

REGIME ANALYSIS AND INTERNATIONAL ORGANIZATIONS:

UNCTAD AND INTERNATIONAL SHIPPING

by

FRANCIS MCGOWAN

A thesis submitted to the Department of Political Studies
in conformity with the requirements for
the degree of Master of Arts

Queen's University

Kingston, Ontario, Canada

July, 1983

copyright © Francis McGowan, 1983

ABSTRACT

This thesis examines the role of international organizations in the shipping industry, and specifically the role of UNCTAD's committee on shipping. By using the concept of regime analysis the thesis aims to establish how international agencies have reflected and challenged the structures and principles of the industry relative to other factors either specific to the sector or of a broader economic or political origin.

Regime analysis is an outcome of the debate within international theory about the relevant focus for the study of international relations and the significance of international institutions. It seeks to establish the structure and dynamics of particular areas of the international system, or international political economy, and looks at the roles of states, and other actors, whether they be non governmental or international, in shaping the regime. It also examines the principles and norms which govern a regime and how these manifest themselves in practice. Within this context it becomes possible to assess how far international organizations are autonomous actors within that regime and how far they merely reflect its structure and principles.

Using this analysis the thesis proceeds to examine the structures and principles of the international shipping regime. It surveys the progress of the regime from statism to a self-regulation and back again and looks at the factors behind these changes. It then looks at the

role of international organizations in that regime and especially of UNCTAD. The development of the Shipping Committee is dealt with in the fourth chapter as is the evolution of the Code of Conduct for Liner Conferences. The conclusion assesses the significance of UNCTAD within international shipping and at the relevance of the case for regime analysis and theories of international relations.

ACKNOWLEDGEMENTS

I would like to thank my supervisor, Professor Charles C. Pentland, for his advice and encouragement over the past year. I am also very grateful to the staff of the Douglas, Law and especially Documents Libraries for their help and patience, as well as to Mrs. Shirley Fraser for typing the thesis and Ms. Kathy Chalmers who typed the bibliography at short notice. Finally I would like to mention all the students at Queen's whom I have come to know in this past year, especially David, Dennis and John, and, above all, Anne.

CONTENTS

CHAPTER ONE: INTERNATIONAL ORGANIZATION	1
International Organization and Theories of International Cooperation	1
Regime Analysis: Critique and Response	9
Regime Analysis and International Shipping: A Summary	17
CHAPTER TWO: THE STRUCTURE OF THE INTERNATIONAL SHIPPING REGIME	23
From Mercantilism to Free Trade	23
The Conference System and the Decline of British Leadership	28
The Postwar Shipping Regime: Challenge and Change	39
CHAPTER THREE: INTERNATIONAL ORGANIZATIONS IN INTERNATIONAL SHIPPING	54
IMCO: False Start in International Regulation	65
International Organization in the Postwar International Economy: From U.S. Hegemony to Third World Challenge	72
UNCTAD and the Creation of the Shipping Committee	77
CHAPTER FOUR: UNCTAD AND INTERNATIONAL SHIPPING	98
The Shipping Committee 1965-68	100
Task Expansion and the Question of International Regulation	106
The Code of Conduct: Developing States and the Conference System	115
CHAPTER FIVE: CONCLUSION	132

ABBREVIATIONS

CMI	Comité Maritime International
CENSA	Committee of European National Shipowners' Association
CES	Committee of European Shippers
CSG	Consultative Shipping Group
CMEA	Council for Mutual Economic Assistance
ECLA	Economic Commission for Latin America
ECOSOC	Economic and Social Council (of the United Nations)
GSP	General System of Preferences
IMCO	Intergovernmental Maritime Consultative Organization
ISF	International Shipowners Federation
LAFTA	Latin American Free Trade Association
OECD	Organization for Cooperation and Development
OEEC	Organization for European Economic Cooperation
TTCC	Temporary Transport and Communications Committee
UMA	United Maritime Authority
UMCC	United Maritime Consultative Council
UNCITRAL	United Nations Commission for International Trade Law
UNCTAD	United Nations Conference for Trade and Development
UNDD	United Nations Development Decade

Chapter One

INTERNATIONAL ORGANIZATION AND REGIME ANALYSIS

International Organization and Theories of International Cooperation

The historical basis for theories of international cooperation lies in the increase in international interaction during the nineteenth century. At the level of high politics this was seen in growing consultations between the European powers after the Congress of Vienna.¹ The period also saw the removal of many restrictions to trade and a host of customs unions and commercial treaties.² In addition to these developments, and perhaps more significant in terms of international theory, was the upsurge in agreements and organizations devoted to apparently technical and politically unimportant issues such as health, posts and communications.³ While free trade promised peace to some, others saw the trend to international administration as a potentially greater swing away from national rivalries. A 'corps of administrators, staffed and paid by the pooled resources of...nationalities, owing first allegiance to an international organization'⁴ presented the possibility of cooperatively based international relations.

The functionalist theory of international politics owed much to these developments while the writings of such thinkers as Saint Simon have been cited as a principal intellectual source for its 'welfarist' character.⁵ The theory was particularly popular in the post-World War I era, a product both of revulsion against the war and the cooperation

which the war effort had entailed.⁶ Functionalism focussed on the possibility of creating international order and reducing the rivalries between states through contacts and cooperation between states within technical international organization:

An organised world society would emerge from a gradual extension of the international administration of things.⁷

Although functionalist theorists differed in the details of the concept and over the possibilities for its enactment, all agreed on the crucial role which international organizations were to play in their world order. In the aftermath of the first world war ideas of international cooperation gained support; at the international level governments formed the League of Nations while more generally world government and other internationalist ideas found new audiences⁸; a strong idealism permeated much work in this field. The principle of international organization as the key to world order had never been more strongly held, a fact which determined the development of international studies:

Along with the diplomatic historian, the international lawyer, with a penchant for institutions, and the progressive social engineer and institution builder of the late nineteenth and early twentieth century were the progenitors of international relations as it emerged as an academic subject after the first World War.⁹

Yet, as it turned out, the international organization proved incapable of fostering stability in the international system, quite apart from creating a new order. The functional international agency enjoyed varying success as a technical organization but failed to establish any bases for greater cooperation. The League, which had the support of functionalists and which included some of the theory's principles, such as the international civil service,¹⁰ was unable to

cope with the tensions of the period. Economic crises and depression were met by protectionism and saue qui peut policies, international conferences only providing the forum for the disintegration of the former system.¹¹ The power and pre-eminence of the nation state prevailed into the Second World War.

Bergsten has noted how each phase of international institution building has, amongst other things, served to legitimate and codify the existing international power structure.¹² Certainly the United Nations system served to consolidate the leadership of the United States, as did the Bretton Woods agreements in the economic sphere. Initially, there was also a definite internationalism and optimism about the possibilities of the new world organizations. As Huntington has pointed out, however, this internationalism was inherently limited by its acceptance of the pre-eminent role of the nation state.¹³ Nation states and not world governments were to prevail in the postwar system; international organizations merely served the interests of their most influential members.

Much the same could be said for contemporary international theory; the nation state was the central actor and security issues were the main concerns for most writers in the field. As Strange points out, after a century of tension and war it was not surprising that the subject should reflect this reality¹⁴ though some writers such as Carr were concerned with those issues in the interwar era.¹⁵ High politics prevailed in this 'realist paradigm'. Although there are undoubtedly differences amongst its adherents, Keohane and Nye's characterisation of realism identifies its core elements: the state is the primary, if not the only actor in the international system; force or the threat of it is the main,

means of policy; security issues head the international agenda.¹⁶

According to such an analysis, international cooperation is solely a function of nation states deciding to do so while any institutional arrangements remain subject to the consent of those states. The implication is, moreover, that such schemes are low politics and not the stuff of international political analysis.¹⁷ While some realists have studied these issues their conclusions tend to emphasise the role of the state.¹⁸

This is not to say that other approaches to the subject vanished completely. Functionalist ideas persisted both in a broadly internationalist and a regionalist, 'European' perspective. The latter owed its popularity to the desire to overcome the national rivalries which had led to two world wars. Though many of its adherents had the ultimate goal of a federal Europe,¹⁹ 'neo-functionalism' took greater account of the realities of international politics studying economic and regional integration.²⁰

Such integration theories aimed at a more limited form of collaboration than functionalism though they still attached much importance to the institutional means to their end. While both functionalism and neo-functionalism regard the development of attitudes and other forms of interaction as critical to the process of integration, the international or supranational organization is the principal mechanism of cooperation and the focus of much of their research.

Even so, the integration theories of the postwar period fell into traps often similar to those encountered by earlier theories of international cooperation. As some of its adherents admit, the theory was too

teleological, too Eurocentric, and therefore ultimately disappointing.²¹ The European example turned out to be unique, constrained by economic recovery; as the opportunities for 'negative integration', the removal of economic barriers, were exhausted so the process of 'positive integration' became more difficult.²²

The fits and starts of integration can certainly be viewed in this way, the process being symptomatic of 'international marriages of convenience'.²³ Hoffmann, in an article reassessing international organizations in the international system, sees them as dependent on the 'moderation' of the system and the degree of consensus amongst its members. He attributes the decline in the study of international organizations to misunderstandings of, and disillusionment with, their role, and while he sees them having a meaningful role in the international system, he regards them as very much the dependent variable.²⁴

Yet, from the late 1960s on, a rather different view of collaboration and the interests of states developed. In its extremest form it held that, "the nation state is about through as an economic unit",²⁵ while more generally it implied a wider range of issues and actors present in international politics than the orthodox realist position allowed. The theory was effectively the product of the perceived erosion of American power and concerns on the international agenda and the increasing importance, again perceived, of economic issues in international discussions.²⁶ The realists' distinction between high and low politics no longer held. Whether or not it had ever existed is of course debatable but in the light of events in the 1960s and 1970s the distinction faded still further.

As with other areas of international theory it is difficult to throw together a collection of writers who range from modified realists to supporters of world government. Nonetheless, and drawing on Keohane and Nye's work once again,²⁷ it is possible to identify general principles in the interdependence/transnationalist perspective. For the most part, such writers note that the growth of commercial, cultural and technical contacts among nations in the postwar period has created an interdependent world. The period has also seen an increase in the powers and concerns of national governments; the agenda of national politics has expanded as international politics has become more complex. This politicisation of issues has three consequences. There is not a hierarchy but a plurality of concerns each of which has claims to the government's attention (as contrasted with the primary position of security concerns in the realist perspective). Nor is it possible to focus on one expression of a government's policy; politicisation brings in other sectors of the government into the external politics. Government then is not a coherent unified actor working through its foreign office. Moreover it is not the only actor within the system. There are a range of international organizations, nongovernmental bodies, cartels, pressure groups and companies which either have an impact in their own right or influence governments in conducting foreign politics.²⁸

Like integration, interdependence theories have been criticised for presenting an idealised and distorted view of the world. The rhetoric of interdependence has been common currency amongst politicians in recent years²⁹ and one is reminded of Carr's comments on earlier utopian stances, that the invocation of mutual interests³⁰ obscures vested interests.

Critics have also noted that it is too oriented toward the western industrialised states, glossing over the basic inequalities between them and the third world; references to 'asymmetric interdependence' ignore the structurally unequal relations between north and south. However, the concept itself need not be so loaded ideologically. Indeed one Marxist critic of 'dependency' theories claimed that 'interdependence' is a better characterisation of the state of north-south relations.³¹ Nor need one see interdependence as portraying a perfect world; it involves an interdependence of costs as well as of benefits.

There may well be problems with some applications of interdependence theory and their assumptions,³² but what seems unobjectionable is its claim that there is a range of issues and power sources open to states and other actors. Moreover the theory is better equipped to deal with the emergence of actors than with the traditional 'European' concerns of realism.

Theories of interdependence and transnationalism vary in the importance they attach to international organization. In emphasising the increasing importance of transnational factors in international politics, Huntington claims that international agencies are insignificant; they are so clearly the product of nation states that they cannot behave as autonomous actors. As was noted earlier, internationalism is not a principle of the system in the way that both nationalism and transnationalism are.³³

In response to Huntington's position, Keohane and Nye agree that there has been an increase in transnational relations but that these

need not render the international organization redundant.³⁴ Such organisations provide an avenue and agenda for interaction as well as a sphere of legitimacy. In addition there is even greater potential for an 'activist' international organization with the secretariat being capable of exercising independent action:

International secretariats can be viewed both as catalysts and as potential members of coalitions; their distinctive resources tend to be information and an aura of international legitimacy.³⁵

McNemar accepts that there are constraints within the system on what international organizations can do, but holds that this is in fact a two-way process; while nation states' actions and attitudes shape the climate for the organization, the organization also forces states "to examine their goals and conduct in the light of the procedures and purposes of the existing institutions".³⁶ Moreover he sees their role increasing in the light of increasing interdependence and the need for states to cooperate:

As states are faced with the necessity for cooperative actions in spite of their sovereign independence, these capabilities of international institutions may assume more saliency and permit the institutions to fulfill a variety of significant functions in the international environment of the future.³⁷

While McNemar's position may be overoptimistic, it does indicate the possible roles played by international organizations within an interdependent world. The experience of the 1970s seems to bear out such a realistic (not 'realist') view; they can be important actors without being the stepping stones to world or regional government.

Regime Analysis: Critique and Response

One methodological aspect of theories of interdependence has been its focus on particular issues or problems, the implication being that power resources and mechanisms vary from area to area. A number of writers in the field have elaborated this principle into a mode of analysis³⁸: regime analysis. It assumes that since there is this plurality of issues within international politics it is possible to treat these 'issue areas' separately. Although there are clearly inter-connections between these issues in international society, it remains possible to isolate and analyse them and establish the structures, principles and dynamics of particular sectors.

Regime analysis offers an approach to how and why states and other actors collaborate. The concept of a regime has been defined as "the principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue area".³⁹ Other definitions focus on regulation, seeing it as "a set of rules together with the administrative arrangements for their implementation and enforcement",⁴⁰ or on interaction, seeing it as "social institution governing the activities of those interested in specifiable activities...[being]... recognised patterns of behaviour or practice around which actor expectations converge".⁴¹ These views of regimes are not mutually exclusive though Mason and Young's definitions emphasise different aspects of the theory. The thesis will therefore use Krasner's definition as it offers a broad view of the concept.

In discussing regimes, Krasner distinguishes between, on the one hand, principles and norms, and on the other, rules and decision-making

procedures.⁴² The former define the orientation and underlying values of the regime. Actions within a regime are directed toward certain ends and are informed by certain principles. These ends can be either specific goals or simply general codes of behaviour which temper the members' actions. The rules and decision-making procedures constitute the concrete, institutionalised aspect of the regime. More 'visible' than the principles and norms, these procedures and rules are adaptable and open to change while the underlying features remain largely unchanged. These constitute the basis of the regime; if they are changed one is effectively describing a different regime. As Krasner notes in the case of the GATT, the adoption of the GSP marked a change in the rules of the international trade regime without constituting a shift in its values, whereas the wholesale adoption of the New International Economic Order would do so.⁴³ The GSP may, however, exemplify the weakening of the trade regime as it undermined the principle of 'most-favoured-nation' within the GATT.

The regime is as much concerned with the values behind a series of agreements and agencies as it is about those factors themselves. Even so, as will be explained, it is the formal and informal mechanisms of the regime which are the principal concern of this thesis. These do not simply consist of organizations and laws; a regime might equally well consist of longstanding informal agreements,⁴⁴ with international organizations playing a minimal role, perhaps expressing the overall condition of the regime rather than shaping or influencing it. Curzon Price has noted how international conferences express a less formalised agreement or the breakdown of that agreement.⁴⁵

Most theorists regard the regime as an intermediary factor in the international system, standing between the structure of power and influence in the issue area and the conduct of actors and distribution of resources. The power structure affects the context and operation of the regime which in turn affects how the participants operate and achieve their ends.⁴⁶

The mediating role of the regime can be seen in the prevailing view of the origins and development of a regime. The regime is a product of actors consciously or unconsciously deciding to forego autonomy in a sector and to compromise in their interactions with one another. This is generally in circumstances where collaboration would lead to more beneficial or less costly outcomes. However while it is the product of self-interested actors, one cannot dismiss the regime as merely 'epiphenomenal'; in constituting a set of norms, principles and rules, the regime becomes more than simply an agreement among its actors and is capable of shaping their conduct.⁴⁷

By extension, one can apply a similar analysis to the role of institutions in the regime. Clearly such bodies or practices belong to its decision-making structures though they also embody its norms and principles. As noted earlier, moreover, it is possible that the development of the rules and processes of the regime may alter, weaken, or challenge those underlying values. Given the origins of regime analysis in the interdependence literature, it is unsurprising that the international organization or agreement should be considered as a potentially influential actor in the regime.

'Modified realism' characterises the viewpoint of most adherents to regime analysis. For them the primary actors are nation-states, and their main concern is with how these states achieve their ends within the regime. However, they do not regard military power as being the only means of power nor do they limit themselves to security questions. Regime analysis offers a realist view of international cooperation without limiting the agenda of relevant issues. It is unlikely to serve as a useful analysis for the more orthodox realist.

The most outspoken critique of the concept has not come from the 'hard-line' realist perspective but from the less-easily labelled international political economy perspective of Susan Strange.⁴⁸ In an article which develops her previous reservations about the concept and goes beyond that to critique many of the assumptions and practices of the discipline of international relations, Strange attacks regime theory for a series of faults and imprecisions.⁴⁹ In responding to those criticisms I hope to show that her criticisms are based on a mistaken understanding of the concept, and that, while some of her remarks point to real problems in certain theorists' use of it, the problem does not lie in regime analysis itself. Indeed, regime analysis, as understood in this thesis, sets out to address the structural concerns that Strange is interested in, and offers a more practical insight into questions of international collaboration and of the role of international organization.

Strange attacks the concept as being too imprecise and open to a multitude of interpretations.⁵⁰ It can be considered as an institutional/regulative tool to one which generally identifies patterned behaviour,

analysing anything from concrete working arrangements to the broadest interactions. Certainly, the concept has been widely interpreted and some of those interpretations stretch its meaningfulness (as in Young's ideas⁵¹). In this the concept is encountering a familiar problem faced in international theory: where and what to analyse. Such concepts as 'integration' and 'transnationalism' suffered from a similar lack of precision.⁵² They nonetheless implied an overall orientation which guided the areas and character of research. As regards the scope of the concept, there is nothing necessarily wrong with employing it at various levels of analysis, whether specific to a narrow issue area or more generally in terms of the norms and principles of the international economy.

The emphasis given by certain writers to the state is also criticised by Strange. She sees as endemic in the analysis a state-centredness that gives states, "the right to define the agenda of academic study... [directing]...scholars mainly to those issues that government officials feel significant and important."⁵³ Her remarks here must derive from the use of the concept by 'modified realist' writers with their continued preoccupation with the state. This would indeed confine the study of regimes to those areas which governments think important. However, as has been pointed out, there undoubtedly exist other actors within regimes and this widens the possible agenda of relevant issues. The shipping case offers one such example; for a period the regime was essentially managed by private cartels, with the principal governments taking a consciously minimal role and seeking to prevent its 'politicisation'. Even though states as such played a secondary role, one can still talk in terms of a definite regime in the field of shipping.

How far is regime analysis value-laden? Strange considers it so and accordingly, bad social science. The very term implies other connotations of the word, specifically those of regularity, discipline and authority, thereby suggesting that there is an effective structure or order to the international system:

In short, government, rulership and authority are the essence of the word, not consensus, nor justice, nor efficiency in administration.⁵⁴

Having established this, Strange asserts that this assumes order to be the primary value in international relations and quotes Krasner to this effect.⁵⁵

Krasner's view of regime theory does indeed seek out order and its maintenance and destruction, but this should not lead us to reject the entire concept as value laden (though it may lead us to question Krasner's goals⁵⁶). What Strange seems to have confused is examining regimes as sources of order and claiming that to be a good thing. She has not recognised the distinction made by Weber and others between value-freedom, which she denies to regime analysis, and value-relevance.⁵⁷ It may be that regime theory can locate sources of international order--order may be regarded as a 'relevant' value--but this is not the only value that regime analysis implies. The theory is, it seems, relatively value-free and can help discern a variety of values. As to the connotations of the word, Strange ignores the most obvious one: legal terminology. For lawyers, a regime refers to the norms and rules for a particular area of the law.⁵⁸ While this is close to our initial definition of the word, there seems a definite distinction between its use in the two fields. The basis of 'regime' for international relations

lies in previous theories of international collaboration even though the term itself has been borrowed from legal analysis.

Given her view of the value-laden character of regime analysis, it is not surprising that she should accuse it of constituting too static a view of the international system and attributing too much importance to institutions and other 'visible' elements.⁵⁹ Yet it is hard to see why regime analysis need be as static as Strange evidently believes it is. No-one would deny that the international system is changing and that in such circumstances the formal trappings of a regime may indeed be out of track with the structure and development of a particular issue area. This does not imply that regime analysis cannot help to explain those changes.⁶⁰

Strange is criticising regime analysis with a view to establishing a more structuralist view of international political economy, one which, she asserts, takes a more sceptical view of international collaboration and organizations. Regime analysis, she believes, "risks overvaluing the positive and undervaluing the negative aspects of international cooperation".⁶¹

While it is true that one should not be misled by the presence of international agencies and agreements into believing that they constitute the principal processes and procedures within an issue area, it is also true that they retain at least some significance; as noted earlier, they may be taken as reflections of the structures of power and influence in the area. In this regard it is perhaps noting the ideas of a theorist such as Robert Cox who regards international organizations as 'hegemonies' or 'international superstructures'.⁶² While not central to this thesis,

such concepts are used to deepen the regime analysis and its assessment of the role of international organizations. They also help to satisfy Strange's broader reservations about the approach.

In an earlier work, Strange predicted the ultimate failure of regime theory in terms of its accepting issues at face value. She attributes this to the consensual nature of much social science. As she rightly points out:

The problem with consensus is that the most important task becomes the explanation of the internal workings of the consensus itself, through the analysis of regimes and issues, without reference to the set of conditions or structures upon which international consensus depends.⁶³

Strange is right to claim that much regime analysis, as with much international relations theory, begs many questions. However, if one informs regime analysis with Cox's ideas on hegemony,⁶⁴ then the begged questions become the central ones. The nature and origins of the international consensus, as well as any challenges to it, become crucial to the analysis. Such a regime analysis looks below the underlying principles and norms to the interests which inform them.

One possible difficulty with this approach is that many would argue that it calls for an overall, holistic approach to the international order rather than the more 'issue-specific' approach adopted in the bulk of this thesis. This is true as the values and interests within a particular sector must have broader roots and ramifications. Nonetheless, it still holds that each sector is characterised by its own special interests and values, and, providing one does not ignore these broader aspects, the narrower focus holds good.

Overall, Strange's critique, though ultimately flawed, helps to sharpen one's understanding and use of regime analysis. Her criticisms often hold true against certain interpretations of the concept, while her own structuralist approach is not so dissimilar from a more structuralist conception of regime analysis. The predominant role of the state is recognised, but so are the forces behind and beyond the state. International arrangements are examined in terms of their actual roles rather than their formal procedures (though these can also shed light on the regime).

As regards the position of the concept within the context of theories of international cooperation, regime analysis offers a means of identifying the dynamics of collaboration among states and other interests without loading it in terms of a particular end. One can trace a shift away from idealism in such theories as experience and failure sharpened people's awareness of the limits of international organisation. Regime analysis, developing out of these earlier theories, has dispensed with such questions and, though one can certainly inform one's use of the concept with questions of international order or change, it is not itself biased toward any particular value. At the level of ideology and international theory, one can certainly see it as the latest attempt by liberal American social science to come to terms with the changing international order, without necessarily accepting the premises of that social science.

Regime Analysis and International Shipping: A Summary

Having set out the theoretical basis for the thesis, I shall briefly outline how the analysis will be used in relation to the case of

international shipping and how the rest of the thesis will proceed.

Given the importance of locating the structure behind a regime, the second chapter will look at the development of international shipping primarily since the mid-nineteenth century. Aside from identifying the principal actors, national and otherwise, this chapter will show how the present international shipping regime has been influenced by broader economic forces and principles. The next chapter will focus on the international regime itself, both the values behind it and the role of formal international agreements and agencies within it. This is not necessarily to declare that such institutional factors are the principal elements of the regime, but since the thesis is concerned with the role of international organizations in the regime it is necessary to examine them in some detail.

The following chapters deal with the role of UNCTAD in the shipping sector. In examining this question, the third chapter will look at UNCTAD's emergence as an international economic institution and the origins of its involvement in the issue of shipping. Having established UNCTAD's initial position in the international shipping regime, the thesis will take the case study of its activities in the field of shipping conference rates and practices leading up to the Code of Conduct and developments following from that. Finally the thesis will assess UNCTAD's impact on international shipping as a whole, noting its other activities in the sector, and conclude with a consideration of the role of international organizations in the international economy.

Chapter One - Footnotes

1. F.H. Hinsley, Power and the Pursuit of Peace (London: Cambridge University Press, 1967), p. 238. He goes on to note a more regularized and formal system of international relations with the consolidation of the nation state, pp. 266ff.
2. Sidney Pollard, European Economic Integration 1815-1970 (London: Thames and Hudson, 1974), pp. 29ff.
3. Hinsley, op. cit., pp. 261-62.
4. G.J. Mangone, A Short History of International Organization (Greenwood Press, 1975), p. 82.
5. Robert W. Cox and Harold Jacobson, The Politics of International Organization (New York: Praeger, 1970), p. 15, and Thomas-George Weiss, International Bureaucracy: An Analysis of the Operation of Functional and Global International Secretariats (Lexington, 1975), pp. 44-45.
6. One of the key functionalist texts of the early 20th century was based on Allied shipping policy. A.S. Salter, Allied Shipping Control (Oxford: Clarendon Press, 1921).
7. Cox and Jacobson, op. cit., p. 16.
8. Ray Maghroori, "Major Debates in International Relations" in Maghroori and Ramberg, Globalism Versus Realism (Westview Press, 1982), p. 10.
9. A.J.R. Groom, "The Advent of International Institutions" in P. Taylor and A.J.R. Groom, International Organization (London: Francis Pinter, 1978), p. 13.
10. Although the League was by no means the ideal functionalist organization, it was still the focus of many functionalist hopes. It was also one source of the idea of the neutral international bureaucracy, an idea later challenged in UNCTAD. See R. Walters, "International Organizations and Political Communication", International Organization, Vol. 25, No. 4, pp. 821-22.
11. E.H. Carr, The Twenty Years Crisis 1919-39 (London: Macmillan, 1940), pp. 71-72. Curzon Price has noted the tendency for international discussions during economic crises to mask the pursuit of protectionist economic policies. See her "Recessions and the World Economic Order" in Susan Strange and Roger Tooze, The International Politics of Surplus Capacity (London: Allen and Unwin, 1982).
12. C. Fred Bergsten, Georges Berthoin and Kinhide Mushakoji, "The Reform of International Institutions" in Trilateral Commission Task Reports: 9-14 (New York University Press), p. 92.

13. Samuel P. Huntington, "Transnational Organizations in World Politics" in M. Smith, R. Little and M. Shackleton (eds.), Perspectives on World Politics (London: Croom Helm, 1981), p. 338. See also Gunnar Myrdal, Realities and Illusions in Regard to Inter-Governmental Organisations (Oxford University Press, 1955).
14. Susan Strange, "The Study of Transnational Relations", International Affairs, July 1976, Vol. 52, No. 3, pp. 334-35.
15. Carr, op. cit.
16. Robert O. Keohane and Joseph S. Nye, Power and Interdependence (Little, Brown and Co., 1977), p. 23.
17. Maghroori, op. cit., p. 15.
18. See Stephen Krasner, Defending the National Interest (Princeton University, 1978).
19. R.J. Harrison, "Neofunctionalism" in Taylor and Groom, op. cit., p. 253.
20. R.O. Keohane and Nye, J.S., "International Interdependence and Integration" in F.I. Greenstein and N.W. Polsby (eds.), Handbook of Political Science, Vol. 8 (Addison-Wesley, 1975), p. 364.
21. J.S. Nye, "Transnational and Transgovernmental Relations" in G.L. Goodwin and A. Linklater (eds.), New Dimensions of World Politics (London: Croom Helm, 1975), pp. 96ff.
22. The idea is that of John Pinder and is cited by Strange and Tooze in their "Introduction", op. cit., p. 8.
23. Donald W. Puchala, "Of Blind Men, Elephants and International Integration" in Smith et al. (eds.), op. cit., p. 238.
24. Stanley Hoffmann, "International Organization and the International System", International Organization, Vol. 24, 1970, pp. 389-395.
25. Charles Kindleberger cited in Keohane and Nye, "Power and Interdependence", p. 3.
26. Susan Strange, "Cave Hic Dragones: A Critique of Regime Analysis", International Organization, Spring 1982, Vol. 36, No. 2, pp. 483-84.
27. Keohane and Nye, "Power and Interdependence", pp. 24-25.
28. Keohane and Nye, "Transgovernmental Relations and International Organizations" in Smith et al. (eds.), op. cit., pp. 222-23.
29. See for example Henry Kissinger's "Age of Interdependence" speech to the United Nations General Assembly in 1975.

30. Carr, op. cit., pp. 102-03.
31. Bill Warren, Imperialism: Pioneer of Capitalism (London: Verso Books, 1982), pp. 10, 102-03. Also Keohane and Nye, "International Interdependence and Integration", p. 367.
32. Waltz's critique of interdependence is particularly thorough, in A Theory of International Politics (Addison-Wesley, 1979), Ch. 5.
33. Huntington, op. cit., p. 200.
34. Keohane and Nye, "Transgovernmental Relations and International Organization" in Smith et al. (eds.), op. cit., pp. 222-23.
35. Ibid., p. 223.
36. Donald McNemar, "The Future Role of International Institutions" in Black, Cyril and Richard A. Falk, The Future of the International Legal Order, Volume IV: The Structure of the International Environment (Princeton University Press, 1972) pp. 449-50.
37. Ibid., p. 462.
38. Aside from Keohane and Nye's "Power and Interdependence", the concept has been prevalent in Krasner's work, notably his contributions to the special edition of International Organization on regime analysis, Vol. 36, No. 2, Spring 1982.
39. Krasner, "Structural Causes and Regime Consequences" in International Organization, Vol. 36, No. 2, Spring 1982, p. 185.
40. Christopher M. Mason, The Effective Management of Resources (London: Francis Pinter, 1979), p. 6.
41. Oran R. Young, "Regime Dynamics: The Rise and Fall of International Regimes" in International Organization, Vol. 36, No. 2, Spring 1982, p. 277.
42. Krasner, "Structural Causes and Regime Consequences", p. 187.
43. Ibid., p. 188.
44. Young, op. cit., p. 277, Keohane and Nye, "Power and Interdependence", p. 19.
45. See Curzon Price's article, op. cit.
46. Keohane and Nye, "Power and Interdependence", p. 21.
47. Krasner, "Structural Causes and Regime Consequences", p. 189.
48. In her contribution to International Organization and to a lesser extent in Strange and Tooze, op. cit.

49. Strange, "Cave Hic Dragones", p. 479.
50. Ibid., p. 484.
51. Young, op. cit., pp. 277ff.
52. Strange, "Cave Hic Dragones", p. 485.
53. Ibid., p. 491.
54. Ibid., p. 486.
55. Ibid., p. 487.
56. Ibid., p. 487 and Robert W. Cox, critique of Krasner in "In Search of Political Economy", New Political Science, Nos. 5/6, Winter/Spring 1981.
57. Michael Lessnoff discusses Weber's distinction in his The Structure of Social Science (London: Allen and Unwin, 1974), pp. 147ff, 153ff.
58. Black's Law Dictionary gives a broad definition of a regime as a system of rules and regulations in French law. Henry C. Black, Black's Law Dictionary (Minneapolis: West Publishing, 1979), p. 1153.
59. Strange, "Cave Hic Dragones", p. 488.
60. Krasner, "Regimes and the Limits of Realism", International Organization, Vol. 36, No. 2, 1982, p. 501.
61. Strange, "Cave Hic Dragones", p. 487.
62. See Cox's articles, "Labor and Hegemony", International Organization, Vol. 31, No. 3, 1977 and "The Crisis of World Order and the Problem of International Organization in the 1980s", International Journal, Vol. 32, 1979/80.
63. Strange and Tooze, op. cit., pp. 218-19.
64. See especially, "The Crisis of World Order and the Problem of International Organization in the 1980s".

Chapter Two

THE STRUCTURE OF THE INTERNATIONAL SHIPPING REGIME

This chapter deals with the structure and development of the international shipping regime. While dealing primarily with shipping from the nineteenth century on, the chapter also examines how the present regime, which is currently being challenged, itself constituted a challenge to the prevailing norms and principles of the Mercantilist era. The primary purposes of this chapter are to demonstrate how the development of capitalism has shaped the interests of those in the shipping sector and the orientations and conduct of national shipping policies and how these elements have interacted with the character of the state to influence the international shipping regime.

From Mercantilism to Free Trade

International shipping was largely static prior to the sixteenth and seventeenth centuries as both markets and technology remained broadly unchanged for centuries.¹ It was only with the expansion of commerce to the Americas and the development of merchant capital that the pace of shipping development quickened. The shortlived maritime pre-eminence of Spain and Portugal was superseded by Holland and, following a period of commercial rivalry and conflict, by England.² Of the European states employing mercantilist policies England was the most successful at strengthening^a the state through protectionism and expansion and in

developing a large merchant-cum-naval fleet.³

The latter was both a product and instrument of that development and relied upon the seventeenth century Navigation Acts, laws which required that English trade be carried only by English ships. Though it was not the first legislation designed to protect English shipping, it was important in determining the character of most national shipping policies for the next two centuries. French commercial and shipping policy under Colbert followed a mercantilist line,⁵ and eighteenth century Sweden⁶ and revolutionary America⁷ pursued similar policies. The effectiveness of such laws has long been the subject of much controversy,⁸ but it is beyond dispute that they were crucial to consolidating the basis of English commercial and maritime power.⁹ The French, as principal maritime rival in the eighteenth century, were convinced of the role of shipping and of the state in fostering English power:

[T]he decisive factor was thought to be the wise and skillful policy of a government which was constantly anxious to promote foreign trade and merchant shipping, which knew the right 'maxims' and 'principles' for this purpose, and which embodied them in properly devised laws.¹⁰

The commercial classes encouraged such intervention by the state.¹¹ Indeed, it complemented the pattern of ownership in the industry at that time. Merchants, either trading with or established in a colony generally owned or shared their transportation¹²; there was no rigid distinction between shipper and shipowner which might have worked against the state playing so large a role.¹³

Aside from French rivalry, the major challenge to English military and commercial strength arose out of American independence. American shipping had accounted for one-third of the English fleet while the

East coast provided resources and skills for shipbuilding.¹⁴ Not only did the Revolution deprive England of a substantial portion of its fleet but it also gave the new American state a potential for maritime expansion; during the first half of the nineteenth century it came to rival British shipping in tonnage while in terms of innovation and efficiency it overtook the protected European industry. The state's involvement was confined to countering and gradually eroding protectionist legislation overseas.¹⁵

The early nineteenth century was a transitional phase in the international shipping regime, a regime which had hitherto been marked by extensive state involvement in national shipping. As a result of changes within the domestic and international economy there was a shift away from the blatant sanctioning of cargo reservation to less direct forms of state assistance. Since these changes necessarily altered the principles and practices of international trade, the norms and rules of international shipping also developed; the freedom of the seas, an early principle of international law only observed in the breach, was restored and became a part of the international shipping regime.¹⁶

American policy was the first to reflect these changes. As a newly independent state but with a large shipping capacity it was not encumbered by the need to enact navigation acts; that it initially did so was more a response to existing European legislation. Even then, it was able to penetrate the European trading lanes through reciprocal arrangements in the 1820s and 1830s.¹⁷ Within Europe it was recognised that protectionist laws were upping the costs of shipbuilding and shipping in comparison to America (American ships were often employed as neutral carriers in times of war in Europe).¹⁸

However, if America was the first to challenge such policies the underlying factors were most clearly developed in Britain. The character of the British economy and state no longer corresponded with that of the mercantilist era. Accordingly, the interests which had fed the mercantilist state were no longer as strong as they had been. The British industrial and commercial classes were pushing for reciprocal agreements as much as was America,¹⁹ though these were themselves only a product of more basic changes in the economic system. The industrial revolution had not only created the infrastructure and capacity for Britain's primacy in shipping for the next hundred years but also brought into play a new class of interests within the British state.²⁰

It is not of course possible to separate the 'industrial' from the 'commercial' revolution; both were clearly part of the process of capitalist development. They do however represent different phases of that development with the commercial preparing the way for the industrial²¹ while the interests and principles represented by industrial capital were very different from those of merchant capital. This can be clearly seen in the conduct of English shipping from the mid-nineteenth century on, especially with regard to the role of the state in the sector.

By the 1800s, British shipowners regarded the Navigation Acts as too restrictive and industrial interests saw them as the cause of overly high freight rates.²² The growing complexity of shipping itself, separating trade from industry,²³ eroded any semblance of the common interests of the mercantilist era. The Acts had served their purpose in boosting colonial trade, shipbuilding capacity, and the power of the English, later British, state. Now the thrust of development required

an expansion of trade:

As the only industrial power she could undersell anyone else and the less discrimination there was the more she could undersell.²⁴

Legislation was now confined to setting general standards and conditions of health and safety as in the 1854 Merchant Shipping Act.²⁵

American competition may have placed pressure on the British and European maritime system but it was the British outright venture into free trade with the repeal of the Navigation Acts in 1849 which signalled the crumbling of mercantilism, ushering in an apparently more open and 'international' shipping regime, albeit, one centred on Europe and North America and under British hegemony. The Swedish Produktplakat, their equivalent of the English Navigation Acts, for example, was seen as impeding the development of the shipping industry and trade²⁶ though it was not until the repeal of the British Navigation Laws that the act was dropped.²⁷

Elsewhere, however, the impact of free trade ideas and interests was not so benign. Chile, which possessed a growing merchant marine following independence, lost much of it to British carriers after adopting an open trading policy in the 1860s.²⁸ The Indian shipping industry was broken by the advent of British Imperial rule to the benefit of the metropolitan shipowners.²⁹ Outside of North America and Europe, the idea of open shipping was vitiated by colonial expansion or semi-colonial influence.

Aside from the expansion of trade and economic influence in the international economy, Britain's hegemony rested on its industrial abilities. The use of steel in ship construction and the development of

the ocean-going steamship gave it major technical advantages over other shipping states.³⁰ While in 1860 American shipping tonnage almost equalled that of the British Empire, by 1890 the latter's was almost twice as large. Not all of this is attributable to British innovation³¹ but the technical lead lasted until the end of the century, and even after that time, no states came to rival British shipping as the United States had in the first half of the century.

The Conference System and the Decline of British Leadership

The increasing complexities and costs of shipping and shipbuilding led to considerable structural changes in the industry itself. The separation of shipowning and trading has already been noted³²; it became more and more common for exporters and importers either to charter a ship or buy space on a sailing. Within the industry, two types of shipping services evolved, each with their own structures and practices. Bulking trades, that is, those engaged in the transportation of large quantities of a particular raw material or resource, developed throughout the century and were dealt with by tramp shipping. Under this system a ship would be chartered on the open market for a single voyage and were not accordingly geared to rigid schedules.³³ Such rigidity and regularity of service was not possible prior to the middle of the century. Regular sailings began in the 1810s but it was not until the development of the steamship that schedules could be kept to with any degree of certainty.

The liner services, as they were called, developed out of earlier common carrier services insofar as they generally carried a range of

goods and resources rather than a single product. The principal difference from those earlier services was the guarantee of specified times of arrival and departure, creating a surer basis for trade.

Unlike the tramp system, liners would adhere to a particular trading route; though, in carrying a range of products quickly and efficiently the costs of running a liner are higher than those for a tramp.³⁴

Liner shipping was and is costly and inflexible, entailing a considerable capital commitment. It was not capable of operating in the open market as it required a steady level of profit to maintain itself. In the competition for cargoes the new steamers were against established sailing ships which, while smaller and slower, were the prevalent form of shipping throughout the century and were able to offer lower rates than the newcomers to trade.³⁵ Moreover, at this time the problem of excess capacity was growing acute as shipping tonnage increased quicker than the rate of trade expansion. Attempts at open competition in liner shipping resulted in rate wars threatening many shipowning companies.³⁶

It was the over-capacity on the UK-Calcutta route which prompted a group of British shipowners to form the first shipping conference,³⁷

the principal aim of which was to set minimum freight rates. The conference system set out to guarantee the stability of liner shipping not only in terms of its regularity and efficiency but also in terms of its profitability in the context of a hitherto highly competitive market.³⁸ The initial conferences were established on trading routes between the United Kingdom and its colonies³⁹ but, as other national fleets joined these routes and as carriers on other routes recognised the efficacy of

the system, conferences were also set up on most major trading routes. German lines were, after an unsuccessful rate war, admitted to the first West African conference.⁴⁰

As with other aspects of the shipping regime, the system was primarily developed by and for European and American interests, while the concerns of other nations and of most traders and shippers were not addressed. Conferences were and are anti-competitive cartels that stabilise markets, though the question of who benefits from this stability has been a controversial issue since the 1870s.⁴¹ The principal objection of most shippers to the conference system centred on the practices initiated by early conferences to ensure their stability. The dual rate system was one such practice, granting loyal shippers preferential rates over others while larger shippers were often accorded preferential rates to ensure their patronage of the conferences. The most controversial, however, was the deferred rebate scheme.⁴² Although it was originally designed to attract shippers to the system with rate rebates, the system became a means of ensuring the loyalty of customers by delaying the payment of the rebate until the end of a contract; if a shipper left the conference it would forfeit the rebate.⁴³

It would be wrong to imply that, between the middle and the end of the nineteenth century, shipping had become transformed from an open competitive market into a closed cartel. Other forms of shipping were available, the conferences did not monopolise trade routes at that time and there was an element of competition within the conferences themselves; conference structure could not lead to excessive profits.

Were that so, it was--and is--argued, outside competition would undermine the conference.⁴⁴ Yet the conferences were quite prepared to undercut the rates of outsiders with "fighting ships" while many developed into closed conferences.⁴⁵ Moreover, this was only one aspect of an increasingly concentrated industry. The turn of the century was marked by a series of mergers and attempted mergers, both nationally and internationally, tightening the conference system and internationalising the industry.⁴⁶

Given the increasing differentiation of interests within the industry and its growing internationalisation, the role of the state became less one of directly intervening and more one of supportive subsidy. As in later phases of the shipping regime, such subsidies were either intended to encourage and develop new industries or to assist and secure fading ones.

The United States was the principal example of the latter. When its fleet had been growing and was competitive internationally its policy was laissez faire, coincident rather than conflicting with the various interests in shipping and trade. However, with the growing uncompetitiveness of its sailing ships and following the losses of the Civil War period, the industry went into decline from the 1870s on.⁴⁷ The American government was faced with conflicting pressures from, on the one hand, shippers and some shipowners to abandon its registry policy, which obliged shipowners to purchase American ships, and, on the other, shipbuilding interests which wanted the registry policy retained and supported by subsidies.⁴⁸ The registry policy remained until 1912, making American shipping policy one of the most protectionist

at that time, but, aside from naval contracts and mail subventions there was no accompanying subsidy policy. As a result the American merchant fleet declined until the outbreak of war in Europe.⁴⁹

Though some older maritime states such as France pursued policies similar to but not so restrictive as America's, state assistance schemes were mostly employed by the newer maritime states and generally to much better effect.⁵⁰ Germany began to develop its maritime power as it consolidated its industrial base. By the 1870s, Germany was exporting ships, and although it was still importing ships for domestic use from Britain⁵¹ the industry was securing orders for the home market within the decade.⁵² The expansion of German shipping was helped by various government policies including the reservation of emigration control stations to national shipping companies, postal subventions and the granting of preferential railway rates.⁵³ While such aid undoubtedly gave the state influence over shipping policy, its main goal was expansion and it sought to encourage rather than control the sector. In fact, actual subsidies were relatively unimportant.⁵⁴ More extensive and explicit subsidy policies were practised by both Japan and Brazil while Holland, Norway and some South American states adopted more open shipping policies.⁵⁵

Shipping between the mid-nineteenth century and World War I was undoubtedly less restrictive than either the years before or after that period but it would be wrong to characterize it as 'laissez-faire'. The methods of state assistance had changed from the actively discriminatory practices of the preceding phase; the multitude of interests in the industry effectively ruled out such a policy. Now the policy was

one of more or less involvement and preferences depending on conditions within the industry and the aims of national policy.⁵⁶

The other principal difference from before was the growing self-regulation of the industry. While the initial intention of the repeal of navigation laws may have been to open the shipping industry to free trade,⁵⁷ the chaos of all out competition and rate wars in an increasingly capital-intensive industry led to the formation of the conference system for liner trades. As the system and its methods of operation developed, shippers began pressuring governments to investigate and control conference practices.⁵⁸

The first to feel the effects of the conference system were traders in the British colonies and Dominions, the initial destinations of the first conference routes.⁵⁹ In the early 1900s commissions in Australia, South Africa and the Straits Settlements complained about conference practices, notably the deferred rebate scheme.⁶⁰ The issue was also raised by shippers in chambers of commerce throughout the Empire, there being no specific shippers' associations at this time. As a result, in 1906, the Royal Commission on Shipping Rings was established. In 1911 the American Justice Department brought anti-trust actions against conferences while the Congressional Committee on Merchant Marine and Fisheries began investigations into the system the following year.

In testimony to the Commission, the overwhelming weight of trading opinion was opposed to the conference system. West African-based shippers and colonial administrators, for example, condemned the conference serving that route as monopolistic, being controlled by two shipping

lines which were effectively able to dictate the terms of shipment.⁶¹ The experience of other colonies and dominions supported these views. British traders were also critical of the system but for different reasons; indeed the interests of metropolitan and colonial shippers were almost as opposed to each other as they both were against the conferences.

This was partly why the Commission was unable to agree to a single final report. Instead there was a majority report, which was signed by and reflected the interests of the 'British' members and a minority report, reflecting the interests and opinions of the colonies and those not directly connected with the industry.⁶² Since it only had to deal with the opposing views of shipowners and traders, the Congressional Committee or Alexander report, was unanimous in its findings.

All the reports were agreed upon the growing concentration and increasing collaboration within the industry. Both the majority and the Alexander reports were agreed on the benefits that conferences had brought to international shipping and trade in terms of stabilising rates and services⁶³ as well as the problems of unilateral regulation in an international industry,⁶⁴ though they did recognise the dangers of monopoly in the industry. The minority report was far more critical, attacking such practices as charging what markets could bear, the deferred rebate and preferential rates.⁶⁵

None of the reports called for the dismantling of the system, all accepting that it was necessary to avoid cut-throat competition and to maintain stability in the industry. The American report was the most restrictive in terms of recommendations, calling for the prohibition

of closed conferences, deferred rebates and the use of so-called 'fighting ships' as well as more state control of the system but leaving the principle of self-regulation largely intact.⁶⁶ The majority and minority reports were broadly similar in their recommendations, calling for the publication and supervision of rates and conditions and suggested that shippers' associations be established to counter the position and power of the conferences.⁶⁷

Although the shipping industry itself came under government supervision during World War I, the conflict also delayed action on the Royal Commission's recommendations. In 1918, however, the Imperial Shipping Committee was established to investigate complaints over rates and conditions, though it was clear that it avoided casting decisions on rate-setting and sought to encourage bargaining between shippers' associations and conferences. This reflected the long standing British acceptance of self-regulation by a system which was seen to benefit British shipping.⁶⁸

Other states, however, were not so satisfied with the system and, in many cases, directly intervened to support the interests of their shipping sector. The British Dominions were considerably more active than the home country in supervising and controlling conferences.⁶⁹ In other cases, such as some Latin American states, shippers were able to rely on government support in countering conference abuses or bolstering negotiations.⁷⁰ At bottom, however, there was a grudging acceptance of the conference system as a necessary evil. Moreover, the principal European maritime states such as Britain, Holland and the Scandinavian countries, did not impose conditions on shipping conferences

as such.⁷¹ This contrasted with not only the practices of the new maritime states but also the United States, which implemented the Alexander Committee's recommendations in the 1916 Act. However, while the United States sought to control certain aspects of the system this did not challenge the basic principle of self-regulation; indeed the law effectively exempted shipping from American anti-trust legislation, a major concern of the shipowners.⁷²

The interwar period constituted an ambivalent period for the international shipping regime; while there were shifts within its underlying economic structure, the general principles of the regime remained. The Depression and the growth of economic nationalism constituted a challenge to those principles insofar as there was then a greater readiness to adopt protectionist measures. Yet states continued to follow either open or restrictive shipping policies and the character of those policies depended as much on the correlation of interests acting on the state and the structure, development and importance attached to shipping in the economy as it did on the Depression.

World War I itself entailed major tonnage losses for Germany and Britain though other fleets, notably those of America, France, Japan and some European neutral states, benefited in terms of increased tonnage and trade.⁷³ The war, by directing tonnage away from many trade routes, provided the opportunity to other states to develop their merchant marine. Both the American and the Japanese governments offered substantial assistance to their fleets to fill the gap left by British and German shipping.⁷⁴ Not only did this lead to their shipping a larger proportion of their wartime trade but it also brought home to many states the necessity of maintaining a national merchant fleet.⁷⁵

The British fleet was able to rebuild in the postwar era but, while it remained the largest fleet, never recovered its prewar dominance of the industry.⁷⁶ Throughout the interwar period British tonnage declined relatively while from 1930 its absolute share also dropped. German shipping lost much tonnage not only through the war but also through the post war settlements⁷⁷ and it was not until the 1930s under the highly nationalistic and protectionist policies of Third Reich that it fully recovered.

Economic nationalism clearly thrived in the interwar years particularly during the Depression when there was a major tonnage surplus problem. This was compounded by the increasing prevalence of subsidies and preferences. Some older shipping states such as France introduced reservation schemes for state cargoes while others such as Germany instituted 'scrap and build' programmes to expand and modernise their shipping.⁷⁸ The 1936 Merchant Marine Act of the United States went much further than preceding legislation in providing a comprehensive programme of construction and operating subsidies.⁷⁹ The newer maritime states, primarily the South American fleets, were similarly subsidised and protected, even to the extent of the state founding and owning the merchant fleet. Only the Scandinavian and Dutch fleets were largely unreliant on assistance⁸⁰ and were even able to expand despite the economic conditions; both the Norwegian and Dutch fleet tonnage grew by more than 100% in the period 1914-1931.⁸¹

Certain states, then, were prepared to accept the principles and rules of the 'free-trade' shipping regime and were even able to develop in it. Others, particularly those developing new fleets and/or on the

other side of the Europe-based trade routes were less willing to accept without alteration the norms of that regime and were ready to intervene in the industry or to counter the conference system. Such actions did not constitute a challenge to the regime as a whole but reflected dissatisfaction with and desire for access to the regime.

Moreover, the period saw the international economy generally in crisis. The reversion to national solutions to that crisis was seen in shipping as it was in other areas of economic and trade policy; any challenge was at the wider level rather than within the shipping sector itself where previous trends were exacerbated by the depression rather than wholly new developments.

The major shift in the structure of the industry was the erosion of British hegemony.⁸² Again this was not peculiar either to period or the sector but it had important implications for the future. The shipping and shipbuilding industry in Britain were less innovative and dynamic than in the nineteenth century. Thus British shipping became more conservative and reliant on the regime which it had been instrumental in establishing when it was the principal maritime, trading and industrial power. Even then, other states were able to use that regime to better effect than it was, while the British government instituted a limited reservation and subsidy programme in the depth of the recession--after an unsuccessful attempt to gain international agreement against such policies at the 1933 World Monetary and Economic Conference.⁸³

The regime then was one overshadowed by an international economy in depression and by interventionist policies designed to combat it. Yet the principles of the 'free trade' shipping regime were in many respects revived in the period after the Second World War.

The Postwar Shipping Regime: Challenge and Change

The war entailed the loss of over 32 million tons of shipping, or just over half the total of the prewar world fleet.⁸⁴ There were major shipbuilding schemes in both Allied and Axis states which more than restored the lost tonnage, though by the end of the war this had changed the distribution of shipownership quite drastically. Taking into account wartime losses and reparations requirements the Axis fleets were reduced by over 75% while the British fleet decreased by 20%.⁸⁵ The major change, however, was in American tonnage which increased by almost 400%.⁸⁶ Much of this fleet was sold off to American private industry and to other states rebuilding or developing their fleet while much of the remainder was laid up as reserve tonnage.⁸⁷ In fact, from 1948, the American fleet entered a decline just as other states, including Britain, consolidated and increased their shipping capacity. Nonetheless, because of its political and economic leadership in the postwar international system,⁸⁸ the United States maintained a considerable direct and indirect influence on the conduct of international shipping.

Despite the inevitable surplus tonnage created during the war, the post-war period was marked by an overall growth in the shipping sector as national and international economies recovered and trade increased. Although there were slight setbacks throughout the following years--tonnage surpluses and the occasional rate war⁸⁹--the general trend was one of expansion, particularly after the Korean war.⁹⁰ Since the conference system was intended to stabilise rates and services, liner shipping did not benefit as much as tramp shipping, though equally it was not as badly affected as the latter during the recessions of the 1950s.⁹¹

In 1948 the tonnage of the developed country fleets totalled 64 million tons, rising to 83 million in 1955 and 136 million by 1962.⁹² The latter increase occurred despite a general recession in the shipping sector from 1958,⁹³ though much of the increase was attributable to the tanker and other bulk trades. The industrialised capitalist states accounted for 70% of total world tonnage. By 1962 Britain once more possessed the largest active shipping fleet followed by the United States, Norway, Liberia, Japan and Greece,⁹⁴ but its share of the total continued to drop. While most developed economies increased their tonnage in line with their trade some were dependent on shipping as an industry in its own right; they not only employed shipping for their own trade but also engaged in cross-trade, that is, in the trades of other states. This was true of the continental European states, notably Scandinavia and Greece, and, albeit to a lessening extent, Britain.⁹⁵

Shipping interests in these states were particularly keen to defend an open shipping regime, and their governments followed a similar line internally and internationally. Most of these fleets were developed without the use of discriminatory practices, though a number employed construction and operating subsidies. For the most part these were accepted as measures taken to rebuild fleets rather than to obtain an unfair advantage, though German and Japanese subsidies were regarded by many as such.⁹⁶ As regards subsidies, certain states were willing to enter bilateral trade agreements while others, such as Britain, were not⁹¹; the only state to practice such policies itself was France. In general, however, there was a renewed commitment in the post war era to

a free and efficient shipping sector on the part of European, and the Japanese, governments. This reflected a broader support of a liberal trading order, established in their particular interests, while for some there was the additional economic necessity of relying on international shipping as a generator of foreign exchange. The United States did not demonstrate a similar commitment, and for equally pressing considerations.

As has been noted, America was the principal architect and guarantor of the post war international economic order.⁹⁸ It was however less liberal in regard to its shipping policy, and effectively excluded the issue from considerations for the International Trade Organisation.⁹⁹ Moreover, while Marshall Aid and the 1946 Act may have offered substantial assistance to foreign states to rebuild their fleets, the American government also practised cargo reservation.¹⁰⁰ Such policies had been common in the interwar years but only the United States among the developed countries pursued them after the war, reserving 50% of government cargoes to national shipping. The exact extent of the programme is disputed, though it does appear to have been particularly important in the early 1950s.¹⁰¹ Its principal impact however was in 'setting a precedent' for other states to practice similar actions.¹⁰² The United States also participated in bilateral trade agreements and maintained a strong subsidy programme for ship construction and operation. The continuation of such policies in the face of a declining fleet and an otherwise liberally-oriented state demonstrates how importantly national security considerations figured and continue to figure in American shipping policy.

It was this defence of 'national interests' which also motivated American regulatory efforts in the period. As was noted earlier, United States' legislation on the conference system, while recognising the principle of self regulation, went much further than did European law. This was even truer in the postwar era when most European states either did not practice or had abandoned conference regulation; most did not even run government agencies specifically concerned with shipping. The United States by contrast, strengthened its supervisory role, particularly in the early 1960s, when the state's functions of regulation and promotion were separated into different governmental bodies.¹⁰³ There has long been a tension between these two economic roles of the American state but in the period at hand, the regulatory role prevailed. The 1916 Act was regarded as not effectively enforced¹⁰⁴ and the 1961 law was drawn up by a Congress aware of this. The Act was characterised by a greater attempt to control the anti-competitiveness of the conference system, strengthening provisions on rate-supervision.

The practical effect of the law was to attempt to regulate unilaterally international shipping. It is doubtful whether other developed states would have agreed to the proposed measures, since they went completely against the principle of non-interference which the European and Japanese governments observed. Nevertheless, the act was passed without real consideration of their interests or opinions, demonstrating the tensions inherent in attempting to regulate such an international industry single-handedly.

These tensions came to a head when the Federal Maritime Commission, the American regulatory agency, acted following shippers' complaints and

Congressional pressures.¹⁰⁶ The shippers claimed that the rates on east-bound freights were higher than those for west-bound, and thereby constituted discrimination by the conferences, even though the practice was apparently long-standing and, in the conferences' view, based on economics rather than discrimination. After pressure from Congress, the FMC investigated the complaint, seeking information from the conferences concerned, both American and foreign members.¹⁰⁷ The foreign carriers however held that the information was confidential and could not be disclosed. In this they were supported by their governments who took countervailing action to obstruct the FMC.¹⁰⁸

The American action had the effect of engaging the European and Japanese governments in international shipping albeit in defence of the traditional order. The transport ministers of the respective governments met to discuss the issue, as well as other challenges to that order, and raised the issue within the OECD.¹⁰⁹ In addition they encouraged the establishment of national shippers' councils in an effort to forestall further criticism of the inequality of the conference system.¹¹⁰ However, most of the complaints regarding the conference system did not come from shippers in the industrialised world, though some, particularly those engaged on exporting raw materials, continued to have problems with the system. The principal complainants were the shippers and the governments of the developing states.

The details of the developing states' complaints will be dealt with in the chapters on UNCTAD. This chapter is concerned with the growth of the Third World states in international shipping and the measures adopted to gain access to and control of the regime by those states.

The developing countries have slowly increased their share of shipping tonnage over the postwar period. Of course, aside from the Latin American states, there were few fleets in the Third World since it was mostly under the colonial rule of the metropolitan states. It was not until the 1950s that shipping began to develop in these areas. From 1955 to 1964, the developing countries' fleets grew from 5.4 to 11.1 million tons, increasing their share of the world fleet from 6.5% to 8.1%.¹¹¹ These figures understate the relative importance of their shipping since much of the overall increase in shipping at this time was in the tanker and bulk sectors, whereas the primary interest and focus of developing country shipping policies has been in liner tonnage; in 1968, when their overall share of shipping fell back to 7.4%, its share of liner tonnage stood at 11.1%.¹¹² None of this included the shipping registered under flags of convenience, principally Honduras, Panama and Liberia, whose fleets have grown steadily larger since the war. Though these fleets have been nominally registered in developing countries, they are in fact owned and operated by developed country carriers, many from the United States' seeking to avoid excessive taxation and labour costs.¹¹³

Given the dependence of developing countries on the export of raw materials, it was not surprising that they should seek to engage in the shipping of those cargoes themselves; it was not merely a question of national prestige. However, the fleets were developed at a time of tonnage surplus. To carriers and governments in the industrialised states, these new fleets would only increase that over-supply and do so on the basis of largely inefficient and government-subsidised fleets.

Aside from such criticisms, carriers in some conferences tried to stifle the development of those fleets by refusing to admit them to the relevant conferences or only giving them a minute portion of the market.¹¹⁴ In doing so the conferences only increased developing states' dissatisfaction with the practices and structures of the international shipping regime.

The shipping policies of many developing states have therefore been a mixture of regulation and preferences; subsidies were uncommon in most developing states at that time given the relative weakness of their economies.¹¹⁵ These policies have sought, on the one hand, to regulate the activities of conferences and establish principles of consultation between their shippers and the conferences, and, on the other, to support their own carriers through reservation policies. These latter policies, in many respects reminiscent of the pre-free trade shipping policies of the European states, have been justified not only as responses to the restrictiveness of the conference system but also as elements of national economic strategies, which entail the support of infant industries and the diversification of the economy. Shipping in such an overall policy becomes more a public good¹¹⁶ and accordingly open to government control. This principle went against the norms of the traditional shipping regime as well as the practices of most of developed states. In more recent years, however, as the 1970s' recession deepened, more and more developed states came to accept the principle,¹¹⁷ acceding to bilateral trading agreements more readily and even agreeing to its international codification.

In many respects the international shipping regime has come full

circle. The principles established in the nineteenth century only fully prevailed in times of national economic growth and even then were half-heartedly adhered to by states new to the sector. In times of economic crisis, the principles of non-interference have been vitiated by policies of subsidy and preference. And yet the principles survived the depression of the 1930s; the immediate post war shipping regime was still controlled by the European powers and generally supported by the United States. It was only from the 1960s and the growth of third world interest in shipping as an element in development that the regime came under challenge, a process consolidated by the development of new shipping technologies¹¹⁸ and the economic recession of the 1970s and 1980s.

This erosion of the international regime occurred both at the national and the international levels. The following chapters examine the institutional expressions of that regime and how these have reflected, supported and challenged the conduct of international shipping.

Chapter Two - Footnotes

1. Richard W. Unger, The Ship in the Medieval Economy 600-1600 (London: Croom Helm, 1980), p. 22. Abraham Berglund, Ocean Transportation (New York: Longmans, 1931), p. 55.
2. Helen M. Gibbs, "Shipping-Sea Power and National Power" in Carl E. McDowell and Helen M. Gibbs, Ocean Transportation (McGraw-Hill, 1954), p. 15. M.S. Ram, Shipping (Asia Publishing, 1969), pp. 15-16.
3. J.W. Horrocks, A Short History of Mercantilism (London: Methuen, 1925), p. 60.
4. Immanuel M. Wallerstein, The Modern World System, Vol. II (New York: Academic Press, 1976), p. 78.
5. H.M. Gibbs, "Shipping-Sea Power and National Power", p. 16.
6. E.F. Heckscher, An Economic History of Sweden (Harvard University Press, 1954), pp. 194-95.
7. John G.B. Hutchins, The American Maritime Industries and Public Policy, 1789-1914 (Harvard University Press, 1941), p. 249.
8. S.G. Sturmev, British Shipping and World Competition (London: Athlone Press, 1962), pp. 24-27.
9. E.J. Hobsbawm, Industry and Empire (London: Pelican Books, 1978), p. 232. H.M. Gibbs, "Shipping-Sea Power and National Power", pp. 18-20.
10. F. Crouzet, "The Sources of England's Wealth: Some French Views in the Eighteenth Century" in P.L. Cottrell and D.H. Aldcroft, Shipping Trade and Commerce (Leicester University Press, 1981), p. 64.
11. I.M. Wallerstein, op. cit., p. 78.
12. Economist Intelligence Unit, "Ocean Shipping and Freight Rates and the Developing Countries" in UNCTAD, Proceedings, Vol. 5, Financing and Invisibles, Institutional Arrangements (New York: United Nations, 1964), p. 218.
13. Clinton H. Whitehurst, Merchant Marine Policy (Washington: American Enterprise Institute, 1969), p. 5. Bernhard J. Abrahamsson, International Ocean Shipping: Current Concepts and Principles (Westview Press, 1980), p. 120.
14. Hutchins, op. cit., pp. 171-73. Edgar Gold, Maritime Transport (Lexington Books, 1981), p. 83.
15. Hutchins, op. cit., pp. 233; 255.

16. G. Alexandersson and G. Norstrom, World Shipping (John Wiley, 1963), p. 44.
17. Gibbs, "Shipping-Sea Power and National Power", p. 27.
18. Hutchins, op. cit., p. 224.
19. John Harold Clapham, Economic History of Modern Britain, Vol. I (Cambridge: The University Press, 1926), p. 333.
20. Gold, op. cit., p. 89. Hobsbawm, op. cit., p. 235.
21. J.E.C. Hill, Reformation to Industrial Revolution (New York: Pantheon, 1968), p. 129.
22. Gibbs, op. cit., p. 24.
23. Abrahamsson, op. cit., p. 120.
24. Hobsbawm, op. cit., p. 232.
25. Gold, op. cit., pp. 89-90.
26. Heckscher, op. cit., p. 195.
27. A. Montgomery, The Rise of Modern Industry in Sweden (London: P.S. King, 1939), pp. 92-93.
28. Andre Gunder Frank, Capitalism and Underdevelopment in Latin America (New York: Monthly Review Press, 1967), p. 64.
29. Nagendra Singh, Achievements of UNCTAD-1 (1964) and UNCTAD-11 (1968) in the Field of Shipping and Invisibles (New Delhi: S. Chond, 1969), p. 15.
30. Gold, op. cit., p. 90.
31. Hobsbawm, op. cit., p. 158.
32. Economist Intelligence Unit, op. cit., pp. 218-20.
33. Gibbs, "Overseas Trade and Shipping Services" in McDowell and Gibbs, op. cit., pp. 43-51.
34. B.M. Deakin, Shipping Conferences: A Study of their Origins, Development and Economic Practices (Cambridge University Press, 1973), p. 13.
35. Ibid., p. 15.
36. Ram, op. cit., p. 46.

37. A. Branch, The Elements of Shipping (London: Chapman and Hall, 1977), pp. 110-11.
38. R.O. Goss, Studies in Maritime Economics (Cambridge University Press, 1968), p. 16.
39. Sturmev, op. cit., p. 323.
40. Charlotte Leubuscher, The West African Shipping Trade, 1909-1959 (Leyden: A-W Sythoff, 1963), p. 15.
41. For a general discussion of the conference system see anon., "The American Shipping Industry and the Conference System", Stanford Law Review, Vol. 10, Spring 1958, pp. 148-53 and anon., "Rate Regulation in Ocean Shipping", Harvard Law Review, Vol. 68, 1965, pp. 635-38.
42. Sturmev, op. cit., p. 324.
43. Branch, op. cit., p. 111. Berglund, op. cit., pp. 383-37.
44. Goss, op. cit., p. 19.
45. Raymond F. Burley, "Rates and Practices and their Regulation" in McDowell and Gibbs, op. cit., p. 390.
46. Clapham, op. cit., Vol. III, p. 277. Daniel Marx, International Shipping Cartels: A Study of Industrial Self-Regulation by Shipping Conferences (Princeton University Press, 1953), pp. 47-48.
47. Gerald R. Jantscher, Bread upon the Waters: Federal Aids to the Maritime Industries (Washington: Brookings, 1975), p. 6.
48. Lawrence C. Allin, "The Civil War and the Period of Decline: 1861-1913" in Robert A. Kilmarx, America's Maritime Legacy: A History of the U.S. Merchant Marine and Shipbuilding Industry Since Colonial Times (Westview, 1979), p. 68 and Hutchins, op. cit., pp. 470-74.
49. Whitehurst, op. cit., p. 6. Allin, op. cit., p. 72.
50. Allin, op. cit., p. 82.
51. Hutchins, op. cit., p. 510.
52. Ibid., pp. 480-81.
53. Sturmev, op. cit., pp. 29-30.
54. Osborne Mance, International Sea Transport (Oxford University Press, 1945), p. 7.
55. Hutchins, op. cit., p. 515.

56. Gold, op. cit., p. 132.
57. Hobsbawm, op. cit., p. 232.
58. Marx, op. cit., pp. 48-49.
59. Leubuscher, op. cit., pp. 48-49.
60. Marx, op. cit., pp. 48-49.
61. Leubuscher, op. cit., pp. 18-20.
62. Ibid., p. 26.
63. William L. Grossman, Ocean Freight Rates (Cornell Maritime Press, 1956), p. 97.
64. Robert Jack, "Self-Policing of Ocean Shipping Conferences", Stanford Law Review, Vol. 20, April 1968, p. 724.
65. Marx, op. cit., p. 59.
66. Ibid., p. 66.
67. Grossman, op. cit., p. 98. Sturmev, op. cit., pp. 327-28.
68. Marx, op. cit., p. 52.
69. Mance, op. cit., pp. 98-99.
70. Ibid., p. 99.
71. Marx, p. 98.
72. Goss, op. cit., p. 25. Andreas F. Lowenfeld, "To Have One's Cake...-- The Federal Maritime Commission and the Conference", Journal of Maritime Law and Commerce, Vol. 1, No. 1, Oct., 1969, p. 26.
73. Sturmev, op. cit., pp. 37-41.
74. Ibid., pp. 37-39.
75. Gold, op. cit., pp. 143-45.
76. Sturmev, op. cit., p. 61.
77. Gold, pp. 143-45.
78. Mance, op. cit., p. 12.
79. Clarence G. Morse, "A Study of Merchant Marine Legislation", Law and Contemporary Problems, Vol. 43, 1960, p. 57. Grossman, op. cit., p. 101. Jantscher, op. cit., p. 4.

80. Gold, op. cit., p. 197.
81. Mance, op. cit., pp. 67, 126.
82. Sturmev, p. 95.
83. Ibid., p. 75. Gold, pp. 190-91.
84. Sturmev, p. 138.
85. Ibid., p. 140.
86. C.E. McDowell, "Merchant Fleets of the World" in McDowell and Gibbs, op. cit., p. 105.
87. Paul Horn, International Trade: Principles and Practices (New York: Prentice-Hall, 1951), p. 282. Clark G. Reynolds, "American Maritime Power Since World War II" in Kilmarx, op. cit., p. 216.
88. Reynolds, op. cit., p. 216 and see Charles S. Marer, "The Politics of Productivity: Foundations of American International Economic Policy after World War II" and Stephen Krasner, "United States' Commercial and Monetary Policy: Unravelling the Paradox of External Strength and Internal Weakness" both in Peter J. Katzenstein, Between Power and Plenty: Foreign Economic Policies of Advanced Industrial States (University of Wisconsin Press, 1978).
89. The Economist, March 26th, 1949, p. 577.
90. Ibid., December 2nd, 1950, p. 966. Sturmev, op. cit., p. 160.
91. OECD, Maritime Transport Review, 1955, p. 42. Economist, May 1st, 1954, p. 389.
92. OECD, Maritime Transport Reviews, 1953, pp. 11ff and 1962, pp. 23-24.
93. Economist, May 31st, 1958, p. 818. The Times, February 7th, 1961, p. 17.
94. OECD, op. cit., 1962, pp. 21-24, 35.
95. Economist, September 5th, 1959, p. 786.
96. Ibid., February 27th, 1954, p. 634.
97. Sturmev, op. cit., p. 195. John Magnusson, "Maritime Agreements with State Traders", St. John's Law Review, V. 146, Oct., 1971, pp. 50ff. The practice has since grown; see for example Journal of Commerce, March 27th, 1973, p. 1.
98. See Maier and Krasner in Katzenstein, op. cit.

99. Economist, October 26th, 1946, p. 652.
100. Reynolds, op. cit., p. 216. Ralph Michael Silberman, "Cargo Preferences: The United States and the Future Regulation of International Shipping", Virginia Journal of International Law, Vol. 16, Summer, 1976, pp. 867-69.
101. Jantscher, op. cit., p. 12. Silberman, op. cit., p. 869.
102. Hans Böhme, Restraints on Competition in World Shipping (Ditchling Press, 1978), p. 47. Paul Horn, op. cit., p. 266.
103. S.A. Lawrence, United States Merchant Shipping Policies and Politics (Washington: Brookings, 1966), pp. 128, 258-59.
104. Goss, op. cit., p. 34. Lowenfeld, op. cit., p. 34. Leonard G. James, "Some Current Developments in United States' Control of International Shipping", International Lawyer, Vol. 7, July 1973, p. 544.
105. Economist, April 4th, 1964, pp. 39-40 and April 11th, p. 168.
106. R. Jack, op. cit., pp. 725ff.
107. Economist, April 4th, 1964, pp. 39-40. On Congressional see S.A. Lawrence, United States Merchant Shipping Policies and Politics, pp. 321-24.
108. Masao F. Takanaski, "Discriminatory Ocean Freight Rates and the Balance of Payments of the United States", Journal of World Trade Law, Vol. 1, No. 6, pp. 677-78.
109. See OECD, Maritime Transport Review, 1963, pp. 93-94; 1965, p. 10; 1966, p. 13; and 1970, p. 17.
110. Economist, December 21st, 1963, p. 1287.
111. UNCTAD, Review of Maritime Transport, 1968, p. 8.
112. Ibid., p. 9.
113. Reynolds, op. cit., p. 216.
114. Sturmev, op. cit., p. 195.
115. On the character of subsidies versus discrimination, see Böhme, op. cit., pp. 13-15 and "Pampering on the High Seas", Economist, Oct. 11th, 1969, pp. 62-63.
116. Ibid., p. 41.
117. This issue will be dealt with more fully in Chapter 4.

118. Technological development in modern shipping constitutes a topic on its own and, accordingly, has not been dealt with in this thesis. Nonetheless it has had a real impact on the international shipping regime, especially in the field of liner shipping and the conference system. The advent of container and intermodal transport systems have increased the efficiency and the costs of the industry, requiring considerable capital outlays. The shipowning and shipping industries have largely met this through mergers and the formation of consortia. Though these new bodies have been called 'super-conferences' they constitute a far greater degree of concentration than was the case in the traditional conference. Given their use of other modes of transport, moreover, it is understandable that some have seen the development of the container transport as a major weakening of the shipping regime. See Journal of Commerce, May 18th, 1974, p. 1 and June 6th, 1974, p. 1. On the container system see Susan Strange, "Who Runs World Shipping?", International Affairs, Vol. 52, No. 3, 1976 and Dennis Thompson, "International Carriage by Container", Journal of World Trade Law, Vol. 1, No. 4, 1967.

Chapter Three

INTERNATIONAL ORGANIZATIONS IN INTERNATIONAL SHIPPING

The previous chapter looked at the structure of world shipping over the past one hundred years, examining how it had developed from earlier times. The most striking change was the shift away from mercantilist policies in the nineteenth century toward a commitment to open shipping by most maritime states. This shift was effected under the hegemony of the United Kingdom, and entailed a minor role for the state; the basic norms of the regime were those of self-regulation and autonomy. To some extent this shift was vitiated by the actions of states seeking to develop their shipping sector. However such policies were aimed at fostering or encouraging shipping; access rather than control was the goal; subsidies rather than discrimination the means. They did not therefore undermine the regime since self-regulation grew rather than diminished during the twentieth century (aside from some investigations and minor controls). The overall weakening of liberal economic policies during the Depression was reflected in shipping but the broad principles of the regime re-emerged after World War II. The 1960s and 70s have, however, seen a return to discriminatory policies as Third World states have sought both to develop their own shipping fleets and to control the system of self-regulation.

This chapter examines the role of international procedures and institutions in the shipping regime of the past century, looking at what

form such aspects have taken, what roles they have played and how effective they have been. Given the structure of the regime prior to the nineteenth century, the chapter looks briefly at the relevant international maritime law of the time, and notes how it reflected the underlying shifts within the regime. It then concentrates on the international organizations which developed from the end of the century on. The thesis then looks at the debate surrounding the creation of the Intergovernmental Maritime Consultative Organization and how that agency has since developed.

The chapter then examines the development of UNCTAD both as an international organization in its own right and as an institution concerned with shipping (given the closeness of the postwar shipping regime to the general international economic order it is necessary to locate UNCTAD's activities within broader institutional questions). In conclusion the chapter assesses the relationship between international regimes and international organizations.

In terms of international principles of law the period prior to the nineteenth century was marked by the ideas of 'mare liberum' and 'mare clausum' contending for predominance in the context of old customs and practices.¹ In propagating the idea of closed access to the high seas, 'mare clausum' was fundamentally nationalist, not to say imperialist, in its claims; it was accordingly well suited to the mercantilist character of state policy in those times. Mare liberum, on the other hand, implied an open and international shipping regime, constituting a necessary if not a sufficient condition for such a regime; if the seas were open to all nations then at least access was free.

The principle of the freedom of the seas, while not new to the seventeenth century² was codified at that time in the work of Hugo Grotius. His writings came at a crucial time for the conduct of international shipping given both the development of trade and the growing strength of European nation-states and empires.³ Grotius's work was in fact written to justify and legitimate the actions of the Dutch state which was, through the Dutch East India Company, seeking to develop its trade there despite the claims of the Portuguese to control the high seas there.⁴ In simple terms, the principle was based on the idea of the sea being open to all.⁵ Though it has become a cardinal tenet of international law and the international shipping regime, this claim to freedom of the seas was employed primarily as the basis for an ascendant power's claim to trade.

The Dutch claim and its maritime predominance were in turn challenged by another ascendant power, England, while the principle was criticised in the writings of Selden.⁶ He was quite candid about his work being connected with English policy, which was then shifting to a more mercantilist line just as it had supported the free seas in the open Elizabethan policy.⁷

Throughout this period, then, mare liberum was a contentious principle whose fortunes varied with the shifts in mercantile power and policy in the seventeenth and eighteenth centuries.⁸ Later, with its leadership firmly established, Britain extolled and upheld the principle as it did free trade⁹ though the latter has not fared as well as the former since then.

The principle of the freedom of the seas became entrenched in the

international shipping regime as a condition within which the industry operated. In terms of international agreements the nineteenth century saw the first steps toward institutionalising the conduct of shipping. Agreements on rules for neutral shipping during wartime and on the use of international rivers¹⁰ supplemented and reinforced mare liberum. In addition there was a trend to codify and develop an international private law, largely at the behest and the initiative of shipping interests.¹¹

Shipping was becoming more complex throughout this time, a development which, as was noted in the previous chapter, led to a reduced state role in the industry. The shift to self regulation was not only seen in the conference system but also in the system of classification and insurance which Lloyd's developed.¹² However, just as guiding principles had been needed in the field of navigation so the industry itself required similar conditions. These were codified in national law but were gradually harmonised towards the end of the century with the first steps to international unification of maritime law:

As national legislatures frequently laid down divergent legal rules on several aspects of shipping, it became clear to the maritime nations that uniformity of legislation was essential.¹³

The trend was however more notable in continental Europe than in Britain, partly because of the different legal traditions but more generally because Britain as the 'maritime superpower' of the time was unwilling to be constrained by international principles, particularly since its law was often followed by other states.¹⁴ Within Europe there was a general recognition of the need for unification of maritime laws¹⁵ and some progress was made towards that end.¹⁶ Belgium's attempts at

international conferences on the issue were not successful, however.

The 1885 Antwerp Conference was for the most part a failure due to the intransigence of the British 'delegation'--an unofficial group sent by the English bar in contrast to the official representatives sent by the other participants: they clearly saw no advantages in unifying laws when the British system prevailed in many parts of the world.¹⁷

The United States convened the first truly intergovernmental conference on shipping in 1889. The Conference was to discuss a range of primarily technical maritime issues as well as to encourage international cooperation in these areas.¹⁸ On the first issue, the Conference was relatively successful but was unable to institutionalise these talks into a form of international cooperation.¹⁹ This was a result of divergences in national laws and the unwillingness of most states present to agree to an international agency.²⁰ Many states held it to be unnecessary since it would be consultative rather than legislative.²¹ Some states, notably the Scandinavians, were in favour of an organization,²² but most rejected even the more limited proposal of an agency gathering information on shipping.²³

The idea of a permanent shipping organization, then, was ruled out by most states. Cooperation would be restricted to only the most general and uncontroversial areas of maritime policy with these being pursued with the most minimal of institutional support. One of the few tangible outcomes of the 1889 Conference had been an agreement on collisions at sea,²⁴ while there had been gradual progress on codifying broad commercial principles of maritime law such as 'general average'.²⁵ Discussions on this had been under way since the middle of the century

under the auspices of the International Law Association's Maritime Law Committee.²⁶ The Association was also prominent in fostering the 'Comité Maritime International' (CMI).

Although it shared the International Law Association's goal of a uniform international law, the Comité did so as a means to fostering international trade rather than as an end in itself.²⁷ It was formed by lawyers, bankers and other groups interested in shipping and it was because of its origins amongst those running the industry that the Comité was more successful than the Antwerp and Washington Conferences. It coordinated the work of national associations²⁸ and was non governmental in structure though it worked with the Belgian government to convene diplomatic conferences to ratify its work.²⁹

In expressing and codifying the interests of shipowners the Comité constituted a strong pressure group in an area where the state followed a policy of 'benign neglect'.³⁰ It maintained the prevalence of carrier over shipper interests and has continued to be identified with those interests.³¹ Its work has focused on issues such as collision, liability, mortgages and freight law. Through a policy of preparing the bases of agreement amongst its national associations, the Comité was able to present finalised conventions for national governments to ratify and thereby maintained the self-regulatory character of the regime.³²

In addition there were a range of international organizations and agreements created in the last decades of the nineteenth and the beginning of the twentieth century which were part of the general growth of organizations in this period. These were often based on agreements relating to a technical issue such as the Regulations on Collisions at

Sea, International Code of Signals, and the International Hydrographic Bureau, or within the industry such as the International Shipping Federation and the Sea Transport Committee of the International Chamber of Commerce.³³

The first world war marked a break in the development of such commercial and functional organizations as well as the collapse of those principles of international law designed to regulate the conduct of shipping during wartime.³⁴ However, in contrast to the distinegration of those aspects of the shipping regime, the industry came under international control. Initially this was enacted nationally as governments requisitioned larger shares of the merchant marine for military and supply purposes.³⁵ As the war progressed the Allies under British leadership coordinated their shipping policies but initial attempts to formalise their cooperation were unsuccessful.³⁶ With the entry of the United States the Allies agreed to cooperate to make the best use of tonnage under their control, establishing the Allied Maritime Transportation Council.³⁷

According to Salter, the Council could at the time, "claim to be within the economic sphere the most advanced experiment yet made in international cooperation" though he goes on to note that it was an agency, "coordinating and not replacing the national departments which directed the respective mercantile marines".³⁸ Certainly it entailed a major intervention into the shipping sectors as well as the economies of the Allies in its allocation of tonnage and supplies. Moreover it was continued into the postwar period. The executive of the Council recommended that the organization be changed into a General Economic

Council but this was rejected by the United States.³⁹ The Council was therefore confined to dealing with the immediate postwar shipping problems such as the division of the German and Austrian fleets and was then disbanded.

The idea of a major shipping organisation did not prevail into the 1920s, the wartime arrangements having been dictated wholly by the necessities of the conflict. As noted in Chapter One, broader hopes regarding international organisations were quickly tempered by national considerations. The League of Nations was limited from the start in its aims of fostering international stability and peace. However, amongst the various committees and organisations connected to the League there were some which were concerned with shipping, reflecting a felt need to revise the basic conditions of the area.

The Transit Committee was concerned with overall transportation questions; it was not a functionally specific shipping organisation and covered only certain aspects of shipping.⁴⁰ Its principal interests concerned technical issues such as the unification of tonnage measurements.⁴¹ However its Sub-Committee for Ports and Maritime Navigation did venture into more economic areas of shipping policy, notably the question of flag discrimination.

The issue had its origins in various discussions following the Peace on freedom of transit.⁴² Although the initial view was that it was inadvisable to set an international convention on port treatment, the issue was taken up by the Sub-Committee and a convention was presented to the 1923 General Conference on Commerce and Transit.⁴³ Under the terms of the convention, "following the principle of reciprocity, every

contracting state undertakes to grant to the vessels of every other contracting state in its maritime ports equality of treatment with its own vessels."⁴⁴ The Convention was quickly ratified by a number of states and passed into operation. As was noted earlier, broader questions of discrimination were considered in the League's Economic Conferences but to little avail.⁴⁵ Moreover the League was always limited by the fact that a principal maritime power, the United States, was not a member of the organization.

The 1920s also saw the establishment of the International Labour Organization's Joint Maritime Committee. Its work was primarily directed to labour matters though there was apparently some concern that it was impinging on other aspects of maritime transport such as ship design and management.⁴⁶ Shipping was also discussed in the Pan-American Union initially focusing on technical questions but shifting in the 1930s and 40s to discussions on shipping practices. The 1940 conference marked a break between North and South America in their approaches to the industry, inasmuch as the Latin American states pressed the issue of cargo reservation.⁴⁷

Aside from these government-oriented bodies the interwar years saw the continued development of non-governmental organizations and the adoption of agreements formulated by those agencies. They were primarily continuations of the trends emerging before the war though there was an increasing awareness of challenges to the order that they had hitherto managed.

The principal new institution was the International Shipping Conference established in 1921. The organization was not a conference

in the specialised sense of the term but more of an international trade association representing the interests of shipowners.⁴⁸ It was concerned with issues of trade, maritime law, flag discrimination and insurance.⁴⁹ The Conference claimed not to be involved in the control of setting of rates or sailings even though it had been formed in response to the crisis in postwar shipping⁵⁰ and assisted the operation of minimal freight schemes. It not only concerned itself with challenges to the existing shipping regime and general steps to ease the operation of that regime but also engaged partly in the self-regulation typical of other bodies in the regime.⁵¹

The development of this organization along with the continued activities of the Comité Maritime International and the International Law Association demonstrated the continuing willingness of the industry to regulate itself⁵²; conferences continued to grow more international in this period. International organizations were active in furthering general enabling measures⁵³ but aside from one agreement sought by the major maritime states they were unable to venture into the economic side of shipping.⁵⁴

Moreover there was very little coherence to international shipping institutions. Tasks and functions were carried out by a range of agencies and organizations, with no overall coordination. The issue did not receive more attention in the principal international body of the period largely because of the continued opposition of the main shipping powers. Mance, writing in 1945, notes that an international agency concerned with shipping would have been likely to, "introduce political distractions into a sphere which is essentially technical"⁵⁵ and the vested interests

of the principal maritime powers would have underscored such perceptions. The period saw challenges to international shipping but these were primarily at the national level, a result of the economic crisis; they did not increase the felt need for an international shipping organization in the interwar period though they did so in hindsight after the war.

As during the first world war, the allied states, or rather the United States and Great Britain, developed a form of international cooperation after 1941. The Consultative Shipping Advisory Board was to coordinate shipping supply and demand but as the war continued a more ambitious form of cooperation was designed, one which would last into peacetime. The United Maritime Authority was established along lines similar to those of the Allied Maritime Transport Committee, but it was fully intended for use after the war. At its height it was responsible for controlling 90% of Allied tonnage,⁵⁶ though it left decisions on rate-setting to national authorities.⁵⁷

The UMA continued its work of tonnage and supplies allocation into 1946 when it was replaced by two organizations: the Shipping Coordinating and Review Committee, which took on the practical tasks of the old organization; and the United Maritime Consultative Committee, which was to serve as a forum for exchanging information and discussing postwar shipping policy. The organizations were intended as short term successors to the UMA with the UMCC effectively acting as an interim body between the wartime organizations and whatever peacetime international organizations might be held to be necessary.⁵⁸

At the same time the Allied powers under American leadership were

developing the United Nations system to replace the League of Nations. In a number of the less political institutions there was considerable continuity with the old agencies. In the transportation field the League had, prior to the war, granted autonomy to the Organization for Communications and Transit, its work being continued by the League Secretariat during the war.⁵⁹ In 1946 the United Nations decided to continue its work in the Temporary Transport and Communications Committee which would advise on any machinery which might be needed in those areas.⁶⁰

IMCO: False Start in International Regulation

It was between these two organizations, the UMCC and the TTCC, that the idea for an international shipping organization was developed. However the broader causes must be located elsewhere, in the desire of certain maritime states to harmonise shipping activities and especially to avoid the lapse into protectionism of the interwar period, a concern which was evident in other fields of the international economy, as will be seen. An international organization with these goals would underpin their efforts to reestablish the old international shipping regime weakened during the depression. The general trend towards international codification and legitimation in the postwar period was also an influence. The way in which these desires and policy choices interacted with others can be seen in the negotiations leading to and including the International Marine Conference in 1947.

The first step was taken by the TTCC in a report to the UN Economic and Social Council (ECOSOC)⁶¹ recommending that a technical agency be

established to integrate the activities hitherto dispersed amongst a range of organizations. The ECOSOC sought the advice of the UMCC. It took a broader view of a possible organization partly because of its own origins in shipping coordination, contrasted with the more limited role of the TTCC's precursor, but also because of the British and American determination that such an organization be created.

The UMCC drew up a convention as the basis for further negotiations.⁶² The convention reflected the UMCC's broader conception of the organization going beyond technical responsibilities and engaging it in facilitating, "the removal of all unnecessary restrictions by governments affecting shipping engaged in international trade".⁶³ It also proposed a structure which would give the larger shipowning and shipping powers a larger influence on the executive body of the organization thus keeping the organization within the control of the principal maritime states.⁶⁴

In the replies of governments to the initial draft of the Convention⁶⁵ and throughout the negotiations on the Convention itself the range of opinions emerged on the necessity and functions of an 'IMCO' as the proposed body was called. Most governments did not reject the concept out of hand, though the Scandinavian states queried whether such an organization was necessary, only reluctantly accepting the principle of even a technical agency. They were completely opposed to giving the organization any authority in the commercial aspects of shipping, even of combating government restrictions.⁶⁶ They felt that any such considerations should be taken up in the International Trade Organization whose Charter was also under negotiation at the time.⁶⁷

On the other hand there were some developing states at the Conference

seeking a powerful international organization with a role in the commercial and economic aspects of shipping.⁶⁸ They rejected the idea that the ITO would be able to discuss such issues in full, particularly when it emerged that the ITO would not have any competence in those fields. The Indian delegate summed up the developing countries' position:

If the United Nations were to concern itself with economic development, shipping should be the first subject for examination.⁶⁹

That is not to say that India and other developing states were for the Convention in its initial form. On the one hand they sought provisions concerning shipping practices, especially those of the conferences, but, on the other hand, they wanted the provision on government barriers to competition weakened. Argentina, for example, felt that the Convention should recognise the need for government intervention in a number of cases.⁷⁰

The other developed countries were keener to maintain a clear reference to the removal of governmental restrictions.⁷¹ They did not wish to condemn government intervention as such but wanted the orientation of the Convention and the Organization to be in line with their conception of the conduct of international shipping; they were not, as the conference's secretariat noted, "inspired by a protectionist zeal" in calling for the IMCO.⁷² Nonetheless, there had been a definite shift in most maritime states' policies in the mere call for an international shipping organization.

Why had this change taken place? Certainly it was not out of any consensus between governments and shipping interests. The representative

of the International Chamber of Commerce in addressing the Conference noted how shipping had been able to cope without such an organization in the past.⁷³ National industries took the same position as the Scandinavian governments. American carriers were against the organisation because of, "an instinctive opposition to international governing bodies impinging on the rights and areas of private enterprise".⁷⁴ These forces were apparently outweighed by most governments' favourable attitude to the harmonisation of shipping activities along open policies and institutionalising them in an international organization.⁷⁵ However it was not so simple.

The governments of most states were wary of the ITO having a role in international shipping. The ITO, as will be seen, had become the most ambitious of the postwar international economic institutions and was committed not only to free trade but also to the principle of governmental intervention in the economy.⁷⁶ Moreover the one state one vote system within the ITO entailed the possibility of the maritime states becoming outnumbered within the organization and potentially subject to interventionist shipping policies.⁷⁷ It was in the maritime states' interests to push for the IMCO, an organization in which they would have a greater influence.⁷⁸ By including a provision in the Charter which would exclude the ITO from dealing with transport issues where other competent bodies existed, the maritime states may have hoped to keep the principles of international shipping intact.⁷⁹

In view of the persisting differences on the structure and aims of the IMCO, the conference broke into working groups which were to examine the scope of the organization and the details of the Convention.⁸⁰

However, aside from clarifying certain aspects of the IMCO's work, such as excluding shipbuilding from its purview, the differences between the states remained.⁸¹ There was, however, a consensus between the developing and most developed states on the need for an organization and the Charter was approved over the opposition of the Scandinavian states.⁸²

According to the final version, the organization would deal with the economic aspects of shipping. The section on government restrictions included a statement which accepted the possibility of states assisting their industry as long as the aid was not discriminatory.⁸³ On shipping practices the organization was allowed to investigate those complaints of members which the normal processes of international shipping had been unable to resolve.⁸⁴ Though these provisions gave the organization formally wide powers of investigation, the structure of the main decision-making body, the Council, was weighted to favour the interests and policies of the major maritime states, thereby working against the effective use of those powers.

Moreover, by attempting to balance a range of interests, the Convention effectively alienated many of those interests. Though many of those present at the negotiations signed the Convention, only a few ratified it immediately.⁸⁵ The collapse of the ITO did not help speed the organization's ratification, depriving it of a precedent for dealing with restrictive practices.⁸⁶ To come into force, the IMCO required 21 states to ratify it but only a trickle of states did so.

Finally, in 1958, the Convention had been ratified by 21 states. The growth of membership with decolonisation provided some new support

for the organisation while there was also a 'demonstration effect' amongst the maritime states since none wished to be outside of a body to which the others belonged.⁸⁷ Moreover, a number of those initially opposed to or hesitant about the organization, attached reservations to their ratifications. These repeated their original objections to the organization and effectively prevented the organization from engaging in anything but the least controversial of policies.

Of the developing states, Cambodia, Cuba, Ecuador, India, Mexico, Morocco and Spain all reserved their position regarding Article 1(b)⁸⁸ concerning governmental interference; they declared that their national shipping policies were designed to promote their national fleet and therefore in line with the article. On the other hand some developed states either withheld their commitment to provisions on restrictive business practices, such as the United States, or declared that they regarded IMCO as a technical and not a commercial organization.⁸⁹ Some states, namely Finland, Greece and Norway even included the proviso that any IMCO 'task expansion', that is, any involvement in economic issues would prompt them to reexamine their position within the organization under the terms of Article 59.⁹⁰

The initial agenda for IMCO reflected a lowest common denominator of issues which the agency could examine. It dealt only with technical questions and since then has maintained an agenda of "largely non-controversial issues" such as safety and marine pollution.⁹¹ These issues may become the subject of fierce debate but at least they are accepted as issues within the domain of the organization. IMCO has been responsible for a number of conventions in these fields though some developing states have felt them too costly and burdensome.⁹² In any

case it remains a consultative rather than a regulatory agency, which its members are unwilling to grant any real authority or autonomy. Those agreements it has been responsible for have been made, "only when faced with the most dire need...or when internationally adhered to standards were to everyone's longrun economic advantage".⁹³ It has not become an overly politicised organization,⁹⁴ and has remained an effective international agency within its narrow sphere. As one writer pointed out, states seeking an international body concerned with the economic aspects of shipping would have to look elsewhere.⁹⁵

There were a number of postwar institutional innovations in shipping at the regional level. The OEEC, later OECD, created in 1961, established a maritime committee to foster the organization's goals of trade liberalisation in the shipping field.⁹⁶ The Committee examined the problems of both ship-building and shipping, as well as surveying the 1950 OEEC Convention on the Liberalisation of Invisible Trade, and tackling the building subsidies in the 1960s.⁹⁷ Within the OECD the European and Japanese members formed a Consultative Shipping Group,⁹⁸ an ad hoc ministerial committee established to discuss and coordinate policies regarding American shipping policy in the 1960s (the U.S. had reserved its position regarding the OECD's shipping activities when it joined the organization in 1960.⁹⁹ The CMEA developed similar bodies, for consultations in the 1950s and 60s.¹⁰⁰ The EEC, however, excluded the issue from its initial discussions, due to the opposition from the Dutch.¹⁰¹

There were also developments in Latin American shipping organizations in this period. The shift in their policies has already been

noted but they were codified in the LAFTA during the 1950s and 60s.¹⁰²

A group of experts on maritime and river transport was formed within that organization and it was responsible for the agreement on water transportation for intra-Latin American trade, reflecting their national policies as the OECD did for the developed maritime states.¹⁰³

Among private organizations the principal developments were again largely regional and focused on Europe. Both the Council of European Shipowners and the Council of European National Shipowner Associates were organizations of European and Japanese shipowning interests formed to respond to initially American and then Third World challenges to their shipping practices.¹⁰⁴ They worked with the Consultative Shipping Group and the European Shippers Council--a body of shippers encouraged by national governments as a 'counterweight' to the power and organization of the carriers.¹⁰⁵ These organizations marked a departure inasmuch as they were prepared to work with national authorities if only to try to counter the actions of other governments in the postwar period. A similar carrier organization was formed by Latin American shipowners and was notable in its opposition to the broad lines of their own governments' policies.¹⁰⁶ Other organizations such as the CMI and the International Chamber of Shipping, as the ISC was now called, continued their work and maintained large elements of the international shipping regime outside of the control of national authorities.

International Organization in the Postwar International
Economy: From U.S. Hegemony to Third World Challenge

The origins of UNCTAD date from the 1940s and America's efforts to internationalise trade issues. As the hegemonic power of the war

it saw its leadership in economic as well as political terms; it saw itself as, "capable of taking the initiative in promoting a world wide movement toward the relaxation of trade barriers".¹⁰⁷ It identified economic nationalism with political extremism and international tension,¹⁰⁸ and used its leadership to commit the other powers to its policy.¹⁰⁹

In negotiations with Britain, the idea of an international trade organization to complement the other international economic institutions emerged.¹¹⁰ Although the United States had been able to dominate negotiations regarding the other organizations, it was unable to with the ITO.¹¹¹ From the start the concept of the ITO was broadened to include questions of employment and state intervention in the economy.¹¹²

The organization was therefore marked by a tension between the desire to codify liberal principles in the international economy and to satisfy the interests of other states and take account of the 'complexities' of international trade. As one author noted, the U.S., and to a lesser extent, Britain, sought to go beyond the general principles of interwar economic conferences and deal with those complexities.¹¹³ As noted this was partly a concession to the British but it was also due to American business pressures to control restrictive practices. This latter pressure was to turn against the U.S. An attempt to include in the ITO Charter provisions protecting foreign investments was transformed in the negotiations to protect the interests of capital importers.¹¹⁴ The developing countries led by Australia, sought a strengthening of the provisions on employment and development.¹¹⁵ They wanted commitments to special treatment because of their economic position but, though the final version of the Charter went some way to meeting these demands, notably regarding commodity agreements and tariff concessions, they

regarded the provisions as insufficient.¹¹⁶ As in the case of the IMCO, the Charter tried to accommodate all interests, but failed to meet any satisfactorily.

A number of states conditioned their acceptance of the ITO on American support, which was in any case crucial given its position in the postwar international economy.¹¹⁷ Pressures inside the U.S. however worked against its participation. To many the Charter was not committed enough to free trade, containing too many 'escape clauses,'¹¹⁸ and made too many concessions to "the paraphernalia of state planning and trading".¹¹⁹ Moreover, despite its arguments and in contrast to the other postwar organizations, the United States would only have one vote.¹²⁰

By the late 1940s the American emphasis on international organization was not as strong as in the immediate postwar period, especially as the Cold War focused most of its attention on Europe.¹²¹ The idea of an ITO lacked urgency while the ITO as it developed was not the organization the Americans were intending; in 1950 the President decided not to send the Charter for ratification to a Congress unlikely to do so.¹²² Its absence, however, left a large imbalance in international economic institutions, one which favoured developed country interests and concerns over others.

The American attempt to codify its values in an international trade agency was dashed by the broader participation of other states anxious to maintain their national economic capabilities; while they accepted American leadership in international financial regulation, they sought to retain their autonomy in other areas of their economy. Even though the U.S. never ratified the Charter, however, it was able to obtain many of its goals through the General Agreement on Tariffs and Trade.

The GATT was established as an interim arrangement for the ITO in 1947 and generally dealt with the explicitly commercial functions of the Charter. It was seen as a temporary agency but, with the collapse of the ITO, became enmeshed in the international postwar economic order.¹²³ Aside from its limited functions, the agency's ambiguous character meant that it could be approved in the U.S. by Executive Order without being constrained by Congress¹²⁴ which had blocked the progress of the Bretton Woods organizations.¹²⁵ Though it may have met the needs of the U.S. and the other developed states, it scarcely substituted for the ITO, flawed as it was.¹²⁶

The overall orientation of the United Nations at this time centred on the Cold War while membership was effectively frozen.¹²⁷ Issues concerning the developing countries were only gradually placed on the agenda, particularly as membership began to grow from the mid-1950s on. Development was scarcely dealt with for most of that decade, either in the U.N., its associated agencies, or in the GATT. An attempt to revive the ITO in 1954 through the Organization for Trade Cooperation was dashed by U.S. uninterest.¹²⁸

Given the lack of attention paid to their concerns it was not surprising that so few developing countries adhered to the GATT; of the 17 Latin American states which signed the ITO charter only 3 were party to the GATT at its inception.¹²⁹ Its whole structure was seen as geared to the developed states' interests; the principle of reciprocity, central to the GATT, required a competitiveness which few developing countries could achieve, while agriculture was subject to exceptions which protected the developed states' rural economies. A revision of

the Agreement in 1954 was used by the developing states to voice their dissatisfaction but to little avail. It was not until the Haberler Report of 1958 that their concerns were addressed.¹³⁰

There was then a certain disillusionment with the treatment which their economic problems received in international institutions as well as with the U.N. system generally.¹³¹ However, a shift in national and international perspectives on development was taking place by the end of the decade. Security no longer dominated the U.N. agenda while questions of decolonisation and national self-determination grew with the developing states' UN membership.¹³² Those states were themselves becoming more organised around the issues of nonalignment, anticolonialism and, to a lesser extent, economic development.¹³³ The latter became of increasing concern as their national economies encountered more problems in development.

Whatever the reasons for this failure to develop--and their interpretations of it varied as much as did their national policies--they increasingly attributed it to the workings of the international economy; accordingly their development required international as well as internal reforms:

The international arena was no longer seen as a residual category for the LDCs, an arena for symbolic or ceremonial exercises.... A foreign policy of development manipulating the international system for domestic economic goals, became the central feature of Third World policies in the 1960's.¹³⁴

The combination of domestic economic problems, altered perspectives of the international economy and increasing numerical strength and solidarity of the developing countries reinforced the arguments for an international organization concerned with development. Such a body would also perhaps

contribute to a restructuring of the international economy.

The 1950s saw various proposals to rekindle the ITO. Aside from the OTC scheme, the Socialist countries sought an organization to deal with East-West trade.¹³⁵ Their resolutions within the General Assembly were defeated by those favouring the existing trade system.¹³⁶ As the balance in the General Assembly changed the developing countries' concerns were addressed,¹³⁷ as was also seen in the publication of the Haberler report and the designation of the 1960s as a 'Development Decade'.

UNCTAD and the Creation of the Shipping Committee

In the 1960s the developing countries took the initiative with a series of resolutions proposing an international conference on trade and development. In this they were supported by the socialist and opposed by the western states. The developing countries, however, were still largely divided into the Afro-Asian and Latin American groups and frequently put forward opposing resolutions.¹³⁸ It was only at the 1962 Cairo Conference of Developing states that they were able to consolidate their solidarity in the idea of a conference.¹³⁹ After attempts to water down the proposal for a conference had failed, Western resistance gave way and the General Assembly adopted a unanimous resolution which convened a Preparatory Committee to set the agenda for the Conference on Trade and Development, appointing Raul Prebisch as its secretary-general.

What is unclear about the events leading up to the UNCTAD is why the west was so unprepared to resist the idea after opposing such an

organization for so long. Of course it was not complete in rejecting the concept; the Scandinavian states were quite prepared to support a conference.¹⁴⁰ However the decisive factor was America's shift to support the Conference.¹⁴¹ This tied in with U.S. policy in the early sixties which sought to retain developing country support; the Americans felt that simple negativism would be counterproductive,¹⁴² implying that it would align the developing states with the socialist states, even though it was clear that the developing states were more concerned with pursuing their own interests over those of the socialist states.¹⁴³

Throughout 1963 and the start of 1964 the UNCTAD preparatory committee met to draw up a provisional agenda for the Conference. It examined a range of issues including trade expansion, manufactures, commodities, invisibles as well as the institutional measures for the Conference.¹⁴⁴

The Committee on institutional questions was unsurprisingly divided on whether existing organizations were sufficient and did not make any recommendations to the Conference. Nonetheless the principle of the Conference was accepted and proved to be an irreversible step towards the creation of a permanent organization. At that stage, however, there was no consensus on the form of such an organization even among those who favoured it. The socialist states maintained their call for an ITO but turned out to be largely peripheral in what became a debate between the west and the south.¹⁴⁵ The developed countries, having met in the OECD before the conference, were concerned above all to retain the existing organizations and to prevent the revival of the ITO.¹⁴⁶ The developing countries favoured a variety of solutions resolving their position in the course of the overall debate.

Within the conference itself states were divided regionally:

Group A consisting of the Latin American states, Group B of the western industrialised states, Group C of the Afro-Asian states and Group D the socialist states. As negotiations in the institutional committee proceeded, it became clear that the developing countries' hopes of a new specialised agency would not be accepted by the Group B states. They would therefore have to compromise, as the Latin American resolution recognised.¹⁴⁷

To resolve their internal differences they convened in what had become initially known as the 'Group of 75' after presenting a joint resolution from the Cairo Conference. They eventually agreed on a proposal which called for a regular conference to be serviced by a permanent board and secretariat. The conference was to be an organ of the General Assembly rather than of the ECOSOC, which, along with the UN secretariat, were too identified with the west for many developing states.¹⁴⁸ It would thus be an agency which was autonomous of other sections of the UN. It would be identified with the interests of the developing countries, which were rapidly becoming the majority grouping in the General Assembly. The proposed conference would also deal with various aspects of the development process rather than simply that of trade.¹⁴⁹

The Group B countries rejected this proposal and sought to keep any institution within the ECOSOC structures and restrict it in its activities to those of trade and commodities. The developing states in the Group of 75 then put their resolution to the vote and with the support of the socialist states, passed it despite the opposition of

the western governments.¹⁵⁰ In doing so they demonstrated their numerical power and cleared the way for another compromise. Under the mediation of Prebisch they laid the basis for the continuing machinery which was eventually adopted in the UN General Assembly resolution 1995.

The agreement, while not creating a new ITO, did establish the new organization's autonomy and range of concerns. Moreover the likely orientation of the new agency was confirmed by the appointment of Prebisch as its first Secretary General as well as by the adoption of his report to the first Conference.

Settling the institutional question was the principal achievement of the first conference. However the conference also dealt with the principal problems of development. Aside from the institutional committee three other committees were established to examine the role in development of commodities, manufactures and invisible trade. Shipping was to be dealt with in the last of those, along with invisible, financial and other problems.

On commodities the developing countries sought support for producer-consumer agreements to guarantee and increase earnings from their principal exports, as well as to coordinate marketing and production. They also wanted the removal of obstacles and discrimination against their agricultural exports. By contrast, in manufactures they sought special treatment for their exports though the Group B states were opposed to any preference schemes. On invisibles the developing states reaffirmed the goal of 1% of Gross National Product being used for aid, as well as calling for assistance in servicing their debts.¹⁵¹ As will be seen, the question

of shipping was also considered within this committee.

In most fields the debates consisted of repetitions of each side's position, only starting the slow process of incremental change which has characterised many UNCTAD negotiations. Shipping has been no exception but it was the focus of a confrontation between developing and developed countries.

The Preparatory Committee dealt with shipping as part of the invisibles commitment of developing states. Aside from agreeing to more study and documentation for the Conference, the committee did touch on the freight rates issue. The division between developed and developing states quickly emerged.¹⁵² The debate was continued within the Invisibles Committee of the Conference though it became clear that it required a separate forum for discussions. A working group on shipping was established within the committee.¹⁵³

The decision to establish a working group was accepted by most states present regardless of group, though their differences reemerged over the terms of reference. India, speaking for the developing countries, saw its task as to examine how current methods of setting rates discriminated against developing states and to identify the conference system's restrictive practices.¹⁵⁴ Norway saw it establishing how international shipping could contribute to the expansion of trade "taking into account the special characteristics of ocean transport [and] the international character of shipping".¹⁵⁵ Britain felt that the Indian proposals, "tended to overemphasise the developing countries" while Japan was also wary of them.¹⁵⁶ After negotiations the terms were agreed upon and the working group was established with nearly 70 states seeking to join it, indicating how important both sides held the issue to be.

The developing countries attributed many of their problems in shipping to their lack of influence in an industry on which they were so dependent for the carriage of their exports and imports.¹⁵⁷ They felt that shipping was being run without regard to their needs. Low ship ownership in the third world and the restrictive practices of shipping conferences were the reason for their lack of influence.¹⁵⁸

Their basic substantive complaint, however, concerned the level and setting of freight rates.¹⁵⁹ These not only affected their balance of payments but were also based on unfair structures which favoured the export of manufactures from the developed countries and hindered those from the developing world. Moreover they claimed that rates were decided arbitrarily and without consultation, and that, because of their weakness in the sector, they were obliged to accept them. They denied that the rates were set by competition since the conference system effectively constituted an oligopoly.

The conference system was, then, their other main complaint. The use of dual rates and deferred rebates worked against competitive rate setting and the conferences were accordingly able to charge what the market would bear. The secrecy surrounding the system was also attacked as unnecessary. The developing states mostly accepted the need for the conferences to maintain regular sailings and stable rates but claimed that its worth was hampered by the practices mentioned above.¹⁶⁰

Their principal proposal to alleviate their position was the development of their own fleets. They argued that, given their high share of trade, much of it should be carried by their national shipping. This would also alleviate their balance of payments problem, bolster their independence and enlarge and diversify their economies. In order

to develop their fleets they called for financial assistance through international loans. In addition they called for more consultations with the conferences in the setting of rates as well as access to conferences as equal members.

Their principal solution was seen in the use of preferences.¹⁶¹ These were needed to encourage the development of their fleets and to offer them a share in their own trade. The developed fleets were only in control of these trades because of their established position. Thus they called for certain non-reciprocal measures as would be the case in any infant industry. They also stressed that their actions would not interfere with the freedom of navigation, thereby implicitly breaking the link between free seas and free trade. In this as in their other demands they were supported by the socialist states.

These solutions were not welcomed, however, by the Group B states. They were largely on the defensive at UNCTAD in seeking to maintain the prevailing international economic order, and this was particularly true in shipping. They could not accept the premises on which the developing states based their demands. For them shipping was an international industry which served all countries' interests by being kept as open and efficient as possible.¹⁶²

On the costs of shipping, the Group B states drew attention to the overall cost of transportation, noting how small a part shipping constituted, and how low a factor in total costs it was.¹⁶³ The sector should not therefore be singled out for attention. The best way of keeping rates down, they argued, was through competition and the efficient use of shipping. Discrimination on the other hand could only lead to increased costs and inefficiencies.¹⁶⁴

They also argued that the conference system was necessary and effective and that internal and external competition were possible. They agreed on the need for consultations but held that they be between the commercial interests on both sides; government intervention in rate setting was certainly not necessary.

The Group B states also supported the development of new fleets but argued that they be efficient. They questioned how far governments should devote their scarce resources to shipping development rather than elsewhere in the economy, and they disagreed with the developing states on the likely foreign exchange savings to be made, noting how much of a burden an imported ship would be.¹⁶⁵ Overall their position reflected their desire to minimise the role of government in international shipping and prevent discrimination.

Not surprisingly the delegations' draft recommendations reflected the differences noted above. The developing states' draft, aside from raising substantive issues, brought up the question of international shipping institutions.¹⁶⁶ It commented on the absence of a suitable agency to deal with the issues raised and called for an intergovernmental committee for shipping practices and freight rates to be established by the UN.¹⁶⁷ The UNCTAD would form the first committee which would then decide on its rules and terms of reference. The agency envisioned resembled the original IMCO in being a consultative and advisory organization and could have been a separate organization. The Group B recommendation made no mention of such a committee and it was clear from the debate that they were not willing to discuss institutional questions.¹⁶⁸

Despite these seemingly irreconcilable positions the working group eventually arrived at the so-called Common Measure of Understanding¹⁶⁹ which noted the basic issues on which all were in agreement; a limited range of principles and vaguely phrased recommendations open to wide interpretation. Indeed both groups in accepting the common measure explicitly stated that they held by their original resolutions.¹⁷⁰

The Conference approved the common measure of understanding as well as a recommendation on institutional questions. It stated that, "appropriate intergovernmental procedures, including any committee that might be deemed necessary, be established under the UN system or as part of the institutional system that might be set up under the UNCTAD, to promote understanding and cooperation in the field of shipping and to study and report on the economic aspects of shipping that might be referred to it."¹⁷¹ A number of states, however, appended reservations to the resolution aiming to keep it within their limited interpretation of the common measure, while seven maritime states voted against a Special Principle of the Final Act which called for measures to assist the developing states build up their fleets.¹⁷²

Following the General Assembly resolution establishing the UNCTAD, a Sessional Committee was established to formulate the terms of reference for the various committees of the new organization while the Board debated whether there should be a separate shipping committee. Even though no decision had been made on the latter, the developing states were able to have the terms of reference of such a committee discussed in the Sessional Committee, thereby keeping the issue of a separate committee high on the agenda.¹⁷³ The terms of reference for

the committee came closest to those proposed by the developing states and dealt with the range of economic issues they had discussed at UNCTAD I. By the time the Trade and Development Board considered the issue, then, the basis and consensus for a shipping committee were well founded. After some last attempts by some Scandinavian states to limit it to an expert committee responsible to the Invisibles Committee,¹⁷⁴ the Board agreed to a shipping committee.

The creation of a shipping committee was probably inevitable from the beginning of UNCTAD despite the efforts of the developed states.¹⁷⁵ They had no real response to the Group of 75's arguments and only defended their interests. Once the issue was given special treatment within the working group it became clear how much importance the developing states attached to it. As Singh has noted, the working party prepared the ground for the shipping committee.¹⁷⁶ The developed states' opposition only strengthened the solidarity of the Group of 75 in seeking a separate forum for shipping and development issues.

The international codification of the shipping regime has accumulated over the years from a set of basic customs and principles to the present set of international organizations. Such agencies only emerged toward the end of the nineteenth century and played a largely marginal role, setting the basic conditions of the regime and providing minimal but necessary services; the principle of self regulation prevailed. This mirrored broader principles in the international economy with trade agreements constituting a means to encourage rather than control the development of economies.

The postwar period saw renewed efforts in both fields to develop international institutions designed to underpin the principles on which those economies were based rather than to regulate them. Only later with the emergence of the developing countries as a political force were institutions developed which looked at the economy with a view to altering it.

The creation of the UNCTAD Shipping Committee, while it did not establish a formally autonomous international organization in the economic aspects of that regime, provided a forum where issues could be tackled as if it were such an agency. Moreover it functioned within an organization which was not necessarily oriented to the prevailing norms and principles of the international economy. Cordovez's comment on UNCTAD certainly held true for its activities in shipping:

[UNCTAD] exploded the myth that all countries are economically equal and thus established the principle that a code of rules of international trade should reflect the existence of basic differences of economic and social organization, economic development and bargaining power.¹⁷⁷

The premises on which UNCTAD was built made it clear that the organization would tackle issues like shipping in a fundamentally different way from that of previous organizations. The aim of Prebisch and others within UNCTAD was to create an organization with quite different perspectives on the international economy,¹⁷⁸ through the use of the secretariat, group system and other aspects of the organization to foster third world solidarity and focus their concerns.¹⁷⁹

The international organization therefore becomes a means of changing the structures of the international economy instead of simply reflecting them. Krasner¹⁸⁰ has noted how a combination of internal and international

weakness along with the increasing autonomy of international organizations has enabled Third World countries to use them in this way.¹⁸¹ This is borne out by the case of UNCTAD inasmuch as the decline of American control over UN agencies created the possibility for such an organization. He also points to the alternative world view offered by the ideas of Prebisch and others to the prevailing economic orthodoxies.¹⁸²

However as the last chapter indicated, the 1950s and 60s were marked by major challenges to the international shipping regime. Thus the question remains: how far did UNCTAD constitute a reflection of changes in the international economy and/or how much was it an attempt to make those changes?

Chapter Three - Footnotes.

1. T.K. Thommen, International Legislation on Shipping (N.Y.: United Nations, 1968) TD(32).
2. Pitman B. Potter, The Freedom of the Seas in History, Law and Politics (Londmans, 1924), p. 7.
3. See the discussion of this era in Chapter Two.
4. Gold, op. cit., p. 46.
5. For a discussion of what the principle has meant, see Potter, op. cit., Chapter One.
6. Selden's "Mare Clausum" was written as a reply to Grotius' work, Potter, op. cit., p. 58.
7. C. John Colombos, The International Law of the Sea (Longmans, 1967), p. 51.
8. Potter, op. cit., pp. 83-84.
9. Colombos, op. cit., pp. 55-57.
10. Hinsley, op. cit., p. 232.
11. Gold, op. cit., p. 108.
12. Branch, op. cit., pp. 88-89.
13. Thommen, op. cit., p. 3.
14. Gold, op. cit., p. 126.
15. Nagendra Singh and Raoul Colinvaux, British Shipping Laws, Vol. 13: Shipowners (London: Stevens and Sons, 1967), p. 155.
16. Gold, p. 152.
17. Gold, p. 151.
18. U.S. Government, Protocols of Proceedings of the International Marine Conference (Washington: G.P.O., 1896), Vol. I, pp. ix-xiii.
19. Harvey B. Silverstein, Superships and Nation States: The Transnational Politics of IMCO (Westview, 1978), p. 11.
20. U.S. Government, Protocols of Proceedings, Vol. II, pp. 984-85.
21. Gold, op. cit., p. 123.

22. Mance, p. 57. U.S. Government, Protocols of Proceedings, Vol. II, pp. 984-5.
23. U.S. Government, Protocols of Proceedings, Vol. II, p. 1053.
24. Ibid., pp. 1365ff.
25. For a discussion of this principle, which is used in marine insurance, see Colombos, op. cit., p. 362.
26. Singh and Colinvaux, op. cit., p. 155.
27. Marx, op. cit., p. 268.
28. Mance, op. cit., p. 5.
29. Carl E. McDowell, "International Conventions and Treaties", in McDowell and Gibbs, op. cit., p. 433. Thommen, op. cit., p. 4.
30. Silverstein, op. cit., p. 11.
31. Branislav Gosovic, UNCTAD: Conflict and Compromise (Sijthoff, Leiden 1972), p. 248. Samuel A. Lawrence, International Sea Transport: The Years Ahead (Lexington, 1972), p. 39.
32. Singh and Colinvaux, op. cit., p. 155.
33. McDowell, "International Conventions and Treaties", p. 441.
34. Gold, op. cit., pp. 170-71.
35. Sturmev, op. cit., pp. 46-49. Salter, op. cit., pp. 141-43.
36. Salter, op. cit., p. 40.
37. Marx, op. cit., p. 272.
38. Salter, op. cit., p. xiii.
39. Ibid., p. 220.
40. Mance, op. cit., p. 3.
41. Marx, op. cit., p. 270.
42. Colombos, op. cit., pp. 238-39.
43. Ibid., pp. 238-39.
44. United Nations Economic and Social Council (ECOSOC), Intergovernmental Maritime Conference, 1948, "Preparatory Memorandum", (E/CONF.4/4).

45. Marx, op. cit., p. 270.
46. Mance, op. cit., p. 7.
47. Marx, op. cit., p. 270.
48. Lawrence, International Sea Transport, p. 39.
49. Singh and Colinvaux, op. cit., pp. 143-44.
50. Colombos, op. cit., p. 392.
51. Marx, op. cit., p. 269.
52. For details of these bodies' work in the 20th century see Gold, pp. 207-09 and 291-92.
53. Singh and Colinvaux, pp. 124-25.
54. Note Chapter 2; this period was one of protectionism and nationalist shipping policies.
55. Mance, p. 8.
56. International Organization, 1948, p. 150. At that time this journal included large unauthored sections detailing the work of contemporary international organizations.
57. Marx, op. cit., p. 273.
58. Ibid., pp. 272-73.
59. U.S. Government, Department of State, "Toward a World Maritime Organization", by Eula McDonald, Department of State Bulletin, Vol. 18, No. 447, pp. 101-02.
60. D.H.N. Johnson, "IMCO: The First Four Years (1959-62)", International and Comparative Law Quarterly, Vol. 12, 1963, p. 92.
61. Report of the Transport and Communications Commission to the ECOSOC, 1947 annexed in ECOSOC, "Preparatory Memorandum", p. 17.
62. "Draft Convention for an Intergovernmental Maritime Consultative Organisation" in ECOSOC, Intergovernmental Maritime Conference (E. Conf. 4(1)), pp. 3ff. This document includes a collection of UMCC materials.
63. International Organization, 1948, p. 151.
64. See "Draft Convention" Article VI in ECOSOC, Intergovernmental Maritime Conference, p. 7. The Article provides for the executive body, the Council, to consist of the seven largest shipowning and shipping nations, with four other states elected from the Assembly.

65. ECOSOC, Intergovernmental Maritime Conference, "Replies of Governments to the Secretary General's Request for Submission of Comments on or Amendments to the Draft Convention." Prepared by the United Maritime Consultative Council", (E. Conf. 4/2), pp. 2ff.
66. ECOSOC, Intergovernmental Maritime Conference, "Replies of Governments... Annexes II and VIII, ECOSOC, U.N. Maritime Conference, "Summary Record of the First Meeting", (E. Conf. 4/SR.1), pp. 5-7.
67. "Summary Record of the First Meeting", p. 6.
68. Ibid., pp. 8-9.
69. Indian delegate, *ibid.*, p. 8.
70. Ibid., "Summary Record of the Second Meeting", (E. Conf. 4/SR.2), p. 8.
71. Ibid., pp. 6, 10.
72. Ibid., "Summary Record of the First Meeting", p. 4.
73. Ibid., "Summary Record of the Third Meeting", (E. Conf. 4/SR.3), p. 5.
74. "The Times" quoted in Silverstein, *op. cit.*, p.200.
75. Silverstein, *op. cit.*, p.201.
76. See Chapter 2, pp. 72ff.
77. William Adams Brown, The United States and the Restoration of World Trade (Washington: Brookings, 1950), pp. 372-75.
78. Marx, *op. cit.*, p. 277.
79. Article 53, paragraph 3 of the Havana Charter requires the ITO to transfer issues concerning services to the relevant intergovernmental organization. See United Nations Conference on Trade and Employment, Final Act and Related Documents, (E. Conf. 2./78, 1948), p: 37.
80. ECOSOC, U.N. Maritime Conference, "Summary Record of the Third Meeting", p. 6.
81. Ibid., "Summary Record of the Fourth Meeting", (E. Conf. 4/SR.4), p. 4.
82. Ibid., "Summary Record of the Sixth Meeting", (E. Conf. 4/SR.6), p. 9.
83. IMCO, Convention Article I, part (b).
84. Ibid., part (c).
85. Singh and Colinaux, *op. cit.*, p. 129.

86. David Padwa, "The Curriculum of IMCO" in International Organization, Vol. 14, 1960, p. 539.
87. One can note a similar trend nearly 20 years later with the Code of Conduct in Liner Conferences.
88. See Singh and Colinvaux, op. cit., p. 129.
89. Johnson, op. cit., pp. 40-41.
90. Ibid., pp. 38-39.
91. Padwa, op. cit., pp. 539-40.
92. Silverstein, op. cit., p. 183.
93. Ibid., pp. 183-84.
94. Gosovic, op. cit., p. 248 notes the creation of a Legal Committee within UNCTAD.
95. Gold, op. cit., p. 260.
96. Sturmev, op. cit., p. 175. Lawrence, International Sea Transport, p. 38.
97. Singh and Colinvaux, op. cit., p. 390.
98. Branch, op. cit., p. 82.
99. Singh, p. 391.
100. See UNCTAD, Committee on Shipping, "Review of Studies and Activities in the Field of Shipping and Ports Carried Out by Other Institutions within the United Nations System and by Inter-Governmental and Non-Governmental Organizations" (TD/B/C.4/26).
101. Anna A. Bredimas and John G. Tzoannos, "In Search of a Common Shipping Policy for the E.C.", Journal of Common Market Studies, Vol. 20, No. 2, December, 1981, pp. 98-99.
102. Singh and Colinvaux, op. cit., pp. 152, 391.
103. UNCTAD, Committee on Shipping, "Review of Studies...".
104. Branch, op. cit., pp. 80-83.
105. Goss, op. cit., p. 20.
106. Singh and Colinvaux, pp. 151-52.

107. Richard N. Gardner, Stirling-Dollar Diplomacy: The Origins and Prospects of Our International Economic Order (McGraw-Hill, 1969), p. 102. See also Kenneth W. Dam, GATT: Law and International Economic Organization (University of Chicago Press, 1977), pp. 12-13.
108. Maier and Krasner in Katzenstein, op. cit. Joan Spero, The Politics of International Economic Relations (St. Martin's Press, 1977), pp. 66-67.
109. Fred L. Block, The Origins of International Economic Disorder (University of California, 1977), p. 75. Spero, op. cit., p. 67.
110. M.A.G. van Meerhaeghe, International Economic Institutions (Longman, 1971), p. 90.
111. Spero, op. cit., p. 75.
112. Block, op. cit., p. 75.
113. William Diebold, The End of the ITO (Princeton, 1952), p. 9.
114. Spero, op. cit., pp. 111-127.
115. William Adams Brown, The United States and the Restoration of World Trade (Brookings, 1950), p. 99.
116. Gosovic, op. cit., p. 10.
117. Horn, op. cit., p. 198.
118. Maier in Katzenstein, p. 39.
119. U.S. Chamber of Commerce quoted in Horn, op. cit., p. 200.
120. Brown, op. cit., p. 146.
121. Diebold, op. cit., pp. 4-6. Block, pp. 75ff.
122. Lars Anell and Birgitta Nygren, The Developing Countries and the World Economic Order (Francis Pinter, 1980), p. 40.
123. Diego Córdovez, "The Making of UNCTAD--Institutional Background and Legislative History", Journal of World Trade Law, Vol. I, No. 3, 1967, p. 251.
124. Andrew Shonfield, Politics and Trade (Oxford University Press, 1976), pp. 146, 150.
125. Krasner in Katzenstein, op. cit., pp. 72-74.
126. Gosovic, op. cit., p. 18.

127. A.S. Friedeberg, The United Nation Conference on Trade and Development of 1964 (Rotterdam University Press, 1969), p. 8.
128. UNCTAD, Proceedings, Vol. 5, "The Developing Countries in GATT", p. 433.
129. Gosovic, op. cit., p. 11.
130. Van Meerhaege, p. 114.
131. Richard Gardner, "The UNCTAD", International Organization, Vol. 22:1, Winter 1968, pp. 100-02.
132. Annell and Nygren, op. cit., pp. 52-54. Friedeberg, op. cit., p. 8.
133. Carol Geldart and Peter Lyon, "The Group of 77: A Perspective View", International Affairs, Vol. 57, No. 1, 1980/81, pp. 82-83.
134. Robert L. Rothstein, The Weak in the World of the Strong: The Developing Countries in the International System (New York: Columbia University Press, 1977), p. 136.
135. Gardner, "The UNCTAD", p. 103. Friedeberg, op. cit., p. 4.
136. Gosovic, op. cit., p. 18.
137. Charles O. Robertson, "The Creation of UNCTAD" in Cox and Jacobson (eds.), The Politics of International Organization, p. 259.
138. Gosovic, op. cit., p. 16 on differences between Latin American States and the Afro-American States.
139. Cordovez, op. cit., p. 259.
140. H.O. Bergesen, H.H. Holm, and R.D. McKinlay, (eds.), The Recalcitrant Rich, pp. 154-56.
141. Robertson, op. cit., p. 261.
142. Ibid., p. 262.
143. Friedeberg, op. cit., p. 12.
144. Cordovez, op. cit., p. 271.
145. Gosovic, op. cit., p. 35.
146. Gardner, "The UNCTAD", p. 105.
147. Gosovic, op. cit., pp. 39-40.
148. Gardner, "The UNCTAD", p. 103.

149. Gosovic, op. cit., pp. 40ff.
150. The vote was passed by 83 votes to 20 with 3 abstentions.
Gosovic, op. cit., p. 43.
151. On these issues, see the reports of the various committees at the first UNCTAD in Proceedings, Vol. 1.
152. UNCTAD, Proceedings, Vol. VII, p. 40.
153. UNCTAD, Third Committee "Summary Records of the Eighth Session", (EC 46/C3/SR8, pp. 2-3).
154. Ibid., "Summary Records of the Eleventh Session", (EC 46/C3/SR11), p. 2.
155. Ibid., p. 4.
156. Ibid., pp. 5-6.
157. UNCTAD, Proceedings, Vol. I, Report of the 3rd Committee, p. 220.
158. Ibid., p. 221. Articles expressing the developing states' perspective on shipping include C.M.S. Rajwar, "Trade and Shipping Needs of Developing Countries" and M.G. Valente, "The Participation of Developing Countries in Shipping", both in "Shipping and Developing Countries", International Conciliation, No. 582, March 1971.
159. UNCTAD, Proceedings, Vol. I, pp. 220-23.
160. Ibid.
161. Ibid., p. 222.
162. Ibid., pp. 222-23.
163. Ibid.
164. Ibid., p. 233.
165. Ibid.
166. Ibid., pp. 224-25.
167. Ibid., p. 225.
168. Ibid., p. 226.
169. Ibid., pp. 228-29.
170. Ibid., p. 229.
171. Annex A.IV.21 in ibid., p. 54.

172. Special Principle 12 in *ibid.*, p. 24.
173. See UNCTAD, Sessional Committee on Terms of Reference of Board Committees (TD/B/SC.1), 1965.
174. UNCTAD, Trade and Development Board, First Session (TD/B/L.24).
175. Gold, *op. cit.*, p. 279.
176. Singh, *op. cit.*, p. 44.
177. Cordovez, *op. cit.*, p. 243-49.
178. Kimiko Kitazawa, McNamara's World Bank and Prebisch's UNCTAD: A Comparison (Master's Thesis, Queen's University, 1980), pp. 122ff.
179. *Ibid.*, pp. 123-25.
180. S. Krasner, "Transforming International Regimes: What the Third World Wants and Why", International Studies Quarterly, July, Vol. 25, No. 1, March, 1981.
181. *Ibid.*, pp. 120-21.
182. *Ibid.*, pp. 138-45.

Chapter Four

UNCTAD AND INTERNATIONAL SHIPPING

So far we have noted the general trends within the international shipping regime and the way in which they have interacted with broad economic and political changes as well as technological developments. The industry has primarily been self-regulatory, leaving a minor role for governments in that regime. The last chapter demonstrated how that entailed an even more minimal role for international agreements and institutions. International law generally set basic conditions for the operation of the industry, in the process of legitimating the prevailing order, while organizations were largely avoided or restricted to limited technical functions.

In the postwar era this minimalism tied in with a similarly limited role for international institutions in the international economy, though now certain developed states sought to codify their principles in a more institutionalised form through agencies like the IMF, GATT and, in the shipping area, IMCO. It was not until the late 1950s that challenges to the institutions of that hegemony were developed within the United Nations by the developing states. Their principal achievement was the UNCTAD, which dealt with a range of their concerns.

Shipping was amongst those concerns and the developing states were determined that the new organization would pursue it. They sought an organization which would serve as a forum for discussing their complaints and demands and possibly as a means to change the international shipping

regime. Despite the opposition of the developed states, the Committee on Shipping was established and with it UNCTAD's competence in the regime.

This chapter looks at the activities of the developing countries within the Committee and at the evolution of the Committee's role in the regime. Rather than deal with the whole range of the Committee's concerns, the chapter focuses on the cluster of issues which have constituted the core demands of the developing states: consultations between shipowners and shippers, conference practices and the participation of third world fleets in shipping. In addition the chapter examines the development of the Committee's competence in international shipping legislation insofar as it affects these other issues.

The focus of the chapter is the International Code of Conduct for Liner Conferences. This agreement effectively stands as the outcome of the Committee's considerations on conferences and development needs. The Code, and the events and arguments that led to it, can be seen as the principal substantive result of the developing countries' efforts within the Committee. The question of its impact on the international shipping regime and whether it marks an attempt to change that regime or merely codify and legitimise shifts in it will also be discussed.

In view of its focus on the Committee's activities from its formation to the formulation of the Code, the nature of the Committee's work and the documentation available,¹ the principal span of the chapter is the period 1965-74. Some consideration will also be given to the years after 1974 in order to assess the effect of the Code.

The Shipping Committee 1965-68

When the Shipping Committee first met it quickly became clear how far its terms of reference were only an initial compromise between the participating states. Both sides, i.e. the Group B and the Group of 77,² interpreted them in the way that best suited their own concerns: the developed countries took a minimalist view of the Committee and its work while the developing countries took a far wider view of what the Committee could do. This was a crucial period for the Group B countries since the opening session of the Committee would determine the bases for future discussions in the Committee.

The opening discussions on the programme of work mirrored these concerns. In proposing work for the Committee, the developed states were keen to reaffirm their view of the industry and the role of the Committee in it, particularly in view of the internal disagreements between America on the one hand and the European and Japanese states on the other.³ They seized on the issue of consultation machinery as the best means of employing the Committee.

International shipping, they argued, was based on commercial agreements which required mutual trust and communication between the parties involved. Consultation machinery was the best way of maintaining contacts, of settling problems and of thereby improving the conduct of the industry. Since the developing states' problems were largely concerned with the lack of such contacts, the Committee could usefully examine the possibilities for consultation machinery and the experiences of existing models.⁴ A number of European states noted the CENSA/ European Shippers Group machinery which was developed in the early 1960s.

The crucial feature of this machinery was its involvement of only the commercial parties involved and exclusion of governments as such; one representative pointed out that they could only be involved in their capacity as shippers or shipowners, not as regulators of the consultation process.⁵

The developing states did not disagree on the appropriateness of UNCTAD's studying consultation machinery but were keen to clarify their view of that process. One representative acknowledged that it was primarily a matter for shipowners and shippers but that, given the latter's poor organization in most developing states, the state would need to be involved.⁶ The Group of 77 amended the Secretariat's proposals, emphasising that governments be an integral part of such machinery; it was not simply that the state was involved in shipping and shipowning in these countries but also that it played a key role in the economy.⁷

At that time only a few developing states had formal shipper organizations let alone consultation processes. In some states, such as Ceylon and Singapore, the government assisted trade associations and chambers of commerce in talks with conferences.⁸ In India, one of the few states to possess shippers' councils,⁹ the government was developing a consultation mechanism under which it could hold talks with shippers and shipowners when the two sides failed to agree. That scheme was, however, delayed by conference reluctance to agree to the use of government arbitration.¹⁰

Aside from the obstructiveness of conferences the main problem in establishing councils and consultation machinery was the diverse interests of shippers within these countries.¹¹ Moreover, a number of

states held that shippers were often closer to the shipowners than to the producers and consumers within a country and that, accordingly, the national interest was not necessarily protected.¹² Such factors strengthened the developing states' determination that the government play a role beyond that of initiating consultation procedures.

Following the debate within UNCTAD a number of states enacted policies to develop shippers' councils and consultation machinery. In Latin America, discussions in UNCTAD and ECLA during 1964 prompted LAFTA to develop its policy on these issues,¹³ while Indonesia also initiated its government-dominated policy as a result of UNCTAD's deliberations.¹⁴ These policies went far beyond what was suggested in the European schemes, which formed but a part of the UNCTAD study.

Studies were a key part of UNCTAD's work, but their significance went beyond the actual information they provided; they would shape the future work of the Committee. Thus while the developing states wanted the Secretariat to examine the role for governments in consultations, the Group B states wanted it to concentrate on existing models, none of which entailed a major governmental role.¹⁵ The importance of how UNCTAD would approach the issue was highlighted for the Group of 77 since it was one of the few bases for study and research that they had.¹⁶

Just how controversial the question of such studies could be was seen in the clash over freight-rate studies at the first session of the Committee. Though their views of the study differed, both groups agreed on the desirability of studies on consultation machinery. Rate studies were a far more delicate issue. As noted in Chapters 2 and 3, freight rates were a source of discontent for shippers in developed

and developing countries; not only were they arbitrarily set but they were made without any discussions.¹⁷

The Group of 77 saw this as a key topic for UNCTAD to investigate; if the agency was to collect information on shipping, then an inquiry into how rates were set was a priority. The developed states disagreed, arguing that the issue was too complex for the studies proposed.¹⁸ On the related issue of studies on conference practices they argued that these should be left to the consultation machinery; indeed some states felt that UNCTAD should not be involved at all in such issues once machinery was set up.¹⁹ They felt that the Secretariat should confine itself to collecting existing information and making it more widely available rather than embarking on complex and controversial new studies. In other words, they saw the Secretariat in an essentially administrative role, as opposed to the more activist agency which the developing countries envisaged.²⁰

Why did they object to the idea of rate studies? Partly it was a repetition of the dispute between the European maritime states and the United States.²¹ Now, as then, they felt the studies would pry into confidential aspects of the industry, providing information which could be commercially useful, and entailing unwarranted government interference.²² More importantly however, there was a resistance to the implication that such studies would demonstrate the "fairness" or inequities of the rate-making process and open the way to greater regulation of rate-fixing.²³

The Committee was in deadlock over the issue. For the developing states, UNCTAD's investigating rates would not only reveal interesting information but would also strengthen the wider view of its work. At

an extension of the first session, the Secretariat presented a report on possible approaches to the study; they were at pains to point out that they did not wish to set rates but only to show how rates were set.²⁴ Although some Group B states agreed to the principle of studies,²⁵ with some interested in the information they could provide, a hard core of states balked at the idea of specific routes being examined.

In the vote, Sweden, Norway, Britain and the Netherlands opposed the studies while most other developed states abstained; Canada and New Zealand voted for the resolution. These divisions indicated the differences between the traditional maritime states involved in cross-trading and those with less of a stake in protecting the processes of rate-setting. It also demonstrated the lack of coordination amongst the Group B states relative to the developing states.²⁶

The confrontational atmosphere of the Committee's first session was not nearly as strong when it resumed its work in 1966. Much of the time was spent discussing the Secretariat's report on consultation machinery; though both sides maintained their differences, they did agree on a joint resolution on the report.²⁷ On the issue of route studies and other aspects of the Secretariat's work the developed states maintained their reservations and queried its approach, principally in its use of statistics on relative liner and tramp rates. The developing states, on the other hand, saw the Secretariat's work as crucial and argued that it justified their shipping policies.²⁸

Between the First and Second UNCTAD Conferences, then, the Group of 77 developed their national shipping policies and their collective stance in international fora.²⁹ Although the developing states initially met

in regional groupings, they coordinated their positions and demands within the overall Group. It would meet round the sessions of UNCTAD and its Board, in the latter as the 'Group of 31'.³⁰ Though it later expanded its activities and established informal coordinating groups in other UN bodies, the Group was clearly most identified with UNCTAD as the principal development agency in the UN.³¹

At their meeting in Algiers for the Second Conference in 1968, the Group noted the lack of progress on the Geneva Final Act and put forward their demands in the so-called 'Charter of Algiers'.³² In the provisions on shipping, they spelt out substantive goals on participation in conferences serving their trade, conference representation in their countries, and assistance for consultation machinery.³³ The Charter echoed the Common Measure of Understanding in affirming the right to develop their merchant fleets but went further in recognising the practice of cargo reservation as a means to that end. Moreover it called for such measures to be unreciprocated, i.e., without counter-measures by developed states.³⁴

The issue of cargo reservation raised the other side of developing states' shipping policies, one not raised in the Committee but discussed at the Geneva Conference. While they were concerned at issues of high rates and unfair conference practices the developing states regarded these as symptoms of a fundamental powerlessness within the shipping regime. Despite the fact that their trade accounted for a high proportion of sea-borne trade their share of shipping was minute. If they were engaged in liner shipping themselves then not only would they have access to the conferences and influence over their policies but they would

also offset the otherwise high balance of payments costs of shipping with foreign carriers. Accordingly they argued that just as an infant industry required protection to become competitive so their fleets should be entitled to a share of their trades. All of this was of course in contradiction to the developed states' views on freedom of cargoes and sound economic criteria for fleet development.³⁵

Unlike the issue of consultation machinery, where it seemed that UNCTAD had played an initiatory role in communicating and guiding developing states' policies, a number of developing states had been engaged in such policies before the UNCTAD was formed.³⁶ The practice was quite common in Latin America during the 1950s and 60s with Brazil being one of the most interventionist states, especially after the military government took over in 1964; its doctrine of national security provided both economic and military justifications for its policy³⁷ and it set a model for other developing states. Domestic factors, therefore, were instrumental in enacting such policies before UNCTAD became concerned with the issue, though it undoubtedly played a role in spreading the principle by highlighting the policies of other states.

Task Expansion and the Question of International Regulation

It was not then until the New Delhi conference that the issue was placed on the Committee's agenda. Prior to then the Committee dealt with the issues noted above and, fleetingly, with international shipping legislation. In fact an attempt by Group B to raise the issue at the Committee's first meetings³⁸ was rejected by the developing states as,

"a new and very controversial problem which did not fit in with the Committee's terms of reference"³⁹; they were apparently wary of any discussion of the issue which might cast opprobrium on the practice of cargo reservation.

By the time of UNCTAD 2, however, the developing states raised the issue themselves in the Charter, perhaps surer of the agency's direction. In the discussions at the Conference they defended reservation over the less objectionable practice of subsidy, regarding the latter as too costly for developing states⁴⁰ and pointed to the reservation policies of, amongst others, the U.S.⁴¹ The Group B states, even those sympathetic to the developing states' other policies, rejected such arguments, arguing that their fleets were not the products of protective policies⁴² and reiterating the inefficiencies of the policy.⁴³ Other states noted that the conferences were becoming more open and that the rationale for such protective policies was no longer there.⁴⁴ Inevitably, they were unable to agree on a resolution including a reference to the issue, and it was passed on to the next session of the Committee.

New Delhi demonstrated that the developing countries were defining the character of UNCTAD and the Committee, even if the substantive results were meager.⁴⁵ Its work legitimated and influenced their claims and policies and appeared to be communicating the problems of their economies.⁴⁶

International shipping legislation and the development of UNCTAD's role in that field are a key illustration of the developing states' use of the agency and its encroachment on the international shipping regime. The primary focus in this section is on the way in which UNCTAD became

involved in this issue rather than the details of international shipping law.

International shipping legislation was first raised at the fourth session of the Trade and Development Board⁴⁷ and followed on from recent efforts to examine the law of international trade.⁴⁸ The issue was again raised at the second session of the Committee by the developing countries which wanted it discussed at the New Delhi Conference. The Egyptian delegate noted that though UNCTAD was discussing the economics of shipping it had not as yet examined the legal aspects of that problem even though the two were closely related.⁴⁹ The problem of international shipping legislation arose because many international shipping conventions were more favorable to the shipowner than to the shipper.⁵⁰ Although the issues were not as yet clear the Group of 77 still wanted it placed on UNCTAD's agenda; the Committee could examine the issue, note the deficiencies in the field and draw up revised conventions.⁵¹

The initiative for UNCTAD to deal with the issue was clearly the developing countries'. In fact the Secretariat was doubtful whether it could provide adequate documentation for discussion at New Delhi, and noted that the organization was not really equipped to deal with legal questions.⁵²

UNCTAD's appropriateness was more directly questioned by the B Group states. Quite apart from the agency's heavy workload, the developed countries doubted if it was the best agency. Some states were sympathetic to the idea of unifying international shipping law but felt it would be better done in a body such as UNCITRAL.⁵³ Such unification in any case was only a partial goal of the developing states. Others

rejected the principle, adhering to the role of the IMC in unifying shipping law, and understood that the developing countries' goal was more "a system of intergovernmental control in which case it would no longer be possible to speak of free shipping trade"⁵⁴; UNCTAD's work would be either redundant or unacceptably interventionist.

In response the developing states noted that UNCTAD would examine the issue from the trade and development perspective. Existing conventions had largely been drawn up before they became independent or without regard to their interests.⁵⁵ Their dissatisfaction with existing international organisations in the field became clear at the second Conference. IMCO, for example, required standards in its safety conventions which were hard for the third world to meet.⁵⁶ On UNCITRAL they accepted the need for coordination with UNCTAD but clearly saw the latter as the senior agency; especially since UNCITRAL was not dealing with shipping law as a priority.⁵⁷

A resolution calling for the establishment of a Working Group on International Shipping Legislation within UNCTAD was put forward by the developing states. The resolution also suggested some aspects of the issue for the Working Group to examine, including the feasibility of a general instrument on shipping and development.⁵⁸ The developed states voted against the resolution but eventually agreed to its establishment. As with other cases, the developing states pushed through a resolution to have it accepted at a later date and after discussions on the agenda for the working group and the settling of budgetary and personnel problems the group held its first session in 1969.

Aside from agreeing to the Working Group's agenda, the third

session of the Committee also dealt with the issue of freight rates and conference practices. The developing countries were frustrated with the lack of progress in restructuring the rate system; if anything, rates were increasing while the conferences were as secretive as ever.⁶⁰ Access to conferences was still difficult and it seemed that consultation machinery was not able to overcome these problems.⁶¹ Moreover, the developing states charged that the Group B countries were not cooperating with the Secretariat in its reports on rate-setting and conference practices.⁶² One representative noted legislation in certain European states which blocked the divulging of information on these matters⁶³ while others pointed to media reports that the developed states had closed ranks to hinder UNCTAD in its work.⁶⁴ The Secretariat itself hinted at the obstructiveness of the European maritime states, remarking on the similarity of their responses to its questionnaires and the need to consult the American Federal Maritime Commission to obtain the information required.⁶⁵

The developed states were defensive in their response, denying that there had been any collusion and that their legislation was obstructive.⁶⁶ They argued that they were unable to pressure shipping companies in their countries because of the government's limited role in their shipping policies, and had encouraged them to comply with the UNCTAD's studies.⁶⁷ In addition some developed states admitted that progress had been slow and that the conference system was in need of change.⁶⁸

The Committee remained the developing states' main forum for venting their dissatisfaction with, and for proposing changes in, the international shipping regime. They increasingly came to see the latter

in terms of two main mechanisms: cargo reservation and the legitimation of that principle which would justify the use of state intervention in apportioning trade for national fleets; and the international codification or regulation of shipping practices whether it be the sanctioning of consultations or the option of an international agreement on conferences. The latter was more concerned with regulating the conduct of the regime whereas the former sought to increase the power of developing states' fleets, indirectly strengthening their position in the regime.⁶⁹ Both of these mechanisms were discussed at the Committee's fourth session.

In spite of its being regarded as one of the more successful committees in UNCTAD,⁷⁰ the substantive rather than the symbolic achievements of the Shipping Committee were minimal; it had voted through numerous unanimous resolutions, yet there was little concrete to show for it.⁷¹ Instead these resolutions masked major differences of perspective and interpretation which revealed themselves when the Trade and Development Board attempted to formulate the shipping provisions for the Second United Nations Development Decade International Development Strategy.⁷² In this context, and given the continued problems faced by the developing countries,⁷³ it was hardly surprising that they should press for more concrete outcomes from the Committee.

Some developed states countered that in its studies, reviews, and contact work the Committee was doing the job it was meant to do: "its primary task was to stimulate efforts in the field of shipping, the effects of which could not possibly be immediate".⁷⁴ Though discussions on many issues were heated, the developed countries did agree to resolutions on international shipping legislation and on the Secretariat's

report on conference practices, passing it onto the Working Group on International Shipping Legislation.⁷⁵ They did not, however, accept the Secretariat's report on cargo reservation.

That report defended the practice in terms of the infant industry argument and on account of its benefit to overall earnings,⁷⁶ criticised free trade arguments as ignoring the cumulative advantages of established carriers⁷⁷ and noted that cargo reservation was the result of the present structure of the industry.⁷⁸ The developed states opposed the conclusions of the report but were not so unified in countering it. Initially they tried to postpone a vote by calling for conciliation procedures,⁷⁹ but this was due more to their own internal differences than to the desire to head off confrontation. When the Secretariat ruled that conciliation procedures were not applicable⁸⁰ the developing states pushed their resolution through revealing the divisions among those Group B countries that voted against the resolution and those that merely abstained, in contrast to the unity of the Group of 77.⁸¹

The developed countries were divided between those who wished to oppose the principle and practice of cargo reservation and those who wanted to dissociate themselves from the principle but to accept it in practice by only abstaining. In being unable to agree they presented a disunited front in the Committee and diluted the force of their previous stance on this issue. The vote did, however, have the effect of reconvening the meetings of the European Ministers of Transport, previously held at the height of the US shipping crisis in the 1960s.⁸²

The developments within UNCTAD and in the shipping policies of third world states, then, were causing considerable anxiety amongst the

traditional maritime states. It was in the wake of increasing protective measures as well as the crisis in British shipping that the UK government set up the Rochdale Committee on Shipping. Although much of its report, published in 1970, dealt with the problems of British shipping, it also dealt with trends in international shipping and made some significant proposals concerning that aspect of the industry.

The Report recognised, if not approvingly, the changes in shipping since the war, notably the increasing role of the state in the industry. In an effort to control these developments the Report called for an intergovernmentally-agreed-on code of shipping conduct.⁸³ It also saw the need for conferences to be more accessible and suggested a code of practice which would deal with such questions as entry to conferences and provision of information.⁸⁴ Unlike the previous proposal, there was no mention of intergovernmental agreements; more likely, it was seen as a measure which the conferences themselves should adopt.

How far these measures were intended to pre-empt wider actions by the developing states is not clear; the concept of a code of conduct was very much in its infancy at this time. By the time the idea was taken up by the Consultative Shipping Group of European and Japanese states in 1971, staving off wider-ranging actions by the developing states was a definite consideration.

The meeting of the European and Japanese Ministers of Transport in February 1971 preceded the second session of the UNCTAD Working Group but followed the decision to send the Secretariat's report on conferences to the Group. As such the Ministers' meeting can be seen both as an attempt at coordinating their policies and of staving off,

or at least setting the terms for, future action by the Committee.

The tone of the CSG's recommendations was apparently conciliatory, though it often covered over a harder line. On cargo reservation, they accepted the rights of developing countries and agreed to discussions on aid but also hinted at countermeasures against the practice.⁸⁵ They basically defended the conference system but recognised the need to strengthen confidence in it; the conferences should be seen to observe certain standards of conduct thereby deflecting allegations of unfair practices.⁸⁶ One means of doing so would be to adhere to a code of practice which would spell out their duties; full public reports, contacts with shippers and established conciliation procedures would be key elements of the code which would also take account of UNCTAD's work and recommendations.⁸⁷ The code, however, would be developed by the industry itself and be voluntary; it would not constitute a multi-lateral system of regulation.⁸⁸

In proposing this scheme the developed states inevitably coloured the proceedings of the Working Group. However the reaction was the opposite of that they may have hoped for. The Group considered their proposals along with the Secretariat's report and a developing country resolution to include work on a code of conduct at the top of the Group's agenda, that is over its existing programme of work. The developed states argued that the Group should continue with its existing work schedule and questioned if it was the appropriate forum for the issue⁸⁹; as on other issues their policy objections to UNCTAD's involvement were couched in procedural terms.

The developing states noted that the resolution to send the report

to the Group had been unanimous and that therefore the developed countries had agreed to it considering the issue. They also held that the issue had a new urgency as a result of the CSG meeting and the 2nd UNDD proposals.⁹⁰ On the proposals of the CSG, they argued that the envisaged self-regulatory code had been agreed to without consulting those most affected by it, i.e., the developing countries.

Instead of moderating the tone of the debate, the developed states' proposal had raised the profile of the issue and strengthened the developing states' determination to discuss it. After attempts to reach a compromise resolution failed the developing states with Group D support voted through a resolution placing the issue at the top of the agendas for the third session of both the Working Group and the General Conference in 1972.

The Code of Conduct: Developing States and
the Conference System

At the fifth session of the Committee in 1971 both sides elaborated on their positions. Rejecting the claim that their proposal constituted an organised opposition to UNCTAD⁹¹ the developed states argued that it was in line with their intention of implementing UNCTAD's resolutions⁹² and of maintaining the principle of self-regulation and flexibility, thereby avoiding multilateral enforcement and intervention. It was a balance between the principle of the free flow of shipping and criticism of the existing system.⁹³

The developing states, however, believed they had been pre-empted. The Secretariat held that such a code should be formulated in a global forum such as UNCTAD⁹⁴ and also remarked that the CSG's recommendation

on cargo reservation went against the spirit of UNCTAD's resolutions.⁹⁵

On the code, it produced a report on the regulation of conferences for consideration at the Group's third session and the Santiago Conference.⁹⁶

The report was subtitled, "A Code of Conduct for the Liner Conference System", and started from that principle effectively mirroring the developing states' perspective in form if not entirely in content. It dealt with the evolution of the idea, primarily in the developed countries, from the 1963 CENSA agreement through to the Rochdale Report and the 1971 CSG proposal, but held that not even the last of these could "meet the needs of world trade for an internationally acceptable code of conduct".⁹⁷ After noting the problems of regulation in such an industry, it proposed a code dealing with consultations, information, rate-setting and also issues such as cargo reservation,⁹⁸ calling for the code to be implemented by a UN Conference of Plenipotentiaries and an international convention.

Thus, by the time the third session of the Working Group met shortly before the Santiago Conference, the principle of an international code of conduct was well established. The Group of 77's Lima Declaration called for such a code while the CENSA code had also been agreed upon. The controversial questions of the form of the code, the extent of its powers and its legal character were still to be decided, however.

The developing countries sought a binding and enforceable code agreed to in the form of a convention, dealing with conference abuses as well as such UNCTAD goals as the expansion of developing states' fleets.⁹⁹ They regarded the CENSA code as too general, failing to establish, "a new and more equitable liner conference system", and

leaving conferences to be the best judges of their own conduct.¹⁰⁰

Most Group B states pointed out the deficiencies of national and international regulation and defended the CENSA model. They again queried the Working Group's role, noting that the Committee should support the work of UNCITRAL and should not formulate a code.¹⁰¹ They also criticised the proposals on cargo reservation and arbitration. Some developed countries, however, were less critical, accepting the principle of international regulation and regarding the CENSA proposals as too weak.¹⁰² This indicated continued disagreements amongst the Group B states as well as the fact that CENSA did not cover all the developed countries.

The developing states were also apparently disunited, although more on the emphases of the code than the contents as such. Two drafts of the code were submitted, one by the Afro-Asian states and the other by the Latin American states.¹⁰³ The former gave more attention to the means and details of arbitration while the latter was more concerned with questions of cargo reservation. Those differences were ironed over, however, by including both model drafts in a single resolution. There was, however, no vote on the issue and the debate was continued at UNCTAD 3.

The 1972 Santiago Conference was a key benchmark in the development of Third World collective action; it was at this conference that the idea of a charter of economic rights and duties of states was raised.¹⁰⁴ As such it reflected a crucial stage in the developing states' policies within international institutions, one of frustration with the lack of progress on resolutions made in the UN and yet a readiness to adopt wide-

ranging agreements within these bodies. In particular there seemed to be an interest in the adoption of quasi-legal conventions; while the debate on the liner code continued, the issue of a code on technology transfer was introduced.¹⁰⁵ This process culminated in the declarations on the New Economic Order in the mid-1970s. Given the nature of these demands, and the developed countries' resistance to them, this was also a period of confrontation between North and South in international organisations, with the rhetoric of Third Worldism stronger than ever.¹⁰⁶

In this context the proposed liner code of conduct constituted a particularly well elaborated challenge to the international economic order; the Group of 77 held that the code take their development goals into account rather than be limited to shipper/conference relations.¹⁰⁷ They regarded it as both a means of regularising their contacts with the conference system and of improving their position within the international shipping regime.

While the developed states accepted their aspirations most could only accept a code based on shipper/conference relations; they accepted the idea of a code but only if it dealt with shipping as a commercial industry.¹⁰⁸ The secretariat and developing state codes' provisions on consultation, information, etc., were in line with their own views but they could not agree to the inclusion of cargo reservation clauses nor were they happy with the role allotted to the government in the code.¹⁰⁹ Even those states which were more sympathetic to the developing states' goals cautioned that their code would be too inflexible and receive few ratifications.¹¹⁰

In an effort to reach a compromise the debate shifted from the

Committee, where it had dominated the agenda, to a contact group and then to the plenary sessions of the Conference. The differences prevailed, however, and once again the developing states pushed through a resolution calling on the General Assembly to convene a Preparatory Committee and Conference of Plenipotentiaries which would draw up a code.¹¹¹ The Assembly voted on this in December 1972 and adopted it, the developed states only abstaining instead of voting against it.

The Group B states participated in the Preparatory Committee in spite of their wariness. Their opening remarks, in arguing against hasty action and majority voting, restated their reservations but had little effect on the developing states, who continued to call for a binding legal instrument which would redress the imbalances within the industry.¹¹² Their difference persisted in the various working groups of the Preparatory Committee, particularly in those examining the principles and content of the code.

On the principles and objectives of the code, the developed states argued against its including a set of broad principles since they were not normally included in a legally binding code. The code's more limited objectives should be limited to liner conferences, rather than any 'political' goals. The developing states argued that the code ought to reflect the political decisions behind it¹¹³ and were insistent on such provisions. They were quite candid about its being in line with their overall aim of reforming the international economy.

On the substance of the code the developed states raised the issue of closed conferences. They felt that the code should not legitimise the principle but allow for conference discretion. Their desire not to

exclude third flag fleets coincided with their concern over cargo reservation. When they presented their counterproposals to the second session of the Preparatory Committee, they made no mention of this issue since they did not wish it codified.¹¹⁴ By contrast, the developing nations reiterated that the main beneficiaries of trade between two states should be those two states. They rejected claims that their 40-40-20 scheme would be too rigid, arguing that it would expand the developing states' fleets while leaving trade for other carriers. They also rejected the developed states' complaints that the rate provisions were too detailed and complex and defended their demand that rates be held steady for 18 months.

The differences persisted into the Conference of Plenipotentiaries itself though there had clearly been a change in attitude on the part of the Group B states.¹¹⁵ The developed states had, for example, accepted the binding nature of the code, at least tacitly, and were now solely concerned with the substance of that code. What also became clearer was the Group of 77's apparent commitment to the reformed conference system. They were wary of its being undermined by crosstrading interests; unless the code regulated their activities, it was argued, the conference system would collapse.¹¹⁶

As ever their commitment was a unified and coordinated one. By contrast, the developed states were in disarray; whereas the Group of 77 addressed the Conference on behalf of all its members the Group B states presented a number of different views. While these rarely contradicted one another, they did betray differences in opinion and approach amongst the developed states. Some were openly critical of the existing system

while others accepted the principle of cargo reservation.¹¹⁷

The differences between the developed states were fully revealed during the final drafting of the code. On the issues where the Group of 77 and the developed states had previously been in disagreement, a small core of the latter accepted the developing states' proposals; though it varied from issue to issue, Germany, France, Spain and Australia supported almost all their proposals and voted for the Code in the final roll-call vote. Canada, Greece, Italy, the Netherlands and New Zealand abstained and the rest of the B Group opposed the code.

Why these states changed positions so drastically is not clear. It seems the trigger was the Group of 77's compromise on the arbitration issue¹¹⁸ while some writers have noted those states' 'Third Worldist' policies as an explanation.¹¹⁹ Cargo reservation was, however, a definite source of disagreement. As noted earlier, the developed states had divided on this issue before. Moreover, none of the states voting for the code was a significant crosstrader; they had nothing to lose and even stood to benefit from the code's provisions.¹²⁰

As voted through, then, the code would legitimate many developing states' demands; it gave special treatment to national lines, guaranteeing them entry to conferences, and downgraded third flag lines to a subsidiary role; it endorsed the 40-40-20 principle on cargo reservation; it regulated freight rate increases calling for 150 days' notice of proposed rate rises; and instituted a system of mandatory but nonbinding conciliation through an International Panel of Conciliators.¹²¹

In order to go into operation the Code required the ratification of states whose combined shipping tonnage totalled not less than 25% of

world shipping total. It was left open for signature, ratification and accession but only a few of those states which had voted for it became party to it immediately. The slowness with which it was ratified suggested that many states had supported the code for political reasons and had later seen the compromise and poor drafting within it.¹²²

Indeed the code has been criticised for being ambiguous and cumbersome,¹²³ an "unfortunate example of the developing nations' failure to analyse carefully the economic aspects of an international trade treaty".¹²⁴

Others have pointed out that the code deals more with encouraging the development of fleets than with protecting shippers' interests.¹²⁵ They argue that both the roles of national governments and shippers are subordinated to that of the new conferences.¹²⁶ Though the government is involved in implementing the code and enacting legislation to that end, the code leaves much to the conferences themselves.¹²⁷ In effect it seeks to change the structure of the conference system in order to gain access for the developing states but it also defends that new system, fostering the interests of those involved more than those of the shippers.

Nonetheless the cost of that new conference system was too high for the traditional maritime states. They hoped that wariness over the code and its implications would lead to its demise due to lack of signatures. Initially it seemed that this might happen as the ratifications trickling in over the first few years were those of states with only a little shipping tonnage.¹²⁸ Some of the larger maritime states did, however, sign the code and there was a revived interest in the code in the late 1970s. A number of states dropped their opposition to its provisions¹²⁹ while the European Community sought a common shipping policy to ratify subject to reservations¹³⁰; while accepting the developing states' right

to reserve their 40%, they left their share of the cargo open to competition.¹³¹ A number of other states indicated that they would also accede to the code while the USSR also adopted the code.¹³²

The only state which still opposed it was the United States even though it continued to make bilateral shipping agreements with developing states.¹³³ This could lead to problems when the code comes into effect in October 1983.¹³⁴

Thus despite the initial opposition of the major maritime nations, the Code of Conduct for Liner Conferences is scheduled to come into effect. As such it demonstrates that the UNCTAD strategy of agenda formation, consensus building and communication has been successful. The history of the first ten years of the Shipping Committee's work is a testimony to that process insofar as the concerns of the developing states were raised, studied and formulated into resolutions publicising and legitimising them, ultimately in the form of an international convention. The key development was the formation of the Working Group on International Shipping Legislation, an example of task expansion which led to the codification of the developing countries' demands in a legal form.

The developing states clearly regarded the restructuring of the principles of international shipping as one aim of the Committee. Though the worth of such international norm-setting activities has been questioned by some writers¹³⁵ the fact that the culmination of the Committee's work, the code of conduct, has been accepted by all but one of the traditional maritime states indicates that they do have a positive and tangible outcome.

How far one can attribute the developed states' acceptance of these

changes to international processes is debatable, however. This returns us to the question of the role of international organizations in international regimes. Certainly UNCTAD has served as a forum for the concerns of the developing countries and has helped those states in investigating both the structures and practices of international shipping. In terms of initiating and guiding policies, the record is mixed. The developing states were clearly engaged in cargo reservation before UNCTAD tackled the issue and were keen to use the organization to legitimate their policies and aspirations; there has been a key group of states which have used the Committee to introduce initiatives and proposals. On other issues, however, the Committee has played a key role in introducing policies, such as consultation machinery, with the Secretariat becoming more activist and even partisan as the values of the organization have become more concrete. UNCTAD's effect on international shipping and its value as a case study will be examined in more detail in the conclusion.

Chapter Four - Footnotes

1. The UNCTAD Summary Records, the basis of much of the research in this thesis were discontinued in 1975, while the proceedings of Working Groups and Special Committees are only available in report form. Accordingly, it is necessary at times to rely on reports of meetings rather than on the verbatim record.
2. Since the Socialist states sided with the developing states for most of the debates this chapter is primarily concerned with the discussions between the Group of 77 and the Group B states.
3. On this dispute between Europe and America see Chapter Two.
4. UNCTAD, Shipping Committee, "Summary Record of the Fourth Meeting" (TD/B/C.4/SR.4) 1965, pp. 2-3.
5. Ibid., "Summary Record of the Eleventh Meeting" (TD/B/C.4/SR.11), 1965, p. 4.
6. Ibid., "Summary Record of the Fourth Meeting" (Td/B/C.4/SR.4), 1965, p. 3.
7. Ibid., "Summary Record of the Seventh Meeting" (TD/B/C.4/SR.7), 1965, p. 3.
8. Ibid., "Consultation in Shipping", (TD/B/C.4/20), 1967, p. 136.
9. Ibid., p. 136.
10. Ibid., p. 8
11. Ibid., p. 121. "Summary Record of the Twenty-First Meeting" (TD/B/C.4/SR.21), 1966, p.
12. UNCTAD, Proceedings of the Second U.N. Conference on Trade and Development, Shipping Committee, "Summary Record of the Third Meeting" (TD/II/C.4/SR.3), 1968, p. 5. See also Haji on the difficulties of shipper interests, "UNCTAD and Shipping", Journal of World Trade Law, Vol. 6, (Iqbal Haji), 1972, pp. 71-72.
13. UNCTAD, Shipping Committee, "Consultation in Shipping", p:
14. Ibid., "Summary Record of the Sixteenth Meeting", (TD/B/C.4/SR.16), 1965, p. 15.
15. Ibid., "Summary Record of the Seventh Meeting", (TD/B/C.4/SR.7), 1965, p. 4. The Report dealt with the main models available, those of Europe, India and Australia. The last two involved the government though not in a regulatory role, while the report itself made no concrete recommendations on a particular model for such machinery. See "Consultation in Shipping", pp. 24-25.

16. Ibid., "Summary Record of the Seventh Meeting", (TD/B/C.4/SR.7), 1965, p. 2.
17. On the developing states' complaints and problems, see Gosovic, op. cit., Chapter 6.
18. UNCTAD, Shipping Committee, "Summary Record of the Eighth Meeting", (TD/B/C.4/SR.8), 1965, p. 2.
19. Ibid., pp. 4-5.
20. Ibid., "Summary Record of the Ninth Meeting", (TD/B/C.4/SR.9), 1965, p. 9.
21. The Times, 18th July, 1966, p. 1.
22. Economist, July 23rd, 1966, pp. 375-76.
23. Gosovic, op. cit., p. 143.
24. UNCTAD, Shipping Committee, "Summary Record of the 14th Meeting", (TD/B/C.4/SR.14), 1966, p. 2.
25. Ibid. and "Summary Record of the 15th Meeting", (TD/B/C.4/SR.15).
26. See William J. Bosies and William G. Green, "The Liner Conference Convention: Launching an International Regulatory Regime", Law and Policy in International Business, Vol. 26, 1974, p. 552.
27. Limited Document (TD/B/C.4/L.26).
28. The Uruguayan representative, for example, felt that the Secretariat's work indicated why its government was taking "certain protective resources", UNCTAD, Shipping Committee "Summary Record of the Twenty Eighth Session" (TD/B/C.41/SR.28), 1967, p. 9.
29. In fact UNCTAD II was not going to discuss shipping had it not been for the developing states' presence. Trade and Development Board, Report of the Session, (TD/B/86), p. 3.
30. "Charter of Algiers" in UNCTAD, Proceedings of the Second Conference, Volume I, pp. 431ff.
31. Geldart and Lyon, op. cit., p. 89.
32. "Charter of Algiers", p. 441.
33. "Charter of Algiers", p. 437.
34. Ibid., p. 438.
35. Ibid., p. 438.

36. Sturmev, pp. 98ff.
37. Michael A. Morris, International Politics and the Sea: The Case of Brazil (Westview Press, 1978), p. 270.
38. In their proposals for the Committee's programme of work (TD/B/C.4/L.15), Item IV.
39. Indian representative in UNCTAD, Shipping Committee, "Summary Record of the Ninth Session (TD/C.4/SR.9), 1965, p. 10.
40. UNCTAD, Proceedings of the Second Conference (TD/II/C.4/SR.11), 1968, pp. 103-04.
41. Ibid., p. 114, "Summary Record of the Fourteenth Meeting", (TD/B/II/C.4/SR.14), p. 133.
42. Ibid., "Summary Record of the Eleventh Meeting", (TD/B/II/C.4/SR.11), p. 109.
43. Ibid., "Summary Record of the Twelfth Meeting", (TD/B/II/C.4/SR.12), pp. 117-18.
44. Ibid., "Summary Record of the Ninth Meeting", (TD/B/II/C.4/SR.9), p. 93.
45. In the late 1960s there was a consensus that in terms of policy outcomes, UNCTAD was not successful. See for example Reginald Green, "UNCTAD and After: Anatomy of a Failure", Journal of Modern African Studies, Vol. 5, No. 2, 1967.
46. See Walters, op. cit. and on the issue of route studies, Guy Erb, "The Second Session of UNCTAD", Journal of World Trade Law, Vol. 2, No. 3, 1968, p. 355.
47. UNCTAD, 1st Sessional Committee, (TD/B/SC.5/SR.10), p. 3.
48. Ibid., Trade and Development Branch, 106th meeting (TD/B/SR.106), p. 96.
49. UNCTAD, Shipping Committee, "Summary Record of the Thirty First Meeting", (TD/B/C.4/SR.31), 1967, p. 3.
50. Ibid.
51. Ibid., p. 6.
52. Ibid., "Summary Record of the Thirty Second Meeting", (TD/B/C.4/SR.32), 1967, p. 2.
53. Ibid., "Summary Record of the Thirty First Meeting", (TD/B/C.4/SR.31), p. 7.

54. Ibid., "Summary Record of the Thirty Second Meeting", (TD/B.C.4/SR.32), p. 10.
55. Ibid., "Summary Record of the Thirty Fifth Meeting", (TD/B.C.4/SR.35), p. 9.
56. Ibid., Proceedings of the Second Conference, (TD/II/C.4/SR.17), p. 177.
57. Erb, op. cit., p. 357.
58. Economist, April 6th, 1968, p. 65.
59. J.K. Smid, "International Legislation on Shipping", Journal of World Trade, Vol. 3, No. 3, 1970, p. 325.
60. UNCTAD, Shipping Committee, "Summary Record of the Forty Second Meeting", (TD/B/C.4/SR.42), 1969, pp. 41-42.
61. Ibid., "Summary Record of the Fortieth Meeting", (TD/B/C.4/SR.46), p. 20.
62. UNCTAD, Shipping Committee, "Summary Record of the Forty Second Session", (TD/B/C.4/SR.42), p. 19.
63. Ibid., "Summary Record of the Forty Second Meeting", (TD/B/C.4/SR.42), 1969, p. 43.
64. Economic Times of India cited in *ibid.*, "Summary Record of the Forty Fourth Meeting", (TD/B/C.4/SR.44), p. 71.
65. Ibid., "Summary Record of the Forty Fifth Meeting", (TD/B/C.4/SR.45), pp. 95-97.
66. Ibid., pp. 99-101.
67. Ibid., "Summary Record of the Forty Third Meeting", (TD/B/C.4/SR.43), p. 56.
68. Ibid., "Summary Record of the Forty Fifth Meeting", (TD/B/C.4/SR.45), pp. 98, 104.
68. Ibid., "Summary Record of the Forty Eighth Meeting", (TD/B/C.4/SR.48), p. 141.
70. Economist, April 6th, 1968, p. 65.
71. UNCTAD, Shipping Committee, "Summary Record of the Fifty Ninth Meeting", (TD/B/C.41/SR.59), 1970, pp. 1-3.
72. Ibid., p. 6.

73. The developing states felt they were subsidising wage increases in the North through freight charges. See Ibid., "Summary Record of the Sixty First Meeting", (TD/B/C.4/SR.61), p. 8 and receiving poor treatment from the conferences, *ibid.*, pp. 8-10.
74. Italian representative in *ibid.*, "Summary Record of the Sixtieth Meeting", (TD/B/C.4/SR.60), p. 3.
75. See "P.W.", UNCTAD: Success in Shipping", in Journal of World Trade and Law, Vol. 4, No. 5, 1970, p.
76. UNCTAD, Committee on Shipping, (C.4./SR.63), 19 , p. 2.
77. *Ibid.*, p. 7.
78. *Ibid.*, p. 18.
79. *Ibid.*, "Summary Record of the Seventieth Meeting", (TD/B/C.9/SR.70), pp. 7-8.
80. *Ibid.*, p. 10.
81. "P.W.", *op. cit.*, p.
82. *Ibid.*, p.
83. Great Britain, Parliament, Parliamentary Papers (Commons, 1969-70), Vol. 27. Cmnd. 4337. "Report of the Committee of Inquiry into Shipping" (Rochdale Report), pp. 381, 412.
84. *Ibid.*, p. 381.
85. CSG documents included in UNCTAD limited papers. (TD/B/C.4/L.69) Article 1.
86. *Ibid.*, Article II, para 7.
87. *Ibid.*, Article II, para 9.
88. Statement by CSG governments (Td/B/C.4/L.73).
89. UNCTAD Shipping Committee, "Report of the Working Group on International Shipping Legislation, 2nd Session", (TD/B/C.4/86), p. 22.
90. *Ibid.*, pp. 23-24.
91. UNCTAD, Committee on Supply, "Summary Record of the Seventy Second Meeting", (TD/B/C.4/SR.72), p. 8.
92. *Ibid.*, pp. 10-12.
93. *Ibid.*, "Summary Record of the Seventy Fifth Meeting", (TD/B/C.4/SR.75), p. 2.

94. Ibid., p. 31.
95. See the limited document TD/B/C.4/L.80.
96. UNCTAD, Secretariat, The Regulation of Liner Conferences (TD/104), 1972.
97. Ibid., p. 9.
98. Ibid., pp. 22-32.
99. UNCTAD, Committee on Shipping, "Report of the Working Group on International Shipping Legislation", (TD/B/C.4/93), 1972, p. 6.
100. Ibid., pp. 7-8.
101. Ibid., pp. 11-12.
102. Ibid., pp. 15-16.
103. Ibid., Annex I, appendices 1 and 2.
104. Annell and Nygren, op. cit., p. 107.
105. R. Grosse, "Codes of Conduct for Multinational Enterprises", Journal of World Trade Law, Vol. 16, No. 5, 1982.
106. See Geldart and Lyon, pp. 91ff on this period.
107. UNCTAD, Proceedings of the 3rd Conference on Trade and Development, Shipping Committee, "Summary Record of the 6th Meeting" (TD/III/C.4/SR.6), 1972, p. 41.
108. Ibid., "Summary Record of the Fifth Meeting", (TD/III/C.4/SR.5), p. 34.
109. Ibid., "Summary Record of the Sixth Meeting", (TD/III/C.4/SR.6), pp. 42, 47.
110. Ibid., pp. 45-46.
111. Resolution 66 (III).
112. UNCTAD, United Nations Conference on a Code of Conduct for Liner Conferences. Report of the Preparatory Committee, (TD/CODE/1), 1973, p. 25.
113. Ibid., p. 24.
114. Ibid., Report of the Preparatory Committee, (TD/CODE/2), 1973, p. 22.
115. Bosies and Green, op. cit., p. 561.
116. UNCTAD, United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, (TD/CODE/13), 1975, p. 11.

117. Ibid., pp. 14-15.
118. Bosies and Green, op. cit., p. 565.
119. P. Larsen and H. Vetterik, "The UNCTAD Code of Conduct for Liner Conferences: Reservations, Reactions and U.S. Attitudes", Law and Policy in International Business, Vol. 13, No. 1, 1981, pp. 244-45.
120. The Times, April 8th, 1974, p. 19.
121. Lawrence Juda, "International Shipping, UNCTAD and the New International Economic Order", International Organization, Vol. 35, No. 3, pp. 499-500.
122. The Times, April 1st, 1975, p. 15.
123. L.L. Herman, "The Code of Conduct for Liner Conferences: Frustrations on the Road to Utopia", Canadian Yearbook of International Law, 1976.
124. Clifford G. Golderness, "Economic Analyses of the United Nations Code of Conduct for Liner Conferences", Stanford Law Journal, 1977, p. 877.
125. Hermann, op. cit., p. 269.
126. Larsen and Vetterik, op. cit., pp. 232ff.
127. Stephen C. Neff, "The United Nations Code of Conduct for Liner Conferences", Journal of World Trade Law, Vol. 14, No. 5, 1980, p. 405.
128. See for example the OECD Maritime Transport Reviews which chronicle the gradual increase in signatures and ratifications.
129. The Times, May 28th, p. 19.
130. Juda, op. cit., pp. 502, 517. Larsen and Vetterik, op. cit., pp. 242ff.
131. Bredimus and Tzoannos, op. cit., pp. 109-10.
132. Larsen and Vetterik, op. cit., p. 255.
133. Financial Times, March 14th, 1983, p. 30.
134. Globe and Mail, May 9th, 1983, p. B-8.
135. Norbert Horn, "Normative Problems of a NIEO", Journal of World Trade Law, Vol. 16, No. 4, 1982.

Chapter Five

CONCLUSION

In the first chapter it was argued that regime analysis provides a more realistic--as opposed to a 'realist'--view of international organisation in international politics. By going beyond formal agreements and institutions, it examines the other variables, such as principles and norms, which underlie particular sectors of the international system. The approach does not deny significance to the institutions and rules within an issue area but requires that one go beneath those formal expansions to understand how the regime operates.

The thesis also noted Cox's use of the concept of 'hegemony', seeing it as a way of removing some of the ambiguity in regime theory. While some regime theory only looks to those underlying principles and norms, the idea of hegemony goes beneath them to examine the structure of economic and political power both in the particular sector and in the international political economy as a whole. The concept also raises the profile of international organisations by treating them both as registers of the international order thereby indicating the forces supporting and challenging the regime, and as means of bringing about change in that international order. The thesis sought to use these concepts in an analysis of the role of international institutions in regimes, using the area of international shipping as the case study.

The thesis examined the structure and development of shipping over the past two centuries though it also dealt with the prevailing structures and

principles prior to that time. In the seventeenth and eighteenth centuries the industry was run along mercantilist principles with the state intervening to protect and advance the political-military and economic interests of the nation. There was concomitantly rivalry and conflicts amongst the key naval states, with first Holland then England establishing authority over the regime.

With the development of technology and trade, in fact with the evolution of capitalism, the structure of the industry changed. Britain remained the preeminent force in terms of its shipping strength and its overall role in international politics. Having established itself in that position, it was able to shape the principles of international shipping, initiating a period of free trade and free shipping. With the growth of modern shipping, then, the principle of non-interference was established and largely followed by other maritime states as they developed their fleets.

In the sector of liner shipping this was extended to a form of self-regulation with the conference system. As was noted, the character of liner shipping dictated a less than perfect market structure. Though the system was oligopolistic the principle of self-regulation survived a number of investigations and laws as well as the economic crises of the 1930s to prevail into the 1960s and 1970s.

The structure of international shipping was for much of this time Eurocentric. Even after Britain's leadership began to diminish in the 20th century the other traditional maritime states, such as Norway, Holland and most other European states were anxious to defend those

principles and non-interference and self-regulation on which it was based. From the 1950s on, however, those principles came under greater stress as other states sought more influence over the regime.

These challenges to a greater or lesser extent entailed the involvement of state authorities in shipping whether to regulate it or or encourage it. They went beyond the principle of subsidy, which most maritime states engaged in to some extent, towards more explicitly protectionist policies. The key device was that of cargo reservation which some developed states, notably the United States, and a number of developing states practiced. Not only did this entail discrimination, thereby flouting the principles of noninterference and the free flow of trade, but it also threatened the shipping activities of those established maritime states engaged in crosstrading. When those states disputed these policies, then, they were defending not only the principles of international shipping but also their own national interests, the latter being basically equivalent to the former.

The principle of self-regulation was weakened by reservation policies as well, though a more direct challenge came from states seeking greater access and control over the conference system and its practices. Again the United States was a key protagonist with its revived shipping policy during the 1960s. The developing countries also attempted such policies, though they came to pursue these goals at an international level. In both cases, however, the aim was more access than control and it appeared that the developing countries at least were prepared to accept the conference system as long as they had influence within it. The developed states, after resisting the principle and practice of these challenges during the 1960s and 70s, have reluctantly come to accept them.

Given the self-regulatory nature of the regime, which restricted the extent and character of government action within international shipping, it is not surprising that the role of international rules and agencies was even more minimal. Of course shipping was most definitely an international industry and the conference system which regulated it became international as it developed. It was international within the context of an industry regulating itself; it was not intergovernmentally controlled in any sense.

There was some early codification of the conduct of shipping based on practice and custom and to some extent this codification constituted the international rules of shipping. They were invoked, however, at the discretion of governments as much as to legitimate their actions as to establish a system of rules. Towards the end of the nineteenth century a number of interests in the industry with the support of their governments created international agencies to unify and codify laws and practices within shipping but these were almost entirely at the 'technical' level, reflecting their interests rather than a system of international regulation.

It was not until the 1940s that an international agency, the IMCO, was established to regulate the regime. Its goals, however, were ostensibly limited to protecting the principles of the regime and preventing its abuse. Its structure favoured the principal maritime states and seemed likely to express their view of the regime. Even then the resistance of some states to this form of 'regulation' and of shipping states to a perceived bias towards the status quo limited its agenda to largely technical issues.

The creation of UNCTAD and its Shipping Committee was a key step in the development of the international shipping regime. It reflected the emergence of other states' interests in the sector as well as their determination to pursue them nationally and internationally. While it is true that the character of the organization was not initially defined, being the result of a compromise which both sides interpreted differently, the Committee soon became identified with the aspirations of the Third World. This took place in the context of increasing developing state activities in international agencies, as they sought to change the structure of the international economy.¹

As its competence in international shipping developed over the years the Committee shifted from being a forum for debate to an instrument for developing the policies of the Third World. With the support of the UNCTAD Secretariat, and the creation of working parties and contact groups, the developing countries were able to formulate their demands and their policies into a code of conduct for the conference system. The code expressed the changes sought by the developing countries in the structure of international shipping, by altering-- though not necessarily abandoning--the principles of the regime. In its provisions on cargo reservation, the code rejected the principle of the free flow of shipping and it also legitimised the role of the state and legislation within international shipping. It did not however abandon the principle of self-regulation nor that of non-intervention; the code left much to the discretion of a reformed conference system. Rather than marking the abandonment of the international shipping regime, the code demonstrated that the developing

countries' main goals were access to that regime and the legitimation of their policies.²

The code reflected a major shift in the international shipping regime, but the factors behind that shift are not so clear. Writers on regimes have noted a number of possible sources for change within a regime. If we are to assess the role of international organizations in international regimes then we must note other elements that might help to explain how regimes change.

The overall development of the international economy has clearly influenced the character of the regime. It was imperialism and the growth of trade that necessitated the development of shipping while the economic recessions and recoveries have also determined how protectionist shipping is. The Third World countries clearly regard shipping as just one aspect of a generally inequitable international economy and have tailored their policies accordingly. Likewise technology has been crucial in shaping the regime; the development of steam power not only gave a lead to Britain in shipping but also raised the costs of shipping and prompted the formation of the conference system. More recently the liner trades, and the conferences, have been affected by intermodal systems of transport, specifically container traffic; these require far greater levels of concentration than conferences have done and many have pointed to them as a factor in the demise of the old administered market mechanisms.

These technologies are generally specific to the industry and it is true that shipping has its own dynamics which are to some extent autonomous of the international economy. The industry has undergone a

cycle of booms and slumps in the postwar era much more frequently than has the economy as a whole, though the worst slumps have coincided with the recession of the 1970s and 80s. The resulting surplus capacity has been seen by some as a cause of the weakening of liberal principles as well as a cause for the divisions amongst the developed states in recent years. Indeed it seems likely that the present economic crisis in shipping has been a factor in softening the resistance of the developed maritime states to the developing states' hitherto unconscionably protectionist policies.³ One cannot divorce such considerations, however, from the overall erosion of liberal values in the international economy, though shipping is one of the few where it seems to tie in with the developing states' aspirations.

There is then something to be said for the 'issue-specific' form of explanation. The structure of the industry has not replicated that of the economy as a whole. Britain remained a major maritime state long after it lost its economic and political leadership while Norway and Greece demonstrate how small states can be key participants in a regime. The role of the United States also suggests that power and influence in the regime does not depend on overall strength. It was not able to codify its view of shipping in an international organization due to Scandinavian states' resistance nor was it able to impose its regulation of shipping unilaterally, though its actions undoubtedly challenged the regime. It could not assert its postwar power to 'lead' shipping as Britain had.

State power has, however, conditioned the development of the regime. The 'national interest' has been the key factor in states' policies

whether they view it in terms of laissez-faire or national security.⁴ In the regime as it evolved during the 19th and 20th centuries, governments saw their own, and their industries' interests as best served in a self-regulatory regime; now, a different pattern of states with different economic structures has led to a far more interventionist regime. None of this is to deny, of course, the pattern of relations and the differences within these states, nor that any such ideology reflects a truly 'national interest'. It is only to assert that state power, or the withholding of it, has been instrumental in shaping the regime. Within those states the shipping industry has been a major pressure either for change or the status quo, but the actions of states either individually or collectively have set the terms for the conduct of international shipping.

What, then, has been the role of international organization in regime change? Prior to 1948, such organizations as existed primarily reflected the non-interventionist principles of the regime. The creation of IMCO reflected, in part, the postwar explosion of international organizations and, in part, an attempt to codify the principles of international shipping. It was largely an American and British initiative constituting a compromise between liberal principles and the American desire to limit restrictive practices, in much the same way as the ITO aimed to do so in the field of trade as a whole. Due to resistance to the very principle of such an organization and the absence of a concerted effort to enforce the Convention, IMCO was restricted to a technical role. This period was one in which the principles of the regime were largely intact, even if changes in the structure of the industry were under way.

By the time UNCTAD was formed, these structural changes, particularly the development of Third World fleets, were increasingly challenging the regime. As a product of the Third World's 'strength' within the United Nations and of their economic problems, UNCTAD was to serve as a forum for expressing their demands and for proposing solutions to their problems. It was initially more a 'forum' than a 'service' organization, in Cox and Jacobson's terms.⁵ As we have seen, however, it developed an increasingly 'service' orientation in drawing up reports and studies from the developing states' perspective. This latter role entailed an increasingly activist and partisan organization, one in line with the goals of its first Secretary-General.

On first view this can be seen as purely symbolic or indicative of changes occurring elsewhere in the international regime; just as the limited agendas of the pre-UNCTAD shipping organizations reflected the former regime so the Shipping Committee's debates, studies, resolutions and codes of conduct, i.e. the appearance of action, reflected the challenge to that regime. Cox has suggested that international organizations be regarded as a historical process of the institutionalisation of hegemony or counter-hegemony,⁶ that is, of the prevailing principles in a regime or of a shift in or challenge to that regime. This has certainly been a part of UNCTAD's role.

Yet this appears to relegate international institutions to the status of afterthought or superstructure without necessarily suggesting a more autonomous or influential role in international regimes. Krasner, on the other hand, regards organisations like UNCTAD as key instruments of Third World action.⁷ As noted in Chapter 3 he attributes this to, on

the one hand, their weakness in implementing internal policies and their shared sense of weakness in the international economy, and, on the other hand, to the autonomy of the UN system following the decline of American influence within it. This has enabled the developing states to adopt international organizations as a means of policy, given their numerical strength and relative solidarity. The activities of the Shipping Committee demonstrate how this can be done, by developing a consensus on the problems facing the Third World and pushing through solutions, which have eventually gained the backing of the developed states (though one must take into account the broader processes at large both in shipping and the international economy as a whole to understand why the developed states changed tack).

The Code of Conduct, which has been seen as the principal change of rules in the international shipping regime, marks a culmination in UNCTAD's work. It also reflects the developing countries' concern to codify their demands. Roffe has noted the apparent contradiction between their distrust of traditional international law principles, as seen in their view of bodies such as the CMI, and their adherence to the forms of international law in expressing their demands.⁸ The Code was the first of a series of legal or quasi-legal instruments proposed by the developing countries in various institutions, including codes of conduct on transfer of technology, transnational corporations and the flow of information as well as the Integrated Programme for Commodities; even the declaration on the New International Economic Order and the Charter of Economic Rights and Duties of States have been seen as the basis of international norm-setting activities⁹ and

as constituting an alternative body of international law. It is also notable that the developed countries have been in most cases more resistant to the adoption of the form as well as the contents of such schemes than they were with the liner code.¹⁰ In all cases these disputes have been played out in general agencies of the UN, i.e., agencies with a Third World majority, and many of them under UNCTAD's auspices. Given the initial resistance to the Liner Code, and the snail's pace with which it gained support, however, it may be too early to comment on the chances of these other measures.

It is possible then to locate two types of function played by international organizations in regimes and the process of regime change. There is a forum/register role where the agency reflects the structures of power and interest within the regime. Often its function will reinforce the principles of the regime, as in the CMI and, less so, the IMCO but it need not do so; UNCTAD as the forum where the formerly undiscussed issues of international shipping practice were debated also serves this task while its development in terms of its activities and perspective reflected the developing countries' views and policies in shipping.

On the other hand there is an instrumental role, where the agency is used as a means of consolidating or challenging the regime, rather than simply reflecting the state of the regime. To a limited extent institutions such as IMCO, CMI and the OECD have played such a role in reinforcing or reforming the regime. UNCTAD, however, has been very active in this respect, as the fourth chapter demonstrated. Moreover under this function, it is possible to accord the agency itself a certain

autonomy in terms of agenda-setting, task-expansion etc. While overall one would regard that the developing states formulated their demands through UNCTAD, it remains the case that the agency guided them in the process of formulating those demands and, in a few cases, of indicating policies to them.

The case of UNCTAD demonstrates that international organizations have a rôle, albeit a limited one, within international regimes. Though the key forces in bringing about regime change lay in both broad changes in the international economy, in factors specific to the shipping sector and in national policies, the work of UNCTAD helped codify and to some extent bring about radical changes to a regime established for a century. In terms of the study of international relations, the case study suggests that regime analysis is a fruitful means of approaching the study of international organization and its role in the international political economy.

Chapter Five - Footnotes

1. Craig N. Murphy, "What The Third World Wants", International Studies Quarterly, Vol. 37, No. 1.
2. Neff, op. cit., pp. 404-05
3. P.S. Cowhey and E. Long, "Testing Theories of Regime Change", International Organization, Vol. 37, No. 2, 1983.
4. Böhme, op. cit., p. 35ff.
5. Cox and Jacobson (eds.), The Anatomy of Influence: Decision-Making in International Organizations, pp. 5-7.
6. Cox, "The Crisis of World Order and International Organization in the 1980's", p. 377.
7. Krasner, "Transforming International Regimes", p. 138-45.
8. Pedro Roffe, "Reflections on Current Attempts to Revise International Legal Structures: The North South Dialogue", Georgia Journal of International and Comparative Law, Vol. 9, Fall, 1979.
9. Norbert Horn, op. cit.,
10. Grosse, op. cit. and Krishnamurti, "UNCTAD as a Negotiating Institution", Journal of World Trade Law, Vol. 15, No. 1, 1981.

BIBLIOGRAPHY

Books

- Abrahamsson, Bernhard., International Ocean Shipping: Current Concepts and Principles. Westview Press, 1980.
- Alexandersson, G. and Norstrom, G., World Shipping. John Wiley, 1973.
- Allin, Lawrence C., "The Civil War and the Period of Decline 1861-1913" in Kilmarx, Robert A. America's Maritime Legacy: A History of the U.S. Merchant Marine and Shipbuilding Industry Since Colonial Times. Westview, 1979.
- Annell, Lars and Nygren, Birgitta. The Developing Countries and the World Economic Order. London: Frances Pinter, 1980.
- Berglund, Abraham. Ocean Transportation. New York: Longmans 1931.
- Bergsten, C. Fred, Berthoin, Georges and Mushakoji, Kinhide. "The Reform of International Institutions" in Trilateral Commission Task Forces Reports: 9-14. New York University Press, 1978.
- Black, Cyril and Falk, Richard A. (eds.). The Future of the International Legal Order, Volume 5: The Structure of the International Environment. Princeton University, 1972.
- Black, Henry C. Black's Law Dictionary. Minneapolis: West Publishing, 1979.
- Block, Fred. The Origins of International Economic Disorder. Berkley University of California Press, 1977.
- Bohme, Hans. Restraints on Competition in World Shipping. Ditchling Press, 1978.
- Branch, Alan. The Elements of Shipping. London, Chapman and Hall, 1977.
- Brown, William Adams. The United States and the Restoration of World Trade. Brookings, 1950.
- Burley, Raymond F. "Rates and Practices and their Regulation" in McDowell, C. and Gibbs, H. (eds.): Ocean Transportation. McGraw-Hill, 1954.
- Carr, Edward Hallett. The Twenty Years' Crisis 1919-1939. London Macmillan 1940.

- Clapham, J.H. Economic History of Modern Britain Vols I-II. Cambridge University Press 1926.
- Colombos, C. John. The International Law of the Sea. Longmans, 1967.
- Cottrell, P.L. and Aldcroft, D.H. (eds.). Shipping, Trade and Commerce. Leicester University Press, 1981.
- Cox, Robert W. and Jacobson, Harold. The Politics of International Organization. New York: Praeger, 1970.
- Cox, Robert W. and Jacobson, Harold. The Anatomy of Influence: Decision Making in International Organization. Yale University Press, 1973.
- Crouzet, F. "The Sources of England's Wealth: Some French Views in the Eighteenth Century" in Cottrell, P.L. and Aldcroft, D.H. (eds.). Shipping, Trade and Commerce. Leicester University Press, 1981.
- Curzon Price, Victoria. "Recessions and the World Economic Order" in Strange, Susan and Tooze, Roger (eds.). The International Politics of Surplus Capacity. London, Allen and Unwin, 1982.
- Dam, Kenneth W. GATT: Law and International Economic Organization. University of Chicago Press, 1977.
- Deakin, B.M. Shipping Conferences: A Study of their Origins, Development and Economic Practices. Cambridge University Press, 1973.
- Diebold, William. The End of the ITO. Princeton University Press, 1952.
- Economist Intelligence Unit. "Ocean Shipping and Freight Rates and the Developing Countries" in UNCTAD, Proceeding of the First Conference Volume 5.
- Frank, Andre Gunder. Capitalism and Underdevelopment in Latin America. New York: Monthly Review Press, 1967.
- Friedeberg, A.S. The United Nation Conference on Trade and Development of 1964. Rotterdam University Press, 1969.
- Gardner, Richard N. Sterling-Dollar Diplomacy: The Origins and the Prospects of Our International Economic Order. McGraw-Hill, 1969.
- Gibbs, Helen M. "Shipping-Sea Power and National Power" In McDowell and Gibbs, H. (eds.). Ocean Transportation. McGraw-Hill, 1954.
- Gibbs, Helen M. "Overseas Trade and Shipping Services" in McDowell, C. and Gibbs, H. (eds.). Ocean Transportation. McGraw-Hill, 1954.
- Gold, Edgar. Maritime Transport. Lexington Books, 1981.

- Goodwin, G.L. and Linklater, A. (eds.). New Dimensions of World Politics. London: Croom Helm, 1975.
- Goss, R.O. Studies in Maritime Economics. Cambridge University Press, 1968.
- Greenstein, F.L. and Polsby, N.W. (eds.). Handbook of Political Science Vol. 8. Addison-Wesley, 1975.
- Groom, A.J.R. "The Advent of International Institutions" in Taylor, P. and Groom, A.J.R. (eds.), International Organization. London: Frances Pinter, 1978.
- Grossman, William L. Ocean Freight Rates. Cornell Maritime Press, 1956.
- Harrison, R.J. "Neofunctionalism" in Taylor, P. and Groom, A.J.R. (eds.). International Organization. London: Frances Pinter, 1978.
- Heckscher, E.F. An Economic History of Sweden. Harvard University Press, 1951.
- Hill, J.E.C. Reformation to Industrial Revolution. New York: Pantheon Books, 1968.
- Hinsley, F.H. Power and the Pursuit of Peace. Cambridge University Press, 1967.
- Hobsbawm, E.J. Industry and Empire. London: Pelican Books, 1978.
- Horn, Paul. International Trade: Principles and Practices. New York: Prentice Hall, 1951.
- Horrocks, J.W. A Short History of Mercantilism. Methven, 1925.
- Huntington, Samuel P. "Transnational Organizations in World Politics" in Smith, M., Little, R. and Shackleton, M. (eds.). Perspectives on World Politics. London: Croom Helm, 1981.
- Hutchins, John G.B. The American Maritime Industries and Public Policy 1789-1914. Harvard University Press, 1941.
- Jantscher, Gerald R. Bread Upon the Waters: Federal Aids to the Maritime Industries. Washington: Brookings, 1975.
- Katzenstein, Peter J. (ed.). Between Power and Plenty: Foreign Economic Policies of the Advanced Industrial States. University of Wisconsin Press, 1978.
- Keohane, Robert O. and Nye, Joseph S. "International Interdependence and Integration" in Greenstein F.I. and Polsby, N.W. (eds.). Handbook of Political Science Vol. 8. Addison-Wesley, 1975.

- Keohane, R.O. and Nye, J.S. Power and Interdependence. Little, Brown and Co. 1977.
- Keohane R.O. and Nye, J.S. "Transnational Relations and International Organization" in Smith, M., Little, R., and Shackleton, M. (eds.). Perspectives on World Politics. London: Frances Pinter, 1981.
- Kilmarx, Robert, A. (ed.). America's Maritime Legacy: A History of the U.S. Merchant Marine and Shipbuilding Industry Since Colonial Times. Westview, 1979.
- Kitazawa, Kimico. McNamara's World Bank and Prebisch's UNCTAD: A Comparison. Master's Thesis, Queen's University, 1980.
- Knudsen, Olav. The Politics of International Shipping. Lexington, 1973.
- Krasner, Stephen. "United States' Commercial and Monetary Policy: Unravelling the Paradox of External Strength and Internal Weakness" In Katzenstein, Peter, J. (ed.). Between Power and Plenty. University of Wisconsin Press, 1978.
- Lawrence, Samuel, A. United States' Merchant Shipping Policies and Politics. Washington: Brookings, 1966.
- Lawrence, S.A. International Sea Transport. Lexington, 1972.
- Lessnoff, Michael, H. The Structure of Social Science. London: Allen and Unwin, 1974.
- Leubuscher, Charlotte. The West African Shipping Trade: 1909-1959. Leyden: Sijthoff, 1963.
- Maghroori, R. and Ramberg, B. Globalism versus Realism. Westview, 1982.
- Maghroori, R. "Major Debates in International Relations" in Maghroori R. and Ramberg, B. Globalism versus Realism. Westview, 1982.
- Maier, Charles, S. "The Politics of Productivity: Foundations of American International Economic Policy after World War II" in Katzenstein, Peter, J. (ed.). Between Power and Plenty. University of Wisconsin, 1978.
- Mance, Osborne. International Sea Transport. Oxford University Press, 1948.
- Mangone, G.J. A Short History of International Organization. Greenwood Press, 1975.
- Marx, Daniel. International Shipping Cartels: A Study of Industrial Self-Regulation by Shipping Conferences. Princeton University Press, 1953.
- Mason, C.M. The Effective Management of Resources. London: Frances Pinter, 1979.

- McDowell, Carl E., and Gibbs, Helen M. (eds.). Ocean Transportation. McGraw-Hill, 1954.
- McDowell, Carl E. "Merchant Fleets of the World", in McDowell, C.E. and Gibbs, H.M. (eds.). Ocean Transportation. McGraw-Hill, 1954.
- McNemar, Donald. "The Future Role of International Institutions" in Black C. and Falk, R.A., The Future of the International Legal Order Vol. 5. Princeton University Press, 1972.
- Montgomery, A. The Rise of Modern Industry in Sweden. London: P.S.: King, 1939.
- Morris, Michael, A. International Politics and the Sea: The Case of Brazil. Westview, 1978.
- Myrdal, Gunnar. Realities and Illusions in Regard to Intergovernmental Organizations. Oxford University Press, 1955.
- Nye, J.S. "UNCTAD: Poor Nations' Pressure Group." in Cox and Jacobson. The Anatomy of Influence. Yale University Press, 1973.
- Nye, J.S. "Transnational and Transgovernmental Relations" in Goodwin, G. and Linklater, A. (eds.). New Dimensions of World Politics. London: Croom Helm, 1975.
- Pollard, Sidney. European Economic Integration 1815-1970. London: Thames and Hudson, 1974.
- Potter, Pitman, B. The Freedom of the Seas in History, Law and Politics. Longmans, 1924.
- Puchala, Donald W. "Of Blind Men, Elephants and International Integration," in Smith, M., Little, R., and Shackleton, M. (eds.). Perspectives on World Politics. London: Croom Helm, 1981.
- Ram, M.S. Shipping. Asia Publishing, 1969.
- Reynolds, Clark G. "American Maritime Power Since World War II" in Kilmarx, R.A. (ed.). America's Maritime Legacy. Westview, 1979.
- Robertson, Charles O. "The Creation of UNCTAD" in Cox, R.W. and Jacobson, H., The Politics of International Organization. New York: Praeger, 1970.
- Rothstein, Robert L. The Weak in the World of the Strong: The Developing Countries in the International System. New York: Columbia University Press, 1977.
- Rothstein, Robert L. Global Bargaining. Princeton University Press, 1979.
- Salter, A.S. Allied Shipping Control. Oxford: Clarendon Press, 1921.

- Shonfield, Andrew. Politics and Trade. Oxford University Press, 1976.
- Silverstein, Harvey B. Superships and Nation States: The Transnational Politics of IMCO. Westview, 1978.
- Singh, N. and Colimaux, R. British Shipping Laws, Vol. 13: Shipowners. London: Stevens and Sons, 1967.
- Singh, N. Achievements of UNCTAD I (1964) and UNCTAD II (1968) in the Field of Shipping and Invisibles. New Dehli: S. Chand, 1969.
- Sletmo, G. and Williams, E. Lines Conferences in the Container Age. London: Macmillan, 1981.
- Smith, M., Little, R., and Shackleton, M. (eds.). Perspectives on World Politics. London: Croom Helm, 1981.
- Spero, Joan. The Politics of International Economic Relations. St. Marhn's Press, 1977.
- Strange, Susan and Tooze, Roger. (eds.). The International Politics of Surplus Capacity. London: Allen and Unwin, 1982.
- Sturmey, S.G. British Shipping and World Competition. London: Athlone Press, 1962.
- Taylor, Paul and Groom, A.J.R. (eds.). International Organization. London: Frances Pinter, 1978.
- Thommen, T.K. International Legislation on Shipping. New York: United Nations, 1968.
- Unger, Richard W. The Ship in the Medieval Economy 600-1600. London: Croom Helm, 1980.
- Van Meerhaege, M.A.G. International Economic Institutions. Longmans, 1971.
- Wallerstein, Immanuel M. The Modern World System Volume 2. New York: Academic Press, 1976.
- Waltz, Kenneth. A Theory of International Politics. Addison- Wesley, 1979.
- Warren, Bill. Imperialism: Pioneer of Capitalism. London: Vero Books, 1982.
- Weizz, Thomas George. International Bureaucracy: An Analysis of the Operation of Functional and Global Secretariats. Lexington, 1975.
- Whitehurst, Glington, H. Merchant Marine Policy. Washington: American Enterprise Institute, 1969.

Periodicals

- anon. "The American Shipping Industry and the Conference System." Stanford Law Review Vol. 10, 1958.
- anon. "Rate Regulation in Ocean Shipping." Harvard Law Review Vol. 78, 1965.
- Bosies, William J., and Green, William G. "The Lines Conference Convention: Launching an International Regulatory Regime." Law and Policy in International Business Vol. 6, 1974.
- Bredimas, Anna A. and Tzoannos, John G. "In Search of a Common Shipping Policy for the European Community." Journal of Common Market Studies Volume 20, no. 2, December, 1981.
- Buehrig, Edward. "The Resolution Based International Agency." Political Studies Vol. 29, no. 2, 1981.
- Cordovez, Diego. "The Making of UNCTAD-Institutional Background and Legislative History." Journal of World Trade Law Vol. 1, no. 3, 1967.
- Cowhey, P.S. and Lang, E. "Testing Theories of Regime Change." International Organization Vol. 37, no. 2, 1983.
- Cox, Robert W. "Labor and Hegemony." International Organization Vol. 31, no. 3, 1977.
- Cox, Robert W. "The Crisis of World Order and the Problem of International Organization in the 1980's." International Journal Vol. 35, 1979/80.
- Cox, Robert W. "In Search of International Political Economy." New Political Science no. 5/6, 1981.
- Erb, Guy. "The Second Session of UNCTAD." Journal of World Trade Law Vol. 2, no. 3, 1968.
- Gardner, Richard N. "The UNCTAD." International Organization Vol. 22, no. 1, Winter 1968.
- Geldart, Carol and Lyon, Peter. "The Group of 77: Perspective View." International Affairs Vol. 57, no. 1, 1980/81.
- Grosse, Robert. "Codes of Conduct for Multinational Enterprises." Journal of World Trade Law Vol. 16, no. 5, 1982.
- Haji, Iqbal. "UNCTAD and Shipping." Journal of World Trade Law Vol. 6, no. 1, 1972.
- Herman, L.L. "The Code of Conduct for Lines Conferences: Frustrations on the Road to Utopia." Canadian Yearbook of International Law Vol. 14, 1976.

- Hoffmann, Stanley. "International Organization and the International System." International Organization Vol. 24, 1970.
- Holderness, Clifford G. "Economic Analysis of the United Nations Code of Conduct for Lines Conferences." Stanford Law Journal Vol. 29, April, 1977.
- Horn, Norbert. "Normative Problems of a New International Economic Order." Journal of World Trade Law Vol. 16, no. 4, 1982.
- Jack, Robert A. "Self Policing of Ocean Shipping Conferences." Stanford Law Review Vol. 20, April, 1968.
- James, Leonard G. "Some Current Developments in United States' Control of International Shipping." International Lawyer Vol. 7, July, 1973.
- Johnson, D.H.N. "IMCO: The First Four Years." International and Comparative Law Quarterly Vol. 12, 1963.
- Juda, Lawrence. "World Shipping, UNCTAD and the New International Economic Order." International Organization Vol. 35, 1981.
- Krasner, Stephen. "Transforming International Regimes: What the Third World Wants and Why." International Studies Quarterly Vol. 25, no. 1, 1981.
- Krasner, Stephen. "Structural Causes and Regime Consequences." International Organization Vol. 36, no. 2, Spring 1982.
- Krasner, Stephen. "Regimes and the Limits of Realism." International Organization Vol. 36, no. 2, Spring 1982.
- Krishnamurti, "UNCTAD as a Negotiating Institution." Journal of World Trade Law Vol. 15, no. 1, 1981.
- Larsen, P.B. and Vetterick, V. "UNCTAD Code of Conduct for Lines Conferences: Reservations, Reactions and U.S. Alternatives." Law and Policy in International Business. Vol. 13, 1981.
- Lowenfeld, Andreas F. "To Have One's Cake. . . The Federal Maritime Commission and the Conferences." Journal of Maritime Law and Commerce Vol. 1, no. 1, 1969.
- Magnusson, John. "Maritime Agreements with State Traders." St. John's Law Review Vol. 46, October, 1971.
- Morse, Clarence G. "A Study of Merchant Marine Legislation." Law and Contemporary Problems Vol. 43, 1960.
- Murphy, Craig N. "What the Third World Wants: An Interpretation of the Development and Meaning of the NIEO Ideology." International Studies Quarterly Vol. 27, no. 1, 1982.

- Neff, Stephen C. "The United Nations Code of Conduct for Lines Conferences." Journal of World Trade Law Vol. 14, no. 5, 1980.
- "P.W." "UNCTAD: Success in Shipping." Journal of World Trade Law Vol. 4, no. 5, 1971.
- Padwa, D. "The Curriculum of IMCO." International Organization Vol. 14, 1960.
- Rajwar, C.M.S. "Trade and Shipping Needs of Developing Countries." International Conciliation no. 582, March, 1971.
- Roffe, Pedro. "Reflections on Current Attempts to Revise International Legal Structures: The North-South Dialogue." Georgia Journal of International and Comparative Law Vol. 9, 1979.
- Silberman, Ralph Michael. "Cargo Preferences: The United States and the Future Regulation of International Shipping." Virginia Journal of International Law Vol. 16, 1976.
- Smid, J.K. "International Legislation on Shipping." Journal of World Trade Law Vol. 3, no. 3, 1970.
- Strange, Susan. "The Study of Transnational Relations." International Affairs July, 1976 Vol. 52, no. 3.
- Strange, Susan. "Who Runs World Shipping?" International Affairs July, 1976, Vol. 52, no. 3.
- Strange, Susan. "Cave, Hic Dragones: A Critique of Regime Analysis." International Organization Vol. 36, no. 2, Spring 1982.
- Takanashi, Masao F. "Discriminatory Ocean Freight Rates and the Balance of Payments of the United States." Journal of World Trade Law Vol. 1, no. 6, 1967.
- Thompson, Denis. "International Carriage by Container." Journal of World Trade Law Vol. 1, no. 4, 1976.
- Valente, M.G. "The Participation of Developing Countries in Shipping." International Conciliation no. 582, March 1971.
- Walters, R. "International Organizations and Political Communication." International Organization Vol. 25, no. 4, 1971.
- Young, Oran R. "Regime Dynamics: The Rise and Fall of International Regimes." International Organization Vol. 36, no. 2, 1982.
- Zamora, Stephen. "Rate Regulation in Ocean Transport: Developing Countries Confront the Lines Conference System." California Law Review Vol. 59, 1971.

Newspapers

Economist 1946-75.

Financial Times. March 1983.

Globe and Mail. May 9th, 1983.

Journal of Commerce 1973-75.

The Times 1958-78.

Government and International Documents

Great Britain:

Parliament, Parliamentary Papers (Commons, 1969-70) Vol. 27.
(mind 4337. "Report of the Committee of Inquiry into Shipping."
(Rochdale Report).

Organization for Economic Cooperation and Development:

Maritime Transport Review, 1962-80.

Organization for European Economic Cooperation:

Maritime Transport Review, 1955.

United Nations:

(i) ECOSOC:

Intergovernmental Maritime Conference: "Draft Convention for
an Intergovernmental Maritime Consultative Organization."
[E. Conf. 4 (1) 1948].

Intergovernmental Maritime Conference. "Replies of Governments
to the Secretary General's Request for Submission of Comments
on or Amendments to the Draft Convention." [E Conf. 4 (2) 1948].

Intergovernmental Maritime Conference. "Preparatory Memorandum."
[E. Conf. 4 (4) 1948].

Intergovernmental Maritime Conference. "Summary Records."
[E Conf. 4/SR 1-99, 1948].

(ii) UNCTAD:

(a) Conference on Trade and Development.
Proceedings of the UNCTAD. 1st, 2nd, and 3rd Sessions.
[E Conf. 46 Vols I-V, TD/97 Vol I, TD/180 Vol I].

International Legislation on Shipping [TD/32].

The Regulation of Lines Conferences [TD/104].

(b) Committee on Shipping.
Consultation in Shipping [TD/B/C. 4/20].

Review of Studies and Activities in the Field of Shipping
Carried Out by Other Institutions Within the United Nations
System and by Intergovernmental and Non Governmental Organizations.
[TD/B/C. 4/26].

Review of Maritime Transport, 1968 [TD/B/C. 4/50].

The Lines Conference System, [TD/B/C. 4/62].

The Nature and Extent of Cargo Reservation [TD/B/C. 4/63].

Report of the Working Group on Internal Supply Legislation on
its Second and Third Sessions. [TD/B/c. 4/86, TD/B/C. 4/93].

Summary Records [TD/B/C. 4/SR 1-80].

(c) Conference on a Code of Conduct for Lines Conferences.
(Conference of Plenipotentiaries on a Code of Conduct for
Lines Conferences):

Report of the Preparatory Committee [TD/CODE 2.].

Report of the Conference of Plenipotentiaries [TD/CODE 13.].

(iii) United Nations Conference on Trade and Employment.
Final Act and Related Documents [E Conf. 2/78, 1948].

United States of America:

Protocols of Proceedings of the International Marine Conference
(Washington: G.P.O. 1896) Vols. I and II.

Department of State Bulletin Vol. 18, No. 447, 1948.

VITA

Name:

Francis McGowan

Place and year of birth:

Rutherglen, Glasgow, 1960

Education:

1977-1981: Glasgow University, Scotland.
Graduated June 1981 with M.A.(hons.)
1st class in Politics

1982-1983: Queen's University, Kingston,
Ontario. M.A. Political Studies

Awards:

March 1982: University of Glasgow
Graduate Scholarship (declined)

April 1982: Robert Schuman Scholarship;
stagiaire at European Parliament, Luxemburg

June 1982: McLaughlin Scholarship;
graduate student at Queen's University