012, many were successful, including the 2003 Negotiation between *Azerbaijan, Kazakhstan* and the *Russian Federation,* the 2004 Negotiation between *Australia* and *New Zealand,* the 2008 *Mauritius-Seychelles* EEZ Delimitation Treaty.

Self-Assessment Exercise

1. Identify the relation between the UN Charter and the UNCLOS regarding dispute settlement.
2. How can conciliation be differentiated from arbitration?
3. List the type of cases the ITLOS has jurisdiction to hear.
4. Succinctly explain the composition of the ICJ

Advantages of Negotiations over Compulsory Dispute Settlement Mechanisms

In the context of boundary delimitation, there are some considerable advantages in pursuing negotiation.

a. During negotiations, the parties are actually in control of the processes

b. The parties retain control over a series of important issues including the precise result of the boundaries delimited, the way the line is being defined, the terms and the timing of the agreement and the way the agreement is presented to the public.
c. Negotiation is preferred to litigation because litigation always carries risks for the parties and that the range of legal findings available to the tribunal is more restricted than the range of options open to the negotiators.
d. When appearing before a tribunal applying international law, the parties operate within a specific frame which lacks flexibility and leaves little room for creativity and tends to favor always one side while failing to consider the interests of all actors.
e. Negotiation enables the parties pursue a process of joint development in the maritime space and are able to set aside the legal dispute to focus on practical measures to secure each party's underlying objective, particularly where each party wishes to pursue different types of exploitation.
f. Parties are free to accept or reject the outcome of negotiations

iii. Mediation

Mediation is an informal, but structured settlement procedure by which neutral third party known as mediator, assists the parties in dispute to reach a consensus on their own. *A mediator is employed to facilitate and assist parties in reaching an amicable dispute settlement. The role of the mediator is therefore to help the parties in reaching a negotiated agreement. Unlike an arbitrator, the mediator is not a decision-maker. Unlike negotiation,* States rarely resort to mediation or good offices. For example, the Organisation of American States (OAS) Mediation in 2015 on *Belize-Guatemala* Border Dispute has not resolved the dispute and has led the parties to taking the matter before the International Court of Justice.

Advantages of mediation as conflict resolution mechanism include the following:

a. The process is non-adversarial
b. It is less expensive
c. It assures confidentiality, neutrality and impartiality
d. It is faster
e. It is very flexible

iv. Conciliation

In the Convention's dispute settlement system, conciliation features as a first resort means of settlement as well as a final resort or residual resort means (S. Yee, 2013). Conciliation is an alternative dispute resolution (ADR) mechanism whereby the parties to a dispute use

a neutral third party known as *conciliator*, who meets with the parties both separately and together in an attempt to resolve their dispute.

International conciliation is defined as the diplomatic mode of dispute settlement in which the third party conciliator or conciliation commission has the most pronounced effect on the process (L C Reif, 1990).

It is an *intervention in the settlement of an international dispute by a body having no political authority of its own, but enjoying the confidence of the parties to the dispute and entrusted with the task of investigating every aspect of the dispute and of proposing a solution which is not binding on the parties* (J. COT 1968).

Like mediation, conciliation is a voluntary, flexible, confidential, and interest based process. The parties seek to settle their dispute amicably with the assistance of the conciliator, who acts as a neutral third party. Conciliators can achieve their aims by calming down tensions, improving communications, interpreting issues, encouraging parties to explore potential solutions and assisting them in finding a mutually acceptable outcome.

One cardinal feature of conciliation is the non-binding character of the conciliator's recommendations. The recommendations are not binding on the parties to the dispute because they are ultimately free to accept or reject the recommendations. However, if a settlement agreement is made between the parties based on any recommendations given by the conciliator such agreement in and of itself is binding on the parties. Conciliation is different from arbitration in that the conciliation process, of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

Conciliation still differs from mediation in that in conciliation, the parties are often in need of restoring or repairing a relationship, either personal or business.

The United Nations Convention on the Law of the Sea provides for conciliation as a means of dispute settlement by State parties. *Article 284* of the Convention provides that:

> 1. A State Party which is a party to a dispute concerning the interpretation or application of this Convention may invite the other party or parties to submit the dispute to conciliation in accordance with the procedure under Annex V, section 1, or another conciliation procedure.

2. If the invitation is accepted and if the parties agree upon the conciliation procedure to be applied, any party may submit the dispute to that procedure.

3. If the invitation is not accepted or the parties do not agree upon the procedure, the conciliation proceedings shall be deemed to be terminated.

4. Unless the parties otherwise agree, when a dispute has been submitted to conciliation, the proceedings may be terminated only in accordance with the agreed conciliation procedure

In essence however, States are not inclined to use conciliation because once they decide to give up control over the dispute and allow for a formal decision by a third party body, they usually opt for an ultimate binding decision making body. Since there is not much to gain from a process which looks a lot like arbitration without the guarantee of legal certainty flowing from the issuance of an arbitral award. Also, States would also prefer to lose arbitration, and have grounds to set aside the award rather than lose a conciliation and are left with no legal basis to set the result aside.

Consequently, the conciliation procedure provided for in *Part 15* of the United Nations Convention on the Law of the Sea is almost redundant. The 1981 *Iceland/Norway* Continental Shelf Dispute Regarding *Jay Mayen Island* is one of the few conciliation proceedings ever documented.

v. Arbitration

The maritime sector is internationally recognized as one of the most economically viable industry capable of facilitating a global sustainable development. As a result, amicable settlement of maritime disputes is paramount to guarantee a kind of robust trade and commerce environment. Arbitration as an age-long Alternative Dispute Resolution (ADR) mechanism applied in the amicable settlement of disputes in a relaxed and semi-formal manner can therefore be apt in the resolution of sea disputes. It is particularly suitable for resolving commercial disputes because of the enforceability of arbitral awards as shown by the existing international arbitral jurisprudence. Various law of the Sea tribunals such as the *International Tribunal for the Law of the Sea* (ITLOS) or an *ad hoc* panels expressly recognizes arbitration as one of the models for settlement of disputes as a suitable alternative to litigation (E O Babatunde, 2019).

Arbitration as dispute settlement mechanism is usually adopted by parties to a dispute when they reach an impasse during negotiations but there is serious need to resolve the dispute

to enable them exploit the resources in the disputed zone. At this stage, they will resort to compulsory dispute procedure provided for in the Convention. Some countries, such as Nicaragua, are very familiar with the process and have appeared on several occasions before the ICJ in pursuance of settlement of maritime dispute. The more familiar States become with the process, the more likely they are to prefer compulsory Law of the Sea dispute resolution in the future.

Arbitration has become the most popular means of settling maritime disputes since 1994 when the Convention came into force. Under Annex VII of The UNCLOS, the arbitral tribunals are composed of five arbitrators and each party to the dispute appoints an arbitrator and they jointly appoint the remaining three. In the event that it is needed, the President of ITLOS serves as the appointing authority. The arbitral tribunal decides on its own procedures and this allows for a lot of flexibility (Aceris Law, 2015).

Under *section 2* of the Convention which deals with compulsory procedures entailing binding decisions, the Convention provides particularly in *Articles 286* and *287 t*hat:

> Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

Article 287 gives the parties choice of procedure and states that:

> **1.** When signing, ratifying or acceding to this Convention or at anytime thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:
>
> (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
>
> (b) the International Court of Justice;
>
> (c) an arbitral tribunal constituted in accordance with Annex VII;

(d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

2. A declaration made under paragraph 1 shall not affect or be affected by the obligation of a State Party to accept the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea to the extent and in the manner provided for in Part XI, section 5.

Many coastal States have settled their long-standing maritime boundary delimitation disputes adopting arbitration as a means of the settlement. Some of such examples of States which have settled their maritime disputes successfully through arbitration include:

Argentine v. Ghana *"ARA Libertad Arbitration"*

Australia and New Zealand v. Japan *"southern Bluefin Tuna Arbitration"*

Barbados v. Trinidad and Tobago Maritime Delimitation Arbitration

Ireland v. UK *"Mox Plant Arbitration"*

Malaysia v. Singapore *"Land Reclamation Arbitration"*

Guyana v. Suriname Maritime Delimitation Arbitration

Bangladesh v. India *"Bay of Bengal Maritime Boundary Arbitration"*

Mauritius v. UK *"Chagos Archipelago Arbitration"*

Philippines v. China *"South china / West Philippines Sea Arbitration"*

Malta v. Sao Tome and Principe *"Duzgit Integrity Arbitration"*

- Netherlands v. Russian Federation *"Arctic sunrise Arbitration"*
- Denmark in respect of the Faroe Islands v. European Union *"Atlanto-Scandian Herring Arbitration"* (Aceris Law, 2015).

The 1982 Convention on the Law of the Sea does not, by itself, seek to address issues of States sovereignty over territory. Therefore, while analysing the Annex VII arbitrations, it

is good to note that jurisdictional issues do arise whenever the tribunals are called upon to rule on what State has sovereignty over a specific territory.

Take for instance, in the *Chagos Archipelago Arbitration*, Mauritius claimed that the UK administration of the Archipelago was unlawful and that Mauritius territory should include the Chagos Archipelago. When Mauritius brought the proceeding in 2010, it tried to frame it in a way that only indirectly touched sovereignty issues. However, in March 2015, the tribunal found that it lacked jurisdiction as the dispute directly concerned sovereignty, which is not within the scope of its jurisdiction. The Arbitral Tribunal however pointed out that some minor issues of sovereignty, ancillary to the underlying claims, could be ruled upon.

In the *Philippines v. China arbitration,* while challenging China's activity in the South China Sea and Seabed Area, the Philippines contended that China's claims over the area delimited by the "Nine-Dash Line" are not lawful under the United Nations Convention on Law of the Sea. The Philippines therefore sought for a declaration that China's claims over this area are unlawful. The Philippines also asked the tribunal to decide whether some features claimed by both the Philippines and China qualify as islands, and a finding regarding the Philippines' rights beyond its exclusive economic zone. China rejected the tribunal's jurisdiction *stating among other things,* that the essence of the subject matter of the dispute is sovereignty.

On July 12, 2016, the Permanent Court of Arbitration ruled in favor of the Philippines. It clarified that it would not "...rule on any question of sovereignty over land territory and would not delimit any maritime boundary between the Parties". The tribunal also ruled that China has "no historical rights" based on the "nine-dash line.

States adopt arbitration more and more because Arbitral tribunals are quick in issuing decisions and give the parties greater control over the procedure (Aceris Law, 2015). Although States have used Arbitral Tribunal to resolve many disputes than other settlement mechanisms, it has some disadvantages any way:

a. The tribunal has no power to call upon any of the parties to the dispute unless both the parties accept its jurisdiction and make an agreement to solve their problem through it.
b. It does not have the power to make any party bound to follow its decision.
c. The two limitations above can lead to a protracted maritime boundary delimitation dispute

d. Arbitration is more expensive than litigation.

Advantages of Arbitration over Litigation:

a. Time. Arbitration typically provides a speedier resolution than proceeding in court.
b. Flexibility. Court litigation is largely controlled by laid down statutory and procedural rules which make it more formal and rigid than arbitration.
c. Expertise. Arbitrators are selected from a pool of professionals, typically with experience in the construction industry and, therefore, may provide a greater level of expertise than a judge in the specific areas of concern.

vi. Judicial Settlement

In a judicial settlement, a dispute is placed before an existing independent court. We will discuss this under the following headings:

1.4 International Tribunal for the Law of the Sea (ITLOS)

The creation of the new institution, International Tribunal for the Law of the Sea (ITLOS) in Hamburg is one of the notable innovative features of the United Nations Convention on Law of the Sea. The ITLOS may hear both contentious and non-contentious cases concerning settlement of maritime dispute.

a. Composition of the ITLOS

The tribunal is composed of 21 serving judges elected for 9 years by the State parties. Each State party can nominate up to two candidates. There is a process to ensure equitable distribution among the judges and the term of one third of them expires every three years. ITLOS operates somewhat in similar way to the ICJ in terms of having some permanence to the institution and a rotation system (Aceris Law, 2015).

ITLOS has the particular jurisdiction to hear “prompt release” cases taking place on an expedited basis when a coastal State has seized a foreign vessel and its crew within its territorial jurisdiction and brought it into its ports.

b. Jurisdiction of the ITLOS

The ITLOS has Jurisdiction over all disputes and all applications submitted to it in accordance with the Convention. It has jurisdiction over all disputes concerning the interpretation or application of the Convention, subject to the provisions of *Article 297* and to the declaration made in accordance with *Article 298* of the UNCLOS. However, pursuant to *Article 299 paragraph 2* of the Convention, the provisions of *Article 297* and declaration under *Article 298* of the Convention do not prevent parties from agreeing to submit to the

tribunal a dispute otherwise excluded from the tribunal's jurisdiction under these provisions. The tribunal is entitled to give an advisory opinion by its Seabed Dispute chamber on legal questions arising within the scope of the activities of the Assembly or Council of the International Seabed Authority. Also, in accordance with *Article 138* of the Rules of ITLOS 1997, The Tribunal may also give an advisory opinion on a legal question if this is provided by an international agreement related to the purposes of the Convention. It provides that:

> 1. The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion.
>
> 2. A request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal.
>
> 3. The Tribunal shall apply mutatis mutandis articles 130 to 137.

The ITLOS also has jurisdiction to hear cases from natural or juridical persons although they have to obtain permission of their flag State.

Although the ITLOS has a very robust court in Hamburg capable of hearing contentious and non-contentious cases, litigation before the Tribunal has been very modest. Out of few cases (about 25) cases registered almost all are related to "prompt release" matters and ITLOS very rarely decides cases on the merits. Although States mostly prefer going before the ICJ, more and more cases are registered before ITLOS. Examples are ITLOS Case No. 16 "*Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal" and* ITLOS Case No. 23 "*Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean"* (Aceris Law, 2015).

1.5 International Court of Justice (ICJ)

The *International Court of Justice* (ICJ) is the successor of the Permanent Court of International Justice (PCIJ), which was established by the League of Nations in 1920. After the World War II, both the League of Nations and the PCIJ were succeeded by the United Nations and ICJ, respectively. ICJ is the head judicial body of the United Nations and one of its principal organs. The Court is the number one forum for States seeking judicial settlement regarding the Law of the Sea and even concerning sovereignty issues. It is the

largest judicial organ in the world and is usually referred to as the World Court. As we noted earlier, ICJ is not only limited to the Law of the Sea cases but also may decide both maritime and sovereignty issues. The Court has jurisdiction over any dispute concerning the interpretation or application of the provisions of the UNCLOS which is submitted to it under *Article 287* and *Article 288* of the Convention. (M. Hasan *et al,* 2019). The ICJ settles disputes between States and gives advisory opinions on international legal issues referred to it by relevant organs of the United Nations. Its opinions and rulings serve as sources of international law.

Composition of the ICJ

a. Regular Judges

The ICJ is composed of fifteen judges elected to nine-year terms by the UN General Assembly and the UN Security Council from a list of people nominated by the national groups in the Permanent Court of Arbitration. The election procedure is outlined in *Articles 4* to *19* of the ICJ Statute. Elections are staggered, with five judges elected every three years to ensure continuity within the court. The general practice is that where a judge dies in office, another judge would be elected in a special election to complete the term. No two judges may be nationals of one country. In accordance with *Article 9* of the ICJ Statute, the membership of the court is supposed to represent the "main forms of civilization and of the principal legal systems of the world". Essentially, that includes common law, civil law and socialist law (now post-communist law).

There is an informal arrangement whereby the seats will be distributed by geographic regions so that there are five seats for Western countries, three for African states (including one judge of francophone civil law, one of Anglophone common law and one Arab), two for Eastern European States, three for Asian States and two for Latin American and Caribbean States (D J Harris, 2012). Experience show that for the court's history that the five permanent members of the United Nations Security Council (France, USSR, China, the United Kingdom, and the United States) have always had a judge serving, thereby occupying three of the Western seats, one of the Asian seats and one of the Eastern European seats. Exceptions have been China not having a judge on the court from 1967 to 1985, during which time it did not put forward a candidate, and British judge Sir Christopher Greenwood being withdrawn as a candidate for election for a second nine-year term on the bench in 2017, leaving no judges from the United Kingdom on the court. *Article 6* of the Statute provides that all judges should be "elected regardless of their nationality among persons of high moral character" who are either qualified for the highest judicial

office in their home states or known as lawyers with sufficient competence in international law. Judicial independence is dealt with specifically in *Articles 16* to *18*. Judges of the ICJ are not able to hold any other post or act as counsel. In practice, members of the court have their own interpretation of these rules and allow them to be involved in outside arbitration and hold professional posts as long as there is no conflict of interest. According to *Article 8* of the Statute, a judge can be dismissed only by a unanimous vote of the other members of the court. Despite these provisions, the independence of ICJ judges has been questioned. For example, during the *Nicaragua* case, the United States issued a communiqué suggesting that it could not present sensitive material to the court because of the presence of judges from the Soviet bloc. See generally *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v USA), [1986] ICJ Reports 14, 158–60 (Merits) per Judge Lachs.

Judges may deliver joint judgments or give their own separate opinions. Decisions and advisory opinions are by majority, and, in the event of an equal division, the President's vote becomes decisive, which occurred in the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (Opinion requested by WHO), [1996] ICJ Reports 66. Judges may also deliver separate dissenting opinions.

b. *Ad hoc* Judges

Article 31 of the Statute provides a procedure whereby *ad hoc* judges sit on contentious cases before the court. The system allows any party to a contentious case (if it otherwise does not have one of that party's nationals sitting on the court) to select one additional person to sit as a judge on that case only. It is therefore possible that as many as seventeen judges may sit on one case.

The system may seem strange when compared with domestic court processes, but its purpose is to encourage states to submit cases. For example, if a state knows that it will have a judicial officer who can participate in deliberation and offer other judges local knowledge and an understanding of the state's perspective, it will likely be motivated to submit to the jurisdiction of the court. Although this system does not sit well with the judicial nature of the body, it is usually of little practical consequence. *Ad hoc* judges usually (but not always) vote in favour of the state that appointed them and thus cancel each other out *(E A Posner, 2005).*

c. Chambers

Generally, the court sits as full bench, but in some cases, it has had an occasion to sit as a chamber. *Articles 26* to *29* of the statute allow the court to form smaller chambers, usually 3 or 5 judges, to hear cases. Two types of chambers are provided by Article 26:

a. chambers for special categories of cases, and
b. the formation of *ad hoc* chambers to hear particular disputes.

In 1993, a special chamber was established, under *Article 26(1)* of the ICJ statute, to deal specifically with environmental matters although this chamber has never been used.

Ad hoc chambers are more frequently convened. For example, chambers were used to hear the *Gulf of Maine Case* (Canada/US). In that case, the parties made clear they would withdraw the case unless the court appointed judges to the chamber acceptable to the parties. Judgments of chambers may have either less authority than full Court judgments or diminish the proper interpretation of universal international law informed by a variety of cultural and legal perspectives. On the other hand, the use of chambers might encourage greater recourse to the court and thus enhance international dispute resolution (S Schwebel, 1987).

The ICJ has handed down some important Judgments on the law of the sea since 1994 that the Convention came into force. These include:

- 1998 *Fisheries Jurisdiction* (Spain v. Canada) 2001 *Maritime Delimitation and Territorial Questions* (Qatar v. Bahrain)
- 2002 *Land and Maritime Boundary* (Cameroon v. Nigeria: Equatorial Guinea intervening)
- 2007 *Territorial and Maritime Dispute in the Caribbean Sea* (Nicaragua v. Honduras)
- 2012 *Territorial and Maritime Dispute* (Nicaragua v. Colombia)
- 2009 *Maritime Delimitation in the Black Sea* (Romania v. Ukraine)
- 2014 *Maritime Dispute* (Peru v. Chile)
- 2014 *Whaling in the Antarctic* (Australia v. Japan: New Zealand intervening)

The ICJ jurisprudence is a robust one which has largely contributed to our understanding of how Law of the Sea disputes should be decided. For example, for many years, the methodology used for delimiting maritime boundaries has been quite uncertain but in the

past decades the jurisprudence, in particular in relation to Black Sea disputes, has established a three-part approach to delimitation to wit:

i. The tribunal draws a provisional equidistant line from base points on the coasts of both States parties to the delimitation dispute;
ii. The tribunal considers factors calling for adjustments such as a small bump on the coast of one State which drastically impacts the provisional equidistant line; and
iii. Lastly, the tribunal conducts a proportionality analysis whereby it looks at the two parts of water delimited, looks at the ratio and at the coastlines and decides whether there is a significant disproportion in the maritime spaces awarded to each State).

1.6 Continental Shelf Commission

Under the UNCLOS, virtually every coastal State has a Continental Shelf up to 200 nautical miles but States sometimes claim that their Continental Shelf prolonged beyond this line. Where this is the case, the State is allowed to exploit resources found in its extended continental shelf which affects other States' rights to exploit resources in the area.

Under its **Annex 2,** the United Nations Convention on the Law of the Sea established a Commission known as *Continental Shelf Commission* to hear the numerous Extended Continental Shelf Claims and their underlying scientific arguments. The Commission consists of 21 members, experts in the field of geology and physics, who will rule on the claims and issue a *Recommendation* as to where the limit of the Continental Shelf should be drawn and which, if followed, is considered a binding delimitation *vis-à-vis* all the parties to the Convention on the Law of the Sea.

Eighty-Five States have filed submissions before the Commission to obtain such Recommendations and Thirty-Five Recommendations have been issued so far (UN, Division for Ocean Affairs and Law of the Sea).

1.7 Summary

There increasing trends in dispute settlement under the contemporarily law of the sea is occasioned by the amount of detailed rules now available, the growing interest in the resources at sea and in conserving these resources, the divergent State claims over the zones of the sea, and the prospect of compulsory dispute settlement hanging over State actors.

New forms of dispute are now beginning to emerge due to several factors. These include global climate change which is generating a significant amount of disputes as seas are rising from the melting of glaciers, arctic ice and the expansion of water generally. These lead to the general change of sea baselines affecting maritime boundaries especially island States some of which may one day disappear. In this unit, we discussed the various mechanisms for the settlement of dispute including negotiation, mediation, conciliation, arbitration and judicial processes.

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1.10 Possible Answer to Self-Assessment Exercise

1. The United Nations Charter particularly *Articles 1* and *2* requires all States to settle their international disputes by peaceful means in such a manner that international peace and security are not endangered. The *United Nations Convention on the Law of the Sea* therefore builds on this commitment by providing a compulsory and binding framework for the peaceful settlement of all related disputes. *Under Article 279* the UNCLOS imposes obligation on States to settle their disputes by peaceful means

2. Conciliation is different from arbitration in that, unlike arbitration, the conciliation process, of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award.

3. ITLOS has jurisdiction to hear:

i. Contentious
ii. Non-contentious
iii. Prompt release case

4. The ICJ is composed of:
   i. Regular Judges is consisting of fifteen judges elected to nine-year terms by the UN General Assembly and the UN Security Council from a list of people nominated by the national groups in the Permanent Court of Arbitration.