PROGRAMME: LL.M

COURSE CODE: JIL 819

COURSE TITLE: INTERNATIONAL MARITIME LAW 1

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FIRST SEMESTER

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INTRODUCTION

National Open University of Nigeria, Abuja, runs LLM in International Maritime Law and is taught in the Department of Jurisprudence and International Law by renowned experts in the area of International Law, International Maritime Law and International Law of the Sea. You will gain knowledge and practical skills required to advise, litigate and negotiate, based on relevant legal frameworks such as international trade law and environmental law and the rules of admiralty. The wide range of options includes key modules that provide the essential know-how for a career in the maritime industry, such as Carriage of Goods by Sea, Marine Insurance, Admiralty Law and International Trade Law. Maritime law is a complex and fascinating special area that opens up a broad range of career options. Whichever path you choose, our diverse student community and extensive industry connections will enable you to build a global network of contacts that will be invaluable for your future in the maritime industry.

The LLM Maritime Law programme develops your practical legal skills required to advise, litigate and negotiate, within a module structure that allows you to shape your degree towards your particular interests. The LLM Maritime Law draws on the research strengths of the department of academic staff who are active at the cutting edge of international and national legal reform and development. In the Department of Jurisprudence and International of Law we are strongly committed to providing the very best learning experience for all our students in a friendly, stimulating and research-led environment. This challenging and prestigious degree attracts talented students from around the world for those who already have legal training.

Note that Maritime law regulates activities that take place on the sea. Many countries have their own laws which govern maritime activities within their borders, but there are also various treaties and conventions which provide a framework for international maritime laws. Students pursuing an LL.M. program in Maritime or Admiralty Law will be exposed to a number of issues important in the field, including regulation of shipping, marine insurance, and international trade Law. And increasingly, LL.M. programs in Maritime Law are also exploring related topics, such as marine pollution and climate change. An LL.M. in Maritime Law can prepare grads for a variety of jobs, including maritime specialists in private law firms, legal analysts at maritime insurance firms, or positions at international bodies.

This LLM provides an advanced understanding of a specialist area of maritime law and enables practitioners in both the legal field and maritime industry to enhance their career prospects. It improves students' research and independent study skills as well as the ability to develop substantiated critical argument. It is open to students who have successfully completed an LLB degree. International Maritime Law Program brings together a global network of accomplished professionals from a broad range of legal practices, industries, and businesses. The programme is unique blended learning format combines theory and practical with online instruction, offering a level of flexibility that's ideal for busy Legal practitioners who seek advanced expertise in International Maritime Law.

COURSE LEARNING OUTCOMES

You will learn the key doctrines of international Maritime Law and practice from the Department of Jurisprudence and International Law taught by members of academic staff of the department of

the Faculty of Law, while you expand your international connections. Such concepts of International Law are:

i. The concept of International Maritime Law
ii. Delimitation of various maritime Zones
iii. The doctrine of hot pursuit
iv. Sources of International Maritime Law
v. The rights of coastal and Landlocked states in navigating seas and International straits
vi. Principles of International Maritime law.
vii. The jurisprudential issues on International Maritime law.

The LLM in International Maritime Law provides opportunities for students to develop and demonstrate knowledge and understanding, qualities, skills and other attributes in both International Maritime and commercial Law..

AIM OF THE COURSE

The general aim of this course is to equip you with the knowledge and skills needed to undertake a meaningful study in the International Maritime Law. It aims at making you an informed reader and analyst of Maritime Law. The programme develops leading knowledge and awareness of international trade and maritime law, increasing understanding of how commercial trade ventures may give rise to legal issues

LLM in International Maritime Law is aim to educate law graduates and practicing lawyers in National and International Maritime Law which allows them to make a contribution to the shipping industry. Being a highly specialized course it deals in sophisticate new areas of Maritime and Ocean Laws. The course is highly relevant and service oriented. The primary objective of LLM Maritime Law is to produce law professionals who can critically evaluate the laws and legal systems pertaining to water bodies and ports for seagoing vessels from a juristic perspective. It also fosters expertise specialized in areas of maritime law, jurisprudence and other emerging laws rising out of international disputes. On successful completion of the course, a law professional will enhance his/her drafting skills pertaining to International Maritime Contracts. The course ensures that its participants become qualified legal experts capable of addressing legal issues arising in Fisheries and Marine sectors.

Studying LLM is really essential in Nigeria as Nigeria is a major maritime state in Africa. However specialized knowledge in a legal subject like International Maritime Law is a sign of having an edge over others. It can help carving our niche career specially when there is a dearth of maritime lawyers in Nigeria. This course approaches law in relation to how it is applied in practice. Students with a prior degree in Law may continue their studies to a PhD degree in International Maritime Law.

The Department's LL.M. programme provides students with a specialised education in maritime law from an international perspective. Particular emphasis is placed on the study of shipping law, especially the international regulatory law of maritime transport to ensure maritime safety and the protection of the marine environment. The programme also covers the commercial law aspects of shipping including the carriage of goods by sea and marine insurance as well as public international law and law of the sea. Unlike traditional programmes, Department`s LL.M. programme offers a distinctive international study of maritime law. Major systems of law in the world, including the civil and the common law systems, are comparatively considered in relation to maritime affairs. An international faculty brings to the classroom the legislative and judicial experience of leading maritime jurisdictions. The programme is also designed to provide training in the development and drafting of maritime legislation. Intensive drafting exercises are carried out taking into account both the international law on the subject as well national maritime policies and objectives.

Finally, the LL.M. programme is an exciting inter–cultural journey as the Department draws candidates from across the globe. The department promotes a spirit of mutual understanding and cooperation between cultures, paving the way for future collaboration between graduates in combining efforts towards international unification of maritime law.

WORKING THROUGH THIS COURSE

As mentioned earlier, the course contains four modules of 17 units which blend theory with practice in the field of Law of the sea as a major area studies. You should painstakingly go through all the units in this course, taking note of the essential concepts introduced to you. You should also do the Self-Assessment Exercise and the Tutor-Marked Assignments. For you to drive maximum benefit from the course, you should consult as many of the reference/suggestions for further reading given at the end of each unit.

COURSE MATERIALS

The major materials to be used for the course are:

This Course Guide;

Study Units;

Textbooks;

Assignment File; and Presentation Schedule.

In addition, you must obtain the textbooks as they are not provided by NOUN. You are required to obtain them in your own responsibility. You may purchase your own copies. Your tutor will always be available should you have any problem in obtaining these textbooks.

STUDY UNITS

There are 17 study units in the course and you will need between fifteen (15) to twenty (20) weeks to study them thoroughly, working through the exercise/assignment and consulting the recommended texts.

TEXT BOOKS AND REFERENCES:

To be bit acquainted with the maritime law and still want to know more and keep yourself updated, here are some of the best books on the same which would definitely quench your thirst for knowledge about all of the admiralty laws, by providing you with almost every aspect of maritime questions and offences including seafaring activities of merchant ships, passenger liners, yachts, navies and navigation; and also shipbuilding, seamanship, sailing ships etc,

1. Maritime Law by Christopher Hill

2. Coastal State Regulation of International Shipping by Lindy S. Johnson

3.Admiralty and Maritime Law by Robert Force

4. Maritime Law by Yvonne Baatz

5. Admiralty and Maritime Law (Hornbook Series Student Edition)

ASSESSMENT

There are self-assessment exercise, there will be TMAs which is over 30 percent and the final exams which is 70 percent. However the pass mark in the a student must get 50 and above

COURSE OVERVIEW/PRESENTATION

The sea is vital to human existence for commerce, navigation routes, and as a major source of natural resources. Legal expertise in the issues surrounding the law in these areas is always in demand. LLM in International Maritime Law will give you an in-depth understanding of the law concerning contracts for the carriage of goods, marine insurance, international trade and law of the sea. Learning from experts with high level academic and practical experience, you will gain specialist knowledge and skills that are highly valued by employers, and open up a range of exciting career opportunities.

Graduates of the LLM in International Maritime Law are well positioned for stimulating and rewarding career opportunities. Improving your employability is a key priority for us, and we organise a range of events to help, including the annual LLM careers fair, which gives you the opportunity to meet local and international law firms, as well as networking events and visits to leading practices in the City of London.

TUTOR MARKED ASIGNMENT

There will be turtor marked assignment to be administered by the Lecturer

FINAL EXAMINATION AND GRADING

COURSE SCORE DISTRIBUTION

- 30% of the final grade is based on the TMAs
- 70% of the final grade is based on examination.
- Seminar presentation

COURSE OVERVIEW/ PRESENTATION

This is a three credits unit course running in the spring semesters of an academic year for Master of International Maritime Laws students. The Master's programme is part of the strategy of the Law Faculty on focusing on internationalization and legal issues pertaining maritime law. The programme aims through its courses and master's thesis to give the students a broad introduction and knowledge of the International Maritime Law, including its development, politics and institutional aspects. Also the course shall add to the skills of the students to identify, analyze, explain and solve legal problems; both on a theoretical and a practical level. There will be a special focus on the relevance and application of international Maritime Law in relation to human activities in the sea.

The objective is to be achieved through active participation of the students during the courses; through study, discussions, and papers. Lectures will provide for the introduction to the themes while problem-based seminars will make most of the teaching where students and teachers identify and discuss legal questions. The objective is also to qualify the students for careers within a broad specter of areas; both at national and international level. Candidates will be qualified for jobs within the United Nations and its specialized agencies, in national diplomatic service as well as public administration and industry and commerce.

It covers the main principles of international Maritime law and a case study of a selection of international treaties concerning the use, exploitation and management of the resources of the seas and oceans of the world. The course will also examine some leading cases decided by international courts and tribunals concerning the law of the sea. It will focus on the 1982 United Nations Convention on the Law of the Sea. It will also cover the evolution of the international law of the sea, international efforts to regulate the delimitation of the maritime zones and exploitation of the resources therein, a selection of other international treaties relating to the management,

conservation, exploitation of the resources of the seas and the case law developed by various international courts and tribunals. The aim is to provide a thorough understanding of the current regime of the law of the sea and the interplay between law and politics in this area.

The course focuses predominantly on international law, with a particular emphasis on the International law of the sea. Students will acquire expertise in the multifaceted interface between the different fields of international law, whilst also developing specialist knowledge of the law pertaining to the sea. The skills learnt on this programme are adaptable to work in international bodies such as the United Nations, International Courts and Tribunals, and International Law firms; as well as in roles relating to piracy or marine pollution. The ICC Commercial Crime Services, the International Maritime Organisation, the Marine Management Organisation

HOW TO GET THE MOST FROM THIS COURSE

This Course is about the International Maritime Law. It is a postgraduate course for students who are registered for Masters of Law Degree Programme. It is a useful study also to anyone who does not intend to complete the degree course but wants to learn marine Law generally. This Course is particularly concerned with maritime activities on the sea and oceans of the world. It comprises two semester papers, namely: JIL 810 and JIL 820. Each of them is a 3-Credit Unit course, implying a minimum study time of 8- hours per week, for the duration of each of the two semesters. In the course. Maritime law or otherwise known as marine law, is an area of law that specialises in issues that occur offshore. These include ocean policy, admiralty, and maritime commerce. Not many realise that the rules governing the sea vary tremendously from those on land. From issues such as accidents due to colliding fishing vessels, the discovery of sunken treasures, employees' rights while working at sea, to conflicts arising from environmental issues. Maritime law covers them all. Did you know that maritime law is one of the oldest and most established types of law in the world?

TUTORS AND TUTORIALS

You are not alone in your journey through this course as there are facilitators and tutors to guide and assist you. You should make sure you exploit this opportunity, especially during tutorials. If you have read the course materials very well, you will able to identify the issues to be sorted out

with your facilitators/tutors. This simply means that you should not miss your tutorials and you should adequately prepare for them.

SUMMARY

Although this course is an introduction to International Law of the sea, it exposes you to the essentials of the law of the sea which comprises the rules governing the use of the sea, including its resources and environment. The law of the sea is one of the principal subjects of international law and is a mixture of treaty and established or emerging customary law. The law of the sea covers rights, freedoms and obligations in areas such as shipping, territorial seas and waters and the high seas, fishing, wrecks and cultural heritage, protection of the marine environment and dispute settlement.

INTRODUCTION

GENERAL OVERVIEW OF THE INTERNATIONAL MARITIME LAW

International Maritime law is a fundamental branch of law that regulates commerce and navigation on the seas or other navigable waters. It covers a broad spectrum of matters such as the development of legislation, both nationally and internationally; customs and excise regulations; the fishing industry; human rights and employment issues usually relating to the crew; insurance claims; property damage; the implications of stowaways on vessels; pollution; personal injuries; wreck and salvage; piracy; and container and passenger liner matters, etc.

The origins of maritime law date back to antiquity as did trade between nations through sea transport. It thus became increasingly necessary to expand this scope of the law as no country may claim arbitrary jurisdiction over the seas. Consensus between nations also became vital in the face of disputes. With time, the principles of maritime law were developed and refined. However it must be noted that although general maritime law has developed internationally, it operates under the auspices and laws of an individual country as each nation bases its own maritime law on the general international regulations with the modifications and qualifications it deems essential and suitable to its particular needs.

In addition to the above, maritime law regulates the enforcement of contracts and commonly makes provision for damages to parties who have suffered some form of loss at the hands of a contracting party that has failed to honour or perform in accordance with their agreement. Such a contractual clause must be distinguished from the principle of general average which contemplates the voluntary sacrifice made by the master of the ship in respect of cargo, equipment or funds in order to mitigate further losses or damage in an emergency. The loss suffered by parties is thus shared amongst other parties who have shared in the relevant venture.

The exception of force majeure in contracts usually also exists which relieves a party from any liabilities or obligations whenever an extraordinary or unpredictable vent occurs, such as a war, strike, or an act of God.

Module 1: CONCEPTS AND NATURE OF THE INTERNATIONAL MARITIME LAW

Unit 1 The Concept of International Maritime Law

Unit 2 Historical Development of the International Maritime law

Unit 3 The Sources of International Maritime Law

Unit 4 The Components and principles of International Maritime Law

Module 2: DIVISION OF THE SEA INTO MARITIME ZONES

Unit 1 Internal waters

Unit 2 Territorial Sea

Unit 3 Contiguous Zone

Unit 4 Exclusive Economic Zone

Unit 5 The High sea and Coastal jurisdiction over Merchant ship

Module 3: THE HIGH SEA AND ITS USES

Unit 1 Scope and freedom of the High Sea

Unit 2 The uses of High sea

Unit 3 International Sea Bed Authority

Unit 4 Access to the Sea for Landlocked states and International Straits

Module 4: THE REGIME CONTRACT OF CARRIAGE OF GOODS BY SEA

Unit 1 Definition and Historical development of contract of carriage by sea

Unit 2 Types of contract of carriage of goods by sea

Unit 3 Bills of lading contracts

Unit 4 International Trade Law

MODULE 1: THE CONCEPT AND NATURE OF INTERNATIONAL MARITIME LAW

Unit 1 The Concept and Characteristics of International maritime law

1.1 Introduction

International maritime law is a branch of international law, cutting across public and private law. It has helped defined and make more uniform a very complex area of law both within and outside Coastal. It consists of a regulatory system for international shipping for the purposes of trade facilitation, maritime safety, environment protection, and security. It is one of the most detailed and systematically regulated fields of international law. It is also a field where industry-developed standard contracts draw heavily from international instruments and market practices aimed at harmonization.

1.2 Learning Outcomes

It is intended that at the of this unit should be able to:

i. Define the Concept of international maritime Law

ii. The Nature and Characteristics of Maritime Law

iii. Explain the Historical development of International maritime and

iv. List the sources of International maritime Law.

1.3 Definition of International Maritime Law

Maritime law has been variously described and defined in ways that reflect subjective perception as well as semantics. One view is that maritime law provides the legal framework for maritime transport. Another is that maritime law comprises a body of legal rules and concepts concerning the business of carrying goods and passengers by water. Both are narrow in scope but the first is more general and could be construed as embracing matters on maritime, which extend beyond the purely private domain of maritime business and commerce, into areas of public concern**.**

Others submitted that the distinction is artificial and anomalous, and in support of their proposition point to the etymological root of the word maritime, which derived from Latin, means of or pertaining to the sea. In this broad sense, the term maritime law accommodates the entire body of laws, rules, legal concepts and processes that relate to the use of marine resources, ocean commerce, and navigation.

The expression Admiralty Law, used in many countries with Anglo Saxon legal traditions, adds to the terminology debate. Admiralty law refers to the body of law including procedural rules developed by the English Courts of Admiralty, in their exercise of jurisdiction over matters. This jurisdiction was distinctively different from that of the common law courts. Admiralty law thus originally encompassed the subject - matter over which the admiralty courts possessed inherent jurisdiction imbued through a process of evolution. Subsequently, the subject matter which bore a maritime character was codified and enumerated by statute. Interestingly enough, while in the English language, the word admiralty originates in the office of the Lord Admiral; its root meaning is derived from Arabic.

In Common Law jurisdictions, Admiralty Law often connotes the Maritime Law relating to wet matters, i.e., those involving ships when they are at sea, as distinguished from dry matters also involving ships but pertaining only to commercial aspects that are essentially land-based issues. While Maritime Law consists of two broad elements, dividing it into two neat compartments and

labeling them public and private, is rather an over - simplification. The shipping industry is involved in many matters of general law and non-maritime legal transactions which are not part of the lex maritima. It is well acknowledged that many aspects of commercial maritime law are in fact derived from the lex mercatoria8. The bifurcation may be attributable to perceptions that are politically tinged.

Professor Gold states: the new law of the sea has in the past decade addressed itself to almost all areas of ocean use except the one that since before the dawn of history, has been pre-eminent - the use of the ocean as a means to transport people and their goods from place to place on this planet, so much more of which is water than is land. Marine transport has been discussed in an almost abstract manner, as if it did not really fit or belong within the public domain but needed to be confined to the more private region of international commerce, which was considered to be outside the scope of the law of the sea.

Professor Sanborn had this to say: The word maritime law, as commonly used today, denotes that part of the whole law which deals chiefly with the legal relations arising from the use of ships. But in the earlier period, of which this work treats, the law maritime had a considerably wider scope. It dealt not merely with the modern Admiralty law, but also with the primitive. Ancestors of some branches of our modern commercial law, dealt too, with the germs of that public law which we today style international law.

International Maritime law is the body of international legal principles which governs, in particular, marine commerce and navigation, business transacted at sea or relating to navigation, to ships and shipping, to seamen, to transportation of persons and property at sea and marine affairs generally. It is a also a body of international laws, international conventions, and treaties , international customs that govern private maritime business and other nautical matters, such as shipping or offenses occurring on open water. International rules that governs nautical issues and private maritime disputes. Admiralty 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. While each legal jurisdiction usually has its own legislation governing maritime matters, the international nature of the topic and the need for uniformity has, since 1900, led to considerable international maritime law developments, including numerous multilateral treaties.

1.SELF ASSESSMENT EXERCISE: Give a succinctly definition of maritime law in your own words

1.4 Characteristics of International Maritime Law and Business

i.International Nature

Although regulated to a large extent by national legislation, maritime law in almost all jurisdictions is clearly shaped by international influences, in particular international conventions. This is due to the fact that shipping by its very nature involves international relations. The ocean-going vessels flying the flag of a state operate in all waters throughout the world and sail from country to country. Vessels often are supplied and repaired in foreign ports. Cargo may be damaged or lost while at sea in the course of an international voyage or in a foreign port, and likewise seamen may be injured on the high seas or in the waters of foreign countries. Such background facilitated the development of common international usage and practice since antiquity. The common universal usage and practices were subsequently adopted by national laws. Maritime law is thus a specialized domestic law that cannot avoid international influences. This may in part be the reason why judges and lawyers who deal with maritime law consider themselves as specialists with an international background.

ii.Complete Legal System

The second important characteristic of maritime law is its breadth. Maritime law is a complete legal system, just as the civil law and the common law are complete legal systems. Maritime law, incidentally, is much older than the common law and probably contemporaneous with the advent of the civil law. That maritime law is a complete legal system can be readily seen from its component parts. As noted by William Tetley, maritime law has had its own law of contract of sale of ships, of service (towage), of lease chartering, of carriage of goods by sea, of insurance (marine insurance being the precursor of insurance ashore, of agency ship chandlers, of pledge (bottomry and respondentia), of hire (masters and seamen), of compensation for sickness and personal injury (maintenance and cure) and risk distribution (general average]. It is and has been a national and an international law probably the first private international law. It also has had its

own public law and public international law. Maritime law has and has had, as well, its own courts and procedures from earliest times.

As will be seen in due time, International maritime law seeks to regulate personal and property relationships as well as contractual and tortuous relationships. The comprehensiveness of the law can also be seen in its administrative and few criminal provisions. In short, maritime law is a comprehensive system of law concerning maritime matters both public and private, with the later forming the major part.

iii.Special Legal Jargons

The study of maritime law usually employs the use of complex jargons which, in most cases, are alien to other areas of law. Understanding the subject matter without first knowing such shipping terms may often be difficult. The presence of different jargons peculiar to this area of law may well be attributable to its unique development. Early maritime law the basis of modern maritime law is distinguishable from the development of other areas of law. Though first developed in continental Europe, the law relating to shipping was, in origin, based on customs only- custom and usage of the sea. Though the forthcoming discussions reveal many of these special jargons, we may tentatively note some of them here: charter party, maritime lien, general average, and salvage.

Charter party: A charter party is a contract of lease of a ship in whole or in part for a long or short period of time or for a particular voyage.

Maritime lien: A secured claim against a ship and sometimes against cargo or bunkers in respect of services provided to the vessel or damages done by it.

General average: The monetary contribution required of ship-owners and cargo owners or their respective insurers in respect of general average expenditures and general average sacrifices. Cargo's claim for general average contributions against the ship is secured by either a maritime lien or a statutory right ***in rem*** depending on the jurisdiction concerned.

Salvage: Rendering assistance to ships at distress. Rules awarding such assistance have long been prescribed in various maritime nations.

2. SELF ASSESSMENT EXERCISE: List at least five characteristics of maritime law and business

1.5 The Four Pillars of International maritime Law

International waters are any waters outside the jurisdictions of a coastal State and foreign countries. Ships sailing in international waters typically fall under the country of a ship's registry, for maritime laws. However, in certain circumstances, maritime laws of the nearest country could apply. To illustrate, a ship's registry is Nassau. When the ship is sailing in international waters, Nassau's maritime laws would apply in most cases.

The Pillars are:

i. SOLAS: Safety of Life at Sea – is generally regarded as the most important of all international Conventions. The international SOLAS Convention sets minimum safety requirements for the construction, equipment, and operation of merchant ships. The 14 chapters currently included in the SOLAS Convention consist of a range of codes and regulations which specify the minimum safety standards for the area mentioned above. The SOLAS Convention does not apply to all ships. Only vessels travelling international waters excluding warships, cargo ships of less than 500 GT, non-propelled ships, wooden ships, non-commercial pleasure yachts and fishing vessels will be held accountable to the standards enforced by SOLAS.

ii. MARPOL: The International Convention for the Prevention of Pollution from Ships – is the main international maritime Convention covering the prevention of environmental pollution by ships. MARPOL covers pollution prevention from a routine operational and accidental perspective. In addition to setting standards for the discharge and cleaning processes of operational shipping waste, the MARPOL Convention also sets standards for the stowing, handling, and transfer of hazardous cargoes. Unlike SOLAS, the MARPOL Convention applies to vessels of all types flagged under a State member of the Convention, or that operate within its jurisdiction, regardless of where they sail. Signatory flag states are obliged to incorporate MARPOL requirements into domestic law.

iii. **The STCW**: Standards of Training, Certification and Watchkeeping for Seafarers sets minimum qualification standards for personnel and crew of all levels on board a ship, including masters, officers and watch personnel. Similar to the other pillars, the main purpose of the international Convention is to promote safety at sea, alongside the protection of the marine environment. STCW is helping to further achieve these goals through a common agreement which ensures similar programmes of training with equal standards are carried out by all seafarers of equal role and rank globally. The STCW Convention requires that training leading to the issue of certification is provided by an approved source.

iv. The MLC: Maritime Labour Convention sets out minimum standards for seafarers working on a ship. The comprehensive Convention provides an internationally recognised, single source of regulation and guidance. Under the MLC, seafarers will have minimum working and living rights covering among other areas such as: Contracts of employment, pay, manning levels etc.

1.6 Summary

In this Unit we were able to consider the various definitions of international maritime law and its characteristics. Maritime law is a body of law applicable to maritime commerce and vessels. The key to understanding maritime law is to understand that it has developed to promote maritime commerce, which is a matter of international concern and practice. As a consequence, while most maritime nations have their own maritime law, the principles of maritime law are mostly consistent among maritime nations, and decisions based on general maritime law principles are widely recognized around the world.

Admiralty law is generally synonymous with maritime law although admiralty law is more correctly understood as a subset of maritime law. Admiralty law evolved as an amalgam of international common law and civil law or codes, decided by judges who would look to international practices and customs, as well as to the local civil law, to determine what standards to apply to maritime disputes. The important characteristic of maritime law is its breadth. Maritime law is a complete legal system, just as the civil law and the common law are complete legal systems. It also has had its own public law and public international law.

Maritime is the masculine accusative form of mare (sea), derived from maritimus, meaning "of the sea. The foundation of maritime law is a significant body of well-established common law, developed from ancient practices of maritime commerce and from the decisions of maritime courts applying those standards of traditional admiralty law, in what has become known in the U.S. courts as the general maritime law. Maritime law also includes statutory enactments, many of which are driven by, or at least based upon, international conventions and agreements, as well as established maritime customs. In some ways, maritime law has developed apart from and somewhat in tension with local civil laws. It has done so because the fundamental purpose of maritime law is different from that of the civil law. While the civil law developed to help maintain a civil society and resolve disputes between members of a single nation, maritime law developed to pro-mote the just and speedy resolution of disputes among per-sons from possibly different countries involved in maritime commerce

The designation of a matter as an admiralty matter brings it within federal jurisdiction, and makes it subject to the federal maritime law. The necessary consequence is that the state law that would otherwise apply is supplanted by the federal rule of decision. To balance the national interest in a uniform maritime law with the local state interest in preserving state jurisdiction over local matters, the federal Judiciary Acts have noted that the federal courts have original jurisdiction, exclusive of the courts of the states over any civil case of admiralty or maritime jurisdiction,but then goes on, “saving to suitors in all cases all other remedies to which they are otherwise entitled (this is referred to as the Savings to Suitors clause.

1.7 References/Further Reading/Web Resources

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Christopher J. Giaschi (2000-10-03). "The Constitutional implications of Ordon v. Grail and the expanding definition of Canadian maritime law". Archived from the original on 2011-03-19. Retrieved 2012-01-10.

Joseph R. Oliveri (2008). "Converse-Erie: The Key to Federalism in an Increasingly Administrative State" (essay). Archived June 13, 2010, at the Wayback Machine

Robinson, Gustavus H. (1939). Handbook of Admiralty Law in the United States. Hornbook Series. St. Paul, Minnesota: West Publishing Co.

Nathalie Mouly. "Université Paris 2 Panthéon-Assas Droit maritime (1230) programme de cours". Archived from the original on 4 March 2016. Retrieved 17 August 2015.

3.

SELF ASSESSMENT EXERCISE: What are the five pillars of International Maritime Law

1.8 Possible Answers to Self-Assessment Exercise no 1.

International maritime law, also known as the Law of the Sea, refers to the laws used to govern international waters. It consists of a body of conventions, regulations, and treaties used to govern nautical issues and regulate maritime organizations.

Unit 2 Historical Development of international maritime Law

2.1 Introduction

The origins of maritime law go back to antiquity. Because no country has jurisdiction over the seas, it has been necessary for nations to reach agreements regarding ways of dealing with ships, crews, and cargoes when disputes arise. The earliest agreements were probably based on a body of ancient customs that had developed as practical solutions to common problems. Many of these customs became part of Roman civil law. After the fall of the Roman Empire, maritime commerce was disrupted for about 500 years.

After maritime activity was resumed in the Middle Ages, various disputes arose and laws were formulated to deal with them. Gradually the laws of the sea were compiled; among the best-known collections of early maritime law are the Laws of Oleron and the Black Book of the Admiralty, an English compilation prepared during the 14th and 15th centuries. Special courts to administer sea laws were set up in some countries. In Britain today, maritime law is administered by courts of the admiralty.

2.2 Learning Outcomes

It is intended that at the end of this unit you should be able to

i.Analysis the Historical Evolution of the Law of International Maritime Law.

ii. Explain the origin of maritime law of the Mediterranean's

iii. List he first major codes of maritime Law

2.3 Origin of Maritime Law

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2.3.1 Ancient maritime legislation

Though the marine law of modern Europe has its foundations laid in the jurisprudence of the ancients, there is no certain evidence that either the Phoenicians, Carthaginians, or any of the states of Greece, formed any authoritative digest of naval law. Those powers were distinguished for navigation and commerce, and the Athenians in particular were very commercial, and they kept up a busy intercourse with the Greek colonies in Asia Minor, and on the borders of the Euxine and the Hellespout, in the islands of the Aegean sea, and in Sicily and Italy. They were probably the

greatest naval power in all antiquity. Themistocles had the sagacity to discern the wonderful influence and controlling ascendancy of naval power.

The Athenians encouraged, by their laws, navigation and trade; and there was a particular jurisdiction at Athens for the cognizance of contracts, and controversies between merchants and mariners. There were numerous laws relative to the rights and interests of merchants, and of their navigation; and in many of them there was an endeavor to remove, as much as possible, the process and obstacles which afflicted the operations of commerce.

The universality and stability of the Greek tongue were owing, no doubt, in a considerable degree, to the conquests of Alexander, to the loquacity of the Greeks, and the inimitable excellence of the language itself; but it is essentially to be imputed to the commercial genius of the people, and to the factories which they established, and the trade and correspondence which they maintained throughout the then known parts of the eastern world.

The Rhodians were the earliest people that actually created, digested, and promulgated a system of marine law. They obtained the sovereignty of the seas about nine hundred years before the Christian era, and were celebrated for their naval power and discipline. Their laws concerning navigation were received at Athens, and in all the islands of the Aegean sea, and throughout the coasts of the Mediterranean, as part of the law of nations. Cicero, who in early life studied rhetoric at Rhodes, says,[4] that the power and civil discipline of that republic continued down within his time of memory, in vigor and with glory. We are indebted to the Roman law for all our knowledge of the commercial jurisprudence of the Rhodians. Not only their arts and dominion have perished, but even their nautical laws and usages would have entirely and forever disappeared in the wreck of nations, had it not been for the superior wisdom of their masters, the Romans; and one solitary title in the pandects,[5] contains all the fragments that have floated down to modern times, of their once celebrated maritime code.

The Romans prohibited commerce to persons of birth, rank, and fortune and no senator was allowed to own a vessel larger than a boat sufficient to carry his own corn and fruits. The navigation which the Romans cultivated, was for the purposes of war, and not of commerce, except so far as was requisite for the supply of the Roman market with provisions. This is the reason, that amidst

such a vast collection of wise regulations as are embodied in the fabric of the Roman law, affecting almost every interest and relation in human life.

2.4 Maritime legislation of the middle ages.

Upon the revival of commerce, after the destruction of the Western empire of the Romans, maritime rules became necessary. The earliest code of modern sea laws was compiled for the free and trading republic of Amalphi, in Italy, about the time of the first crusade, towards the end of the eleventh century. This compilation, which has been known by the name of the Amalphitan Table, superseded the ancient laws; and its authority was acknowledged by all the states of Italy. Other states and cities began to form collections of maritime law; and a compilation of the usages and laws of the Mediterranean powers was made and published, under the title of the *Consolato del mare*. This commercial code is said to have been digested at Barcelona, in the Catalan tongue, during the middle ages, by order of the kings of Arragon. The Spaniards vindicate the claim of their country to the honor of this compilation; and the opinion of Casaregis, who published an Italian edition of it at Venice, in 1737, with an excellent commentary, and of Boucher, who in 1808 translated the *Consolato* into French, from an edition printed at Barcelona, in 1494, are in favor of the Spanish claim.

The laws of Oleron were the next collection in point of time and celebrity. They were collected and promulgated in the island of Oleron, on the coast of France, in or about the time of Richard I. The French lawyers in the highest repute, such as Cleirac, Valin, and Emerigon, have contended, that the laws of Oleron were a French production, compiled under the direction of Queen Eleanor, Dutchess of Guienne, in the language of Gascony, for the use of the province of Guienne, and the navigation on the coasts of the Atlantic; and that her son, Richard I, who was King of England, as well as Duke of Guienne, adopted and enlarged this collection. Selden, Coke, and Blackstone, on the other hand, have claimed it as an English work, published by Richard I in his character of King of England. It is a proof of the obscurity that covers the early history of the law, that the author of such an important code of legislation as the laws of Oleron, should have been left in so much obscurity as to induce profound antiquaries to adopt different conclusions, in like manner as Spain and Italy have asserted rival claims to the origin of the *Consolato*. The laws of Oleron were borrowed from the Rhodian laws, and the *Consolato*, with alterations and additions, adapted to the

trade of western Europe. They have served as a model for subsequent sea laws, and have at all times been extremely respected in France, and perhaps equally so in England, though not under the impulse of the same national feeling of partiality. They have been admitted as authority on admiralty questions in the courts of justice in this country.

The laws of Wisbuy were compiled by the merchants of the city of Wisby, in the island of Gothland, in the Baltic sea, about the year 1288. It had been contended by some writers, that these laws were more ancient than those of Oleron, or even than the *Consolato*. But Cleirac says, they were but a supplement to the laws of Oleron, and constituted the maritime law of all the Baltic nations north of the Rhine, in like manner as the laws of Oleron governed in England and France, and the provisions of the *Consolato* on the shores of the Mediteranean. They were, on many points, a repetition of the judgments of Oleron, and became the basis of the ordinances of the Hanseatic League.

The renowned Hanseatic association was begun at least as early as the middle of the thirteenth century, and it originated with the cities of Lubec, Bremen, and Hamburgh. The free and privileged Hanse Towns became the asylum of commerce, and the retreats of civilization, when the rest of Europe was subjected to the iron sway of the feudal system, and the northern seas ware infested by savage clans, and roving barbarians.

2.5 Modern Maritime legislation.

All the former ordinances and compilations on maritime law, were in a great degree superseded in public estimation, their authority diminished, and their luster eclipsed by the French ordinance upon commerce in 1673, which treated largely of negotiable paper; and more especially by the celebrated marine ordinance of 1681. This monument of the wisdom of the reign of Louis XIV, far more durable and more glorious than all the military trophies won by the valor of his arms, was erected under the influence of the genius and patronage of Colbert, who was not only the minister and secretary of state to the king, but inspector and general superintendant of commerce and navigation. It was by the special direction of that minister, and with a view to illustrate the advantages of the commerce of the Indies, that Huet wrote his learned history of the commerce and navigation of the ancients. The vigilance and capacity of the ministry of Louis communicated uncommon vigor to commercial inquiries. They created a marine which shed splendor on his reign,

and corresponded, in some degree, with the extent of his resources. It required such a work as the ordinance to which I have referred, to consolidate the establishment of the maritime power which had been formed by the sagacity of his counsels. In addition to these general codes of commercial legislation, there have been a number of local ordinances, of distinguished credit, relating to nautical matters and marine insurance, such as the ordinances of Barcelona, Florence, Amsterdam, Antwerp, Copenhagen, and Konigsberg. There have also been several treatises on nautical subjects by learned civilians in the several countries of Europe, which are of great authority and reputation.

The English nation never had any general and solemnly enacted code of maritime law, resembling those which have been mentioned as belonging to the other European nations. This deficiency was supplied, not only by several extensive private compilations, but it has been more eminently and more authoritatively supplied, by a series of judicial decisions, commencing about the middle of the last century. Those decisions have shown, to the admiration of the world, the masterly acquaintance of the English judiciary with the principles and spirit of commercial policy and general jurisprudence, and they have afforded undoubted proofs of the entire independence, impartiality and purity of the administration of justice.

Since the year 1798, the decisions of Sir William Scott, now Lord Stowell on the admiralty side of Westminster Hall, have been read and admired in every region of the republic of letters, as models of the most cultivated and the most enlightened human reason. The English maritime law can now be studied in the adjudged cases with at least as much profit, and with vastly more pleasure, than in the dry and formal didactic treatises and ordinances professedly devoted to the science. The doctrines are there reasoned out at large, and practically applied The arguments at the bar, and the opinions from the bench, are intermingled with the gravest reflections, the most scrupulous morality, the soundest policy, and a thorough acquaintance with all the various topics that concern the great social interests of mankind.

The reports of judicial decisions in the several states, and especially in the states of Massachusetts, New York, and Pennsylvania, evince great attention to maritime questions, and they contain abundant proofs, that our courts have been dealing largely with the business of an enterprising and commercial people. Maritime law became early and anxiously an object of professional research. As for the evolution of Seaborne transport, the earliest channels of commerce, and rules for

resolving disputes involving maritime trade were developed early in recorded history. Early historical records of these laws include the Rhodian law, of which no primary written specimen has survived, but which is alluded to in other legal texts Roman and Byzantine legal codes, and later the customs of the Consulate of the Sea or the Hanseatic League. In southern Italy the Ordinamenta et consuetudo maris 1063 at Trani and the Amalfian Laws were in effect from an early date.

Bracton noted further that admiralty law was also used as an alternative to the common law in Norman England, which previously required voluntary submission to it by entering a plea seeking judgment from the court. In England, a special Admiralty Court handles all admiralty cases. Despite early reliance upon civil law concepts derived from the Corpus Juris Civilis of Justinian, the English Admiralty Court is very much a common law court, albeit a *sui generis* tribunal initially somewhat distanced from other English courts. After around 1750, as the industrial revolution took hold and English maritime commerce burgeoned, the Admiralty Court became a proactive source of innovative legal ideas and provisions to meet the new situation. The Judicature Acts of 1873-1875 abolished the Admiralty Court as such, and it became conflated in the new "Probate, Divorce & Admiralty division of the High Court. However, when the PDA was abolished and replaced by a new "Family Division, admiralty jurisdiction passed to a so-called "Admiralty Court" which was effectively the Queen's Bench Division sitting to hear nautical cases. The Senior Courts Act 1981 then clarified the admiralty jurisdiction of the High Court, so England once again has a distinct Admiralty Court (albeit no longer based in the Royal Courts of Justice, but in the Rolls Building.

English Admiralty courts were a prominent feature in the prelude to the American Revolution. For example, the phrase in the Declaration of Independence For depriving us in many cases, of the benefits of Trial by Jury refers to the practice of the UK Parliament giving the Admiralty Courts jurisdiction to enforce The Stamp Act in the American Colonies. This power has been awarded because the Stamp Act was unpopular in America, so that a colonial jury would be unlikely to convict any colonist of its violation. However, since English admiralty courts have never had trial by jury, a colonist charged with breaching the Stamp Act could be more easily convicted by the Crown.

Admiralty law became part of the law of the United States as it was gradually introduced through admiralty cases arising after the adoption of the U.S. Constitution in 1789. Many American lawyers who were prominent in the American Revolution were admiralty and maritime lawyers in their private lives. Those included are Alexander Hamilton in New York and John Adams in Massachusetts.

From the fact that the ancient Egyptians engaged in shipping on a wide scale, it can be inferred that they had at least rudimentary laws regulating that activity, although no trace of any has been found thus far. Nor is there anything known of any maritime laws of the Phoenicians, who succeeded the Egyptians as commercial leaders in the Mediterranean. That Rhodes was a major source of maritime law, however, is clearly indicated in two passages from the *Digest* (ad 533) of the Roman emperor Justinian. The first quotes the emperor Antoninus (reigned ad 138–161) in a case of plunder following a shipwreck: “I am indeed lord of the world, but the Law is the lord of the sea. This matter must be decided by the maritime law of the Rhodians, provided that no law of ours is opposed to it. The second is a statement of the basic law of general average, which the *Digest* attributes to the Rhodians. Average here means any loss sustained by a vessel or its cargo. When one segment of a maritime venture is sacrificed to save the others, the average is described as general, and the owners of the property saved must help make good the loss. Thus, if cargo is jettisoned in a successful effort to refloat a grounded vessel, the owners of the vessel and of the cargo saved are obliged to bear proportionate shares of the loss sustained by the owner of the cargo singled out for sacrifice.

Rome did not become a maritime power until the Punic wars of the 3rd century bc. From the fact that the Romans were allies of the Rhodians and from the references in the *Digest*, it is logical to assume that Roman maritime law borrowed heavily from that of Rhodes. Acknowledging Rhodes as the birthplace of maritime jurisprudence, the maritime code of the later Eastern Empire, dating from the 7th or 8th century ad, was called the Rhodian Sea Law.

Because the Mediterranean, under Roman control, was not only the centre of the Western world but also its principal commercial highway, European maritime law evolved as a uniform, supranational, comprehensive body of law—a characteristic which, though sometimes threatened by the spread of nationalism, has never been lost completely. The barbarian invaders who moved

south were not seafarers, and the principal Mediterranean seaports were thus able to maintain their independence. Moreover, the conquered peoples were permitted to keep the Roman law to which they had become accustomed, and in the field of maritime jurisprudence the transition into the Middle Ages was therefore gradual. As certain Italian cities began to outstrip the Eastern Byzantine Empire commercially, they formulated their own maritime laws, some dating as early as 1063. Trani, Amalfi, Venice, and other Italian port cities all offered their own collections of laws. Nevertheless, the next widely accepted body of sea laws was the *Consolat de Mar*, or Consulate of the Sea" originally compiled at Barcelona in the 13th century. More elaborate than the earlier codes, the *Consolat* was followed in Spain, Provence, and the Italian cities and had a significant effect on the development of modern maritime law.

The earliest code to emerge beyond the Mediterranean was the Rolls of Oléron, named for an island in the Bay of Biscay and apparently dating from the 12th century. Whether the Rolls were of French or of Anglo-Norman origin, they became the nucleus of the maritime law not only of England and France but also of Scotland, Flanders, Prussia, and Castile; and they are still occasionally cited as authority, even by U.S. courts. The Rolls were closely followed in the Laws of Wisby, headquarters of the Hanseatic League until 1361.

In continental Europe, loss of uniformity in the maritime law began with the late Renaissance and accelerated with the rise of nationalism in the 17th century, which witnessed adoption of the Maritime Code of Christian XI of Sweden 1667, the Marine Ordinances of Louis XIV of France 1681, and the Code of Christian V of Denmark 1683. Of these, the most significant were the Ordinances, prepared under Louis XIV's finance minister, Jean-Baptiste Colbert, as part of his comprehensive though unfulfilled plan for the codification of all French law. Established customs of the sea, revised to suit the times, were made part of the national law, enforceable in the French Admiralty Court, which was granted maritime jurisdiction to the exclusion of the old consular courts, whose judges had been elected by the mariners themselves.

The individuality of the maritime law its separation from other types of law was accentuated by the Ordinances, which gathered together in one code all of the criminal, private, procedural, and public laws relating to the sea. Although the French Admiralty Court failed to survive the Revolution that began in 1789, the substantive law embodied in the Ordinances was very closely

followed in the *Code de Commerce*, whose adoption in 1807 meant that the maritime law was thereafter considered simply as a branch of commercial law, with consequent diminution of the weight previously given to custom and usage. Furthermore, abolition of the Admiralty Court resulted in the trial of maritime cases by the commercial courts, on which, in the smaller ports, maritime interests might not be represented. In countries with codes based directly or indirectly on the French commercial code, civil maritime cases, as well as nonmaritime commercial disputes, are heard and decided by commercial courts.

Although the Code de Commerce was widely adopted in the first half of the 19th century, in some cases by choice and in others by conquest, the German Commercial Code of 1861, revised in 1897, marked a departure from French law, and revisions of the Spanish and Italian codes showed the influence of the new German law. These, in turn, had their effect in countries under Italian and Spanish influence.

Although the Pied Poudre courts, held primarily for the settlement of disputes at English fairs and markets, also had special jurisdiction of seamen's cases, it is probable that the first English tribunals to apply maritime law, with the Rolls of Oléron as a basis, were the courts of the Cinque Ports. The High Court of Admiralty, which sat at London, and the Vice Admiralty Courts, set up in the other ports, were a later development. They were named after the admiral, an officer whose duties were at first solely administrative and military but were broadened early in the 14th century to include disciplinary proceedings in such matters as piracy. The Admiralty Court is considered as dating from 1360, when for the first time the admiral was expressly granted jurisdiction in civil maritime cases. By the end of the 16th century the admiralty courts had come to exercise an extremely wide jurisdiction, reaching far beyond saltwater transportation into many areas of commercial law. But during the first half of the 17th century, the judges of the common-law courts succeeded in divesting their competitors in the Admiralty of their commercial jurisdiction and in restricting them to the adjudication of "things done upon the sea.

The Admiralty was a royal court with valuable emoluments. It functioned without the aid of juries, following procedures borrowed from the Continent that were somewhat less dilatory and cumbersome than those of the common-law courts, and applied the laws and customs of the sea to the maritime controversies that came before it. For these reasons it was preferred by the merchants

and favoured by the Crown, which depended to a considerable extent on taxation of the merchants for its revenues. Its jurisdiction therefore waxed and waned with the strength or weakness of the reigning sovereign. Thus, it enjoyed wide jurisdiction under the Tudors, but its powers were severely curtailed under succeeding monarchs and governments, and were never fully restored until the passage of the first of the Admiralty Court Acts in the 19th century. Although the powers of the English Admiralty are today quite broad, in practice it is rare for cases other than those involving marine collisions and salvage to be brought before it. Controversies respecting charter parties, ocean bills of lading, and marine insurance, for example, are more generally brought before the Commercial Court.

In the United States, the federal district courts are by statute granted original jurisdiction, exclusive of the courts of the States, of Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." This means, essentially, that if a maritime claimant wishes to have his claim litigated in accordance with admiralty procedure he must invoke the admiralty jurisdiction of the district courts. However, he is free to sue in a state court, unless the defendant is a citizen of another state, in which case the suit may be tried as an ordinary civil action in the district court.

Transportation of goods and passengers by water is one of the most ancient channels of commerce on record.This mode of transportation was and still is indispensable for international trade since ships are capable of carrying bulky goods which otherwise would not be carried. Rules governing relationships among participants of sea-transport have also been known since c.1st millennium BC.

Ancient maritime rules derived from the customs of the early Egyptians, Phoenicians and the Greeks who carried an extensive commerce in the Mediterranean Sea. The earliest maritime code is credited to the island of Rhodes which is said to have influenced Roman law. It is generally accepted that the earliest maritime laws were the Rhodian Sea Laws, which have been claimed to date from 900 B.C., but which more likely appeared in the form recognized today during the period from 500 to 300 B.C. These laws were recognized in the Mediterranean world as a method of providing predictable treatment of merchants and their vessels. The complexity and attention to detail found in the Rhodian Sea Laws demonstrated the sophistication of commerce and trade of

Ancient Greece a world of commerce, the center of which, Rhodes, was in a position to dictate terms for trade.

These laws which derived their essential elements from Rhodian customs were afterwards leveled up by Romans. There was a great enlargement of the application of the principles of the Roman law in the revival of commerce consequent upon the growth of the Italian republics and the great free cities of the Rhine and the Baltic Sea. Special tribunals were set up in the Mediterranean port towns to judge disputes arising among seafarers. This activity eventually led to the recording of individual judgments and the codification of customary rules by which courts become bound. Three noted codes of maritime law whose principles were found in the Roman law, were formulated in Europe during the three centuries between A.D. 1000 and A.D. 1300. One, Libre del Consolat de mar of Barcellona was adopted by the cities on the Mediterranean; the second, the Laws of Oleron prevailed in France and England; and the third, Laws of Wisby governed the great free cities of the Hanseatic League on the Baltic.

The oldest of these codes was Consolato del Mare, or Regulation of the Sea, prepared at Barcelona. It was a compilation of comprehensive rules for all maritime subjects. It, for example, dealt with ownership of vessels, the duties and responsibilities of the masters or captains thereof, duties of seamen and their wages, freight, salvage, jettison, average contribution, and the like. Libre del Consolat de mar of Barcellona and the Tablets of Amalfi, one prepared at the famous of Italian seaports, enjoyed authority far beyond the ports where they were promulgated. In essence, until the rise of modern nations, maritime law did not derive its force from territorial sovereigns but represented what was already conceived to be the customary law of the sea.

Eventually, as commerce from the Mediterranean moved northward and westward, sea codes developed in northern European ports. Among the important medieval sea codes were the *Laws of Wisby* (a Baltic port), the *Laws of Hansa Towns* (a Germanic league), and the *Laws of Oleron* a French island. The *Consolato del Mare* was inspirational in the preparation of these later codes. In particular, *the Laws of Oleron*, the second great code of maritime regulation, was inspired by the *Consolato del Mare*. These three codes are called the three arches upon which rests modern admiralty structure.

Contemporary maritime law is a mixture of ancient doctrines and new at laws both national and international. Among the traditional principles of admiralty still in use are marine insurance, general average and salvage. The welfare of the seaman, the ancient concept of maintenance and cure" are also still in use today. The main reason for the continuous use of ancient principles of law is the unchanging nature of basic hazards of seafaring. Since at least the end of the 19th century, however, naval architecture and cargo handling have changed in significant ways. The extensive use of crude oil carriers as well as carriers of liquefied natural gas has, for example, posed new hazards and questions of liability for oil pollution and damage to the marine ecology and the shorelines. As a result of this, modern maritime law consists of laws that are of historic origin and of recent development. Note also that not all of the original principles of maritime law still apply.

1.SELF ASSESSMENT EXERCISE: Briefly describe the evolution of Maritime law up to present day.

2.6 Summary

In this unit you are able the learn the evolution and development of maritime Law. In English-speaking countries, admiralty is sometimes used synonymously, but in a strict sense the term refers to the jurisdiction and procedural law of courts whose origins may be traced to the office of Admiral. Although etymologically maritime law and law of the sea are identical, the former term is generally applied to private shipping law, whereas the latter, usually prefixed by international, has come to signify the maritime segment of public international law. The Convention on the Law of the Sea, on the other hand, is a UN agreement regarding territorial waters, sea lanes, and ocean resources. The Convention was originally signed by 119 nations on Dec. 10, 1982.

From the fact that the ancient Egyptians engaged in shipping on a wide scale, it can be inferred that they had at least rudimentary laws regulating that activity, although no trace of any has been found thus far. Nor is there anything known of any maritime laws of the Phoenicians, who succeeded the Egyptians as commercial leaders in the Mediterranean. That Rhodes was a major source of maritime law, however, is clearly indicated in two passages from the *Digest* (AD 533) of the Roman emperor Justinian.

The first quotes the emperor Antoninus in a case of plunder following a shipwreck: “I am indeed lord of the world, but the Law is the lord of the sea. This matter must be decided by the maritime law of the Rhodians, provided that no law of ours is opposed to it. The second is a statement of the basic law of “general average,” which the *Digest* attributes to the Rhodians. average, means any loss sustained by a vessel or its cargo. When one segment of a maritime venture is sacrificed to save the others, the average is described as general, and the owners of the property saved must help make good the loss. Thus, if cargo is jettisoned in a successful effort to refloat a grounded vessel, the owners of the vessel and of the cargo saved are obliged to bear proportionate shares of the loss sustained by the owner of the cargo singled out for sacrifice.

Many modern-day principles are still found today in the general maritime law or in national statutes or international conventions. For example, Rhodian law, which was probably an unwritten lex maritima, had three of its principles of general average, recorded in the Digest of Justinian jettison, cutting the mast and cutting the anchor) and this is the authority today for general average, because the terms of general average are not set out in any national statute or international convention. The York/Antwerp Rules are merely contactual terms of general average, which are applicable only by agreement of the parties, usually in a bill of lading or charter party.

Roman law gave us and still gives us, the bottomry bond, the shipbuilding lien, a lien for ship repairs, a lien for supplies for the crew and a freight lien on cargo. The Rôles of Oléron gave and still gives us, amongst other things, more details on bottomry and more liens, the principles of salvage and the rights between partners in the ownership of a ship probably the beginnings of company law. The Admiralty had in particular the civilian saisie conservatoire the seizure before judgment the attachment which was and is unknown in the common law.

2. (SELF ASSESSMENT EXERCISE): Discuss only modern evolution of maritime law

2.7 References/Further Reading/Web Resources

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2.8 Possible answers to self-assessment exercise no 1. The evolution of maritime Law is in three stages, the ancient, the Middle Ages and the modern time.

Unit 3: The Legal Framework of International Maritime Law

3.1 Introduction

Sources of law are the origins of laws, the binding rules that enable any state to govern its territory. The term source of law may sometimes refer to the sovereign or to the seat of power from which the law derives its validity. The perceived authenticity of a source of law may rely on a choice of jurisprudence analysis. Tyrants such as Kim Jong-un may wield *De facto* power, but critics would say he does not exercise power from a *de jure* or legitimate source. After World War II it was not a valid defence at Nuremberg to say "I was only obeying orders", and the victors hanged Nazis for breaching universal and eternal standards of right and wrong.

Over decades and centuries, principles of law have been derived from customs. The divine right of kings, natural and legal rights, human rights, civil rights, and common law are early unwritten sources of law. Canon law and other forms of religious law form the basis for law derived from religious practices and doctrines or from sacred texts; this source of law is important where there is a state religion. Historical or judicial precedent and case law can modify or even create a source

of law. Legislation, rules, and regulations are form the tangible source of laws which are codified and enforceable.

i. Traditional international law sources. The traditional starting point of discussion on the sources of international law is Article 38 of the Statute of the International Court of Justice. To the extent that it speaks to the law to be administered to disputes at bar between sovereign States, Article 38 refers to four sources, three of which are considered in this article. First are international conventions expressly recognized by States. These constitute the bulk of international maritime law. In order for the provisions of an international treaty to have direct force of law in a coastal, it is necessary for that instrument to be transformed, i.e., legislated into domestic law. The requirement of express recognition in Article 38 makes it unclear whether international instruments, to which a state is not a party, but which have been legislated or whose underlying values are recognized by a State court as reflecting State values, constitute a source of international law.

Second, there is international custom as evidence of a general practice accepted as law. By definition international custom is unwritten law, and it may or may not be codified, although frequently the evidence of the existence of a custom may be written. Unlike conventions, custom does not require express sovereign State consent for its emergence and eventual binding authority. This has significance for how Canadian courts notice custom as a source of international law, as will be seen below. States are bound by customary law irrespective of whether they are parties to conventions in which it is codified. Much maritime law has customary origins, and despite extensive codification and further development, as will be seen below, uncodified custom remains. The customary law-making process is ongoing: old customs evolve and new norms emerge through the combined force of State practice and opinio juris.

Third, general principles of law recognized by States are also a source, but are not addressed in this article. Finally, Article 38 includes as a secondary source, subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. In so far as

Canadian judicial decisions are concerned, Justice La Forest underlined the role of the Supreme Court of Canada's judgments in contributing to the further development of international law and in assisting other jurisdictions.

ii. **International maritime "soft law**" and industry practices In addition to traditional sources of international law, international and domestic lawmakers and industry also look to alternative sources for guidance of State and industry practice with respect to navigation and shipping. These sources can be described in part as international maritime soft law and in other respects as maritime industry practices. First, the International Maritime Organization adopts resolutions, codes and guidelines of a voluntary character which do not necessarily relate to obligations under any of the conventions for which it has secretariat responsibilities, although many are related in some way. These instruments are designed to assist member States with the implementation of a particular convention or to assist with a specific issue not yet subject to an international rule or standard. An example of this is the IMO Guidelines on Places of Refuge for Ships in Need of Assistance, which provide a voluntary framework for decision-making by coastal State authorities and ship-owners, masters, and salvors. The philosophy behind this instrument is to promote clarity and uniformity in risk assessment-based decision-making without creating new international legal obligations. Although not intended to be mandatory, several States, including Canada, have incorporated the guidelines within their domestic practice, but without necessarily legislating them. Professor Kindred has proposed that a principled approach to curial notice of international instruments should also include consideration of "soft law" sources of international law.

3.2 Learning outcomes

It is intended that at the end of this unit you should be able to:

i.List the various sources of International Law

ii. You will be able to distinguish International sources and domestic sources

iii. You will have a deeper knowledge of the sources of International maritime Law.

3.3 Sources of International Maritime Law

Since there is no world government, there is no world Congress or parliament to make international law the way domestic legislatures create laws for one country. As such, there can be significant difficulty in establishing exactly what international law is. Various sources, however principally

treaties between states are considered authoritative statements of international law. Treaties are the strongest and most binding type because they represent consensual agreements between the countries who sign them. At the same time, as stated in the statute of the International Court of Justice, rules of international law can be found in customary state practice, general principles of law common to many countries, domestic judicial decisions, and the legal scholarship. It is created by several sources. For example, The Charter of the United Nations is the establishing document for the International Court of Justice as the principal judicial organ of the United Nations.

Article 38(1) of the Statute of the International Court of Justice lists the sources that the ICJ uses to resolve disputes as follows:

i. Treaties. Treaties are similar to contracts between countries; promises between States are exchanged, finalized in writing, and signed. States may debate the interpretation or implementation of a treaty, but the written provisions of a treaty are binding. Treaties can address any number of fields, such as trade relations, such as the North American Free Trade Agreement, or control of nuclear weapons, such as the Nuclear Non-Proliferation Treaty. They can be either bilateral ie between two countries or multilateral between many countries. They can have their own rules for enforcement, such as arbitration, or refer enforcement concerns to another agency, such as the International Court of Justice. The rules concerning how to decide disputes relating to treaties are even found in a treaty themselves the Vienna Convention on the Law of Treaties 1969.

International treaties are contracts signed between states. They are legally binding and impose mutual obligations on the states that are party to any particular treaty states parties. The main particularity of human rights treaties is that they impose obligations on states about the manner in which they treat all individuals within their jurisdiction. Even though the sources of international law are not hierarchical, treaties have some degree of primacy. More than forty major international conventions for the protection of human rights have been adopted. International human rights treaties bear various titles, including ‘covenant’, ‘convention’ and ‘protocol’; but what they share are the explicit indication of states parties to be bound by their terms.

ii. International Custom: Article 38(1)(b) of the ICJ Statute refers to international custom as a source of international law, specifically emphasizing the two requirements of state practice plus

acceptance of the practice as obligatory or *opinio juris sive necessitatis* usually abbreviated as *opinio juris*. Derived from the consistent practice of originally Western states accompanied by opinio juris the conviction of States that the consistent practice is required by a legal obligation, customary international law is differentiated from acts of comity mutual recognition of government acts by the presence of *opinio juris* although in some instances, acts of comity have developed into customary international law, i.e. diplomatic immunity. Treaties have gradually displaced much customary international law. This development is similar to the replacement of customary or common law by codified law in municipal legal settings, but customary international law continues to play a significant role in international law.

iii. General principles of Law

The scope of general principles of law, to which Article 38(1) of the Statute of the ICJ refers, is unclear and controversial but may include such legal principles that are common to a large number of systems of municipal law. Given the limits of treaties or custom as sources of international law, Article 38(1) may be looked upon as a directive to the Court to fill any gap in the law and prevent a nonliquet by reference to the general principles.

In the application of both national and international law, general or guiding principles are used. In international law they have been defined as 'logical propositions resulting from judicial reasoning on the basis of existing pieces of international law'. At the international level, general principles of law occupy an important place in case-law regarding human rights. A clear example is the principle of proportionality, which is important for human rights supervisory mechanisms in assessing whether interference with a human right may be justified.

iv. Judicial decisions.

According to Article 38(1) (d) of its Statute, the ICJ is also to apply judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. It is difficult to tell what influence these materials have on the development of the law. Pleadings in cases before the ICJ are often replete with references to case law and to legal literature.

iv. The writing of Scholars

The writings of scholars contribute to the development and analysis of International Maritime law. Compared to the formal standard setting of international organs the impact is indirect. Nevertheless, influential contributions have been made by scholars and experts working in human rights fora, for instance, in the UN Sub-Commission on the Promotion and Protection of Human Rights, as well as by highly regarded NGOs, such as Amnesty International and the International Commission of Jurists. Legal scholarship is not really authoritative in itself, but may describe rules of law that are widely followed around the world. Thus, articles and books written by law Erudite professors in the area of International Maritime Law can be consulted to find out what international Maritime law is,

v. General practice of International Organization is a source of International maritime Law

Some instruments or decisions of political organs of international organizations and human rights supervisory bodies, although they are not binding on states parties per se, nonetheless carry considerable legal weight. Numerous international organs make decisions that concern human rights and thereby strengthen the body of international human rights standards. Such nonbinding human rights instruments are called 'soft law', and may shape the practice of states, as well as establish and reflect agreement of states and experts on the interpretation of certain standards. Decisions of political organs of the United Nations or major organizations involving political obligations play a special role and can have an impact on human rights standard setting, e.g., certain documents of the Organisation on Security and Co-operation in Europe Conference on Security and Co-operation in Europe until 1995.

The above sources of International Law are applicable to international Maritime Law. However, there are international conventions, treaties, Rules and International standards as a source of Legal instruments dedicated to international Maritime Law.

1.SELF ASSESSMENT EXERCISE : State the Sources of International Maritime from the perspective of public international law

3.4 Key International Maritime Organization Conventions

i.International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended

ii. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL1973/78)

iii. International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW) as amended, including the 1995 and 2010 Manila Amendments

3.5 Other conventions relating to maritime safety and security and ship/port interface

i. Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972

ii. Convention on Facilitation of International Maritime Traffic (FAL), 1965

iii. International Convention on Maritime Search and Rescue (SAR), 197

iv. International Convention for Safe Containers (CSC), 1972

v. International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995.

2.SELF ASSESSMENT EXERCISE: List the sources of International maritime law provided by International Maritime Organisation (IMO)

3.6 Summary

In this unit you are to learn various sources of maritime law as provided under article 38 [1] of the Statute of the ICJ. Such as: Treaties, Customary International Law, Principles of International Law, Writings of Publicists, Judicial Decisions and Non-Legally Binding Instruments. You have also learned International Maritime Organization key maritime conventions and treaties dedicated to regulate maritime activities.

In civil law systems, the sources of law include the legal codes, such as the civil code or the criminal code, and custom in common law systems there are also several sources that combine to form the law. Civil law systems often absorb ideas from the common law and *vice-versa*. Scotland,

for instance, has a hybrid form of law, as does South Africa, whose law in an amalgam of common law, civil law and tribal law.

A state may comply with international law, it may have a written or federal constitution, or it may have regional legislature, but normally it is the central national legislature that is the ultimate source of law. While a written constitution may seem to be the prime source of law, the state legislature may amend its constitution provided certain rules are followed. International law may take precedence over national law, but international law is mainly made up of conventions and treaties that have been ratified; and anything that can be ratified may be denounced later by the national parliament. Although local authorities may feel that they have a democratic mandate to pass bye-laws, the legislative power they wield has been delegated by parliament; and what parliament gives, parliament make later take away. In England, the archetypal common law country, there is a hierarchy of sources,

Since time immemorial, states and peoples have entered into formal relationships with each other. Over the ages, traditions have developed on how such relationships are conducted. These are the traditions that make up modern 'international law'. Like domestic law, international law covers a wide range of subjects such as security, diplomatic relations, trade, culture and human rights, but it differs from domestic legal systems in a number of important ways. In international law there is no single legislature, nor is there a single enforcing institution. Consequently, international law can only be established with the consent of states and is primarily dependent on self-enforcement by those same states. In cases of non-compliance there is no supra-national institution; enforcement can only take place by means of individual or collective actions of other states. This consent, from which the rules of international law are derived, may be expressed in various ways. The obvious mode is an explicit treaty, imposing obligations on the states parties. Such 'treaty law' constitutes a dominant part of modern international law. Besides treaties, other documents and agreements serve as guidelines for the behaviour of states, although they may not be legally binding. Consent may also be inferred from established and consistent practice of states in conducting their relationships with each other. The sources of international law are many and states commit to them to different degrees. The internationally accepted classification of sources of international law is formulated in Article 38 of the Statute of the International Court of Justice.

SELF ASSESSMENT EXERCISE: List the sources of International Maritime Law as provided by IMO

3.7 References /Further Reading/Web Resources

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3.8 Possible Answers to self-assessment exercise no 1.; Article 38(1) ICJ Statutes provided 6 sources of International maritime Law. These are:

Sources of international law includes treaties, international customs, general widely recognized principles of law, the decisions of national and lower courts, and scholarly writings. They are the materials and processes out of which the rules and principles regulating the international community are developed.

Unit 4 Principles and Components of International Maritime Law

4.1 Introduction

A principle is a proposition or value that is a guide for behavior or evaluation. In law, it is a rule that has to be or usually is to be followed, or can be desirably followed, or is an inevitable consequence of something, such as the laws observed in nature or the way that a system is constructed. The principles of such a system are understood by its users as the essential characteristics of the system, or reflecting system's designed purpose, and the effective operation or use of which would be impossible if any one of the principles was to be ignored. A system may be explicitly based on and implemented from a document of principles as was done in IBM's 360/370 Principles of Operation. In common English, it is a substantive and collective term referring to rule governance, the absence of which, being "unprincipled", is considered a character

defect. It may also be used to declare that a reality has diverged from some ideal or norm as when something is said to be true only "in principle" but not in fact. It represents a set of values that inspire the written norms that organize the life of a society submitting to the powers of an authority, generally the State. The law establishes a legal obligation, in a coercive way; it therefore acts as principle conditioning of the action that limits the liberty of the individuals. See, for examples, the territorial principle, homestead principle, and precautionary principle.

A component represents one or more logical tasks. For example consider a car. It can be considered as a component since it allows people to sit, which can be considered an input. It transports a person from one place to another, which is its function. It requires a certain amount of fuel to operate and has a certain maximum speed limit, which represent its characteristics. It is composed of an engine, braking system, air conditioner and other such sub components. Each of these sub components has their own distinguished functions. The engine takes a certain amount of fuel as input, performs a process known as internal combustion and produces movement along with carbon monoxide as outputs. There are also components of maritime law as well.

4.2 Learning Outcomes

It is intended that at the end of this unit you will be able to:

i. Explain the principles guiding the use of the oceans and components of international maritime law.

ii. Have knowledge of the issue of health care during voyage

iii.The principles of assisting a vessel under distress

iv. Deeper knowledge about injuries.

4.3 Principles of International Maritime Law

i. Maintenance and cure

The doctrine of maintenance and cure is rooted in Article VI of the Rolls of Oleron promulgated in about 1160 A.D. The obligation to cure requires a shipowner to provide medical care free of charge to a seaman injured in the service of the ship, until the seaman has reached maximum

medical cure. The concept of maximum medical cure is more extensive than the concept maximum medical improvement. The obligation to cure a seaman includes the obligation to provide him with medications and medical devices which improve his ability to function, even if they don't improve his actual condition. They may include long term treatments that permit him to continue to function well. Common examples include prostheses, wheelchairs, and pain medications.

The obligation of maintenance requires the shipowner to provide a seaman with his basic living expenses while he is convalescing. Once a seaman is able to work, he is expected to maintain himself. Consequently, a seaman can lose his right to maintenance, while the obligation to provide cure is ongoing. A seaman who is required to sue a shipowner to recover maintenance and cure may also recover his attorneys fees. *Vaughan v. Atkinson*, 369 U.S. 527 (1962). If a shipowner's breach of its obligation to provide maintenance and cure is willful and wanton, the shipowner may be subject to punitive damages. See *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009).

ii. Personal injuries to passengers

Ship-owners owe a duty of reasonable care to passengers. Consequently, passengers who are injured aboard ships may bring suit as if they had been injured ashore through the negligence of a third party. The passenger bears the burden of proving that the ship-owner was negligent. While personal injury cases must generally be pursued within three years, suits against cruise lines may need to be brought within one year because of limitations contained in the passenger ticket. Notice requirements in the ticket may require a formal notice to be brought within six months of the injury. Most U.S. cruise line passenger tickets also have provisions requiring that suit to be brought in either Miami or Seattle.

In England, the 1954 case of Adler v Dickson The Himalay*a* 1954 allowed a shipping line to escape liability when a bosun's negligence resulted in a passenger being injured. Since then, the Unfair Contract Terms Act 1977 has made it unlawful to exclude liability for death or personal injury caused by one's negligence. Since then, however, the so-called "Himalaya clause" has become a useful way for a contractor to pass on the protection of a limitation clause to his employees, agents and third-party contractors.

iii. Maritime liens and mortgages

Banks which loan money to purchase ships, vendors who supply ships with necessaries like fuel and stores, seamen who are due wages, and many others have a lien against the ship to guarantee payment. To enforce the lien, the ship must be arrested or seized. In the United States, an action to enforce a lien against a U.S. ship must be brought in federal court and cannot be done in state court, except for under the reverse-*Erie* doctrine whereby state courts can apply federal law.

iv. Salvage and treasure salvage

When property is lost at sea and rescued by another, the rescuer is entitled to claim a salvage award on the salvaged property. There is no life salvage. All mariners have a duty to save the lives of others in peril without expectation of reward. Consequently, salvage law applies only to the saving of property. There are two types of salvage: contract salvage and pure salvage, which is sometimes referred to as merit salvage. In contract salvage the owner of the property and salvor enter into a salvage contract prior to the commencement of salvage operations and the amount that the salvor is paid is determined by the contract. The most common salvage contract is called a Lloyd's Open Form Salvage Contract.

In pure salvage, there is no contract between the owner of the goods and the salvor. The relationship is one which is implied by law. The salvor of property under pure salvage must bring his claim for salvage in court, which will award salvage based upon the "merit" of the service and the value of the salvaged property. Pure salvage claims are divided into high-order and low-order salvage. In high-order salvage, the salvor exposes himself and his crew to the risk of injury and loss or damage to his equipment to salvage the damaged ship. Examples of high-order salvage are boarding a sinking ship in heavy weather, boarding a ship which is on fire, raising a ship or boat which has already sunk, or towing a ship which is in the surf away from the shore. Low-order salvage occurs where the salvor is exposed to little or no personal risk. Examples of low-order salvage include towing another vessel in calm seas, supplying a vessel with fuel, or pulling a vessel off a sand bar. Salvors performing high order salvage receive substantially greater salvage award than those performing low order salvage.

v. Piracy

Merchant vessels transiting areas of increased pirate activity i.e. the Gulf of Aden, Somali Basin, Southern Red Sea and Bab-el-Mandeb straits are advised to implement self-protective measures, in accordance with most recent best management practices agreed upon by the members of the merchant industry and endorsed by the NATO Shipping Centre, and the Maritime Security Centre Horn-of-Africa.

1.SELF ASSESSMENT EXERCISE: What do you understand by the principles of maritime law

4.4 Components of International maritime law

i.Maritime liens

Although admiralty actions are frequently brought ***in personam***, against individual or corporate defendants only, the most distinctive feature of admiralty practice is the proceeding ***in rem***, against maritime property, that is, a vessel, a cargo, or freight, which in shipping means the compensation to which a carrier is entitled for the carriage of cargo. Under American maritime law, the ship is personified to the extent that it may sometimes be held responsible under circumstances in which the ship-owner himself is under no liability. The classic example of personification is the compulsory pilotage case. Some state statutes impose a penalty on a shipowner whose vessel fails to take a pilot when entering or leaving the waters of the state. Since the pilotage is thus compulsory, the pilot's negligence is not imputed to the ship-owner. Nevertheless, the vessel itself is charged with the pilot's fault and is immediately impressed with an inchoate maritime lien that is enforceable in court.

Maritime liens can arise not only when the personified ship is charged with a maritime tort, such as a negligent collision or personal injury, but also for salvage services, for general average contributions, and for breach of certain maritime contracts.

In a proceeding *in rem*, the vessel, cargo, or freight can be arrested and kept in the custody of the court unless the owner obtains its release by posting a bond or such other security as may be required under the applicable law or as may be acceptable to the plaintiff. More frequently,

however, the owner will post security to avoid a threatened arrest, and the property never has to be taken into custody. When the judgment is for the plaintiff in a proceeding *in rem*, there will be a recovery on the bond or other security if the owner of the property does not pay; or, if security has not been posted, the court will order the property sold, or the freight released, in order to satisfy the judgment. The sale of a ship by an admiralty court following a judgment *in rem* divests the ship of all pre-existing liens and not merely those liens sought to be enforced in the proceeding *in rem*. By way of contrast, the holder of an *in personam* judgment against a shipowner can, like any judgment creditor, have the ship sold in execution of the judgment; but such a sale, unlike the sale under an admiralty judgment *in rem*, does not divest existing liens; the purchaser at the execution sale takes the ship subject to all such liens. Thus, an *in rem* proceeding has decided advantages over a proceeding *in personam* in a case in which the ship-owner is insolvent.

Efforts have been made from time to time to increase the security value of ship mortgages, in order to encourage lending institutions to finance vessel construction, but these efforts have not been very successful, largely because of differences in national laws respecting the relative priorities of mortgages and maritime liens. Under general maritime law there is a complex hierarchy of maritime liens; that is to say, in a proceeding that involves distribution of an inadequate fund to a number of lien claimants, liens of a higher rank will be paid in full in priority over liens of a lower rank; and in most countries a ship mortgage ranks lower than a number of maritime liens. Attempts were made to harmonize some of these conflicts by international conventions signed in 1926 and 1976, but the first failed to win widespread support and, as of the end of 1983, the second had been ratified by only half of the signatories required for the convention to enter into force.

ii. Shipping charters

The function of ships, other than warships, pleasure craft, and service vessels of various types is of course transportation of cargoes and passengers. In the jet age the passenger-carrying segment of the shipping industry has lost much of its former importance, but the quantity of goods transported by water continues to grow as the world economy expands. The great majority of the contracts governing the carriage of goods by water are evidenced either by charter parties or by bills of lading. The term charter party a corruption of the Latin *carta partita*, or divided charter is employed to describe three widely differing types of contracts relating to the use of vessels owned

or controlled by others. Under a demise or bareboat charter, the ship owner delivers possession of the vessel to the charterer, who engages the master and crew, arranges for repairs and supplies, and, in general, functions in much the same way as an owner during the term of the charter. A much more common arrangement is the "time" charter, where under the ship owner employs the master and crew and the charterer simply acquires the right, within specified limits, to direct the movements of the vessel and determine what cargoes are to be carried during the charter period. Under both demise and time charters, the charterer pays charter hire for the use of the vessel at a specified daily or monthly rate.

Another type is the voyage charter, which is essentially a contract of affreightment, or carriage. Most voyage charters provide for the carriage of full cargoes on one voyage or a series of voyages, but occasionally a charterer contracts for the use of only a portion of the carrying capacity of the vessel, in which case the governing contract is described as a space charter. Under a voyage charter, it is customary for the master or his agent to issue a bill of lading to the shipper, who is usually the charterer, although as between ship-owner and charterer the voyage charter remains the governing contract of carriage; the bill of lading serves only as a receipt and as a document of title to the goods. Ocean bills of lading are usually in order form; that is, they call for delivery to the order of the shipper or of some other designated party. Such a bill of lading may be negotiated in much the same way as a check, draft, or other negotiable instrument, which means that a bona fide purchaser of the bill of lading takes it free and clear of any defects not appearing on its face. Thus, if cargo is externally damaged on shipment but the damage is not noted on the bill of lading, the carrier will be barred from establishing that the cargo was in fact damaged before it came into the carrier's custody. Once a bill of lading issued under a voyage charter is negotiated to a bona fide purchaser, it becomes the governing contract between the carrier and the holder of the bill.

When a ship strands or collides with another vessel, substantial cargo loss or damage may result. If the casualty is found to have been caused by a sea peril or an error in navigation, there will be no liability if the goods are being carried under a statutory or contractual provision based upon the Brussels Convention on Limitation of Liability (1923), which incorporated the so-called "Hague Rules." If, however, the casualty was the result of the carrier's failure to exercise due diligence to make the ship seaworthy and to see that it was properly manned, equipped, and supplied, the carrier will be held responsible.

iii. Marine insurance

An appreciation of the part played by marine insurance is essential to an understanding of the shipping industry and the special law that governs it. Most ship-owners carry hull insurance on their ships and protect themselves against claims by third parties by means of protection and indemnity insurance. Waterborne cargo is almost universally insured against the perils of the seas. It is impossible in a brief outline such as this to go into any of the special intricacies, which are many, of marine insurance law. Most cases of damage to a ship or its cargo resolve themselves into settlements between insurance carriers. Proposals for changes in the maritime law must always be evaluated against this background of insurance coverage, as the imposition of liabilities that cannot be insured against can discourage all but the wealthiest ocean carriers from engaging in the affected trades.

Marine insurance is the oldest known form of insurance. Indeed, the institution of general average, under which the participants in a maritime venture contribute to losses incurred by some for the benefit of all, may itself be looked on as a primitive form of mutual insurance. Hull and cargo insurance today, in fact, is usually written on forms whose wording has changed little since the 18th century. The so-called perils clause, enumerating the risks insured against, customarily includes not only the natural hazards to which a vessel is exposed but man-made perils such as capture or destruction by enemy forces as well. In 1898, however, Lloyd's of London underwriters inaugurated the practice of adding Free of Capture and Seizure clauses to the basic policy forms, the effect of which was to remove war and similar risks from coverage. The practice has since become universal, with the result that the owner of a ship or cargo must either purchase separate war-risk insurance or else pay his marine underwriters an additional premium in return for deletion of the F.C.&S. clause.

An early type of marine liability insurance was against liability for damage that the insured vessel caused to other vessels. Such insurance was effected by the addition of a "running down" or "collision" clause to the basic hull policy insuring the owner or operator of a vessel against its loss or damage. On the theory that, if given full protection, owners and operators would not be encouraged to exercise proper care in the maintenance of their vessels and the selection of their

masters and crews, hull underwriters at first refused to insure against more than 75 percent of the collision liability.

2. SELF ASSESSMENT EXERCISE: Describe the components of maritime law you have learned.

4.5 International Regulation

Maritime law is often thought of as being a species of international law rather than a branch of domestic or municipal law. It should not be denied that the international aspect of maritime law gives it a distinctive flavour; in doubtful cases courts of one country will often look to the precedents or statutes of another country for inspiration or guidance. Except to the extent that it may have bound itself by international conventions, however, each country has the right to adopt such maritime laws as it sees fit. Although many such laws are common to most maritime countries, others are not, though there is a growing tendency to restore the international uniformity in the maritime law achieved during the Middle Ages. In many areas, the lead has been taken by the International Maritime Committee, more commonly known by its French name, Comité Maritime International which is composed of the maritime law associations of more than 30 nations. The work of the Comité consists principally of drafting international conventions relating to subjects of maritime law. When such a draft is prepared, it is submitted to the Belgian government, which then convenes a diplomatic conference at which the CMI draft is discussed and amended as the official delegates may decide. If the revised draft wins approval at the conference, it is then submitted to the national governments for possible ratification. Although many of these conventions have failed to be widely ratified, others have been highly successful.

4.6 Summary

Maritime law is a complete system of law, both public and private, substantive and procedural, national and international, with its own courts and jurisdiction, which goes back to Rhodian law of 800 B.C. and pre-dates both the civil and common laws. Its more modern origins were civilian in nature, as first seen in the Rôles of Oléron of circa 1190 A.D. Maritime law was subsequently greatly influenced and formed by the English Admiralty Court and then later by the common law

itself. That maritime law is a complete legal system can be seen from its component parts. For centuries maritime law has had its own law of contract.

Maritime law, is the private law of navigation and shipping and covers inland as well as marine waters. It is the entire body of laws, rules, legal concepts and procedures that relate to the use of marine resources, ocean commerce, and navigation. Maritime law was shaped by the practical needs of those countries bordering the Mediterranean Sea involved in maritime commerce, the roots of which are traced as far back as 900 B.C. Usually, the need was for legal solutions that had no application on land, therefore, as medieval codes began to emerge in port cities and states of Europe, the customs of mariners and merchants played a large part in the development of maritime laws. These early codes and customary law practices served to shape the current U. S. maritime law. The contracts, torts, offenses or injuries which are results of involvement in sea navigation or commerce make up this unique body of law.

The term, admiralty, specifically refers to the British courts in England and the American colonies, separate courts that traditionally exercised jurisdiction over all regulations and handling of disputes relating to sea navigation and commerce. The American courts in practice adopted English law and procedure but chose early on to include national subject matter jurisdiction. The American colonies after the Revolution provided, through the Judiciary Act of 1789 and Article III 2 of the U.S. Constitution, exclusive jurisdiction to the federal district courts over admiralty and maritime matters. The U.S. Congress regulates admiralty through the Commerce Clause and provides national uniform rules which prevail in admiralty claims in national or international shipping and commerce. The admiralty courts have limited jurisdiction but have remained a separate entity. They have expanded to include all activities on both the high seas and navigable waters. Much of U.S. maritime law has evolved through international maritime law in concert with maritime laws of other countries. Federal statutes dealing with maritime issues have been customized with a basis coming from international treaties and resolutions.

In English-speaking countries, admiralty is sometimes used synonymously, but in a strict sense the term refers to the jurisdiction and procedural law of courts whose origins may be traced to the office of Admiral. Although etymologically maritime law and “law of the sea” are identical, the former term is generally applied to private shipping law, whereas the latter, usually prefixed by

"international," has come to signify the maritime segment of public international law. The Convention on the Law of the Sea, on the other hand, is a UN agreement regarding territorial waters, sea lanes, and ocean resources. The Convention was originally signed by 119 nations on Dec. 10, 1982.

In addition maritime law regulates the enforcement of contracts and commonly makes provision for damages to parties who have suffered some form of loss at the hands of a contracting party that has failed to honour or perform in accordance with their agreement. Such a contractual clause must be distinguished from the principle of general average which contemplates the voluntary sacrifice made by the master of the ship in respect of cargo, equipment or funds in order to mitigate further losses or damage in an emergency. The loss suffered by parties is thus shared amongst other parties who have shared in the relevant venture.

3. SELF ASSESSMENT EXERCISE): Analyse the regulations of International maritime law?

4.7 References/Further Reading/Web Resources

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4.8 Possible Answer to self-assessment exercise no, 2: Maintenance and cure, salvage and salvage treasure, marine insurance, piracy etc.

Maritime liens

Although admiralty actions are frequently brought *in personam*, against individual or corporate defendants only, the most distinctive feature of admiralty practice is the proceeding *in rem*, against maritime property, that is, a vessel, a cargo, or "freight," which in shipping means the compensation to which a carrier is entitled for the carriage of cargo.

Shipping charters

The function of ships, other than warships, pleasure craft, and service vessels of various types is of course transportation of cargoes and passengers. In the "jet age" the passenger-carrying segment of the shipping industry has lost much of its former importance, but the quantity of goods transported by water continues to grow as the world economy expands.

Limitation of liability

A distinctive feature of maritime law is the privilege accorded to a shipowner and certain other persons (uch as charterers in some instances to limit the amount of their liability, under certain circumstances, in respect of tort and some contract claims.

MODULE TWO: Division of the Sea into Maritime Zones

UNIT 1: Internal Waters

1.1 Introduction

The rights of coastal States to regulate and exploit areas of the ocean under their jurisdiction are one the foundations of the Law of the Sea Convention. These rights need to be balanced with the

freedom of navigation and access to resources outside State control and the freedom of the seas. To demarcate the proverbial rules of the road, the Law of the Sea Convention permits coastal States to establish several different maritime zones. These zones give coastal States different jurisdictional rights. In general, a State has more rights in zones near to its coastline than it does further into the ocean. The main challenges associated with these zones are how variations in geography affect where zones end and where new zones begin.

1.2 Learning Outcomes

You are expected at the end of this you will to be able to:

i.Know those waters that constitutes internal waters

ii. Understand that the ocean is divided into maritime zones.

iii. Explain the sovereign rights of coastal states over internal waters

iv.That the seas and oceans are no longer a free.

1.3 Internal Waters

Waters landward of the baseline are defined as internal waters, over which the state has complete sovereignty: not even innocent passage is allowed without explicit permission from said state. Lakes and rivers are considered internal waters. All archipelagic waters within the outermost islands of an archipelagic state such as Indonesia or the Philippines are also considered internal waters, and are treated the same with the exception that innocent passage through them must be allowed. However, archipelagic states may designate certain sea lanes through these waters.

Internal Waters include littoral areas such as ports, rivers, inlets and other marine spaces landward of the baseline (low-water line or mark where the port state has jurisdiction to enforce domestic regulations. Enforcement measures can be taken for violations of static standards while in port as well as for violations that occurred within the coastal state’s maritime zones and beyond. However, foreign vessels are not usually held to non-maritime or security port state laws so long as the activities conducted are not detrimental to the peace and security of the locale.

In the maritime security context, however, a coastal state can prevent Privately Contracted Armed Security Personnel from entering its ports and internal waters if carriage of weapons is forbidden in national legislation. Moreover, once entering a port PCASP and the vessel which they are aboard can be held accountable for other violations that took place at sea if

(a) they in some way impacted the port state or

(b) for other reasons with the permission of the flag state. According to the United Nations Convention on the Law of the Sea, a nation's internal waters include waters on the side of the baseline of a nation's territorial waters that is facing toward the land, except in archipelagic states. It includes waterways such as rivers and canals, and sometimes the water within small bays.

In inland waters, sovereignty of the state is equal to that which it exercises on the mainland. The coastal state is free to make laws relating to its internal waters, regulate any use, and use any resource. In the absence of agreements to the contrary, foreign vessels have no right of passage within internal waters, and this lack of right to innocent passage is the key difference between internal waters and territorial waters. The archipelagic waters within the outermost islands of archipelagic states are treated as internal waters with the exception that innocent passage must be allowed, although the archipelagic state may designate certain sea lanes in these waters.

When a foreign vessel is authorized to enter inland waters, it is subject to the laws of the coastal state, with one exception: the crew of the ship is subject to the law of the flag state. This extends to labor conditions as well as to crimes committed on board the ship, even if docked at a port. Offences committed in the harbor and the crimes committed there by the crew of a foreign vessel always fall in the jurisdiction of the coastal state. The coastal state can intervene in ship affairs when the master of the vessel requires intervention of the local authorities, when there is danger to the peace and security of the coastal state, or to enforce customs rules.

The claim by one state of a waterway as internal waters has led to disputes with other states. For example, Canada claims a section of the Northwest Passage as part of its internal waters, fully under Canadian jurisdiction, a claim which has been disputed by the United States and most maritime nations, which consider them to be an international strait, which means that foreign vessels have a right of transit passage. See Canadian Internal Waters and Northwest Passage

International waters dispute. The International Tribunal for the Law of the Sea, which was formed in 1994, has the power to settle maritime disputes between party states, although in practice, these resolutions depend on the willingness of these states to adhere to the rulings.

1.SELF ASSESSMENT EXERCISE: Describe internal waters of Nigeria

1.4 The Rights of Coastal State Jurisdiction over Foreign Vessels in Internal Waters

In the case of ships proceeding to internal waters or a call at a port. Facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published.

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always fall in the jurisdiction of the coastal state. The coastal state can intervene in ship affairs when the master of the vessel requires intervention of the local authorities, when there is danger to the peace and security of the coastal state, or to enforce customs rules.

There are some elements of Coastal State Law that a visiting boat may be expected to comply with. The most common is for the skipper of the vessel to be required to prove that he or she is competent to be in command of the vessel. In many countries the national legislation will require such items including life rafts, flares and lifejackets to be "in date" and where applicable that the relevant service paperwork is available for inspection. A country may also specify items of equipment and/or publications that must be carried. Vessels navigating the European inland waters are generally required to carry a copy of the local rules which may be written in the native language of the country concerned. It is important to ensure you are aware of all such requirements.

2.SELF ASSESSMENT EXERCISE: What is the jurisdiction of Coastal state over foreign Vessels

1.5 The Rights of Coastal Over Internal Waters

The rights of coastal States to regulate and exploit areas of the ocean under their jurisdiction are one the foundations of the LOSC. These rights need to be balanced with the freedom of navigation and access to resources outside State control – the freedom of the seas. To demarcate the proverbial rules of the road, the LOSC permits coastal States to establish several different maritime zones. These zones give coastal States different jurisdictional rights. In general, a State has more rights in zones near to its coastline than it does further into the ocean. The main challenges associated with these zones are how variations in geography affect where zones end and where new zones begin.

Much like internal waters, coastal States have sovereignty and jurisdiction over the territorial sea. These rights extend not only on the surface but also to the seabed and subsoil, as well as vertically to airspace.

2.SELF ASSESSMENT EXERCISE: What the rights of coastal state over its internal waters

1.6 Summary

Today's international law there is a variety of maritime areas in which the coastal State exercises sovereignty, sovereign rights or jurisdiction to the exclusion of other States. While every maritime area described in UNCLOS has its own regime consisting of rights and obligations of different categories of States, the interpretation of the provisions defining the activities to which these rights and obligations apply may give rise to difficulties. The picture of the different areas and of their regime in UNCLOS is a static one. Difficulties arise when transformation occurs or may occur and the picture becomes dynamic. The due regard rule and good faith concepts together with the possibility of submitting the question to adjudication may be helpful.

A maritime boundary is a conceptual division of the Earth's water surface areas using physiographic and/or geopolitical criteria. As such, it usually includes areas of exclusive national rights over mineral and biological resources, encompassing maritime features, limits and zones. Generally, a maritime boundary is delineated through a particular measure from a jurisdiction's coastline. Although in some countries the term maritime boundary represent borders of a maritime nation and are recognized by the United Nations Convention on the Law of the Sea, they usually serve to identify international waters. Maritime boundaries exist in the context of territorial waters, contiguous zones, and exclusive economic zones; however, the terminology does not encompass lake or river boundaries, which are considered within the context of land boundaries. Some maritime boundaries have remained indeterminate despite efforts to clarify them. This is explained by an array of factors, some of which illustrate regional problems. The delineation of maritime boundaries has strategic, economic and environmental implications.

The maritime zones recognized under international law include internal waters, the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf, the high seas and the Area. With the exception of the high seas and the Area, each of these maritime zones is measured from the baseline determined in accordance with customary international law as reflected in the 1982 Law of the Sea Convention. The limits of these zones are officially depicted of nautical charts. The limits shown on the most recent chart edition takes precedence. For a description of the various maritime zones, as well as the Three Nautical Mile Line and Natural Resource Boundary, The boundaries of these maritime zones between coastal nations are established through

international agreements entered into by those nations. For the official description of the maritime boundaries with other nations contact the law of the sea, 1982.

Waters landward of the baseline are defined as internal waters, over which the state has complete sovereignty: not even innocent passage is allowed. Lakes and rivers are considered internal waters. All archipelagic waters within the outermost islands of an archipelagic state such as Indonesia or the Philippines are also considered internal waters, and are treated the same with the exception that innocent passage through them must be allowed. However, archipelagic states may designate certain sea lanes through these waters Internal waters are the waters for example, bays and rivers on the landward side of the baseline from which the breadth of the territorial sea is measured. Each coastal State has full sovereignty over its internal waters as if they were part of its land territory. The right of innocent passage does not apply in internal waters. Internal waters refer to rivers, canals, and the water within small bays. Usually internal waters cover all waterways of a country. Foreign vessels are restricted to make a passage within internal waters. They lack the right to innocent passage in the internal waters whereas they can exercise this right in the territorial waters. All states have complete sovereignty over their internal waters. **See the case of A.G, Federation V. A.G, Abia State**

3.SELF ASSESSMENT EXERCISE; What is Internal waters in Maritime Law ?

1.7 Reference/Further Reading/Web Resources

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1.8 Possible Answer to self-assessment exercise:

Internal waters are all the waters that fall landward of the baseline, such as lakes, rivers, and tidewaters. States have the same sovereign jurisdiction over internal waters as they do over other territory. There is no right of innocent passage through internal waters.

Unit 2: Territorial Sea

2.1 Introduction

Territorial waters, or a territorial sea, as defined by the 1982 United Nations Convention on the Law of the Sea, is a belt of coastal waters extending at most 12 nautical miles; from the baseline usually the mean low-water mark of a coastal state. The territorial sea is regarded as the sovereign territory of the state, although foreign ships both military and civilian are allowed innocent passage

through it; this sovereignty also extends to the airspace over and seabed below. Adjustment of these boundaries is called, in international law, maritime delimitation. The term territorial waters is also sometimes used informally to describe any area of water over which a state has jurisdiction, including internal waters, the contiguous zone, the exclusive economic zone and potentially the continental shelf.

2.2 Learning Outcomes

It is expected that are the end of this unit you will be able to:

i. Understand what is territorial waters of a coastal state
ii. To .know the limit of territorial water
iii. Explain the rights of coastal over territorial water
iv. Have a deep knowledge **of the regime of territorial water**

2.3 Territorial Waters of Coastal State

Territorial waters or a territorial sea as defined by the 1982 United Nations Convention on the Law of the Sea, is a belt of coastal waters extending at most 12 nautical miles from the baseline usually the mean low-water mark of a coastal state. The territorial sea is regarded as the sovereign territory of the state, although foreign ships civilian are allowed innocent passage through it, or transit passage for straits; this sovereignty also extends to the airspace over and seabed below. Adjustment of these boundaries is called, in international law, maritime delimitation. The term territorial waters is also sometimes used informally to refer to any area of water over which a state has jurisdiction, including internal waters, the contiguous zone, the exclusive economic zone and potentially the continental shelf. A state's territorial sea extends up to 12 nautical miles from its baseline. If this would overlap with another state's territorial sea, the border is taken as the median point between the states' baselines, unless the states in question agree otherwise. A state can also choose to claim a smaller territorial sea.

Historically, the concept of territorial waters originated in the controversy over the status of the sea in the formative period of modern international law in the 17th century. Although the doctrine that the sea by its nature must be free to all was eventually upheld, most commentators did recognize that, as a practical matter, a coastal state needed to exercise some jurisdiction in the waters adjacent to its shores. Two different concepts developed that the area of jurisdiction should

be limited to cannon-shot range, and that the area should be a much greater belt of uniform width adjacent to the coast and in the late 18th century these concepts coalesced in a compromise view that proposed a fixed limit of 3 nautical miles. In 1793 the United States adopted three miles for neutrality purposes, but although many other maritime states during the 19th century came to recognize the same limit, it never won such universal acceptance as to become an undisputed rule of international law.

In the course of this historical development, it became settled that the belt of territorial waters, together with the seabed and subsoil beneath it and the airspace above, is under the sovereignty of the coastal state. This sovereignty is qualified only by a right of innocent passage that is, peaceful transit not prejudicial to the good order or security of the coastal state for merchant vessels of other nations. The right of innocent passage does not apply to submerged submarines or to aircraft, nor does it include a right to fish. On the width of the belt there has developed no universal agreement except that every state is entitled to a minimum of three nautical miles. Claims in excess of 12 nautical miles commonly meet widespread opposition from other states, though in the 1960s and ’70s a trend to a 12-nautical-mile limit was evident; among about 40 states taking this view were China, India, Mexico, Pakistan, Egypt, and the Soviet Union.

In International Law the term territorial waters refers to that part of the ocean immediately adjacent to the shores of a state and subject to its territorial jurisdiction. The state possesses both the jurisdictional right to regulate, police, and adjudicate the territorial waters and the proprietary right to control and exploit natural resources in those waters and exclude others from them. Territorial waters differ from the high seas, which are common to all nations and are governed by the principle of freedom of the seas. The high seas are not subject to appropriation by persons or states but are available to everyone for navigation, exploitation of resources, and other lawful uses. The legal status of territorial waters also extends to the seabed and subsoil under them and to the airspace above them. From the eighteenth to the middle of the twentieth century, international law set the width of territorial waters at one league (three nautical miles), although the practice was never wholly uniform. The United States established a three-mile territorial limit in 1793. International law also established the principle that foreign ships are entitled to innocent passage through territorial waters.

The sovereignty of a State also extends to its territorial sea , but this differs from internal waters in that it is subject to a right of innocent passage by foreign vessels UNCLOS, article 17. The normal baseline of the territorial sea is the low water line along the coast as marked on large-scale charts officially recognised by the coastal State, although it is left to the State itself to select the tidal criteria. See UNCLOS, article 5

The Coastal State may also have laws and regulations which such vessels must adhere to, to ensure safe navigation, regulation of maritime traffic, protection of navigational aids, facilities, pipelines, and cables, conservation and preservation of the environment and the living resources of the sea including fisheries laws and to prevent against infringement of customs, fiscal, immigration or sanitary laws and regulations of the Coastal State.

The majority of cruising yachts will not however be regarded as being on a continuous and expeditious passage as they may be exploring the coastline, perhaps anchoring for lunch and they may also visit several ports within the Coastal State. These activities bring pleasure boaters under the jurisdiction of the Coastal State as does launching from a foreign shore and they could then be required to adhere to all of the Coastal State's legislation, rules and regulations that apply to foreign flagged boats. This is in addition to any applicable Flag State legislation.

2.4 The Concept of Innocent Passage of Foreign Ships Over Territorial waters

The innocent passage has been codified in the United Nations Convention on the Law of the Sea was adopted in 1982, it is also known as the Law of the Sea Treaty. Its purpose is to establish a comprehensive set of rules governing the oceans and to replace previous U.N. Conventions on the Law of the Sea, 1958 which was adopted in 1958 and another in 1960, since these two convention were believed to be inadequate. The term Innocent Passage is defined under international law referring to a ship or aircraft's right to enter and pass through another's territory so long as it is not prejudicial to the peace, good order or security of the other state. Under Article 19 of the UNCLOS III it is defined "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law. The right of innocent passage of foreign ships through the territorial waters of a coastal state is one of the oldest and most universally recognized rules of public international law.

1.SELF ASSESSMENT EXERCISE: Describe territorial water of a coastal state

2.4.1 Meaning of Passage of ship under Article 18 of the UNCLOS III.

1. Passage means navigation through the territorial sea for the purpose of:

(a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or

(b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

The right of innocent passage is governed by articles 17 to 32 of the Law of the Sea Convention. This right constitutes an integral part of the territorial sea regime and is a well-established rule of international law. However, from the time of its infancy; this rule has been accompanied by a constant and heated controversy between states, concerning its scope of application, legal effect and inherent implication. The point causing most of the controversial debate and even international disputes relates to the innocent passage of warships. Both the 1958 Geneva Convention and the 1982 Law of the Sea Convention contain nearly identical provisions under the same subsection titles regarding innocent passage.

Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State, if in the territorial sea it engages any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; any exercise or practice with weapons of any kind; any act aimed at collecting information to the prejudice of the defense or security of the coastal State; any act of propaganda aimed at affecting the defense or security of the coastal State; the launching, landing or taking on board of any aircraft; the launching, landing or taking on board of any military device; the loading or

unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State; any act of willful and serious pollution contrary to this Convention; any fishing activities; the carrying out of research or survey activities; any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State; any other activity not having a direct bearing on passage.

2.4.2 Innocent passage under international law

Innocent passage is as old as the law of the sea itself and is a normal consequence of freedom of navigation; the doctrine was elaborated in Article 14 of the convention on the law of the sea 1958, which emphasized that that the coastal state must not hamper innocent passage and must publicise any dangers to navigation in territorial sea of which it is aware. Passage is defined as navigation through the territorial sea for the purpose of crossing that sea without entering internal waters or of proceeding to or from internal waters. It may include temporary stoppages, but only if they are incidental to ordinary navigation or necessitated by distress or force majeure. it was practiced by maritime powers throughout the centuries with such consistency, and was affirmed by Jessup in 1927 that As a general principle, the right of innocent passage requires no supporting argument or citation of authority; it is firmly established in international law . Innocent passage" must be interpreted and applied in the light of national law which has been implemented by the coastal state. Every coastal state can adopt laws regarding the safety of navigation, laying of submarine cables, resources, fishing, environmental protection, scientific research, prevention of infringement of customs, fiscal, immigration, or sanitary laws and prevention of pollution as well as implement sea lanes and traffic separation schemes or suspend temporarily the right of innocent passage in specified areas of its territorial sea, subject only to the restriction that any such measures must be in conformity with the Convention and international law relating to "innocent passage .

How one can decide that the passage is innocent or not? Passage is declared to be innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law . Under Article 17 of the UNCLOS III Right of Innocent Passage is defined "Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea", and Passage is defined under Article 18.

1. Passage means navigation through the territorial sea for the purpose of:

(a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or

(b) proceeding to or from internal waters or a call at such roadstead or port facility.

2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article 19 defines Innocent Passage "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State." When any foreign ship do not abide by the rules are considered to be violators' and causes prejudice to the Coastal State Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State [9] . The meaning of "innocent" is a little more difficult to appreciate. The International Court was faced with the problem in the Corfu Channel case. This case arose from incidents that occurred on October 22nd 1946, in the Corfu Strait two British destroyers struck mines in Albanian waters and suffered damage, including serious loss of life. The channel they were following, which was in Albanian waters, was regarded as safe. An incident had already occurred in these waters on May 15th, 1946: an Albanian battery had fired in the direction of two British cruisers. The United Kingdom Government had protested, stating that innocent passage through straits is a right recognized by international law; the Albanian Government had replied that foreign warships and merchant vessels had no right to pass through Albanian territorial waters without prior authorization.

The Court clarified a point on which there had been considerable difference of opinion; the Court held that it was not the character of the ship which was the determining factor, but rather the character of the passage itself. In the words of the Court, the question to consider is "whether the manner in which the passage was carried out was consistent with the principle of innocent passage. The Court was satisfied that the passage was innocent. The evidence showed "that the ships were not proceeding in combat formation, but in line, one after the other, and that they were not

maneuvering until after the first explosion. With respect to the second passage on November 12 and 13, the United Kingdom government itself recognized that it was not mere innocent passage the mine clearing operation was carried out against Albania's ex press objection and "under the protection of an important covering force composed of an aircraft carrier, cruisers and other war vessels. The 1958 Convention expressed the principle underlying the Corfu Channel decision, namely that passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. the Corfu Channel judgment can be of considerable assistance in reaching a decision; whether a particular passage has been proved to be prejudicial to the protected rights of the coastal state.

It would seem that passage is to be presumed innocent until shown otherwise. This is the view of Leo Gross who maintains that "the text as adopted clearly puts the burden on the coastal state to show that the passage itself rather than the passage of a particular ship, its purpose or cargo, was prejudicial to the stated values of the coastal state. Considering this heavy burden, the coastal state must be in a position to secure the necessary evidence when an offensive passage does occur.

SELF ASSESSMENT EXERCISE: Differentiate passage of ship in one of the article under the law of the sea 1982

2.5 The Right of Innocent Passage

The right of innocent passage of foreign ships through the territorial waters of a coastal state is one of the oldest and most universally recognized rules of public international law. Article 17 of the Geneva Convention on the Law of the Sea 1958 provided that ships exercising the right of innocent passage were to comply with the laws and regulations enacted by coastal state, in particular those relating to transport and navigation. This was developed in article 21(1) of the 1982 Convention, it provided with several laws and regulations concerning innocent passage as have been dealt earlier in detail.

Jessup in his book on territorial waters has remarked that, as a general principle, the right of innocent passage requires no supporting argument or citation of authority; it is firmly established in international law. Grotius considered the right of innocent passage related to the "most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle, the spirit

of which is self-evident and immutable, to wit: Every nation is free to travel to every other nation and to trade with it. The right of innocent passage is premised on the general right of freedom of navigation in international waters. Grotius was disposed to claim this right as an adjunct of the right to trade.

The very term “innocent passage” implies two prerequisites for its exercise :

(a) that passage be innocent, i.e., not of such a nature as to affect the security or welfare of the coastal state; and

(b) that passage only may be exercised, to the exclusion of such acts as “hovering” or anchoring in the territorial seas.

One of the Scholars states that the purpose of this right lies in the fact that the whole world has a legitimate and necessary interest in being able to use the seas for the purposes of normal intercourse. Passage is a word of motion, and in its proper use it signifies continuous movement from one place to another. It does not imply any right to remain at rest on the track or to use it for any other purpose than that of transit. Innocent passage derogates from the authority and sovereignty which the coastal state exercises over its territorial seas. Even those disposed to grant the coastal state full sovereignty over its territorial waters do not claim that its sovereignty is absolute. The essential question is: to what extent is the right of innocent passage an independent right, on parity with that of the sovereignty of the coastal state; and to what extent should it be deemed a subordinate right, perhaps even a grant, of the coastal state? The concept of “innocent passage seems to be the result of an attempt to reconcile the freedom of ocean navigation with the theory of territorial waters. Many writers maintain that the coastal state exercises sovereignty; on the other hand, a minority deny the territorial character of the maritime belt and concede that littoral states works only in the interest of the safety of the coast, certain powers of control, jurisdiction, police, etc., but not sovereignty.

There is the classic case in the right of innocent passage and the case concerning Right of Passage over Indian Territory (Portugal v. India) ; was referred to the Court by an Application filed on 22 December 1955. In that Application, the Government of Portugal stated that its territory in the Indian Peninsula included two enclaves surrounded by the Territory of India, Dadra and Nagar-

Aveli. It was in respect of the communications between those enclaves and the coastal district of Daman, and between each other, that the question arose of a right of passage in favour of Portugal through Indian Territory and of a correlative obligation binding upon India. The Application stated that in July 1954 the Government of India prevented Portugal from exercising that right of passage and that Portugal was thus placed in a position in which it became impossible for it to exercise its rights of sovereignty over the enclaves.

The Court referred to the submissions filed by Portugal which in the first place requested the Court to adjudge and declare that a right of passage was possessed by Portugal and must be respected by India; this right was invoked by Portugal only to the extent necessary for the exercise of its sovereignty over the enclaves, and it was not contended that passage was accompanied by any immunity and made clear that such passage remained subject to the regulation and control of India, which must be exercised in good faith, India being under an obligation not to prevent the transit necessary for the exercise of Portuguese sovereignty.

In its Judgment the Court held that, Portugal had in 1954 a right of passage over intervening Indian territory between the enclaves of Dadra and Nagar-Aveli and the coastal district of Daman and between these enclaves, to the extent necessary for the exercise of Portuguese sovereignty over the enclaves and subject to the regulation and control of India, in respect of private persons, civil of officials and goods in general, the Court also mentioned that that Portugal did not have right of passage in respect of armed forces, armed police and arms and ammunition. Most importantly also pointed out that India had not acted contrary to its obligations resulting from Portugal's right of passage in respect of private persons, civil officials and goods in general. A right of passage in respect of private persons, civil officials and goods in general, and not be prejudicial to the peace, good order or security of the coastal States are considered to be innocent.

2.SELF ASSESSMENT EXERCISE: What do you understand innocent passage of ship in the territorial water of a state

2.5.1 Legal status of territorial waters

The actions of states, whether on a national or an international scale, are based on the principle of sovereignty. When two or more sovereign subjects of international law meet, questions of jurisdiction arise, i.e., who has the right and obligation to act. The main purpose of the Convention is to define and regulate such questions relevant to the sea. A central point in this respect concerns how far from the coast the influence of a coastal state extends. Technical regulations for drawing the artificial baseline and extending the territorial sea by a maximum of twelve nautical miles measured from the baseline Articles 3-16; Passage through the territorial sea Articles 17-32, including suspension of navigation in certain areas article 25; Safety zones around scientific research installations. Article 26; (3) Passage through straits Articles 34-45; using the territorial sea of states bordering the straits. Article 37 (4) Passage through archipelagic waters Article 2, Paragraph 1; Articles 52-54; (5) Pollution from vessels Articles 194.

3.SELF ASSESSMENT EXERCISE: Explain the legal status of a territorial water

2.6 Summary

Maritime zones are areas of the sea for which international law prescribes spatial limits. While customary international law recognises only the territorial sea and high seas as maritime zones, modern international law recognises other maritime zones which reflect the modern uses of the sea. The various maritime zones recognised under modern international law are clearly delineated under the United Nations Convention on the Law of the Sea, 1982 which regulates the rights and duties of Coastal States in the zones.

This unit has exposed you what is territorial waters, navigation of war ships and commercial ships. United Nations Convention on the Law of the Sea 1982 provides a framework for coastal states to follow when establishing the zones where they may exercise national jurisdiction, by stipulating where individual sovereign rights of coastal states end and where the collective rights of other states begin. In the event of a dispute arising, UNCLOS encourages states to cooperate in seeking equitable solutions but provides (in Article XV) enforceable procedures for dispute settlement. The zones and associated rights established pursuant to UNCLOS are as follows: The Territorial Sea Baseline: While technically not a zone, the TSB marks the limit between a coastal state's land territory and the ocean that lies beyond. There are two types of baseline – normal and straight and coastal states can define their TSB using any combination thereof. Each coastal state must publicise the location of its TSB on published maritime charts and through publication of its

geographic coordinates. The Territorial Sea. The TS extends seaward from the TSB for up to 12nm. The coastal state has sovereignty over this zone; however, the right of innocent passage is open to ships of all state.

The right of innocent passage in the territorial sea entitles foreign ships to navigate through those waters. Such passage must be continuous and expeditious, but it may include stopping and anchoring in so far as they are incidental to ordinary navigation or are rendered necessary by force majeure or distress , art 18. Passage is deemed innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. The Law of the Sea Convention contains a list of non-innocent activities, including fishing and acts of willful and serious pollution, article 19. A coastal State may take whatever steps are necessary to prevent passage that is not innocent article 25, and can thus exclude such vessels from the territorial sea. Moreover, foreign ships exercising the right of innocent passage must comply with legislation enacted by the coastal State in conformity with international law, and the Law of the Sea Convention expressly permits such legislation for navigational safety, the protection of cables and pipelines, the conservation of the living resources of the sea, the protection of fisheries, the preservation of the environment and the prevention of pollution, for marine scientific research and hydrographic surveys, and for the enforcement of customs, fiscal, immigration and sanitary laws, article 21. Accordingly, although a State cannot prevent genuinely innocent passage by foreign ships through its territorial sea, it can regulate the manner in which the right is exercised. But a coastal State is forbidden to hamper innocent passage article 24.

Innocent Pass Innocent passage is a concept in law of the sea which allows for a vessel to pass through the territorial waters of another state subject to certain restrictions. The UN Convention on the Law of the Sea defines innocent passage as Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law. Continuous and expeditious transit, through territorial waters or internal waters, en route to or from the high seas• Article 19(1) Passage is innocent so long as it is not prejudicial to the peace, good order, or security of the coastal State. Non-innocent passage may be prevented, Submarines must transit on the surface and show their flag Article 20. No right of over flight. May be temporarily suspended, emerging issues: Hazardous vessels, Warships Right of innocent passage – Prior notification/permission.

2.7 REFERENCES/FURTHER READING/Web Resources

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2.8Possible answer to self-assessment exercise no 2:

Innocent passage is a concept in the law of the sea that allows for a vessel to pass through the archipelagic and territorial waters of another state, subject to certain restrictions. Innocent passage shall not be hampered by the coastal State. In particular, the coastal State shall not (a) impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage ; or (b) discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State Art. 24 (1) UN Convention on theLaw of the Sea.

Unit 3: Contiguous Zone

3.1 Introduction

A contiguous zone which must be claimed and, unlike territorial seas, does not exist automatically allows coastal states to exercise the control necessary to prevent and punish infringements of customs, sanitary, fiscal, and immigration regulations within and beyond its territory or territorial sea.

Pirate radio broadcasting from artificial marine fixtures or anchored ships can be controlled by the affected coastal nation or other nations wherever that broadcast may originate, whether in the territorial sea, exclusive economic zone, the continental shelf or even on the high seas. Thus a coastal nation has total control over its internal waters, slightly less control over territorial waters, and ostensibly even less control over waters within the contiguous zones. However, it has total control of economic resources within its exclusive economic zone as well as those on or under its continental shelf., distances measured in nautical miles are exact legal definitions, while those in kilometres are approximate conversions that are not stated in any law or treaty. Federal nations, such as the United States, divide control over certain waters between the federal government and the individual states.

3.2 Learning Outcomes

At the end of this unit you will be to:

i.Explain the term Contiguous Zone of a Coastal State

ii.You will have a deeper knowledge of contiguous zone

iii.You will know the rights of coastal state over this zone and maritime activities that takes place in the zone.

3.3 Contiguous Zone

The contiguous zone is a belt of water extending from the outer edge of the territorial sea to up to 24 nautical miles from the baseline, within which a state can exert limited control for the purpose of preventing or punishing infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. This will typically be 12 nautical miles; wide, but could be more if a state has chosen to claim a territorial sea of less than 12 nautical miles, or less, if it would otherwise overlap another state's contiguous zone. However, unlike the territorial sea, there is no standard rule for resolving such conflicts and the states in question must negotiate their own compromise. The United States invoked a contiguous zone out to 24 metres.

Each coastal State may claim a contiguous zone adjacent to and beyond its territorial sea that extends seaward up to 24 nm from its baselines. In its contiguous zone, a coastal State may exercise

the control necessary to prevent the infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea, and punish infringement of those laws and regulations committed within its territory or territorial sea. Additionally, in order to control trafficking in archaeological and historical objects found at sea, a coastal State may presume that their removal from the seabed of the contiguous zone without its consent is unlawful. In 1972, the U.S. proclaimed a contiguous zone extending from 3 to 12 miles offshore department of state public notice 358, 37, consistent with the 1958 UN Convention on the Territorial Sea and Contiguous Zone. In 1999, eleven years after President Reagan extended the U.S. territorial sea to 12 miles, President Clinton proclaimed a contiguous zone extending from 12 to 24 nm offshore Presidential Proclamation No. 7219, August 2, 1999, consistent with article 33 of the Law of the Sea Convention. Contiguous Zone 12 - 24 nm Overlays EEZ Foreign aircraft have over flight rights Foreign vessels have full navigational, fishing and marine scientific research rights so long as they are not infringing customs, fiscal, immigration and sanitation laws and assuming no EEZ declared for the latter rights. Extends territorial sea enforcement Article 33: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea.

The Contiguous Zone is an intermediary zone between the territorial sea and the high seas extending enforcement jurisdiction of the coastal state to a maximum of 24 nautical miles from baselines for the purposes of preventing or punishing violations of customs, fiscal, immigration or sanitary (and thus residual national security) legislation. In the maritime security context, this can certainly include monitoring any activities which can result in armed violence or weapons import into the state. Therefore the coastal state can take measures to prevent or regulate armed maritime security activities out to 24 nautical miles under the reasoning that it is undertaking customs enforcement operations to prevent movement of arms into its waters/ports.

Ships and aircraft also have obligations. According to UNCLOS Article 39 (1), ships engaged in transit passage must proceed without delay; refrain from activities other than those incident to their normal modes of continuous and expeditious transit, unless rendered necessary by *force majeure; r*efrain from any threat or use of force against the sovereignty, territorial integrity, or political independence of states bordering the strait; and refrain from acting otherwise in violation of the principles of international law embodied in the Charter of the United Nations.

1.SELF ASSESSMENT EXERCISE: Explain the nature and length of a contiguous zone

3.4 Activities within a contiguous Zone

States may also establish a contiguous zone from the outer edge of the territorial seas to a maximum of 24 nautical miles from the baseline. This zone exists to bolster a State's law enforcement capacity and prevent criminals from fleeing the territorial sea. Within the contiguous zone, a 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. It does not provide air and space rights.

2.SELF ASSESSMENT EXERCISE: State the activities that takes place in a contiguous zone

3.5 The rights of coastal state over contiguous zone

Within the contiguous zone, a 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.

3.6 Summary

This unit has exposed you to what is contiguous zone and threat to coastal state may take necessary measures to protect its territorial waters and its citizens. The Contiguous Zone is an intermediary zone between the territorial sea and the high seas extending enforcement jurisdiction of the coastal state to a maximum of 24 nautical miles from baselines for the purposes of preventing or punishing violations of customs, fiscal, immigration or sanitary and thus residual national security legislation. In the maritime security context, this can certainly include monitoring any activities which can result in armed violence or weapons import into the state. Therefore the coastal state can take measures to prevent or regulate armed maritime security activities out to 24 nautical miles under

the reasoning that it is undertaking customs enforcement operations to prevent movement of arms into its waters/ports.

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3. SELF ASSESSMENT EXERCISE: What is the legal status of contiguous zone in maritime Law?

3.7 References/Further Reading/Web Resources

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3.8 Possible Answers to self-assessment exercise no 1:

A zone contiguous to a territorial sea of a coastal State, which may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. The contiguous

zone is a belt of sea contiguous to but beyond the territorial sea where the Coastal. State may exercise enforcement jurisdiction to prevent and punish infringement of its customs, fiscal, immigration and sanitary laws and regulations within its territory or territorial sea.

Unit 4: Exclusive Economic Zone (EEZ)

4.1 Introduction

The idea of allotting nations Exclusive Economic Zones to give them more control of maritime affairs outside territorial limits gained acceptance in the late 20th century. Initially, a country's sovereign territorial waters extended 3 nmi range of cannon shot beyond the shore. In modern times, a country's sovereign territorial waters extend to 12 nmi which is beyond the shore. One of the first assertions of exclusive jurisdiction beyond the traditional territorial seas was made by the

United States in the Truman Proclamation of 28 September 1945. However, it was Chile and Peru respectively that first claimed maritime zones of 200 nautical miles with the Presidential Declaration Concerning Continental Shelf of 23 June 1947 El Mercurio, Santiago de Chile, 29 June 1947 and Presidential Decree No. 781 of 1 August 1947. It was not until 1982 with the UN Convention on the Law of the Sea that the 200 nautical mile exclusive economic zone was formally adopted.

An exclusive economic zone is a sea zone prescribed by the United Nations Convention on the Law of the Sea over which state has special rights over the exploration and use of marine resources, including energy production from water and wind. It stretches from the baseline out to 200 nautical miles from its coast. In colloquial usage, the term may include the continental shelf. The term does not include either the territorial sea or the continental shelf beyond the 200 n.m. limit. The difference between the territorial sea and the exclusive economic zone is that the first confers full sovereignty over the waters, whereas the second is merely a sovereign right which refers to the coastal state's rights below the surface of the sea. The surface waters, as can be seen in the map, are international waters.

4.1 Learning Objectives

At the end of this unit you should be able to

i.Explain the concept of Exclusive economic zone

ii.You will have a deeper knowledge of the zone

iii.You will know the kind of economic activities of the zone

4.3 The Exclusive Economic Zone (EEZ)

The concept of the Exclusive Economic Zone is one of the most important pillars of the 1982 Convention on the Law of the Sea. The regime of the exclusive economic zone is perhaps the most complex and multifaceted in the whole Convention. The accommodation of diverse issues contributed substantially to the acceptance of the concept and to the Convention as a whole. The 1982 Convention on the Law of the Sea is often referred to as a package. The metaphor is derived from a decision made during the Third United Nations Conference on the Law of the Sea that the Convention would be adopted *in toto,* as a package deal. No single issue would be adopted until

all issues were settled. This decision provided an essential mechanism for reconciling the varied interests of the states participating in the Conference. If a state's interests in one issue were not fully satisfied, it could look at the whole package and find other issues where its interests were more fully represented, thereby mitigating the effects of the first. Thus, the Convention became an elaborately-constructed document built on trade-offs, large and small.

An Exclusive Economic Zone is a sea zone prescribed by the 1982 United Nations Convention on the Law of the Sea over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind. It stretches from the baseline out to 200 nautical miles (nmi) from its coast. In colloquial usage, the term may include the continental shelf. The term does not include either the territorial sea or the continental shelf beyond the 200 nmi limit. The difference between the territorial sea and the exclusive economic zone is that the first confers full sovereignty over the waters, whereas the second is merely a sovereign right which refers to the coastal state's rights below the surface of the sea. The surface waters, as can be seen in the map, are international waters.

Generally, a state's exclusive economic zone is an area beyond and adjacent to the territorial sea, extending seaward to a distance of no more than 200 nmi out from its coastal baseline. The exception to this rule occurs when exclusive economic zones would overlap; that is, state coastal baselines are less than 400 nmi apart. When an overlap occurs, it is up to the states to delineate the actual maritime boundary. Generally, any point within an overlapping area defaults to the nearest state.

A state's exclusive economic zone starts at the seaward edge of its territorial sea and extends outward to a distance of 200 nmi from the baseline. The exclusive economic zone stretches much further into sea than the territorial waters, which end at 12 nmi from the coastal baseline if following the rules set out in the UN Convention on the Law of the Sea. Thus, the exclusive economic zones includes the contiguous zone. States also have rights to the seabed of what is called the continental shelf up to 350 nmi from the coastal baseline, beyond the exclusive economic zones, but such areas are not part of their exclusive economic zones. The legal definition of the continental shelf does not directly correspond to the geological meaning of the term, as it

also includes the continental rise and slope, and the entire seabed within the exclusive economic zone.

1.SELF ASSESSMENT EXERCISE: Analyse an Exclusive Economic Zone

4.4 Disputes over the Exclusive Economic Zone

The exact extent of exclusive economic zones is a common source of conflicts between states over marine waters.

--Norway and Russia dispute both territorial sea and EEZ with regard to the Svalbard archipelago as it affects Russia's EEZ due to its unique treaty status. A treaty was agreed in principle in April 2010 between the two states and subsequently ratified, resolving this demarcation dispute. The agreement was signed in Murmansk on 15 September 2010.

--The South China Sea (and the Spratly Islands) is the site of an ongoing dispute between several neighboring nations.

--Croatia's ZERP (Ecological and Fisheries Protection Zone) in the Adriatic Sea caused friction with Italy and Slovenia, and caused problems during Croatia's accession to the European Union.

--A wedge-shaped section of the Beaufort Sea is disputed between Canada and the United States, as the area reportedly contains substantial oil reserves.

--France claims a portion of Canada's EEZ for Saint-Pierre-et-Miquelon based on a new definition of the continental shelf and EEZ between the two countries. Saint-Pierre-et-Miquelon is entirely surrounded by Canada's EEZ.

--Mauritius claims EEZ for Tromelin from France and EEZ for British Indian Ocean Territory from the UK.

--Turkey claims a portion of Cyprus's EEZ based on Turkey's definition that no islands, including Cyprus, can have full EEZ and should only be entitled to a 12 nautical mile reduced EEZ rather than the usual 200 that Turkey and every other country are entitled to, including an area to the

south of Cyprus containing an offshore gas field. Furthermore, the internationally unrecognized Turkish Republic of Northern Cyprus, which was created as result of the Turkish Invasion of Cyprus, also claims portions of Cypriot EEZ. The Republic of Cyprus, intergovernmental organizations and other countries, such the European Union, the United States, Russia, Israel, Switzerland, Egypt, Saudi Arabia and Armenia do not acknowledge the Turkish claims on Cyprus's land and sea, and urge Turkey to restrain itself from illegal drilling for gas in the island's EEZ. Furthermore, EU has threatened Turkey with economic and political sanctions for violating the Cypriot EEZ.

4.5 Continental shelf

The term "continental shelf" is used by geologists generally to mean that part of the continental margin which is between the shoreline and the shelf break or, where there is no noticeable slope, between the shoreline and the point where the depth of the superjacent water is approximately between 100 and 200 metres. A continental shelf is the edge of a continent that lies under the ocean. Continents are the seven main divisions of land on Earth. A continental shelf extends from the coastline of a continent to a drop-off point called the shelf break.

2.SELF ASSESSMENT EXERCISE: List five cases that has been adjudicated over the EEZone

1.8 Economic activities in EEZ

A zone contiguous to a territorial sea of a coastal State, which may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. Unlike other zones whose existence derived from earlier international law, the EEZ was a creation of the LOSC. States may claim an EEZ that extends 200 nautical miles from the baseline. In this zone, a coastal State has the exclusive right to exploit or conserve any resources found within the water, on the sea floor, or under the sea floor’s subsoil. These resources encompass both living resources, such as fish, and non-living resources, such as oil and natural gas.[4] States also have exclusive rights to engage in offshore energy generation from the waves, currents, and wind within their EEZ. Article 56 also allows States to establish and use artificial islands, installations and structures, conduct

marine scientific research, and protect and preserve the marine environment through Marine Protected Areas. Article 58 declares that Articles 88 to 115 of the Convention relating to high seas rights apply to the EEZ "in so far as they are not incompatible with this Part,

3. SELF ASSESSMENT EXERCISE: Mention three economic activities that takes place within the exclusive economic zone of Nigeria and USA.

4.6 Summary

The LOSC allows a State to conduct economic activities for a distance of 200 nautical miles from the baseline, or the continental margin where it extends beyond 200 nautical miles. There are two methods to determine the extent of a continental margin under the LOSC. The first method is by measuring geological features using what is called the Gardiner formula. The EEZ is another intermediary zone, lying between the territorial sea 12 nautical miles and the high seas to the maximum extent of 200 nautical miles. Although high seas freedoms concerning general navigation principles remain in place, in this zone the coastal state retains exclusive sovereignty over exploring, exploiting and conserving all natural resources. The coastal state therefore can take action to prevent infringement by third parties of its economic assets in this area including, *inter alia*, fishing, bio-prospecting and wind-farming. In order to safeguard these rights, the coastal state may take necessary measures including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the international laws and regulations.

Unlike other zones whose existence derived from earlier international law, the EEZ was a creation of the LOSC. States may claim an EEZ that extends 200 nautical miles from the baseline. In this zone, a coastal State has the exclusive right to exploit or conserve any resources found within the water, on the sea floor, or under the sea floor's subsoil. These resources encompass both living resources, such as fish, and non-living resources, such as oil and natural gas. States also have exclusive rights to engage in offshore energy generation from the waves, currents, and wind within their EEZ. Article 56 also allows States to establish and use artificial islands, installations and structures, conduct marine scientific research, and protect and preserve the marine environment through Marine Protected Areas. Article 58 declares that Articles 88 to 115 of the Convention relating to high seas rights apply to the EEZ.

The EEZ is the most misunderstood of all the maritime zones by policymakers in States around the world. Unlike the territorial sea and the contiguous zone, the EEZ only allows for the previously mentioned resource rights and the law enforcement capacity to protect those rights. It does not give a coastal State the right to prohibit or limit freedom of navigation or overflight, subject to very limited exceptions.

4.7 References/Further References

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Butler, William E: International Law and the International System. Boston: M. Nijhoff, 1987.

4.8 Possible Answer to self-assessment exercise no 1 :

The exclusive economic zone is an area where sovereign states have jurisdiction over resources. The EEZ differs from territorial waters in two respects. First, the jurisdiction of the coastal state within the EEZ only pertains to natural resources (fish, offshore oil, and gas), while the coastal state has full jurisdiction within its territorial sea. Second, the maximum width of the territorial sea is 12 nautical miles from baselines, while the maximum width of the EEZ is 200 nautical miles (370 km or 230 English miles). Baselines are lines drawn from headland to headland, enclosing fiords and bays, the maximum length of a straight base line being 24 nautical miles. Nevertheless, the jurisdiction over sedentary and underground resources is wider than this when the continental shelf reaches beyond 200 nautical miles. The rules delimiting the continental shelf are rather technical and are set out in Article 76 of the UN Law of the Sea Convention

MODULE 3: Maritime Activities of the High Sea

Unit 1: The Uses of the High Sea

1.1 Introduction

The High Seas begin where national oversight of the ocean ends. Since they are beyond national jurisdiction responsibility for coordinating management falls largely to a complex network of organizations created through international treaties between States with States largely retaining the responsibility for implementing management responsibilities. As flag-States it's their

responsibility to exercise control over their vessels and citizens. For example, all vessels must fly the flag of their flag-State or else they may be treated as ships without nationality. The United Nations Convention on the Law of the Sea entered into force in 1994, has been ratified by most countries though notably not by the United States of America, and is recognized by most States as reflecting customary international law of the sea.

1.2 Learning Outcomes

At the end of this unit you will be able to:

i.Define the High seas

ii.You will know the high sea is free for all nations weather land or not

iii.You should be able to understand the uses of the High sea for peaceful purposes and other uses

1.3 The High Sea

Article 2 UNCLOS 1982 provides that the high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States**:**

The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

F. Freedom of navigation;

Freedom of navigation is a principle of customary international law that ships flying the flag of any sovereign state shall not suffer interference from other states, apart from the exceptions provided for in international law. In the realm of international law, it has been defined as freedom of movement for vessels, freedom to enter ports and to make use of plant and docks, to load and unload goods and to transport goods and passengers. This right is now also codified as Article 87(1) a of the 1982 United Nations Convention on the Law of the Sea. Not all UN member states have ratified the convention; notably, the United States has signed, but not ratified the convention. However, the United States enforces the practice.

ii. **Freedom of over flight;**

The freedom of over flight means that foreign aircraft are granted the right to fly through the EEZ without any unnecessary delay and shall not carry out activities unrelated to the flyover**.** Public international air law is based on two principles. The first recognizes each state's full and absolute sovereignty over the air above its territory and territorial waters, including the right to impose its jurisdiction over such airspace. Thus, a state may require any foreign aircraft in its airspace, even if only briefly in transit, to comply with its air transport regulations, for example, those concerning the aircraft and its crew, navigation, and the environment. This right, however, is subject to those international treaty obligations the state has assumed in the interest of safe and efficient air transport. The Convention on International Civil Aviation (hereinafter referred to as the Chicago Convention), generally regarded as the Magna Charta of public international air law, requires each contracting state to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. To this end, the International Civil Aviation Organization was granted the power to adopt international standards and recommended practices and procedures dealing with matters such as communication systems and air navigation aids, rules of the air and air traffic control practices, as well as registration and identification of aircraft. Contracting states, however, retained the right to depart from such standards or recommended practices, provided they notified the Organization of

the differences between their national regulations and those prescribed by an international standard.

iii. **Freedom to lay submarine cables and pipelines;**

The freedom to lay submarine cables and pipelines, one of the most venerated high seas freedoms under the 1982 United Nations Convention on the Law of the Sea , faces an uncertain future under the new international legally binding instrument being negotiated in the United Nations. United Nations General Assembly Resolution 72/249, authorizing the intergovernmental conference for the new ILBI, does not expressly mention submarine cables or pipelines but states that the work and results of the conference should be fully consistent with the provisions of UNCLOS. The issues in a new ILBI that are likely to have an impact on the freedom to lay submarine cables and pipelines in areas beyond national jurisdiction are (1) area-based management tools, and (2) environmental impact assessments, which are mechanisms used to protect and preserve the marine environment and biodiversit.

iv. Freedom to construct artificial islands and other installations permitted under international law,

In the high **seas** all States have the freedom to construct artificial islands and other installations permitted under international law, subject to Part VI on the continental shelf where it extends beyond 200 nm. An artificial island or man-made island is an island that has been constructed by people rather than formed by natural means. Artificial islands may vary in size from small islets reclaimed solely to support a single pillar of a building or structure, to those that support entire communities and cities. Early artificial islands included floating structures in still waters, or wooden or megalithic structures erected in shallow waters. In modern times artificial islands are usually formed by land reclamation, but some are formed by the incidental isolation of an existing piece of land during canal construction e.g. Donauinsel, Ko Kret, and much of Door County, or flooding of valleys resulting in the tops of former knolls getting isolated by water e.g. Barro Colorado Island. One of the world's largest artificial islands, René-Levasseur Island, was formed by the flooding of two adjacent reservoirs

v.Freedom of fishing, subject to the conditions laid down.

Article 116 explicitly establishes that the right of States to authorise their nationals to fish on the high seas is subject to specific limitations. This means that States simply do not have the right to authorise their nationals to fish on the high seas unless they fulfil the conditions. The high seas are often characterized as the final and most challenging frontier of fisheries governance. Stock depletions and rent dissipation persist there despite the recovery of several fish stocks within exclusive economic zones

Fishing in the high seas was not perceived as a major problem requiring priority attention during the negotiating process of UNCLOS. Therefore, with respect to the highly migratory and other fishery resources occurring partly or entirely in the high seas, UNCLOS limited itself to providing general principles for their conservation, optimum utilization and management, calling upon all States to cooperate towards the further development and implementation of these general principles. However, as UNCLOS was being adopted and as more coastal States claimed their rights and jurisdiction over fisheries in their EEZ, large distant-water fishing fleets were displaced from some of their traditional coastal fishing grounds and the pressure to fish in the high seas grew rapidly and without much control. Inadequate management and overfishing soon became problems in the high seas, and thus the increased need to control and reduce fishing fleets operating on the high seas as there were indications that excessive fishing was jeopardizing the sustainability of high seas fishery resources, as was highlighted by FAO 1992 in reporting to the Twentieth Session of its Committee on Fisheries FAO, 1993

vi. Freedom of scientific research,

Knowledge about the oceans is still very limited and the development of coastal countries often depends on the potential to exploit their coastal resources. Improving the knowledge and understanding of marine and coastal processes is a prerequisite for protecting the marine environment and ecosystems in a more precautionary way and for supporting sustainable economic opportunities from ocean resources. Results from marine scientific research provide input for policy makers in pursuing developmental options and also benefit society in terms of weather forecasting and prevention of natural disasters.

vi. Freedom of exploitation and exploration of natural resources

UNCLOS recognizes the sovereign rights of the coastal States for the purpose of exploring and exploiting, conserving and managing fishery resources in their EEZs, calling upon the coastal States to adopt conservation and management measures to promote the optimum utilization of fishery resources in their EEZs. With respect to exploited stocks or stocks of associated species occurring both within the EEZ and in the area beyond and adjacent to the zone, UNCLOS calls upon the coastal States and States fishing in the high seas to seek agreement upon the measures necessary for the conservation of those stocks in the adjacent high seas area. UNCLOS also calls upon the coastal States and other States fishing highly migratory species to cooperate in ensuring conservation and promoting the optimum utilization of those resources in their whole area of distribution. With respect to the high seas, UNCLOS also recognizes the free access and the freedom of fishing to all States, calling upon all States and particularly upon States fishing to cooperate in the conservation and management of fishery resources occurring in the high seas.

1.SELF ASSESSMENT EXERCISE: List four freedom of the High sea

1.4 The rights of all over the High sea

The high seas shall be reserved for peaceful purposes. No State may validly purport to subject any part of the high seas to its sovereignty. Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas. In the first paragraph of article 6 of the Convention 1958 of High seas and paragraph 1 of the article 92 of the Convention 1982 stipulated on this issue, therefore, this international instrument has exceptions including piracy, slave trade, suspected ships inspection and other unlawful acts and it has provided.

High seas belong to all humanity. As a result it is not under qualification of any government and is free. International navigation and commerce also with the use of this principle is developing. This case is of basic importance especially for international commerce and trade. So any interference and applying prohibition is out of international rules. The owner of that flag state could stop and investigate every ship and provided that other governments have reasonable reasons to suspect a ship and those reasons to be in a way that which worth to stop and enter the ship is feasible. But if it becomes clear after investigation of the ship that it was unreasonable to suspect the ship, this issue would be pursuable in the international courts or the government which owns

the flag state could retaliate with governmental ships which entered the ship possessing the flag that is harmful for international sailing totally. The flag state, has exclusive qualifications over the ship, its cargo and people. But there are some exceptions to the flag state rule. Right of visiting and searching martial ships in high seas in order to perform rules of international laws when it has acceptable reasons which a non warship and non-governmental) has committed bellow actions, could be stopped and investigated.

2.SELF ASSESSMENT EXERCISE: What are the rights of landlocked and coastal over the high sea

1.4.1 International Seabed Authority

International Seabed Authority made up of 167 Member States, and the European Union, the International Seabed Authority is mandated under the UN Convention on the Law of the Sea to organize, regulate and control all mineral-related activities in the international seabed area for the benefit of mankind as a whole. In so doing, ISA has the duty to ensure the effective protection of the marine environment from harmful effects that may arise from deep-seabed related activities. It is an intergovernmental body based in Kingston, Jamaica, that was established to organize, regulate and control all mineral-related activities in the international seabed area beyond the limits of national jurisdiction, an area underlying most of the world's oceans. It is an organization established by the United Nations Convention on the Law of the Sea.

1.5.2 Activities of the International Seabed Authority

The Authority's main legislative accomplishment to date has been the adoption, in the year 2000, of regulations governing exploration for polymetallic nodules. These resources, also called manganese nodules, contain varying amounts of manganese, cobalt, copper and nickel. They occur as potato-sized lumps scattered about on the surface of the ocean floor, mainly in the central Pacific Ocean but with some deposits in the Indian Ocean.

The Council of the Authority began work, in August 2002, on another set of regulations, covering polymetallic sulfides and cobalt-rich ferromanganese crusts, which are rich sources of such minerals as copper, iron, zinc, silver and gold, as well as cobalt. The sulphides are found around

volcanic hot springs, especially in the western Pacific Ocean, while the crusts occur on oceanic ridges and elsewhere at several locations around the world. The Council decided in 2006 to prepare separate sets of regulations for sulphides and for crusts, with priority given to sulphides. It devoted most of its sessions in 2007 and 2008 to this task, but several issues remained unresolved. Chief among these were the definition and configuration of the area to be allocated to contractors for exploration, the fees to be paid to the Authority and the question of how to deal with any overlapping claims that might arise. Meanwhile, the Legal and Technical Commission reported progress on ferromanganese crusts.

1.6 Summary

Freedom of the seas is a principle in the international law and law of the sea. It stresses freedom to navigate the oceans. It also disapproves of war fought in water. The freedom is to be breached only in a necessary international agreement. This principle was one of U.S. President Woodrow Wilson's Fourteen Points proposed during the First World War. In his speech to the Congress, the president said: Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants. The United States' allies Britain and France were opposed to this point, as France was also a considerable naval power at the time. As with Wilson's other points, freedom of the seas was rejected by the German government. Today, the concept of freedom of the seas can be found in the United Nations Convention on the Law of the Sea under article 87(1) which states: the high seas are open to all states, whether coastal or land-locked. article 87(1) (a) to (f) gives a non-exhaustive list of freedoms including navigation, over flight, the laying of submarine cables, building artificial islands, fishing and scientific research.

The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises both for coastal and land-locked 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.

The doctrine that the high seas in time of peace are open to all nations and may not be subjected to national sovereignty freedom of the seas was proposed by the Dutch jurist Hugo Grotius as early as 1609. It did not become an accepted principle of international law, however, until the 19th century. Freedom of the seas was ideologically connected with other 19th-century freedoms, particularly laissez-faire economic theory, and was vigorously pressed by the great maritime and commercial powers, especially Great Britain. Freedom of the high seas is now recognized to include freedom of navigation, fishing, the laying of submarine cables and pipelines, and over flight of aircraft. By the second half of the 20th century, demands by some coastal states for increased security and customs zones, for exclusive offshore-fishing rights, for conservation of maritime resources, and for exploitation of resources, especially oil, found in continental shelves caused serious conflicts. The first United Nations Conference on the Law of the Sea, meeting at Geneva in 1958, sought to codify the law of the high seas but was unable to resolve many issues, notably the maximum permissible breadth of the territorial sea subject to national sovereignty. A second conference Geneva, 1960 also failed to resolve this point; and a third conference began in Caracas in 1973, later convening in Geneva and New York City.

3. SELF ASSESSMENT EXERCISE: What do you understand by the concept of 'Common Heritage of Mankind' in maritime law?

1.7 Reference/Further Reading/Web Resources

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1.8 Possible Answer to self-assessment Exercise no 1:

i. The rights of all over the High sea
ii. Freedom of exploitation and exploration of natural resources
iii. Freedom to lay cables
iv. Freedom of navigation

The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. The ocean surface and the water column beyond the EEZ are referred to as the high seas in the LOSC. Seabed beyond a coastal State's EEZs and Continental Shelf claims is known under the LOSC as the Area. The LOSC states that the Area is considered the common heritage of all mankind and is beyond any national jurisdiction. States can conduct activities in the Area so long as they are for peaceful purposes, such as transit, marine science, and undersea exploration.

Unit 2: The Regime of Seaport for Oceangoing Vessels

2.1 Introduction

Ports are the main industrial and commercial tools for economic and social development of the countries. The port sector is touched by the socioeconomic changes characterized by the requirements development in the countries, through commitments by the countries of free trade and the new contexts of globalization, to the new constraints and developments economic, institutional, technological, environmental and maritime transport development. Therefore, the seaports have always been disposed to changes in socioeconomic trends. These developments have created a highly uncertain and complex environment for ports and fundamentally changed the port concept.

The seaport is a multidimensional system combined between economical function, infrastructure system, geographical space and trade. In addition, a seaport is managed under a complex legal concept and managed through an organizational model that mostly generates the need for convergence of the public and private sectors. The intention of this study is to collect the different conception of seaport concept and demonstrate that has come about over time and over countries. In the literature review, some research focused on the port governance or port reforms as Wang was among the first to consider governance structures in addressing container port systems on a regional scale. This argument was elaborated in collaborative document flows that followed.

The study of Wang and Slack pointed out that regional forces of redistribution of traffic are complicated by institutional reforms, as a private terminal operator in the hub port, can have simultaneous peripheral installation. In addition, for political circles in a region the system may have spatial concentration or de-concentration effects beyond market forces only. Recently, Wang and Olivier have shown how the institutional integration of the Chinese port system has diverted the container-port development from the linear morphology proposed in Any-port. Thus, in particular, these the authors show how government policies place emphasis on spatial alignment between new deep water container facilities and special economic zones. Others authors provided an empirical study about port development as Yip *et al*, showed the growth of terminal operators in the context of port management with the application of stochastic frontier model. Liu *et al*.

analysed the recent development of a port system in the Pearl River Delta, which founded an evolved system from one stage to another. These two researches showed the important assessment of the fifth generation port.

The seaport products offer various services, which make each service distinct. There is however a lack of studies that discuss the seaports concept and its services. Thus, this paper aims to concentrate on this lack in the literature by presenting and defining the seaport concept and by examining the different characteristics of its services. Exactly, this paper search the flowing interrogations: what is a seaport? How it can be defined? Which services seaport can produce? What are the characteristics of transport services? Who are the customers of port?

2.2 Learning Outcomes

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

i. Understand seaports in the chair of carriage of goods by sea.

ii. You know the Role and functions seaports,

iii. You will know the types of sea ports and the regime of seaports.

2.3 Seaports

A port is a maritime facility which may comprise one or more wharves where ships may dock to load and discharge passengers and cargo. Although usually situated on a sea coast or estuary, some ports, such as Hamburg, Manchester and Duluth, are many miles inland, with access to the sea via river or canal. Because of their roles as a port of entry for immigrants many port cities such as London, New York, Shanghai, Los Angeles, Singapore and Vancouver have experienced dramatic multi-ethnic and multicultural changes. The definition of port has evolved over time. The evolution is discovered by fourth generations, which explain that the economic, geographical, technological, and international trade transformation and container ship fleet development influenced the meaning of the seaport concept over time. For the first generation, the ports were essentially interfaces between the land and the sea in goods transport. Their role was then focused on the

subsequent activities, the loading and unloading of ships, storage and delivery/receipt of merchandise.

For the second generation, port and port service providers have an imperative role in the global port functions. The port is considered a service center in the transport sector, industry and trade. It can consequently implement and offer its users industrial or commercial services which are not directly linked to traditional activities of loading/unloading but which are indirectly through the logistical facilities offered by the port.

The third generation ports are owing to the global expansion containerization and intermodalism, jointed to the growing demands of international trade. The decision-makers, managers and operators of a port of the third generation have dissimilarity from the operation and development point of view for which they are responsible. They perceive the port as a dynamic link in the international production and distribution system. Their behaviour has evolved accordingly.

The fourth generation ports are characterized by internationalization and diversification on the basis of the network system, which attaches many port areas and permits the cooperation with other ports. These are named as network ports. These ports are integrated as international transport logistics chain, practicing door to door services with other logistics operators working in several geographic areas close to the ports.

Furthermore, recently some authors also discuss about the fifth generation ports, as Flynn et al. Lee and Lam and Lee. The new concept of seaport is about the customer services. The port is expected to provide services at a higher levels by using market mechanisms, incentives, and government policies. Customer orientation, satisfaction, service and technology are vital factors for the fifth generation ports. The customers have been the center of attention from of the seaport from a long time, however, the fifth generation encourages these relationships because they would be focusing on the ports users, ie shipping lines, may capture more clients with low emission per TEU performance and focusing on the ports system which can in return attract more clients with services meet th stakeholder request and achieve a high competitiveness.

It argues that the fifth generation port has a stronger focus on customer requirement port throughput the supply chain logistics and networks as it is described by Notteboom. This requires

the development of communication strategies that clearly articulate the port service offering and value proposition to customers and a port marketing framework aimed at enhancing customer loyalty and measuring customer's satisfaction in a highly dynamic and competitive port environment. Consequently, in the next paragraph, we decided to explore the different services of seaport the important role that port plays in services provided to the customers. As we answer some questions, for example? What are the characteristics of transport services? What are the port services? Who are the customers of port services?

2.3.1 The Legal and Institutional Conception

The legal status of the port authority can be public or private. There is no definition of a port in the law context. Thus, below the article 1 of the Geneva Convention of 9th December 1923 on the international regime of maritime ports, All ports which are normally frequented by sea going vessels and used for foreign trade shall be deemed to be maritime ports. The legal regime of port management depends on the kind of traffic received by the port and on the degree to which the port is institutionally dependent on the state or a local authority. The regime cannot always be clearly determined simply on the basis of a port's status. The legal regime of a port depends also on the will of the state adopting a global approach, sees to it that the port system makes the best possible contribution to the country's development, or, adopting a local approach and regards the port as an economic entity which should operate by its own.

An economic and political strategy is then usually preserved in instruments, which take the form of laws where principles are concerned and regulations implemented. Constitutional system designates the authorities empowered to adopt such instruments. The rules generally vary according to the state whether a unitary, federal or a confederal state and having regard to the degree of decentralization and especially to the legal systems in force in the country concerned.

The institutional regime of ports depends on how they are defined and the kind of traffic they receive. For J.G. Matons a port is "a place on the coast specially designated by the competent administrative authority to serve the purposes of seaborne trade". The port is an institution with or without a legal personality, responsible for exercising public works, police or other powers in the geographical and legal space. In the same meaning, B. Steck defined ports as "service companies, at the center of the logistical chain which organizes world trade, to allow the flow of traffic, even

capturing and raising it. In order to respond to changes in the world economy, in particular to changes brought about by technological dynamics, ports must offer an increasing number of services which involve specific equipment in constant renewal.

The port is a place of economic activities, it is a place of exchanges where goods and people circulate. Thus, one distinguishes between a port of the various activities more or less developed according to the economic activity and the stakes of the region. These activities affect the structure of the port and its vicinity.

1. SELF ASSESSMENT EXERCISE: Explain the meaning of a seaport

2.4 Port Facilities for International shipping

The port can be a natural establishment or artificial construction, which provides a place for the loading and unloading of cargo. Ports can be for large seagoing ships and also for inland waterways such as rivers and lakes. The depth of the ports plays a vital role in allowing various types of ships to enter and dock at the port. But nowadays along with its basic purpose, a port is equipped with certain other amenities and facilities. Different types of ports are equipped with different port facilities. Some common port facilities provided by the most common sorts of ports throughout the world are as follows:

i .Special Warehouse: This is available on all the ports, for storing the shipment and for maintaining regular stock.

ii.Port Reception: Reception has details of all the shipment scheduled and moreover it is a guide for the port facilities.

iii.Other facilities: Some other essential facilities are also available at seaports namely hotels, restaurants, restrooms and eateries for the port visitors. Some of the ports are provided with medical facilities to the people present there, if there is no hospital in the vicinity it becomes obligatory for the port to provide with primary medical services.

iv.Fishing facilities: Fishing ports allow its customer with fishing aids and amenities at the port.

v. Warm water facility: A greater revenue-generating warm water port provides warm water even in frosting winters.

vi Loading and Unloading Facility: It is the mandatory part of every port to allow loading and unloading of freight as well as people in a ship.

vii. **Infrastructure and Equipment's:** A port has piers, basins, stacking or storage areas, warehouses to store various ferry equipment. Each port is equipped with essential equipment for e.g. hauling equipment's, draggers, cranes, trucks, loaders, etc.

viii.Workshop: All the bigger and significant ports provide the facility of vessel workshop. It is the place where one can get spare parts and accessories of a vessel. Also, the vessels which have gone out of order are repaired and catered in the workshop.

2.5 Types of seaports

The terms port and seaport are used for different types of port facilities that handle ocean-going vessels, and **river port** is used for river traffic, such as barges and other shallow-draft vessels. **Dry port**: A dry port is an inland intermodal terminal directly connected by road or rail to a seaport and operating as a centre for the transshipment of sea cargo to inland destinations.

i.Fishing port: A fishing port is a port or harbor for landing and distributing fish. It may be a recreational facility, but it is usually commercial. A fishing port is the only port that depends on an ocean product, and depletion of fish may cause a fishing port to be uneconomical.

ii.Inland port: An inland port is a port on a navigable lake, river, ieluvial port, or canal with access to a sea or ocean, which therefore allows a ship to sail from the ocean inland to the port to load or unload its cargo. An example of this is the St. Lawrence Seaway which allows ships to travel from the Atlantic Ocean several thousand kilometers inland to Great Lakes ports like Toronto, Duluth-Superior, and Chicago. The term inland port is also used for dry ports.

iii.Seaport: A seaport is further categorized as a cruise port or a cargo port. Additionally, cruise ports are also known as a home port or a port of call, The cargo port is also further categorized into a bulk or break bulk port or as a container port.

iv.Cargo port: Cargo ports, on the other hand, are quite different from cruise ports, because each handles very different cargo, which has to be loaded and unloaded by very different mechanical means. The port may handle one particular type of cargo or it may handle numerous cargoes, such as grains, liquid fuels, liquid chemicals, wood, automobiles, etc. Such ports are known as the bulk or break bulk ports. Those ports that handle containerized cargo are known as container ports. Most cargo ports handle all sorts of cargo, but some ports are very specific as to what cargo they handle. Additionally, the individual cargo ports are divided into different operating terminals which handle the different cargoes, and are operated by different companies, also known as terminal operators or stevedores.

vi.Port of call: A port of call is an intermediate stop for a ship on its sailing itinerary. At these ports, cargo ships may take on supplies or fuel, as well as unloading and loading cargo while cruise liners have passengers get on or off ship.

vii.Warm-water port: A warm-water port is one where the water does not freeze in wintertime. Because they are available year-round, warm-water ports can be of great geopolitical or economic interest. Such settlements as Dalian in China, Vostochny Port, Murmansk and Petropavlovsk-Kamchatsky in Russia, Odessa in Ukraine, Kushiro in Japan and Valdez at the terminus of the Alaska Pipeline owe their very existence to being ice-free ports. The Baltic Sea and similar areas have ports available year-round beginning in the 20th century thanks to icebreakers, but earlier access problems prompted Russia to expand its territory to the Black Sea**.**

2.SELF ASSESSMENT EXERCISE: What are the facilities expected to be put in place in a port

2.6 Summary

A Seaport is a complex system with multifunctional operations thus making it difficult for the authors to analyze its meaning explicitly. Thus, every one defined the seaport accordingly to their

field and knowledge. This study provided numerical syntheses which indicated the importance of theoretical analysis in seaport sectors, these syntheses are summarized as follows:

The sea port concept has evolved over time with the relative change of the world economic, technological and environmental. The services of transport sectors are particulars in several characteristics which make the services of seaport complex. The users of seaport services are not direct customers, hence, the study shows that the principal users of seaport services are the ships and goods.The services founded for the customers are indirect services.

Finally, in the context of globalization, a port may be able to serve customers and be more competitive. This paper pointed towards a fact that the seaport today is its customers, however, it does not analyze how to make changes so as to maximize customer's satisfaction, keeping in view the constraint of a large profit. The seaport is a response to customers who want to carry out their routine operations easily when they want and without any security concerns because they know that the port authorities deal with such issues. At the same time, there is a growing need for advice because of the diversity of destination, the multiplication of products and the erratic evolution of the financial markets which are confusing. This initiates the development of a traditional relationship that binds the customer to the seaport, and the essential concerns revolving around the different destinations of the seaport of this new relational model.

Ports are the main industrial and commercial tools for economic and social development of the countries. The port sector is touched by the socioeconomic changes characterized by the requirements development in the countries, through commitments by the countries of free trade and the new contexts of globalization, to the new constraints and developments economic, institutional, technological, environmental and maritime transport development. Therefore, the seaports have always been disposed to changes in socioeconomic trends. These developments have created a highly uncertain and complex environment for ports and fundamentally changed the port concept. The seaport is a multidimensional system combined between economical function, infrastructure system, geographical space and trade. In addition, a seaport is managed under a complex legal concept and managed through an organizational model that mostly generates the need for convergence of the public and private sectors. The intention of this unit is to collect the

different conception of seaport concept and demonstrate that has come about over time and over countries.

(SELF ASSESSMENT EXERCISE): Define a sea port and types of seaport you have learned in this unit.

A seaport is a Commercial facility where Ships load or discharge passengers or goods.

If a port is located on a lake, river, or canal that goes to a sea or ocean, that port can be defined an inland port. Ports can also be called a harbour or harbor. Asia is the continent with some of the world's largest and busiest ports, such as Singapore, Shanghai and Ningbo-Zhoushan.

2.7 References/Further Reading/Web Resources

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2.8 Possible Answer to Self Assement Exercise:

The main functions of seaports are: To ensure safety for seagoing vessels entering, operation in and leaving the seaport. To provide facilities and equipment necessary for seagoing vessels to anchor, load and unload cargo, and embark and disembark passengers.

Unit 3: The Right of Hot Pursuit

3.1 Introduction

The doctrine of maritime hot pursuit recognizes the right of a coastal state to pursue onto the high seas a foreign vessel that violated its laws while within its waters. This article examines the hot pursuit doctrine's development under customary and conventional law, particularly in light of recently expanded coastal state jurisdictional claims over resources located in adjacent ocean areas and the growing maritime drug interdiction effort. The article concludes that several of the procedural standards contained in the conventional doctrine unnecessarily restrict the use of innovative and essential technologies in the exercise of hot pursuit. The author proposes a functional approach to defining the standards to be followed in exercising a right of hot pursuit. The functional approach eschews detailed, mechanical standards, and instead articulates the policy goals that must be followed in exercising the right. Such an approach will encourage innovative approaches to maritime law enforcement without compromising the right of legitimate vessels to navigate freely on the high seas.

If the foreign ship is within a contiguous zone, the Exclusive Economic Zone , the Continental Shelf, the Safety Zones in the EEZ or the Continental Shelf, then the pursuit may only be undertaken if there has been a violation of the rules and regulations (customs, fiscal, immigration or sanitary laws and regulations of the coastal state as applicable in the respective regimes [areas, zones). The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of a foreign state. Where a coastal state, stopping or arresting a foreign ship outside the territorial sea on the basis of its right of hot pursuit, fails to justify the exercise, it shall be liable to compensate the ship for any loss or damage caused to it due to the exercise of this right. This right is particularly relevant to fisheries management, maritime pollution laws, and the seaborne illegal drug trade.

In addition, some have proposed translating the maritime right of hot pursuit into a comparable right to pursue criminals over land borders. Although it does not form a settled tenet of international law, the principle has been invoked by the United States regarding Taliban militants crossing into Pakistan, by Turkey regarding its attacks on Kurdistan Workers Party bases in northern Iraq, and by Colombia regarding its raid on a Revolutionary Armed Forces of Colombia camp in Ecuador, which led to the 2008 Andean diplomatic crisis.

3.2 Learning Outcomes

It is intended that at the end of this Unit you should be able to

i. Understand the doctrine of hot pursuit in maritime law

ii. The condition to justify hot pursuit

ii.When a hot pursuit is ceased

iv.What is an offending ship and which ship are allowed to pursuit an offending ship

3.3 The Doctrine of Hot pursuit

Hot pursuit has long formed a part of English common law. The principle can be traced back to the doctrine of distress damage feasant, which allowed a property owner to detain animals trespassing on his land to ensure that he was compensated for the damage they had caused. In particular, a case in 1293 held that a property owner could also chase after trespassing animals leaving his land and catch them if he could. Later cases extended this idea to allow a property owner to distrain the goods of a tenant behind on his rent outside his property in *Kirkman v. Lelly* in 1314 and peace officers to make arrests outside their jurisdiction. In 1939, Glanville Williams described hot pursuit as a legal fiction that treated an arrest as made at the moment when the chase began rather than when it ended, since a criminal should not be able to benefit from an attempt to escape. Because of its pedigree in English law, the principle has been exported to many former colonies of the British Empire, including the United States and Canada.

The doctrine of hot pursuit in international law recognizes the right of a State to pursue a vessel belonging to a foreign State which has violated any law within its territorial boundaries and jurisdiction. The doctrine vests a right to pursue the delinquent vessel outside the territorial limits into the open sea and then can be taken into custody. The fundamental rule of the maritime law states that all vessels have the right to navigate freely on the high seas. Yet, the traditional notion has recognized the doctrine of hot pursuit as an exception to the principles of freedom on the high seas. The doctrine is not a new one and has a long history in the international maritime law. Article 23 of the Geneva Convention on the High Seas, 1958 codified the concept of hot pursuit. The same was also adopted by the United Nations Law of the Sea Conventions under Article 111. It is very evident that the rule of hot pursuit is an exception to the fundamental principles of freedom on the high seas and hence should be exercised with utmost caution.

Over the years the concept of hot pursuit has developed a lot. In the present time, the latest technology is used for the surveillance of the coastal borders of a country. But the traditional view of the concept of hot pursuit developed largely during the canon shot era where certain procedural rules were to be followed. These procedures are often invoked to limit the use of some essential and sophisticated technology.For borders between the countries of the Schengen Area, hot pursuit over the borders is allowed. This is described by the Schengen Agreement, although exact details on distance from the border etc. are described by bilateral agreements.

3.3.2 The Right and Justification of Hot Pursuit

The customary principles of international law give the right to the states of hot pursuit. This right can be seen as an exception to the principle of exclusive flag jurisdiction on the high seas. The doctrine also represents a transgression upon the sovereignty on the flag of a foreign state as the offending vessel can be pursued even beyond the maritime zones.

The right which has been provided by the doctrine is necessary to maintain the balance between the principles of free navigation on the high seas and the interest of the States in the efficient governance of their coastal borders. The right given by the doctrine promotes in upholding public order by minimizing conflicts. Even though the exercise of the right of hot pursuit interferes with the principle of free navigation, it is only exercised against a vessel which has violated the coastal

laws of a different State and there is a very sound reason to believe that there has indeed been a violation. In the long term, hot pursuit does not pose any great threat to the principle of free navigation as it is seldom used by the States.

3.3.3 Requisites of Hot Pursuit

Certain procedures are required to be followed in accordance with the norms laid down in international laws to constitute a successful hot pursuit. One of the basic elements which are required is that the pursuit should be immediate. The phrase implies that the pursuit should be commenced as soon as possible after the offence is committed by the foreign vessel. Article 111 of the UNCLOS also lays down certain conditions which need to be fulfilled to exercise the right validly.

i.The State which is exercising its right under the doctrine must have sufficient and valid reason to believe that the foreign vessel has transgressed the law of the State.

ii. The pursuit must be started when the foreign vessel is within the internal waters, territorial sea, archipelagic waters, contiguous zone or Exclusive Economic Zone of the State.

iii.The pursuit can be commenced only after the foreign vessel has been given an auditory or visual signal to stop, which has been heard or seen by the foreign vessel.

iv. The right can be exercised only by authorized government vessels or warships which are identifiable and clearly marked.

v.There should be no interruption in the pursuit

vi. The right comes to an end when the offending vessel enters the territorial sea of its own jurisdiction or any third State.

3.4 Condition where a Hot Pursuit can be Initiated

Few conditions are needed to be fulfilled before a hot pursuit can be initiated by the State. They are-

i.There must be a good reason

The guidelines given under the UNCLOS require that there should be a good and sufficient reason to believe that the foreign vessel violated the law of the state within its territorial waters. The phrase 'good reason' means that there should be more than a mere suspicion that an offence has been committed by the vessel. The reason should be based on a strong sign or indication. The right of hot pursuit is limited not only to a committed offence. The right can also be exercised in the case of attempted offence by a foreign vessel.

iii. **Commencement within the maritime Jurisdiction of the State**

A foreign vessel may be pursued when it commits any wrong either physically or constructively while it is under the jurisdiction of the law enforcing state. The alien vessel can be pursued when it violates any domestic law within the internal water or the contiguous zone. The state also through specific legislations may include EEZs under the ambit of the doctrine. The UNCLOS also recognizes the right of hot pursuit in the continental shelf and safety zone around the continental shelf.

iv. **Type of Vessel, that is, government ships**

Only warships, military vessels and government vessels which are clearly marked and are identifiable can commence the hot pursuit. These vessels should be under the service of the government. This implies that naval submarines, enforcement vessels, coast guard vessels and ministry or defense or military vessels can exercise the right of hot pursuit. If the government especially authorizes any other vessel or aircraft to enforce law and order of the State, they can also exercise the right of pursuing the alien vessel provided that they are clearly marked as being under the service of the government.

iv.There must be signal to stop

Before the commencement of hot pursuit, the enforcement vessel must give a signal to the alien vessel to stop implying that the alien vessel has been detected and is required to heave for boarding. The UNCLOS stipulates that the order or signal to stop must be auditory or visual and it must be

given from such a distance that the foreign vessel is able to hear or see the signal given by the enforcement vessel. Giving a signal to stop through a radio broadcast is a very debatable issue. When the 1958 Convention was drafted, it excluded radio signal. The reason for excluding radio signal was that there may be no limit on the distance from which a radio signal may be given.

1.SELF ASSESSMENT EXERCISE: What are the conditions of hot pursuit

3.5 Maintaining the Hot Pursuit

Under the international, law several conditions are needed to be fulfilled to maintain a hot pursuit-

3.5.1 Uninterrupted and Continuous Pursuit

The word interrupted has not been defined by the UNCLOS clearly but Article 111 of the UNCLOS states that the pursuit should be a continuous one as long it is not interrupted. The law states that that the first vessel or craft should continue pursuing the alien vessel until some other vessel or craft which has been sent by the coastal authorities or has been summoned by the pursuing vessel arrives at the spot and continue the pursue. There can be a few reasons for interruptions. There may be some mechanical or technical failure in the pursuing vessel due to which it is compelled to discontinue the hot pursuit, or due to any natural causes like darkness or bad climatic and weather conditions the pursuing vessel is forced to give up the chase or for any other reason like stopping to gather evidence left by the alien vessel or arrest any other small boats which are accompanying the alien vessel.

A hot pursuit ends when the vehicle which is being pursued enters its own territorial jurisdiction or that of any third state. A hot pursuit also comes to an end when it is abandoned or is interrupted. The restriction which is placed is due to the fundamental rule of the sovereignty of the other state. Convention on the Law of Sea and High Seas also states that the hot pursuit must not be resumed when an alien vessel enters its own territorial jurisdiction or the territorial jurisdiction of a third state and subsequently returns to the high seas. Such provisions can be sometimes used intentionally by the alien vessels as evasive actions in case of a hot pursuit.

The Conventions of 1958 and 1982 do not list out any specific offences which justify hot pursuit. Therefore, it can be derived that whatever law the coastal state may want to enforce upon the foreign vessel can be done through hot pursuit provided that the law which the coastal state want to enforce is legitimate. Before commencing the hot pursuit, the coastal state must determine the gravity and intensity of the offence committed by the foreign vessel and decides that whether it is really justified to transgress upon the freedom of navigation of the foreign vessel. There are few offences which do justify the right to hot pursuit. Illicit drug trafficking is one of the issues which poses a grave threat to all the nations and requires strong and quick action to tackle the problem. Protection of the coastal borders of a nation against marine pollution and bio-degradation by foreign vessels is also one area where the coastal state may enforce the rules and regulations by going for a hot pursuit. A coastal state can commence a hot pursuit for the protection of its fisheries also as these are vital resources for the coastal state not only as a source of income but also as a source of food product and other additional industries.

3.5.2 Use of Force in a Hot Pursuit

Under the International law, the coastal state is justified in using force during a hot pursuit. But the use of force is only to be limited to a certain extent and only as much as necessary. Also, force should be used as a last resort. The necessary amount of force can be exercised by the coastal state even if it in any manner infringes the freedom of the alien vessel on the high seas. But excessive and unwarranted force will not be considered justice. **The I Am Alone Case, 7 I.L.R. 203 (1935), U.S./Canadian A.R.**

For the efficient implementation and enforcement of international law, it is of vital importance that all nations respect the rule of law. If the right given by the doctrine of hot pursuit is exercised in a wrong manner it reflects badly upon the rule of law which might cause a discord between the nations. The state which has engaged itself in any kind of unjustified hot pursuit should compensate the foreign vessel owners for their losses. The 1982 Convention states that according to the natural principle of the customary international laws, freedom of high seas is of vital importance.

2. SELF ASSESSMENT EXERCISE: When does hot pursuit stop

3.6 Summary

The doctrine of hot pursuit is of vital importance to the international law and is a firmly anchored concept. But since many factors are included in the exercise of this right and the doctrine is an exception to the fundamental rule of free navigation in the high seas, it should be exercised with utmost caution. The doctrine allows coastal states to protect their own sovereignty by preventing or stopping an alien or foreign vessel from committing an offence in the coastal state's territory.

The fundamental of the doctrine is still founded on the rules and procedures of the old era where sophisticated technology and mechanism was not involved in the governance of a nation. The doctrine of hot pursuit should also evolve with the changing time if it is to prove effective and enforceable in the long run. Where the expansion of maritime rules, regulation and laws is in question, it is important to bring these new technologies and mechanism under its ambit as they have now become an indispensable part of the society.

The doctrine of maritime hot pursuit recognizes the right of a coastal state to pursue onto the high seas a foreign vessel that violated its laws while within its waters. The author proposes a functional approach to defining the standards to be followed in exercising a right of hot pursuit. The right of a coastal state to pursue a foreign ship within its territorial waters or possibly its contiguous zone and there capture it if the state has good reason to believe that this vessel has violated its laws. The hot pursuit may but only if it is uninterrupted continue onto the high seas, but it must terminate the moment the pursued ship enters the territorial waters of another state, as such pursuit would involve an offence to the other state unless during conflict; in these circumstances extradition should be employed instead. The doctrine applies equally to aircraft that intrude into local airspace.

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3.8 Possible Answer to self-Assessment Exercise;

The essence of the right of hot pursuit is to ensure that vessels which have violated the rules of a coastal state do not escape to the high seas. In effect, by virtue of the doctrine, a coastal state may pursue and capture the offending ship on the high seas and escort it back to its port.

i The State which is exercising its right under the doctrine must have sufficient and valid reason to believe that the foreign vessel has transgressed the law of the State.

ii.The pursuit must be started when the foreign vessel is within the internal waters, territorial sea, archipelagic waters, contiguous zone or Exclusive Economic Zone of the State.

iii. The pursuit can be commenced only after the foreign vessel has been given an auditory or visual signal to stop, which has been heard or seen by the foreign vessel

Unit 4 The Regime of Landlocked States: Access to the High Sea for states without Sea Coast

4.1 Introduction

The archipelagic regime in Part IV of the 1982 United Nations Convention on the Law of the Sea was aimed at resolving an issue that had long challenged the international community, namely, whether a group of islands should be considered a single entity and thus subject to a special regime distinct from the rules applicable to continental land masses and individual islands. This chapter examines the critical issues associated with the implementation of Part IV as well as future issues that may arise. It first discusses the development of the archipelagic regime. It then addresses the definition of an archipelago and an archipelagic State, archipelagic baselines, and archipelagic waters, respectively, and examines issues in implementation. It considers the issue of 'dependent archipelagos' and whether there is a lacuna in LOSC in this regard. The chapter concludes with a discussion on future areas of focus for the archipelagic regime

4.2 Learning Outcomes

It is intended that at the end of this unit you will be able to:

i.Understand what is a landlocked state, Achipelgo or Achipelagos Island

iiYou will know the rights of passage of foreign ship in international straits and their status.

iii.You will have a deep knowledge high sea

4.3 Access to the Sea by Coastal and Landlocked States

A landlocked country or landlocked state is a sovereign state that does not have territory connected to an ocean or whose coastlines lie on endorheic basins. There are currently 49 landlocked countries, including 5 partially recognized states. Generally, being landlocked creates some political and economic handicaps that having access to international waters would avoid. For this reason, nations large and small throughout history have sought to gain access to open waters, even at great expense in wealth, bloodshed, and political capital. The economic disadvantages of being landlocked can be alleviated or aggravated depending on degree of development, surrounding trade routes and freedom of trade, language barriers, and other considerations. Some landlocked countries are quite affluent, such as Switzerland, Liechtenstein, Luxembourg, and Austria, all of which, excluding Luxembourg, which is a founding member of NATO, frequently employ neutrality in global political issues. The majority, however, are classified as Landlocked Developing Countries. Nine of the twelve countries with the lowest Human Development Indices) are landlocked.

Historically, being landlocked has been disadvantageous to a country's development. It cuts a nation off from important sea resources such as fishing, and impedes or prevents direct access to maritime trade, a crucial component of economic and social advance. As such, coastal regions, or inland regions that have access to the World Ocean, tended to be wealthier and more heavily populated than inland regions that have no access to the World Ocean. Paul Collier in his book The Bottom Billion argues that being landlocked in a poor geographic neighborhood is one of four major development "traps" by which a country can be held back. In general, he found 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. He states, If you are coastal, you serve the world; if you are landlocked, you serve your neighbors. Others have argued that being landlocked has an advantage as it creates a natural tariff barrier which protects the country from cheap imports. In some instances, this has led to more robust local food systems.

Landlocked developing countries have significantly higher costs of international cargo transportation compared to coastal developing countries. A country is considered landlocked when it is surrounded on all sides by one or more other countries and therefore has no direct access to a coastline providing access to the oceans.

Article 46

Use of terms

For the purposes of this Convention:

(a) archipelagic State means a State constituted wholly by one or more archipelagos and may include other islands;

(b) archipelago means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Article 46.1 of the 1982 United Nations Convention on the Law of the Sea defines the archipelagic State as a State constituted wholly by one or more archipelagos and may include other islands. We can therefore distinguish between two types of archipelagos States. Type I: coastal archipelagos States, a State consisting of a territory that is part of a continent, followed by a group of islands nears its coasts that are archipelagos. A typical example of this species is the Norwegian coastal archipelago. The second type is the archipelagos States, which means a State whose whole territory consists of one or more archipelago surrounded by seawater or ocean, such as the Philippines, Indonesia and Fiji.

4.3.1 Traffic System in the Archipelagic Waters

Although archipelagic waters are subject to the sovereignty of the archipelagic state, there are rights to other states in these waters. These rights constitute restrictions on the archipelagic state. The most important of these restrictions is the passage of two types of traffic in archipelagic waters, namely the right of innocent passage, the right of archipelagic traffic. The regime adopted by the Convention on the Right of Foreign Ships to Exercise International. Navigation via Archipelagic Water is a kind of reconciliation between archipelagic water subordination to the sovereignty of the State and considerations of guaranteeing the freedom of international navigation and not placing impediments to its movement.

The Right of Innocent Passage through Archipelagic Waters In 1982, the United Nations Convention on the Law of the Sea recognized the right of foreign vessels to pass through archipelagic waters. Article 52, paragraph 1, of the Convention states: “Subject to article 53 and

without prejudice to article 50, ships of all States shall enjoy the right of innocent passage during archipelagic waters, in accordance with Part III, section 3". It is clear from this text that innocent passage in archipelagic waters is subject to the same rules as the Convention, which governs and regulates innocent passage in the territorial sea.

4.4 Group of Islands

The word archipelago refers to an island chain. An archipelago is a type of landform that consists of a group of islands, often including similar formations like atolls or islets. The islands that make up an archipelago are clustered or form a chain within a body of water, such as an ocean, gulf, sea, or lake. An archipelago is an area that contains a chain or group of islands scattered in lakes, rivers, or the ocean. West of British Columbia, Canada, and south of the Yukon Territory, the southeastern coastline of Alaska trails off into the islands of the Alexander Archipelago.

Archipelagos geographic type may be found in isolated in large amounts of water or neighbouring a large land mass. For example, Scotland has more than 700 islands surrounding its mainland which form an archipelago Archipelagos are often volcanic, forming along island arcs generated by subduction zones or hotspots, but may also be the result of erosion, deposition, and land elevation. Depending on their geological origin, islands forming archipelagos can be referred to as oceanic islands, continental fragments, and continental islands. Oceanic islands are mainly of volcanic origin, and widely separated from any adjacent continent. The Hawaiian Islands and Easter Island in the Pacific, and Île Amsterdam in the south Indian Ocean are examples.

4.5 Straits for International Navigation

In international law, straits used for international navigation and therefore open to ships of all countries under equal conditions. Freedom of the high seas is a generally recognized principle of international law, and the legal regime that applies to the high seas also applies to straits that link two parts of the high seas and that are important international waterways. International straits are free for navigation by ships of all nations, regardless of whether or not they overlap with the

territorial waters of littoral states. Among such international straits are the Strait of Gibraltar, La Manche (the English Channel), the Strait of Dover, Singapore Strait, and the Strait of Magellan.

International straits that are the only outlet from enclosed seas to the high seas have a special legal status. The rules of navigation in such straits are regulated by special international agreements that in many cases contain restrictions on entry into enclosed seas by warships of countries without coastlines on those seas. Some straits are more important than others because they are the sole connecting links between oceans and interior waters. For example, the Strait of Gibraltar gives access from the Atlantic Ocean to the Mediterranean and Aegean Seas. Other straits are not as important. The availability of alternate routes does not in itself deprive a strait of its character as an international waterway. In the *Corfu Channel* case, 1949 I.C.J. 4, 1949 WL 1 (I.C.J.), the international court of justice rejected the test of essentiality as the only route, ruling that "the decisive criterion is rather [the strait's] geographic situation as connecting two parts of the high seas and the fact of its being used for international navigation.

Article34

Legal status of waters forming straits used for international navigation.

1. The regime of passage through straits used for international navigation established in this Part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.

2. The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law.

4.6 Summary

The United Nations Convention on the Law of the Sea 1982 provided rights for landlocked states on the sea. More importantly, the convention provided them with the right of access to and from the seas and freedom of transit. However, the law makes such rights subject to the agreements to be made by landlocked and transit states. This, in turn, depends on the prevailing relations between the concerned states. If they are not in a smooth relation, the transit states may not be willing to

negotiate and thereby put impediments on the landlocked states' free transit. The political will and commitment of transit states highly conditioned the rights of landlocked states. The denial of free transit, in turn, affects the rights of landlocked states on the different maritime regimes. Landlocked states have no absolute right of access to and from the seas and freedom of transit. Hence, the study concludes that to give practical effect to those rights, negotiating bilateral and multilateral agreements with the transit states has a crucial and irreplaceable role. The archipelagic regime in Part IV of the 1982 United Nations Convention on the Law of the Sea was aimed at resolving an issue that had long challenged the international community, namely, whether a group of islands should be considered a single entity and thus subject to a special regime distinct from the rules An archipelago is a group of closely scattered islands. St. David's Island, above is part of the archipelago that makes up the British territory of Bermuda (officially called the Bermudas) in the Atlantic Ocean.

The United Nations Convention on the Law of the Sea, also called the Law of the Sea Convention or the Law of the Sea treaty, is the international agreement that resulted from the third United Nations Conference on the Law of the Sea UNCLOS III, which took place between 1973 and 1982. The Law of the Sea Convention defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources. The Convention, concluded in 1982, replaced the quad-treaty 1958 Convention on the High Seas. UNCLOS came into force in 1994, a year after Guyana became the 60th nation to ratify the treaty. As of June 2016, 167 countries and the European Union have joined in the Convention. It is uncertain as to what extent the Convention codifies customary international law.

While the Secretary-General of the United Nations receives instruments of ratification and accession and the UN provides support for meetings of states party to the Convention, the UN has no direct operational role in the implementation of the Convention. There is, however, a role played by organizations such as the International Maritime Organization, the International Whaling Commission, and the International Seabed Authority). The ISA was established by the UN Convention.

The term archipelago is used to refer to the sea areas spread by a group of islands and on the same islands at the same time. The islands can therefore be used as synonyms for the archipelago. However, the geographical location distinguishes between two types of archipelagos, where there are coastal archipelagos near the continental coasts, archipelagos located in the middle of the seas and oceans consisting of several islands and forming an independent State

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MODULE FOUR: THE REGIME OF CONTRACT OF CARRIAGE OF GOODS BY SEA

Unit 1: Definition, Nature and Types of Contract of Carriage of Goods by Sea

1.1 Introduction

The law of Carriage of Goods by Sea is generally referred to as Dry Shipping Law because it mainly focuses on the legal implications of the agreements for the transport of cargoes by sea and for the chartering of vessels. The business of carriage of goods by sea is obviously risky. The cargo may arrive late or not at all. How are the various risks allocated between the carriers and the various other parties who might have an interest in the ship and her cargo? Contract of carriage can come in various shapes and in this course you will study the two main forms of contract and carriage and their uses.

It is right to say that trade in goods represent an essential share in the gross domestic product of most states or regions, and that international trade transactions continue to support significantly, the economic growth and development of various nations. However, it must be noted that this trade is largely dependent on the transportation of such goods from one place to another except, of course, where the sale relates to electronic items such as software and electronic books. Otherwise, transportation is integral to international trade and depending on the sale contract e.g. cost, insurance, freight CIF or free on board - FOB between the seller and the buyer, the seller is usually responsible for arranging for the transportation of the cargo from his country to the buyer's country. The transportation of goods may be by air, road, rail, or sea. The transportation of goods, by whatever mode, must be done in a safe and efficient manner if the parties to the transaction are

to be satisfied and trade relations, sustained. Therefore, it is paramount to have in place binding agreement between parties to any contract for the transportation of goods as well as laws which create, unify and if necessary, regulate the transactions by setting minimum or further obligations, liabilities and rights for the parties. This unit is concerned with contracts of carriage of goods by sea, and consequently, excludes discussions on carriage by other modes of transportation. The sea mode of transportation of goods is perhaps the most used as about 80% of internationally traded goods are carried by sea.

1.2 Learning Outcome

It is intended that at end of this Unit you should be able to

i. Understand and analyze the legal regime of the contract of carriage of goods by sea.
ii. The two major means of the contract of carriage by sea
iii. Know the Legal regime governing the contract of carriage by seas

1.3 Contract of Carriage of Goods by Sea

The law of carriage of goods by sea is a body of law that governs the rights and duties of shippers, carriers and consignees of marine cargo. The great majority of contracts governing the transportation of goods by ships are made either by bills of lading or charter parties. The term *charter party* is a corruption of the Latin *carta partita,* or "divided charter." It is used to describe three types of contracts dealing with the use of ships owned or controlled by others. Under a demise charter, the ship-owner gives possession of the vessel to the charterer, who engages the ship's master and crew, arranges for repairs and supplies, takes on the cargo, and acts much like the owner during the term of the charter.

The contract of carriage of goods by sea can easily be seen as a contract involving two parties who for an agreed sum agree to be bound by the terms reached by them. But this definition may be very misleading, for though the contract of carriage involve this important element it is not the same as the usual contracts reached and agreed by parties.Perhaps looking at some definitions posed by some authorities, more light would be shed on the nature of this kind of contract. Clive M. Schmitthoff tried to give a vivid description as to the nature of this contract, here he said that a contract of carriage entails a situation where an exporter concludes with a ship owner to carry

goods in his ship from one port to another, usually overseas, such contract is known as the contract of carriage by sea. R.M. Goode on the other hand sees a contract of carriage involving two parties the shipper and the carrier. The shipper is the person to whom the carrier undertakes the duty of transporting the goods. Black's Law Dictionary defines it as an agreement for carriage of goods by water, which may employ a bill of lading, a charter party or both to ship goods.

A contract of carriage of goods by sea is one which is made for transportation of a bulk or general cargo between a shipper a seller or buyer and a carrier a shipowner or charterer of the cargo. The contract may be embodied in a charterparty where the shipper of goods charters a ship from the shipowner or evidenced by a bill of lading where the shipper procures shipping space from the shipowner or a charterer. Thus, where a shipowner makes available his entire vessel for a particular voyage, a specific period of time or by demise the contract of carriage is termed a 'charterparty' and generally governed by common law principles which afford the parties the freedom to negotiate terms without statutory interference.

The United Nations Convention on the Law of the Sea 1982 under Article 1 Carriage of Goods By Sea Act defines contract of carriage as those that: Apply only to contracts covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under a pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

1.3 .1 Evolution of carriage by sea

Until the development of railroads, the most prominent mode of transport was by water. Overland transportation of goods was relatively slow, costly, and perilous. For this reason, the law governing carriage of goods by sea developed much earlier than that governing inland transportation. The preclassical Greek city-states had well-developed laws dealing with the carriage of goods by sea, along with specialized commercial courts to settle disputes among carriers, shippers, and consignees. The sea laws of the island of Rhodes achieved such prominence that a part of them was carried, many centuries later, into the legislation of Justinian.

In Roman law the contract of carriage did not achieve the status of a distinct contractual form; juris consults (legal advisers) dealt with it in the framework of the contractual forms known to them, such as deposit and hire of services or of goods. There was special regulation only insofar as the responsibility of the carrier was concerned: shipowners (*nautae*), along with innkeepers and stable keepers, were liable without fault for destruction of or damage to the goods of passengers. Nevertheless, they could be relieved of responsibility by proving that the loss was attributable to irresistible force.

In English common law the principles applying to the relationship between the carrier and his customers go back to a time when neither railways nor canals existed. Whether influenced by Roman law or derived quite independently, early English decisions imposed on carriers the obligation not only to carry goods but to carry them safely and to deliver them in good condition to the owner or his agent. The carrier was always liable for the loss of the goods and also liable for any damage to the goods, unless he could prove that the loss or damage had resulted from an excepted cause. This duty of the carrier to deliver the goods safely was considered to exist without regard to obligations arising under any contract between the parties. It was imposed upon him by the law because he had been put in possession of another's goods. In legal language, this meant that the carrier was considered to be a bailee, who, in certain circumstances, was liable to the bailor if he failed to deliver the goods intact. This law of bailment developed in England long before the law of contract. The contractual element of bailment was not stressed until after the 17th century. Today, in common-law countries, the rights and liabilities of shippers, consignees, and carriers are in the large majority of cases based on a contract of carriage, whether express or tacit. The mere fact that, in the ordinary course of his business, a carrier accepts goods for carriage and delivery implies the making of a contract of carriage. The right of the carrier to claim the freight depends on this contract, and this contract is also the foundation of his duty to carry the goods safely to their destination. But there remain vestiges of bailment in the law of carriage of goods. Thus, the owner of the goods, though not a party to the contract of carriage between the shipper and the carrier, may sue the carrier for loss of or damage to his goods.

In France and in a great number of countries following the French system, a contract of carriage requires the presence of three indispensable elements: carriage, control of the operation by the carrier, and a professional carrier. If any of these elements is missing, the contract is one for the

hire of services rather than a special contract of carriage. The classification of a contract as a contract of carriage involves significant legal consequences. Exculpatory clauses in a contract of carriage are ordinarily null and void; receipt of the goods by the consignee and payment of the freight without protest within a designated period of time exclude all actions against the carrier; actions that may be brought against the carrier are subject to a short period of limitation, that is, one year; the carrier has a privilege, which corresponds to a common-law lien, on the things carried for the payment of the freight; and, finally, either party to a contract of carriage may demand that experts determine the condition of the things carried or intended to be carried.

1.4 Characteristics of carriage of goods by sea

The law of Carriage of Goods by Sea is generally referred to as Dry Shipping Law because it mainly focuses on the legal implications of the agreements for the transport of cargoes by sea and for the chartering of vessels. The business of carriage of goods by sea is obviously risky. The cargo may arrive late or not at all. How are the various risks allocated between the carriers and the various other parties who might have an interest in the ship and her cargo? Contract of carriage can come in various shapes and in this course you will study the two main forms of contract and carriage and their uses.

i.Common-law Common carrier

In English and American law, common carriers are distinguished from other carriers. A common carrier is one who holds himself out as being ready to carry goods for the public at large for hire or reward. In England carriers of goods by land that are not classified as common carriers are termed private carriers; carriers of goods by sea or by inland water that are not classified as common carriers may be public carriers, namely, professional carriers who do not hold themselves out as ready to serve the general public or persons who carry goods incidentally to their main business or for one consignor only. In the United States distinction is made among common carriers, contract carriers, and private carriers. A person who engages to carry the goods of particular individuals rather than of the general public is a contract carrier; a person who carries his own goods is a private carrier. Both a common carrier and a contract carrier are engaged in transportation as a business. The basic difference between them is that a common carrier holds himself out to the general public to engage in transportation, whereas a contract carrier does not

hold himself out to serve the general public. The exact boundary between common carriage and contract carriage is not always clear.

A person may be a common carrier although he limits the kinds of goods that he is ready to carry, the mode of transport, or the route over which he is prepared to carry. He is a common carrier only to the extent that he holds himself out as ready to carry goods for the public. It is indispensable for the classification that he accepts reward for the carriage and that his principal undertaking is the carriage of goods. Ancillary carriage for purposes of warehousing does not make one a common carrier. Unless the law provides otherwise, a carrier may cease at any time to be a common carrier by giving notice that he is no longer ready to carry goods for the public at large.

ii.Civil-law public carrier

The concept of common carrier has no exact equivalent in civil-law systems. But, if one looks to substance rather than form or terminology, one may conclude that the concept of public carrier in civil-law systems is a functional equivalent of the concept of common carrier. A public carrier is a professional carrier of goods or passengers; he is distinguished from a private carrier who either carries his own goods exclusively or carries goods incidentally to his other business. Generally, the scope of private carriage is narrowly defined so that most carriage operations fall under the rubric of public carriage; this ensures maximum application of rules designed to safeguard the public interest in the carriage of goods. Public carriers, like common carriers in common-law countries, are subject to strict economic regulation and are under the supervision and control of administrative agencies. When a public carrier is also a professional merchant, normally an individual or a private corporation, he assumes all the duties, obligations, and liabilities attaching to merchants under applicable commercial codes or special legislation. Like a common carrier, a public carrier must accept the goods lawfully delivered to him for carriage, either because he is held to a permanent offer made to the public or because he is under obligation to carry by virtue of public legislation or administrative regulations. Unlike common carriers, public carriers are not liable for loss or damage to the goods without fault; this difference is more apparent than real, because carriers in civil-law systems are presumed to be liable, unless they prove that the loss or damage occurred without their fault.

iii.The Actual Carrier

The carrier is defined as the person who carries goods by the sea in return for a certain fee this fee is referred to as freight under Turkish maritime trade law. In order to be considered as a sea carrier, a person does not have to perform the carriage personally, it would be sufficient for the carrier to undertake the carriage. In this respect, the carrier may perform the carriage in accordance with the contract of carriage in person, or assign someone else to perform the carriage, partially or wholly. The person who is assigned to perform the carriage, partially or wholly, is considered to be the actual carrier. In such case, the carrier who assigned the carriage is considered to be the contracting carrier.

In order to have an actual carrier in a carriage relationship, the carrier who undertakes the carriage under a freight contract should assign someone else for the performance under another freight contract. Consequently, there are two separate freight contracts and two separate contracts of carriage. The first contract is established within the framework of the freight contract concluded between the shipper who approaches the carrier to have his goods carried, and the carrier who undertakes the carriage. The second one is established between the carrier who undertakes the carriage in accordance with the freight contract concluded with the shipper, but will not actually perform the carriage, partially or wholly, and the (actual) carrier who undertakes the carriage. The subject of this second freight contract, which is concluded between the contractual carrier and the actual carrier is partially or totally the same as the first freight contract, and it aims to perform the carriage partially or in total, which is undertaken by the contractual carrier.

In the case of damage or delay, where there are multiple contracts of carriage and multiple carriers, being able to establish each carrier's period of liability through carriage would be important.

Actual carrier is any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.

1.4.1 Types of Contract of Carriage

There are two types of contract of carriage:

i. Charter party

ii. Bill of Lading

i.Charter Party

According to Chuah where the shipper intending to ship goods, wants the use of an entire vessel for that purpose, he might wish to enter into a direct contract of carriage with the ship owner, for the charter of the latter's ship. This transaction is known as a charter party. Here the charterer pays freight in exchange for use of the ship. Another authority sees a charter party

as a contract for the hire of an entire ship for a specified voyage or period of time. It is important to point out that a charter party is not subject to the Carriage of Goods Act or any other statute. It is principally governed by the rule of common law and thus the parties are free to make any term as they wish.

ii.Bill of Lading

In circumstances where bills of lading are used, usually what we see in this case is the shipper of goods not wishing to contract for the entire ship, but rather some cargo space on board. Here he contracts with either the ship owners or the charterer, depending on the arrangement. In cases were the latter's applicable, the parties are not bound by the Carriage of Goods by sea Act, as already enunciated above. But where parties to the contract reach an agreement, the trade usage in such instances is that the shipper receives a bill of lading from the carrier as evidence of the shipment contract.

A bill of lading, is a document which states that certain specified goods have been shipped in a particular ship and which purports to set out the terms on which the goods have been delivered to and received by the ship.

It is common practice for carriers to convey various cargoes for different shippers, in the sense the ship is said to be employed as a general ship under different bills of lading, this is in sharp contrast with the charter party where to whole ship is more often than not in the control of the charterer, who may decide whether or not to adopt the use of the bill of lading in their transactions.

1.5 Components of the Carriage of Goods

Delay and misdelivery

In all legal systems, carriers incur liability for delay in delivering the goods to the consignee. Statutes, international conventions, administrative regulations, or even contractual agreements may fix the period of transportation with reference to the applicable means of carriage and determine the consequences of the delay. Under the law of contracts, failure of the carrier to deliver the goods within the prescribed period of time will be treated as a breach of contract.

In common-law jurisdictions, if the delay is caused by a deviation, the carrier is ordinarily answerable for damages. A deviation takes place when the carrier leaves the route that he has expressly or impliedly agreed to follow or when he goes past his destination. In civil-law jurisdictions, carriers are not bound to follow any particular route in the absence of special legislation or contractual agreement. Thus, a deviation from the normal route does not itself constitute a fault of the carrier; if the deviation causes a delay, the carrier will be liable only if he is at fault. Like delay, misdelivery engages the responsibility of the carrier. Misdelivery is the delivery of the goods by the carrier to the wrong person or to the wrong place.

National and international regulation

In all legal systems the law of carriage has been influenced by the idea that carriers enjoy a factual monopoly. The services that a customer may demand and the remuneration that a carrier may exact are generally regulated by legislation or administrative regulations. The growth of competition among carriers and means of transport in the Western world has led to a reduction in the scope of municipal legislation in a number of countries, but international conventions and administrative regulations have proliferated. The right to carry on a transport business is still everywhere

regulated through elaborate licensing systems, and the operations of transport are subject to continuous supervision and control by appropriate agencies. The legal relation between the carrier and his customer is affected by this intervention of the public authorities, and public as well as private laws form the body of the law of carriage.

1.5.1 Typical clauses

A charterparty may contain these clauses.

Bunker clause: A bunker clause stipulates that the charterer shall accept and pay for all fuel oil in the vessel's bunkers at port of delivery and conversely, owners shall pay for all fuel oil in the vessel's bunkers at port of re-delivery at current price at the respective ports. It is customary to agree upon a certain minimum and maximum quantity in bunkers on re-delivery of the vessel. Since the OW Bunker test case, ship operators need to take care to ensure that bunker supply terms are suitable.

Ship clause: Under this clause, the owner of the ship writes clearly that the ship would be seaworthy at the start of the voyage in every respect, in other words, the ship would be appropriate to travel to the country for which it is taken.

Ice clause: An ice clause is inserted in a bill of lading or a charterparty when a vessel is bound for a port or ports which may be closed to shipping by ice when the vessel arrives or after the vessel's arrival.

Lighterage clause: A lighterage clause is inserted into charter-parties which show as port of discharge any safe port in a certain range, e.g. Havre/Hamburg range.

Negligence clause: A negligence clause tends to exclude ship owner’s or carrier's liability for loss or damage resulting from an act, default or neglect of the master, mariner, pilot or the servants of the carrier in the navigation of manoeuvring of a ship, not resulting, however, from want of due diligence by the owners of the ship or any of them or by the ship's husband or manager.

Ready berth clause: A ready berth clause is inserted in a charter party, *i.e.* a stipulation to the effect that laydays will begin to count as soon as the vessel has arrived at the port of loading or

discharge whether in berth or not. It protects shipowner's interests against delays which arise from ships having to wait for a berth.

1.6 Summary

A contract to carry goods or passengers by sea. Carriage of passengers or goods by sea depends on the individual contracts involved; such a contract may exclude or limit liability for damage to goods, or death or injury to passengers. However, international contracts are governed by international conventions. The relation between the contract of carriage and the B/L becomes an issue at times when there is a reference in one to the other. The TCC clearly sets forth that the provisions of a contract of carriage, where the nature of such provisions so allows, may only be binding on the holder of the B/L if a copy of the contract of carriage is represented to the holder of the B/L. Although there are only a few decisions with respect to this issue, the decisions show that the Court of Cassation examines, in such cases, whether or not the contract of carriage, which is referred to in the B/L, has been provided to the holder of the B/L.

When a ship strands or collides with another vessel, cargo loss or damage may occur. If the damage was caused by a sea peril or an error in navigation, the carrier will not be liable if the goods were being carried under a statutory or contractual provision based on the 1923 Brussels Convention on Limitation on Liability. If, however, the damage was caused by the carrier's failure to exercise due diligence to make the ship seaworthy and to ensure that it was properly staffed, equipped, and supplied, the carrier will be held responsible.

Man has always been by his nature an interactive and interdependent being, and trade has been one of those means by which he interacts and shows his interdependency. He engages in the exchange of goods and services for a valuable consideration. The concept of international trade is not new to man, only that here, this form of exchange seems to resonate on a much broader platform involving a complex web of structures and processes which makes this sort of transaction possible and one of this structure is the carriage of goods by sea, thus it is important to point out that, this form of transportation of goods is not only vital to international trade, but it also forms an integral part of it, that the absence it would make international trade very difficult to undertake. Though our focus is the rights and obligations of parties under the carriage of goods by sea, full

appreciation of this rights and duties will not be attained, if some attention is not given to highlight the nature of this form of transaction.

A contract of carriage is an agreement that is concluded between a carrier and a shipper for the carriage of goods by sea, in which a carrier, against the payment of freight, undertakes to deliver goods from one port to another. While concluding a contract of carriage, the negotiations are made by the shipper and the carrier, and the terms and conditions are established by the above-mentioned parties. In general, the contract of carriage is executed with the carrier by either the seller or the purchaser, depending on the terms of the sale agreement. However, in maritime trade, at times the contract of carriage provides a clause that the shipment shall be subject to the terms and conditions of the Bill of Lading, a document which is issued unilaterally at a later stage by the carrier. On the other hand, some Bills of Lading refer to the contract of carriage for the terms and conditions. Therefore, it is crucial to understand the relation between contracts of carriage and Bills of Lading, and the effects of these two documents on the parties to the carriage.

SELE ASSESSMENT EXERCISE: Analyze the two major contract in the carriage of goods by Sea

1.7References/Further Reading/Web Resources

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1.8 Possible Answer to self-assessment Exercise:

Shipping Contracts means all contracts, orders and arrangements of company with shippers for Company to transport goods and products of shippers from pick up points to delivery points. A contract of carriage of goods by sea is one which is made for transportation of a bulk or general cargo between a shipper a seller or buyer and a carrier a shipowner or charterer of the cargo.

The major contract for carriage of goods by sea is either by charterparty or by the use of bill of lading. The contract may be embodied in a charterparty where the shipper of goods charters a ship from the shipowner) or evidenced by a bill of lading where the shipper procures shipping space from the shipowner or a charterer.

Unit 2: Bills of Lading Contracts and Functions

2.1 Introduction

The great majority of contracts governing the transportation of goods by ships are made either by bills of lading or charter parties. While there is evidence of the existence of receipts for goods loaded aboard merchant vessels stretching back as far as Roman times, and the practice of recording cargo aboard ship in the ship's log is almost as long-lived as shipping itself, the modern bill of lading only came into use with the growth of international trade in the medieval world. The growth of mercantilism which produced other financial innovations such as the charterparty once *carta partita*, the bill of exchange and the insurance policy pr oduced a requirement for a title document that could be traded in much the same way as the goods themselves. It was this new avenue of trade that produced the bill of lading in much the same form as we know today.

2.2 Learning Outcomes

At the end of this unit you will be able to:

i.Explain the role of bill of lading and types of bill of Lading

ii. Learn about the importance of bill of lading in the carriage of goods by sea

iii.You will have the knowledge of the legal character of a bill of Lading

iv.The aim of the unit is that you will understand the use of bill of lading for seagoing vessels

2.3 Bill of Lading in the Contract of carriage by sea

The term “bill” is defined as a printed or written statement of the cost for the goods or services delivered or to be delivered. Transportation Company (carrier) issues these records to the shipper. A bill of lading indicates a particular carrier through which the goods have been placed to their

final destination and the conditions for transporting the shipment to its final destination. Land, ocean and air are the means used for bills of lading.

A bill of lading is a document issued by a carrier to acknowledge receipt of cargo for shipment. Although the term historically related only to carriage by sea, a bill of lading may today be used for any type of carriage of goods. A comprehensive article on Bill of Lading Bills of lading are one of three crucial documents used in international trade to ensure that exporters receive payment and importers receive the merchandise. The other two documents are a policy of insurance and an invoice.[3] Whereas a bill of lading is negotiable, both a policy and an invoice are assignable. In international trade outside the United States, bills of lading are distinct from waybills in that the latter are not transferable and do not confer title. Nevertheless, the UK Carriage of Goods by Sea Act 1992 grants all rights of suit under the contract of carriage to the lawful holder of a bill of lading, or to the consignee under a sea waybill or a ship's delivery order.

A bill of lading is a standard-form document that is transferable by endorsement or by lawful transfer of possession. Most shipments by sea are covered by the Hague Rules, the Hague-Visby Rules or the Hamburg Rules, which require the carrier to issue the shipper a bill of lading identifying the nature, quantity, quality and leading marks of the goods. In the case of *Coventry v Gladstone*, Lord Justice Blackburn defined a bill of lading as "A writing signed on behalf of the owner of ship in which goods are embarked, acknowledging the receipt of the Goods, and undertaking to deliver them at the end of the voyage, subject to such conditions as may be mentioned in the bill of lading." Therefore, it can be stated that the bill of lading was introduced to provide a receipt to the shipper in the absence of the owners.

Although the term "bill of lading" is well known and well understood, it may become obsolete. Articles 1:15 & 1:16 of the Rotterdam Rules create the new term transport document but (assuming the Rules come into force) it remains to be seen whether shippers, carriers and "maritime performing parties" another new Rotterdam Rules coinage) will abandon the long-established and familiar term bill of lading.

A contract of carriage of goods by sea as stated earlier is one made between a shipper and a carrier by which the carrier will, for a charge, undertake to transport the shipper’s cargo to a destination

and deliver to a designated person. Often than not, there is a verbal agreement between the parties further to which the carrier issues a bill of lading upon shipment of the cargo. The bill of lading will therefore: record the goods as having been loaded on board the ship and as such serve the function of a receipt for such goods; a document of title to such goods; and an evidence of the contract of carriage between parties.

It should be noted that between the carrier and the shipper, the bill is only an evidence of the contract between the parties thus, in Owners of the Cargo Lately Laden on Board the Ardennes v Owners of the Ardennes (the Ardennes) the carrier's verbal undertaking to the shipper, to sail to London directly was held to be binding even though the bill of lading stated that the carrier can break the journey. The court decided that the bill of lading is not itself the contract of carriage between the shipper and the carrier although it is an excellent evidence of it. The bill is however, a contract of carriage when transferred to a third party, endorsee or consignee

Today, nearly every contract of carriage covered by a bill of lading is governed by an international convention. And as stated above, these conventions, basically define and set minimum contractual obligations for the parties, and further make it unlawful for them to by agreement, avoid or lessen such obligations. The carrier may however, undertake to assume obligations which are higher than the minimum.

2.3.1 Legal character of a bill of Lading

The carrier need not require all originals to be submitted before delivery. It is therefore essential that the exporter retains control over the full set of the originals until payment is effected or a bill of exchange is accepted or some other assurance for payment has been made to him. A bill of lading**,** therefore, is a very important issue when making shipments to move the cargo or freight from one point to the other. On one hand it is a contract between a carrier and shipper for the transportation of goods and on the other hand, it serves as a receipt issued by a carrier to the shipper.

Hence, the bill of lading is considered a legal document which provides all the vital details to the shipper and the carrier to conveniently process the freight shipment through different maritime countries and invoice it correctly.The bill of lading document is meant to act as a transport

document enacting as the evidence of the contract of carriage of the goods. A negotiable bill of lading has the following legal qualities:

1.It acts as a piece of evidence for the carriage contract containing the terms and condition under which the goods transportation will be carried out. That is

2.4 Types of Bill of Lading

i. Straight bill of lading reveals that the goods are consigned to a specified person and it is not negotiable free from existing equities. It means any endorsee acquires no better rights than those held by the endorser**.** This type of bill is also known as a non-negotiable bill of lading, and from the banker's point of view, this type of bill of lading is not safe. This type of bill is prominently used for military cargo.

ii.Open bill of lading – This is a negotiable bill of lading where the name of Consignee can be changed with consignees' signature and thus transferred. This can be transferred multiple times. Switch bill of lading is a type of open bill of lading.

iii. An electronic bill of lading (or e B/L) is the legal and functional equivalent of a paper bill of lading. The electronic bill of lading must digitize the core functions of a paper bill of lading, namely its legal acceptance as a receipt, as evidence of or containing the contract of carriage and as a document of title.

2.5 Advantages of Electronic Bill of Lading:

i.As there are no papers involved, it saves paper cost as well the cost involved in sending the paper to a different destination by courier

ii.The electronic bill of lading can be transmitted instantaneously around the word in the presence of an internet connection, enabling a quick trade and ease of multiple transfers of ownership during the carriage of the cargo.

iii.If there are any modifications required in the bill, it can be made quickly and cost-effectively as compared to the paper system of the bill of lading.

iv.If the electronic bill of lading system is drawn correctly, such as introducing audit trials, PIN, electronic signature etc., it will be difficult to commit any type of fraud.

2.6 Summary

The contract between the carrier and the shipper is already created before issuing the bill of lading when the cargo is loaded on the ship. This is done to safeguard the shipper in case the cargo is damaged before loading it on board the vessel and to help the shipper in the claim process. For the carrier and the consignee, the bill of lading will act as the actual contract of carriage.

There are different types of bill of lading use in the carriage of goods by sea from a non-negotiable and non-transferable bill of lading and is assigned as an Original document to a named collector/receiver of the goods. In such a case, the presentation of the identification of the consignee is mandatory in order to release the consignment. Moreover, the person or company needs to surrender at least one copy of the B/L.

2.7 References /Further Reading/Web Resources

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The Carriage of Goods by Sea Act 1992 s.1(2) provides that a bill of lading may be a "received for shipment bill of lading

Unit3: The Regime of the contract of carriage of goods by sea

3.1 Introduction

In most contracts of carriage the carrier has greater bargaining power than the shipper, and in the 19th century English judges developed rules to protect the weaker parties. Beginning with the Hague Rules, the various conventions set out to codify and develop such common law principles by providing an international set of basic standards to be met by the carrier, with a view to establishing a universal framework of legal rights and duties. In practice, however, the level of protection was actually reduced because of new provisions allowing the carrier to (i) limit his liability, and (ii) rely on a wide array of exemptions from liability. Also, whereas up until about 1885, the carrier's duties were deemed to be strict, by 1905 the duty became one of reasonable care or due diligence only.

The Hague Rules of 1924 effectively codified, albeit in a diluted form, the English common law rules to protect the cargo owner against exploitation by the carrier. Nearly 50 years later, the Hague-Visby "update" made few changes, so that the newer Rules still applied only to "tackle to tackle" carriage i.e. carriage by sea) and the container revolution of the 1950s was virtually ignored. The Hague-Visby Rules both excluded cabotage carriage, and declared that deck cargo and live animals were not to be considered as goods although the Carriage of Goods by Sea Act 1971 provided that cabotage, deck cargo and live animals are to be covered in English contracts.

The enormous list of exemptions to liability in Article IV made the Rules seem biased in favour of the carrier. As a result, The United Nations produced its own Hamburg Rules which were both more modern and fairer to cargo-owners; but while these have been enthusiastically adopted by developing nations, the wealthier ship-owning nations have stuck to Hague-Visby. In 2008 the final text of the Rotterdam Rules was agreed at UNCITRAL. These Rules are very extensive, with over 90 Articles against 11 in Hague-Visby. Although the Rotterdam Rules are up-to-date and

address multimodal carriage, they have, nine years later, yet to be in force. It now seems doubtful that the Rotterdam Rules will ever be adopted, but there is a slim possibility that a cut-down version of the Rules ("Rotterdam Lite") might find favour. China has effectively adopted the Hague Rules. The USA, which tends to shun conventions and instead rely on homespun legislation, has its own statutes. These comprise the Carriage of Goods by Sea Act a mildly updated version of the Hague Rules for goods in foreign commerce), and the Harter Act (for mostly domestic carriage.

3.2 Learning Outcomes

At the end of this unit you will be able to:

i.Under the Legal regime in the carriage of goods by sea

ii.You will learn about the main International Conventions governing the contract of carriage of goods by sea

iii.You will how these conventions regulate international seagoing vessels.

iv.You will also have a deep knowledge of the rights and obligations of the parties in the contract of carriage by sea.

3.3 Bills of Lading Act 1855

WHEREAS by the Custom of Merchants a Bill of Lading of Goods being transferable by Endorsement the Property in the Goods may thereby .pass,- to the Endorsee, but nevertheless all Rights in respect of the Contract contained in the Bill of Lading continue in the original Shipper or Owner, and it is expedient that such Rights should pass with the Property: And whereas it frequently happens that the Goods in respect of which Bills of Lading purport to be signed have not been laden on board, and it is proper that such Bills of Lading in the Hands of a bond fide Holder for Value should not. be questioned by the Master or other Person signing the same on the Ground of the Goods not haying been laden as aforesaid: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Rights under Bills of Lading to vest in Consignee or Endorsee.

Every Consignee of Goods named in a Bill of Lading, and every Endorsee of a. Bill of Lading to whom the Property in the Goods therein mentioned shall pass, upon or by reason of such Consignment or Endorsement, shall have transferred to and vested in him all Rights of Suit, and be subject to the same Liabilities in respect of such Goods as if the Contract contained in the Bill of Lading had been made with himself.

Not to affect Eight of Stoppage in transitu or Claims for Freight.

Nothing herein contained shall prejudice or affect any Right, of-Stoppage in transitu, or any Right to claim Freight against the original Shipper or Owner, or any Liability of the Consignee or Endorsee by reason or in consequence of Ms being such Consignee or Endorsee, or of his Receipt of the Goods by reason or in consequence of such Consignment or Endorsement, Bill of Lading in Hands of Consignee, &c, conclusive Evidence of the Shipment as against Master,

Every Bill of Lading in the Hands of a Consignee or Endorsee, for valuable Consideration representing Goods to have been shipped on board a Vessel shall be conclusive Evidence of such Shipment, as against the Master or other Person signing the same, notwithstanding that such Goods or some Part thereof may not have been so shipped, unless such Holder of the Bill of Lading shall .have had actual .Notice at the Time of receiving the same that the Goods had not been in fact laden on board : Provided, that the Master or other Person so signing may exonerate himself in respect of such Misrepresentation by showing that it was caused without any Default on his Part, and wholly by the Fraud of the Shipper, or of the Holder, or some Person under whom the Holder claims.

3.4 The Hague Rules 1924

The Hague Rules of 1924 formally the "International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, and Protocol of Signature’ is an international convention to impose minimum standards upon commercial carriers of goods by sea. The extent of application of the Rules to contracts of carriage It is important to start by understanding that the Rules are not applicable to every contract of carriage and therefore, apply only to those covered by a bill of lading or any similar document of title issued in relation to goods carried by sea. Thus, the Rules exclude their application from contracts not covered by a bill of lading as well as contracts covered

by any document which does not constitute a document of title. Therefore, if the contract is covered by a waybill, the Rules will not apply since a waybill, lacks the character of a negotiable document of title. The Rules will however, apply where the contract is covered by a straight bill of lading, which lacks the character of negotiable document of title like a waybill but employs the form of a standard bill of lading to which extent, it may become a negotiable document. Thus, in *JI MacWilliam Co. Inc v Mediterranean Shipping Co. SA (The Rafaela S)*, the claimant who was a named consignee under a straight bill of lading, which indicated that the bill was non-negotiable, sought the application of the Rules to a contract of carriage in respect of which goods carried from Durban, South Africa got damaged between Felixstowe, England and Boston, USA. The Court held that the Rules were applicable, and in so holding, stated that the document was a document of title because it expressly provided that it had to be presented to obtain delivery of the goods.

3.5 Hague Visby protocol 1968

After being amended by the Brussels Amendments (officially the "Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading in 1968, the Rules became known colloquially as the Hague–Visby Rules. A final amendment was made in the SDR Protocol in 1979. The Hague–Visby Rules is a set of international rules for the international carriage of goods by sea. They are a slightly updated version of the original Hague Rules which were drafted in Brussels in 1924.

The premise of the Hague–Visby Rules and of the earlier English common law from which the Rules are drawn was that a carrier typically has far greater bargaining power than the shipper, and that to protect the interests of the shipper/cargo-owner, the law should impose some minimum affreightment obligations upon the carrier. However, the Hague and Hague–Visby Rules were hardly a charter of new protections for cargo-owners; the English common law prior to 1924 provided more protection for cargo-owners, and imposed more liabilities upon common carriers.

The official title of the Hague Rules the "International Convention for the Unification of Certain Rules of Law relating to Bills of Lading". After being amended by the Brussels Amendments (officially the "Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading") in 1968, the Rules became known colloquially as the

Hague–Visby Rules. A final amendment was made in the SDR Protocol in 1979. Many countries declined to adopt the Hague-Visby Rules and stayed with the 1924 Hague Rules. Some other countries which upgraded to Hague-Visby subsequently failed to adopt the 1979 SDR protocol.

Under the Rules, the carrier's main duties are to "properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried" and to "exercise due diligence to ... make the ship seaworthy and to . properly man, equip and supply the ship". It is implicit (from the common law) that the carrier must not deviate from the agreed route nor from the usual route; but Article IV(4) provides that "any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules.

The carrier's duties are not "strict", but require only a reasonable standard of professionalism and care; and Article IV allows the carrier a wide range of situations exempting them from liability on a cargo claim. These exemptions include destruction or damage to the cargo caused by: fire, perils of the sea, Act of God, and act of war. A controversial provision exempts the carrier from liability for neglect or default of the master ... in the navigation or in the management of the ship". This provision is considered unfair to the shipper; and both the later Hamburg Rules (which require contracting states to denounce the Hague–Visby Rules and Rotterdam Rules (which are not yet in force) refuse exemption for negligent navigation and management.

3.5.1 The United Nations Convention on the Carriage of Goods by Sea, Known as the Hamburg Rules 1978

The Hamburg Rules are a set of rules governing the international shipment of goods, resulting from the United Nations International Convention on the Carriage of Goods by Sea adopted in Hamburg on 31 March 1978. The Convention was an attempt to form a uniform legal base for the transportation of goods on oceangoing ships. A driving force behind the convention was the attempt of developing countries' to level the playing field. It came into force on 1 November 1992.

The first of the international conventions on the carriage of goods by sea was the Hague Rules of 1924. In 1968, the Hague Rules were updated to become the Hague-Visby Rules, but the changes were modest. The convention still covered only "tackle to tackle" carriage contracts, with no provision for multimodal transport. The industry-changing phenomenon of containerization was

barely acknowledged. The 1978 Hamburg Rules were introduced to provide a framework that was both more modern, and less biased in favour of ship-operators. Although the Hamburg Rules were readily adopted by developing countries, they were shunned by richer countries who stuck with Hague and Hague-Visby. It had been expected that a Hague/Hamburg compromise might arise, but instead the more extensive Rotterdam Rules appeared. Article 31 of the Hamburg Convention covers its entry into force, coupled to denunciation of other Rules. Within five years after entry into force of the Hamburg Rules, ratifying states must denounce earlier conventions, specifically the Hague and Hague-Visby Rules. A long-standing aim has been to have a uniform set of rules to govern carriage of goods, but there are now five different sets: Hague, Hague-Visby, Hague-Visby/SDR, Hamburg and Rotterdam. (The Rotterdam Rules are not yet in force.]

3.5.2 Carrier's Liability

The greatest criticism of the Hague and Hague/Visby rules was that the carriers superior bargaining position, which remained unaffected by the rules, was still capable of being used to insert, indiscriminately, wide exclusion of liability clauses against which the shipper would remain without a remedy. This was especially true against shippers from developing countries who have reported over the years, innumerable loopholes and lacunas in the rules that allow carriers to limit their liability. Also, a lack of expertise and weakness of bargaining position can make these shippers particularly lose out to the fact that there is no model bill of lading that can be used by the various parties.

Therefore, following the first UN regional Economic Commission, the United Nations Conference on Trade and Development began re-examining the legal regime that was established and propagated by the Hague Rules. It can be seen therefore, that some fifty years after the ex-colonies and dominions succeeded in getting The Hague Rules negotiated despite fierce resistance from carriers and ship-owners, shippers, this time from the developing nations, were again forcing a renegotiation of the rules. What's more, it was the very same concerns that were behind the complaints. The excessive exemptive privileges of ship owners, exclusion from liability in key carrier operations such as navigation and restrictive jurisdiction clauses in bills of lading were the complaints levelled at carriers' and ship-owners' practices.

The frustration at such abuses as the insertion of clauses in bills of lading that are simply invalid according to the Hague/Visby rules yet succeed in halting legal action due to the uncertainty of the shipper of his rights was growing in many shipping circles. The jurisdiction clause was also being abused to the benefit of carriers, the wide exceptions to the rules and low limits of monetary liability were other factors that fed into this feeling of discontent. Such emotions however, were matched by an equally powerful laissez-faire in favour of the status quo by governments in the west that is still seen today in the small support the Hamburg Convention has received from major shipping nations.

i.Period of Responsibility

Situation in Hague/Visby system

The Hague/Visby rules rightfully placed great importance on the question of liability and it was decided as a fundamental rule, that the liability of the carrier would begin with loading of the ship, and end with discharge from the ship. After discharge, the local law at that place would govern liability. Article I(e) therefore provides, Carriage of goods covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

Complete freedom of contract is maintained for the regulation of liability before loading and after discharge. This is logical as the risks at sea are far greater than on land and it is this aspect of carriage that the rules are attempting to regulate. Also, the rules and procedures for loading and discharging are different in different countries for various reasons and it would be unwise to ignore these. It can be argued that the carrier has very little control over the goods while they are not aboard his ship and therefore it is fairer to allow the parties to provide for this themselves.

Unsurprisingly in rules of this age, they have been subject to litigation. In Pyrene v. Scindia Navigation Co. there was a dispute as to the purpose of the words with the court ruling that they were intended only to ‘identify the first operation in the series which constituted the carriage of goods by sea’. In Goodwin, Ferreira v Lamport and Holt it was held that discharge occurred when all the goods had been discharged so that goods discharged in fact, were not discharged in law until the entire cargo joined them on solid ground.

ii.Article IV of the Hamburg Rules

Article IV of the Hamburg abandons this 'tackle to tackle' rule and states

"(1) The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.

(2) For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods from the time he has taken over the goods…"

.It is clear from this article that the carrier's liability has been extended to all time under which he has taken over the goods from the sender until such times as they are regarded by the destination port as out of port and in storage, warehouse or onward transit etc. "

Read in conjunction with Article 23 which states that, "Any stipulation… is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention." It is clear that the carrier's ability to contract out of this clause has been removed completely.

iii.Basis of Liability

There are three main ways of breaching a contract for the carriage of goods by sea, these are by losing or damaging the goods, delivering the goods short of their destination, or there has been a delay in carriage. Under Article 4(5) of the Hague/Visby rules, the carrier is liable for 'any loss or damage' to the goods. It is unclear if this includes loss caused by a reduction in the value of the goods due to delay. The House of Lords, in The Heron II, Koufas v. C. Csarnikow Ltd. stated that damages would be assessed at the difference between the market value at the time of contracted delivery and the time of actual delivery. Article 3(1)(a) provides that the carrier must exercise due diligence in ensuring that the ship is seaworthy and according to Article 3(2) must also exercise due care of the cargo. However, it is Article 4(2) and its list of seventeen exceptions that has been at the route of calls for an amended set of rules. In fact it is probably because of Article 4(2) that we have a Hamburg Convention at all. Under these seventeen circumstances, the carrier can contract out of his liability which you can be assured is overwhelmingly the norm. In the case of

The Marine Sulphur Queen they were termed the ‘uncontrollable causes’ and as such, the carrier will not be liable for them.

Article 4(2)(a) is commonly termed the negligence clause and excludes liability from the carrier for ‘act, neglect, or default of the master, mariner, pilot or servants of the carrier in the navigation or in the management of the ship’. While the practical use, to the shipping industry as a whole, of this clearly unfair clause is open to question, marine insurers maintain that it is vital. The fear of course is that it is not necessary to the majority of conscientious carriers and is therefore merely relied on by a minority of negligent carriers to the expense both of the shipper in the particular case, and to their more careful competitors.

iv. Article 5 of the Hamburg Convention makes serious modifications to this provision stating

Under Article 5(1), The carrier is liable for the loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in Article 4, unless the carrier proves that he, his servants and agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

This puts the liability for all loss, damage or delay clearly on the carrier unless he can show that he took all reasonable actions to avoid the loss. At first sight this seems a far more logical distribution of risk than what occurs under the Hague/Visby rules. Whatever the danger and unpredictability of life at sea, the carrier is in far more control over such situations than the shipper is. While the shipper can pass on the costs of insurance to shippers, the possibility now exists for careful carriers to reduce insurance costs by making less claims than their competitors. Likewise, negligent carriers will soon be unable to secure insurance and will rightfully be excluded from operating. Surely this is a more rational and economically efficient way of operating the market.

Article 5(2) as occurring when,

‘the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time

which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.'

3.5.3 The Rotterdam Rules 2008

The legal issues that surround the Rotterdam Rules and their implications. This will be achieved by analyzing the provisions of the rules and various other publications in concern with the subject of carriage of goods by sea. Of special help to this paper are various publications by The United Nations Commission on International Law- UNCITRAL. This paper will start by analyzing various objectives of the Rules then proceed to look at the provisions put in place to achieve these aims. This paper puts into focus that there are might be varied types interpretations of the laws and hence put special emphasis on the need to reduce ambiguity and maintaining uniformity in application of the law.

The Rotterdam Rules though have not come into effect. If it successfully comes into application, ship owners and maritime carriers will have significantly increased liability in respect to carriage of cargo under the convention. In addition to regulating international maritime carriage of goods, it will also legislate for international multimodal carriage of goods. Due to this fact, UNCITRAL describes the convention as a "maritime plus" instrument which for instance eliminates the 'nautical fault exception where there exception of error in the navigation or management of a vessel. One notable fact is that under the Rotterdam Rules, the obligation to exercise due diligence in relation to the seaworthiness of a vessel is not restricted to before and as the commencement of a voyage and has been extended to the entire duration of the voyage. It takes a stricter stance than Hague Rules and most of the preceding legislations. It also significantly increases the limits of liability per package or unit of weight beyond all the previous laws and provisions. It is therefore apparent that wide adoption of these Laws will lead to increased financial impact to seafarers due to increased liability. Analysts are of the opinion that ship owners, their investment partners and insurers will be subjected to increased costs of cargo claims.

Convention has many positive features. It retains many of the beneficial aspects of existing legislations. For instance, it retains the existing aspect of network liability. Network liability implies that "liability and the applicable limits of liability for loss of and damage to the goods occurring before or after the sea-leg will be determined by any uni-modal international instrument

compulsorily applicable to the relevant mode of transport where the loss or damage occurs. The importance of this provision is pegged on the fact that the liability for loss and damage applies regardless of whether it occurred in the sea or in the land leg. The concept of 'fault based liability has also been maintained allowing greater freedom of contract in linear trade to parties.

Just like in the existing conventions, the Rotterdam Rules apply transport documents like the bills of lading and the sea waybills, issued both in liner and in non-liner trades. It differs from Hague-Visby Rules due to the fact that it does not apply to charter parties whether used in liner or non-liner transportation. While asserting that it does not criticize the use of "through transport" documents, it also does not include an express provision that permits their continuing use. This implies that individual states' national legislation will continue governing through transport carriage and documentation. Provisions on jurisdiction and arbitration are based on the approach of the Hamburg Rules which are overly restrictive. They give freedom to cargo owners to choose from a number of jurisdictions the court where they can sue the carrier. It however has the "opt-in" provision which for instance, the European Union would most likely not go for.

ii.Aims of the Rotterdam Rules

The general objective of putting up this legislation was to create a harmonized and modern body of rules that would effectively regulate the sea trading environment of the 21st century. This overall objective can be broken down into the following sections:

Currently there are three legislations that regulate the carriage of goods by sea; the Hague Rule, the Hague-Visby Rule and the Hamburg Rule. Their application is not uniform across different states; while some states have not even ratified them yet, where they are in application they are often interpreted differently from country to country. This difference in application and practice creates legal uncertainty which has far reaching effect on international trade through the transport of goods by sea. The Rotterdam Rules therefore seek to amalgamate these rules and achieve uniformity in their application.

The existing legislations fail to give legitimacy and the functional equivalence of paper-based documentation to electronic transport documents. They also fail to recognize the prevalence of containerization for the international movement of goods. The Rotterdam Rules are aimed at

addressing these issue and others through various provisions as will be discussed in the sections that follow.

vii. Key provisions of the Rotterdam Rules

Rotterdam Rules are significantly extensive than any of these Conventions that precede them with 96 Articles. This paper considers the following key provision which are the most notable

a.Scope of application

The Rotterdam Rules apply between the carrier and the consignee, controlling party or holder to international contracts of carriage which include an international sea leg. It therefore holds if in respect to the carriage contract, the place of receipt, the port of loading, the place of delivery, or the port of discharge is locate in the contracting state. There is exception on applicability for charter parties and other contracts for the use of a vessel. UNCITRAL assert that the application of the Convention does not take into regard the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee or nay other interested parties.

b.Period of application, maritime plus

The Convention introduces the concept of the 'door-to-door' approach which implies that it applies to the entire period that there is carriage of goods from the instance of delivery to the end of discharge in the receiving port. This effectively ensures that the career cannot easily take advantage of network liability where there exist different bases of liability determined by the stage at which damage occurs. Simply put, it creates a single regime liability where the carrier is bound to exercise due diligence in the whole course of the carriage last they be held liable for damages. Rhidian describes the convention as 'maritime plus' since it requires a sea leg for it to apply. This in contrast to a perfectly multimodal system

c.Performing parties

This is another concept that has been introduced by the Rotterdam Rules. It defines a maritime performing party as any person other than the carrier that performs any of the carrier's obligations directly or indirectly at the carrier's request or under the carrier's supervision or control. This

implies that side parties at the port such as terminal operators, stevedores are subject to the liabilities and obligations applicable to the carrier under this convention since it covers events between the period of arrival of the goods at the port and their departure from the port. They are also entitled to the same defenses and limits of liability under certain circumstances. It also classifies inland carriers as 'maritime performing parties' who are not subject to the provisions of the Convention.

d.Volume contracts

There is a provision that gives freedom to derogate from the Rotterdam Rules in respect of 'volume contracts' for a series of shipments of specified quantities of goods during an agreed period of time. Despite this provision, regulations on seaworthiness, crewing and ship equipping cannot be omitted in any case. Also, under Articles 29 and 32, it stipulates that there can be no omissions or amendments on the provision of information dangerous goods the limits of liability and the loss of the right to limit liability

e. Obligations of the shipper

The obligations and liability of the shipper are contained in Article 27 and 29. They are follows; the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property. The shipper shall provide to the carrier… such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier". This will allow the carrier to: comply with applicable laws and regulations; compile the contract document; and arrange for the proper handling and carriage of the goods. These regulations are much stricter than the pervious regime of laws which raises concerns that they will lead to increased costs due to increased liability. It should however be noted that they are a positive step forward since they require that all participants exercise their duties carefully hence effectively reducing many conflicts and offering clarity in arbitration where conflicts have already occurred.

3.6 Summary

In spite of many years and more modern rules for carriage of goods in place, hague visby rules still dominates the shipping industry. This makes the knowledge of Hague visby rules so important for anyone connected with the carriage of goods. Knowledge of these rules can a give new view point to the seafarers about what are the responsibilities of the carrier for whom they work. It is an inevitable fact that the Rotterdam Rules will increase ship owners' liabilities to a great extent. Despite this, the new law will accomplish the important task of providing the much needed uniformity and precision for legislation on international carriage of goods by sea. It effectively counters the problem of legal uncertainties that has been a major challenge for the previous regime of laws. These rules also incorporate modern business practices including containerization, door-to-door multimodal contracts, electronic aspects and e-commerce. They will go a long way in improving the sea trade and transport business which is a vital component of the world economy.

In a world comprising cargo owning nations, and ship owning nations, and where most nations are both, there is a continual balancing of risk allocation concerning the damage or loss of sea-borne cargo. Therefore, on the fields of international maritime law, the international law community such as United nation has sought uniformity and harmonization on cargo liability that would equitably address the often-conflicting interests of shippers and carriers. Historically, there have been several well known attempts at establishing uniform international law in this field, including: the Hague Rules 1924; the Hague/Visby Rules 1968; the Hamburg Rules 1978; and so forth. However, it is not likely to be resolved with all parties satisfied. During the 1970's pressure mounted from developing countries and major shipper nations for a full re-examination of cargo liability regimes in Hague-visby Rules. The Hamburg Rules establishes a relative uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea. It was prepared at the request of developing countries, and its adoption by States has been endorsed by such intergovernmental organizations as the United Nations Conference on Trade and

SELF ASSESSMENT EXERCISE: Briefly discuss the legal regime of the contract of carriage of goods by sea

3.7 References/Further Reading/Web Resources

Indira Carr, and Peter Stone, International Trade Law *6th ed, Routledge, 2018*

Jason Chuah, *Law of International Trade: Cross-Border Commercial Transactions,* 5th ed, Sweet & Maxwell, 2013) at pages 243-245. See also art 1 (a) of the Hague-Visby Rules on who is a carrier for the purpose of a contract of carriage to which the Rules are applicable.

John F. Wilson, *Carriage of Goods by Sea,* 7th ed, Pearson Education Ltd., 2010

3.8 Possible answer to self-assessment exercise:

The contract of carriage by sea is an aspect of the shipping law which has attracted strategic significance because the bulk of international trade is transacted through this medium. Carriage of goods may be by land railway transport and road transport, by air, or by sea.

United Nations Convention on the Carriage of Goods by Sea Hamburg, 1978 the Hamburg Rules Adopted by a diplomatic conference on 31 March 1978, the Convention establishes a uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea.

Nigeria is a party to the Hague Rules Unification of Certain Rules Relating to Bills of Lading 1924, which have been incorporated into domestic legislation as the Carriage of Goods by Sea Act 2004 now LFN 2010. It essentially covers only outgoing cargo, not imports.

Unit 4: International Trade Law

4.1 Introduction

International trade law is the set of laws and agreements that govern commerce between countries. International trade laws create the rules that countries and businesses must follow in order to do business across borders. Lawyers who work in the field help create international agreements. The international shipping industry is responsible for the carriage of around 90% of world trade. Shipping is the life blood of the global economy. Without shipping, intercontinental trade, the bulk transport of raw materials, and the import/export of affordable food and manufactured goods would simply not be possible.

The concept of logistics has been used in business for more than two decades. Logistics management as an earlier and limited version of supply chain management until the beginning of the 2000s, covers the physical process of planning, organising and controlling the flow of materials and services from the supplier's point to the customer's as the end point. Besides these aspects, the concept of supply chain management also includes customer satisfaction, customer relations, financial flow, and information flow by making logistics functions a more integrated and complex group of activities. Therefore, logistics support and interaction of logistics and supply chain management with local and global trades cannot be disregarded. As approximately 85 per cent of international trade has been made by maritime transport by using either ocean transport, seaways and inland waterways, the role of maritime transport is considered to be crucial in international trades. This unit is mostly focuses on developments in international maritime transport by also emphasising the developments in global trade. It gives a broad idea of logistics and its interaction with international trade. This unit provides general characteristics of logistics and interrelation of various business areas.. The unit is more depth the developments in global economy and the maritime transport industry in relation to international trade. Objectives of this is to provide a general description of logistics, and countries with economies in transition in the global economy and - to review international maritime trade networks, review of developments in international maritime transport by cargo types, in particular, and review of liner shipping connectivity data for

the purpose of determining, in more depth, a background to international competitiveness in maritime trade routes and cargo types between countries on maritime networks.

4.2 Learning Outcomes

It is expected that at the end of this unit you will be able to:

i.Learn about international trade Law and its relevant in international maritime trade.

ii. You will have deep knowledge of the principles of international trade Law

iii.You will know its applicability in modern international maritime trade.

4.3 International Trade Law

International trade law governs the way in which states may restrict or regulate trade in goods and services, including in relation to tobacco products. It is, for the most part, governed by the World Trade Organization agreements, with some states also party to bilateral, plurilateral, or regional preferential trade agreements. International trade law includes the appropriate rules and customs for handling trade between countries. However, it is also used in legal writings as trade between private sectors, which is not right. This branch of law is now an independent field of study as most governments have become part of the world trade, as members of the World Trade Organization Since the transaction between private sectors of different countries is an important part of the WTO activities, this latter branch of law is now a very important part of the academic works and is under study in many universities across the world. International trade law should be distinguished from the broader field of international economic law. The latter could be said to encompass not only WTO law, but also law governing the international monetary system and currency regulation, as well as the law of international development.

The body of rules for transnational trade in the 21st century derives from medieval commercial laws called the *lex mercatoria* and *lex maritima* respectively, the law for merchants on land and the law for merchants on the sea. Modern trade law extending beyond bilateral treaties began shortly after the Second World War, with the negotiation of a multilateral treaty to deal with trade in goods: the General Agreement on Tariffs and Trade. International trade law is based on theories

of economic liberalism developed in Europe and later the United States from the 18th century onwards.

International Trade Law is an aggregate of legal rules of international legislation and new lex mercatoria, regulating relations in international trade. International legislation international treaties and acts of international intergovernmental organizations regulating relations in international trade. lex mercatoria the law for merchants on land. Alok Narayan defines lex mercatoria as any law relating to businesses which was criticised by Professor Julius Stone. and lex maritime - the law for merchants on sea. Alok in his recent article criticised this definition to be too narrow and merely-creative. Professor Dodd and Professor Malcolm Shaw of Leeds University supported this proposition.

The Lex Mercatoria is the grouping of legal rules that guide and underlie international trade, which acts totally independently of the positive law of states, being considered normative. Currently, the new Lex Mercatoria has been prepared. The former Lex Mercatoria was generated in light of the characteristic demands of the time in question, including the values, culture, and future provisions of the time, whereas, the new one is recognized as having the responsibility of common international trade law. The General Agreement on Tariffs and Trade has been the backbone of international trade law since 1948 after the charter for international trade had been agreed upon in Havana. It contains rules relating to "unfair" trading practices dumping and subsidies. Many things impacted GATT like the Uruguay Round and the North American Free Trade Agreement.

In 1994 the World Trade Organization was established to take the place of the GATT. This is because the GATT was meant to be a temporary fix to trade issues, and the founders hoped for something more concrete. It took many years for this to come about, however, because of the lack of money. The British Economy was in crisis and there was not much backing from Congress to pass the new agreement. The idea of these agreements WTO and GATT was to create an equal field for all countries in trade. This way all countries got something of equal value out of the trade. This was a difficult thing to do since every country has a different economy size. This led to the Trade Expansion act of 1962...

4.4 Principles of International Trade Laws

National Treatment Principle: Imported and locally-produced goods should be treated equally at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. These principles apply to trade in goods, trade in services as well as trade related aspects of intellectual property rights.

Most Favored Nation (MFN) Principle or standard: The MFN principles ensures that every time a WTO Member lowers a trade barrier or opens up a market, it has to do so for the like goods or services from all WTO Members, without regard of the Members' economic size or level of development. The MFN principle requires to accord to all WTO Members any advantage given to any other country. A WTO Member could give an advantage to other WTO Members, without having to accord advantage to non- Members but only WTO Members benefit from the most favorable treatment.

Cross-border operations are subject to taxation by more than one country. Commercial activity that occurs among several jurisdictions or countries is called a cross-border transaction. Those involved in any international business development or international trade should be knowledgeable in tax law, as every country enforces different laws on foreign businesses. International tax planning ensures that cross-border businesses stay tax compliant and avoid or lessen double taxation.

4.5 World Trade Organization

In 1995, the World Trade Organization, a formal international organization to regulate trade, was established. It is the most important development in the history of international trade law. The purposes and structure of the organization is governed by the *Agreement Establishing The World Trade Organization*, also known as the Marrakesh Agreement. It does not specify the actual rules that govern international trade in specific areas. These are found in separate treaties, annexed to the Marrakesh Agreement. The World Trade Organization is the 'only global international organization dealing with the rules of trade between nations'. It is a 'rules-based, member-driven' multilateral organization, founded in 1994 . The objectives of the WTO recognise that its Member

States' 'relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

The WTO provides a common institutional framework for the conduct of trade relations among its Members in matters related to the' WTO agreements, a series of international treaties that regulate various aspects of international trade. Joining the WTO involves making a single undertaking to accede to all of the WTO agreements as a 'whole and indivisible package. In making the single undertaking, WTO Members accede to the Marrakesh Agreement Establishing the World Trade Organization, as well as more than two dozen covered agreements regulating different aspects of trade between members. Under these agreements, Members commit to restrictions on their imposition of tariff barriers such as import taxes or customs duties and non-tariff barriers to trade (such as regulatory measures, quantitative restrictions, and internal tax laws that apply to both domestic and imported products. WTO Members also make commitments in other areas related to trade, such as protection of intellectual property rights, food safety, agriculture, customs valuation, and subsidies.

4.5.1 Preferential trade agreements

In addition to belonging to the WTO, many states including WHO FCTC Parties are parties to other trade agreements. These agreements known as preferential trade agreements or PTAs are usually bilateral or regional agreements. Parties to PTAs grant trade preferences to each other, typically by eliminating tariffs. PTAs may also include non-tariff obligations similar to those in the WTO agreements or obligations that place greater restrictions on their parties than WTO rules, such as requiring higher levels of intellectual property protection than the provisions in the TRIPS Agreement. Although many PTAs provide for inter-state dispute settlement, generally, states have used WTO dispute settlement procedures when they wish to bring dispute settlement proceedings against other WTO Members.

Regulatory and tax measures to implement the WHO FCTC may interact with obligations under international trade law, in particular the GATT, the TBT, and the TRIPS agreement.

In these agreements, WTO member states commit to ensuring that:

Regulatory and tax measures do not discriminate between local and imported 'like products', or between 'like products' from different countries.

Regulatory measures that constitute technical regulations are no more trade-restrictive than necessary'.

Certain intellectual property protections are implemented into national law

These obligations have been the subject of WTO disputes relating to tobacco products, as well as discussions in WTO committees.

The scope of WTO :

(a) provide a framework for administration and implementation of agreements; (b) forum for further negotiations; (c) trade policy review mechanism; and (d) promote greater coherence among members economics policies

(a) A principle of non-discrimination (most-favored-nation treatment obligation and the national treatment obligation) (b) market access (reduction of tariff and non-tariff barriers to trade) (c) balancing trade liberalization and other societal interests (d) harmonization of national regulation TRIPS agreement, TBT agreement, SPS agreement.

4.5.2 International Maritime Trade

Maritime trade officially began in the year 1648, when the Treaty of Westphalia confirmed the ideas set out by Hugo Grotius, who said that the sea should be open for international trade. This evolved further in the year 1982, when the first collaborative effort to establish a maritime security organization, with ocean law framework in place, was established. Because over 90% of the entire World's trade occurs by the sea, it is important for its entirety to be carefully preserved in order to

ensure that successful trade is not threatened. Numerous developments were made in these laws that established power over things like general security and trading practices.

The United Nations Convention on the Law of the Sea is especially dedicated to combating pirates, addressing safety issues and helping reduce the surge of piracy around the coast of Somalia and surrounding countries. Since maritime piracy had doubled in the year 2008, over forty countries have begun to patrol the Gulf of Aden to help protect sailors and goods. In addition to combating pirate activities, the group was successful in establishing countermeasures to the trade of drugs and narcotics overseas. Three separate conventions, which had occurred between 1961 and 1988, had resulted in much stricter protective policies to be enacted on maritime trade, especially around problem areas. The control measures that were provided by these treaties immediately resulted in the decrease of narcotics and legal drugs being traded on the black market, but the organization's goals are far from over.

4.5.3 Dispute settlement

Resolving trade disputes is one of the core activities of the WTO. A dispute arises when a member government believes another member government is violating an agreement or a commitment that it has made in the WTO. The WTO has one of the most active international dispute settlement mechanisms in the world. Since 1995, 612 disputes have been brought to the WTO and over 350 rulings have been issued.

Most prominent in the area of dispute settlement in international trade law is the WTO dispute settlement system. The WTO dispute settlement body is operational since 1995 and has been very active since then with 369 cases between 1 January 1995 and 1 December 2007. Nearly a quarter of disputes reached an amicable solution, in other cases the parties to the dispute resorted to adjudication. The WTO dispute settlement body has exclusive and compulsory jurisdiction over disputes on WTO law (Article 23.1 Dispute Settlement Understanding.

The various stages through which a dispute can pass in the dispute settlement system. There are two main ways to settle a dispute once a complaint has been filed in the WTO:

(i) the parties find a mutually agreed solution, particularly during the phase of bilateral consultations; and (ii) through adjudication, including the subsequent implementation of the panel and Appellate Body reports, which are binding upon the parties once adopted by the DSB.

(ii) There are three main stages to the WTO dispute settlement process: (i) consultations between the parties; (ii) adjudication by panels and, if applicable, by the Appellate Body; and (iii) the implementation of the ruling, which includes the possibility of countermeasures in the event of failure by the losing party to implement the ruling.

4.6 Summary

More than 153 governments have signed the agreement establishing the World Trade Organization, committing themselves to comply with a large body of complex rules and procedures that regulate the actions of national governments affecting international trade. A continuing work program is under way in the WTO on important topics such as competition policy. Every country expecting to gain the benefits of WTO membership will in turn be expected to comply with its obligations under the WTO agreements and to implement them effectively through changes in its domestic laws, institutions, and administrative practices. Each country will also want to take steps, when necessary, to insure compliance by other countries. Beyond the WTO - The last decade or so has seen an explosion in the number of regional trade agreements - mostly free trade areas and customs unions – and this trend is likely to continue even if the Doha Round of multinational trade negotiations is successfully concluded.

Two main areas of international trade on the domestic side include trade remedy work and export controls/sanctions. Trade remedies are tools used by the government to take corrective action against imports that are causing material injury to a domestic industry because of unfair foreign pricing and/or foreign government subsidies. An example of a trade remedy includes antidumping duties set forth by the International Trade Commission in response to dumping; this occurs when a foreign company sells a product in the U.S. that is below the price it sells for in its 'home market' and thus causes harm to the U.S. industry. Export control laws govern the exportation of sensitive equipment, software, and technology for reasons related to foreign policy objectives and national security. Three U.S. government agencies have the authority to issue export licenses, including:

Department of State; Department of Commerce; and Department of Treasury. Violations of export control laws can carry both civil and criminal penalties. On the international treaty front, companies may need advice on the rules of the World Trade Organization, which is a formal international organization that regulates trade. Other relevant treaties include the North American Free Trade Agreement and bilateral investment treaties. Some firm practices focus on only one aspect of the law such as antidumping, whereas others are very broad practice groups that touch all areas of international trade. The predicted growth area for the future is the laws surrounding data and privacy information flow, since what is permissible differs greatly by country.

SELF ASSESSMENT EXERCISE: Describe the relationship between International Trade Organization with International Maritime and Trade.

4.7 References/Further Reading

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4.8 Possible Answer to self-Assessment Exercise:

Since the end of World War II, ongoing trade liberalism under the banner 'World Peace through World Trade has led to the gradual removal of political, regulatory, and cultural obstacles to trade. Integration processes took place both at the regional level and at the global level. The collapse of the Soviet Union and the opening up of China in the 1990s represented landmark events that incited the entry of close to 2 billion consumers as well as the related resources into the global economy

International trade relies on international maritime transport which provides the basis for which goods and services cross international boundaries. International maritime transport also provides an important legal function in international trade since it provides a link between the buyer and seller of the goods or services being traded. International trade relies volume-wise for about 80% on maritime transportation, which involves several markets such as dry bulk, roll-on/roll-off, general cargo, and containers.