

27. Also in 1965, at the invitation of the IMCO, a Conference was held in London, which adopted the Convention on Facilitation of International Maritime Traffic, April 9, 1965.⁴⁵ The Convention seeks to provide for appropriate measures to facilitate and expedite international maritime traffic and for persons and property on board. The Annex to the Convention lays down facilitation provisions relating to the arrival and departure of ships.

28. The U.N. General Assembly, by its resolution 2209 (XXI) of December 17, 1966, established the United Nations Commission on International Trade Law (UNCITRAL), to promote "the progressive harmonization of the law of international trade". In the report of the Secretary-General of the U.N., which served as the basis of discussion on the subject by the Assembly, carriage of goods by sea was listed under the heading "Transportation", as being one of the topics falling within the scope of the law of international trade. Also in 1966, the IMCO convened the International Conference on Load-Lines in London, which adopted the 1966 International Convention on Load-Lines.⁴⁶ The Convention lays down uniform principles and rules regarding the limits to which ships on international voyages may be loaded, having regard to the safety of life and property at sea. The Convention on Water-Borne Transportation of the Countries of the Latin American Free Trade Association, was adopted on September 30, 1966.

29. In 1967, the efforts of the Comité Maritime International crystallized into adoption, at Brussels, of the revised Convention on Maritime Liens and Mortgages, May

45. See Final Act of the International Conference on Facilitation of Maritime Travel and Transport, March 24 to April 9, 1965, Cmnd, 2746, Misc. No. 18 (1965).

46. Final Act of International Conference on Load-Lines, 1966, April 5, 1966, and Attachment 1.

27, 1967, and the Convention relating to Registration of Rights in Respect of Ships Under Construction, May 27, 1967, and the International Convention for the Unification of Certain Rules relating to the Carriage of Passengers' Luggage by Sea, May 27, 1967. Also through the efforts of the said Committee, the Protocol to amend the 1924 Brussels Convention for the Unification of Certain Rules of Law relating to Bills of Lading, was adopted in 1968.

30. At the Second Conference of the UNCTAD held in February-March, 1968, the Fourth Committee (on Shipping) considered the question of Review of International Legislation on Shipping. In its Resolution 14 (II) of March 25, 1968, the Conference, recognized "that the existing international legislation on shipping does not cover many important economic and commercial aspects of maritime activity"; emphasized "the need for an early review of some areas of the existing international legislation concerned with commercial and economic aspects of shipping"; and recommended "that the Trade and Development Board instruct the Committee on Shipping of the UNCTAD to create a working group on International Shipping Legislation, from amongst the member countries", "to review commercial and economic aspects of International Legislation on Shipping in order to identify areas where modifications are needed and to make recommendations concerning new legislation which has to be drafted". The Resolution also envisaged that "the Committee on Shipping, upon recommendation of the Working Group, may ask the UNCITRAL to take up the work of drafting new Conventions on the subjects identified by the Working Group and also to set up a special subsidiary body for the purpose of such drafting, and that "if it should appear that UNCITRAL is not able to draft the required legislation according to the time schedule requested by the Committee on Shipping, that Committee should consider other steps to finalize the drafting". The Resolution also recommended "that the following subjects, among others,

should be taken up for drafting appropriate conventions or for revising existing legislation: (i) charter-parties; (ii) marine insurance; and (iii) amendments to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924". The Resolution further recommended "that the Working Group should examine the feasibility of drafting a general instrument (Convention or Agreement) on Maritime Transportation and Development, dealing with International Relations in Shipping, for the consideration by an International Conference to be convened under the auspices of the United Nations".⁴⁷

31. The Trade and Development Board, by its Resolution 46 (VII) of September 21, 1968, instructed the Committee on Shipping to create a Working Group on International Legislation on Shipping and to determine its terms of reference and programme of work in the light of the provisions of Conference Resolution 14 (II).⁴⁸ The U.N. General Assembly, by its Resolution 2421 (XXIII) of December 18, 1968, recommended "that the United Nations Commission on International Trade Law should...consider the inclusion of International Shipping Legislation among the priority topics in its work programme". In 1968, a Joint Shipping Legislation Unit (UNCTAD/Office of Legal Affairs of the U.N.) was also set up.

32. Also in 1968, the International Law Association, at its Buenos Aires Conference, considered the report of its Committee on International Trade and Investment, which includes among its topics, one on discrimination in international transport. Part I of the Report on this topic consists of a summary of replies from nine regional branches of the Association to a questionnaire on Discrimina-

47. UNCTAD Document TD/II/Res. 14.

48. Document A/7214, Part Two, Annex I, and UNCTAD Document TD/B/C. 4/41, Annex I.

tion in International Transport by Sea. The questions and replies are arranged under the following headings: Transport of Goods; Ocean Freight Rates; Method of Payment and Trade Terms; Regulation of Shipping Industries; Regulation of Shipping Conferences; and Legislation and other provisions and/or Services. Part IV of the Report on this topic consists of a summary of replies from four of the branches to a questionnaire on shippers.⁴⁹

33. The United Nations Commission on International Trade Law (UNCITRAL), during its Second Session, held in Geneva in March 1969, adopted a Resolution, on March 27, 1969, which took into account Resolution 14 (II) of March 25, 1968 of UNCTAD and Resolution 46 (VII) of September 21, 1968 of the Trade and Development Board; recalled the U. N. Resolution 2421 (XXIII) of December 18, 1968; and decided "to include International Legislation on Shipping among the priority items in its programme of work", and "to set up a Working Group consisting of representatives of Chile, Ghana, India, Italy, the United Arab Republic, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland, which may be convened by the Secretary-General either on his own initiatives or at the request of the Chairman, to meet some time before—preferably shortly before—the commencement of the Third Session of the Commission to indicate the topics and method of work on the subject, taking into consideration the study prepared by the Secretary-General, if it is ready, and giving full regard to the recommendations of UNCTAD and any of its Organs, and to submit its Report to the Commission at its Third Session".⁵⁰

49. See Report of the International Law Association, for its 53rd Session, Buenos Aires, 1968.

50. See General Assembly, Official Records, Twenty-fourth Session, Supplement No. 18(A/7618), at pp. 59. and 60.

34. The UNCTAD Committee on Shipping, by its Resolution 7 (III) of April 25, 1969, concerning creation of a Working Group on International Shipping Legislation, recalled the Conference Resolution 14 (II) of March 25, 1968 and the Trade and Development Board Resolution 46 (VII) of September 21, 1968; noted the above-mentioned Resolution of March 27, 1969, of UNCITRAL adopted at its Second Session; recognized "the need for co-ordination of the efforts of the United Nations Bodies concerned with this matter, with a view to avoiding any duplication of the international activities in this field"; and decided "to establish a Working Group on International Shipping Legislation composed of thirty three representatives,⁵¹ elected from among the member States in accordance with the principle of equitable geographical distribution", "(a) to review economic and commercial aspects of international legislation and practices in the field of shipping from the standpoint of their conformity with the needs of economic development, in particular, of the developing countries, in order to identify areas where modifications are needed; (b) in the light of this review, to make recommendations and prepare the necessary documentation relating thereto to serve as a basis for further work in this field, to be submitted to the United Nations Commission on International Trade Law for the drafting of new legislation or other appropriate action and, when necessary, to consider other measures to implement fully the provisions of paragraph 1 of Resolution 14 (II); (c) to report its findings and recommendations to the Committee on Shipping". The Resolution further recommended "that the Working Group, in drawing up its programme of work, should include, *inter alia*, the following topics : (a) Charter-parties; (b) Marine

51. Nigeria, Argentina, Belgium, Brazil, Bulgaria, Canada, Ceylon, Chile, Colombia, Czechoslovakia, Ethiopia, Federal Republic of Germany, France, Gabon, Ghana, Greece, India, Indonesia, Iran, Iraq, Ivory Coast, Japan, Mexico, Norway, Pakistan, the Philippines, Poland, Spain, Sweden, USSR, UK and USA.

Insurance and General Average; (c) Bills of Lading and related Matters". It also required the Working Group to hold its First Session before the meeting of the UNCITRAL Working Group on the subject, and authorized it to transmit its Report to the latter for consideration.⁵²

35. In May 1969, on the initiative of IMCO, the Convention on Tonnage Measurement, 1969, was adopted.

36. The Institute for the Unification of Private Law (UNIDROIT) issues two specialized publications providing information on the work of unification done by the various organizations and on the leading cases decided by national courts concerning the interpretation of international conventions, including the International Conventions on Maritime Law and the Inland-Navigation.

PART III

Need for the Review of International Legislation on Shipping

37. Dr. T.K. Thommen, in his Report on "International Legislation on Shipping",⁵³ stated: "It is to avoid conflicts and divergencies between national laws in the different spheres of International Shipping that a body of internationally accepted legal norms has been adopted by means of Conventions. The principal object of a maritime convention, whether it formulates existing norms or creates new norms or amalgamates conflicting norms, or whether it lays down rules of public law or private law, is therefore to build up a body of internationally accepted legal norms for the settlement of problems connected with Maritime Trade". In this

52. UNCTAD Document TD/B/240, Annex I, at pp. 26 and 27. The UNCTAD Working Group is scheduled to meet in December, 1968, and the UNCITRAL Working Group is to meet sometime thereafter, but before the Third Session of UNCITRAL (New York), April 6 to 30, 1970.

53. UNCTAD Document TD/32/Rev. 1.

connection, it may be helpful to bear in mind, that while the broad outlines of international legislation and practices in the field of shipping show remarkable degree of uniformity, there exist nevertheless considerable differences with respect to particular rules and their application in different countries. This may be particularly apparent in the possible differences of approach of common and civil law systems, which may show considerable differences with respect to form, as also substance.

38. A review of International Legislation on Shipping is particularly important from the viewpoint of the developing countries, as many States consider that the high cost of shipments is a major factor in their balance-of-payments difficulties and the cost of their exports. Mr. Khalil of the United Arab Republic stated, before the Fourth Committee at the Second Session of the UNCTAD, that a review of international legislation in the field of shipping was needed to eliminate past mistakes and to provide a truly international system which would be beneficial to developing countries alike.⁵⁴

Mr. Ansetta of Chile pointed out the need for adoption of common legal standards in the field of shipping. He also stated that as a branch of law, shipping had been continually subject to revision by international treaties or by private contractual arrangements. The difference between countries with a codified legal system and common law countries had given rise to endless disputes over interpretation.⁵⁵ Mr. Khabur of the U.S.S.R. stated that international shipping was a complex subject and required unified principles to govern it.⁵⁶

39. It was pointed out by Mr. Mirbaha of Iran that the principal source of International Shipping Law was inter-

54. UNCTAD Document TD/II/C.4/SR. 14.

55. In his statement of February 20, 1968, before the Fourth Committee of UNCTAD-II. See Document TD/II/C.4/SR.19.

56. *Ibid.*

national custom, which itself was based partly on the national laws of the traditional maritime nations.⁵⁷ Mr. Radkovski of Bulgaria expressed the view that most of the Conventions on the subject had been concluded in the past by the developed countries in order to protect the interests of their shipping companies.⁵⁸ According to Mr. Rouanet of Brazil, the existing Conventions were weighted in favour of the carrier or shipowner, to the detriment of the shipper—and hence of developing countries.⁵⁹ Mr. Adebajo of Nigeria expressed the view that the existing Conventions on shipping lacked the force of law.⁶⁰ Many representatives were of the view that there were gaps in the existing legislation on shipping, which needed to be filled.⁶¹ Mr. Khabur of the U.S.S.R. and Mr. Ahmed of Pakistan pointed out that maritime law still respected obsolete practices which did not take due account of the interests of shippers as well as shipowners. Mr. Umar of Indonesia pointed out that the governments of the developing countries were not always in a position to give effect to certain Shipping Conventions because of their lack of technical capacity and financial implications.⁶²

40. Mr. Adebajo of Nigeria thought it important to pay attention to such questions as the need for universality in Conventions on Shipping; the need to avoid conflict in their

57. *Ibid.*

58. In his statement of February 19, 1968, before the Fourth Committee of UNCTAD-II. See UNCTAD Document TD/II/C.4/SR.14.

59. *Ibid.*

60. *Ibid.*

61. Mr. Rouanet of Brazil (TD/II/C.4/SR. 14); Mr. Ahmed of Pakistan (TD/II/C.4/SR. 19); Mr. Malivoneski of the UNCTAD Secretariat (TD/II/C.4/SR.16).

62. In their statements of February 20, 1968 before the Fourth Committee of UNCTAD-II. See UNCTAD Document TD/II/C.4/SR.15.

interpretation or application; and the need for clarity in their formulation.⁶³ In regard to the gaps to be filled in International Legislation on Shipping, Dr. Nagendra Singh of India pointed out three aspects: "(i) Co-ordination, (ii) Consolidation of existing International Legislation, and (iii) New fields to be covered."⁶⁴ Mr. Khalil of the United Arab Republic suggested that a Convention providing for a truly international system, which would benefit all countries, should be prepared and submitted to an International Conference convened for its adoption. He further suggested that legislation be undertaken on questions, such as Charter-parties and Marine Insurance which were not yet covered by Conventions and which were affecting the process of development.⁶⁵ According to Mr. Rouanet of Brazil, the proposed Convention should cover the points in respect of which there were gaps in the existing legislation and suitably adapt the existing Conventions wherever they were incompatible with the interests of developing countries.⁶⁶ Dr. Nagendra Singh favoured the idea of convening an International Conference and drafting a Convention for ratification by sovereign States. In this connection, he regarded it necessary to have a thorough review of all the matters on which legislation was required, bearing in mind particularly the interests of the developing countries and their need for guidance on international legislation.⁶⁷ Mr. Khabur of the U.S.S.R. favoured the idea of preparing a universal international instrument to govern the relations between States in the sphere of shipping.⁶⁸ Mr.

63. In his statement of February 10, 1968, before the Fourth Committee of UNCTAD-II, See TD/II/C.4/SR.14.

64. *Ibid.*

65. *Ibid.*

66. *Ibid.*

67. *Ibid.*

68. In his statement of February 20, 1968, before the Fourth Committee of UNCTAD-II. See UNCTAD Document TD/II/C.4/SR.15.

Radkovsky of Bulgaria supported this proposal.⁶⁹ Mr. Pavera of Czechoslovakia regarded it advisable to draft an International Convention proclaiming the major principles which should govern co-operation and relations between States in the field. He felt that a Convention of this kind would serve as a model for national legislation.⁷⁰

41. Mr. Schuld of the Netherlands pointed out that views as to how much regulation was necessary were bound to be different between countries in which shipping was a purely private activity and those in which there was active government participation in shipping. He stated that in his country, where shipping was a private activity, it would be impossible for the government to participate in international regulation unless it was clear that such regulation was in the general interest.⁷¹ However, most of the representatives from developing countries at the Fourth Committee of UNCTAD-II, wanted UNCTAD to undertake the task of review of International Shipping Legislation and preparation of Convention on the subject. The representatives from the socialist countries while favouring the idea of a Convention on International Shipping Law, wanted UNCTAD to avoid duplication and to work in collaboration with other international bodies.

PART IV

Status of Ships

42. The relevant Conventions providing for the principles of international law concerning the status of a ship are as follows:

- (i) The Geneva Convention on the High Seas, 1958,⁷² which makes provisions in regard to grant by a State

69. In his statement of February 22, 1968. Doc./TD/II/C.4/SR.17.

70. *Ibid.*

71. In his statement of February 20, 1968. Doc. TD/II/C.4/SR.15.

72. See *British Shipping Laws Series*, Vol 8, on "International Conventions on Merchant Shipping" (by Dr. Nagendra Singh), at p. 1145.

of its nationality to ships, their registration in its territory, and their right to fly its flag, and the rights and obligations of such State in respect of the said ships. The Convention provides, in paragraph 1 of Article 5, that each "State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory and for the rights to fly its flag", and that there "must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag". In paragraph 2 of Article 5, the Convention provides that "each State shall issue to ships to which it has granted the right to fly its flag documents to that effect".

- (ii) Declaration recognizing the Right of Flag of State Having No Sea-Coast, Barcelona, April 20, 1921.⁷³
- (iii) Treaty on International Commercial Navigation Law, Montevideo, March 19, 1940,⁷⁴ Articles 1 to 4. The Convention was adopted by the Second South American Congress held at Montevideo on March 6 to 19, 1940.
- (iv) Convention relating to Registration of Rights in respect of Ships under Construction, May 27, 1967, which came to be adopted through the efforts of the Comité Maritime International.

43. It may be stated that even though the Convention on High Seas refers to the terms "genuine link", it does not define the same. Dr. T.K. Thommen points out that while "some States insist that a ship can be registered only if it is owned by nationals of the State of registration, States like Liberia and

73. *Ibid.*, at p. 1221.

74. *Ibid.*, at p. 1099.

Panama do not seem to have any strict requirements as to the nationality of the owners. There are obvious disadvantages in this lack of uniformity. The registration of ships is a matter of considerable importance to the State as it adds to its national tonnage, and it will be of advantage to the interests concerned in maritime commerce if the criteria for the determination of the genuine link are specified".⁷⁵

PART V

Freedom of Navigation and Transit

44. Dr. T.K. Thommen, in his report on "International Legislation on Shipping", presented to UNCTAD-II points out that "it is in the interest of maritime trade that vessels of all nations are treated equally in foreign waters".

The existing Conventions in this field are as follows :

(i) and (ii) Convention and Statute on Freedom of Transit, Barcelona, April 20, 1921,⁷⁶ and the International Convention and Statute concerning the Regime of Navigable Waterways of International Concern, Barcelona, April 20, 1921,⁷⁷ both of which came to be adopted as a result of efforts of the League of Nations. The said Conventions lay down the principle of allowing foreign vessels freedom of navigation and transit on a footing of equality.

(iii) The International Convention and Statute on the Regime of Maritime Ports, Geneva, December 9, 1923,⁷⁸ which affirms the principle of allowing foreign vessels freedom of access to maritime ports used for foreign trade.

75. In his report on "International Legislation on Shipping," UNCTAD Document TD/32/Rev. 1.

76. See British Shipping Laws Series, Vol. 8, on "International Conventions of Merchant Shipping" by Dr. Nagendra Singh at p. 1230.

77. *Ibid.*, at p. 1236.

78. *Ibid.*, at p. 1221.

(iv) Draft Convention on the Legal Status of Territorial Sea, prepared by the Hague Codification Conference of 1930, convened by the League of Nations. However, the Conference could not reach an agreement on the subject of territorial waters.

(v) The Convention on the Inter-Governmental Maritime Consultative Organization of 1948,⁷⁹ adopted by a Conference of Plenipotentiaries convened at the instance of the Economic and Social Council of United Nations. The Convention affirms the principle of non-discrimination between vessels on the basis of the flag, and the principle of freedom of shipping on all flags to participate in international trade.

(vi) and (vii) The Geneva Convention on Territorial Sea and Contiguous Zone 1958,⁸⁰ and the Geneva Convention on High Seas, 1958,⁸¹ adopted by the 1958 U.N. Conference on the Law of Sea. The first Convention recognizes the right of innocent passage of foreign merchant ships through the territorial waters of the State. Article 24 of the Convention provides that ship of all States, "whether coastal or not, shall enjoy the right of innocent passage through the territorial sea". The Convention on High Seas recognizes that the freedom of the high seas include freedom of navigation, and vessels and things and persons therein are subject to the jurisdiction of the flag State while they are on the high seas. Both the Conventions provide that, the Government ships engaged in commercial services are treated on a par with private merchant ships.

(viii) The Convention on the Transit Trade of Land-locked Countries, July 8, 1965,⁸² adopted by the U.N. Conference on the Transit Trade of Land-locked Countries convened by UNCTAD. The Convention provides that in the

79. *Ibid.*, at p. 1153.

80. *Ibid.*, at p. 1139.

81. *Ibid.*, at p. 1145.

territorial and internal waters, the coastal State shall not discriminate between vessels of Land-locked States and those of other States. Vessels flying the flag of Land-locked States shall have the same freedom of access to, and the use of, sea ports, as is accorded to the vessels of the coastal State or any other State.

45. In regard to freedom of maritime navigation and transit, one of the questions to be considered is the one relating to flag discrimination. The International Chamber of Commerce, in co-operation with the International Chamber of Shipping, has been attempting for many years to focus attention to the damage which flag discrimination causes to international trade as a whole and, consequently, to those countries which believe they are helping their nationals by applying such measures.⁸³ Another question, which is under consideration of the Legal Committee of the IMCO, concerns legal problems arising from scientific oceanic research and the exploration and exploitation of the sea-bed and ocean floor including (i) the legal status of platform rigs, artificial islands and manned and unmanned devices used in oceanographic investigation; and (ii) peaceful uses of the sea-bed and ocean floor beyond the limits of present national jurisdiction.

PART VI

Facilitation of international maritime traffic

46. The existing conventions on this topic are as follows :

(i) International Convention on Navigation Law, Montevideo,⁸⁴ adopted at the Second South American Congress on Private International Law.

82. See Official Records of the Trade and Development Board, Second Session, Annexes, agenda item 6, Document TD/18.

83. A reference in this connection may also be made to a publication on "Flag Discrimination" by Mr. Jorge Allard P., under the auspices of the Latin American Shipowners' Association.

84. See *British Shipping Laws Series*, Vol. 8 on "International Conventions of Merchant Shipping", by Dr. Nagendra Singh, at p. 1099.

PART VII

Tonnage measurement of ships

51. Dr. Thommen, in his report stated that the "measurement of the tonnage of vessels is a matter on which uniformity of rules is desirable. A ship pays dues to port and harbour authorities, lighting authorities, the Suez and Panama Canal authorities on the basis of tonnage, and if uniform rules regarding the measurement are not followed by maritime nations serious difficulties will arise for vessels proceeding from port to port".

52. The conventions concerning this question are as follows :

(i) The Convention relating to Tonnage Measurement of Ships, Warsaw, April 19, 1935,⁸⁷ adopted through the efforts of the League of Nations, seeking to lay down uniform rules in this regard.

(ii) The Convention for a Uniform System of Tonnage Measurement of Ships, adopted at Oslo on June 10, 1947,⁸⁸ on the basis of a draft proposed by the technical experts on the League of Nations Transit Committee. The draft forms an annex to the Convention.

(iii) The Convention on Tonnage Measurement of Ships, London, May 1969, prepared by the Sub-Committee on Tonnage Measurement of IMCO, seeking to revise the 1947 Convention.

86. UNCTAD Document TD/32/Rev.

87. See *British Shipping Laws Series*, Vol. 8 on "International Conventions of Merchant Shipping", by Dr. Nagendra Singh, at p. 631.

88. *Ibid.*, at p. 633.

PART VIII

Load Lines

53. It may be noted that often in the past life and property were jeopardized on the seas by the manner in which vessels were loaded. There was no uniformity in the principles and rules adopted by various maritime nations with regard to the limits to which ships could be loaded on their international voyages.

54. The existing Conventions concerning the subject are as follows:

(i) The International Convention respecting Load Lines, London, July 5, 1930,⁸⁹ which sought to lay down common rules as regards depth to which ships engaged in international commerce might be loaded. It required that ships of participating countries engaged in international voyages be surveyed for structural efficiency and certain safety requirements and marked with load lines as specified in the Convention. The Convention recognized that the load lines might, with full regard to safety, differ at varying seasons of the year and in different parts of the oceans of the world and therefore fixed zones and seasons in which and during which, different rules for fixing the load lines should apply.

(ii) The International Convention on Load Lines, 1966,⁹⁰ prepared and opened for signature and accession, by the International Conference on Load Lines, held at London from March 3 to April 5, 1966, upon the invitation of IMCO, for the purpose of updating the 1930 Convention. The 1966

89. *Ibid.*, at p. 58.

90. Final Act of International Conference on Load Lines, 1966, April 5, 1966, and Attachment 1 [International Convention on Load Lines (1966)]. As of July 21, 1968, the required 15 Countries had accepted the Convention thus bringing it into force on that date.