PROGRAMME: MASTER OF LAWS (LL.M)

FACULTY: LAW

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SECOND SEMESTER

COURSE: JIL 820 INTERNATIONAL MARITIME LAW 11

INTRODUCTION

This is a second semester course .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. programme and study International 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 International 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 course brings together a global network of accomplished professionals from a broad range of legal practices, industries, and businesses. The course 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 legal regime of ships
ii. The regime of crew, passengers and cargo
iii. The rules of securing safety at sea
iv. International maritime institutions

The course 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.

WORKING THROUGH THIS COURSE

The second semester course contains four modules of 16 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 16 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

i.30% of the final grade is based on the TMAs

ii.70% of the final grade is based on examination.

iii.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 second semester work JIL 820. It 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.

Module 1: THE LEGAL REGIME OF SHIPS

Unit 1 Ships Registration, Nationality and flag of convenience

Unit 2 Stateless ships and pirate Ships

Unit 3 Maritime collision, Wrecks and salvages

Unit 4 Warships, Government own Merchants ships, Noncommercial ships

Module 2: THE REGIME OF CREW, PASSENGERS AND CARGO

Unit 1 Crew, Passengers and Marine Cargoes

Unit 2 Manning, Conditions of Labour and Consular Jurisdiction over Seamen aboad

Unit 3 Marine Pollution Oil and chemical

Unit 4 Maritime Insurance and Marine policy

Module 3: RULES OF SECURING SAFETY AT SEA

Unit 1 Rules for prevention collision at sea

Unit 2 Ship in Distress and Assistance at Sea

Unit 3 Law of Genera Average and contribution

Unit 4 Maritime warfare, prize law and prize courts

Module 4: INTERNATIONAL MARITIME INSTITUTIONS

Unit 1 Types of International Maritime Institutions

Unit 2 International Maritime Organizations

Unit 3 Admiralty Law and Procedure

Unit 4 Law of Asylum and Law of Refugees

Module 1: THE LEGAL REGIME OF SHIPS

Unit 1 Registration, Nationality of ships and flag of convenience

1.1 Introduction

A cardinal principle in international law is that jurisdiction over a vessel on the high seas resides solely with the state to which the vessel belongs. A second principle, which is a corollary of the first, is that all vessels using the high seas must possess a national character. The concept of the flag in maritime law and practice is virtually synonymous with ship registration. Indeed, the expressions nationality, flag and registration are often used interchangeably. However, they each have a distinct and essential significance in so far as they all relate to the identification and exercise of jurisdiction over ships. There are legal implications that need to be appreciated in light of these distinctions; and furthermore, the interrelationship between a ship's nationality, registration and ownership needs to be clearly understood because these matters raise some contentious issues and have in certain contexts evoked emotional and sensitive responses.

1.2 Learning Outcomes

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

i.learn the process of Registration of ships before a ship is engage in international voyage

ii.You will learn that ships navigates into different jurisdictions and into different continents

iii.You will also learn that where a ship having been registered it must be assigned a nationality.

iv.You will have a deep knowledge of the Legal regime of ships.

1.3 Ship Registration

Ship registration is the process by which a ship is documented and given the nationality of the country to which the ship has been documented. The nationality allows a ship to travel internationally as it is proof of ownership of the vessel. International law requires that every ship be registered in a country, called its flag state. A ship is subject to the law of its flag state. It is usual to say that the ship sails under the flag of the country of registration.

A ship's flag state exercises regulatory control over the vessel and is required to inspect it regularly, certify the ship's equipment and crew, and issue safety and pollution prevention documents. The organization which actually registers the ship is known as its registry. Registries may be governmental or private agencies. In some cases, such as the United States' Alternative Compliance Program, the registry can assign a third party to administer inspections. A register that is open only to ships of its own nation is known as a traditional or national register. Registers that are open to foreign-owned ships are known as open registries and are sometimes called flags of convenience,

Ship registration has originally meant to control ships carrying cargo in European seaborne countries; it was used to make sure ships were being built in the local country, with crews predominantly of the local country. Since then, ship registration has been used to document ships for ownership. Documentation provides definite evidence of nationality for international purposes and provides financing opportunities with the availability of preferred mortgages on documented vessels. Vessels that operate internationally or cross international borders are required to be registered. Some jurisdictions also require vessels that only operate in territorial waters to register on their national register, and some forbid foreign-flagged vessels from trading between ports within the country known as Cabotage. The country of registration is a ship's flag state and determines its nationality as well as which country's laws govern its operation and the behavior of its crew. Details of registration may differ from states to states.

Each registry has its own rules as to the types of vessels that it will accept for registration. The Liberian Registry, for example, registers seagoing vessels of more than 500 net tons that conduct foreign trade. Vessels over the age of 20 require a waiver as well as the vessel's classification society being willing to issue statutory certificates to the vessel. Vessels 15 years or older must have a Status Report of the vessel's Special Survey to be reviewed by Marine Safety. Registries charge a registration fee. There must be a genuine link between a vessel and its flag state. Article 5(1) of the Geneva Convention on the High Seas of 1958, which came into effect in 1962, requires that "the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. There are 63 states party to that Convention. The principle was repeated in Article 91 of the United Nations Convention on the Law of the Sea of 1982 which came into effect in 1994. That Convention has 167 parties.

In 1986, the United Nations Conference on Trade and Development attempted to solidify the genuine link concept in the United Nations Convention on Conditions for Registration of Ships. The Convention on Conditions for Registration of Ships would require that a flag state be linked to its ships either by having an economic stake in the ownership of its ships or by providing mariners to crew the ships. To come into force, the 1986 treaty requires 40 signatories whose combined tonnage exceeds 25% of the world total. To date, only 14 countries have signed the treaty. National or closed registries typically require that a ship be owned and constructed by national interests, and at least partially crewed by its citizens. Open registries do not have such requirements; some offer on-line registration, sometimes guaranteeing completion in less than a day.

1.3.1 Types of ship Registration

There are various types of ship registration

i. Traditional or Closed Registry

A registry that is open only to ships of its own nation is known as a traditional or closed registry. In other words they allow only vessels that are owned by companies or persons that are residents of that country. Traditionally, closed registries have a two-fold requirement, firstly, incorporation in country of registration and secondly, principal place of business in country of registration. In a closed registry, the tax is charged on the earnings as compared to open, wherein the taxes are on the basis of tonnage.

ii. Open registry or International Registry

International Registry has virtually no restrictions, however, this has led to allegations of sub-standard ships. International registry incorporates second registry, hybrid system and bareboat charter registration. Open registers denote flags of convenience for ships. More than half of the world's shipping countries follow open registry, such as Panama, Liberia and Bahamas. A ship registered in a country is required to fly the flag of that country and is entitled to the privileges and protection of the country. Registration provides title to a ship which is important for the ship to enter into trade relations.

iii. Secondary registry

Secondary Registry is also known as Offshore Registry. It permits as an economic incentive, the hiring of foreign crews at wages lower than those payable to domestic crews. It was viewed as an alternative to open registry, to counter its effects on shipping. Prior to the advent of secondary registry, traditional maritime countries were offering various forms of financial incentives to ship owners, thus the main objective of secondary Registry was the phasing out of subsidy and incentive schemes.

iv.Hybrid Registry

Hybrid registers offer attractive combinations of national and open registry features designed to lure ship-owners. Just as open registers developed in response to national registries, so hybrid registers have developed in response to open registries. They are easier to access and have fewer entry requirements than most national registries. They tend to maintain a nationality link between beneficial owner or management of the vessel and the flag State. In general, hybrid registries tend to offer financial incentives and advantages similar to open registers. Many hybrid registers are maintained for use only by national ship-owners as an alternative to flagging out and as a way to compete with the open registry system. However, some hybrids allow foreign ship-owners access to the registry once certain technical standards are met. The Norwegian and Danish International Ship Registers, the Isle of Man, and Madeira permit foreign owned or controlled vessels in certain circumstances while the German and the French International Ship Registers do not have nationality requirements.

1.3.2 Vessel Registration Process in Nigeria

Article 91 of UNCLOS 111 1982 requires every state to issue ships which it has granted the rights to fly its flag a document to that effect which is known as the certificate of registry. The Nigerian Ship Registration Office is empowered to register ships in accordance with the following Acts:

i.Merchant Shipping Act. S. 5-81 (part ii & iii)

ii.Nigeria Maritime Administration and Safety Agency(NIMASA) Act 2007 S. 28-32 (part viii)

iii.Coastal and Inland Shipping Act S. 22-28 (part v)

1.4 Applicant's Guide for Registration of Ships in Nigeria

How to register with the Nigerian Ship Registration Office

STEP 1- Send an application to the Director-General with all supporting documents required for your request (Check the requirement page)

STEP 2- Liaise with the Nigerian Ship Registry Office for payment of the required fees.

STEP 3- Pick up your certificate/ document from the Nigerian Ship Registry Office

Minimum Share Capital for vessel owners (Companies only)

The minimum share capital for any vessel owned by a Nigerian company is N25, 000,000.00

1.4.1 Reservation and Approval of Ship Names

The Application for Registration allows an owner to specify a preferred name for a ship and any alternatives, should the preferred name be unavailable. It is also possible to check on name availability before submitting the application and to reserve preferred names. This can be done by visiting the Nigerian Ship Registration Office.

A proposed name may be refused for any of the following reasons:

i.It is already the name of a Nigerian registered ship

ii.It is a name so similar to an existing name that it could pass off as belonging to the same owner.

iii.It is likely to cause offence or embarrassment to the flag.

iv.It is calculated to deceive or offend the public interest.

v.Reservation of name is for a 60 days period after which the name shall lapse.

1.4.2 Nationality of Ships

Nationality is a legal relationship between an individual person and a state. Nationality affords the state jurisdiction over the person and affords the person the protection of the state. What these rights and duties are varies from state to state. This relationship generally enables intervention by a State to provide help and protection to its nationals when they are harmed by other States. By custom and international conventions, it is the right of each state to determine who its nationals are. Such determinations are part of nationality law. In some cases, determinations of nationality are also governed by public international law for example, by treaties on statelessness and the European Convention on Nationality.

Nationality differs technically and legally from citizenship, which is a different legal relationship between a person and a country. The noun national can include both citizens and non-citizens. The most common distinguishing feature of citizenship is that citizens have the right to participate in the political life of the state, such as by voting or standing for election. However, in most modern countries all nationals are citizens of the state, and full citizens are always nationals of the state.

Nationality of Ships

The nationality in relation to a vessel is a technique to assign any ship or vessel to a certain national legal statute or jurisdiction of a concrete state under whose laws the vessel is registered or licensed. Ships have the nationality of the State whose flag they are entitled to fly and that is why flag state is one of the most important instruments in International Maritime and Admiralty Law. The procedure of granting the nationality of the ship starts with the recording and registration in the ship´s registry and once it is completed the vessel has the obligation and the right to fly the state flag.

The flag state is the administrative authority which is held responsible for the effective application of all kind regulations on the vessels registered under that flag, such as labour

relationships between owner and crew members, technical inspection or survey, certification, classification and safety and environmental prevention issues. International Public Law has always tried to establish clear rules and regulations on the nationality of the vessels by means of international conventions but not always it has been easy. Already in 1921 the Flag Right Declaration recognised that all states have a right to be a flag state. The Convention on the High Seas from 1958 and the UN Convention on the Law of the Sea from 1982 prescribed that the ships have the nationality of the State that has granted the right to fly his flag by having fulfilled the administrative requirements for its recording in the correspondent national Ships Registry. Some flag states do not fully comply with their survey and certification responsibilities ie. Flag of convenience some states use classification societies and use the Port State Controls of foreign-registered ships entering their jurisdiction.

It is important to remark that there must be an authentic and real relationship between vessel and flag state: in that that sense Article 91(1) of the 1982 United Nations Convention on the Law of the Sea, provides that every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. There must exist a so called *genuine link* between the State and the ship. Unfortunately neither Convention, defines or states what is meant by a genuine link, nor does either Convention stipulate what consequences follow where no genuine link exists and so there are two basic aspects admitted by most of the maritime admiralty lawyers for its proof: Due to that very flexible interpretation of the genuine link and as it happens very often in the Public International Law not all the jurisdictions assume their obligations and control of their ships in the same way and with the same criteria and this has as consequences the so call “substandard” ships un international maritime traffic, some of them well known after important accidents with damages in sea environment and even human life.

1.5 Flag of Convenience of Ship Owner

Flag of convenience is a business practice whereby a ship's owners register a merchant ship in a ship register of a country other than that of the ship's owner’s country. The ship flies the civil ensign of that country, called the flag state. The term is often used pejoratively, and the practice is regarded as contentious. Each merchant ship is required by international law to be registered in

a registry created by a country, and a ship is subject to the laws of that country, which are used also if the ship is involved in a case under admiralty law. A ship's owners may elect to register a ship in a foreign country which enables it to avoid the regulations of the owners' country which may, for example, have stricter safety standards. They may also select a jurisdiction to reduce operating costs, bypassing laws that protect the wages and working conditions of mariners. The term flag of convenience has been used since the 1950s. A registry which does not have a nationality or residency requirement for ship registration is often described as an open registry.

The ship's flag is an important factor when the court makes the decision. The ship's flag is a representation of the ship's nationality, which means the ship is under control by the registered country. The ship should follow the regulation of the country and also can get the various protections or have the preferential treatments as tax, certification and security etc. In official, the ship's flag is called ensign or pennant. The function of the ship's flag is to show the other countries or ships that the ship's nationality in the open sea to make them recognize where are the ships belonged. Based on the ship's flag, the ship should obey the international and the registered country's maritime law in the open sea. The ship's flag is a sign of the ship's nationality; therefore, the nationality of the ship is the other significance of the flag. The flag has a relationship with the nationality. The ship's nationality plays an important role in the maritime law. And it can be used on the different kinds of marine conflict.

A ship's nationality is a certification of the ship owner register the ship based on a country's regulation and gains the country's tax or security protection when the ship sails on the open sea. The function of the ship's nationality is for the justification when the ship has the conflict with the other ship, the court will make the judgment based on the ship's national law.

1.6 Summary

Ship registration **is** the process by which a ship is documented and given the nationality of the country to which the ship has been documented. The nationality allows a ship to travel internationally as it is proof of ownership of the vessel. The organization which actually registers the ship is known as its registry. There different types of ships registry with advantages:

Income Tax Advantage

Easy Transfer of Registration

Dual Registration

Discounted Registration Fees for Fleets

The shipping business has different conflict on the territorial and open sea area. The judgment of the conflict has various situations. The foundation of the arbitration will be according to the contract or the other element of the maritime law. The ship's flag is an obvious and significant sign of the ship's nationality, which performs the national maritime law when the conflict happened. Therefore, the choice of the ship's flag is very important to the shipping business and also the judgment when something happened. As the connecting factor between a ship and a State, the ship's nationality takes a main effect when the ship has conflict. In addition, the scope of using the municipal law of the ships registry is wildly. The ship's ownership of property, the tortuous act on the open sea, the marine salvage and the limitation of marine liability of damage all can get a fair trial under this maritime law. Therefore, the choice of the ship's flag is very important, it will affect the arbitration when the ship's get into international conflict.

A port of registry determines the rules that vessel must abide by, beyond international agreements. Most of all, it determines the amount of taxation applied to the vessel, owner, and operator for numerous items. Clearly there us a competitive environment between countries that host ship registries. Under international law, every merchant ship must be registered with a country, known as its flag state. That country has jurisdiction over the vessel and is responsible for inspecting that it is safe to sail and to check on the crew's working conditions.

Flags of Convenience have been in practice since the late 1920's in the United States when ship-owners were frustrated by increased regulations and rising labour costs, began to register their ships to Panama. Ships registered under flags of convenience can often reduce operating costs or avoid the regulations of the owner's country. A vessel owner will find a nation with an open registry, or a nation that allows registration of vessels owned by foreign entities. A ship operates under the laws of its flag state, so vessel owners often register in other nations to take advantage of reduced regulation, lower administrative fees, and greater numbers of friendly ports. In 1968, Liberia grew to surpass the United Kingdom as the world's largest shipping register and, as of 2009, more than half of the world's merchant ships were registered with open registries, with

Panama, Liberia, and Marshall Islands flags accounting for almost 40% of the entire world fleet as calculated by tonnage. According to Ship Inspection, companies opt for Flags of Convenience for the following reasons:

i.Foreign corporations can register a ship without being established in the territory.

ii.Where a company is required to be formed in the State, there are low formation costs.

iii.The beneficial ownership of the ship may remain anonymous.

iv. Low taxation and other fiscal incentives.

v. No special crew nationality or employment requirements.

vi. Relaxed ship age limit.

vii. No minimum ship tonnage requirement.

viii. Dual registry is allowed in some cases vessel registered under one country, but simultaneous registry permitted on bareboat charter registry of another country).

ix.All IACS and sometimes other classification societies permitted to conduct surveys.

x. Speedy and simple registration procedures.

SELF ASSESSMENT EXERCISE: Analyse the procedure for registration of ships in Nigeria

1.7 References/Further Reading/ Web Resources

Vonk, Olivier (2012). Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States. Martinus Nijhoff Publishers.

Weis, Paul. Nationality and Statelessness in International Law. 2012.

Boll, Alfred Michael (2007). Multiple Nationality and International Law. Martinus Nijhoff Publishers.

D'Andrea, Ariella (2006). The "Genuine Link" Concept in Responsible Fisheries Legal Aspects and Recent Development.

Neff, Robert (2007). Flags That Hide the Dirty Truth". Asia Times. Asia Times Online. Retrieved 202020

1.8 Possible answer to self-assessment exercise: Procedure for Registration of ships in Nigeria

i. A completed NIMASA application form.

ii. A completed NIMASA approval of name of ship form.

iii. Copy of Certificate of Incorporation.

iv. Evidence of registration as a shipping company with NIMASA.

v. Certified True Copy(CTC) of Memorandum and Article of Association

Unit 2: Stateless and Pirate Ships

2.1 Introduction

Ship registration is similar to a person receiving a passport. It means that any ship can have a passport. In fact, when a ship is registered it means that ship is documented and given the nationality of a country which the ship has been documented. Therefore, the nationality allows a ship to travel internationally as it is proof of ownership of the vessel. When a ship is documented, it means that the ship has the nationality of the country and can fly the flag of that country. This is called the law of the flag, and the country is often referred to as the flag state. This is important to have in mind that the United Nations Convention on the Law of the Sea and customary international law provide that, with a few notable exceptions, the flag state has exclusive jurisdiction over its vessels on the high seas. Stateless vessels upon the high seas do not enjoy the legal protection accorded to flagged ships under international law. As such, they are subject to the extraterritorial jurisdiction of any authority on the scene.

A ship's flag state exercises regulatory control over the vessel and is required to inspect it regularly, certify the ship's equipment, crew, and issue safety and pollution prevention documents. The organization which actually registers the ship is known as its registry. Registries may be governmental or private agencies, or in some cases, a third party is administered to do the inspections. Sometimes, vessels find another way for registration that is called flags of convenience. In this case, vessels register with states with which they have no real connection but the state is known to have low fees and few enforcement mechanisms, and it is easier for them to have their flags.

2.2 Learning Outcomes

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

i.Explain what is a stateless ships and pirate ships found in coastal and international waters.

ii.You will have a deep knowledge of the applicable legal regime to stateless and pirate ships.

iii.Understand the statuis of stateless ship.

2.3 Stateless Ship in Maritime Law

In international law, a stateless person is someone who is not considered as a national by any state under the operation of its law. Some stateless people are also refugees. However, not all refugees are stateless, and many people who are stateless have never crossed an international border.

In relation to international Law, a stateless ship means a ship without nationality or assimilated to a ship without nationality when the ship has not been granted by any State the right to fly its flag or when it sails under the flags of two or more States, using them according to convenience. As regards interception, this proposal while retaining the same set of measures as in the decision, distinguishes between the measures that may be taken in the territorial sea article 6, on the high seas article 7 and in the contiguous zone. Article 8, thus clarifying the conditions under which these measures may be taken and the jurisdictional basis on which action may be taken particularly as regards stateless ships. Where there are reasonable grounds to suspect that a ship without nationality or one that may be assimilated to a ship without nationality is engaged in the smuggling of migrants by sea, the participating unit may board and stop the ship with a view to verifying its statelessness.

Under the 1961 Convention on the Reduction of Statelessness, for the purposes of determining the obligations under the convention, a birth on a ship or aircraft in international waters or airspace shall be treated as a birth in the country of the ship or aircraft's registration. Article 8 deals with the extension of diplomatic protection to stateless persons and refugees, while article 19 recognizes the right of the State of nationality of a ship to seek redress on behalf of crew members but not to exercise diplomatic protection. These include safeguards for children born on the territory of a State party or to a parent who is a national of a State party where the child would otherwise be stateless, as well as a specific provision to ensure the right to a nationality for foundlings and children born on a ship or aircraft.

Article 31 deals with Jurisdiction. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed in its territory; or on board a ship flying the flag of that Party; or on board an aircraft registered under the laws of that Party; or by one of its

nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State; against one of its nationals. In its territory; or on board a ship flying the flag of that Party; or on board an aircraft registered under the laws of that Party; or by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State; against one of its nationals.

Under the United Nations Convention on the Law of the Sea and customary maritime law, states are entitled to enforce domestic laws, including immigration and criminal laws, on ships bearing their own flags, stateless ships, and any ships in their territorial seas, subject to the right of innocent passage Where there are reasonable grounds to suspect that a ship without nationality or one that may be assimilated to a ship without nationality is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State or the participating Member State in whose territorial sea the stateless ship is intercepted shall authorize and instruct the participating unit to stop it and to take any of the measures laid down in paragraph. Where a stateless ship is transiting the contiguous zone, Article 7(8) shall apply.

Meanwhile, it is necessary to know about the Right of Approach which is a right of investigation of the flag. A warship may intercept a vessel, inspect it from a safe distance to determine its name, flag, and home port, receive and review any data the vessel might be emitting from its automatic identification system. Also, if there is no response, then there are the rights to visit and to board. Therefore, for a vessel without flag, there is still the risk of being approached by the military vessels or certain governmental vessels (Article 110 UNCLOS 1982)

2.3.1 Pirates and Pirate Ships

Pirate ships include ships operated by pirates and used for conducting piracy upon the seas, and rivers. The English word pirate is derived from the Latin word pirata (pirate, corsair, sea robber), and Greek brigand. The meaning of the Greek word. literally is one who attacks ships. The word is also cognate to peril. The term first appeared in English c. 1300. Spelling did not become

standardised until the eighteenth century. There is one thing that all pirate ships generally had in common, that would be the fact that they were not bought and sold as a pirate ship, but rather stolen and conditioned for the purpose of piracy**.** What this generally meant was making more space for a larger crew and cannons by removing cabins and changing the sail arrangements.

Note that Piracy is an act of robbery or criminal violence by ship or boat-borne attackers upon another ship or a coastal area, typically with the goal of stealing cargo and other valuable items or properties. Those who engage in acts of piracy are called pirates, while dedicated ships that are used by them are called pirate ships. The earliest documented instances of piracy were in the 14th century BC, when the Sea Peoples, a group of ocean raiders, attacked the ships of the Aegean and Mediterranean civilizations. Narrow channels which funnel shipping into predictable routes have long created opportunities for piracy, as well as for privateering and commerce raiding. Historic examples include the waters of Gibraltar, the Strait of Malacca, Madagascar, the Gulf of Aden, and the English Channel, whose geographic structures facilitated pirate attacks. A land-based parallel is the ambushing of travelers by bandits and brigands in highways and mountain passes. Privateering uses similar methods to piracy, but the captain acts under orders of the state authorizing the capture of merchant ships belonging to an enemy nation, making it a legitimate form of war-like activity by non-state actors.

Today, pirates armed with automatic weapons, such as assault rifles, and machine guns, grenades and rocket propelled grenades use small motorboats to attack and board ships, a tactic that takes advantage of the small number of crew members on modern cargo vessels and transport ships. They also use larger vessels, known as mother ships, to supply the smaller motorboats. The international community is facing many challenges in bringing modern pirates to justice, as these attacks often occur in international waters. Some nations have used their naval forces to protect private ships from pirate attacks and to pursue pirates, and some private vessels use armed security guards, high-pressure water cannons, or sound cannons to repel boarders, and use radar to avoid potential threats.

2.4 Anti-piracy Measures for Safety at Sea

Under a principle of international law known as the universality principle, a government may exercise jurisdiction over conduct outside its territory if that conduct is universally dangerous to

states and their nationals. The rationale behind the universality principle is that states will punish certain acts wherever they may occur as a means of protecting the global community as a whole, even absent a link between the state and the parties or the acts in question. Under this principle, the concept of universal jurisdiction applies to the crime of piracy. For example, the United States has a statute section 1651 of title 18 of the United States Code imposing a sentence of life in prison for piracy as defined by the law of nations committed anywhere on the high seas, regardless of the nationality of the pirates or the victims.

i.Self-defense

The fourth volume of the handbook: Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Are*a* (known as BMP4) is the current authoritative guide for merchant ships on self-defense against pirates. The guide is issued and updated by Oil Companies International Marine Forum. a consortium of interested international shipping and trading organizations including the EU, NATO and the International Maritime Bureau. It is distributed primarily by the Maritime Security Centre Horn of Africa, the planning and coordination authority for EU naval forces. BMP4 encourages vessels to register their voyages through their region. BMP4 contains a chapter entitled Self-Protective Measures which lays out a list of steps a merchant vessel can take on its own to make itself less of a target to pirates and make it better able to repel an attack if one occurs.

This list includes rigging the deck of the ship with razor wire, rigging fire-hoses to spray sea-water over the side of the ship to hinder boardings, having a distinctive pirate alarm, hardening the bridge against gunfire and creating a citadel where the crew can retreat in the event pirates get on board. Other unofficial self-defense measures that can be found on merchant vessels include the setting up of mannequins posing as armed guards or firing flares at the pirates. .

ii. Self-protection measures

First and foremost, the best protection against pirates is simply to avoid encountering them. This can be accomplished by using tools such as radar, or by using specialised systems that use shorter wavelengths as small boats are not always picked up by radar. Other measures vessels can take to protect themselves against piracy are air-pressurised boat stopping systems which can

fire a variety of vessel-disabling projectiles, implementing a high free wall and vessel boarding protection systems e.g., hot water wall, electricity-charged water wall, automated fire monitor, slippery foam. Ships can also attempt to protect themselves using their Automatic Identification Systems.

iii. Patrol by coast guard

In an emergency warships can be called upon. In some areas such as near Somalia, patrolling naval vessels from different nations are available to intercept vessels attacking merchant vessels. For patrolling dangerous coastal waters, or keeping cost down, robotic or remote-controlled USVs are also sometimes used. Shore- and vessel-launched by coast guard UAVs are used by the coastal Navy.

2.5 Evolution of piracy

During the so-called Golden Age of piracy (1700-1725), thousands of pirates terrorized shipping lanes all over the world, particularly in the Atlantic and Indian Oceans. These ruthless men and women needed good ships to be able to run down their prey and escape from pirate hunters and navy vessels. Where did they get their ships, and what made for a good pirate craft? In one sense, there was no such thing as a pirate ship. There was no shipyard where pirates could go and commission and pay for a pirate ship to their specifications. A pirate ship is defined as any vessel whose sailors and crew are engaged in piracy. Thus, anything from a raft or canoe to a massive frigate or man of war could be considered a pirate vessel. Pirates could and did use very small boats, even canoes when nothing else was at hand.

Since no one was making ships exclusively for piracy, pirates had to somehow capture existing ships. Some pirates were crewmen on board naval or merchant vessels who took over by mutiny: George Lowther and Henry Avery, were two well-known pirate captains who did so. Most pirates simply traded ships when they captured one that was more seaworthy than the one they had been using. Sometimes brave pirates could steal ships: "Calico Jack" Rackham was cornered by Spanish gunships one night when he and his men rowed over to a sloop the Spanish had captured. In the morning, he sailed away in the sloop while the Spanish warships shot up his old ship, still anchored in the harbor.

When pirates got a new ship, by stealing one or by swapping their existing ship out for a better one belonging to their victims, they usually made some changes. They would mount as many cannons on the new ship as they could without significantly slowing her down. Six cannons or so was the minimum that pirates liked to have on board. The pirates usually changed the rigging or ship's structure so that the ship would sail faster. Cargo spaces were converted into living or sleeping quarters, as pirate ships usually had more men and less cargo onboard than merchant's vessels. A good pirate ship needed three things: it needed to be seaworthy, fast, and well-armed.

2.6 Summary

The recent efforts of the international community reflect a definitive movement toward conservation and a heightened need for fair play on the high seas. The international community is developing rules on both a global and regional basis to deal with bad actors on the high seas. Even as the Compliance Agreement and the Fish Stocks Agreement are moving closer to entry into force, individual nations and regional fisheries. Organizations have begun putting the principles they contain into action. The international community has begun to call instinctively for a stronger conservation ethic to govern high seas fishing. Despite these notable measures, bad actors continue to jeopardize the sustainability of the world's fishery resources. The international community continues to face both nations and vessels that are unwilling to adhere to international law and undermine conservation and management schemes. Numerous nations continue to offer flag of convenience registry to fishing vessels with no accompanying oversight of their fishing practices. Parties to international agreements and regional organizations often exceed agreed quotas or are out of compliance with conservation and management regimes. Furthermore, nations continue to subsidize their fishing industries, leading to overcapitalization and increasing pressure to maximize harvest.

Stateless vessels inhabit a lacuna in international law as neither customary law nor treaty practice makes clear provision for their regulation, legality or jurisdiction. Jurisdictional regime applicable to stateless vessels at sea is complex. In international waters, states may only exercise jurisdiction over such vessels where a jurisdictional nexus connects the intercepting state to the suspect vessel. Beyond universal jurisdiction, the bases for extensions of jurisdiction extraterritorially are limited, requiring evidence that an offence was partially committed in the territory of the state or the offender possesses the nationality or residence of the intercepting

state. Further states cannot easily rely on treaty-based extensions of jurisdiction, as such extensions technically rely on jurisdictional ‘swaps’ between state parties and consequently cannot bind non-party states. In establishing jurisdiction over stateless vessels, states e□ectively claim that an underlying basis exists in custom. Objection or acquiescence by the third-party state then supports or rebuts the claim. Yet, again, no state exists to object or acquiesce to the practice of interdicting stateless vessels.

SELF ASSESSMENT EXERCISE (SAE): Describe the meaning of a Stateless Ship in maritime Law

2.7 References/Further Reading/Web Resources

Nationality and Statelessness: Handbook for Parliamentarians N° 22". United Nations High Commissioner for Refugees 2014.

Southwick, Katherine. "Ethiopia-Eritrea: statelessness and state succession" Forced Migration 2012.

Nationality and Statelessness, A Handbook for Parliamentarians" United Nations High Commissioner for Refugees 2012.

Tekle, Amare. Eritrea: State succession and the effort to eliminate statelessness ".2012.

2.8 Possible answer to self-assessment exercise:

An unregistered ship is stateless and breaches the law of the flag regime. This does not mean it is lawless. Certain crimes come under universal jurisdiction e.g. piracy and certain types of trafficking and are always a crime. Importantly, sovereign states have a Right of Approach under the laws of a sea. Current international law holds that a ship is stateless if it lacks proper registration or is not entitled to fly the flag of a recognized state. UNCLOS opens the possibility of another type of stateless vessel-one that does not have a genuine link to the flag state.

Unit 3: Maritime Collisions, Shipwreck and Salvage

3.1 Introduction

The vast oceans are so large that even the largest of the supertankers are by comparison mere specks of dust. Consequently, the inexperienced often think maritime collisions a rare event. However, a cursory review of reported American Maritime Cases, reveals the many collisions which find their way into admiralty courts. Ships steam night or day, in all weather, regularly in narrow channels or harbors and their momentum under way, slow response to steerage, and limited stopping capabilities require constant vigilance and proper and timely action on the part of her master, officers, and crew to avoid collision. Ship collision is the name given to the physical impact that occurs between two ships resulting in a damaging accident. This particular collision can also occur between a ship and a stable or a floating structure like an offshore drilling platform or an ice berg or even a port.

An oil tanker is a very good example of this and the world has seen many accidents involving a tanker. The oil spills not only create a biological crisis but also remains damaging for a very long time thereby resulting in financial losses to the tune of millions of dollars. In such cases the communities residing in the coastal area near the site of the ship collision suffer the most. The next big sufferers are obviously the owners of the ships or those who had some financial stakes in the two or any one of the vessels. Although there are laws that govern the calculation of the damage and the subsequent penalty, in any case the loss plus the financial penalty if any is a huge setback to the owners. And finally, the damage to the infrastructure is also something that has to be taken into consideration. The causes of any ship collision are numbered. It could occur due to a blatant human error, be it an error in judgment or navigation or both. In fact in most cases this is the root-cause. In addition to this any technical malfunction or mechanical failure of the system or machinery like the propulsion unit can also be a genuine cause. And last but not the least an act of sabotage can also not be ruled out although this has not been the case in the majority of the cases thus far.

3.2 Learning Outcomes:

i. It is expecte4d that at the end of this Unit you will be able to explain maritime Collision

ii.You will be able to explain shipwrecks

iii.List types of Salvage Operations

iv.You will have a deeper knowledge of the regime of collision and prevention, clearance of shipwrecks and law of salvage.

3.3 Ship Collision at Sea

Ship Collision is the structural impact between two ships or one ship and a floating or still object such as an iceberg. Ship collisions are of particular importance in marine accidents. Some reasons for the latter are: The loss of human life, The environmental impact of oil spills, especially where large tanker ships are involved, Financial consequences to local communities close to the accident, The financial consequences to ship-owners, due to ship loss or penalties, and damage to coastal or off-shore infrastructure, for example collision with bridges. As sea lanes are getting more congested and ship speeds higher, there is a good possibility that a ship may experience an important accident during her lifetime. Higher speeds may cause larger operational loads, like slamming, or excessively severe loads, for example during a collision. Denser sea routes increase the probability of an accident in particular a collision involving ships or ships and shore or offshore structures.

The International Regulations for Preventing Collisions at Sea 1972 (COLREGs) are published by the International Maritime Organization and set out, among other things, the rules of the road or navigation rules to be followed by ships and other vessels at sea to prevent collisions between two or more vessels. COLREGs can also refer to the specific political line that divides inland waterways, which are subject to their own navigation rules, and coastal waterways which are subject to international navigation rules. The COLREGs are derived from a multilateral treaty called the Convention on the International Regulations for Preventing Collisions at Sea.

Prior to the development of a single set of international rules and practices, there existed separate practices and various conventions and informal procedures in different parts of the world, as advanced by various maritime nations. As a result, there were inconsistencies and even contradictions that gave rise to unintended collisions. Vessel navigation lights for operating in darkness as well as navigation marks also were not standardised, giving rise to dangerous confusion and ambiguity between vessels at risk of colliding. With the advent of steam-powered

ships in the mid-19th century, conventions for sailing vessel navigation had to be supplemented with conventions for power-driven vessel navigation. Sailing vessels are limited as to their maneuver ability in that they cannot sail directly into the wind and cannot be readily navigated in the absence of wind. On the other hand, steamships can manoeuvre in all 360 degrees of direction and can be manoeuvred irrespective of the presence or absence of wind.

The International Regulations for Preventing Collisions at Sea were adopted as a convention of the International Maritime Organization on 20 October 1972 and entered into force on 15 July 1977. They were designed to update and replace the Collision Regulations of 1960, particularly with regard to Traffic Separation Schemes following the first of these, introduced in the Strait of Dover in 1967. As of June 2013, the convention has been ratified by 155 states representing 98.7% of the tonnage of the world's merchant fleets.

They have been amended several times since their first adoption. In 1981 Rule 10 was amended with regard to dredging or surveying in traffic separation schemes. In 1987 amendments were made to several rules, including rule 1(e) for vessels of special construction; rule 3(h), vessels constrained by her draught and Rule 10(c), crossing traffic lanes. In 1989 Rule 10 was altered to stop unnecessary use of the inshore traffic zones associated with TSS. In 1993 amendments were made concerning the positioning of lights on vessels. In 2001 new rules were added relating to wing-in-ground-effect craft and in 2007 the text of Annex IV (Distress signals) was rewritten.

3.3. 2 Rules of Maritime Navigation and Right of way

A commonly held misconception concerning the rules of marine navigation is that by following specific rules, a vessel can gain certain rights of way over other vessels. No vessel ever has absolute right of way over other vessels. Rather, there can be a give way burdened vessel and a stand on [privileged) vessel, or there may be two give way vessels with no stand on vessel. A stand on vessel does not have an absolute right of way over any give way vessel, and is not free to maneuver however it wishes, but is obliged to keep a constant course and speed so as to help the give way vessel in determining a safe course. Furthermore, a stand on vessel may still be obliged under Rule 2 and Rule 17 to give way, in particular when a situation has arisen where a

collision can no longer be avoided by actions of the give way vessel alone. For example, two power-driven vessels approaching each other head-to-head, are *both* deemed to be give way and both are required to alter course so as to avoid colliding with the other. Neither vessel has right of way.

Liability for collision under the admiralty law is based upon fault. The fact of impact between two vessels has no legal consequence. The concept of fault presupposes a standard of correct conduct, and any deviation from the required standard will likely result in a finding of fault. The standard of correct conduct in navigation of vessels from the largest merchant ships down to the smallest pleasure boats is supplied primarily by the federal statutory Rules of Navigation. There are four sets of these so called Rules of the Road in force, each of which applies to different waters. Every officer and every vessel operator is held by the law to strict adherence to the applicable Rules. The International Rules apply to navigation of vessels on the high seas. The Great Lakes Rules apply on those waters, the Western Rivers Rules apply primarily on the Mississippi and its tributaries, and the Inland Rules apply to regulate navigation on all other navigable waters in the United States including seaports, bays, rivers, harbors, channels, inland lakes, and all other waterways.

The Collision: As a matter of substantive law, collisions at sea involve the application of the law of negligence. The party which claims for the damage should establish the existence of a duty of care owed to it, that duty has been breached and the damage caused by that breach.

The Duty of Care: In accordance to The Dundee, there is a mutual duty of reasonable care between the crews of the Bacchus and the Neptune, since they navigated in the same sea. And also they have the duty to exercise reasonable care in management of vessels-Brown v Mallett . Both crews should have reasonably foreseen that their actions would be likely to injure those they 'ought reasonably to contemplate' as being so affected-**Donoghue v Stevenson.**

Breach of Duty: It is a difficult issue of law to establish. The defendant's conduct must have fallen below the legal standard of care that required him. In the general law of negligence, the conduct of those navigating a ship involved in a collision will be judged by the standards of prudent seamanship. In the context of the law of maritime collisions, collisions usually result

from the negligence of the crews which the ship-owner will be vicariously liable as their employer. The test as to whether there has been professional negligence is the standard of the ordinary skilled man exercising and professing to have the relevant skills-Bolam v Friern Hospital. The relevant standard is largely found in the Convention on the International Regulations for Preventing Collisions at Sea 1972 the Collision Regulations'), which developed from the practice and custom of seamen..

Damage Caused by the Breach of Duty: Even if the claimant establishes breach by the defendant, it must still prove that its loss was actually caused by that breach, in that the loss would not have occurred but for the breach-Barnett v Chelsea and Kensington HMC. This applies when both vessels are at fault.

3.4 Shipwrecks and Maritime Safety

A shipwreck is the remains of a ship that has wrecked, which are found either beached on land or sunken to the bottom of a body of water. Shipwrecking may be deliberate or accidental. In January 1999, Angela Croome estimated that there have been about three million shipwrecks worldwide. Historic ship wrecks are attractive to maritime archaeologists because they preserve historical information: for example, studying the wreck of Mary Rose revealed information about seafaring, warfare, and life in the 16th century. Military wrecks, caused by a skirmish at sea, are studied to find details about the historic event; they reveal much about the battle that occurred. Discoveries of treasure ships, often from the period of European colonisation, which sank in remote locations leaving few living witnesses, such as *Batavia*, do occur as well. Some contemporary wrecks, such as the oil tankers Prestige or Erika, are of interest primarily because of their potential harm to the environment. Other contemporary wrecks are scuttled in order to spur reef growth, such as Adolphus Busch and Ocean Freeze. Wrecks like and historic wrecks such as Thistlegorm are of interest to recreational divers that dive to shipwrecks because they are interesting to explore, provide large habitats for many types of marine life, and have an interesting history.

Well known shipwrecks include the catastrophic Titanic, Britannic, Lusitania, Estonia, Empress of Ireland, Andrea Doria, or Costa Concordia. There are also thousands of wrecks that were not

lost at sea but have been abandoned or sunk. These abandoned or derelict ships are typically smaller craft, such as fishing vessels. They may pose a hazard to navigation and may be removed by port authorities. Poor design, improperly stowed cargo, navigation and other human errors leading to collisions with another ship, the shoreline, an iceberg, etc, bad weather, fire, and other causes can lead to accidental sinkings. Intentional reasons for sinking a ship include: intending to form an artificial reef; destruction due to warfare, piracy, mutiny or sabotage; using the vessel for target practice; or removing a menace to navigation. A ship can be also used as breakwater structure.

3.3.3 Famous shipwrecks yet to be discovered

Santa Maria

Christopher Columbus famously set sail on his first voyage to the New World with three ships the Niña, the Pinta and the Santa Maria but only two returned to Spain. On Christmas Eve 1492, the sailor charged with steering the flagship Santa Maria handed the wheel over to an inexperienced cabin boy, who promptly ran the vessel onto a coral reef near modern day Haiti. Crewmen managed to empty the ship of its cargo with the help of local natives, but it sank the following day and may have later been buried by sediment. Its precise location has since been lost to history. Underwater explorer Barry Clifford made headlines in 2014 after he claimed to have found the Santa Maria using information from Columbus journals, but an examination by UNESCO experts later found proof that the wreck belonged to a different ship from the 17th or 18th centuries.

USS Indianapolis

On July 30, 1945, just a few days after it successfully delivered components for the first atomic bomb to an American base on the island of Tinian, USS Indianapolis was nearly ripped in half by a double torpedo strike from the Japanese submarine I-58. The unescorted heavy cruiser disappeared beneath the surface in a matter of minutes, taking some 300 seamen with it. The remaining 900 sailors were left bobbing helplessly in the shark-infested waters of the Philippine Sea. By the time they were accidentally spotted by a Navy plane and rescued four days later, all but 317 had perished from exposure and attacks by prowling hordes of oceanic white tips. The

sinking of Indianapolis is now remembered as the worst American naval disaster of World War II. Yet despite multiple expeditions using sonar and underwater vehicles, the ship's wreckage has never been found. Part of the problem lies in the extreme depths of the search area. According to some estimates, the cruiser may rest in over 12,000 feet of water.

HMS Endeavour

HMS Endeavour is most famous for carrying Captain James Cook around the globe during his first voyage of discovery from 1768 to 1771. The ship was the first European vessel to visit the east coast of Australia and circumnavigate New Zealand, but only a few years after returning home, it was unceremoniously sold to a private buyer and renamed the Lord Sandwich. It was later chartered by the British Royal Navy and used to ferry troops to New England during the American Revolution. While moored in Rhode Island's Newport Harbor in 1778, it became one of 13 vessels that were intentionally sunk to form a blockade against an approaching French fleet. The ship's decaying remains are now the target of an ongoing search by the Rhode Island Marine Archaeology Project and the Australian National Maritime Museum, which have spent several years mapping and exploring the silt-laden waters around Newport. The team has located more than two-thirds of the scuttled ships as of this year, but they have yet to find hard evidence that any of them is Cook's long lost Endeavour.

The Griffin

The first sailing ship to cruise the Great Lakes, Griffin was a three-masted vessel built by the French explorer Rene-Robert Cavelier, Sieur de La Salle during an early expedition to the North American frontier. La Salle used Griffin to travel the Niagara River and explore parts of Lake Erie, Lake Huron and Lake Michigan, but the ship later disappeared in September 1679 after setting sail from present-day Green Bay with six crewmen and a cargo of furs. Its true fate remains a mystery, though it's commonly believed that the ship may have foundered in a storm or been scuttled by a mutinous crew. Legions of searchers have tried to track down its watery grave, but so far none of their discoveries has been confirmed to be the so-called "holy grail of Great Lakes shipwrecks." One of the most recent false alarms came in 2014, when two treasure hunters were reported to have found the fabled ship in the waters of Lake Michigan.

Unfortunately, a subsequent investigation revealed that the wreck was most likely a steam-powered ship from the 19th or 20th centuries.

Shackleton's Endurance

In 1914, Ernest Shackleton set sail from England on his Imperial Trans-Antarctic Expedition to the South Pole. The Irish-born explorer hoped to make the first overland crossing of Antarctica, but before he ever set foot on the continent, his ship Endurance became trapped in heavy pack ice in the Weddell Sea. True to its name, the wooden barquentine survived 10 months in the frozen vise before the pressure finally cracked its hull and sent it tumbling to the seafloor. While Shackleton would later lead his crew to safety by making a perilous 800-mile voyage in a lifeboat, Endurance remains lost in the frigid deep to this day. The ship is now believed to lurk at a depth of some 10,000 feet beneath a 5-foot layer of ice. The likes of underwater salvage expert David Mearns and Titanic discoverer Robert Ballard have expressed interest in hunting it down, but no team has yet to scrape together funding for an Antarctic expedition.

Bonhomme Richard

Few Continental Navy ships chalked up a more distinguished combat record than Bonhomme Richard. A French donation to the Patriot cause, the aging frigate set sail in 1779 under Captain John Paul Jones and proceeded to capture 16 British vessels in a matter of weeks. On September 23, it squared off against HMS Serapis and another Royal Navy ship in a ferocious battle off the northeast coast of England. Brushing off an early call to surrender with the immortal words "I have not yet begun to fight," Jones rallied his men and successfully captured Serapis after several hours of combat. Unfortunately, his victory came too late for Bonhomme Richard, which had caught fire during the exchange and taken several shots below its waterline. After spending 36 hours trying to keep it afloat, Jones and his crew reluctantly abandoned the ship and let it sink in the choppy waters of the North Sea. Its wreckage has since become the target of expeditions by everyone from British locals to professional salvage companies, the U.S.

3.3.4 The Laws of Shipwrecks

Shipwreck law determines important legal questions regarding wrecks, perhaps the most important question being the question of ownership. Legally wrecks are divided into material washed ashore after a shipwreck and material still at sea, which are treated differently by some, but not all, legal systems. Wrecks are often considered separately from their cargo. For example, in the British case of Lusitania 1986 QB 384 it was accepted that the remains of the vessel itself were owned by the insurance underwriters who had paid out on the vessel as a total loss by virtue of the law of subrogation who subsequently sold their rights, but that the property aboard the wreck still belonged to its original owners or their heirs. Military wrecks, however, remain under the jurisdiction and hence protection of the government that lost the ship, or that government's successor. Hence, a German U-boat from World War II still technically belongs to the German government, although the Third Reich (the government of the time) is long-defunct. Many military wrecks are also protected by virtue of being war graves. .

Some countries assert claims to all wrecks within their territorial waters, irrespective of the interest of the original owner or the salvor. Some legal systems regard a wreck and its cargo to be abandoned if no attempt is made to salvage them within a certain period of time. English law has usually resisted this notion encouraged by an extremely large maritime insurance industry, which asserts claims in respect of shipwrecks which it has paid claims on, but it has been accepted to a greater or lesser degree in an Australian case and in a Norwegian case.

The American courts have been inconsistent between states and at Federal level. Under Danish law all shipwrecks over 150 years old belong to the state if no owner can be found. In Spain, wrecks vest in the state if not salvaged within 3 years. In Finland, all property on board shipwrecks over 100 years old vests in the state.

The British Protection of Wrecks Act, enacted to protect historic wrecks, controls access to wrecks such as Cattewater Wreck which can only be visited or investigated under licence. The British Protection of Military Remains Act 1986 also restricts access to wrecks which are sensitive as war graves. The Protection of Military Remains Act in some cases creates a blanket ban on all diving; for other wrecks divers may visit provided they do not touch, interfere with or

penetrate the wreck. In the United States, shipwrecks in state waters are regulated by the Abandoned Shipwrecks Act of 1987. This act is much more lenient in allowing more open access to the shipwrecks.

3.4 Marine Salvage Operation

Marine Salvage is the process of rescuing, recovering, repairing and refloating a ship, its cargo and crew and other properties from maritime casualty. Ship salvage operations are mandatory and must be accomplished rapidly and without delay in order to repair, remove ship wreck and clear out the passage for further navigation and also reduce marine pollution. The law of salvage is a principle of Maritime Law whereby any person who helps recover another person's ship or cargo in peril at sea is entitled to a reward commensurate with the value of the property salved. Maritime law is inherently international, and although salvage laws vary from one country to another, generally there are established conditions to be met to allow a claim of salvage. Nowadays, most salvage is carried out by specialist salvage firms with dedicated crew and equipment.

Salvage, in maritime law, is the rescue of a ship or its cargo on navigable waters from a peril that, except for the rescuer's assistance, would have led to the loss or destruction of the property. Under some jurisdictions, aircraft may also be salved. Except for salvage performed under contract, the rescuer, known as the *salvor*, must act voluntarily without being under any legal duty to do so, apart from the general duty to give assistance to those in peril at sea, or to stand by after a collision.

The law of salvage is the result of the Latin *negotiorum gestio* concept. Negotiorum gestio Latin for management of business *is* a form of spontaneous voluntary agency in which an intervenor, the gestor, acts on behalf and for the benefit of a principal, but without the latter's prior consent. The gestor is only entitled to reimbursement for expenses and not to remuneration, the underlying principle being that negotiorum gestio is intended as an act of generosity and friendship and not to allow the gestor to profit from his intermeddling. This form of intervention is classified as a quasi-contract or implied-in-law contract *or* constructive contract, a fictional

contract recognised by a court. The notion of a quasi-contract can be traced to Roman law and is still a concept used in some modern legal systems.

The Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea is a treaty on marine salvage that was concluded on September 23, 1910, in Brussels (Belgium). The Brussels Convention forms the basis of current international marine salvage law. The Convention was amended on May 27, 1967 and overridden in some countries by the 1989 International Convention on Salvage, which took effect in 1996. The 1989 International Convention on Salvage replaced a convention on the law of salvage adopted in Brussels in 1910 which incorporated the "*no cure, no pay*" principle under which a salvor is only rewarded for services if the operation is successful. Although this basic philosophy worked well in most cases, it did not take pollution into account. A salvor who prevented a major pollution incident for example, by towing a damaged tanker away from an environmentally sensitive area but did not manage to save the ship or the cargo got nothing. There was therefore little incentive to a salvor to undertake an operation which has only a slim chance of success.

The 1989 Convention seeks to remedy this deficiency by making provision for an enhanced salvage award taking into account the skill and efforts of the salvors in preventing or minimising damage to the environment. The 1989 Convention introduced a "*special compensation*" to be paid to salvors who have failed to earn a reward in the normal way by salving the ship and cargo. The compensation consists of the salvor's expenses, plus up to thirty percent of these expenses if, thanks to the efforts of the salvor, environmental damage has been minimised or prevented. The salvor's expenses are defined as out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used. The tribunal or arbitrator assessing the reward may increase the amount of compensation to a maximum of one hundred percent of the salvor's expenses, if it deems it fair and just to do so. If, on the other hand, the salvor is negligent and has consequently failed to prevent or minimise environmental damage, special compensation may be denied or reduced. Payment of the reward is to be made by the vessel and other property interests in proportion to their respective salved values.

All vessels have an international duty to give reasonable assistance to other ships in distress in order to save life, but there is no obligation to try to salve the vessel. Any offer of salvage assistance may be refused; but if it is accepted a contract automatically arises to give the successful salvor the right to a reward under the 1989 Convention. Typically, the ship and the salvor will sign up to an LOF agreement so that the terms of salvage are clear. Since 2000, it has become standard to append a SCOPIC (Special Compensation P&I Clubs) clause to the LOF, so as to circumvent the limitations of the Special Compensation provisions of the 1989.

3.5 Types of Salvage

Salvors are seamen and engineers who carry out salvage to vessels that they do not own, and who are not members of the vessel's original crew. When salving large ships, they may use cranes, floating dry docks and divers to lift and repair submerged or grounded ships, preparing them to be towed by a tugboat. The goal of the salvage may be to repair the vessel at a harbour or dry dock, or to clear a channel for navigation. Salvage operations may also aim to prevent pollution or damage to the marine environment. Additionally, the vessel or valuable parts of the vessel or its cargo may be recovered for resale, or for scrap.

i. Offshore salvage

The refloating of ships stranded or sunk in exposed waters is called offshore salvage. In this type of salvage, vessels are exposed to waves, currents and weather and are the most vulnerable and difficult to work on. They also tend to deteriorate more rapidly than such vessels in protected harbors. Offshore salvage may provide only a short window of opportunity for the salvage team due to unusually high tide or inclement weather for instance. The work window may not come around again for as long as weeks or months and in the interim, the vessel will continue to deteriorate. As a result, it is often imperative to work quickly. Typically, offshore salvage is conducted from pre-outfitted salvage tugs and other tugboats. In addition, portable diving facilities may be transported by helicopter or small boat to the work area. From a tactical point of view, working in unprotected waters is less hospitable for floating cranes, construction tenders, dredges and equipment barges. Plus, it is often difficult to depend upon a stable workforce welders, carpenters, etc. as all personnel must be present on site for the duration

ii. Harbour salvage

The term harbour salvage refers to the salvage of vessels stranded or sunk in sheltered waters. Such vessels are not normally subject to the same deterioration caused by marine and weather conditions as offshore salvage vessels are. In addition, unless the vessel to be salvaged is obstructing navigation, then there is no need to work as swiftly as in offshore salvage. Also, harbour pre-salvage survey and planning stages tend to be less time-consuming and environmentally dependent. It is also easier to gain access to local labour resources and heavy equipment such as floating cranes and barges.

ii. Cargo and equipment salvage

Saving the cargo and equipment aboard a vessel may be of higher priority than saving the vessel itself. The cargo may pose an environmental hazard or may include expensive materials such as machinery or precious metals. In this form of salvage, the main focus is on the rapid removal of goods and may include deliberate dissection, disassembly or destruction of the hull.

iii. Wreck removal

Wreck removal focuses on the removal of hazardous or unsightly wrecks that have little or no salvage value. Because the objectives here are not to save the vessel, the wrecks are usually refloated or removed by the cheapest and most practical method possible. In many cases, hazardous materials must be removed prior to disposing of the wreck. The most common techniques used in wreck removal are cutting the hull into easily handled sections or refloating the vessel and scuttling it in deeper waters.

v. Afloat salvage

The salvage of a vessel that is damaged but still afloat is called afloat salvage. This type of salvage is mostly unobtrusive and involves primarily damage control work such as hull welding, stabilization (rebalancing ballast tanks and shifting cargo) and structural bracing. In some cases, the vessel can remain underway with little disruption to its original purpose and crew.

3.5.1 Conditions for Salvage Operation /Recognized Subject Matter

Traditionally, salvage only recognizes a ship or craft vessel, cargo on board, freight payable, and bunkers carried on board as the subject of property in danger. The scope of salvage has been expanded by the 1989 Salvage Convention, and protection of the environment is part of salvage. Oil pollution can cause damage to the environment. If the salvor prevents oil pollution from happening, he indeed performs a valuable service to the community as mentioned by 1997 1 Lloyd's Rep 323 HL. Therefore, the salvor will be rewarded with special compensation, i.e., liability salvage instead of property salvage. The Convention does not consider saving lives to be part of salvage, but if one vessel saves life and the other saves property, the arbitrator may apportion the salvage reward between them as he thinks fit.

i. Real peril

Danger needs to be real but not necessarily immediate or absolute. The subject of salvage must be in real danger, which means the property is exposed to damage or destruction. It is incumbent upon the court to assess the existence and level of danger, both present and future. The case of the Troilus (1951 1 Lloyd's Rep. 467, HL) illustrated the concept of future danger that the court must take into account when determining the existence of danger.

ii. Voluntary service

Voluntary means that the services are not rendered under a pre-existing contract agreement or under official duty or purely for the self-preservation interests of the salvor. Because of this, there is no limitation to the class of persons that can be considered as volunteers. A pre-existing agreement refers to any agreement entered into before the time of the existence of danger. It includes ship's master and crew who have pre-existing employment agreement with ship-owners. They have the duty to preserve the ship and cargo, and therefore they cannot convert themselves into salvors in the event of trouble. Crewmen cannot claim themselves as individual salvors unless their employment contract has been actually or constructively terminated before the salvage service commenced.

iii. Success

The requirement for the service to be successful can be summed up from the common expression **no cure; no pay**. However, success need not be total. Partial success, provided that there is some measure of preservation to the owners, is sufficient. The **Tojo Maru case 1972 AC 242 HL** examined certain characteristics of salvage contracts and concluded that the primary consideration is that the person rendering the salvage service is not entitled to any remuneration unless he saves the property in whole or in part. If the ship's peril following the service is as grave as before, no award will be given. Likewise, if the salvage services which rescue a vessel from one danger eventually make the situation worse, no salvage award is typically granted. The **Melanie v The San Onofre 1925 AC 246** held that the services which rescued a vessel from one danger, but eventually left her in a position of even greater danger, did not contribute to ultimate success and therefore do not amount to salvage. The ship owner as well as the claimant are expected to adhere to the maritime laws to ensure they succeed.

3.6 Summary

Recovered wreck material, must be reported it to the 'Receiver of Wreck'. Wreck material includes things found on the sea shore or in tidal water that have come from a ship, aircraft or hovercraft vessels. This could be parts of the vessel, its cargo or equipment. Any property that salvors gain through the process of salvage is eligible for compensation or to keep. That means full vessels, marine instruments and gauges, sunken treasure, personal belongings of value, and other items are all eligible for salvage. Vessels in distress can also be salvaged, and a salvor can seek compensation for the full value of the vessel and more.

The law of salvage is a principle of maritime law whereby any person who helps recover another person's ship or cargo in peril at sea is entitled to a reward commensurate with the value of the property salved. Maritime law is inherently international, and although salvage laws vary from one country to another, generally there are established conditions to be met to allow a claim of salvage. The vessel must be in peril, either immediate or forthcoming; the salvor must be acting voluntarily and under no pre-existing contract; and the salvor must be successful in his efforts, though payment for partial success may be granted if the environment is protected.

In shipping law, salvage is the compensation allowed to persons who voluntarily assist in saving a vessel or its cargo from impending or actual peril from the sea. Generally salvage is limited to vessels and their cargoes, or to property lost in the sea or other navigable water, that have been subsequently found and rescued.

Except for salvage performed under contract, the rescuer, known as the salvor, must act voluntarily without being under any legal duty to do so. As long as the owner or the owner's agent remains on the ship, unwanted offers of salvage may be refused. Typical acts of salvage include releasing ships that have run aground or on reefs, raising sunken ships or their cargo, or putting out fires. The salvor has a maritime lien on the salvaged property, in an amount determined by a court based on the facts and circumstances of the case. The salvor may retain the property until the claim is satisfied or until security to meet an award is given. The owner may elect to pay salvage money to the salvor or to not reclaim the property A salvor has the responsibility for filing a claim under maritime law to secure ownership of a piece of property or for an entire shipwreck. Without doing so, a salvor may be required to relinquish his or her claim to the rightful owner. If a salvor has filed a claim, creating a maritime lien, then a property owner must negotiate a claim reward through the legal system for the value of the property and other factors. Until a ship owner pays salvage money, he or she may not be able to reclaim a vessel. The salvor has a maritime lien on the property as determined by statute or jurisdiction, and will not be required to return the property until he has obtained recompense for services rendered. A salvor cannot claim salvage compensation from a vessel owner who does not reclaim the property.

SELF ASSESSMENT OF EXERCISE: Explain the types of shipwrecks you have learned

3.7 References/Further Reading/Web Resources

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3.8 Possible answer to self-assessment exercise: In maritime law, flotsam, jetsam, lagan, and derelict are specific kinds of shipwreck. The words have specific nautical meanings, with legal consequences in the law of admiralty and marine salvage. Sunken ships are more commonly known as shipwrecks. The word shipwreck accurately describes what's left of a ship that has sunk. There are many reasons why ships wreck. In the case of the Titanic, an iceberg breached its hull.

Unit 4 Warships, Merchants Ships, Noncommercial Ships

4.1 Introduction

A ship is a large watercraft that travels the world's oceans and other sufficiently deep waterways, carrying goods or passengers, or in support of specialized missions, such as defense, research and fishing. Ships are generally distinguished from boats, based on size, shape, load capacity, and tradition. In considering maritime warfare, there are two points to bear in mind from the outset. The first is that the object of maritime warfare is ultimately to affect outcomes on the land. The second point is that success in maritime warfare requires the ability to operate at sea, in the air, and on the land. Maritime warfare can best be understood through an appreciation of the strategy it is intended to serve. It might in the first instance be helpful to illustrate the point by reference to the British experience. The benefits of a maritime strategy are not confined to island nations. The ability to use the sea for its own purposes is vital to any nation that relies on maritime trade for its existence and similarly, for those with exposed seaboards, to ensure they cannot be invaded. In fact, any nation that has a desire for security, wealth, and power needs to be able to use the seas freely and assert their right to do so when necessary.

Foreign warships and other government ships assimilated to the position of warships enjoy several jurisdictional immunities while lying within or passing through the waters of a coastal state. On the high seas, such ships have complete immunity from the jurisdiction of any state other than the flag state. It is this immunity from jurisdiction that gives a government ship a status in international law quite peculiar to herself and different from that enjoyed by a private ship. Whether this immunity from jurisdiction is characteristic of all government ships without distinction, or whether it is limited to certain categories of government ships, is still not clear.

4.2 Learning Outcomes

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

I. Explain ships and types of ships engage in the carriage of goods and passengers.

ii. You will learn about merchant ships and regime governing ships in territorial waters and on the High sea

iii.Have a deep knowledge of warship, merchant ships and non merchant ship

4.3 Definition and Nature of Ship

A ship is a large watercraft that travels the world's oceans and other sufficiently deep waterways, carrying goods or passengers, or in support of specialized missions, such as defense, research and fishing. Ships are generally distinguished from boats, based on size, shape, load capacity, and tradition. In the Age of Sail a ship was a sailing vessel defined by its sail plan of at least three square rigged masts and a full bowsprit. Ships have been important contributors to human migration and commerce. They have supported the spread of colonization and the slave trade, but have also served scientific, cultural, and humanitarian needs. After the 15th century, new crops that had come from and to the Americas via the European seafarers significantly contributed to the world population growth. Ship transport is responsible for the largest portion of world commerce. As of 2016, there were more than 49,000 merchant ships, totaling almost 1.8 billion dead weight tons. Of these 28% were oil tankers, 43% were bulk carriers, and 13% were container ships

Ships are generally larger than boats, but there is no universally accepted distinction between the two. Ships generally can remain at sea for longer periods of time than boats. A legal definition of ship from Indian case law is a vessel that carries goods by sea. A common notion is that a ship can carry a boat, but not *vice versa*. A US Navy rule of thumb is that ships heel towards the *outside* of a sharp turn, whereas boats heel towards the inside because of the relative location of the center of mass versus the center of buoyancy. American and British 19th century maritime law distinguished vessels from other craft; ships and boats fall in one legal category, whereas open boats and rafts are not considered vessels.

4.3.1 Types of Ships

The great majority of ships that are neither military vessels nor yachts can be divided into several broad categories: cargo carriers, passenger carriers, industrial ships, service vessels, and noncommercial miscellaneous. Each category can be subdivided, with the first category containing by far the greatest number of subdivisions.

i. Service vessels

The service ships are mostly tugs or towing vessels whose principal function is to provide propulsive power to other vessels. Most of them serve in harbours and inland waters, and, because the only significant weight they need carry is a propulsion plant and a limited amount of fuel, they are small in size. The towing of massive drilling rigs for the petroleum industry and an occasional ocean salvage operation e.g., towing a disabled ship demand craft larger and more seaworthy than the more common inshore service vessels, but oceangoing tugs and towboats are small in number and in size compared with the overwhelmingly more numerous cargo ships.

ii. Industrial ships

Industrial ships are those whose function is to carry out an industrial process at sea. A fishing-fleet mother ship that processes fish into fillets, canned fish, or fish meal is an example. Some floating oil drilling or production rigs are built in ship form. In addition, some hazardous industrial wastes are incinerated far at sea on ships fitted with the necessary incinerators and supporting equipment. In many cases, industrial ships can be recognized by the structures necessary for their function. For example, incinerator ships are readily identified by their incinerators and discharge stacks.

iii. Cruise ships

Cruise ships are descended from the transatlantic ocean liners, which, since the mid-20th century, have found their services preempted by jet aircraft. Indeed, even into the 1990s some cruise ships were liners built in the 1950s and ’60s that had been adapted to tropical cruising through largely superficial alterations e.g., the addition of swimming pools and other amenities to suit warm-latitude cruising areas. However, most cruise ships now in service were built after 1970 specifically for the cruise trade. Since most of them are designed for large numbers of passengers perhaps several thousand, they are characterized by high superstructures of many decks, and, since their principal routes lie in warm seas, they are typically painted white all over. These two characteristics give them a wedding cake appearance that is easily recognizable from great distances. Closer examination usually reveals a large number of motor launches carried aboard for the ferrying ashore of passengers. Many cruise ships have stern ramps, much like

those found on cargo-carrying roll-on/roll-off ships, in order to facilitate the transfer of passengers to the launches and to serve as docking facilities for small sporting boats.

iv. Ferries

Ferries are vessels of any size that carry passengers and in many cases their vehicles on fixed routes over short cross-water passages. The building of massive bridges and tunnels has eliminated many ferry services, but they are still justified where waters are too formidable for fixed crossings. Vessels vary greatly in size and in quality of accommodations. Some on longer runs offer overnight cabins and even come close to equaling the accommodation standards of cruise ships. All vessels typically load vehicles aboard one or more decks via low-level side doors or by stern or bow ramps much like those found on roll-on/roll-off cargo ships.

v. Cargo carriers

Cargo ships can be distinguished by the type of cargo they carry, especially since the means of handling the cargo is often highly visible. As noted below, the trend is toward specialization in this regard. One consequence is a proliferation in types of cargo vessel. The present discussion is limited to a few types that are represented by large numbers of ships and are distinctive in appearance.

vi. Tankers

Ships that carry liquid cargo, most often petroleum and its products, in bulk are made distinctive by the absence of cargo hatches and external handling gear. When fully loaded they are also readily distinguishable by scant freeboard a condition that is permissible because the upper deck is not weakened by hatches. In essence, the tanker is a floating group of tanks contained in a ship-shaped hull, propelled by an isolated machinery plant at the stern. Each tank is substantially identical to the next throughout the length of the ship. The tanks are fitted with heating coils to facilitate pumping in cold weather. Within the tanks are the main, or high-suction, pipes, running several feet from the bottom to avoid sludge. Below them, low-suction piping, or stripping lines, removes the lowest level of liquid in the tank. Tanks are filled either through open trunks leading from the weather deck or from the suction lines with the pumps reversed. Because tankers,

except for military-supply types, usually move a cargo from the source to a refinery or other terminal with few maneuvers en route, the machinery plant is called on only to produce at a steady rate the cruise power for the ship; consequently, considerable use of automatic controls is possible, thus reducing the size of the crew to a minimum. In view of the simplicity of inner arrangement, the tanker lends itself to mass production perhaps more than any other ship type. Because of the limited crew requirements and the low cost per ton for initial building and outfitting, the tanker has led the way in the rapid expansion in the size of ships. The decline of crude oil prices after the petroleum crisis of 1979 led in turn to a decline in preferred tanker size, but at that time a few ships had reached 400 metres in length, 80 feet in loaded draft, and a deadweight of 500,000 tons.

vi. Container ships

Like tankers, container ships are characterized by the absence of cargo handling gear, in their case reflecting the usual practice of locating the container-handling cranes at shore terminals rather than aboard ship. Unlike the tanker, container ships require large hatches in the deck for stowing the cargo, which consists of standardized containers usually either 20 or 40 feet in length. Belowdecks, the ship is equipped with a cellular grid of compartments opening to the weather deck; these are designed to receive the containers and hold them in place until unloading is achieved at the port of destination. The ship is filled to the deck level with containers, the hatches are closed, and one or two layers of containers, depending upon the size and stability of the ship, are loaded on the hatch covers on deck.

In a few hours the ship can be load with containers destined for another port and can be under way. An additional economy is the low cost of the crew of the ship while it is in port awaiting loading or unloading. Further, because each ship can make more trips than before, container fleets require fewer vessels. There is also less pilferage and, hence, lower insurance rates and, finally, the assurance to the shipper that the shipment will not require any further handling until it arrives at its destination.

vii. Barge-carrying ships

An extension of the container ship concept is the barge-carrying ship. In this concept, the container is itself a floating vessel, usually about 60 feet long by about 30 feet wide, which is loaded aboard the ship in one of two ways: either it is lifted over the stern by a high-capacity shipboard gantry crane, or the ship is partially submerged so that the barges can be floated aboard via a gate in the stern.

viii. Roll-on/roll-off ships

Roll-on/roll-off ships, designed for the carriage of wheeled cargo, are always distinguished by large doors in the hull and often by external ramps that fold down to allow rolling between pier and ship. Because vehicles of all kinds have some empty space and in addition require large clearance spaces between adjacent vehicles they constitute a low-density cargo a high stowage factor that demands large hull volume. The general outline of the ship, in view of its relatively low density of cargo, is rather boxy, with a high freeboard and a high deckhouse covering much of the ship's superstructure, to afford more parking decks. To ensure stability, fixed ballast is usually included in these ships, along with water ballast to adjust load and stability. The engineering plants are commonly twin engines of compact variety, such as geared diesel, and they are arranged so that the engine spaces are at either side of the ship, allowing valuable free space between them for vehicle passage.

4.3.2 Merchant ships

Merchant ships are ships used for commercial purposes and can be divided into four broad categories: fishing, cargo ships, passenger ships, and special-purpose ships. The UNCTAD review of maritime transport categorizes ships as: oil tankers, bulk and combination carriers, general cargo ships, container ships, and other ships, which includes "liquefied petroleum gas carriers, liquefied natural gas carriers, parcel, chemical tankers, specialized tankers, reefers, offshore supply, tugs, dredgers, cruise, ferries, and other non-cargo. General cargo ships include multi-purpose and project vessels and roll-on/roll-off cargo.

Modern commercial vessels are typically powered by a single propeller driven by a diesel or, less usually, gas turbine engine, but until the mid-19th century they were predominantly square sail rigged. The fastest vessels may use pump-jet engines. Most commercial vessels have full hull-

forms to maximize cargo capacity. Hulls are usually made of steel, although aluminum can be used on faster craft, and fiberglass on the smallest service vessels Commercial vessels generally have a crew headed by a sea captain, with deck officers and engine officers on larger vessels. Special-purpose vessels often have specialized crew if necessary, for example scientists aboard research vessels.

Fishing boats are generally small, often little more than 30 meters but up to 100 metres for a large tuna or whaling ship. Aboard a fish processing vessel, the catch can be made ready for market and sold more quickly once the ship makes port. Special purpose vessels have special gear. For example, trawlers have winches and arms, stern-trawlers have a rear ramp, and tuna seiners have skiffs.

Passenger ships range in size from small river ferries to very large cruise ships. This type of vessel includes ferries, which move passengers and vehicles on short trips; ocean liners, which carry passengers from one place to another; and cruise ships, which carry passengers on voyages undertaken for pleasure, visiting several places and with leisure activities on board, often returning them to the port of embarkation. Riverboats and inland ferries are specially designed to carry passengers, cargo, or both in the challenging river environment. Rivers present special hazards to vessels. They usually have varying water flows that alternately lead to high speed water flows or protruding rock hazards. Changing siltation patterns may cause the sudden appearance of shoal waters, and often floating or sunken logs and trees (called snags) can endanger the hulls and propulsion of riverboats. Riverboats are generally of shallow draft, being broad of beam and rather square in plan, with a low freeboard and high topsides. Riverboats can survive with this type of configuration as they do not have to withstand the high winds or large waves that are seen on large lakes, seas, or oceans.

Fishing vessels are a subset of commercial vessels, but generally small in size and often subject to different regulations and classification. They can be categorized by several criteria: architecture, the type of fish they catch, the fishing method used, geographical origin, and technical features such as rigging. As of 2004, the world's fishing fleet consisted of some 4 million vessels. Of these, 1.3 million were decked vessels with enclosed areas and the rest were open vessels. Most decked vessels were mechanized, but two-thirds of the open vessels were

traditional craft propelled by sails and oars.[39] More than 60% of all existing large fishing vessels were built in Japan, Peru, the Russian Federation, Spain or the United States of America.

4.3.3 Warship or Combatant Ship

A warship or combatant ship is a naval ship that is built and primarily intended for naval warfare. Usually they belong to the armed forces of a state. As well as being armed, warships are designed to withstand damage and are usually faster and more manoeuvrable than merchant ships. Unlike a merchant ship, which carries cargo, a warship typically carries only weapons, ammunition and supplies for its crew. Warships usually belong to a navy, though they have also been operated by individuals, cooperatives and corporations. In wartime, the distinction between warships and merchant ships is often blurred. In war, merchant ships are often armed and used as auxiliary warships, such as the Q-ships of the First World War and the armed merchant cruisers of the Second World War. Until the 17th century it was common for merchant ships to be pressed into naval service and not unusual for more than half a fleet to be composed of merchant ships. Until the threat of piracy subsided in the 19th century, it was normal practice to arm larger merchant ships such as galleons. Warships have also often been used as troop carriers or supply ships, such as by the French Navy in the 18th century or the Japanese Navy during the Second World War.

When considering maritime warfare, there are two points to bear in mind from the outset. The first is that the object of maritime warfare is ultimately to affect outcomes on the land. The second point is that success in maritime warfare requires the ability to operate at sea, in the air, and on the land. Maritime warfare can best be understood through an appreciation of the strategy it is intended to serve. It might in the first instance be helpful to illustrate the point by reference to the British experience. The benefits of a maritime strategy are not confined to island nations. The ability to use the sea for its own purposes is vital to any nation that relies on maritime trade for its existence and similarly, for those with exposed seaboards, to ensure they cannot be invaded. In fact, any nation that has a desire for security, wealth, and power needs to be able to use the seas freely and assert their right to do so when necessary.

4.4 History and evolution of warships

First warships

In the time of Mesopotamia, Ancient Persia, Ancient Greece and the Roman Empire, warships were always galleys such as: long, narrow vessels powered by banks of oarsmen and designed to ram and sink enemy vessels, or to engage them bow-first and follow up with boarding parties. The development of catapults in the 4th century BC and the subsequent refinement of this technology enabled the first fleets of artillery-equipped warships by the Hellenistic age. During late antiquity, ramming fell out of use and the galley tactics against other ships used during the Middle Ages until the late 16th century focused on boarding.

Naval artillery was redeveloped in the 14th century, but cannon did not become common at sea until the guns were capable of being reloaded quickly enough to be reused in the same battle. The size of a ship required to carry a large number of cannons made oar-based propulsion impossible, and warships came to rely primarily on sails. The sailing man-of-war emerged during the 16th century. By the middle of the 17th century, warships were carrying increasing numbers of cannon on their broadsides and tactics evolved to bring each ship's firepower to bear in a line of battle. The man-of-war now evolved into the ship of the line. In the 18th century, the frigate and sloop-of-war – too small to stand in the line of battle evolved to convoy trade, scout for enemy ships and blockade enemy coasts.

During the 19th century a revolution took place in the means of marine propulsion, naval armament and construction of warships. Marine steam engines were introduced, at first as an auxiliary force, in the second quarter of the 19th century. The Crimean War gave a great stimulus to the development of guns. The introduction of explosive shells soon led to the introduction of iron, and later steel, armour for the sides and decks of larger warships. The first ironclad warships, the French *Gloire* and British *Warrior*, made wooden vessels obsolete. Metal soon entirely replaced wood as the main material for warship construction. From the 1850s, the sailing ships of the line were replaced by steam-powered battleships, while the sailing frigates were replaced by steam-powered cruisers. The armament of warships also changed with the invention of the rotating barbettes and turrets, which allowed the guns to be aimed independently of the direction of the ship and allowed a smaller number of larger guns to be carried. The final innovation during the 19th century was the development of the torpedo and development of the

torpedo boat. Small, fast torpedo boats seemed to offer an alternative to building expensive fleets of battleships.

20th Century: The dreadnought era

Another revolution in warship design began shortly after the start of the 20th century, when Britain launched the Royal Navy's all-big-gun battleship dreadnought in 1906. Powered by steam turbines, it was bigger, faster and more heavily gunned than any existing battleships, which it immediately rendered obsolete. It was rapidly followed by similar ships in other countries. The Royal Navy also developed the first battle cruisers. Mounting the same heavy guns as the dreadnoughts on an even larger hull, battle cruisers sacrificed armour protection for speed. Battle cruisers were faster and more powerful than all existing cruisers, which they made obsolete, but battle cruisers proved to be much more vulnerable than contemporary battleships. The torpedo-boat destroyer was developed at the same time as the dreadnoughts. Bigger, faster and more heavily gunned than the torpedo boat, the destroyer evolved to protect the capital ships from the menace of the torpedo boat.

At this time, Britain also developed the use of fuel oil to produce steam to power warships, instead of coal. While reliance on coal required navies to adopt a coal strategy to remain viable, fuel oil produced twice the power and was significantly easier to handle. Tests were conducted by the Royal Navy in 1904 involving the torpedo-boat destroyer *Spiteful*, the first warship powered solely by fuel oil. These proved its superiority, and all warships procured for the Royal Navy from 1912 were designed to burn fuel oil.

Decline of battleships

During the lead-up to the Second World War, Germany and Great Britain once again emerged as the two dominant Atlantic sea powers. Germany, under the Treaty of Versailles, had its navy limited to only a few minor surface ships. But the clever use of deceptive terminology, such as Panzerschiffe deceived the British and French commands. They were surprised when ships such as Admiral Graf Spee, Scharnhorst, and *Gneisenau* raided the Allied supply lines. The greatest threat though, was the introduction of the Kriegsmarine's largest vessels, Bismarck and Tirpitz. Bismarck was heavily damaged and sunk/scuttled after a series of sea battles in the north

Atlantic in 1941, while *Tirpitz* was destroyed by the Royal Air Force in 1944. The British Royal Navy gained dominance of the European theatre by 1943.

The Second World War brought massive changes in the design and role of several types of warships. For the first time, the aircraft carrier became the clear choice to serve as the main capital ship within a naval task force. World War II was the only war in history in which battles occurred between groups of carriers. World War II saw the first use of radar in combat. It brought the first naval battle in which the ships of both sides never engaged in direct combat, instead sending aircraft to make the attacks, in the Battle of Coral Sea.

4.4.1 Cold War-era

Modern warships are generally divided into seven main categories, which are: aircraft carriers, cruisers, destroyers, frigates, corvettes, submarines and amphibious assault ships. Battleships comprise an eighth category, but are not in current service with any navy in the world. Only the deactivated American *Iowa*-class battleships still exist as potential combatants, and battleships in general are unlikely to re-emerge as a ship class without redefinition. The destroyer is generally regarded as the dominant surface-combat vessel of most modern blue-water navies. However, the once distinct roles and appearances of cruisers, destroyers, frigates, and corvettes have blurred. Most vessels have come to be armed with a mix of anti-surface, anti-submarine and anti-aircraft weapons. Class designations no longer reliably indicate a displacement hierarchy, and the size of all vessel types has grown beyond the definitions used earlier in the 20th century. Another key differentiation between older and modern vessels is that all modern warships are soft, without the thick armor and bulging anti-torpedo protection of World War II and older designs. Most navies also include many types of support and auxiliary vessels, such as minesweepers, patrol boats and offshore patrol vessels.

By 1982 the United Nations Convention on the Law of the Sea treaty negotiations had produced a legal definition of what was then generally accepted as a late-twentieth century warship. The UNCLOS definition was: A warship means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the

appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

4.4.2 The Law of War

The law of war refers to the component of international law that regulates the conditions for war jus ad bellum and the conduct of warring parties' **jus in bello**. Laws of war define sovereignty and nationhood, states and territories, occupation, and other critical terms of international law. Among other issues, modern laws of war address the declarations of war, acceptance of surrender and the treatment of prisoners of war; military necessity, along with *distinction* and *proportionality*; and the prohibition of certain weapons that may cause unnecessary suffering. The *law of war* is considered distinct from other bodies of law such as the domestic law of a particular belligerent to a conflict which may provide additional legal limits to the conduct or justification of war.

Article 29 of the LOSC defines a warship as, A ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew who are under regular naval discipline."[2] Under this definition, a ship does not need to be armed in order to be considered a warship. Articles 95 and 96 of the LOSC recognize the complete immunity of warships and other government ships operated for non-commercial purposes on the high seas. Regarding the territorial waters of a coastal State, Article 32 reaffirms the immunities of warships and other government ships operated for non-commercial purposes", but a coastal State may require a warship to leave its territorial sea if the warship does not comply with the laws and regulations of the coastal State when consistent with international law concerning innocent passage and disregards any request for compliance made to it The right of innocent passage is addressed in more detail in Chapter Three: Freedom of Navigation. Additionally, the LOSC provisions on protection and preservation of the marine environment do not apply to warships.

4.5 The Principles of the laws of war

Military necessity, along with distinction, proportionality, humanity (sometimes called unnecessary suffering, and *honor* sometimes called chivalry are the five most commonly cited principles of international humanitarian law governing the legal use of force in an armed conflict. Military necessity is governed by several constraints: an attack or action must be intended to help in the defeat of the enemy; it must be an attack on a legitimate military objective, and the harm caused to civilians or civilian property must be proportional and not excessive in relation to the concrete and direct military advantage anticipated.

Distinction is a principle under international humanitarian law governing the legal use of force in an armed conflict, whereby belligerents must distinguish between combatants and civilians.

Proportionality is a principle under international humanitarian law governing the legal use of force in an armed conflict, whereby belligerents must make sure that the harm caused to civilians or civilian property is not excessive in relation to the concrete and direct military advantage expected by an attack on a legitimate military objective.

Humanity. This principle is based in the Hague Conventions restrictions against using arms, projectiles, or materials calculated to cause suffering or injury manifestly disproportionate to the military advantage realized by the use of the weapon for legitimate military purposes. In some countries, like the United States, weapons are reviewed prior to their use in combat to determine if they comply with the law of war and are not designed to cause unnecessary suffering when used in their intended manner. This principle also prohibits using an otherwise lawful weapon in a manner that causes unnecessary suffering.

Honor is a principle that demands a certain amount of fairness and mutual respect between adversaries. Parties to a conflict must accept that their right to adopt means of injuring each other is not unlimited, they must refrain from taking advantage of the adversary's adherence to the law by falsely claiming the law's protections, and they must recognize that they are members of a common profession that fights not out of personal hostility but on behalf of their respective States.

Section III of the Hague Convention of 1907 required hostilities to be preceded by a reasoned declaration of war or by an ultimatum with a conditional declaration of war. Some treaties,

notably the United Nations Charter 1945 Article 2, and other articles in the Charter, seek to curtail the right of member states to declare war; as does the older Kellogg–Briand Pact of 1928 for those nations who ratified it. Formal declarations of war have been uncommon since 1945 outside the Middle East and East Africa.

Modern laws of war regarding conduct during war *jus in bello*, such as the 1949 Geneva Conventions, provide that it is unlawful for belligerents to engage in combat without meeting certain requirements, such as wearing distinctive uniform or other distinctive signs visible at a distance, carrying weapons openly, and conducting operations in accordance with the laws and customs of war. Impersonating enemy combatants by wearing the enemy's uniform is allowed, though fighting in that uniform is unlawful perfidy, as is the taking of hostages. Combatants also must be commanded by a responsible officer. That is, a commander can be held liable in a court of law for the improper actions of his or her subordinates. There is an exception to this if the war came on so suddenly that there was no time to organize a resistance, e.g. as a result of a foreign occupation.

The rules of war

Although there are many rules contained in the Conventions, here are crucial principles that are relevant to ongoing conflicts. The rules of war, also known as international humanitarian law:

i.Protect those who are not fighting, such as civilians, medical personnel or aid workers.

ii.Protect those who are no longer able to fight, like an injured soldier or a prisoner.

iii.Prohibit targeting civilians. Doing so is a war crime.

iv.Recognize the right of civilians to be protected from the dangers of war and receive the help they need. Every possible care must be taken to avoid harming them or their houses, or destroying their means of survival, such as water sources, crops, livestock, etc.

v.vanadate that the sick and wounded have a right to be cared for, regardless of whose side they are on.

vi.Specify that medical workers, medical vehicles and hospitals dedicated to humanitarian work can not be attacked.

vii.Prohibit torture and degrading treatment of prisoners.

4.5.2 Types of Warships

Frigates. Frigates are usually regarded as ships weighing more than 3000 tons. Its role is to protect other ships of its strike group, the main part of this responsibility is to protect them from hostile submarines. The Frigate does not have any actual definition which means that they have similarities to corvettes, destroyers and even cruisers. The Littoral combat ships are by some regarded as frigates.

Corvettes: A Corvette is a small warship with light arms. Due to this and their high maneuverability they are great in smaller seas, the Red Sea for instance, which is an important reason along the comparably low cost – many of the world's navies operate them just to give you some examples: The US, Argentina, Bangladesh, Brazil, Bulgaria, China, Denmark, Germany, Egypt, India, Indonesia, Iran, Israel, Italy, Pakistan, the Philippines, Poland, Portugal, Romania, Russia, South Korea, Sweden, Turkey… Due to Russia being connected to many smaller seas they have invested a lot in Corvettes and are by that the world's biggest operator of corvettes.

Destroyers: Destroyers are among the widely used ships in the world due to their wide range of use. Their combination of high firepower and high endurance make them ideal for both wars, escort and other peace-keeping operations. The name Destroyer" comes from the Russo-Japanese war in the early 20th century where they were named Torpedo boat destroyer. Today they are the heaviest surface combatants after the cruiser.

Cruisers; The cruiser is the strongest of them all. It is built to have great firepower and to be able to take out everything that its strike group can face. Due to its high cost and narrow mission capability, only the US, Russia and Peru old ships operate them. The line between cruisers and destroyers is not very obvious due to some of the new destroyers DDG-1000 for instance, having greater firepower than some cruisers.

Amphibious Assault Ships: These ships are warfare ships used to support ground troops in forms of ammunition, transport, refuelling of vehicles and to protect them from incoming enemy aeroplanes and surface vessels. Most of them have both a helicopter deck (where VTOL aeroplanes such as the F-35 as well as helicopters can disembark from and a good deck where small amphibious vessels can be maintained and repaired. Some of them are regarded as aircraft carriers, for instance, the Japanese aircraft carriers Izumo has been renamed to "helicopter destroyer" even though it looks like an aircraft carrier.

Aircraft Carriers: The definition of an aircraft carrier is a large naval vessel designed as a mobile airbase, having a long flat deck on which aircraft can take off and land at sea". Just as the definition says it is used as a naval base and aircraft operation centre. The aircraft carriers are the biggest military ships in the world with some weighing over 100 000 tons and the capability to house almost 6000 men. An alternate name of carriers is *Supercarriers* which is the name of aircraft carriers weighing more than 66 000 tons. The only country that operates more than 2 aircraft carriers is currently the United States.

Submarine: Ballistic Missile: Submarine of the US Ohio class one of its ballistic missiles is 150 times more powerful than both the Nagasaki and Hiroshima bombs combined This type of submarine is specialised to go out on the sea, hide, and then launch Sub marine Lauch Ballistic Missile with nuclear or conventional warheads to take out strategically important enemy targets. The second-strike capability was to ensure the "no first use" of nuclear weapons during the Cold War. Strategic submarines are the traditional – but expensive method of providing a second strike capability. The other one would be Launch on warning". The new nuclear submarines can stay out at sea for months, at any instance being able to launch a missile of mass destruction from thousands of kilometres away. Due to this, all of the modern ballistic missile submarines have nuclear reactors as the energy source which gives them a nearly unlimited range.

4.5.3 Non-Governmental Ships

Legal actions against NGOs and volunteers involved in the search and rescue at sea based on domestic criminal or administrative law must be implemented in accordance with the relevant international, Council of Europe and EU fundamental rights law and refugee law standards. This requires making the delicate distinctions between real smugglers and those enforcing the human rights imperative of saving lives at sea, either by acting out of humanitarian considerations and/or by following international obligations for rescue at sea. National authorities and courts need to find a right balance between applicable international and EU law, and national law, as complemented by non-legally binding guidance, such as the Italian Code of Conduct and similar domestic instructions. The 2017 UNHCR guidance on search and rescue operations at sea (link is external) including the non-penalisation of those taking part in these activities, gives useful guidance in this regard.

Non-Governmental Hospital Ships

Short-term medical missions are a well-established means of providing health care to the developing world. Despite over 250 million dollars and thousands of volunteer hours dedicated to STMMs, there is a lack of standardized evaluation to assess patient safety, quality control, and mission impact. Short-term medical missions have become a well-established vehicle for extending the reach of health care professionals to the developing world. They appeal to physicians and other medical professionals due to their unique combination of philanthropy and

direct approach to patient care. The National Library of Medicine defines "Medical Missions, Official" as "travel by a group of physicians to a foreign country for the purpose of making a special study or of undertaking a special study of a short-term duration. This broad definition encompasses a wide range of services, ranging from surgical missions providing craniofacial reconstruction or cataract extraction to medical and/or pediatric missions providing care for acute illness and chronic disease.

Mercy Ships is a global charity operating hospital ships since 1978 in developing nations to bring medical, relief, and developmental assistance to the poor and needy in third world developing nations. It operates hospital ships as a platform for providing thousands of specialized surgeries to patients in the developing world. Mercy Ships is the leader in using hospital ships to deliver free world-class specialized healthcare & community development services to the poor. Mercy Ships' other programs within the health sector include HIV/AIDS, mother and child nutrition, child development, and community health education. Mercy Ships implements activities in the areas of disaster relief, crop and livestock development, water and sanitation, vocational training, and education. Mercy Ships provides services primarily in Latin America and Africa. In addition to the platform of the hospital ships, Mercy Ships has established long-term development projects in Sierra Leone and Honduras.

4.6 Summary

The truth is that the overwhelming majority of ships sailing our oceans are purposed for international freight transport. But if all these ships carry freight**,** in which aspects are they different**?** Nothing more than the specificities of the freight they can carry. In other words, each type of cargo requires different conditions and a specialised ocean transport mode. This leads us to review the types of ships in existence, based on the types of loads they transport.

The economic factor is of prime importance in designing a merchant ship. Every owner wants maximum return on their investment which means a ship’s construction not only depends on the current economic necessities but the factor of future adaptability also plays a part. The rules of war, or international humanitarian law as it is known formally are a set of international rules that

set out what can and cannot be done during an armed conflict. The rules of war are universal. The Geneva Conventions (which are the core element of IHL have been ratified by all 196 stat**1.8**

SELF ASSESSMENT EXERCISE 1. List the rules of war
SELF ASSESSMENT EXRCISE 2. List six merchants ships engage in international shipping
SELF ASSESSMENT EXERCISE 3: Name the five types of warships

4.7 References/Further Reading/Web resources

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4.8 Possible answer to self-assessment exercise 2.

Types of modern merchant ship include container ships, cruise liners, oil or gas tankers, chemical carriers, bulk carriers, cable layers, ro-ro ferries, car carriers, oil rig supply vessels and general-purpose cargo ships.

MODULE TWO THE REGIME OF CREW

Unit 1 Crew, Passengers and Cargoes

1.1 Introduction

Ocean transport, fluvial transport, or more generally waterborne transport is the transport of people passengers or goods (cargo) via waterways. Freight transport by sea has been widely used throughout recorded history. The advent of aviation has diminished the importance of sea travel for passengers, though it is still popular for short trips and pleasure cruises. Transport by water is cheaper than transport by air, despite fluctuating exchange rates and a fee placed on top of freighting charges for carrier companies known as the currency adjustment factor.

Maritime transport can be realized over any distance by boat, ship, sailboat or barge, over oceans and lakes, through canals or along rivers. Shipping may be for commerce, recreation, or for military purposes. While extensive inland shipping is less critical today, the major waterways of the world including many canals are still very important and are integral parts of worldwide economies. Virtually any material can be moved by water; however, water transport becomes impractical when material delivery is time-critical such as various types of perishable produce. Still, water transport is highly cost effective with regular schedulable cargoes, such as trans-oceanic shipping of consumer products and especially for heavy loads or bulk cargos, such as coal, coke, ores, or grains. Arguably, the industrial revolution took place best where cheap water transport by canal, navigations, or shipping by all types of watercraft on natural waterways supported cost effective bulk transport. Containerization revolutionized maritime transport starting in the 1970s. General cargo includes goods packaged in boxes, cases, pallets, and barrels. When a cargo is carried in more than one mode, it is intermodal or co-modal.

1.2 Learning Outcomes

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

i. Explain the Rules governing international ships

ii. You will be able to explains the Rules for crew, manning of ships and passengers

iii. Distinguish cargoes and Liquid cargoes

1.3 Manning of Ship and Crew

Crew is a body or a class of people who work at a common activity, generally in a structured or hierarchical organization. A location in which a crew works is called a crew yard or a work yard. The word has nautical resonances: the tasks involved in operating a ship, particularly a sailing ship, providing numerous specialties within a ship's crew, often organised with a chain of command. Traditional nautical usage strongly distinguishes officers from crew, though the two groups combined form the ship's company. Members of a crew are often referred to by the title Crewman. Crew also refers to the sport of rowing, where teams row competitively in racing shells.

Crew management for ships, otherwise known as crewing, are the services rendered by specialised shipping companies. Crew management services are an essential part of maritime and ship management that includes the management of all the various activities handled by crew on-board vessels, as well as related shore-based administration. Major locations where crew management activities are carried out from include Limassol (Cyprus), Singapore, Hong Kong and Malta.

Organisations that provide crew management services are known as crew management companies, or crewing managers, as commissioned by ship owners, ship managers, ship operators or charterers under a crew management contract. Crew management companies are responsible for the human resources and manning of all types of vessels, utilising their management offices, as well as a network of localised recruitment agencies based in key seafarer sourcing locations. Most commonly, these services include crew recruitment, deployment to vessel, scheduling, and regular training and development. Crew management companies are also responsible for taking care of on-going management and administrative duties of seafarers, such as payroll, travel arrangements, insurance and health schemes, overall career development, as well as their day-to-day welfare.

Manning of ships

Human resources and the human element of crew management is of utmost importance to the sustainable development of maritime transportation, as well as in turn to global trade. The main issue impacting the global crew management sector and the wider shipping industry is an expected shortage of qualified seafarers over the coming years, especially for specialised vessels such as chemical, LNG and LPG carriers, engineering officers, and officers at management level. The latter two mainly due to not having enough new vacancies open up to allow new cadets to receive the required training at sea, coupled with current market volatility. Regardless of the accuracy of these estimates, a continuing worldwide shortage of officers is also confirmed by the International Maritime Organization.

Seafaring is a tradition that encompasses a variety of professions and ranks. Each of these roles carries unique responsibilities that are integral to the successful operation of a seafaring vessel. A ship's crew can generally be divided into four main categories: the deck department, the engineering department, the steward's department, and other. The reasoning behind this is that a ship's bridge, filled with sophisticated navigational equipment, requires skills differing from those used on deck operations such as berthing, cargo and/or military devices which in turn requires skills different from those used in a ship's engine room and propulsion, and so on.

The following is only a partial listing of professions and ranks. Ship operators have understandably employed a wide variety of positions, given the vast array of technologies, missions, and circumstances that ships have been subjected to over the years There are some notable trends in modern or twenty-first century seamanship. Usually, seafarers work on board a ship between three and six years. Afterwards they are well prepared for working in the European maritime industry ashore. Generally, there are some differences between naval and civilian seafarers. One example is nationality on merchant vessels, which is usually diverse and not identical like on military craft. As a result, special cross-cultural training is required especially with regard to a lingua franca. Another notable trend is that administrative work has increased considerably on board, partly as an effect of increased focus on safety and security. A study shows that due to this development certain skills are missing and some are desired, so that a new degree of flexibility and job sharing has arisen, as the workload of each crew member also

increases. Seamen's Articles of Agreement Convention, 1926 (No. 22) Maritime Labour Convention, 2006, as amended (MLC, 2006) (Entry into force: 20 Aug 2013.

1.3. 1 Modern Ship's Complement

i. Ship Bridge

Ship's complement, the number of persons in a ship's company, including both commissioned officers and crew. The captain or master is the ship's highest responsible officer, acting on behalf of the ship's owner. Whether the captain is a member of the deck department or not is a matter of some controversy, and generally depends on the opinion of an individual captain. When a ship has a third mate, the captain does not stand watch. The captain is responsible for the day-to-day affairs of the ship as they are in command. It is their responsibility to ensure that all the departments under them perform to the requirements. Therefore the heads of the various departments answer to them. The captain represents the owner and hence is called master. The captain is officially not considered to be a crew member.

ii. Deck department

The chief mate is the head of the deck department on a merchant vessel, second-in-command after the ship's Master. The Chief mate's primary responsibilities are the vessel's cargo operations, its stability, and supervising the deck crew. The mate is responsible for the safety and security of the ship, as well as the welfare of the crew on board. The chief mate typically stands the 4–8 navigation watch as officer in-charge of the navigational watch, directing the bridge team. Some crews have additional Third mates, which allow the Chief mate to not stand navigational watch, and focus more on cargo and deck operations. Additional duties include maintenance of the ship's hull, cargo gears, accommodations, life saving appliances and firefighting appliances. The chief mate also trains the crew and cadets on various aspects like safety, firefighting, search and rescue, and various other contingencies. The chief officer assumes command of the whole ship in the absence or incapacitation of the master.

iv. Engine department

The engineers are also called technical officers. They are responsible for keeping the ship and the machinery running. Today, ships are complex units that combine a lot of technology within a small space. This includes not only the engine and the propulsion system, but also, for example, the electrical power supply, devices for loading and discharging, garbage incineration and fresh water generators. Also they are commonly considered a high officer in ranking in the ship.[2]

v. Electro-technical department

The electro-technical officer sometimes referred to as the electrical engineer is in charge of all the electrical systems on the ship. The electrical engineer is one of the most vital positions in the technical hierarchy of a ship and engineer is responsible for their assigned work under the chief engineer's instructions. Unlike engineers the ETO does not carry out an assigned engine room "watch" instead they are normally on call 24 hours a day and generally work a daily shift carrying out electrical and electronic maintenance, repairs, installations and testing.

On larger vessels such as cruise ships, electro technical officers can have ranks within their profession, such position names include, lead ETO, 1st Electrician, chief electrical officer or chief electrical engineer. In this situation, the highest ranked electro technical officer will report directly to the chief engineer. On special class ships such as FPSOs the electro technical officer can sometimes earn nearly the same wage as a chief engineer due to the complexity of the electrical systems on the ship.

As the technology advances, more automation and electronic circuits are replacing conventional and electrical systems. The International Maritime Organization amended STCW 95 also known as the Manila Amendment on June 25, 2010 to introduce the certified position of Electro-technical officer in place of Electrical officer. With advancements in satellite communications leading to the widespread adoption of the Global Maritime Distress and Safety System the old position of radio officer is far less common, although a U.S. Coast Guard license is still issued for it. Ship officers may be licensed by the Federal Communications Commission as GMDSS operators and electrical officers as GMDSS maintainers. Morse code has not been used on

French ships since 1997[6] and on U.S. ones since 1999[7] However, an FCC certificate for radiotelegraphy may still be obtained.

vi. Steward's department

A typical Steward's department for a cargo ship would be composed of a Chief Steward, a Chief Cook, and a Steward's Assistant. All three positions are typically filled by unlicensed personnel. The chief steward directs, instructs, and assigns personnel performing such functions as preparing and serving meals; cleaning and maintaining officers' quarters and steward department areas; and receiving, issuing, and inventorying stores. On large passenger vessels, the Catering Department is headed by the Chief Purser and managed by Assistant Pursers. Although they enjoy the benefits of having officer rank, they generally progress through the ranks to become pursers. Under the Pursers are the department heads such as chief cook, head waiter, head barman etc. They are responsible for the administration of their own areas. The chief steward also plans menus; compiles supply, overtime, and cost control records. They may requisition or purchase stores and equipment. They may bake bread, rolls, cakes, pies, and pastries. A chief steward's duties may overlap with those of the Steward's Assistant, the Chief Cook, and other Steward's Department crewmembers.

1.4 Types of passengers ships

A passenger ship is a merchant ship whose primary function is to carry passengers on the sea. The category does not include cargo vessels which have accommodations for limited numbers of passengers, such as the ubiquitous twelve-passenger freighters once common on the seas in which the transport of passengers is secondary to the carriage of freight. The type does however include many classes of ships designed to transport substantial numbers of passengers as well as freight. Indeed, until recently virtually all ocean liners were able to transport mail, package freight and express, and other cargo in addition to passenger luggage, and were equipped with cargo holds and derricks, kingposts, or other cargo-handling gear for that purpose. Only in more recent ocean liners and in virtually all cruise ships has this cargo capacity been eliminated. While typically passenger ships are part of the merchant marine, passenger ships have also been used as troopships and often are commissioned as naval ships when used as for that purpose.

Passenger ships include ferries, which are vessels for day to day or overnight short-sea trips moving passengers and vehicles whether road or rail; ocean liners, which typically are passenger or passenger-cargo vessels transporting passengers and often cargo on longer line voyages; and cruise ships, which often transport passengers on round-trips, in which the trip itself and the attractions of the ship and ports visited are the principal draw. Types of passengers ships are:

i. Cruise: For a long time, cruise ships were smaller than the old ocean liners had been, but in the 1980s, this changed when Knut Kloster, the director of Norwegian Caribbean Lines, bought one of the biggest surviving liners, the SS *France*, and transformed her into a huge cruise ship, which he renamed the SS *Norway*. Her success demonstrated that there was a market for large cruise ships. Successive classes of ever-larger ships were ordered, until the Cunard liner *Queen Elizabeth* was finally dethroned from her 56-year reign as the largest passenger ship ever built a dethronement that led to numerous further dethronements from the same position.

ii. Special Cruise Ships

Cruise ships built for visiting specific regions of the world are termed as special cruise ships. For e.g. cruise ships visiting Polar Regions (Arctic and Antarctic) are called polar cruise ships. They are specially designed and built to face the tough environment of such extreme climatic regions. Passenger ships, both of the ferry ships and the cruise ships variances, have become extremely popular in contemporary times. Providing a sense of novelty amongst the likes of road, rail and aerial travelling options, passenger's vessels help people to re-associate themselves with the marvel that only oceanic vistas can offer.

iii.Ferries: They are vessels for day to day or overnight short-sea trips moving passengers and vehicles whether road or rail. Ferry ships are those vessels which are used to transit voyagers on short-natured water travel routes. Ferry ships can be dual in nature that is, either they can be used only for the purposes of transporting passengers or they can be ships that can also carry the vehicular load along with the intake of voyagers. Ferries are also referred to as water taxis or water buses. These are the ships which sail on the same route with many intermittent stops. These ships serve the same purpose as the public transport on road or rail do. So, ferries are the smaller ships used for smaller distance voyages or rather as public transport.

iv. Ocean liners: An ocean liner is the traditional form of passenger ship. Once such liners operated on scheduled line voyages to all inhabited parts of the world. With the advent of airliners transporting passengers and specialized cargo vessels hauling freight, line voyages have almost died out. But with their decline came an increase in sea trips for pleasure and fun, and in the latter part of the 20th century ocean liners gave way to cruise ships as the predominant form of large passenger ship containing from hundreds to thousands of people, with the main area of activity changing from the North Atlantic Ocean to the Caribbean Sea.

1.5 Types of Cargoes ships

Bulk cargo is commodity cargo that is transported unpackaged in large quantities. It refers to material in either liquid or granular, particulate form, as a mass of relatively small solids, such as petroleum/crude oil, grain, coal, or gravel. This cargo is usually dropped or poured, with a spout or shovel bucket, into a bulk carrier ship's hold, railroad car/railway wagon, or tanker truck/trailer/semi-trailer body. Smaller quantities still considered bulk can be boxed or drummed and palletised. Bulk cargo is classified as liquid or dry. The Baltic Exchange is based in London and provides a range of indices benchmarking the cost of moving bulk commodities, dry and wet, along popular routes around the seas. Some of these indices are also used to settle Freight Futures, known as FFA's. The most famous of the Baltic indices is the Baltic Dry Indices, commonly called the BDI. This is a derived function of the Baltic Capesize index, Baltic Panamax index, Baltic Supramax index and the Baltic Handysize index. The BDI has been used as a bellwether for the global economy as it can be interpreted as an indicator of an increase or decrease in the amount of raw commodities countries are importing/exporting.

i.Break bulk cargo or **general cargo** are goods that must be loaded individually, and not in intermodal containers nor in bulk as with oil or grain. Ships that carry this sort of cargo are called general cargo ships. The term *break bulk* derives from the phrase **breaking bulk** the extraction of a portion of the cargo of a ship or the beginning of the unloading process from the ship's holds. These goods may not be in shipping containers. Break bulk cargo is transported in bags, boxes, crates, drums, or barrels. Unit loads of items secured to a pallet or skid are also used.

ii. Bulk cargo is commodity cargo that is transported unpackaged in large quantities. It refers to material in either liquid or granular, particulate form, as a mass of relatively small solids, such as petroleum/crude oil, grain, coal, or gravel. This cargo is usually dropped or poured, with a spout or shovel bucket, into a bulk carrier ship's hold, railroad car/railway wagon, or tanker truck/trailer/semi-trailer body. Smaller quantities still considered bulk can be boxed (or drummed) and palletised. Bulk cargo is classified as liquid or dry.

iii..Tanker: A **tanker** is a ship designed to transport or store liquids or gases in bulk. Major types of tankship include the oil tanker, the chemical tanker, and gas carrier. Tankers also carry commodities such as vegetable oils, molasses and wine. In the United States Navy and Military Sealift Command, a tanker used to refuel other ships is called an oiler or replenishment oiler if it can also supply dry stores) but many other navies use the terms tanker and replenishment tanker. A wide range of products are carried by tankers, including: Hydrocarbon products such as oil, liquefied petroleum gas , and liquefied natural gas.

iv.Containerization is a system of intermodal freight transport using intermodal containers also called shipping containers and ISO containers The containers have standardized dimensions. They can be loaded and unloaded, stacked, transported efficiently over long distances, and transferred from one mode of transport to another vcontainer ships, rail transport flatcars, and semi-trailer trucks—without being opened. The handling system is completely mechanized so that all handling is done with cranes and special forklift trucks. All containers are numbered and tracked using computerized systems.

iv. Dry bulk shipping

Dry bulk shipping refers to the movement of significant commodities carried in bulk the so-called major bulks such as iron ore, coal, grain, together with ships carrying steel products coils, plates and rods, lumber or log and other commodities classified as the minor bulks. Other cargo ships include OBO’s, which are vessels able to trade alternatively dry and wet cargoes. The importance of the dry cargo industry is crucial. Without it, global trade and industry could not exist. The international steel industry, for example, could not function without an efficient and cost effective maritime industry transporting the raw materials – coal and iron ore, as well as the

means to ship the finished product around the world. At average home, the unseen links with the dry cargo industry are clearly noticed. Toasting a piece of bread involves metal components in the toaster – manufacturing processes using ores and aluminum, grain used in the bread and coal-generated electricity providing the power.

1.6 Summary

A seaman contributes to the work of the vessel if the seaman's work adds to the accomplishment of the vessel's mission. It is difficult to conceive of a vessel crew member who does not contribute to the accomplishment of the vessel's mission. About the only type of maritime employee who might find him/herself on a vessel and not be contributing to the accomplishment of the vessel's mission might be a member of the vessel owner's administrative support staff who, for some reason, is on the vessel during one of its trips.

A nation's shipping fleet merchant navy, merchant marine, merchant fleet consists of the ships operated by civilian crews to transport passengers or cargo from one place to another. Merchant shipping also includes water transport over the river and canal systems connecting inland destinations, large and small. For example, during the early modern era, cities in the Hanseatic League began taming Northern Europe's rivers and harbors. And, for instance, the Saint Lawrence Seaway connects the port cities on the Great Lakes in Canada and the United States with the Atlantic Ocean shipping routes; while the various Illinois Canals connect the Great Lakes and Canada with New Orleans. Ores, Coal, and grains can travel along the rivers of the American midwest to Pittsburgh, or Birmingham. Professional mariners are merchant seaman, merchant sailor, and merchant marine, or simply seaman, sailor, or mariners. The terms seaman" or sailor may refer to a member of a country's navy.

SELF ASSESSMENT EXERCISE 1: Describe the various department in a ship
SELF ASSESSMENT EXERCISE 2: List 5 types of cargo carrying ships

1.7 Reading/Further Reading

Importance of seafarers and training - IMEC Enhanced Cadet Training Programme". The International Maritime Employers' Council 2016.

Number and Nationality of World's Seafarers". International Chamber of Shipping. 2016.

Shortages of Seafarer Officers Indicates from BIMCO/ICS Manpower Report". Seaman 2016.

International Maritime Organizarion. 2016

Durand, Jean-François. Autour du Monde Paquebots: Cruise Ships Around the World. Editions marines, 1996.

1.8 Possible answers to self-assessment exercise 2:

Types of cargo are: Feeder ship., General cargo vessels.,Container ships., Tankers., Dry bulk carriers.,Multi-purpose vessels.,Reefer ships. and Roll-on/roll-off vessels

Unit 2 Manning, Conditions of Labour and Consular Jurisdiction

2.1 Introduction

The owner or operator of a United Kingdom registered ship is required to make an assessment of the numbers and grades of personnel necessary for safe operation. These should be sufficient to ensure that: the required watch keeping standard can be maintained and that personnel are able to obtain sufficient rest; personnel are not required to work more hours than is safe in relation to the safety of the ship; the master officers and ratings can perform their duties in accordance with the framework of operational guidance in section A-VIII of the STCW Code; the master, officers and ratings are not required to work such hours or under such conditions which may be injurious to their health and safety.Proposals based on the assessment should be submitted to the Maritime and Coastguard Agency which, when satisfied that the proposed manning levels are adequate, will issue a safe manning document. Application to the MCA for a Safe Manning Document should be made by completing form.

The Safe Manning, Hours of Work and Watch keeping Regulations 1997 place clear responsibilities on companies owning or operating UK-registered seagoing ships, and other ships whilst in United Kingdom waters, to ensure that their ships are manned with personnel of appropriate grades who have been properly trained and certificated. Regulation 14 of Chapter V SOLAS lays down specific requirements for safe manning in order to ensure navigational safety. The numbers of certificated officers and certificated and non-certificated ratings must be sufficient to ensure safe and efficient operation of the ship at all times. Regulation 14 of SOLAS Chapter V states that all ships to which SOLAS Chapter I applies, i.e. ships on international voyages - cargo ships of 500 gt or more and all passenger ships, are required to hold a safe manning document. Owners or operators of cargo ships below 500 gt may also find it advantageous.

2.2 Learning Outcomes

The aim of the Unit is that at the end of the unit you will be able to:

i. Have a deep knowledge of regime of Manning of vessels and conditions of Labour.

ii.The conditions of manning vessels

iii.You will know the regime of manning

2.3 Manning of Vessel

Ship must have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about fatigue and the particular nature and conditions of voyage. Ship must comply with the manning levels listed on the Safe Manning Document or equivalent issued by the competent authority Standard. The act on the **manning of ships** prescribes that, on all **ships**, there must be a master and in addition the crew necessary in consideration of the safety of human lives at sea.

Safe Manning, STCW certificates Requirement: Each Member shall require that all ships that fly its flag have a sufficient number of seafarers on board to ensure that ships are operated safely, efficiently and with due regard to security. Every ship shall be manned by a crew that is adequate, in terms of size and qualifications, to ensure the safety and security of the ship and its personnel, under all operating conditions, in accordance with the minimum safe manning document or an equivalent issued by the competent authority, and to comply with the standards of this Convention. FS/PS Guidelines: Crew list to ascertain number, category such as cooks and those responsible for food preparation and those who are responsible for medical care and qualifications of seafarers working on board. Verification that safe manning requirements are being implemented Document: Safe Manning, Shipboard working arrangement Requirement: When determining, approving or revising manning levels, the competent authority shall take into account the need to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue, as well as the principles in applicable international instruments (especially those of the International Maritime Organization) on manning levels. Confirmation that the catering department is adequate with regards to the number of seafarers working on board Document.

These Guidance Notes, together with Resolution A.1047(27), contain the detailed mandatory requirements specified in the Merchant Shipping (Safe Manning, Hours of Work and Watch keeping Regulations 1997 and give guidance on the application of the Regulations with respect to the safe manning of UK-registered ships and other ships when they are in UK national waters.

2.3.1 The Role of ship's Officers in Safe Sailing

International Maritime Organization has created the Convention on Standards of Training, Certification and Watch keeping for Seafarers which prescribes that the ship shall be manned by qualified seafarers to carry out the following functions to the best of their ability.

i. Navigation means taking the ship from one place to the other well clear of all dangers.

ii. Cargo handling and stowage means looking after the cargo from the time it is loaded in the ship till it is finally unloaded at the destination.

iii Controlling the operation of the ship and care for persons on hoard means ensuring that the ship is operated in a safe manner throughout the voyage. Without causing any damage to the environment and the seafarers on board remain safe and healthy at all times.

iv.Marine engineering means maintaining and operating the ship's machinery, whether on deck or in engine room in efficient manner.

v.Electrical, electronic and control engineering means operating the ship's electronic and electrical equipment, including control systems, in an efficient manner.

vi.Maintenance and repair means looking after the ship's structure, fittings, equipment and machinery so that the ship as a whole will perform without any hitch.

vii. Radio Communication means ensuring that continuous communication is available between the ships at sea and with the shore organizations for safety of ship, life and environment.

2.3.2 International Labour Standards on Seafarers

An estimated 90 per cent of world trade passes through maritime or river transport and requires seafarers to operate the ships. Seafarers are therefore essential to international trade and the international economic system. It should be emphasized that maritime transport is the first really globalized sector. To protect the world's seafarers and their contribution to international trade,

the ILO has adopted over 70 instruments 41 Conventions and the related Recommendations at special maritime sessions of the International Labour Conference. The ILO's international standards for this sector establish the minimum conditions for decent work and address almost all aspects of work, including minimum requirements for work on a ship such as minimum age, medical fitness and training), provisions on conditions of employment, such as hours of work and rest, wages, leave, repatriation, accommodation, recreational facilities, food and catering, occupational safety and health protection, welfare and social security protection. In addition, they address issues such as pensions and an internationally recognized document for seafarers a seafarers' identity document to assist in border control.

International laws are laws made at the highest level between States. Since it was founded in 1919, the International Labour Organisation has set international labour standards for all workers, and specifically has set standards for seafarers in more than 65 Conventions and Recommendations. These instruments, taken together, constitute a comprehensive set of standards and concern practically all aspects of living and working conditions of seafarers. In February 2006, these existing conventions and recommendations were updated and consolidated in the Maritime Labour Convention, 2006, a single, coherent international maritime labour standard for seafarers that entered into force on 20 August 2013. Human rights instruments also exist at international and regional level which may be relevant to the rights of seafarers. At the international level, Conventions of the International Maritime Organisation impose obligations on States, a number of which have the effect of creating benefits for seafarers.

In February 2006, at the 10th Maritime Session, the 94th ILC adopted the Maritime Labour Convention, 2006 (MLC, 2006) . This Convention revises and consolidates 37 existing Conventions and the related Recommendations. The MLC, 2006, uses a new format with some updating, where necessary, to reflect modern conditions and language. In this manner, it sets out, in a single instrument, the right of the world's 1.5 million seafarers to decent conditions of work in almost every aspect of their working and living conditions, including minimum age, employment agreements, hours of work and rest, payment of wages, paid annual leave, repatriation, on board medical care, the use of recruitment and placement services, accommodation, food and catering, health and safety protection and accident prevention, and complaint procedures for seafarers (more information in "Rules of the Game.

The International Labour Organisation is the UN agency that sets internationally recognised labour standards to protect the rights of workers. The ILO is made up of a social partnership of governments, employers and trade unions. ITF leads the work of the shipping and fisheries trade unions in this partnership.

2.4 Consular in Maritime law

A Consular is an official representative of the government of one state in the territory of another, normally acting to assist and protect the citizens of the Consular's own country, and to facilitate trade and friendship between the people of the two countries. A consul is distinguished from an ambassador, the latter being a representative from one head of state to another, but both have a form of immunity. There can be only one ambassador from one country to another, representing the first country's head of state to that of the second, and their duties revolve around diplomatic relations between the two countries; however, there may be several consuls, one in each of several major cities, providing assistance with bureaucratic issues to both the citizens of the consul's own country traveling or living abroad and to the citizens of the country in which the consul resides who wish to travel to or trade with the consul's country. A less common usage is an administrative consul, who takes a governing role and is appointed by a country that has colonised or occupied another.

In classical Greece, some of the functions of the modern consul were fulfilled by a proxenos. Unlike the modern position, this was a citizen of the host polity in Greece, a city-state. The proxenos was usually a wealthy merchant who had socio-economic ties with another city and who helped its citizens when they were in trouble in his own city. The position of proxenos was often hereditary in a particular family. Modern honorary consuls fulfill a function that is to a degree similar to that of the ancient Greek institution.

Historical development of the term consular

Consuls were the highest magistrates of the Roman Republic and Roman Empire. The term was revived by the Republic of Genoa, which, unlike Rome, bestowed it on various state officials, not necessarily restricted to the highest. Among these were Genoese officials stationed in various

Mediterranean ports, whose role included duties similar to those of the modern consul, i. e. helping Genoese merchants and sailors in difficulties with the local authorities.

The *c*onsolat de mar was an institution established under the reign of Peter IV of Aragon in the fourteenth century, and spread to 47 locations throughout the Mediterranean. It was primarily a judicial body, administering maritime and commercial law as Lex Mercatoria. Although the consolat de mar was established by the Corts General (parliament) of the Crown of Aragon, the consuls were independent from the King. This distinction between consular and diplomatic functions remains at least formally to this day. Modern consuls retain limited judicial powers to settle disputes on ships from their country notably regarding the payment of wages to sailors.

The consulado de mercaderes was set up in 1543 in Seville as a merchant guild to control trade with Latin America. As such, it had branches in the principal cities of the Spanish colonies. The connection of "consul" with trade and commercial law is retained in French. In Francophone countries, a *juge consulaire* (consular judge) is a non-professional judge elected by the chamber of commerce to settle commercial disputes in the first instance in France, sitting in panels of three; in Belgium, in conjunction with a professional magistrate. The office of a consul is a **consulate** and is usually subordinate to the state's main representation in the capital of that foreign country (host state), usually an *embassy* or between Commonwealth countries high commission. Like the terms *embassy* or *high commission*, *consulate* may refer not only to the office of consul, but also to the building occupied by the consul and their staff. The consulate may share premises with the embassy itself.

2.4.1 The Role of Consular Officer

Consuls of various ranks may have specific legal authority for certain activities, such as notarizing documents. As such, diplomatic personnel with other responsibilities may receive consular letters patent. Aside from those outlined in the Vienna Convention on Diplomatic Relations, there are few formal requirements outlining what a consular official must do. For example, for some countries, consular officials may be responsible for the issue of visas; other countries may limit consular services to providing assistance to compatriots, legalization of

documents, etc. Nonetheless, consulates proper will be headed by consuls of various ranks, even if such officials have little or no connection with the more limited sense of consular service.

Activities of a consulate include protecting the interests of their citizens temporarily or permanently resident in the host country, issuing passports; issuing visas to foreigners and public diplomacy. However, the principal role of a consulate lies traditionally in promoting trade assisting companies to invest and to import and export goods and services both inwardly to their home country and outward to their host country. Although it is not admitted publicly, consulates, like embassies, may also gather intelligence information from the assigned country.

The Vienna Convention on Consular Relations is a product of the work of the International Law Commission. Article 41 was drafted by the ILC and the ILC commentary sheds a bit of light on the origins of that provision. Essentially, the ILC was seeking to settle a matter on which there had been divided practice historically. However, Art. 41 in providing for a degree of personal inviolability of consular officials sought to build on provisions in numerous consular conventions providing for such inviolability. These conventions provided for personal inviolability except in cases of offences of a serious nature. However, the conventions expressed this idea of offences of a serious nature in different ways. Sometimes they simply provided an exception to personal inviolability in cases of "serious criminal offences; sometimes the exception was for offences punished as felonies; and sometimes the exception applied to offences to which a particular length of sentence or punishment was attached. The ILC itself initially had two options for this provision. In one option, arrest would have been permissible where the maximum sentence was not less than 5 years and the second option, was the one finally adopted an exception for grave crimes. This option was adopted because most states that commented on the draft preferred it.

The privilege under this paragraph is granted to consular officials by reason of their functions. The arrest of a consular official hampers considerably the functioning of the consulate and the discharge of the daily tasks which is particularly serious inasmuch as many of the matters calling for consular action will not admit of delay e.g., the issue of visas, passports and other travel documents; the legalization of signatures on commercial documents and invoices; various activities connected with shipping, etc.. Any such step would harm the interests, not only of the sending State, but also of the receiving State, and would seriously affect consular relations

between the two States. It would therefore be inadmissible that a consular official should be placed under arrest or detention pending trial in connexion with some minor offence.

Consular jurisdiction today is regarded as being of historical significance only. However, remnants of it may be found in contemporary international law. Consular jurisdiction excluded the judicial competence of the receiving State with regard to the nationals of the sending State. Foreigners were subordinated to consuls who exercised judicial authority. Such exclusion infringed the sovereignty of the receiving State in the contemporary meaning of this notion.2 Consular jurisdiction was a feature of those times when personalism, as opposed to territorialism.

The need for states to relate and communicate with one another and with various International organisations led to the need for diplomatic staff and these persons represent their states in various ways, they thus benefit from the legal principle of State sovereignty. Diplomacy is an ancient institution and constitutes one of the earliest.

2.5 Marine Notes of Protest

i. Different laws, union contracts, collective bargaining agreements, and treaties and consular conventions cover marine notes of protest. Since consular involvement occurs so infrequently,

ii. Marine Notes of Protest, although rarely filed in the United States any more, do exist in other countries. They are used to report any incident that occurred during the voyage and may be used by the operators, or insurance companies, in future claims regarding damage to the ship or cargo caused by conditions beyond the master's control.

v. Taking of a marine note of protest is a notarial service for the owner and the operators of a vessel. You are not to investigate the protest. .

iv. There is no requirement that a marine note of protest be filed under any circumstances, although the master, owner, operators or agent of a vessel may elect to do so. If so, you must require the master or an officer designated in writing by the owner, agent or the operators of a vessel to make the protest in person before you. You may not waive the personal appearance by the master/officer without the specific authorization of the ship's owner, operators or agent.

e. Information may be taken in the form of a letter or memorandum indicating:

i. The date and place of the protest;

ii. The name of the protester (master);

iii. Name of the vessel and its tonnage;

iv. Type of cargo;

v.The date of the occurrence and date of arrival in local port; and

vi. The nature of the incident.

vii.Sign and notarize the "Note of Protest."

2.6 Summary

The MLC 2006 sets minimum requirements to improve seafarers' working and living conditions including recruitment and placement practices, conditions of employment, hours of work and rest, repatriation, annual leave, payment of wages, accommodation, recreational facilities, food and catering, health protection. Maritime Labour Convention according to the ILO or International Labour Organisation, provides a broad perspective to the seafarer's rights and fortification at work. The maritime regulation will finally enter into force on August 20th, 2013. Nearly 1.2 million seafarers will be affected by the terms and conditions of this human rights act, which will lay down a set of regulations for protection at work, living conditions, employment, health, social security and similar related issues. On the basis of Maritime Labour Convention, the Seafarer's Employment Contracts will be implemented and mandated against nullifying the present employment contracts. MLC will be similar to the other statutory certifications such as ISM and ISPS onboard ships and the certificate will have 5 years of validity with interim, initial and intermediate surveys. It is imperative for all seafarers to understand the importance of Maritime Labour Convention 2006.

Under MLC, 2006, the ship owners are required to submit a DMLC or Declaration of Maritime Labour Compliance to their respective flag states which form a party to the convention. The flag states will accordingly issue the MLC Certificate to the fleet flying their flag following, surveys,

inspections, paperwork and approvals. The certificate would be then required to be posted at a conspicuous position onboard.

A consul is a public officer who resides in a foreign country, principally at sea-ports and in commercial centers, to represent there the interests of his government and his fellow-countrymen. His duties are partly administrative and partly judicial. He is charged with a supervision of such ships of his nationality as arrive at the district of his consulate, receiving the ships papers, settling the disputes between the officers and men, especially guarding the rights of seamen, supervising the enlistment and discharging of sailors, and securing their pay; performing also such notarial functions as may be necessary on the entrance, re-fitting, and departure of a vessel. In maintaining their authority over captains and seamen, our consuls in most countries have the right to demand the assistance of the local police; thus being armed with full power to execute their duties. Consuls are also empowered to issue and *visa* passports of United States citizens, proved so to be to their satisfaction; but they may not *issue* passports, if residing in a country where there is a resident minister of the United States. Among their duties are those of registering births, marriages, and deaths of American citizens; arbitrating between Americans and settling disputes; serving as administrators of estates; watching over the commercial interests of the United States, seeing to it that commercial treaties are not violated, gathering and reporting commercial facts and statistics. The principal commercial function of a consul residing in an inland town is to examine and verify invoices of goods destined to be entered at the United States custom-houses.

SELF ASSESSMENT EXERCISE: Who is a consular

2.7 References/Further Reading/Web Resources

Seafarers' identity documents: New requirements enter into force triggering renewed momentum for the ratification of Convention No. 185 - Amended version of the Seafarers' Identity Documents Convention

ILO Seafarers' Identity Documents Information

Meeting of Experts concerning Convention No. 185 on Seafarers' Identity Documents 2015

2.8 Possible answer to self-assessment exercise: A **consul** is an official representative of the government of one state in the territory of another, normally acting to assist and protect the citizens of the consul's own country, as well as to facilitate trade and friendship between the people of the two countries.

Unit 3 Marine Pollution, Oil and Chemical Spills

3.1 Introduction

Ships can pollute waterways and oceans in many ways. Oil spills can have devastating effects. While being toxic to marine life, polycyclic aromatic hydrocarbons, found in crude oil, are very difficult to clean up, and last for years in the sediment and marine environment. Oil spills are probably the most emotive of marine pollution events. However, while a tanker wreck may result in extensive newspaper headlines, much of the oil in the world's seas comes from other smaller sources, such as tankers discharging ballast water from oil tanks used on return ships, leaking pipelines or engine oil disposed of down sewers.

Discharge of cargo residues from bulk carriers can pollute ports, waterways, and oceans. In many instances vessels intentionally discharge illegal wastes despite foreign and domestic regulation prohibiting such actions. An absence of national standards provides an incentive for some cruise liners to dump waste in places where the penalties are inadequate. It has been estimated that container ships lose over 10,000 containers at sea each year usually during storms. Ships also create noise pollution that disturbs natural wildlife, and water from ballast tanks can spread harmful algae and other invasive species. Ballast water taken up at sea and released in port is a major source of unwanted exotic marine life.

3.2 Learning Outcomes

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

i.The nature and meaning of Pollution

ii.Explain the types of maritne pollution

iii.Marine Pollution cause by ships.

iv.You will have an in-depth knowledge of the Legal regime of preventing pollution at sea and the consequences as to liability for chemical and oil pollution.

3.3 The Definition and Types of Marine Pollution

Marine pollution occurs when harmful effects result from the entry into the ocean of chemicals, particles, industrial, agricultural and residential waste, noise, or the spread of invasive organisms. Eighty percent of marine pollution comes from land. Air pollution is also a contributing factor by carrying off pesticides or dirt into the ocean. Land and air pollution have proven to be harmful to marine life and its habitats. The pollution often comes from nonpoint sources such as agricultural runoff, wind-blown debris, and dust. Pollution in large bodies of water can be aggravated by physical phenomena like the biological effects of Langmuir circulation. Nutrient pollution, a form of water pollution, refers to contamination by excessive inputs of nutrients. It is a primary cause of eutrophication of surface waters, in which excess nutrients, usually nitrates or phosphates, stimulate algae growth. Many potentially toxic chemicals adhere to tiny particles which are then taken up by plankton and benthic animals, most of which are either deposit feeders or filter feeders. In this way, the toxins are concentrated upward within ocean food chains. Many particles combine chemically in a manner highly depletive of oxygen, causing estuaries to become anoxic. When pesticides are incorporated into the marine ecosystem, they quickly become absorbed into marine food webs. Once in the food webs, these pesticides can cause mutations, as well as diseases, which can be harmful to humans as well as the entire food web. Toxic metals can also be introduced into marine food webs.

Marine pollution was a major area of discussion during the 1972 United Nations Conference on the Human Environment, held in Stockholm. That year also saw the signing of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, sometimes called the London Convention. The London Convention did not ban marine pollution, but it established black and gray lists for substances to be banned (black) or regulated by national authorities gray. Cyanide and high-level radioactive waste, for example, were put on the black list. The London Convention applied only to waste dumped from ships, and thus did nothing to regulate waste discharged as liquids from pipelines.

A majority of the ship-sourced oil and chemical pollution that enters the marine environment comes from refuelling, vessel maintenance and bilge discharges. Operators must have systems and processes in place to ensure that they use and dispose of all on-board oils and chemicals

correctly and safely. Once these pollutants enter our waterways they have the potential to impact on many aquatic organisms, which can have a flow-on effect through the whole ecosystem. Contaminated fish stocks, crustaceans such as crabs, and filter feeders such as oysters and mussels can accumulate these harmful chemicals and pass them onto humans, if consumed. Keeping bilges clean helps to reduce oil and chemical pollution. Boat owners should consider fitting filters to automatic bilge pumps to reduce the accidental discharges and use absorbents to mop up excess oil or fuel, wash bilges with biodegradable degreasers or detergents and dispose of any cleaning residues ashore. It is important to note that the use of dispersants or other cleaning agents can increase the toxic effects of oil spills so do not use them in the aquatic environment.

3.3.1 Types of Pollution from Seagoing Vessels

i. Ballast Water Pollution:

Cruise ships, like other big vessels, use a huge amount of ballast water to stabilise the ship while travelling. As these vessels travel for a longer period, the Ballast water is often filled from one region and discharged in another whenever required. The amount of ballast water released typically is around 1,000 metric tons. This discharge of the ballast water from the cruise ships is a major cause of cruise pollution. Since the ballast water contains microbes and micro-organisms in addition to vegetation and other sea-animals, the pollution aspect is mainly caused by the local species and marine life. One very good example of such ecological damage would be the huge swell of the population of jellyfish in the Black Sea.

ii. Noise pollution

The noise produced by the passing ships affects badly the environment as it disturbs the marine ecosystem. Unlike other ships, Cruise ships contribute heavily to marine noise pollution as the windows of noise pollution are high in cruise ships. In addition to the noise pollutions from the ship’s machinery, cruise ships produce more noise thanks to the entertainment activities on board. These noises disturb the marine animals and mammals, including killer whales and dolphins, whose sensitive hearing gets harmed and debilitated, often leading to their unwanted death and an overall loss to the eco-system.

iii. Grey Water Pollution

Unlike other vessels, cruise ships dump more wastewater offshore (after passing through a treatment plant, especially Grey water that comes from sinks, laundries, showers and galleys abroad the vessel. Thus, even the most regular activity onboard the cruise ship, such as cleaning utensils and doing the laundry, causes cruise ship pollution. Classified under the head of the grey water, this water accumulation contains not just harmful chemicals but sometimes even metals and minerals too. The potency of grey water harming the marine environment is greater because of its high concentration in the oceanic waters. Studies show that a large cruise ship releases around one million gallons of grey water during a single week's voyage.

iv. Blackwater/ Sewage Pollution

What happens when someone flushes the loo on a cruise ship? The answer is very simple. The ship dumps human waste into our oceans after passing through sewage treatment plant. And, we have larger cruise ships that can accommodate up to 6680 passengers and 2200 crew members. Yes, the next huge cruise pollution cause is from sewage. Classified as Blackwater, around 210,000 gallons of human sewage is deposited into the ocean by cruise ships during a week's voyage. Sewage includes waste from the toilets and the health facilities provided in the cruise ship. Such sewage is rich in bacteria and algae adversely affecting the oceanic life-forms and the entire marine eco-system.

iv. Chemical Pollution

The entry of chemicals from the cruise ships to the oceans through the grey water or the black water channels is another threat the cruise ships make to the marine ecosystem. Cruise ships emit toxic chemicals from batteries, dry cleaning and industrial products, chemicals for daily operations, and several other chemicals past their expiry, polluting the waters the ships travel. Environmentalists argue that these chemicals possess a huge threat to the lives of the marine creatures and life-forms.

v.Oil Pollution/ Bilge Oil Pollution

Oil pollution from the shipping industry is considered to be the main reason for the increased level of marine pollution. Cruise ships, huge in size compared to other vessels, end up burning more heavy fuel oil, one of the dirtiest fossil fuels available in the market. This oil contains dangerous levels of sulfur and heavy metals etc. It is estimated that the cruise ships use, on average, 150 tons of heavy fuel oil every day. With the bilge oil mixing with oceanic water, the use of this oil causes serious marine pollution. Faulty engine system and improper repair work are two areas through which oil could leak and mix with the oceanic water. Collisions and accidents also act as a reason for such oil pollution.

3.4 Liability and Compensation for Marine Pollution

International Maritime Organization is primarily concerned with the safety of shipping and the prevention of marine pollution, but the Organization has also introduced regulations covering liability and compensation for damage, such as pollution, caused by ships. The **Torrey Canyon** disaster of 1967, which led to an intensification of IMO's technical work in preventing pollution, was also the catalyst for work on liability and compensation. An ad hoc Legal Committee was established to deal with the legal issues raised by the world's first major tanker disaster and the Committee soon became a permanent subsidiary organ of the IMO Council, meeting twice a year to deal with any legal issues raised at IMO.

The main issues raised by the **Torrey Canyon** were: who is to be held responsible for damage caused by oil pollution, the basis for determining liability and the level of compensation for damage. There were already well-established procedures for settling claims resulting from, for example, a collision between two ships. Generally speaking, only they are to blame, and only the ships, cargo, and those on board are likely to suffer damage or injury. But a major pollution disaster, like the Torrey Canyon, involves third parties and the damage caused can be enormous. It is important to establish a system which enables liability to be determined and ensures that any compensation due is paid.

In 1969, a conference convened by IMO adopted a convention dealing with the civil liability of

the ship or cargo owner for damage suffered as a result of a pollution casualty. The purpose of the International Convention on Civil Liability for Oil Pollution Damage was to ensure that adequate compensation was paid to victims and the liability was placed on the shipowner.

Some delegates to the 1969 Conference felt that the liability limits established were too low, and that the compensation made available in some cases, therefore, might prove to be inadequate. As a result, another conference was convened by IMO in 1971 which resulted in the adoption of a convention establishing the International Fund for Compensation for Oil Pollution Damage. The Convention came into force in 1978 and the Fund has its headquarters in London. Unlike the Civil Liability Convention, which puts the onus on the shipowner, the Fund is made up of contributions from oil importers. The idea is that if an accident at sea results in pollution damage which exceeds the compensation available under the Civil Liability Convention, the Fund will be available to pay an additional amount, while the burden of compensation will be spread more evenly between ship-owner and cargo interest.

The limits of liability in the two conventions were greatly increased through amendments adopted by a conference held in 1992, and again during the Legal Committee's 82nd session held from 16-20 October 2000. In May 2003, a Diplomatic Conference adopted the 2003 Protocol on the Establishment of a Supplementary Fund for Oil Pollution Damage. The Protocol establishes an International Oil Pollution Compensation Supplementary Fund, the object of which is to provide an additional, third tier of compensation for oil pollution damage. Participation in the Supplementary Fund is optional and is open to all Contracting States to the 1992 Fund Convention. However, those States that do not join will continue to enjoy their present cover under the current CLC/Fund regime.

In 1974, IMO turned its attention to the question of passengers and their luggage and adopted a convention which establishes a regime of liability for damage suffered by passengers carried on seagoing vessels. The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea declares the carrier liable for damage or loss suffered by passengers if the incident is due to the fault or the neglect of the carrier. The limit of liability was set at 46,666 Special drawing Right (SDR) per carriage. In 1990 a Protocol was adopted to the Athens

Convention raising the amount of compensation payable. For death or personal injury, for example, the limit was raised to 175,000 SDR. In October 2002 a Diplomatic Conference adopted a 2002 Protocol which totally revised the 1974 Convention, adopting much increased levels of liability, revising the basis of liability and introducing compulsory insurance.

The general question of limitation of liability for maritime claims was dealt with in a convention adopted in 1957, before IMO first met. As time went by, however, it became clear that the limits of liability established were too low and, in 1976, IMO adopted a new convention which raised the limits, in some cases by 300%. The Convention on Limitation of Liability for Maritime Claims specifies limits for two types of claim - those for loss of life or personal injury and property claims, such as damage to ships, property or harbour works. The compensation limits of this Convention were raised by means of a Protocol adopted in 1996.

In 1996, IMO adopted the Hazardous and Noxious Substance [HNS] Convention, which is based on the highly successful model of the Civil Liability and Fund Conventions. As with the original oil pollution compensation regime, the HNS Convention establish a two-tier system for compensation to be paid in the event of accidents at sea, in this case, involving hazardous and noxious substances, such as chemicals. However, it goes further in that it covers not only pollution damage but also the risks of fire and explosion, including loss of life or personal injury as well as loss of or damage to property.

By 2009, the HNS Convention had still not entered into force, due to an insufficient number of ratifications. A second International Conference, held in April 2010, adopted a Protocol to the HNS Convention 2010 HNS Protocol,that was designed to address practical problems that had prevented many States from ratifying the original Convention. In March 2001, IMO adopted a new International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, which established a liability and compensation regime for spills of oil, when carried as fuel in ships' bunkers. Previous regimes covering oil spills did not include bunker oil spills from vessels other than tankers. The convention is modeled on the International Convention on Civil Liability for Oil Pollution Damage, 1969. IMO's Legal Committee adopted a wreck removal convention by a Diplomatic Conference held from 14 to 18 May 2007.

Oil and chemical spill is the release of a liquid petroleum hydrocarbon into the environment, especially the marine ecosystem, due to human activity, and is a form of pollution. The term is usually given to marine oil spills, where oil is released into the ocean or coastal waters, but spills may also occur on land. Oil spills may be due to releases of crude oil from tankers, offshore platforms, drilling rigs and wells, as well as spills of refined petroleum products such as gasoline, diesel and their by-products, heavier fuels used by large ships such as bunker fuel, or the spill of any oily refuse or waste oil. Oil spills can have disastrous consequences for society; economically, environmentally, and socially. As a result, oil spill accidents have initiated intense media attention and political uproar, bringing many together in a political struggle concerning government response to oil spills and what actions can best prevent them from happening

Largest oil spills

Crude oil and refined fuel spills from tanker ship accidents have damaged vulnerable ecosystems in Alaska, the Gulf of Mexico, the Galapagos Islands, France, the Sundarbans, Ogoniland, and many other places. The quantity of oil spilled during accidents has ranged from a few hundred tons to several hundred thousand tons e.g., *Deepwater Horizon* Oil Spill, Atlantic Empress, Amoco Cadiz, *but volume is a limited measure of damage or impact. Smaller* spills have already proven to have a great impact on ecosystems, such as the Exxon Valdez oil spill because of the remoteness of the site or the difficulty of an emergency environmental response.

Since 2004, between 300 and 700 barrels of oil per day have been leaking from the site of an oil-production platform 12 miles off the Louisiana coast which sank in the aftermath of Hurricane Ivan. The oil spill, which officials estimate could continue throughout the 21st century, will eventually overtake the 2010 BP Deepwater Horizion disaster as the largest ever, but there are currently no efforts to cap the many leaking well heads.

Oil spills at sea are generally much more damaging than those on land, since they can spread for hundreds of nautical miles in a thin oil slick which can cover beaches with a thin coating of oil. These can kill seabirds, mammals, shellfish and other organisms they coat. Oil spills on land are more readily containable if a makeshift earth dam can be rapidly bulldozed around the spill site before most of the oil escapes, and land animals can avoid the oil more easily.

The International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978. MARPOL 73/78. MARPOL is short for International Convention for the Prevention of Pollution from Ships and 73/78 short for the years 1973 and 1978) is one of the most important international marine environmental conventions. It was developed by the International Maritime Organization with an objective to minimize pollution of the oceans and seas, including dumping, oil and air pollution.

3.5 Liability and Compensation for Oil Pollution

International Maritime Organization is primarily concerned with the safety of shipping and the prevention of marine pollution, but the Organization has also introduced regulations covering liability and compensation for damage, such as pollution, caused by ships. The Torrey Canyon disaster of 1967, which led to an intensification of IMO's technical work in preventing pollution, was also the catalyst for work on liability and compensation for maritime pollution.

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convention by a Diplomatic Conference held from 14 to 18 May 2007.

SELF ASSESSMENT EXERCISE 1. Define maritime pollution
SELF ASSESSMENT EXERCISE 2. List types marine pollution

3.6 Summary

The International Convention on Civil Liability for Oil Pollution Damage, 1969, renewed in 1992 and often referred to as the CLC Convention, is an international maritime treaty admistered by the International Maritime Organization that was adopted to ensure that adequate compensation would be available The owner of a ship at the time of an incident causing oil pollution damage is to be liable for any damage so caused, unless the incident is caused by act of war, exceptional natural phenomenon, malicious act of a third party or negligence of a Government or other authority in maintaining navigational aids art. 3. Contributory liability on the part of the plaintiff may be established in certain cases art. 3. Where two or more ships have caused such damage, the owners are to be jointly and severally liable (art. 4). Limits to liability are established article 5.

One of the biggest threats to our oceans is man-made pollution. Discarded plastics and other residential waste, discharge from pesticides and industrial chemicals eventually find their way into the sea with devastating consequences for marine life and the habitats they depend on. Shipping accidents and oil spills add additional toxins to the mix. It is estimated that a staggering 80 per cent of marine pollution originates on land. Land-based pollutants – such as agricultural run-off and nutrients from sewage outflows - are contributing to ocean ‘dead zones’ – areas which can no longer sustain life because they have low or zero oxygen. There are now some 500 of these dead zones around the world.

The Declaration on the Human Environment, Stockholm Declaration. The United Nations Conference on the Human Environment, held in Stockholm in June 1972. Both documents have special sections on marine pollution. This conference was one of the first attempts of the integrated approach to the global environmental issues. It was stressed in the Principle 7 of the Stockholm Declaration on the Human Environment, 1972 that states shall take all possible steps to prevent pollution of the seas by substances that create hazards to human health, harm living

resources and marine life, damage amenities or interfere with other legitimate uses of the sea. Principle 22 addresses the issue of liability and compensation for marine pollution damage requiring from states further cooperation in order to develop rules of international law regarding this issue. Action Plan consisting of 109 recommendations proposes to address pollution by means of the environmental assessment, environmental management and supporting measures.

3.7 References/Further Reading/Web Resources

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3.8 Possible answer to Self assessment exercise 1. Marine pollution is a combination of chemicals and trash, most of which comes from land sources and is washed or blown into the ocean. This pollution results in damage to the environment, to the health of all organisms, and to economic structures worldwide.

Unit 4: Marine insurance and Policy

4.1 Introduction

Marine Insurance is a type of insurance that covers cargo losses or damage caused to ships, cargo vessels, terminals, and any transport in which goods are transferred or acquired between different points of origin and their final destination. Marine insurance can protect commercial ships against cargo loss and damage. Marine insurance is basically insurance relating to boats and travel of cargo over oceans. The two main categories of marine insurance are cargo insurance and hull insurance. Marine insurance is further broken down into three categories of insurance. These are ship or hull insurance, cargo insurance and freight insurance. Inland marine insurance is a type of business insurance that helps cover products, materials and equipment while they are transported on land, such as by truck or train. This coverage is meant to help protect business property that is movable or used for transportation or communication purposes.

4.2 Learning Outcomes

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

i.learn more of marine insurance and marine policy which is the contract of agreement of marine insurance and you will be able to:

ii.Explain marine insurance

ii. You will be able to explain the difference between marine insurance and policy

iv.Able to list types of policy

v.You will have a deep knowledge of maritime law and the properties that must be insure before embarking on a sea voyage.

4.3 Definition and Nature of Marine Insurance and Policy

Marine insurance covers the loss or damage of ships, cargo, terminals, and any transport by which the property is transferred, acquired, or held between the points of origin and the final destination. Cargo insurance is the sub-branch of marine insurance, though Marine insurance also includes Onshore and Offshore exposed property, container terminals, ports, oil platforms, pipelines, Hull, Marine Casualty, and Marine Liability. When goods are transported by mail or courier, shipping insurance is used instead.

Marine insurance was the earliest well-developed kind of insurance, with origins in the Greek and Roman marine loan. It was the oldest risk hedging instruments our ancestors used to mitigate risk in medieval times were sea/marine loans, commenda contract, and bill of exchanges. Separate marine insurance contracts were developed in Genoa and other Italian cities in the fourteenth century and spread to northern Europe. Premiums varied with intuitive estimates of the variable risk from seasons and pirates. Modern marine insurance law originated in the Lex mercatoria law merchant. In 1601, a specialized chamber of assurance separate from the other Courts was established in England. By the end of the seventeenth century, London's growing importance as a centre for trade was increasing demand for marine insurance. In the late 1680s, Edward Lloyd opened a coffee house on Tower Street in London. It soon became a popular haunt for ship owners, merchants, and ships' captains, and thereby a reliable source of the latest shipping news.

Lloyd's Coffee House was the first marine insurance market. It became the meeting place for parties in the shipping industry wishing to insure cargoes and ships, and those willing to underwrite such ventures. These informal beginnings led to the establishment of the insurance market Lloyd's of London and several related shipping and insurance businesses. The participating members of the insurance arrangement eventually formed a committee and moved to the Royal Exchange on Cornhill as the Society of Lloyd's. The establishment of insurance companies, a developing infrastructure of specialists (such as shipbrokers, admiralty lawyers, bankers, surveyors, loss adjusters, general average adjusters, *et al.*), and the growth of the British Empire gave English law a prominence in this area which it largely maintains and forms the basis of almost all modern practice. Lord Mansfield, Lord Chief Justice in the mid-eighteenth century, began the merging of law merchant and common law principles. The growth of the London insurance market led to the standardization of policies and judicial precedent further developed marine insurance law. In 1906 the Marine Insurance Act codified the previous common law; it is both an extremely though and concise piece of work. Although the title of the Act refers to marine insurance, the general principles have been applied to all non-life insurance. In the 19th century, Lloyd's and the Institute of London Underwriters (a grouping of London company insurers) developed between them standardized clauses for the use of marine insurance, and these have been maintained since. These are known as the Institute Clauses because the

Institute covered the cost of their publication. Out of marine insurance, grew non-marine insurance and reinsurance. Marine insurance traditionally formed the majority of business underwritten at Lloyd's. Nowadays, Marine insurance is often grouped with Aviation and Transit cargo risks, and in this form is known by the acronym 'MAT'.

4.4 Types of Marine Property Coverage

i. Hull protects the vessel during transportation within a specific geographical location. Out-of-region and international locations are typically excluded unless stated.

ii. Cargo reimburses for the value of incoming and outgoing freight. For example, if Cregg's inventory costs $25,000, he would receive a check for that amount if the ship sank during transportation.

iii. Freight Revenue pays for profit in the event of a loss. For example, if the cost of inventory is $25,000 and Cregg's profit would have been $10,000, the insurance company would pay $10,000 under this coverage.

4.5 Types of Maritime Policy

Any insurance is designed to manage risks in the event of unfortunate incidents like accidents, damage to the property and environment or loss of life. When it comes to Ships, the stakes are higher as all factors are involved in the operation, i.e. risk of losing valuable cargo or expansive ships, the risk of damage to the environment due to oil pollution and risk of losing precious lives of seafarers due to accidents. The three most common types of marine insurance are hull, cargo, and protection and indemnity (P&I). There is no such thing as a standard marine insurance policy and not all marine insurance companies insure against the same risks in the same type of policy
Marine Insurance is a type of insurance policy that provides coverage against any damage/loss caused to cargo vessels, ships, terminals, etc. in which the goods are transported from one point of origin to another. t is generally taken by ship owners. Along with hull insurance, one should also go for machinery insurance to cover the machinery of the ship. It insures the applicant against operational, mechanical and electrical damage to the ship machinery.

i. Time Policy

Under this policy, the subject-matter is insured for a definite period of time, e.g., from 6 a.m. of 1st January 1976 to 6 a.m. of 1st January 1977. The policy is generally taken for one year although it may be for less than one year. This policy is commonly more used for hull insurance than for the cargo insurance. The policy may cover while navigating the vessel or while under construction. Risks covered under construction are for more than 12 months. There are standard clauses in relation to freight, premium, interests, etc., which are added to this policy. The time policy may be taken in case of goods and other movable vessels.

ii. Voyage and Time Policy or mixed Policies

In this policy, the elements of voyage policy and of time policy are combined ‘in under this policy. The reference is made certain period after completion of the voyage. For example, 24 hours after arrival. It may be beneficial to the hull as well as to cargo insurance.

iii. Valued Policy

Under this policy, the value of the loss to be compensated is fixed and remains constant throughout the risk except where there are fraud and excessive over-valuation. The value of the subject-matter is agreed between the insurer fend the assured at the time of taking the insurance. It is also called insured value or agreed value. It forms the measure of indemnity at the time of loss. The insured value is not necessarily the actual value. It may be total of invoice, e.g., cost of goods, freight; shipping charges, insurance and a certain percentage of margin (generally 10 percent) to cover anticipated profits.

iv. Unvalued Policy

When the value of the policy is not determined at the time of commencement of risk but is left to be valued when the loss takes place. The value thus left to be decided later on is called the insurable value or unvalued or valuable policy. In deciding the value, the invoice cost, freight, shipping and insurance charges are included and no margin for anticipated profit is added. Usually, unvalued policies are not common in marine insurance because the evaluation of loss at the time of damage poses a difficult problem. It is extremely difficult when consignment goes nearer the port of destination.

In-hull insurance, the insurable value is determined taking into account the value of the ship at the commencement of risk including provision and, stores for officers and crew plus the charges of insurance. In insurance on freight whether paid in advance or otherwise, the insurable value is the gross amount of freight plus the charges of insurance. Similarly, in cargo insurance, it would be the cost of goods plus expenses and insurance charges. A limitation of insurable value is desirable not only to fix the measure of indemnity under an unvalued policy but also to provide an approximate basis for the calculation of value in a valued policy.

v. Floating Policy

This policy describes the general terms and leaves the amount of each shipment and other particulars to be declared later on. The declaration is made in order of dispatch of shipment. The policy is taken for around large sum which is specified at each declaration and is attached to each shipment. With each declaration, the amount will be reduced until it is exhausted when the insured sum is said to be 'closed' and the policy is fully declared' or, run off. The most popular form of contract is 'Open Cover'. It is an agreement between the insured and the insurer by which the assured on his part agrees to declare, and the insurer on his part agrees to accept all the shipments falling within the scope of the 'open cover' Which is merely an original ship.

It is not a legal contract of marine insurance and suffers from the same legal disability as the 'original 'ship'. However, the insured and the insurers are honor bound. To give 'Open Cover' a legal form, a policy is issued for the purpose. Separate policies are not issued in case of each shipment but only one policy is issued at the time of entering into a contract. All declarations are written on the back of the" policy. A classification clause is usually inserted in 'open cover' to provide the agreed rates of premium. Similarly, valuation clauses are also inserted to provide the basis for valuation in the event of loss taking place. This policy is suitable for a cargo-owner who makes regular shipments of cargoes. All his shipments are automatically covered as soon as the declarations are made. The floating policies are mostly used in the age of gigantic trade.

vi. Single Vessel and Fleet Policy

A ship or a fleet of ships is insured in a single policy. When one policy is assured, it is called single vessel policy and when a fleet of the ship is insured in the single policy, it is called a fleet

insurance policy. The advantages of the fleet policies are that even old and weak ships are also insured. This insurance facilitates the easy and smooth functioning of insurance benefits.

vii. Annual Policy

The Annual Policy is insured for a period of 12 months to cover goods belonging to the assured or held trust by the assured. The policy is not assignable or transferable. The policy is not allowed to be issued to transport operators/contractors, clearing, forwarding and commission agents or to freight forwarders. Nor can this policy be issued in Joint Names. The sum insured is the aggregate maximum estimated value on rail/road at any one time of all the insured goods in respect of a specified transit. The policy shall be subject to condition of average stipulating that if at the time of any loss damage, the total value of goods in transit is more than the sum assured in respect of that specified transit, the assured shall be considered as being his own insurer for the difference and shall bear a rateable proportion of the loss accordingly.

Sum assured under the Annual Policy shall stand; reinstated as from the time of the happening of an event giving rise to a valid claim and the assured shall remain responsible for a pro-rata additional premium for the remaining period of the policy on the amount reinstated continuing from the date of the loss.

viii. Free on Board Policy

The policy is arranged by the buyer overseas for his own account and benefit Risks under the buyer's policy commence on loading of the cargo on the overseas vessel because it is at that juncture of transit that the risk passes from the seller to the buyer. The covers start from the time the cargo leaves the warehouse until such goods are loaded on the ship. The policy also covers loss/damage reasonably attributable to craft, raft or lighter being stranded, grounded, and sunk or capsized.

ix. Block Policy:

Sometimes a policy is issued to cover both land and sea risks. If the goods are sent by rail or by truck to the departure, then it will involve risk on land also. One single policy can be issued to

cover risks from the point of dispatch to the point of ultimate arrival. This policy is called a Block Policy.

x. Fleet Policy

A policy may be taken up for one ship or for the whole fleet. If it is taken for each ship, it is called a single vessel policy. When a company purchases one policy for all its ships, it is called a fleet policy. The insured has an advantage of covering even old ships at an average rate of premium. This policy is generally a time policy.

4.6 Summary

Perils are risks. Insurance policies have covered and excluded perils. When Cregg receives his marine policy, it's imperative he review the policy to understand coverages and exclusions. Open cargo is another important term; it means the insurer agrees to pay for covered losses incurred for a specific period of time when the insured provides an average value and pays the premium. Cregg asks Paul to define and explain 'premium'. Premium represents the cost of coverage. Premiums are typically paid monthly, quarterly, or annually for most insurance policies. For marine insurance, the company may require a premium per shipment. A marine insurance policy covers the losses which are suffered when goods are moved from one place to another. The policy can be taken to cover the loss suffered by the goods being transported or to cover the vessel or vehicle in which transportation is taking place. A marine insurance policy, therefore, comes in many variants and the coverage depends on the variant selected. Here are the main types of marine insurance policies which are available in the market.

Marine insurance, contract whereby, for a consideration stipulated to be paid by one interested in a ship or cargo that is subject to the risks of marine navigation, another undertakes to indemnify him against some or all of those risks during a certain period or voyage. Marine insurance is the oldest form of insurance known. 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 self-insurance. Marine insurance in a discernibly modern form made its appearance in the Middle Ages in Europe; many of the medieval sea codes contained regulatory provisions. Until the 20th century it was a characteristic of marine

insurance that a substantial number of risks could not be covered, and this remains to some degree true in cargo policies customarily written to exclude losses under stated percentages. The theoretical basis for exclusion of certain risks is often said to be the furnishing of an inducement to the owner of property to look after it himself, as in the case of the deductible feature in the familiar automobile collision-insurance policy. Pressures from ship owners for comprehensive coverage have, however, gradually led to the inclusion of almost all risks: “collision and running down” clauses, war-risk riders, and “P. and I.” protection and indemnity insurance.

An appreciation of the part played by marine insurance is essential to an understanding of the shipping industry. With certain exceptions, such as claims for death and personal injury and claims of seamen for wages, the great majority of claimants have insured themselves. The shipowner carries hull insurance on his own ship and protects himself against claims by third parties under a variety of arrangements. Any case of property damage to a ship or its cargo or to ships in collision resolves itself into a settlement between insurance carriers.

SELF ASSESSMENT EXERCISE: Describe two marine policy.

SELF ASSESSMENT EXERCISE 2.Explain the meaning of Marine Insurance.
SELF ASSESSMENT EXERCISE 3.What the major things that are expected to be insured

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4.8 Possible answer to self exercise no 2: Marine Insurance is a type of insurance policy that provides coverage against any damage/loss caused to cargo vessels, ships, terminals, etc. in which the goods are transported from one point of origin to another.

MODULE 7: RULES FOR SECURING SAFETY AT SEA

Unit 1: Maritime Routes and Preventing Collision at Sea

1.1 Introduction

Shipping has been described by the International Maritime Organization as perhaps the most international of all the world's great industries, and also one of the most dangerous. The numerous safety features incorporated into modern ships did not come about by chance or simply by the foresight of the more diligent ship-owners. They resulted from rules imposed by classification societies and flag states, or by legislation. Otherwise, some ship-owners would have found it expedient not to incorporate them. Many of the safety initiatives were developed in the 19th and early 20th centuries. Currently, international shipping is facing severe risks from piracy and armed robbery, in response to which prudent ship-owners are voluntarily taking measures that may soon have to be enforced for the benefit of all. An indication of what the future holds may be gained from seeing how various safety issues for shipping have been addressed in the past.

Historically, seafarers were often exposed to the risk of their ships capsizing from being overloaded, because the degree of loading was left entirely to the shipowner. Efforts to prevent merchant ships from being overloaded were very haphazard until the Middle Ages, when enforcement measures were taken by the Venetian Republic, and in Northern Europe by the Hanseatic League; and later were imposed by the major maritime nations when longer voyages became commonplace. In response to appalling loss of life during the 19th century, rules governing construction and seaworthiness were also gradually developed. In 1835 a rule to avoid overloading, specifying a relationship between freeboard and the depth of the hold, was introduced by what was then Lloyd's Register of British and Foreign Shipping, for vessels registered with that organisation. By the Merchant Shipping Act of 1876 load lines became compulsory for all British ships; but it was not until 1894, when the position of the line was fixed, that the full benefit of what is known as the Plimsoll Line was felt. Eventually, international uniformity resulted from the 1930 and 1966 Load Lines Conventions.

1.2 Learning Outcomes

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

i.To explain the meaning of collision in maritime law.

ii.Know about Maritime collisions and rules of preventing collision at sea in order to ensure safety at sea.

Iii.List International maritime Routes of the world

iv.You will have a deep knowledge of the legal regime of preventing collision at sea.

1.3 Routes and Collision prevention

Maritime transportation, like land and air modes, operates on its own space, which is concomitantly geographical by its physical attributes, strategic by its control, and commercial by its usage. While geographical considerations tend to be constant in time (except for the seasonality of weather patterns), strategic and especially commercial considerations are much more dynamic. The physiography of maritime transportation is composed of two major elements, which are rivers and oceans. Although they are connected, each represents a specific domain of maritime circulation. The notion of maritime transportation rests on the existence of regular itineraries, better known as maritime routes. Maritime routes are a function of obligatory points of passage, which are strategic places, of physical constraints (coasts, winds, marine currents, depth, reefs, ice, and political borders. Shipping routes are the navigating lanes, both natural and man-made, in wide waterways oceans, lakes used by large vessels to connect major ports and carry cargo. These routes allow efficient, safe and economic transportation of goods while offering the shortest sailing times

One of major risk of merchant shipping is the danger of collision, in relation to which navigation and ship construction are key features. Navigation regulations for the avoidance of collisions have been in force since the late 18th century, and important safety construction features were imposed during the 1850s, including the requirement that iron ships be fitted with a collision bulkhead and an engine-room bulkhead. The introduction of navigation lights enabled the navigation regulations to be developed further, first by Trinity House and then by the Steam

Navigation Act of 1846. During the second half of the 19th century the rules went through several phases within the Merchant Shipping Acts and culminated in the Maritime Conventions Act 1911. Subsequently, navigation rules have been refined in various ways and are currently based on the 1972 Collision Convention, which came into force in 1977 and has been adopted by 154 countries for over 98 per cent of the world's tonnage.

The Safety of Life at Sea Convention (SOLAS) of 1914 highlighted the need for measures designed to minimise the risk and the consequences of fire, among other hazards. Implementation of its recommendations was prevented by the First World War, but subsequent Conventions-SOLAS 1929 and later-led to the introduction of more safety features, including the use of non-combustible construction materials. Even so, the measures proved to be inadequate for passenger ships, as illustrated by a series of fires during the 1960s. Later regulations imposed enhanced requirements for fire and explosion prevention, fire detection, and fire suppression. Recently, operators of some of the older passenger vessels faced a deadline of October 2010 for the removal of almost all combustible materials.

The first SOLAS Convention was a response to the sinking of the White Star liner *Titanic*, with the loss of over 1,500 lives. Among the concepts emerging from that Convention was that not only should merchant vessels carry an adequate number of lifeboats and lifejackets, but that the lifeboats should afford protection against the elements. Other measures related to stability standards, fire-resistant bulkheads, and the installation of a public address system. Later SOLAS Conventions called for additional safety equipment. Recently, attention has focused on ensuring that lifeboat release mechanisms are improved, to avoid further incidents when lifeboats have dropped unexpectedly, sometimes with fatal consequences.

The importance of having a competent and properly trained crew on board a merchant ship can scarcely be over emphasized. Indeed, it is estimated that the human factor is a significant component of around 80 per cent of all casualties at sea (2). This covers poor crew competence, lack of communication, lack of proper maintenance, lack of application of safety or other procedures, inadequate training, poor judgment, etc (3). The SOLAS Conventions; the Conventions on Standards of Training, Certification and Watch keeping; the International Safety Management Code; and the Merchant Shipping Acts, have all influenced the requirements for

crew competence and training, and are supplemented by procedures laid down by flag states and classification societies, among other bodies.

1.3 Principal Regulations Governing Maritime Safety

The following are the major international shipping conventions, adopted by the International Maritime Organization (and the International Labour Organization) concerning safety and pollution prevention. However, many other maritime instruments concerning more specific issues are also in force worldwide.

i. International Convention for the Safety of Life at Sea, 1974 lays down a comprehensive range of minimum standards for the safe construction of ships and the basic safety equipment e.g. fire protection, navigation, lifesaving and radio to be carried on board. SOLAS also requires regular ship surveys and the issue by flag states of certificates of compliance.

ii. International Convention for the Prevention of Pollution from Ships, 1973/1978 contains requirements to prevent pollution that may be caused both accidentally and in the course of routine operations. MARPOL concerns the prevention of pollution from oil, bulk chemicals, dangerous goods, sewage, garbage and atmospheric pollution, and includes provisions such as those which require certain oil tankers to have double hulls.

iii. Convention on the International Regulations for Preventing Collisions at Sea, 1972 lays down the basic "rules of the road", such as rights of way and actions to avoid collisions.

iv. International Convention on Load lines, 1966 sets the minimum permissible free board, according to the season of the year and the ship's trading pattern.

v. The International Ship and Port Facility Security Code, 2002 includes mandatory requirements to ensure ships and port facilities are secure at all stages during a voyage.

1.4 Requirements of License by Shipping Companies

i.The International Safety Management Code, 1993 effectively requires shipping companies to have a license to operate. Companies and their ships must undergo regular audits to ensure that a safety management system is in place, including adequate procedures and lines of communication between ships and their managers ashore.

ii.International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978/1995/2010) establishes uniform standards of competence for seafarers.

iii. The ILO Merchant Shipping (Minimum Standards) Convention, 1976**)** requires national administrations to have effective legislation on labour issues such as hours of work, medical fitness and seafarers' working conditions. This was superseded by the ILO Maritime Labour Convention, 2006) which entered into force on 30 August 2013.

The International Regulations for Preventing Collisions at Sea 1972 are published by the International Maritime Organization and set out, among other things, the rules of the road or navigation rules to be followed by ships and other vessels at sea to prevent collisions between two or more vessels. COLREGs can also refer to the specific political line that divides inland waterways, which are subject to their own navigation rules, and coastal waterways which are subject to international navigation rules. The Racing Rules of Sailing, which govern the conduct of yacht and dinghy racing under the sanction of national sailing authorities which are members of the International Sailing Federation are based on the COLREGs, but differ in some important matters such as overtaking and right of way close to turning marks in competitive sailing.

Prior to the development of a single set of international rules and practices, there existed separate practices and various conventions and informal procedures in different parts of the world, as advanced by various maritime nations. As a result, there were inconsistencies and even contradictions that gave rise to unintended collisions. Vessel navigation lights for operating in darkness as well as navigation marks also were not standardised, giving rise to dangerous confusion and ambiguity between vessels at risk of colliding.

The International Maritime Organization convention, including the almost four dozen rules contained in the international regulations, must be adopted by each member country that is signatory to the convention COLREG laws must exist within each jurisdiction. Thereafter, each IMO member country must designate an administration national authority or agency for implementing the provisions of the COLREG convention, as it applies to vessels over which the national authority has jurisdiction. Individual governing bodies must pass legislation to establish or assign such authority, as well as to create national navigation laws (and subsequent specific regulations) which conform to the international convention; each national administration is thereafter responsible for the implementation and enforcement of the regulations as it applies to ships and vessels under its legal authority. As well, each administrations are typically empowered to enact modifications that apply to vessels in waters under the national jurisdiction concerned, provided that any such modifications are not inconsistent with the COLREGs.

A commonly held misconception concerning the rules of marine navigation is that by following specific rules, a vessel can gain certain rights of way over other vessels. No vessel ever has absolute right of way over other vessels. Rather, there can be a give way"(burdened) vessel and a stand on (privileged) vessel, or there may be two give way vessels with no stand on vessel. A stand on vessel does not have an absolute right of way over any give way vessel, and is not free to maneuver however it wishes, but is obliged to keep a constant course and speed so as to help the give way vessel in determining a safe course. Furthermore, a stand on vessel may still be obliged under Rule 2 and Rule 17 to give way, in particular when a situation has arisen where a collision can no longer be avoided by actions of the give way vessel alone. For example, two power-driven vessels approaching each other head-to-head, are *both* deemed to be give way and both are required to alter course so as to avoid colliding with the other. Neither vessel has right of way.

1.5 Causes of Maritime Accidents

Shortcuts route: Yes –humans are notoriously lazy, so taking shortcuts comes naturally. However, when working onboard ship it isn't the wisest thing to try and be clever. Ooh I know a better way, usually ends in pain. Shortcuts don't really save much time or effort they do however, increase risk of injury, or worse, death. If you do think there is a better way, discuss it

raise it with senior officers or managers. You may be right, and will be thought of as clever sometimes it's good to talk the talk, before walking the walk.

Overconfidence: Confidence can be a good trait. But spice that up, even ever so slightly and you get overconfidence which is bad…and potentially lethal. There is a very fine line between overconfidence and arrogance, a feeling of invincibility. This is where people think, "It will never happen to me", they play fast and loose, and usually end up hurt.

Poor Seamanship: Whenever someone walks around a ship, they can get a pretty good idea of the prevailing attitude towards safety. Just by looking at how well areas are kept. Are records neat, tools put away, areas cleaned? The answers will point to a well-run ship, or a potentially dangerous one. Seamanship is about common sense, and that extends to dealing with hazards and threats at the earliest possible point. Be clean, be neat, be considered and careful – that is sensible…that is good seamanship.

Rushing: Similar to taking shortcuts, but perhaps even more dangerous. Rushing in and starting a task before getting all necessary information, or before planning or assessing the risk is potentially lethal. The quickest way to get a job done is to do it right the first time. To do it right the first time, you need to make sure that you have any and all pertinent information. So step back, think about what you are doing, and then do it well.

Neglecting Safety Rules and Instructions: This is probably the worst thing any seafarer, regardless of rank, experience or time served, can do. Deliberately neglecting set safety management procedures doesn't just endanger the individual, it endangers the whole crew, the ship, cargo and the company as a whole. Casually following safety procedures doesn't work either. Whether people like it or not, they are paid to follow safety procedures, not to make up their own.

Mental Distractions: Tiredness, stress, fatigue or just everyday distractions. Allowing focus to slip from the job or task in hand can be lethal. There is a job to be done, and it needs to be done right. If seafarers do feel they can't focus or manage to concentrate, then this needs to be flagged and action taken.

Failing to prepare: When seafarers begin a task without thinking through the process beforehand, or hastily start without any type of planning, they are setting themselves up for failure. Failing to prepare is preparing to fail. You wouldn't sail without a passage plan, nor should you start jobs without knowing what to do, when and how.

SELF ASSESSMENT EXERCISE. What the possible primary causes of maritime accidents in the world today?

1.6 Summary

First, you should know how most maritime collision cases are classified. Generally, ship disasters are labeled based on where the ship was hit. For example, with a side collision, one ship hits another ship on its side. With a stern collision, one ship runs into the back end of another. And with a bow-on collision, two ships are struck by each other on their front ends, much like a head-on collision in a car. There's also an allision, which is when one ship hits an object that isn't moving, such as a bridge. Any of these types of ship accidents at sea can lead to multiple injuries and deaths among passengers and ship employees alike, at which point a Houston maritime lawyer like Richard Schechter can provide legal guidance for those injured or killed.

There are numerous possible causes of ship accidents at sea that can cause injury or death, as well as damage to the vessel. A common reason for maritime collision cases is the weather. For instance, fog can make it hard to see well enough to properly navigate the ship, while heavy wind and rain can knock the ship around sufficiently to cause it to crash or even sink.

Maritime accidents caused by human error are also among the most common occurrences on the sea. More specifically, ship crews may be careless or negligent when they don't know how to use essential equipment before they go out to sea, or when they don't pay attention to maritime traffic and water conditions as they leave port. Unfortunately, maritime accidents caused by human error can lead to the injury or death of dozens of people at once.

Another cause of ship disasters is equipment failure, such as when the engine stops working, or navigation tools fail. The crew in charge of the ship should take the time to identify and fix

failing equipment before beginning a voyage. This means equipment malfunction is not entirely unavoidable and can often be caused by human error. Finally, infrastructure issues that have nothing to do with the ship itself such as bridge collapses can occasionally cause ship disasters at sea. But these are rare, especially compared to the frequency of maritime accidents caused by human error.

This Unit is the essential reference to the safe operation of all vessels at sea. The unit has provided a guide for all who need to practically and legally understand and comply with 'The Rules'. The unit also discuss the International Regulations for Preventing Collisions at Sea, with practical discussion of the implications of the rules included alongside all updates seen over the years, including the most recent amendments which came into force in December 2007. The unit sets out COLREGs' with clear explanation of their meaning, and gives detailed examples of how the rules have been used in practice by seafarers, as well as excerpts from court judgments to illustrate how they have been interpreted in practice. Written for seagoing engineers, navigating officers, senior crew, cadets and those in training, plus ship operators, marine lawyers and anyone concerned with the safe operation of shipping, this is an essential reference at sea and on shore.

A careful study of the accidents reveals that 85% of all accidents are either directly initiated by human error or are associated with human error by means of inappropriate human response. This is in line with the findings of recent that 80% of accidents at sea are caused by human error. Turkish Government is also aware that collision is the most common type of accident in Turkey and this was again confirmed by the latest data published by the Main Search and Rescue Coordination Centre of Turkey in 2009. Collision amounted to 60% of all accidents if grounding and contacts are included. The unit shows that mistakes are usually made not because of deficient or inadequate regulations, but because the regulations and standards, that do exist, are often ignored. International Maritime Organisations clearly indicates the causes of many of the accidents at sea are due to deficiencies in maritime education and training of seafarers or disregard for current standards and regulations. Majority of accidents and incidents are related to collisions or groundings.

As noted earlier above , measures that have been adopted internationally to avert a range of risks at sea, including those arising from overloading, collision, fire, equipment defects, and shortcomings in crew training, can be enforced by flag states, various branches of governments, and bodies such as classification societies and port authorities. It seems highly likely that laws and rules will ultimately exist, to ensure a comparable degree of safety for all ships in relation to piracy and armed robbery. Vessels making their way through ice need to be specially strengthened, and nowadays each classification society has a set of rules governing this.

There are dozens of causes for maritime accidents. Many of them are unavoidable like severe or extreme weather conditions. Other accidents are caused in part, or even entirely by negligence. If a maritime accident was the result of someone's negligence, workers injured in the accident can claim compensation for damages caused by the accident under the Jones Act and other Admiralty laws. A considerable portion of maritime accidents can be attributed directly to human error. Conditions at sea can be severe. This means that crew members need to be well trained, and alert to dangerous situations. This can prevent many accidents from happening. Unfortunately there are many factors at sea that can contribute to accidents with disastrous consequences.

1.7 References/ Further Reading/Web Resources

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St. John v. Paine, 51 U.S. 557". United States Reports. ***51****: 557*. December 1850. *Archived* from the original on 4 March 2016. *Retrieved 4 January 2016*. Among the nautical rules applicable to the navigation of sailing vessels are the following.

1.8 **Possible answer to self-assessment exercise: Primary Causes of Maritime Accidents**

Long hours of work, Lack of sleep leading to fatigue, inexperience, and lack of training, Long voyages, extended time at sea, Personal relationships aboard the vessel, Reckless behavior, including abuse of drugs and alcohol and poor decision making and/or negligence.

Unit 2 Ship Distress and Assistance at Sea

2.1 Introduction

The right of ships in distress to seek refuge in ports has been long recognized in customary international law. This right has been explicitly recognized in respect of preservation of human life, but there has been no legal consensus as regards its conflict with the interests of the coastal State. The debate on the right of ships in distress to enter a port of refuge or the right of a coastal State to refuse entry is of great importance in both public and private maritime law. While this debate has been ongoing, it was the aftermath of maritime disasters such as the Erika and Prestige that brought it into limelight. This has given birth to certain developments, including the International Maritime Organization's Guidelines on Places of Refuge and the EU legal regime contained in the Erika I package in addition to the contribution from various other sources. Notwithstanding these developments, the uncertainties in the legal regime governing this issue continue to prevail. The lack of clarity has lead to a 'better-on-someone-else's-doorstep' attitude of coastal States. The essential question that this paper seeks to address is whether a ship in distress has the right to enter a place of refuge and if yes, is the right absolute or conditional. This is not a question with definitive answers but one which accommodates varied approaches. In this context, it is worth mentioning that this paper uses "places of refuge", as used by the IMO in its Guidelines, to indicate a sufficiently sheltered area where a ship in need of assistance can stabilize its condition and reduce the hazards to navigation, and to protect human life and environment. This shall not necessarily be a port, although it is the case in most instances. As a corollary, this paper will also address the need, if any, for a specific regime governing ships in distress and places of refuge. This paper will address the jurisdictional aspect of this debate alone and not the issue of liability and compensation. The following three key texts define phases of emergency, distress, urgency *and* uncertainty'and the providers of SAR services need to be ready to respond appropriately to each. But the three texts each define these phases differently; and this disparity is most important when it comes to deciding on whether someone is in distress.

The Maritime SAR Convention defines the phase distress as a situation wherein there is reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.

Think of a drone**.** It can certainly crash, but no-one is in distress as a result unless they get hit by it. We are actually concerned about people aboard these craft. This is clearly what the Civil Aviation Convention means an aircraft and its occupants, but this formulation omits other sorts of craft, or people who have not been in an '*craft*' in the first place. The IMRF has argued that craft are superfluous in this context, and that the common definition of the distress phase should *be* a situation wherein there is a reasonable certainty that a person or persons are threatened by grave and imminent danger and require immediate assistance.

2.2 Learning Outcomes

At the end of this unit you will be able to

i.. Describe what is a ship distress

ii. learn about ships distress at sea and the need for others vessels to render assistance to a distress ship.

iii.. You will have a deep knowledge of rescue and search and the regime to offer assistance at sea.

2.3 Ship Distress in Maritime Law

A ship in distress faces imminent danger. The distress must be something of a grave necessity. The necessity must be urgent, and proceed from such a state of things as may be supposed to produce on the mind of a skilful mariner, a well-grounded apprehension of the loss of vessel and cargo, or of the lives of the crew. Situations of distress have arisen due to conditions on board, such as structural or equipment failure, the urgent need for fuel etc. International law, in general, does not grant a right of entry into ports for foreign ships unless there is a treaty conferring such right to the ships of the flag state concerned. The customary right of ships in distress to enter any port or place of refuge is an exception to this general rule. This customary right has not been codified in any international convention but has been widely acknowledged and defended by maritime States and jurists alike.

According to this exception, ships are entitled to certain humanitarian considerations and jurisdictional exemptions when they are forced into a foreign jurisdiction as a result of force majeure. Although the substantive law on the right of refuge is to be found in customary law, it has to be treated from the conventional law perspective as well for both are intertwined.

While the origin of this customary right is not evident, its early appearance in treaty law can be traced to the Jay Treaty of 1794 and since then it has found a place in various maritime treaties. This right is also implied in the LOSC provisions on the duty to render assistance to persons at sea, the privileges and immunities granted to foreign ships in case of force majeure. This is further confirmed by the provisions which make the exercise of the authority by coastal or port States over foreign ships conditional upon the fact that the ships must have entered their waters voluntarily.

In response to the Prestige disaster and in light of the absence of any global legal regime governing the issue of places of refuge for ships in distress, the EU legal regime on places of refuge was detailed in Directive 2002/59 on Community Vessel Traffic Monitoring and Information System, as amended by Directive 2009/17. The Erika I package was a small step wherein Article 20 of the Directive required Member States to draw up and implement plans and arrangements, taking into account environmental and operational constraints, to accommodate ships in distress in a place of refuge under their authority. These plans and procedures were to be established taking into account the relevant IMO Guidelines. The Directive, however, did not create a legal duty or obligation for coastal/port states to accept a ship in distress into a place of refuge, which remains under the authority of the competent port state authority. Nor did the Directive lay down the criteria or contents of the plans for the accommodation of ships in distress. While the former position still persists even after the amendment Directive 2009/17, the latter position has been set right.

The strength of the amendment directive lies in three major points- one, it provides that all plans in respect of accommodation of ships in need of assistance (hereinafter the plan) shall be drawn up by the competent authority on the basis of IMO Resolutions A.949(23) and A.950(23).

2.4 Duty to Render Assistance at Sea

Article 98 (1) of the United Nations Convention on the Law of the Sea 1982 requires masters of vessels sailing under the flag of signatory States to render assistance to those in distress at sea. It is primarily a State duty fulfilled by the master of the vessel. The master is freed from this requirement only in circumstances where the assisting vessel, the crew or the passengers on board would be seriously endangered as a result of rendering assistance to those in distress. Other international conventions iterate this requirement and the attendant limitation. Regulation V/33 of the International Convention for the Safety of Life at Sea 1974 imposes an obligation on masters of vessels who are in a position to provide assistance to do so. Further, Chapter 2.1.10 of the International Convention on Maritime Search and Rescue 1979 obliges States Party to the Convention to ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of such a person or the circumstances in which that person is found.

Finally, the position at treaty law with respect to the duty to render assistance is a general reflection of customary international maritime law. This means that masters of vessels flying the flag of non-signatory States are also required to render assistance where safe and able to do so. The law is therefore clear. States, both signatories and non-signatories to the above conventions, are duty bound to ensure those in distress at sea are rendered assistance on a non-discriminatory basis. Whether vessels sailing under their flag operate either in a private or public capacity, the requirements incumbent upon the masters of the vessels are the same. As a vessel flying the flag of Germany, a State party to all the above conventions, the Sea Watch will ensure that it fulfils all duties incumbent upon it under international law.

A master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or individuals on board. This does not apply to a vessel of war or a vessel owned by the United States Government appropriated only to a public service. A master or individual violating this section shall be fined not more than $1,000, imprisoned for not more than 2 years, or both.

2.5 International legal regime

The IMO has been considering places of refuge for ships since 2000, triggered by the incidents of the 'Erika' and 'Castor'. The Prestige disaster brought this issue to the top of IMO's agenda and the Guidelines on Places of Refuge for Ships in Need of Assistance were adopted in December 2003. The document does not address rights and obligations, but merely 'the need to balance both the prerogative of a ship in need of assistance to seek a place of refuge and the prerogative of a coastal state to protect is coastline. The Guidelines are applicable where the ship is in need of assistance but safety of life is not involved and provide that the best way of preventing/minimizing damage or pollution would be to lighten its cargo and repair the damage in a place or refuge. However, to bring such a ship into a place of refuge may endanger the coastal State's environmental, economic and security interests. The Guidelines do not, therefore, create a legal duty for coastal States to provide a place of refuge for ships in need of assistance. The coastal states have to decide whether to grant or refuse access and the guidelines provide a framework for assessing the situation of ships in need of assistance to arrive at this decision.

The IMO Guidelines follow the balancing of interests approach and in the process tip the balance in favour of coastal states, which retain the ultimate discretion to allow or refuse refuge. However, where they do score is in the provision of objective criteria which States are expected to assess in exercising such discretion, which is very crucial in respect to States who have hitherto refused refuge to ships with little or no reason. Notwithstanding the fact that this is not a legally binding instrument, the general positive response that it has received from States, if translated into consistent state practice, might result in strengthening the customary right of ships in distress to a place of refuge.

Port of Refuge has always been to the benefit of ships in need of assistance but not in distress, the coastal states, and the cargo owners. The desirability and advantages of a Port of Refuge were more so as the property and environmental damages were limited. Place of Refuge widens the scope of refugee waters in a coastal state. By law, it means a place of shelter on a coast or a port whereby the ship in need of assistance can take actions such that the condition of the vessel is stabilized and further loss to property or the environment is restricted. Ships in Need of

Assistance means a ship which is in a situation apart from requiring rescue of personnel, which could give rise to loss of property (ship) and pose an environmental or a navigational hazard.

2.5.1 On arrival at Port of Refuge

i. The Master, on the vessel's arrival, is responsible for making a Note of Protest within 24 hours and reserving the right to extend the protest.

ii .Master to ensure that the vessel's owners declare General Average accordingly. General Average Bond and Guarantee Forms are to be signed for exercising 'Lien' on cargo.

iv. Co-ordinating with the P&I representatives, the Master shall prepare all his statements based on the facts and avoid such ambiguities that may affect the owners

v. The Master shall co-operate with the Hull and Machinery surveyors, Class surveyors, Cargo inspectors, Port State Control officers, etc. attending the vessel for completing the obligatory inspections and paperwork.

Use of Mayday

A Mayday message consists of the word "mayday" spoken three times in succession, which is the distress signal, followed by the distress message, which should include:

Name of the vessel or ship in distress

Its position (actual, last known or estimated expressed in lat./long. or in distance/bearing from a specific location)

Nature of the vessel distress condition or situation (e.g. on fire, sinking, aground, taking on water, adrift in hazardous waters)

Number of persons at risk or to be rescued; grave injuries

Type of assistance needed or being sought

Any other details to facilitate resolution of the emergency such as actions being taken (e.g. abandoning ship, pumping flood water), estimated available time remaining afloat.

2.6 Summary

In response to the arising confusion over rights and obligations of rescue workers at sea after this incident, the International Maritime Rescue Federation – the federation of maritime search and rescue organisations with the common humanitarian aim of preventing loss of life at sea – issued a statement to clarify the actual legal situation. Rescuing people in distress is a duty placed on everyone at sea, that applies whether in territorial or international waters, and regardless of the legal status of the people in distress or the circumstances in which they are found", reads the statement. The obligation to render assistance to persons in distress at sea and deliver them to a place of safety is clearly established in the international law of the sea.

The European Union Facilitation Directive imposes penalties on any person who assists or tries to assist a non-EU national to enter the territory irregularly for financial gains. As stated by a briefing of the Fundamental Rights Agency, in Greece facilitation of irregular entry can be punished by prison terms of up to ten years and fines of up to 20,000€. However, the rescue of persons at sea and the carriage of people in need of international protection is explicitly excluded from punishment.

Although the EU and IMO actions mark a step forward, they do not contain the final solution to the problem. Both instruments leave the decision to grant or refuse refuge to coastal states and have not brought any change to the fundamental framework. They do not establish mechanisms to ensure that the decision-making process remains technical and not political. It has been suggested by some flag States and several writers that the best alternative would be a Convention on the issue. This idea has been strongly opposed by States in general and coastal States in particular. Certain States which face a high number of distress situations owing to their location are not ready to bind themselves, unless there are financial securities and risk-sharing mechanisms. Above all, it may not be possible to lay down a mandatory rule, regarding such a highly political and practical issue, which is acceptable to coastal States. However, the CMI's Draft Instrument offers a fresh look on the issue and may be worth being pursued. It lays down

the right of refuge as the general norm, which can be refused for reasonable reasons, the reasonableness of which shall be determined on the basis of objective criterial. It balances the interests of coastal States by calling for sufficient financial security upto a certain limit for the provision of refuge.

The possibility of an international instrument on places of refuge looking remote, what is essential now is the need for States to uphold their duties and responsibilities under existing customary and conventional international law. It is essential for States to understand that offering a place of refuge to ships in distress may serve their interests better than pushing them away into the open ocean. Coastal States have to realize that in doing so they will be violating their duty to protect the marine environment and may incur responsibility. The real solution to this problem does not lie in legal niceties alone but in the implementation of the existing law relating to contingency planning, infrastructure development, informed decision making structures and integrated coastal management consisting of pre-designated places of refuge. An international regime on places of refuge would no doubt be helpful but not necessarily workable. What is needed is not more law but better implementation of the existing ones. Coastal States not only have rights, but also duties to protect the marine environment, in their maritime zones and this requires affirmative action as opposed to the 'better-in-someone-else's-doorstep' attitude

Distress signals at sea are defined in the International Regulations for Preventing Collisions at Sea and in the International Code of Signals. Mayday signals must only be used where there is grave and imminent danger to life. Otherwise, urgent signals such as pan-pan can be sent. Most jurisdictions have large penalties for false, unwarranted or prank distress signals. Distress can be indicated by any of the following officially sanctioned methods:

SELF ASSESSMENT EXERCISE 1. What is a distress ship
SELF ASSESSMENT EXERCISE 2. What happen when a ship in distress arrived at port of refuge or port of destination

2.7 References / Further Reading /Web Resources

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2.8 Possible answer to self-assessment exercise:

The Maritime SAR Convention defines the distress phase as a situation wherein there is reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.

Unit 3: Law of Genera average Contribution

3.1 Introduction

General average is a long-standing feature of shipping law which provides that sacrifices and expenses that are intentionally and reasonably made and incurred in order to save the ship, cargo, and other property on board the ship, and any freight which is at risk from a common peril, are to be shared by those interests in proportion to their respective values at the end of the voyage. However, such sacrifices and expenses must be 'extraordinary' and made for the 'common benefit' of the interests concerned, since 'ordinary' costs and expenses are borne solely by the ship-owner.

Rights and obligations in general average are usually based on the terms of the contract of carriage of the cargo or the charter party which will, in the majority of cases, incorporate the York-Antwerp Rules, that apply the long-standing general average principles that have been agreed between the shipping and cargo industries. The YAR were first introduced in 1864 and have been, and continue to be, subject to periodic revisions that are currently administered by the Comite Maritime International.

3.2 Learning Outcomes

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

i.You will learn more about the doctrine of general average in the carriage of goods by sea.

ii.You will have a deep knowledge as to why goods are thrown overboard to lighten a ship in order to sail to nearby ports of safety or port of destination.

iii. You will have a deep knowledge of regime of general average.

3.3 The Law of General Average

The law of general average is a principle of maritime law whereby all stakeholders in a sea venture proportionally share any losses resulting from a voluntary sacrifice of part of the ship or cargo to save the whole in an emergency. For instance, should the crew jettison some cargo overboard to lighten the ship in a storm, the loss would be shared *pro rata* by both the carrier and

the cargo-owners. In the exigencies of hazards faced at sea, crew members may have little time in which to determine precisely whose cargo they are jettisoning. Thus, to avoid quarreling that could waste valuable time, there arose the equitable practice whereby all the merchants whose cargo landed safely would be called on to contribute a portion, based upon a share or percentage, to the merchant or merchants whose goods had been tossed overboard to avert imminent peril. General average traces its origins in ancient maritime law, and the principle remains within the admiralty law of most countries.

General average is defined by The York Antwerp Rules provides as follows, That which has been sacrificed for the benefit of all shall be made good by the contribution of all." The latest revision was made in 2004. These are the rules that are recognized internationally and they lay guidelines for the handling of maritime losses. Legal definition of general average is that general average contribution is the monetary contribution required of ship-owners and cargo owners 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. The ship owner's claim for general average contribution is secured by a possessory lien on the cargo. General average has been in existence since around the year 530 AD. It is a principle where all stakeholders share losses proportionally in the event of an emergency or danger which may require partial voluntary sacrifice in order to save the whole ship. The costs that occur in order to save the ship and its cargos in order to prevent greater danger is shared between all stakeholders in that vessel.

3.3.1 Essential Features of General Average.

i. In a time of peril the common adventure must be in peril. The danger must be real and it must be imminent. For example, smoke may be seen coming from a cargo hold. Water is pumped into the hold to extinguish the expected fire. The cargo is damaged. On arrival, no evidence of fire is found, and it may be held that because there had been no actual peril there could be no general average sacrifice. This requires that action is taken for the common safety, not merely as a precautionary measure. For example, a vessel with a serious machinery breakdown in the middle of the ocean would be in peril and expenses to preserve it from peril may be allowed as GA. However, if the master heard weather forecasts that indicated stormy conditions ahead and called

into a port for safety, this may not be accepted as GA. When the vessel entered the port it was not already in peril. The imminence and degree of danger must be a question of fact. For example, where a ship is stranded, but not in danger and peril is not imminent, sacrifices or expenses made or incurred in trying to lighten and refloat the ship will not be admitted as general average.

ii. The general average act must be voluntary and intentional, not inevitable. An example would be the throwing overboard of cargo (jettison) to lighten a waterlogged vessel. The sacrifice is allowed as general average. If property is already lost, it cannot be considered to be sacrificed and would not be admitted as general average. For example, Rule IV of the York Antwerp Rules 1990 states that the cutting away of wreck or parts of a ship which are effectively lost by accident are not allowed as general average. This can be seen as meaning that inevitable loss is not allowed as GA.

(c) The act must be reasonably made. The sacrifices or expenditures must be reasonable and any sacrifice must be advisable or prudent.

(d) The loss must be extraordinary in nature and not merely connected with the contract of carriage of goods. For example, a vessel may meet rough weather. The use of extra fuel to make a scheduled call at the destination would not be allowable as general average. Increase of an ordinary charge, e.g., crew's wages, is not an "extraordinary" loss. Similarly, the loss of ship's gear when used for the purpose for which it is intended cannot be considered extraordinary. Straining of a ship's engines when the ship is aground and in a position of peril, in trying to force her off the ground, is "extraordinary" damage but if the vessel is afloat, any damage caused in working the propelling machinery is not allowed as general average Rule VII of the York-Antwerp Rules 1990. When the vessel is ashore the use of the machinery would be an abuse and therefore extraordinary. Use of the machinery when the vessel is afloat is normal, even though there may be peril and any damage to the machinery would not be allowed as GA. In one case, heavy weather caused a leak, which necessitated excessive pumping. This caused the bunkers to run low and ship's stores were burnt as fuel. These stores were allowed in general average as an extraordinary sacrifice in time of peril.

(e) The object of the loss must be the general safety and the preservation of the whole adventure. Losses incurred for the benefit of individual interests are not general average. For example, the expenses of lightening a vessel by the removal of cargo to enable her to refloat is general average but if cargo is removed from the vessel merely for the cargo's own safety and forwarded to destination by another vessel, this expense is not allowed as general average.

(f) The adventure must be saved. The general average is obviously futile if the adventure becomes a total loss later, as the essence of general average is sacrifice by one person to save all. Moreover, the arrived value of the property saved is counted in the total general average contributions that must be made. An example could be where cargo is sacrificed by jettisoning to prevent total loss of the vessel, and later, during the same voyage, the vessel is destroyed by fire, with all the remaining cargo on board. There is no general average. For the same reason, if a further general average act should become necessary on the voyage, the second general average must be adjusted first, as without it the first would have had no real effect.

(g) The loss must be directly caused by the general average act. Consequential losses are not a direct result of a general average act and are not admitted as GA. But where cargo is jettisoned, and during the actual operation water enters the hold and damages cargo therein, the water damage is a sacrifice equally with the cargo actually jettisoned, despite the water damage being a consequential loss. Other consequential losses, e.g., demurrage and loss of market, would not be admitted as general average.

The action taken by the master can have many alternatives. For example, a fully loaded container vessel may go aground. By order of the master some containers are jettisoned and the vessel is refloated. The options open to the master include the hiring of a salvage tug to pull the vessel off the ground but this may have caused further damage to the vessel and possibly to the cargo. The master may also have decided to strain the main engine and use the anchors and cables with the possibility that these could be lost or damaged, in trying to pull the ship off the ground. In each case, different interests are sacrificed or suffer a loss. There may be a conflict of interest. For example, the cargo owners may prefer that the master hire a lighter or barge into which to discharge the containers but this requires the availability of a barge and also suitable equipment

on board the vessel. The cargo owner may also have preferred that cargo belonging to another cargo interest was jettisoned. However, the master has the complete but reasonable discretion to act as he sees fit for the safety of the ship and cargo as a whole.

3. 4 Requirements of General Average.

The following are examples of extraordinary sacrifices intentionally and reasonably made for the common safety and allowed as general average:

i. A vessel is aground and her engine and equipment are damaged in efforts to refloat the vessel.
ii. A fire occurs in the hold of a vessel and a hole is cut in another of her holds to gain access to the fire and put it out. The cargo not on fire may also be damaged.

iii.Cargo is jettisoned for the common safety in time of peril.

iv. Cargo burnt as fuel e.g., fuel oil in the ship's tanks) if there is a shortage of bunkers.
v.Cargo not on fire is damaged by water being used to extinguish other cargo, which is on fire.

If cargo is lost and as a result the shipowner cannot collect the freight which is payable at destination, the freight is sacrificed equally with the cargo and is allowed as GA.

3.5 The following are extraordinary expenditure intentionally and reasonably incurred for the common safety:

i.The expense of hiring lighters for storing cargo in which efforts to refloat a vessel take place.
ii.The expense of hiring a tug with fire-fighting equipment to extinguish a fire on board a vessel.
iii.Port of refuge expenses.

iv. Salvage charges

3.6 Summary

Because salvors have not resorted to jettisoning oil cargoes in recent years, it might be concluded that to prohibit such jettison is, like Rhodian law, merely to confirm what has become the practice. Before that conclusion is drawn, however, it should be remembered that all the tugs in

the world may, on their own, be unable to refloat many grounded vessels and that cargo will first have to be discharged. There will inevitably be situations where to wait to lighten into tankers or barges may be to wait too long. Better to jettison and accept that sometimes sacrifice is necessary for the common good and that this applies not only to preserving property but also, and perhaps more so, to preventing even greater pollution.

Let that which has been jettisoned on behalf of all be restored by the contribution of all. This statement from Rhodian law summarizes the principle of general average in maritime law and it is as applicable today as it was in 916–700 bc. Like limitation of liability, general average is another peculiar maritime principle which arose in the similar background of pre-insurance era. While the concept of limited liability is a feature common to all maritime liability laws, the issue of general average arises only in the context of maritime cargo liability law. Whenever ship owners can successfully declare an incident as general average, they not only avoid paying for the loss of the cargo under their care but can also ask the cargo owners to contribute to the expenses incurred in the repair of the ships necessitated by a general average incident.

SELF ASSESSMENT EXERCISE : Describe general average conditions

3.7References/ Further Reading/Web Resources

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Lowndes, Richard (1873). The law of general average: English and foreign. Stevens and Sons, 2016.

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The Association of Average Adjusters of the United States and Canada: YAR Archived 2009, at the Wayback Machine. *General Average Declared After Engine Explosion 2012*

3.8 Possible answer to self assessment exercise: A case of General Average is declared when the following conditions are met: The vessel, fuel and cargo are in common peril. The ship's

management reasonably orders measures to be taken to save the ship, fuel and cargo from the common peril. Damage is deliberately caused to the ship and/or fuel and/or cargo.

Unit 4: Maritime Warfare, Prize Law and Prize Court

4.1Introduction

When considering maritime warfare, there are two points to bear in mind from the outset. The first is that the object of maritime warfare is ultimately to affect outcomes on the land. The second point is that success in maritime warfare requires the ability to operate at sea, in the air, and on the land. Maritime warfare can best be understood through an appreciation of the strategy it is intended to serve. It might in the first instance be helpful to illustrate the point by reference to the British experience. The benefits of a maritime strategy are not confined to island nations. The ability to use the sea for its own purposes is vital to any nation that relies on maritime trade for its existence and similarly, for those with exposed seaboards, to ensure they cannot be invaded. In fact, any nation that has a desire for security, wealth, and power needs to be able to use the seas freely and assert their right to do so when necessary.

4.2 Learning Outcomes

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

i.Explain maritime war fare

ii.Wgat is prize Law in maritme Law

iii.The Jurisdiction of prize court

iv.You will learn the rules of engagement in marimatime warfare or Naval warfare.

v.You will have a deep knowledge of the regime of maritime warfare

4.3 Warfare

Naval warfare is human combat in and on the sea, the ocean, or any other battle space involving a major body of water such as a large lake or wide river. Mankind has fought battles on the sea for more than 3,000 years. Even in the interior of large landmasses, transportation before the

advent of extensive railroads was largely dependent upon rivers, canals, and other navigable waterways. The latter were crucial in the development of the modern world in the United Kingdom, the Low Countries and northern Germany, for they enabled the bulk movement of goods and raw materials without which the Industrial Revolution would not have occurred. Prior to 1750, materials largely moved by river barge or sea vessels. Thus armies, with their exorbitant needs for food, ammunition and fodder, were tied to the river valleys throughout the ages.

The oceanic influences throughout pre-recorded history and classical works such as The *Odyssey* underscore the past influences. The Persian Empire united and strong could not prevail against the might of the Athenian fleet combined with that of lesser city states in several attempts to conquer the Greek city states. Phoenicia's and Egypt's power, Carthage's and even Rome's largely depended upon control of the seas. So too did the Venetian Republic dominate Italy's city states, thwart the Ottoman Empire, and dominate commerce on the Silk Road and the Mediterranean in general for centuries. For three centuries, the Northmen commonly called Vikings raided and pillaged and went where they willed, far into central Russia and the Ukraine, and even to distant Constantinople (both via the Black Sea tributaries, Sicily, and through the Strait of Gibraltar.

Gaining control of the sea has largely depended on a fleet's ability to wage sea battles. Throughout most of naval history, naval warfare revolved around two overarching concerns, namely boarding and anti-boarding. It was only in the late 16th century, when gunpowder technology had developed to a considerable extent that the tactical focus at sea shifted to heavy ordnance primacy. Many sea battles through history also provide a reliable source of shipwrecks for underwater archaeology. A major example is the exploration of the wrecks of various warships in the Pacific Ocean. The English word prize or French prize is derived from the Latin prehendere, which means to seize. In modern usage the term ‘prize’ means a ship or property captured at sea under the laws of war. A prize is a legal capture at sea during wartime. The concept of prize law arose in customary international law in connection with the seizure at sea of enemy property in naval warfare, which may include ships and cargo at sea during times of international armed conflict. Prize law is asserted in connection with belligerent rights during times of war.

4.4 Prize Law

Prize Law is a term used in admiralty law to refer to equipment, vehicles, vessels, and cargo captured during armed conflict. The most common use of prize in this sense is the capture of an enemy ship and her cargo as a prize of war. In the past, the capturing force would commonly be allotted a share of the worth of the captured prize. Nations often granted letters of marque that would entitle private parties to capture enemy property, usually ships. Once the ship was secured on friendly territory, she would be made the subject of a prize case, an *in rem* proceeding in which the court determined the status of the condemned property and the manner in which the property was to be disposed of.

Prize in law, is a vessel, aircraft, or goods acquired through capture by a belligerent state, which is subject to condemnation by a prize court. Prize law has not been completely consistent in its development because the tribunals that rule on the seizure of the vessel are national tribunals and may reflect the interests of the belligerent state in interdicting the enemy war effort. The expanding scope of warfare and the concept of total war have also blurred the distinction between vessels subject to capture as a prize of war and those that are exempt. Some basic rules remain, however. All vessels of an enemy state are subject to seizure at any time by an opposing belligerent. Warships may be sunk immediately, and private merchant vessels are to be taken to a friendly port, if possible, for adjudication by a prize court. A neutral vessel on the high seas or in a belligerent's territorial sea may be stopped and searched, if it is suspected of carrying contraband, and may be condemned as a prize of war if any is found. Finally the right of coastal fishing vessels of any state to be free from seizure while plying their trade is universally recognized.

At the outset, prize taking was all smash and grab like breaking a jeweler's window, but by the fifteenth century a body of guiding rules, the maritime law of nations, had begun to evolve. Grotius's seminal treatise on international law published in 1604 called De Iure Praedae Commentarius Commentary on the Law of Prize and Booty. Mare Liberum inter alia founded the doctrine of freedom of the seas) was an advocate's brief justifying Dutch seizures of Spanish and Portuguese shipping. Grotius defends the practice of taking prizes as not merely traditional or customary but just. His *Commentary* points out that the etymology of the name of the Greek war god Ares was "to seize"; that the law of nations had deemed looting enemy property legal since the beginning of Western recorded history in Homeric times.

Prize law fully developed between the Seven Years' War of 1756–63 and the American Civil War of 1861–65. This period largely coincides with the last century of fighting sail and includes the Napoleonic Wars, the American and French Revolutions, and America's Quasi-War with France of the late 1790s. Fortunes in prize money were to be made at sea as vividly depicted in the novels of

Although Letters of Marque and Reprisal were sometimes issued before a formal declaration of war, as happened during the American Revolution when the rebelling colonies of Massachusetts, Maryland, Virginia, and Pennsylvania all granted Letters of Marque months before the Continental Congress's official Declaration of Independence of July 1776, by the turn of the 19th century it was generally accepted that a sovereign government first had to declare war. The existence of war between nations terminates all legal commercial intercourse between their citizens or subjects, wrote Francis Upton in *Maritime Warfare and Prize*, since trade and commerce presuppose the existence of civil contracts … and recourse to judicial tribunals; and this is necessarily incompatible with a state of war.Indeed, each citizen of a nation "is at war with every citizen of the enemy," which imposes a "duty, on every citizen, to attack the enemy and seize his property, though by established custom, this right is restricted to such only, as are the commissioned instruments of the government.

The formal commission bestowed upon a naval vessel, and the Letter of Marque and Reprisal granted to private merchant vessels converting them into naval auxiliaries, qualified them to take enemy property as the armed hands of their sovereign, and to share in the proceeds.

4.5 Capturing a prize

Capture and prize are not synonymous terms, and a legal determination that the captured property is good prize, within the accepted definition, is necessary before the captor may exercise any beneficial rights in it. A decree of condemnation declares the prize to be the property of the capturing sovereign and may be accompanied by an order for sale, purchase under which gives an internationally valid title. In the 18th century title to a prize sometimes changed simply by virtue of the capture, but by the modern usage of nations a judicial inquiry

must pass upon the case. Within certain undefined limits the nature of the legal process and the definition of condemnable vessels and goods are left by international law to national choice.

Enemy vessels, enemy goods in enemy or in neutral vessels, neutral goods which are contraband, and neutral vessels which have been captured in the act of running a legal blockade or rendering unneutral service are subject to condemnation. Enemy warships or other public ships are liable to condemnation, but they are seldom the subjects of actual adjudications. During a war enemy states do not appear as claimants before the prize court, and after a war rights and liabilities resulting from captures are usually settled as part of the general peace settlement. Individuals having some connection with the capture of a prize may share in its value only if the captor state so provides. In the past, prize money or bounty has been paid, partly as a reward for bravery and as a stimulus to exertion and partly as a compensation for the poor rates of pay prevailing in naval services. However, prize bounty was abolished in the United States in 1899 and in England in 1948.

4.5.1 Prize Court Jurisdiction and procedure

A prize court is a court or even a single individual, such as an ambassador or consul authorized to consider whether prizes have been lawfully captured, typically whether a ship has been lawfully captured or seized in time of war or under the terms of the seizing ship's letters of marque and reprisal. A prize court may order the sale or destruction of the seized ship, and the distribution of any proceeds to the captain and crew of the seizing ship. A prize court may also order the return of a seized ship to its owners if the seizure was unlawful, such as if seized from a country which had proclaimed its neutrality. Prize court, a municipal (national) court in which the legality of captures of goods and vessels at sea and related questions are determined.

The International Prize Court was an international court proposed at the beginning of the 20th century, to hear prize cases. An international agreement, the Convention Relative to the Creation of an International Prize Court, was established at The Hague on October 18, 1907, but this was never ratified or implemented. The International Prize Court was an international court proposed at the beginning of the 20th century, to hear prize cases. An international agreement to create it,

the Convention Relative to the Creation of an International Prize Court, was made at the Second Hague Conference in 1907 but never came into force.

The capturing of prizes (enemy equipment, vehicles, and especially ships) during wartime is a tradition that goes back as far as organized warfare itself. The International Prize Court was to hear appeals from national courts concerning prize cases. Even as a draft, the convention was innovative for the time, in being both the first ever treaty for a truly international court (as opposed to a mere arbitral tribunal), and in providing individuals with access to the court, going against the prevailing doctrines of international law at the time, according to which only states had rights and duties under international law. The Convention was opposed, particularly by elements within the United States and the United Kingdom, as a violation of national sovereignty.

The 1907 convention was modified by the Additional Protocol to the Convention Relative to the Creation of an International Prize Court, done at the Hague on October 18, 1910. The protocol was an attempt to resolve some concerns expressed by the United States at the court, which felt it to be in violation of its constitutional provision that provides for the U.S. Supreme Court being the final judicial authority. However, neither the convention nor the subsequent protocol ever entered into force, since only Nicaragua ratified the agreements. As a result, the court never came into existence. A number of ideas from the International Prize Court proposal can be seen in present-day international courts, such as its provision for judges *ad hoc,* later adopted in the Permanent Court of International Justice and the subsequent International Court of Justice.

During time of war private enemy ships and neutral merchantmen carrying contraband are subject to seizure. Title to such vessels and their cargoes does not immediately pass to the captor state but, under international law, must be adjudicated by the captor state's prize court, which may condemn them as lawful prizes. Enemy warships, enemy public ships (such as prison ships), and neutral ships participating in hostilities, on the other hand, are subject to capture. Title in them passes immediately to the captor state and is not subject to condemnation by a prize court.

Although prize courts are municipal courts, and their character and organization are thus determined by national tradition and law, they apply customary and conventional international

law. There is a practice of long standing for belligerents, at the outbreak of war, to enact prize law through statutory legislation; such enactments are presumed to be declaratory of international law but are, in any event, binding on the courts. In the 20th century, unrestricted sea warfare involving the destruction of merchant shipping has reduced the role of prize courts. The United States has held no prize courts since 1899 for the additional reason of its more liberal policy of requisitioning foreign vessels with compensation rather than appropriating them as prizes.

4.5.2 The court process and procedure

Prize Courts derive their name from their function, which is to pass on the validity and disposition of prizes, a term referring to the seizure of a ship or its cargo by the maritime, not the land, forces of a belligerent. Jurisdictional pronouncements of prize courts have expanded the definition of lawful capture of property at sea to include the territorial waters and navigable rivers of occupied enemy territory and have accepted as legitimate the seizure of vessels in dry docks, ports, and rivers. According to the U.S. Prize Act of 1941, the seizure of aircraft may also fall under the jurisdiction of prize courts.

Although belligerents are operating under the rules of international law when conducting seizures, the prize courts themselves are national instrumentalities. Their structures, rules of procedure, and means of disposition of the prizes emanate from national law. They may apply the principles of international law to determine the validity of seizures and the liability to condemnation, but in many cases the rules of international law are applied by virtue of their adoption by the national legal system or incorporation into it. Domestic enactments and regulations may also modify prize courts. It is not surprising, therefore, that worldwide prize-court decisions have lacked uniformity and have not always reflected a high degree of recognition of, and respect for, international law regarding capture and condemnation. In the United States, jurisdiction in prize matters belongs to the federal district courts, with the right of appeal to the circuit court of appeals and ultimately the Supreme Court. The domestic courts have the authority to appoint special prize commissioners to act abroad. An international prize court has never been established.

Tribunals with jurisdiction to decide disputes involving captures made upon the high seas during times of war and to declare the captured property as a prize if it is lawfully subject to that sentence. In England, admiralty courts possess jurisdiction as prize courts, in addition to their customary admiralty jurisdiction. The judge of an admiralty court receives a special commission in time of war to empower him or her to conduct such proceedings.

The prize that made it back to the capturing vessel's country or that of an ally which had authorized prize proceedings would be sued in admiralty court *in rem* meaning against the thing, against the vessel itself. For this reason decisions in prize cases bear the name of the vessel, such as The Rapid, a U.S. Supreme Court case holding goods bought before hostilities commenced nonetheless become contraband after war is declared or The Elsebe, Lord Stowell holding that prize courts enforce rights under the Law of Nations rather than merely the law of their home country). A proper prize court condemnation was absolutely requisite to convey clear title to a vessel and its cargo to the new owners and settle the matter. According to Upton's treatise, "Even after four years' possession, and the performance of several voyages, the title to the property is not changed without sentence of condemnation.

Neutral vessels could be subject to capture if they ran a blockade. The blockade had to be effective to be cognizable in a prize court, that is, not merely declared but actually enforced. Neutrals had to be warned of it. If so then any ships running the blockade of whatever flag were subject to capture and condemnation. However passengers and crew aboard the blockade runners were not to be treated as prisoners of war, as Upton's *Maritime Warfare and Prize* enjoins: the penalty, and the sole penalty ... is the forfeiture of the property employed in blockade running. Persons aboard blockade runners could only be temporarily detained as witnesses, and after testifying, immediately released. The legitimacy of an adjudication depended on regular and just proceedings. Departures from internationally accepted standards of fairness risked ongoing litigation by disgruntled ship-owners and their insurers, often protracted for decades.

4.6 Summary

The International Prize Court was an international court proposed at the beginning of the 20th century, to hear prize cases. An international agreement to create it, the Convention Relative to the Creation of an International Prize Court, was made at the Second Hague Conference in 1907

but never came into force. The capturing of prizes: enemy equipment, vehicles, and especially ships) during wartime is a tradition that goes back as far as organized warfare itself. The International Prize Court was to hear appeals from national courts concerning prize cases. Even as a draft, the convention was innovative for the time, in being both the first ever treaty for a truly international court (as opposed to a mere arbitral tribunal), and in providing individuals with access to the court, going against the prevailing doctrines of international law at the time, according to which only states had rights and duties under international law. The Convention was opposed, particularly by elements within the United States and the United Kingdom, as a violation of national sovereignty.

The 1907 convention was modified by the Additional Protocol to the Convention Relative to the Creation of an International Prize Court, done at the Hague on October 18, 1910. The protocol was an attempt to resolve some concerns expressed by the United States at the court, which felt it to be in violation of its constitutional provision that provides for the U.S. Supreme Court being the final judicial authority. However, neither the convention nor the subsequent protocol ever entered into force, since only Nicaragua ratified the agreements. As a result, the court never came into existence. A number of ideas from the International Prize Court proposal can be seen in present-day international courts, such as its provision for judges *ad hoc*, later adopted in the Permanent Court of International Justice and the subsequent International Court of Justice.

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court has never been established. Tribunals with jurisdiction to decide disputes involving captures made upon the high seas during times of war and to declare the captured property as a prize if it is lawfully subject to that sentence. In England, admiralty courts possess jurisdiction as prize courts, in addition to their customary admiralty jurisdiction. The judge of an admiralty court receives a special commission in time of war to empower him or her to conduct such proceedings. In the United States, federal district courts have original jurisdiction to try prize cases.

4.7 References/ Further Reading

The Elsebe in Colombos, A Treatise on the Law of Prize p. 21 Lord Stowell noting that prize law is matter of international law, not the law of any one nation.

While the calculation is complex and inexact, adjusted for inflation according to the Consumer Price Index $24 million in the dollars of 1800 computes to approximately $450 million today.

Maclay, A History of American Privateers, Preface p. ix (totaling captured vessels and prize proceeds).

A History of American Privateers p.10–11 (comparing prize awards with pay officers and crew)

Bourguignon, Henry J. The First Federal Court: The Federal Appellate Prize Court of the American Revolution, 1775–1787

4.8 (SELF ASSESSMENT EXERCISE): Explain the jurisdiction of a prize court and procedure for filing claims or matter before it

MODULE 8: INTERNATIOANAL MARITIME INSTUTUTIONS

Unit 1 Types of International Maritime Institutions and functions

1.1 Introduction

The unit enlists some of the best international maritime colleges in the world and United States wherein you can pursue your dream of a successful maritime career. Different colleges provide different types of marine courses and one should select the course that best fits his or her interest and future needs. Take a look at the top maritime colleges of the US and select the right course for you.

1.2 Learning Outcomes

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

i.You will learn about International maritime institutions and principal International maritime organization.

ii.To list regulatory maritime Instituition and bodies

iii.Explain the aims and Objectives of each

iv.You will have a deep knowledge of their roles and organization structures.

1.3 Main Content: Maritme Regulatory Body and International Institutions of the World

1.3.1 World Maritime University

The World Maritime University in Malmö, Sweden, is a postgraduate maritime university founded in 1983 by IMO. The mission of WMU is to be the world centre of excellence in postgraduate maritime and ocean education, research and professional training, while building global capacity and promoting sustainable development. WMU, as an entity within the UN system, is an institution established by and for the international maritime community and is committed to the implementation of the United Nations Sustainable Development Goals relevant to education, gender equality, peace and justice, decent work and economic growth, energy efficiency, sustainable industrialization and innovation, climate change, the oceans and partnerships.

The University, as a global centre of excellence recognized by IMO and the United Nations

General Assembly, plays a significant role in maritime and ocean education, research, capacity-building and economic development while promoting the roles of women in the maritime sector. WMU delivers postgraduate maritime education and confers Master's and Doctoral degrees in seven maritime and ocean specializations at its headquarters in Sweden and Master's degrees in two specializations in China. This is complemented by its distance learning and professional development programmes. WMU is a research institution as well as a convenor of international conferences in the maritime and ocean fields and undertakes capacity-building missions delivering technical cooperation assistance on behalf of IMO.

In May 2018, the WMU-Sasakawa Global Ocean Institute was inaugurated as an integral part of World Maritime University, with the aim to support the work programme of the University, by acting as a focal point between policy makers, the scientific community, regulators, academics and representatives of civil society and undertaking research and building capacity on how best to manage and use ocean spaces and their resources for the sustainable development of present and future generations.

1.3.2 IMO International Maritime Law Institute

The IMO International Maritime Law Institute in Malta, was established in 1988, under the auspices of IMO. The mission of the Institute is to enhance capacity-building in all States, particularly developing States, to contribute to the fulfilment of the IMO objectives thereby promoting safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. This is accomplished by delivering expert legal training of the highest standards and the dissemination of knowledge conducive to the development of expertise in all aspects of international maritime law as well as in legislative drafting techniques aimed at incorporating international maritime instruments into national law. Through its work, the Institute is contributing to the effective implementation and enforcement of the vast body of rules and regulations developed under the aegis of IMO.

International Maritime Law Institute is a world recognized centre for the training of specialists in maritime law and provides suitably qualified candidates, particularly from developing countries, with advanced training, study and research programmes in international maritime law.

1.3.3 International Maritime Institute Greater Noida is one of the best maritime Institutes in India situated at Greater Noida. justifiably takes pride in its excellent reputation for quality training. Equipped with the latest shipboard working instrumentation, maritime teaching systems and a marine workshop, the institute maintains a close liaison with the maritime industry for better placement opportunity.International Maritime Institute Noida graded A1 'Outstanding' by Indian Register of Shipping is conducting whole range of Pre-Sea, Post-Sea Courses approved by DG Shipping under the Ministry of Shipping. A1 Grading from the Indian Registrar of Shipping is the highest certification being granted by Shipping to maritime training institutes in the country as per stringent norms laid out by the DG Shipping. International Maritime Institute India prides itself not only in fostering academic excellence but also in making our student's educational experience satisfying, such that students will remember their time fondly at the institute for the rest of their lives.

3.4 The Regional Maritime University is an international tertiary institution and private university in Accra, Ghana. It attained full university status on 25 October 2007 and was launched as such by John Agyekum Kufuor, former President of the Republic of Ghana. It was first called Regional Maritime Academy. On 1 October 1982, the Government of Ghana promulgated the Regional Maritime Law 1982, which was followed by the signing of the instrument of transfer, handing over the college to the then Ministerial Conference of West and Central African States on Maritime Transport, now known as Maritime Organization of West and Central Africa, which negotiated for its regionalization. Regionalization of the academy was for cooperation, particularly with regard to the training of personnel to ensure the sustained growth and development of maritime industries in the sub-region and beyond. The academy in Ghana serves the Anglophone countries while a sister academy in Ivory Coast.

3.5 Maritime University of Szczecin is a public, technical university in Poland, the history of which dates back to 1947. Three faculties of Navigation, Marine Engineering, and Faculty of Engineering and Economics of Transport offer education to 4000 students.

3.6 The Maritime Academy of Nigeria is a federal owned educational institute in Oron, Akwa Ibom State, Nigeria. Originally called the Nautical College of Nigeria, it was established in 1979 to educate and train shipboard officers, ratings and shore-based management personnel. The first batch of cadets graduated in 1983. In 1988 the college's mandate was expanded to training all

levels and categories of personnel for all facets of the Nigerian maritime industry. By the end of 2008, the academy had trained about 4,300 Nigerian Merchant Navy officers and more than 65,000 other workers in marine operations. The academy has an active alumni association, helping members to keep in touch and assist each other, as well as promoting improvements to standards for cadet training.

Maritime Education and Training Looking at the membership list of the International Maritime Lecturers' Association(IMLA), the percentage of women is less than 0.5%, of which is mostly made up of English Language lecturers and a few associated subjects. This should not come as a surprise because, since the establishment of the World Maritime University in 1983, it was not until May 1999 that the first female 'master mariner' enrolled in the Maritime Education and Training (MET) course, in the person of the author. By the turn of January 2000, the number of female educators have gone up to three.

At Kalmar Maritime Academy (KMA) in Sweden, there are two female lecturers. One isa master mariner, lecturing in nautical subjects and the other a former radio operatorlecturing in radio communication under the Global Maritime Distress Safety System(GMDSS). On the average the in-take of female students between 1989-1999 has beenaround 10%, about five yearly with a little bit fewer in the beginning and now a littlemore in the last years (KMA registry, December 1999).

•The Merchant Maritime Institute (MMI) in Constanta, started accepting females from1995, between 20 to 30 per year. Their first female graduates will pass out this year2000, and will be serving at their shipping offices ashore since the commercial fleet hasnot yet started hiring women deck officers.

•From India, the Chanakya and the Engineering Institute for a start between 1991-2002would have trained a total of three nautical officers and three engineering officers.Currently two navigators and one engineer are at sea (Chanakya Administration records,2000).•Maritiem Instituut "Willem Barentsz" at Terschelling in Amsterdam has one femaleEnglish lecturer, and admitted its first female cadet in 1973. The percentage of femalestudents is 10% of the total population (Heeres, 2000).

The Rotterdam Europoort Delta' (issue 5 of 1983), reported that the Rotterdam Nautical Academy had the first girl breaking through the 'barrier' in the 1960's and ever sincethere has been a female population of 2% compared to that of the men's population.

•From UK, at the Warsash Maritime Centre in Southampton, the average female enrollment in the college is between 4 and 5% for the past ten years (Angas, 2000)

Information available from the Polish Maritime Administration indicates that between1983 and 1999 it has had eight females with master mariner's certificate of competency, with 3 promoted to captain. There are 14 chief officers and 9 class 1 pursers.

•The U.S. Merchant Marine Academy (USMMA) started with 15 young women in 1974out of which 8 graduated with a Bachelor of Science; Ever since the number of female intake has been 30 every year.

1.6 Summary

The Shipping and Transport programme of Netherlands Maritime University and other International Maritime Academic offers an excellent opportunity to improve maritime training, research and logistics knowledge and understanding as well as strengthen your managerial skills. You will be encouraged to share your views on the dynamic world of shipping and logistics with stake holders and with your fellow students, who come from all over the world.

Other maritime institutions are:

Korea Maritime & Ocean University is South Korea's most prestigious national university for maritime study, transportation science and engineering. It is located in Yeongdo-gu in Busan. The university is also known for having its whole campus located inside an island. The university is one of the earliest and prestigious national post-secondary educational institutions in South Korea, and the only post-secondary institution that specializes in maritime sciences and engineering. The university name was changed from Korea Maritime University to Korea Maritime and Ocean University on September 1, 2013. The university name was changed from Korea Maritime and Ocean University to Korea Maritime & Ocean University on February 1, 2019.

The Institute of International Maritime Affairs was founded in May 2005 having the intention of stimulating the research works of humanities and social sciences with relation to the ocean and developing the interdisciplinary activities with other research fields, as well as setting up the educational-industrial-governmental-academic complex and helping to make the policies for region developments. The Institute was selected to the 'Humanities Korea Program' of Korean Research Foundation in November 2008. The Institute wishes to make a universal dispatch point of new studies (Cultural Interaction Studies of Sea Port Cities). More than 40 researchers of the Institute make the sea port cities with their research field and concentrate on the interdisciplinary reconstruction and research of the interchanges of people, information, and materials among the sea port cities and the maritime Silk Roads. The Institute has disseminated its academic findings through the regional connection activities that publicize and popularize its resources and information.

Maine Maritime Academy

Maine Maritime Academy is a small maritime institute but provides a big world of opportunities. Being a member of the International Association of Maritime Universities, its students participate in the student exchange program every year with colleges of countries such as Japan, China, Australia, Turkey etc. Raking top in the list of best placement maritime schools, Maine Maritime Academy provides courses such as marine engineering technology, marine engineering operation, marine transportation operation etc.

Maritime College – State University of New York

The Maritime College – State university of New York has been rated as one of the top maritime colleges in the US. In the past few years it has received great recognition and ratings. The salient feature of the college is that it has its own 565 foot Training Ship Empire State VI on which students get an opportunity to travel different parts of the world and also procure hands on experience. Moreover, the college also boasts of the best names in the maritime industry coming to them for recruitment. This is one college that shouldn't be missed to be considered if you want a maritime career.

1.7 References / Further Reading/Web Resources

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1.8 SAE (SELF ASSESSMENT EXERCISE): List 8 Major Regulatory Maritime Organizations of the World

Unit 2 International Maritime Organizations Regulating World Shipping

2.1 Introduction

Shipping is a key user of the oceans, delivering more than 80 per cent of world trade, taking ferry passengers to their destinations and carrying millions of tourists on cruises. Annually, more than 50,000 seagoing ships carry between them more than 10 billion tons of vital and desired cargoes, including commodities, fuel, raw materials and consumer goods. Merchant shipping is one of the most heavily regulated industries and was amongst the first to adopt widely implemented international safety standards. Regulations concerning shipping are developed at the global level. Because shipping is inherently international, it is vital that shipping is subject to uniform regulations on matters such as construction standards, navigational rules and standards of crew competence. The alternative would be a plethora of conflicting national regulations resulting in commercial distortion and administrative confusion which would compromise the efficiency of world trade

The shipping industry is principally regulated by the International Maritime Organisations, which is the London based United Nations agency responsible for the safety of life at sea and the protection of the marine environment. The International Labour Organizationis also responsible for the development of labour standards applicable to seafarers worldwide. IMO has adopted a comprehensive framework of detailed technical regulations, in the form of international diplomatic conventions which govern the safety of ships and protection of the marine environment. National governments, which form the membership of IMO, are required to implement and enforce these international rules, and ensure that the ships which are registered under their national flags comply. The level of ratification and enforcement of IMO Conventions is generally very high in comparison with international rules adopted for shore based industries.

The principal responsibility for enforcing IMO regulations concerning ship safety and environmental protection rests with the flag states i.e. the countries in which merchant ships are registered - which may be different to the country in which they are owned. Flag states enforce IMO requirements through inspections of ships conducted by a network of international surveyors. Much of this work is delegated to bodies called classification societies. However, flag state enforcement is supplemented by what is known as Port State Control, whereby officials in

any country which a ship may visit can inspect foreign flag ships to ensure that they comply with international requirements. Port State Control officers have the power to detain foreign ships in port if they do not conform to international standards. As a consequence, most IMO regulations are enforced on a more or less global basis.

2.2 Learning Outcomes

In this unit you will learn about some principal International Maritime Organisations in the world that regulates maritime businesses and activities.

You will have a deep knowledge of their objectives and the role they play in enhancing maritime transport and carriage of goods by sea.

2.3Main Content: International Maritime Organisation(IMO)

The International Maritime Organization formally known as the Inter-Governmental Maritime Consultative Organization until 1982, is a specialised agency of the United Nations responsible for regulating shipping. The IMO was established following agreement at a UN conference held in Geneva in 1948 and the IMO came into existence ten years later, meeting for the first time in 1959. Headquartered in London, United Kingdom, the IMO currently has 174 member states and three associate members. The mission of the International Maritime Organization as a United Nations specialized agency is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation.

IMO's primary purpose is to develop and maintain a comprehensive regulatory framework for shipping and its remit today includes safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. IMO is governed by an assembly of members and is financially administered by a council of members elected from the assembly. The work of IMO is conducted through five committees and these are supported by technical subcommittees. Other UN organisations may observe the proceedings of the IMO. Observer status is granted to qualified non-governmental organizations. IMO is supported by a permanent secretariat of employees who are representative of the organization’s members. The secretariat is composed of a Secretary-General who is periodically elected by the assembly, and various divisions such as those for marine safety, environmental protection and a conference section.

Today the MLC stands as the fourth pillar of international maritime law, building on the three other key IMO Conventions SOLAS, MARPOL and the STCW, and further promoting and supporting maritime safety and environmental protection.

International Maritime Organization, formerly Inter-governmental Maritime Consultative Organization, United Nations specialized agency created to develop international treaties and other mechanisms on maritime safety; to discourage discriminatory and restrictive practices in international trade and unfair practices by shipping concerns; and to reduce maritime pollution.

2.3.1 International Chambers of Shipping

The International Chamber of Shipping is the world's principal shipping organization, representing around 80% of the world's merchant tonnage, through membership by national shipowners' associations. It is concerned with all regulatory, operational and legal issues. A major ICS activity is as a consultative body at the United Nations agency with responsibility for the safety of life at sea and the protection of the marine environment, the International Maritime Organization. ICS is unique in that unlike other international shipping trade associations it represents the global interests of all the different trades in the industry: bulk carrier operators, tanker operators, passenger ship operators and container liner trades, including ship-owners and third party ship managers.

ICS has consultative status with a number of other intergovernmental bodies which affect shipping, these include: the World Customs Organization, the International Telecommunications Union, the United Nations Conference on Trade and Development, and the World Meteorological Organization. The ICS also has close relationships with industry organisations representing different maritime interests such as shipping, ports, pilotage, the oil industry, insurance and classification societies responsible for the surveying of ships. The ICS is also responsible for several publications in use in the marine industry, in conjunction with Witherby Seamanship. The UK Chamber of Shipping is a primary member of the ICS. In October 2011, the International Chamber of Shipping left office space on Carthusian Street, near the Barbican Estate, then owned by the UK Chamber of Shipping and moved to the Baltic Exchange in St Mary Axe. The International Chamber of Shipping is a trade association that represents ship

owners and ship operators via national shipowners associations. Its aim is to promote the interests of its members throughout all issues of ship operation and also shipping policy.

2.3.2 The International Association of Independent Tanker Owners (INTERTANKO)

The International Association of Independent Tanker Owners is a membership association for owners of independent tankers throughout the world. The Association was formed in its present guise in Oslo in 1970 to speak out for those independent tanker owners, i.e. non-oil companies and non-state controlled tanker owners, for the safe shipping of oil and chemicals and to act as a forum for marine policy creation. Membership is open to those owners and operators of oil, gas and chemical tankers who fulfil the Association's membership criteria. Independent owners operate a huge percentage of the world's tanker fleet and the vast majority are INTERTANKO Members.

As of January 2019, the organisation had 198 full members, whose combined fleet comprises some 3,931 tankers totalling almost 346 million dwt. INTERTANKO's Associate Membership, i.e. companies with an interest in shipping of oil and chemicals but who do not own or operate tankers, stands at some 244 companies. INTERTANKO is responsible for the compilation of several marine industry books and publications - most of which are available to its Members. Witherby Seamanship are the official distributors of INTERTANKO's retail publications. INTERTANKO's central offices are in Oslo, Norway and in London, with branches in Athens, Greece, Singapore and Arlington.

INTERTANKO actively works on a wide range of operational, technical, legal and commercial issues affecting tanker owners and operators around the world. It draws on regular and direct contact with its Members and other industry stakeholders to develop and disseminate information and best practice, essential to the tanker industry. Membership benefits include representation at all key industry forums by a large, respected industry body, easy access to guidance and advice, as well as networking opportunities with fellow Members and industry peers through the extensive network of Associate Members and other industry stakeholders.

2.4 The World Trade Organization

The World Trade Organization (WTO) is an intergovernmental organization that is concerned with the regulation of international trade between nations of the world. The WTO officially commenced on 1 January 1995 under the Marrakesh Agreement, signed by 123 nations on 15 April 1994, replacing the General Agreement on Tariffs and Trade, which commenced in 1948. It is the largest international economic organization in the world. The WTO deals with regulation of trade in goods, services and intellectual property between participating countries by providing a framework for negotiating trade agreements and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements, which are signed by representatives of member governments and ratified by their parliaments. The WTO prohibits discrimination between trading partners, but provides exceptions for environmental protection, national security, and other important goals. Trade-related disputes are resolved by independent judges at the WTO through a dispute resolution process.

The WTO's current Director-General is Roberto Azevêdo, who leads a staff of over 600 people in Geneva, Switzerland. We hope that the former Nigerian Minister of Finance clinge the post after the elapse of the tenure of Roberts. A trade facilitation agreement, part of the Bali Package of decisions, was agreed by all members on 7 December 2013, the first comprehensive agreement in the organization's history. On 23 January 2017, the amendment to the WTO Trade Related Aspects of Intellectual Property Rights Agreement marks the first time since the organization opened in 1995 that WTO accords have been amended, and this change should secure for developing countries a legal pathway to access affordable remedies under WTO rules.

2.4. 1 The objectives and Functions of WTO are:

i.To improve the standard of living of people in the member countries.

ii.To ensure full employment and broad increase in effective demand.

iii.To enlarge production and trade of goods.

iv.To increase the trade of services.

v.To ensure optimum utilization of world resources.

vi. To protect the environment.

viii. To accept the concept of sustainable development.

2.4.1 The main functions of WTO are:

i.To implement rules and provisions related to trade policy review mechanism.

ii.To provide a platform to member countries to decide future strategies related to trade and tariff.

iii.To provide facilities for implementation, administration and operation of multilateral and bilateral agreements of the world trade.

iv.To administer the rules and processes related to dispute settlement.

v.To ensure the optimum use of world resources.

vi.To assist international organizations such as, IMF and IBRD for establishing coherence in Universal Economic Policy determination.

2.5 Lloyd's Register Group shipping is a technical and business services organisation and a maritime classification society, wholly owned by the Lloyd's Register Foundation, a UK charity dedicated to research and education in science and engineering. The organisation dates to 1760. Its stated aims are to enhance the safety of life, property, and the environment, by helping its clients including by validation, certification, and accreditation to ensure the quality construction and operation of critical infrastructure. Lloyd's Register's main office is located in London at 71 Fenchurch Street. Lloyd's Register also maintains other offices globally, including Hong Kong and Houston, Texas, US.

The organization was named after a 17th-century coffee house in London that was frequented by merchants, marine underwriters, and others, all men associated with shipping. The coffee house owner, Edward Lloyd, helped them to exchange information by circulating a printed sheet of all the news he heard. In 1760, the Register Society was formed by the customers of the coffee house who assembled the Register of Shipping, the first known register of its type. Between 1800 and 1833, a dispute between ship owners and underwriters resulted in each group publishing a list the *Red Book* and the *Green Book* Both parties came to the verge of bankruptcy. They reached agreement in 1834 to unite and form Lloyd's Register of British and Foreign

Shipping, establishing a General Committee and charitable values. In 1914, with an increasingly international outlook, the organisation changed its name to Lloyd's Register of Shipping

The leading classification society, operating in almost every country in the world, is Lloyd's Register of Shipping, which began its work long before any national legislation existed for the performance of its purposes. The history of Lloyd's Register of Shipping can be traced back to 1760. The society was reconstituted in 1834 and again in 1914. Lloyd's operates in most maritime countries, often in cooperation with classification societies established by other nations. These include the American Bureau of Shipping, originally established in 1867 and resuscitated as a result of the large volume of merchant ships built in the United States during World Wars I and II; the Bureau Veritas, which was founded in Antwerp (Belg.) in 1828 but moved its headquarters to Paris in 1832; the Norske Veritas, established in Norway in 1894;.

2.6 Summary

You have learned about some principal international maritime organizations that regulate shipping activities in the world and some are mentioned below. The International Maritime Organization is a specialized agency of the United Nations with 171 Member States. Its main role has been to develop and maintain a consistent regulatory framework for international shipping with particular focus on the areas of safety, security, environment and technical co-operation. The United Nations Commission on International Trade Law is a body of member and observer states that was established by the U.N General Assembly in 1966, to address disparities in national laws governing international trade. The World Shipping Council has been participating in a working group tasked with developing a new international instrument to govern the carriage of goods by sea.The International Organization for Standardization is a network of more than 150 national standards institutes that develops specifications and criteria that can be applied consistently around the world in the classification of materials, the manufacture of products and the provision of services. The World Customs Organization is an intergovernmental organization that helps member states communicate and co-operate on customs issues. The World Shipping Council is a member of the WCO's Private Sector Consultative Group.

The practice of enforced observance of local regulations continues, but since the late 19th century a series of agreements among maritime states has brought near-uniformity to regulations

governing ship operation and aspects of ship design and equipage that bear on safety. Nearly all the world's maritime states, for example, have adopted the International Regulations for Preventing Collisions at Sea. These were originally based on British rules formulated in 1862 and made internationally effective after a series of international meetings culminating in a conference at Washington, D.C., in 1889. The rules specify in great detail how ships must navigate in respect of each other, what lights must be shown, and what signals must be given in accordance with circumstances. Any infringement of this international code of conduct is accepted in all maritime courts of law as prima facie evidence of liability in case of collision. Similarly, the internationally accepted requirements for the protection and safety of life at sea, as far as the ship and its equipment are concerned, are embodied in the International Convention for Safety of Life at Sea. The sinking of the liner *Titanic* in 1912 gave rise to a general desire to raise the standards of safety of life at sea. Although a convention was drawn up in 1914 requiring certain minimum standards for passenger ships, it did not become fully operative because of the outbreak of World War I.

The advent of the United Nations after World War II brought into being a permanent international body, the International Maritime Organization, an arm of the United Nations whose purpose is to produce and modify international conventions in three categories: safety, prevention of pollution, and liability and compensation following accidents. The IMO has produced a regulatory literature too extensive to detail here, but four conventions that have the greatest bearing on ship operation can be mentioned. The International Convention on Load Lines of 1966 emerged from the British Merchant Shipping Act of 1875, which provided what was known as the Plimsoll load line on the ship's side, indicating the maximum depth to which a ship could legally be loaded. In order to protect the competitive position of British ships, the Merchant Shipping Act of 1890 required all foreign ships leaving British ports to comply with the load-line regulations. This led to the adoption of load-line rules by most maritime countries, and the International Load Line Convention of 1930 was ratified by 54 nations. The new convention of 1966 came into force in July 1968 and allowed for a smaller freeboard vertical distance between the water and the deck for large ships while calling for more stringent protection of openings in decks and superstructures. The Convention on International Regulations for Preventing Collisions at Sea and the International Convention for the Safety of

Life at Sea were drawn up in 1972 and 1974, respectively. In 1973 and 1978 the International Convention for the Prevention of Pollution from Ships came up with regulations that cover internal arrangements of tankers in order to minimize oil spills following hull ruptures.

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1.8 (SELF ASSESSMENT EXERCISE): Discuss the 3 International Organisations of the World that regulate shipping activities today.

Unit 3: Law of Asylum and Refugees

3.1 Introduction

States have been granting protection to individuals and groups fleeing persecution for centuries. However, the modern refugee regime is largely the product of the second half of the twentieth century. Like international human rights law, modern refugee law has its origins in the aftermath of World War II as well as the refugee crises of the interwar years that preceded it. Article 14(1) of the Universal Declaration of Human Rights, which was adopted in 1948, guarantees the right to seek and enjoy asylum in other countries. Subsequent regional human rights instruments have elaborated on this right, guaranteeing the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions. American Convention on Human Rights, article. 22(7); African Charter on Human and Peoples' Rights, article. 12(3). The controlling international convention on refugee law is the 1951 Convention relating to the Status of Refugees 1951 Convention and its 1967 Optional Protocol relating to the Status of Refugees 1967 Optional Protocol. The 1951 Convention establishes the definition of a refugee as well as the principle of non-refoulement and the rights afforded to those granted refugee status. Although the 1951 Convention definition remains the dominant definition, regional human rights treaties have since modified the definition of a refugee in response to displacement crises not covered by the 1951 Convention.

3.2 Learning Outcomes

At the end of this unit you are expected to be able to:

i. You will learn about the law of Asylum and Law of Refugees.

ii. You will also learn that Politicians have right to seek for protection in another Country of their choice.

iii. Understand the law that protects persons who run away from their country because of crisis or as a result of war can seek protection of another country.

iv. You will have a deep knowledge of the Law of Asylum and the legal regime of Refugees.

3.3 The law of Asylum

Definition of refugee According to the original 1951 Refugee Convention and 1967 Protocol, refugee children were legally indistinguishable from adult refugees. Although the Convention on

the Rights of the Child was not specific to the rights of refugee minors, it was used as the legal blueprint for handling refugee minor cases, where a minor was defined as any person under the age of 18. In 1988, the United Nations High Commissioner for Refugees Guidelines on Refugee Children were published, specifically designed to address the needs of refugee children, officially granting them internationally recognized human rights.

Refugee law is the branch of international law which deals with the rights and duties States have vis-a-vis refugees. There are differences of opinion among international law scholars as to the relationship between refugee law and international human rights law or humanitarian law. The discussion forms part of a larger debate on the fragmentation of international law. While some scholars conceive each branch as a self-contained regime distinct from other branches, others regard the three branches as forming a larger normative system that seeks to protect the rights of all human beings at all time. The proponents of the latter conception view this holistic regime as including norms only applicable to certain situations such as armed conflict and military occupation or to certain groups of people including refugees refugee law, children (the Convention on the Rights of the Child), and prisoners of war.

Asylum, in international law, is the protection granted by a state to a foreign citizen against his own state. The person for whom asylum is established has no legal right to demand it, and the sheltering state has no obligation to grant it. The right of asylum sometimes called right of political asylum; from the Ancient Greek word is an ancient juridical concept, under which a person persecuted by one's own country may be protected by another sovereign authority, such as another country or church official, who in medieval times could offer sanctuary. This right was recognized by the Egyptians, the Greeks, and the Hebrews, from whom it was adopted into Western tradition. René Descartes fled to the Netherlands, Voltaire to England, and Thomas Hobbes to France, because each state offered protection to persecuted foreigners.

The 1951 Convention does not define how States parties are to determine whether an individual meets the definition of a refugee. Instead, the establishment of asylum proceedings and refugee status determinations are left to each State party to develop. This has resulted in disparities among different States as governments craft asylum laws based on their different resources, national security concerns, and histories with forced migration movements. Despite differences

at the national and regional levels, the overarching goal of the modern refugee regime is to provide protection to individuals forced to flee their homes because their countries are unwilling or unable to protect them.

That everyone has the right to seek and to enjoy in other countries asylum from persecution is enshrined in the United Nations Universal Declaration of Human Rights of 1948 and supported by the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Under these agreements, a refugee is a person who is outside that person's own country's territory owing to fear of persecution on protected grounds, including race, caste, nationality, religion, political opinions and participation in any particular social group or social activities.

Sometimes a criminal had to get to the chapel itself to be protected, or ring a certain bell, hold a certain ring or door-knocker, or sit on a certain chair. Some of these items survive at various churches. Church sanctuaries were regulated by common law. An asylum seeker had to confess his sins, surrender his weapons, and permit supervision by a church or abbey organization with jurisdiction. Seekers then had forty days to decide whether to surrender to secular authorities and stand trial for their alleged crimes, or to confess their guilt, abjure the realm, and go into exile by the shortest route and never return without the king's permission.

Article 14 of the Universal Declaration of Human Rights states that "Everyone has the right to seek and to enjoy in other countries asylum from persecution." The United Nations 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees guides national legislation concerning political asylum. Rendering true victims of persecution to their persecutor is a violation of a principle called non-refoulement, part of the customary and trucial Law of Nations.

3.3.2 Right of asylum is according to a country Law

European Union

Asylum in European Union member states formed over a half-century by application of the Geneva Convention of 28 July 1951 on the Status of Refugees. Common policies appeared in the

1990s in connection with the Schengen Agreement which suppressed internal borders so that asylum seekers unsuccessful in one Member State would not reapply in another. The common policy began with the Dublin Convention in 1990. It continued with the implementation of Eurodac and the Dublin Regulation in 2003, and the October 2009 adoption of two proposals by the European Commission.

Extraterritorial asylum refers to asylum granted in embassies, legations, consulates, warships, and merchant vessels in foreign territory and is thus granted within the territory of the state from which protection is sought. Cases of extraterritorial asylum granted in embassies, legations, or consulates generally known as diplomatic asylum are often occasions for dispute. For example, after an unsuccessful uprising against the communist government of Hungary in 1956, the United States controversially granted diplomatic asylum to dissident Hungarian Roman Catholic Cardinal Mindszenty, who was given refuge in the U.S. embassy and remained there for 15 years.

It is the right of a state to grant asylum to an individual, but it is not the right of an individual to be granted asylum by a state. This perspective is reflected in the Universal Declaration of Human Rights, which, though recognizing article 14 the right "to seek and to enjoy in other countries asylum from persecution, does not explicitly provide a right of asylum. In ancient times asylum designated a place of sanctuary or protection from which a person could not be removed forcibly without sacrilege. Later it came to signify an institution for the protection or relief of some class of destitute or otherwise unfortunate persons; its most common uses in this sense were in orphan asylum *and* insane asylum.

Qualification Directive for non state actors, article. 9(2). The persecution at issue also does not need to have been committed by a State actor; persecutory acts committed by non-state actors may qualify under the 1951 Convention where the State is unwilling or unable to protect the individual claiming refugee status. See at art. 6

On account of there must be a causal nexus between one of the five grounds and the persecutory act. In practice, this means that applicants must show that one of the protected grounds was or will be at least one central reason for the persecution.

Race, religion, nationality – the asylum applicant need not actually possess the racial, religious, or national characteristic in question provided that characteristic was attributed to the asylum seeker by the persecutor and is the reason for the persecution. See Qualification Directive, art. 10(2).

Political opinion – like the above three grounds, political opinion may be imputed to the asylum seeker. There is some debate within the U.S. as to whether neutrality may qualify as a political opinion for the purposes of obtaining asylum. Compare Matter of Acosta, 19 I&N Dec. 211 BIA 1985 (no persecution based on political opinion where refusal to join work stoppage resulted in threats and violence from militants because refusal was motivated by desire to earn wages

3.3.2 Membership in a particular social group.

There is still a lack of consensus as to what constitutes a particular social group and whether classes of persons not included in the 1951 Convention who nonetheless face persecution, such as women and homosexuals, fall within this category. The Council of the European Union has stated that persons may be considered to constitute a particular social group when they share a common immutable characteristic, that is, something innate to their being or so fundamental to their being that they cannot be expected to change it, and have a distinct identity within their country of nationality or habitual residence because they are perceived as being different by that society. Qualification Directive, art. 10(1)(d) applying standard articulated *in* Matter of Acosta.

i. **Particularly serious crime** – the definition of a particularly serious crime varies by country. The UNHCR considers a particularly serious crime to be a capital crime or a very grave punishable act. The UNHCR recommends balancing the severity of the crime against the severity of the persecution feared but this balancing test has not been widely adopted. Under the statute, aggravated felonies may include felonies for which the potential sentence is imprisonment for one year or more. For withholding of removal, the potential sentence must be for at least five years.
ii. **War crimes, Crimes against Humanity** – States apply the definition provided in international humanitarian law, as articulated in Articles 7 and 8 of the Rome Statute

of the International Criminal Court. A.B. v. Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform [2011] IEHC 198

A refugee, generally speaking, is a displaced person who has been forced to cross national boundaries and who cannot return home safely. Such a person may be called an asylum seeker until granted refugee status by the contracting state or the United Nations High Commissioner for Refugees if they formally make a claim for asylum. The lead international agency coordinating refugee protection is the United Nations Office of the UNHCR. The United Nations has a second Office for refugees, the United Nations Relief and Works Agency, which is solely responsible for supporting the large majority of Palestinian refugees. In English, the term *refugee* derives from the root word *refuge*, from Old French *refuge*, meaning hiding place. It refers to shelter or protection from danger or distress, from Latin *fugere*, means to flee, and *refugium*, a taking of refuge, place to flee back to.

The first modern definition of international refugee status came about under the League of Nations in 1921 from the Commission for Refugees. Following World War II, and in response to the large numbers of people fleeing Eastern Europe, the UN 1951 Refugee Convention defined refugee in Article 1.A.2 as any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. The International Refugee Organization was founded on 20 April 1946, and took over the functions of the United Nations Relief and Rehabilitation Administration, which was shut down in 1947. The definition of a refugee at this time was an individual with either a Nansen passport or a "Certificate of identity" issued by the International Refugee Organization.

The Constitution of the International Refugee Organization, adopted by the United Nations General Assembly on 15 December 1946, specified the agency's field of operations. Controversially, this defined "persons of German ethnic origin" who had been expelled, or were to be expelled from their countries of birth into the postwar Germany, as individuals who would

not be the concern of the Organization. This excluded from its purview a group that exceeded in number all the other European displaced persons put together. Also, because of disagreements between the Western allies and the Soviet Union, the IRO only worked in areas controlled by Western armies of occupation.

Headquartered in Geneva, Switzerland, the Office of the United Nations High Commissioner for Refugees was established on 14 December 1950. It protects and supports refugees at the request of a government or the United Nations and assists in providing durable solutions, such as return or resettlement. All refugees in the world are under UNHCR mandate except Palestinian refugees, who fled the current state of Israel between 1947 and 1949, as a result of the 1948 Palestine War. These refugees are assisted by the United Nations Relief and Works Agency.

3.4 Determination of the Status of Refugee

To receive refugee status, a displaced person must go through a Refugee Status Determination process, which is conducted by the government of the country of asylum or the UNHCR, and is based on international, regional or national law. RSD can be done on a case by case basis as well as for whole groups of people. Which of the two processes is used often depends on the size of the influx of displaced persons. The 1951 Convention places a number of restrictions on eligibility for refugee status. Article 1(d) excludes individuals who, at the time of the 1951 Convention, were already receiving protection or assistance from another UN organ or agency. Article 1(d) largely applied to Koreans receiving aid from the United Nations Korean Reconstruction Agency and Palestinians receiving aid from the United Nations Relief and Works Agency for Palestine Refugees in the Near East and continues to apply to the latter. UNHCR, Handbook on Procedures for Determining Refugee Status under the 1951 Convention & the 1967 Protocol relating to the Status of Refugees. Although Palestinians living in areas where UNRWA operates are eligible for refugee status under the 1951 Convention. Additionally, Article 1(f) excludes individuals with respect to whom there are serious reasons for considering that:

i. he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

ii. he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

iii. he has been guilty of acts contrary to the purposes and principles of the United Nations.

Individuals who voluntarily avail themselves of the protection of their country of nationality or habitual residence or individuals who have received protection in a third country are also not considered refugees. *See* 1951 Convention relating to the Status of Refugees, art. 1(C).

There are a number of States who host large refugee populations but who are either not a party to the 1951 Convention and 1967 Optional Protocol or who do not have laws or policies in place to address asylum claims. These States include a large number of countries in the Middle East and Asia with significant refugee populations, including Egypt, Jordan, India, Malaysia, Lebanon, and Pakistan. States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol. In such cases, refugee status determinations are carried out by field offices of the United Nations High Commissioner for Refugees.

The refugee status determination conducted by the United Nations High Commissioner for Refugee is similar to asylum adjudications conducted by States. After registering with the local UNHCR office, asylum seekers meet with an Eligibility Officer who examines their application and supporting documentation. All asylum seekers have the right to an individual in-person interview and may be accompanied by a legal representative. Asylum seekers are permitted to bring witnesses, but UNHCR policy is that the testimony of witnesses should not be given in the presence of the applicant and should never be given in the presence of other witnesses or third parties. All applicants are informed in writing of the Eligibility Officer's decision. Where the eligibility officer has decided not to award refugee status, the applicant is entitled to an explanation of the negative determination. Applicants who have not been granted refugee status are entitled to an appeal.

3.5 Refugee rights under International Law

Refugee rights encompass both customary law, peremptory norms, and international legal instruments. If the entity granting refugee status is a state that has signed the 1951 Refugee

Convention then the refugee has the right to employment. Further rights include the following rights and obligations for refugees:

i.Right of return

Even in a post-conflict environment, it is not a simple process for refugees to return home. The UN Pinheiro Principles are guided by the idea that people not only have the right to return home, but also the right to the same property. It seeks to return to the pre-conflict status quo and ensure that no one profits from violence. Yet this is a very complex issue and every situation is different; conflict is a highly transformative force and the pre-war status-quo can never be reestablished completely, even if that were desirable (it may have caused the conflict in the first place.

iii. Right to non-refoulement

Non-refoulement is the right not to be returned to a place of persecution and is the foundation for international refugee law, as outlined in the 1951 Convention Relating to the Status of Refugees. The right to non-refoulement is distinct from the right to asylum. In respect of the right to asylum, states must not deport genuine refugees. In contrast, the right to non-refoulement allows states to transfer genuine refugees to third party countries with respectable human rights records.

iv. Right to family reunification

Family reunification which can also be a form of resettlement is a recognized reason for immigration in many countries. Divided families have the right to be reunited if a family member with permanent right of residency applies for the reunification and can prove the people on the application were a family unit before arrival and wish to live as a family unit since separation. If application is successful this enables the rest of the family to immigrate to that country as well.

v. Right to travel

Those states that signed the Convention Relating to the Status of Refugees are obliged to issue travel documents i.e. "Convention Travel Document to refugees lawfully residing in their

territory. It is a valid travel document in place of a passport, however, it cannot be used to travel to the country of origin, i.e. from where the refugee fled.

vi. Restriction of onward movement

Once refugees or asylum seekers have found a safe place and protection of a state or territory outside their territory of origin they are discouraged from leaving again and seeking protection in another country. If they do move onward into a second country of asylum this movement is also called irregular movement by the UNHCR. UNHCR support in the second country may be less than in the first country and they can even be returned to the first country. World Refugee Day has occurred annually on 20 June since 2000 by a special United Nations General Assembly Resolution. 20 June had previously been commemorated as African Refugee Day in a number of African countries.

In the United Kingdom World Refugee Day is celebrated as part of Refugee Week. Refugee Week is a nationwide festival designed to promote understanding and to celebrate the cultural contributions of refugees, and features many events such as music, dance and theatre. In the Roman Catholic Church, the World Day of Migrants and Refugees is celebrated in January each year, since instituted in 1914 by Pope Pius X.

vii. Access to healthcare services

Access to services depends on many factors, including whether a refugee has received official status, is situated within a refugee camp, or is in the process of third country resettlement. The UNHCR recommends integrating access to primary care and emergency health services with the host country in as equitable a manner as possible. Prioritized services include areas of maternal and child health, immunizations, tuberculosis screening and treatment, and HIV/AIDS-related services. Despite inclusive stated policies for refugee access to health care on the international levels, potential barriers to that access include language, cultural preferences, high financial costs, administrative hurdles, and physical distance. Specific barriers and policies related to health service access also emerge based on the host country context. For example, primaquine, an often recommended malaria treatment is not currently licensed for use in Germany and must be ordered from outside the country.

viii. Employment

Integrating refugees into the workforce is one of the most important steps to overall integration of this particular migrant group. Many refugees are unemployed, under-employed, under-paid and work in the informal economy, if not receiving public assistance. Refugees encounter many barriers in receiving countries in finding and sustaining employment commensurate with their experience and expertise. A systemic barrier that is situated across multiple levels (i.e. institutional, organizational and individual levels) is coined canvas ceiling.

ix. Education

Refugee children come from many different backgrounds, and their reasons for resettlement are even more diverse. The number of refugee children has continued to increase as conflicts interrupt communities at a global scale. In 2014 alone, there were approximately 32 armed conflicts in 26 countries around the world, and this period saw the highest number of refugees ever recorded[120] Refugee children experience traumatic events in their lives that can affect their learning capabilities, even after they have resettled in first or second settlement countries. Educators such as teachers, counselors, and school staff, along with the school environment, are key in facilitating socialization and acculturation of recently arrived refugee and immigrant children in their new schools.

3.5.1 Refugee crisis in the world

Refugee crisis can refer to movements of large groups of displaced persons, who could be either internally displaced persons, refugees or other migrants. It can also refer to incidents in the country of origin or departure, to large problems whilst on the move or even after arrival in a safe country that involve large groups of displaced persons. In 2018, the United Nations estimated the number of forcibly displaced people to be 68.5 million worldwide. Of those, 25.4 million are refugees while 40 million are internally displaced within a nation state and 3.1 million are classified as asylum seekers. 85% of refugees are hosted in developed countries, with 57% coming from Syria, Afghanistan and South Sudan. Turkey is the top hosting country of refugees with 3.5 million displaced people within its borders.

In 2006, there were 8.4 million UNHCR registered refugees worldwide, the lowest number since 1980. At the end of 2015, there were 16.1 million refugees worldwide. When adding the 5.2 million Palestinian refugees who are under UNRWA's mandate there were 21.3 million refugees worldwide. The overall forced displacement worldwide has reached a total of 65.3 million displaced persons at the end of 2015, while it was 59.5 million 12 months earlier. One in every 113 people globally is an asylum seeker or a refugee. In 2015, the total number of displaced people worldwide, including refugees, asylum seekers and internally displaced persons, was at its highest level on record.

3.5.2 Countries with Refugees Crisis

In the past decade, refugee crises claimed headlines on a daily basis. Millions of people have fled their homes to find safety and a future. Situations like the Syrian civil conflict and the Rohingya exodus to Bangladesh are just two examples.

Eritrea

More than 10% of the population of Eritrea over 492,000 now live as refugees due to social and political instability and violence. It’s hard to gauge humanitarian need within the small East African country Eritrea remains one of the countries that Concern struggles to get complete data on for our annual Global Hunger Index

Somalia

The good news is that the number of Somali refugees around the world has, for the last several years, been on a slow decline. At the end of 2017, there were over 986,000. Now at the end of 2020, there are an estimated 790,000. Like other countries in the Horn of Africa, Somalia has been plagued by droughts and other effects of climate change. Between 2016 and 2018, four successive below-average rainy seasons led to crop failure, livestock deaths, and a loss of assets. A 25-year armed conflict exacerbated the problem. Many Somali refugees have found Ethiopia, Kenya, and even Yemen to be safer alternatives.

Sudan

In Sudan, as with the DRC and other countries on this list, we can see one of the complications that has grown out of the global refugee crisis: While Sudan is the fifth largest country of asylum for refugees including the largest population of refugees from South Sudan, it's also a country that's producing an increasing number of refugees over 805,000 as of December 2021. Many Sudanese are fleeing protracted violence or climate change-induced drought and famine.

The Rohingya Crisis

Since August 25, 2017, over 1.1 million Rohingya refugees have fled ongoing violence in Myanmar. Many of the stateless Rohingya have wound up in what is known as the world's largest refugee camp in Cox's Bazar, Bangladesh.

Afghanistan

Afghanistan continues to be one of the top countries of origin for refugees. Roughly 1 in 10 — that is, 2.6 million — refugees are Afghan by birth, and this number has fluctuated steadily over the last four decades. More than 88% of Afghan refugees are hosted in neighboring Pakistan and Iran.

Ukraine

In less than a month, a crisis in Ukraine has made the country the second-largest country of origin for the global refugee population. As of April 25, 2022, over 5.2 million Ukrainians have fled the country, with nearly 3 million taking shelter just across the border in Poland. This has exceeded the UNHCR's initial estimate that 4 million Ukrainians nearly 10% of the country's population would be displaced internationally as a result of conflict. In all likelihood, the global refugee population has reached a new high in 2022, surpassing 30 million people.

Syria

Over 25% of the total global refugee population are part of the global diaspora in the wake of the 10-year Syrian crisis. As of 2021, 6.7 million Syrians have sought refuge, primarily in Lebanon, Jordan, Iraq, Egypt, and Turkey (which is currently the largest host community for refugees). In

Lebanon, there are no formal camps, which leaves its population of over 1 million Syrians living across 2,000 communities, often overcrowded temporary shelters.

3.5.2 International and regional instruments relating to refugees are:

The 1948 Universal Declaration of Human Rights

The 1951 United Nations Convention Relating to the Status of Refugees

The 1966 Bangkok Principles on Status and Treatment of Refugees adopt ed at the Asian-African Legal Consultative Committee in 1966

The 1967 Protocol Relating to the Status of Refugees

The 1967 UN General Assembly Declaration on Territorial Asylum

The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

The 1974 United Nations *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*

The 1976 Council of Europe's Recommendation 773 (1976) on the Situation of de facto Refugees.

The 1984 Cartagena Declaration on Refugees for Latin America and its three successors:

The 1989 Convention on the Rights of the Child

The 1998 Conclusion on International Protection by the Executive Committee of the High Commissioner's Programme

The 2001 Declaration by States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees.

The 2003 Convention Plus, in which refugee resettlement was decided to be of central concern of UNHCR.

The 2004 European Union's Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and content of the protection granted.

The 2016 New York Declaration for Refugees and Migrants.

3.5.1 Human rights and refugee law

Refugee law and international human rights law are closely connected in content but differ in their function. The main difference of their function is the way in which international refugee law considers state sovereignty while international human rights law do not. One of the main aspects of international refugee law is non-refoulement which is the basic idea that a country cannot send back a person to their country of origin if they will face endangerment upon return. In this case, a certain level of sovereignty is taken away from a country. This basic right of non-refoulement conflicts with the basic right of sovereign state to expel any undocumented aliens.

Human rights are rights a person is guaranteed on the basis only that they were born as a human being. The following are universal human rights that are most relevant to refugees:

i.The right to freedom from torture or degrading treatment

ii.The right to freedom of opinion and expression

iii.The right to freedom of thought, conscience, and religion

iv.The right to life, liberty, and security

v.Freedom from discrimination

vi.Right to asylum.

SELF ASSESSMENT EXERCISE 1. Explain the rights of Refuges under international law.
SELF ASSESSMENT EXERCISE 2.Describe universal human rights relevant to refugees' issues.

SELF ASSESSMENT EXERCISE 3. What are the international Legal Instruments that deals refuges and political Asylum seekers

3. 6 Summary

In international law, Asylum is the protection granted by a state to a foreign citizen against his own state. The person for whom asylum is established has no legal right to demand it, and the sheltering state has no obligation to grant it. Article 1(A) (2) of the 1951 Convention defines a refugee as an individual who is outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group. Applying this definition, internally displaced persons including individuals fleeing natural disasters and generalized violence, stateless individuals not outside their country of habitual residence or not facing persecution, and individuals who have crossed an international border fleeing generalized violence are not considered refugees under either the 1951 Convention or the 1967 Optional Protocol.

To be granted asylum, a person must demonstrate that he or she is a refugee, that he or she is not barred from asylum for any of the reasons listed in our immigration laws, and that the decision-maker should grant asylum as a matter of discretion. A refugee is simply, any person who is outside his or her country of nationality or, if stateless, outside the country of last habitual residence and is unable or unwilling to return to that country because of persecution or well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.

This definition is based on international law, specifically the 1951 UN Convention Relating to the Status of Refugees. The U.S. is not a signatory to this Convention, but did sign on to its 1967 Protocol, which incorporates the Convention by reference. The Refugee Convention requires state parties to protect people living within their borders and prohibits them from sending people to other countries where they would be harmed based on their race, religion, nationality, membership in a particular social group, or political opinion. With the Refugee Act of 1980, the U.S. brought the refugee definition into our domestic law. The refugee definition is found at

section 101(a) (42) of the Immigration and Nationality Act. A person who meets the refugee definition may be granted asylum in the United States if he or she is not barred from asylum for any of the reasons listed in section 208 of that Act and if the adjudicator decides that he or she should be granted asylum as a matter of discretion.

The bars to asylum include the one-year filing deadline, which states that a person who needs asylum should file the application within one year of the last arrival in the United States. Otherwise, the asylum-seeker must show that he or she qualifies for an exception to the filing deadline and that he or she filed within a reasonable time given that exception. Human Rights First advocates for the elimination of the filing deadline from our asylum law.

International action for refugees did not start until the 1920s. In 1921 Fridtjof Nansen of Norway was appointed by the League of Nations as high commissioner for refugees and devised a so-called League of Nations Passport (Nansen Passport], a travel document that gave the owner the right to move more freely across national boundaries. After Nansen's death in 1930, the protection of refugees was entrusted to the Nansen International Office for Refugees, but this office accomplished little before its mandate expired in 1938. Other refugee-assistance organizations have included the Intergovernmental Committee on Refugees , the United Nations Relief and Rehabilitation Refugee Organization and the Office of the United Nations High Commissioner for Refugees, established in 1950. The Intergovernmental Committee for European Migration renamed the Intergovernmental Committee for Migration in 1980 was founded in 1951. Several nongovernmental and voluntary agencies, such as the International Rescue Committee, have also been established throughout the world. Since the 1960s large concentrations of refugees have been located in Africa and Asia. Although the numbers varied from year to year, each of the two regions accounted for more than three million refugees in 2005. In the same year, the total number of refugees worldwide was estimated to be roughly nine million.

3.7 References / Further Reading/Web Resources.

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3.8 Possible answer to self-assessment exercise 2: The following are universal human rights that are most relevant to refugees' issues.

i. The right to freedom from torture or degrading treatment
ii. The right to freedom of opinion and expression
iii. The right to freedom of thought, conscience, and religion
iv. The right to life, liberty, and security
v. Freedom from discrimination
vi. Right to asylum.