

**COMBATING MARITIME FRAUD**

Maritime fraud has become so serious and persistent that today it posed a threat to international trade. One estimate of the size of the problem had placed the losses to the shipping industry in excess of US\$ 13 billion a year. Moreover, developing countries were the most frequent victims. These were some of the main findings of the shipping experts revealed at the UNCTAD sponsored inter-governmental group meeting held in Geneva in October November 1985, where about 50 countries and several inter-governmental and non-governmental organisations participated.

**Shipping Agents**

One major proposal at these Geneva sessions was for the formulation of a uniform set of minimum standards concerning the financial and professional qualifications of shipping agents that could serve as a guideline to national authorities. An UNCTAD secretariat document foresees that all types of shipping agents would be included. i.e. chartering brokers, brokers in liner trades, sale and purchase brokers, port agents and freight forwarders.

The UNCTAD document argues that the need for proper control over shipping agents "arises from the fact that as a group they are increasingly involved in almost every aspect of the running of ships and transportation of goods and services connected with the sale, chartering and operation of ships but, owing to the rapid growth of the shipping industry and alternative methods of transport, containerization and multimodal transport, certain groups of intermediaries, i.e. forwarding agents, have come to act as principals and in their own names".

Given acceptance of the principle that the establishment of a uniform regulatory scheme is desirable,

the document foresees the need to conduct an investigation into the nature and type of agency operations to be included and an examination of the exact nature of the qualifications to be required of shipping agents. Regarding the latter, consideration is expected to be given to financial position, technical expertise and professional conduct. Upon completion of this in-depth study, the document suggests that uniform standards regarding financial and professional qualifications as well as standards of professional conduct, should be formulated as guidelines which could be implemented by the appropriate national body in each country.

### Central Registry for Bills of Lading

Another proposal was the creation of a central registry for bills of lading, the establishment of secure bills of lading that are difficult to falsify, the use of stamping procedures to replace the master's signature and the replacement of bills of lading with sea way bills. Regarding the last point, it was expected that "the modest change in maritime practice that would be involved by using single receipts evidencing carriage, rather than negotiable documents whenever possible would prevent most documentary fraud".

Two other proposals considered by the Intergovernmental Group were the idea of a bank super-service and the possibility of an international agreement to facilitate the prosecution of fraud perpetrators.

Under the super-service a bank upon request of the buyer in a transaction would undertake to verify with issuer of an inspection certificate for a given shipment (a) that the inspection certificate existed and (b) that the certificate in the hands of the buyer was a true, authentic and unaltered copy of the original. This would eliminate the possibility of a forgery of the inspection certificate.

Over the above preventive measures suggested, the need to enhance the ability of prosecuting authorities to deal effectively with cases of

## PIRACY AND MARITIME FRAUDS

An UNCTAD study of Piracy and Maritime Frauds has revealed that there are myriad types of fraudulent acts currently plaguing international shipping and trade. They frequently involve misuse of commercial contracts and documents, particularly bills of lading. Charter party frauds, the theft of cargo, and marine insurance frauds are also numerous. Other types of fraud relate to the activities of shipping agents, mortgage frauds and frauds committed in connection with port activities.

Although various documents can be used in committing what is usually referred to as documentary fraud, the bill of lading seems to be an almost ideal instrument for such malpractices. It serves not only as a receipt for the goods given by the carrier, but also as evidence of the contract of carriage for the goods, and, most importantly, as a document of title to the goods. As it is usually impractical for a buyer to inspect goods before paying for them, either at the port of loading-because it is a long distance away-or at the port of destination because sellers wish to receive payment before the goods arrive-payment for goods is effected on presentation of the relevant documents, principally the bill of lading.

One common fraud occurs when, instead of presenting the goods to a shipping line in return for issuance of a bill of lading, dishonest sellers forge the bill on the standard forms of the relevant shipping line without delivering any goods for shipment at all. Additional documents such as the invoice for the sale price, the marine insurance policy for the transport, and certificates of origin and inspection, are also forged-a relatively simple process. The bill of lading-as title document for the "goods"-and the accompanying documents are sold to an unsuspecting buyer who will expect to take delivery at the intended port of destination. The vessel, however, never arrives, or when it does it comes without the goods. When the buyer discovers the fraud, the seller has usually disappeared.

Alternatively, dishonest sellers may ship goods of a quality or quantity lower than that specified in the sales contract concluded with the buyer. The difference in quality or quantity often goes undetected, especially with goods prepacked in containers.

Other types of maritime fraud are connected with the use of chartered vessels. For example, fraud may be committed by a

charterer who charters a vessel, for which payment is to be staggered, and offers his services to carry cargo, often quoting advantageous freight rates. As soon as a cargo is loaded, the charterer issues the bill of lading, collects the freight fee, defaults on further hire payments to the shipowner, then disappears or goes into liquidation. The shipowner and the cargo owner thus find themselves in a different situation, since one has not received payment for carriage of the goods, while the other has paid all the freight and is expecting the goods to be properly delivered.

Another type of fraud consists essentially of the theft of cargo. It occurs when a shipowner induces a cargo owner to charter a vessel to carry cargo to an agreed destination. However, instead of proceeding as agreed, the vessel deviates on route to another destination where the goods are sold for the benefit of the shipowner. Subsequently, the vessel is either sunk or it "disappears", a manoeuvre often effected by changing name, nominal ownership and country of registration of the ship. This type of fraud thrives near ports which, because of war, civil disorder or other reasons, are not under close supervision and control.

Frauds relating to marine insurance are quite diverse, according to the report. Many involve fraudulent misrepresentation or non-disclosure of a material fact to the insurer-usually concerning the value, but sometimes even the very existence of the object insured.

This kind of fraud can occur in both hull and cargo insurance and it often involves the scuttling or international sinking of an over-insured vessel. This may benefit the shipowner who claims for the loss of more than the vessel's true worth. Alternatively a vessel is sunk which carries over-insured or non-existent cargo, enabling the cargo owner to make a dishonest gain. A fraudulent shipowner may also use scuttling as a means of hiding the fact that he has stolen a cargo and sold it clandestinely before sinking the ship.

If a suspicious insurer wants to avoid paying such claims, he must prove not only that the vessel was intentionally sunk but also the complicity of the assured in the act. This is often a difficult task, because evidence is frequently unavailable and, in some national legal systems, legally difficult to provide as well.

maritime fraud that have been committed was also emphasised.

The group considered the desirability of an international agreement to combat maritime fraud, stating that by defining the international offences of maritime fraud and by granting States appropriate authority to prosecute or to extradite offenders, such an agreement would contribute significantly to the apprehension of maritime criminals.

Significant resolutions accepted at this inter-governmental Group meeting were that the UNCTAD secretariat pursue the question of establishing minimum standards of professional conduct and financial responsibility for shipping agents. First, the secretariat is asked "to make a comparative study of the different minimum standards which are applied at national or international level by professional associations of shipping agents and to consider what scope exists for the development of common guidelines for non-mandatory minimum standards for all those involved in the work of shipping agents. Taking into account the scope thus established, the secretariat is then expected to prepare a draft set of standards. It will report on this as well to the next session of the UNCTAD Shipping Committee in November 1986.

UNCTAD was also requested to complete a study it has undertaken on ways and means of encouraging commercial partners to prevent documentary fraud associated with the use of bills of lading, including the possibilities of replacing them by sea waybills, and report to the next session of the Committee on Shipping in November.

In the realm of prosecution of fraud, the meeting requested the UNCTAD Committee on Shipping "to examine ways and means to increase cooperation among existing national and international bodies in investigation and prosecution of maritime fraud and to undertake corresponding measures for that purpose".