

II

23. Apart from gaining familiarity with the subject-matter of International Sale of Goods, the Sub-Committee devoted its time to the question of the organizational set up necessary for the further study of the subject, and made the following recommendations :

- (1) The Sub-Committee should continue to function as a Standing Committee for exchanging views on the subject of International Sale of Goods. The views and suggestions will be exchanged through correspondence and by circulation of documents. If it becomes necessary, the Sub-Committee may meet on a formal basis as may be arranged by the Secretariat.
- (2) The Secretary of the Asian-African Legal Consultative Committee will keep the members of the Sub-Committee informed about the developments in the the UNCITRAL and its Working Groups in regard to the study of the subject. He will provide such services to the Sub-Committee as may become necessary, including the circulation of relevant documents.
- (3) The Secretary will keep the member Governments informed about the work of the Sub-Committee, its recommendations and suggestions, and will send them necessary materials.

24. A brief reference to the relevant U.N. documents on the subject covered is enclosed.

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Rapporteur

SELECTED BIBLIOGRAPHY

1. Reports of the U.N. Commission on International Trade Law:

- (i) Report of the UNCITRAL on its First Session-29 January-26 February 1968, General Assembly Official Records: Twenty-third Session, Supplement No. 16 (A/7216).

Text of resolution 2205 (XXI) adopted by the General Assembly on 17 December 1966, establishing UNCITRAL, is given as Annex to UNCITRAL report on its First Session.

- (ii) Report of UNCITRAL on its Second Session 3-31 March 1969, General Assembly Official Records: Twenty-fourth Session, Supplement No. 18 (A/7618).

List of documents of the First Session and the Second Session of UNCITRAL are given in the Reports cited above, respectively.

2. Other important documents :

- (i) A/6396 (23 September 1966) : *Progressive Development of the Law of International Trade, Report of the Secretary-General.*
- (ii) A/CN.9/5 : *Survey of activities of organizations concerned with the harmonization and unification of the law of international trade; note by the Secretary-General.*

VII. INTERNATIONAL LEGISLATION ON
SHIPPING

I. INTRODUCTORY NOTE

At the second session of the United Nations Conference on Trade and Development (UNCTAD) held in New Delhi during February-March, 1968, the importance of a review of the International Legislation on Shipping was emphasised by many Delegates, mostly from Asian and African countries. The matter was discussed in detail at the Fourth Committee of the Conference. The Asian-African Legal Consultative Committee, followed the discussions on the subject in the Fourth Committee, mainly with a view to understanding the issues involved, which were important from the viewpoint of the Asian and African countries. On the conclusion of the aforesaid session of the UNCTAD, the Secretariat of the Committee prepared a *Report on the Legal Issues before UNCTAD-II*, summing up the legal issues of importance to the Afro-Asian community arising out of the deliberations of the Conference. The said Report was circulated to the Member Governments of the Committee.

Subsequently, upon the suggestion of the UNCTAD, the U.N. General Assembly in its resolution 2421 (XXIII) of 18 December 1968 recommended that the topic of International Legislation on Shipping be included among the priority topics for consideration by the United Nations Commission on International Trade Law (UNCITRAL) in its programme of work. The UNCITRAL during its second session held in Geneva in March 1969 created a Working Group to indicate the topics and method of work on this subject. This Working Group met in January, 1970.

In April 1969, the UNCTAD Shipping Committee also created its Working Group "to make recommendations and to prepare the necessary documentation relating thereto to serve

as a basis for further work in this field." The Shipping Committee also directed its Working Group to include in its programme of work, the topics of Charter Parties, Marine Insurance, General Average, Bills of Lading and other related matters. This Working Group met in December, 1969.

Both the aforesaid U.N. bodies, namely the UNCTAD and the UNCITRAL had requested this Committee to assist them in their work by studying this subject and making available to them the Asian-African perspective on the matter. The Committee was also invited to be represented in the meetings of their Working Groups.

Pursuant to the aforesaid requests of the UNCTAD and UNCITRAL, and also in view of the fact that the subject is of particular significance to the developing countries of Asia and Africa, the matter was placed on the agenda of Eleventh Session of the Committee held in Accra for preliminary discussion. After general statements were made by the Delegates of Ghana, India, Pakistan and Ceylon at the Accra Session, a Sub-Committee was appointed to indicate the topics which should be studied by the Committee. The Sub-Committee suggested that the first topic to be considered by the Committee should be the question of the Bills of Lading.

II. A PRELIMINARY STUDY ON INTERNATIONAL LEGISLATION ON SHIPPING

Prepared by the Secretariat of the Committee

PART I

Meaning and Scope

1. "International legislation and practices in the field of shipping" constitute a vast body of law and custom, international and national, public and private, governing all the legal and practical relationships involved in the international transportation of persons and goods. The expression "international legislation on shipping" is used to describe "both the process and the product of the conscious effort to make additions to, or changes in",¹ the principles of contemporary international law pertaining to shipping. The legal instruments usually employed to make such additions and changes, are international agreements, treaties and conventions. The said expression is different from "international law of shipping", since the latter merely identifies the body of existing principles of international law, relating to shipping. It is also different from the expression "maritime law", which denotes the body of the principles of contemporary international law governing maritime intercourse, naval warfare and neutrality. Custom is the most important source of international maritime law, and the greatest contribution in the field was made by the Admiralty Courts and the naval officers and practitioners in the British Commonwealth and the United States of America. As stated above, the process of legislation in the field came

1. Manley O. Hudson, *International Legislation*, Vol. 1 (1931), p. XIII.

about through international agreements, treaties and conventions among States.

2. In the present Note the term "international legislation on shipping" is used to describe the process and product of development of international conventional law, as distinguished from international customary law, pertaining to shipping. Since the said term is more restricted in scope than the expression "international maritime law", the present Note does not deal with the legal problems concerning the delimitation of territorial waters, the continental shelf, fishing and conservation of the living resources of the sea, naval warfare and neutrality, international shipping in time of war and the status of warships. The present Note seeks to set out briefly the existing state of, and the activities of various international organizations in regard to, international legislation on shipping. The subject can be divided into three main categories, viz., (1) International legislation concerning the status of ships and regulation of sea traffic, (2) International legislation on commercial and economic aspects of shipping, and (3) International legislation on other aspects of shipping. Various topics relating to shipping can be classified under the aforesaid categories, in the following manner :

International legislation concerning the status of ships and regulation of sea traffic :

- (i) Status of ships,
- (ii) Freedom of navigation and transit,
- (iii) Facilitation of maritime traffic,
- (iv) Tonnage measurement,
- (v) Load lines,
- (vi) Safety legislation,
- (vii) Jurisdiction in cases of collision between vessels,

- (viii) Salvage and assistance,
- (ix) Maritime mortgages and liens,
- (x) Limitation of shipowners' liability,
- (xi) State immunity,
- (xii) Protection of sub-marine cables, and
- (xiii) Liner conferences.

International legislation on commercial and economic aspects of shipping :

- (xiv) Carriage of goods and shipping documents,
- (xv) Bill of lading,
- (xvi) Charter-party,
- (xvii) Marine insurance and general average, and
- (xviii) Containers and unitized cargoes.

International legislation on other aspects of shipping :

- (xix) Carriage of passengers,
- (xx) Pollution,
- (xxi) Sanitation, and
- (xxiii) Labour.

3. Each of these topics has been briefly dealt with in the present Note, on the basis of the aforesaid classification.

PART II

History of International Shipping Legislation

4. Dr. T. K. Thommen, in his report on "International Legislation on Shipping",² points out : "The practice of

merchants engaged in international shipping plays an important part in the formulation of legal rules. In earlier centuries, when sovereign States had not, as yet, intervened by means of legislation to regulate the sea trade, the merchants followed their own rules of conduct which were primarily derived from ancient maritime codes like the Rhodian Sea Law, the Basilika, the Assizes of Jerusalem, the Rools of Oleron, the Laws of Wisby, the Hanseatic Code, the Black Book of the British Admiralty, *Consolato del Mare* and others." An important role in formulation of principles of international law out of these rules, has been played by the courts of several maritime States. The growth of international trade made it necessary for States to regulate international navigation. National laws, incorporating mainly the practice and usage in the field of shipping, were enacted by many maritime States. However, this led to divergencies and conflicts between national laws in the different aspects of international shipping, so that uniformity of legislation became necessary. This was sought to be achieved through international treaties and conventions on the subject. Mr. A. N. Yiannopoulos points out: "Beginning with the last decade of the past century, it has become increasingly apparent that a higher measure of certainty and predictability could be achieved by making uniform, first, the conflict rules, and then the substantive law prevailing in various parts of the world. While uniformity of law and decision can be achieved in several ways, adoption of international conventions, incorporating the rules intended to become uniform in all of the contracting States, has emerged as, perhaps, the most important method."³

2. UNCTAD document No. TD/32/Rev. 1.

3. In his article on "The Unification of Private Maritime Law by International Conventions", *Law & Contemporary Problems*, Vol. 30, 1965, at p. 371.

5. The first efforts towards the unification of the law of merchant shipping came in the later part of the last century. The Institute de Droit International (the Institute of International Law), a non-governmental organization founded in 1873 in Ghent considered and passed resolutions on topics such as the freedom of the high seas, and it was due to its efforts that the Convention on the Protection of Sub-marine cables, was adopted in Paris on March 14, 1884.⁴ Another non-governmental organization, the International Law Association which originally was called "The Association for the Reform and Codification of the Law of Nations" also devoted considerable attention to matters connected with shipping. These provide interesting instances of attempts at international unification of maritime rules through non-official and voluntary organisations, and not by State legislation or multilateral treaties. In 1877 this Association at its Antwerp Conference achieved unification of the Rules of General Average which came into use as the York-Antwerp Rules of General Average.

6. The volume of work involved in the field of maritime law was such that it became necessary to set up a separate organization devoted to the problems of shipping. Thus, the Committee Maritime International (International Maritime Committee), a non-governmental organization, was born in Antwerp in 1897 with the cooperation of the International Law Association. The objects of the International Maritime Committee are: (a) to further by conferences (of the Committee) and by publications and diverse works the unification of maritime law; (b) to encourage the creation of national associations for the unification of maritime law; and (c) to maintain between the associations regular communication and united action. The Committee prepares draft conventions on various aspects of maritime law and these are submitted for the approval of States at diplomatic conferences convened by the Belgian Government.

4. Sources of text : II Malloy 1969.

7. In 1901 the International Law Association adopted the Glasgow Marine Insurance Rules of 1901.⁵ One of the first subjects considered by the Committee Maritime International, was the liability of shipowners in case of collision between vessels, and on September 23, 1910, the Brussels Diplomatic Conference adopted the International Convention for the Unification of Certain Rules of Law with Respect to Collisions between Vessels. It also adopted the International Convention for the Unification of Certain Rules of Law relating to Salvage and Assistance at Sea, on September 23, 1910.⁷ The Convention on Collisions contains several important provisions regarding compensation due for damage caused to vessels or persons or things on board owing to collisions at sea. The Convention apportions the damages payable according to the degree of fault. The Convention concerning Assistance and Salvage deals with the problem of payment of remuneration to persons who have taken part in salvage operations.

8. The year 1919 saw the establishment of the International Labour Organization (ILO) to advance the cause of social justice by establishing international labour standards by means of Conventions and recommendations. The ILO has been concerned with the interests of seafarers almost from its inception, and has adopted a number of Conventions and recommendations concerning maritime labour.⁸

These Conventions and Recommendations regulate variety of matters relating to employment of seamen, their certificates of qualification and identity documents, wages, hours of work and manning, social security, welfare of seafarers and the like.

5. See Report of the International Law Association, 20th Session, held at Glasgow, pp. 213 to 219.
6. See *British Shipping Law Series*, Vol. 8 on "International Conventions of Merchant Shipping", by Dr. Nagendra Singh, at p. 1047.
7. *Ibid.*, at p. 1112.
8. Some of these are : (i) Convention for Establishing Facilities for Finding Employment for Seamen (9 of 1920); (ii) Convention fixing

In 1920, at its Antwerp meeting, the governing body of the ILO appointed the Joint Maritime Commission, to assist the technical maritime service of the Labour Office and to act as a preparatory and advisory body on all Maritime Labour questions. During the past 49 years of its existence, the Commission has advised the ILO on subjects mentioned above.

the Minimum Age for Admission of Children to Employment at Sea (7 of 1920); (iii) Convention concerning Unemployment Indemnity in case of Loss or Foundering of Ship (8 of 1920); (iv) Recommendation concerning Unemployment Insurance for Seamen (10 of 1920); (v) Recommendation concerning the Establishment of National Seamen's Code (9 of 1920); (vi) Convention fixing the Minimum Age for the Admission of Young Persons to Employment as Trimmers or Stokers (15 of 1921); (vii) Convention concerning the Compulsory Medical Examination of Children and Young Persons employed at Sea (16 of 1921); (viii) Convention concerning Seamen's Articles of Agreement (22 of 1926); (ix) Convention concerning the Repatriation of Seamen (23 of 1926); (x) Recommendation concerning the Repatriation of Masters and Apprentices (27 of 1926); (xi) Recommendation concerning the general principles for the Inspection of the Conditions of work of Seamen (28 of 1926); (xii) Recommendation concerning the Protection of Emigrant Women and Girls on Board Ship (26 of 1926); (xiii) Convention concerning the Protection against Accidents of Workers Employed in Loading and Unloading Ships (28 of 1929); (xiv) Recommendation concerning Reciprocity as regards the Protection against Accidents of Workers employed in Loading and Unloading Ships (33 of 1929); (xv) Recommendation concerning the consultation of Workers' and Employers' Organisation in the Drawing up of Regulations dealing with the Safety of Workers Employed in Loading or Unloading Ships (24 of 1929); (xvi) Convention concerning the Protection against Accidents of Workers Employed in Loading or Unloading Ships (32 of 1932); (xvii) Recommendation for Expediting Reciprocity as provided for in the Convention adopted in 1932 concerning the Protection Against Accidents of Workers Employed in Loading or Unloading Ships (40 of 1932); (xviii) Convention fixing the Minimum Age for the Admission of Children to Employment at sea (58 of 1936); (xix) Convention concerning the minimum Requirements of Professional Capacity for Masters and Officers on Board Merchant Ships (53 of 1936); (xx) Convention concerning Hours of Work on

9. The International Law Association, at its 30th Conference held at the Hague in 1921, formulated a body of rules

Board Ship and Manning (57 of 1936); (xxi) Recommendation concerning Hours of Work on Board Ship and Manning (49 of 1936) (xxii) Convention concerning Annual Holidays with Pay for Seamen (54 of 1936); (xxiii) Convention concerning the Liability of shipowners in case of Sickness, Injury or Death of Seamen (55 of 1936); (xxiv) Convention concerning Sickness Insurance for Seamen (56 of 1936); (xxv) Recommendation concerning the promotion, of a Seamen's Welfare in Ports (48 of 1936); (xxvi) Recommendation concerning the Organization of Training for Sea Service (77 of 1946); (xxvii) Convention concerning the Medical Examination of Seafarers (73 of 1946); (xxviii) Convention concerning the Certification of Able Seamen (74 of 1946); (xxix) Convention concerning Wage Hours of Work on Board Ship and Manning (76 of 1946); (xxx) Convention concerning Vacation Holidays with Pay for Seafarers (72 of 1946); (xxxii) Convention concerning Social Security for Seafarers (70 of 1946); (xxxiii) Recommendation concerning Agreements relating to the Social Security of Seafarers (75 of 1946); (xxxiv) Recommendation concerning Medical care for Seafarers' Dependents (76 of 1946); (xxxv) Convention concerning Seafarers' Pension (71 of 1946); (xxxvi) Convention concerning Crew Accommodation on Board Ship (75 of 1946); (xxxvii) Recommendation concerning the Provision to crews by shipowners of Bedding, Mess utensils and other articles (78 of 1946); (xxxviii) Convention concerning Food and Catering for Crews on Board Ship (68 of 1946); (xxxix) Convention concerning Wages, Hours of Work on Board Ship and Manning (93 of 1949); (xl) Convention concerning Vacation Holidays with Pay for Seafarers (91 of 1949); (xli) Recommendation concerning the Engagement of Seafarers for Service in Vessels Registered in a Foreign Country (107 of 1958); (xlii) Convention concerning the Seafarers' National Identity Documents (108 of 1958); (xliii) Convention concerning Wages, Hours of Work on Board Ship and Manning (109 of 1958); (xliv) Recommendation concerning Wages, Hours of Work on Board Ship and Manning (109 of 1958); (xlv) Recommendation concerning Social conditions and Safety of Seafarers in relation to Registration of Ships (108 of 1958); (xlvi) Recommendation concerning the contents of Medical Chests on Board Ship (105 of 1958); and (xlviii) Recommendation concerning Medical Advice by Radio to Ships at Sea (106 of 1958).

known as the Hague Rules, 1921,⁹ defining in clear terms the risks to be assumed by sea carriers under Bills of Lading. The League of Nations was instrumental in the conclusion of the two Barcelona Conventions: the Convention and Statute on Freedom of Transit, April 20, 1921¹⁰ and the International Convention and Statute concerning the Regime of Navigable Waterways of International Concern, April 20, 1921¹¹ and adoption of the Declaration Recognizing the Right to Flag of States Having No Sea-Coast, Barcelona, April 20, 1921.¹² The aforesaid two conventions lay down the principle of allowing foreign vessels freedom of navigation and transit on a footing of equality.

10. The Hague Rules of 1921 were considered at the Diplomatic Conference on Maritime Law which was held at Brussels in October 1922, and were amended in 1923 by a Special Committee appointed by the Conference. The League of Nations Transit Organization did useful work in the field of international transport and communications and its main achievement in the field of shipping was the International Convention on the Regime of Maritime Ports, Geneva, December 9, 1923.¹³ The Convention affirms the principle of allowing foreign vessels freedom of access to maritime ports used for foreign trade. The Pan American Conference, at its Santiago Session in 1923, passed several resolutions on inter-American steamship services, shipping documents, and maritime law. The Pan American Maritime Sanitary Code was signed at the Havana Conference on November 14, 1924.¹⁴

9. See Report of the International Law Association, for the 30th Conference (1921), pp. 212 to 218.

10. *British Shipping Law Series* Vol. 8 (Nagendra Singh) at p. 1230.

11. *Ibid.*, at p. 1236.

12. *Ibid.*, at p. 1221.

13. *Ibid.*, at p. 1222.

14. *Ibid.*, at p. 851.