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WORLD MARITIME UNIVERSITY
Malmö, Sweden

THE LIBERIAN SHIPPING REGISTRY: STRATEGIES TO IMPROVE FLAG STATE IMPLEMENTATION AND INCREASE MARKET COMPETITIVENESS

By

CHRISTIAN G. HERBERT
Liberia

A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

in

MARITIME SAFETY AND ENVIRONMENTAL PROTECTION (MSEP)
(Administration)

1999

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal view, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: **The Liberian Shipping Registry: Strategies to Improve Flag State Implementation and Increase Market Competitiveness**

Degree: **MSc. In Maritime Safety and Environmental Protection(Administration)**

This dissertation is an appraisal of the potential causes of the decline in tonnage recorded in the '80s and '90s, a review of the Flag State Implementation process and an exploration of ways to increase the market competitiveness of the Liberian Registry.

Breaches of the contract between the Government of Liberia(GOL) and the International Trust Company(ITC) by the (ITC) and its parent company, the International Registries Inc.(IRI) with respect to corporate obligations, the operation of two competing registries - Liberia and Marshall Islands - by IRI/ITC and the failure of the Liberian Government to honour contractual obligations are identified as the reasons for the decline in tonnage recorded by the Liberian Registry.

The performance of ITC, as an Agent of the Liberian Government in the process of Flag State Implementation, is reviewed. Moreover, the roles of recognised Classification Societies in conducting surveys and inspections and issuing statutory certificates on behalf of Liberia are examined. A good safety record and low casualty returns compared to other Flag States are highlighted.

Flag, Port and Coastal State duties are identified as the three main statutory functions of the Bureau of Maritime Affairs as its enters the 21st Century. To implement these duties effectively and efficiently, a revised Organisational Structure of the Bureau is proposed. An Advisory Board, a Shipping Department as well as the re-structuring of existing departments and sections of the Bureau are important features of the Structure.

Maintaining a stable political order in Liberia and fostering good US-Liberia relations are important outcomes of the exploratory market research involving shipowners from Greece, Liberia, France, Finland and the Netherlands. Additionally, holding meetings with shipowners, disseminating information brochures and convening Focus Group forums are key marketing techniques derived from the research.

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LIST OF ABBREVIATIONS

ADCON	Administrative Control Services Incorporated
AOTC	American Overseas Tankers Corporation
BMA	Bureau of Maritime Affairs
CIA	Central Intelligence Agency
CIO	Congress of Industrial Organization
CLC	International Convention on Civil Liability for Oil Pollution Damage, 1969
DCO	Deputy Commissioner Office
DOC	Document of Compliance
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization
GMDSS	Global Maritime Distress & Safety System
GOL	Government of Liberia
HSSC	Harmonised System of Survey and Certification
IACS	International Association of Classification Societies
IB	International Bank
ICSID	International Centre for Settlement of Investment Disputes
IGNU	Interim Government of National Unity
ILO	International Labour Organization
IMIF	International Maritime Industries Forum
IMO	International Maritime Organization
IRI	International Registries Incorporated
ISM (Code)	International Safety Management Code
IT	Information Technology
ITC	International Trust Company
ITF	International Transport Workers Federation
LISCR	Liberia International Ship & Corporate Registry
LMA	Liberian Maritime Law
LMTI	Liberia Maritime Training Institute
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978
LSI	Liberia Services Incorporated
MET	Maritime Education and Training
MIIPS	Marine Investigation and International Participation

MIMCA	Marshall Islands Maritime and Corporate Administrators, Incorporated
MODU	Mobile Offshore Drilling Unit
MOU	Memorandum of Understanding
NMU	National Maritime Union
NPP	National Patriotic Party
NTF	Nautical Training Funds
PSC	Port State Control
PSCO	Port State Control Officer
RL	Republic of Liberia
SAR	Search and Rescue
SMS	Safety Management System
SOLAS '74	International Convention for the Safety of Life at Sea, 1974 as amended
STCW '95	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended
TCMI	Trust Company of Marshall Islands Incorporated
TS	Territorial Sea
TWP	True Whig Party
ULISCO	United States Life Insurance Company
UN	United Nations
UNCCRS	United Nations Convention on Conditions for the Registration of Ships
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UK	United Kingdom
US/USA	United States of America
WMU	World Maritime University
WWII	World War Two

1. INTRODUCTION

International shipping has undergone tremendous transformations since the end of World War II. Monumental changes have transformed proprietary ownership of ships with corporate mega-companies replacing the age-old one-man, one-family ownership system that thrived in the late 19th and early 20th Centuries. Although partnerships and joint ownership still exist, the overwhelming trend is towards large corporate ownership embodying the advantages of merged capital, economies of scale and highly paid specialist personnel.

Great leaps in technology have wrought unparalleled changes in ship design, construction, propulsion, speed, manning and communications.

Phenomenal changes have also taken place in shipowners' choice of registry and flag. Open or international registries have virtually substituted the closed registries of the traditional maritime nations thereby re-defining the relationship between the ship, the flag and the state. Underpinning the shift to open registries is the unfettered freedom of shipowners to recruit and employ seafarers from crew supplying countries like the Philippines, India and China. The emergence and influence of the new labour-supplying nations attest to the unprecedented changes that have shaped the contours of international shipping in the last 50 years.

The Liberian Shipping Registry is not only a product but also a catalyst of the changes that revolutionised the shipping industry since the end of the Second World War. Liberia is considered as one of the pioneers of the post-war open registry system and gained the enviable status of the world's largest shipowning nation in 1979, accounting for nearly 20% of the world's gross tonnage. It is the only open registry that had maintained and sustained an unassailable record with respect to maritime safety and pollution prevention. Liberia ranks among global maritime giants such as Denmark, Norway, Greece, Japan, Italy and USA, and has a better casualty record than several of them.

However, beset by problems both exogenous and endogenous, the Registry declined substantially throughout the 1980s and has remained levelled in the late 1990s. Consequently, Liberia abdicated her status as the world's largest maritime nation to Panama in the 1990s.

The objectives of the dissertation are, therefore, to appraise the potential causes of the decline, review the Flag State implementation process and explore

ways to increase the competitiveness of the Registry. To achieve these objectives, the dissertation is structured into seven (7) main Chapters including Chapter 1, which is basically introductory.

Chapter 2 provides a retrospective view of Liberia's maritime history before World War II. It places the dug-in canoe into proper historical perspective as the embodiment of Liberia's pre-war maritime heritage and traces the birth of Liberia's post-war maritime establishment to the 1948-1949 political crisis in Panama which led American shipowners to seek out an alternative Flag State.

Chapter 3 reviews the Flag State implementation process by means of which compliance with mandatory international safety and pollution prevention standards are achieved. It analyses the role of the International Trust Company (ITC) as an agent of the Government of Liberia in discharging delegated Flag State duties such as Ship Registration, Inspections, Surveys and Certification, Marine Casualty Investigation, Seafarers' Training and Certification, etc.

The management of the Liberian Registry by the ITC and the oversight role of the Government of Liberia are critically appraised in Chapter 4. On the one hand, the dissertation investigates the performance of ITC with respect to its contractual obligations and identifies conformities and breaches of the Contract. On the other hand, it scrutinises the performance of the Government of Liberia (GOL) with respect to its contractual obligations, pointing out GOL’s failure to honour its obligations which eventually led to litigation proceedings in a Fairfax County Court in the United States of America.

Chapter 5 looks into the future and conceptualises the Bureau of Maritime Affairs' primary responsibility to be the implementation of Flag, Port and Coastal State duties. It recommends the constitution of a Board with oversight responsibilities for the Bureau of Maritime Affairs (BMA) and proposes a new organisational structure incorporating mechanisms for administering the Small Watercraft Registry and improving BMA’s supervisory authority over the Management of the large Registry of 500 gross tons and above.

The results of the exploratory research exercise involving shipowners from Greece, Finland, France, Liberia and the Netherlands are presented in Chapter 6. The results reveal a direct relationship between the political stability of Liberia and the growth of the Liberian Registry.

Chapter 7 contains Recommendations and Conclusions.

The various chapters of the dissertation are written and arranged inter-dependently to guarantee fluid and consistent reading from chapter to chapter but each chapter can also be comprehended as an independent unit.

The research for the dissertation relied on both primary and secondary sources. Mailed questionnaires were used to survey shipowners while texts on marketing theory and research were also referenced for the exploratory marketing aspects. The bulk of the dissertation exploited a wide range of texts and publications at the WMU Library in particular, the Bureau of Maritime Affairs, the Liberian Permanent Mission to the IMO, the Internet and other relevant secondary sources.

During the research process, a number of problems was encountered. Firstly, relevant documents and information about the Liberian Registry, particularly the operations of the ITC, were scarce. Secondly, it was not possible to conduct an on-the-scene verification of the Flag State implementation process discussed in Chapter 3. Thirdly, financial resources required to facilitate the field surveys for the marketing research were inadequate. These problems had severe mitigating effects on the depth and thoroughness of the research and undermined the effectiveness of the marketing study by limiting the sample size of shipowners earmarked for the survey. Nevertheless, the immense value of the results derived is indicative of the potential benefits the Liberian maritime establishment stands to gain from such projects.

The dissertation is envisaged to serve as a springboard for conducting further research work into the management and operations of both the small and large Liberian registries. It advocates the need for change at the Bureau of Maritime Affairs although differences of opinion may exist regarding the precise nature of the change required. Furthermore, it offers an opportunity for the re-definition of the Bureau's roles and the re-shaping of its strategies and direction in the coming millennium.

2 HISTORICAL BACKGROUND AND DEVELOPMENT OF THE LIBERIAN MARITIME PROGRAMME

2.1 LIBERIA'S PRE-WAR MARITIME HERITAGE

The modern Liberian Shipping Registry evolved out of the ruins of the Second World War. Prior to the war, the stirrings of a thriving maritime industry were evident in Liberia. The Krus, an ethnic group inhabiting the Liberian coast, were renown for their expertise in fishing and coastal trade. The Fanti tribesmen emanating from the "Gold Coast", a part of contemporary Ghana, later joined them. The Fantis, also distinguished for their skills in fishing and navigation, integrated remarkably harmoniously with the Krus along the Liberian coast. The Kru and Fanti people used the dug-in canoe as their ship. The canoe is a large piece of log dug in and fashioned with scientific precision to withstand the vagaries of coastal waters. The Kru fishermen used a canoe of 7 metres powered with pedals or sail, capable of carrying a team of 1-3 persons. The Fanti fishermen used large canoes – 12 meters – also powered by pedals or sails with a crew of 15 persons.

The history of the canoe goes back into time. It has been used in commercial seaborne trade as well as military engagements. It was as useful to the African fishermen in the old days as the "liberty" ships were useful to the Allies in WWII. The canoe, despite its ancient origin, is still being widely used along the West African coast (FAO, 1987, 2).

The arrival of the African-American settlers in 1822, which preceded Liberia's independence in 1847, enriched the maritime tradition of Liberia. Transported across the vast, perilous Atlantic Ocean by a large number of sailing ships, the African-American settlers brought to the west coast of Africa a new experience in seafaring. Their sailing ships were a giant improvement over the canoes and embodied the advantage of economies of scale in trading along the Coast. Between 1847 and 1900, over 300 sailing ships, constructed and wholly owned by Liberians, were engaged in commercial activities along the West African coast (Carlisle, 1981, xiv).

The advent of the steam engine rendered Liberia's sailing ships and, to some extent, the canoe, obsolete. They were, however, the budding of an indigenous merchant fleet and the embodiment of Liberia's maritime heritage before World War II. Although the sailing ships have disappeared, yet the canoe remains a noticeable feature in coastal fishing and trade in West Africa up till now.

2.2 WORLD WAR II AND THE ADVENT OF THE OPEN REGISTRY SYSTEM

World War II changed the world radically. Its end heralded the triumph of the Allied powers over the Axis forces. The victory of the Allies can be attributed, in part, to the huge naval forces at their command. Complementing the efforts of the navy was the vast merchant fleet, commandeered by the Allies but largely camouflaged under the flags of "neutral" nation-states. The Republic of Panama played a leading role in this regard and could be rightly described as the pioneer of the contemporary open registry system.

However, it is important to clarify that the use of foreign registries by shipowners of different nationalities, has been a longstanding practice. B. N. Metaxas, in "Flag of Convenience: A study of Internationalism", provides concrete historical precedents to support this assertion. He reveals that in the 18th century, shipowners from Genoa trading in the Peloponnesian peninsular sailed under the French flag. When the French increased consular and other dues, the Genovese transferred their ships under the Austrian flag. Also, in the first half of the 18th century, Greek shipowners used the Turkish flag; but when the political leadership changed for the worse, the Greek shipowners transferred to the Russian flag. Furthermore, in the middle of the 19th Century, many British shipowners registered their vessels under the Norwegian flag for commercial reasons (1985, 8-10).

Panama's initiation to the "dual" registry practice began in 1919 with the transfer of the 1,141-ton *Belen Quezada* under its flag. The ship was transferred from the Canadian registry through the Panamanian consul in Vancouver, British Columbia on 20 August 1919. Panama subsequently attracted several other ships of foreign ownership but the registration of the *Reliance* and the *Resolute* – two American-owned passenger liners in October 1922 generated widespread

consternation both in the United States and Europe. These transfers highlighted the growing impact of the new open registry shipping practice and the potential threats it entailed. Nevertheless, ships of the United Fruit Company and Standard Oil of New Jersey also joined the long list of new entrants to the Panamanian registry (Carlisle, 1981, 6, 15 & 44). By the 1930s, Panama had succeeded in establishing an organised open shipping registry unprecedented in maritime history.

The Panamanian experiment was given further boost at the onset of World War II when a large number of US-owned merchant ships circumvented the US Neutrality legislation of 1935. The Neutrality Act prohibited American vessels from entering war zones and American citizens from travelling on ships belonging to either the axis or allied powers. The Act also restricted American merchant vessels from carrying arms on board. Registering in Panama seemed to be the only alternative available. This could be accomplished in two ways: either through the transfer of a foreign-owned ship under the Panamanian flag or the direct sale of ships to corporations registered in Panama – corporations which, in most cases, were owned and operated by American shipowners. For example, between 1939 and 1941, the Standard Oil of New Jersey (ESSO) incorporated the Panama Transport Company in Panama and, in joint venture with Socony, operated the Panamanian Shipping Company (Carlisle, 1981, 77).

The US government itself, in a bid to assist the British war efforts, found the Neutrality legislation most embarrassing. President Franklin Roosevelt and his team eventually discovered an outlet. They considered the sale by the American government of ships to private companies in neutral countries to be within the letter and spirit of the Neutrality Act. The view was widely held in the Roosevelt administration that if a recently sold ship was torpedoed and sunk, the United States would not be involved in any way.

The Germans, upon learning of the scheme, accused the American leadership of scheming to supply the allies through the back door by using the Panamanian flag. Despite German protestations, the United States through its Maritime Commission sold over 250 vessels to companies in Panama and other “neutral” countries in July 1941 (Carlisle, 1981, 83).

The extensive use of the Panamanian registry between 1935 and 1945 especially by the US government and private companies changed the practice of

"dual" registry and set a new precedent which legitimised the institution of open registry shipping.

2.3 LIBERIA AS A POST-WAR MARITIME NATION

The end of WWII created a large pool of merchant ships hitherto used for war purposes. The shipping market was further saturated with additional tonnage as a consequence of the sale by the US government of over 1,113 "liberty-type" ships to foreign interests under the Ship Sales Act of 1946 (Carlisle, 1981, 110).

The ensuing years were turbulent for international shipping. American shipowners were grappling with how to maintain a competitive edge while paying American taxes and labour rates, the British and other European nations provided tax relief and subsidies to their shipowners which adversely affected the competition and labour unions in America became restless about the negative impact the low labour rates of the Panamanian registry had on American merchant shipping. But none of these events was equal in significance to open registry shipping as the internal political developments in Panama in 1948.

Two main factors contributed to the birth and development of the Liberian registry: the post-war Panamanian political crises and the contrivance of a troubled American shipping industry. To understand the background to these assertions, it is necessary to discuss the precursory political crises in Panama in 1948.

The acquisition of a large chunk of the world's maritime fleet under the Panamanian flag sparked widespread protest among American and European maritime workers who were concerned that the low labour conditions on Panamanian ships could undermine the high American and European labour rates and create unemployment. Organised labour became vocal. The National Maritime Union (NMU) and the Congress of Industrial Organisations (CIO) wrote to President Harry Truman separate complaints on the Panamanian labour issue. Phillip Murray, President of the CIO claimed in his complaint that 16,000 American maritime jobs were lost between 1945 and 1947 because of the Panamanian registry (Carlisle, 1981, 112). The International Transport Workers Federation (ITF) also voiced strong protest but deferred a definite global action pending the outcome of an

investigation by the International Labour Organisation (ILO) into the workers complaints (Metaxas, 1985, 53-55).

The anti-Panamanian hysteria in America fermented an equally vociferous anti-American backlash in Panama. A rather unrelated matter concerning American bases in Panama suddenly became the subject of intense protests leading the Panamanian Parliament to reject the American-Panamanian treaty in 1948. The Americans evacuated the bases thereafter, hoping to stabilise the situation. Yet, the anti-American fervour seeped into the Panamanian elections of 1948. The electoral contestants included Arnulfo Arias who was accused of pro-nazi sympathies in 1941(Carlisle, 1981, 114).

Arias was President of Panama in 1941 when the American government decided to arm American-owned ships operating under the "neutral" Panamanian flag. Arias opposed this policy and seemed to have convinced his cabinet to cancel the registration of armed merchant vessels as of 6 October 1941. The American State Department urgently sought clarification and while explanations were being offered, President Arias apparently oblivious of threats to his office, undertook a short vacation with his wife to Cuba on 7 October 1941. Taking advantage of Arias' absence, a section of the Panamanian cabinet opposed to Arias, launched a *coup d'etat* ostensibly with the covert assistance of the American government. The overthrow of Arias removed the impediments and paved the way for the continuous arming of merchant vessels to supply the allied forces in Europe (Carlisle, 1981, 94-95).

However, in 1948, the deposed Arias contested the presidential elections and staged a historic comeback. Arias' victory was obviously disturbing in some quarters in Panama and the United States. The leader of the National Guard, Jose Remon refused to accept Arias' victory and imprisoned him. His appointee as Arias' replacement – the 73 year-old Domingo Diaz – died in office soon after. The Vice President, Daniel Chanis, in an apparent attempt to invoke constitutional justification for ascendancy to the presidency, was cowed by Remon who subsequently appointed Roberto Chiari as President. But Chiari refused to yield to Remon's behest thereby causing his eviction from power. Remon, in a surprising decision, appointed the controversial Anulfo Arias as President of Panama in 1948 (Carlisle, 1981, 114).

Arias' resurrection to power 7 years later, was not welcomed by American and European commercial shipping interests. They feared that Arias' anti-American, pro-nazi regime was contemplating nationalisation or confiscation of their ships and other assets. They naturally sought the refuge of an alternative flag.

Another contributing factor to the ambivalence of the American shipowners towards Panama was the indiscriminate fluctuations in consular fees at certain Panamanian consulates. There was no precise, universal set of fees; certain Panamanian consuls took advantage of the lack of control to extort fees at will from shipowners. This practice discouraged many shipowners and re-enforced the argument for disengagement from the Panamanian registry.

The frantic search for a new refuge may have led the disgruntled shipowners to seek out Edward R. Stettinius, a former US Secretary of State who had extensive business interests in Liberia. Liberia was attractive because of its historical relationship with America.

In 1947, Stettinius founded the Stettinius Associates, expressly to provide private economic assistance to Liberia. Actual operations were carried out by a subsidiary company – the Liberian Company - under a profit-sharing scheme with the Liberian government and the Liberian Foundation, a Stettinius-run humanitarian organisation headquartered in Liberia (Carlisle, 1981, 118).

One historical account claims that Stettinius perceived ship registration as a "minor adjunct" to his Liberian operations, but the facts suggest the contrary. Stettinius' partners of the Stettinius Associates were key stakeholders in a number of ship registration companies based in Panama. E. Stanley Klein, an attorney for the Associates and James G. Mackey, Secretary-Treasurer of the group were shareholders in the American Oversees Tankers Corporation (AOTC). The AOTC operated a subsidiary in Panama called the Greenwich Marine for the registration, sale and transfer of ships. General Julius Holmes and Admiral William Halsey, both partners of the Stettinius Associates were also influential stakeholders in AOTC (Carlisle, 1981, 120).

It is quite apparent that the AOTC and its subsidiary in Panama seriously interpreted the rise of Arias to power as a grave threat to their commercial enterprises. Their assemblage, under the aegis of the Stettinius Associates, was more than a chance occurrence. Co-opting Blackwell Smith, a former member of

the US Foreign Economic Administration during World War II, to serve as President of the Associates and former under-Secretary of State under Stettinius, Joseph C. Grew, completed the team.

Grew played a leading role, using his extensive contacts in the US government, to convene a "mini-summit" meeting of top US government officials in March 1948 in Washington D.C. Those in attendance were the secretaries of the Army and the Air Force, the Under Secretary of the Navy, an Assistant Secretary of State, and Brigadier General Edwin L. Siebert, Deputy Director of the Central Intelligence Agency (CIA) (Carlisle, 1981, 121). Members of the Stettinius Associates including Stettinius himself used the gathering to enlist the support of the military and diplomatic sectors of the American government for the undertaking. They cited Liberia's strategic importance to the United States and the benefits to be accrued by the CIA. Because the meeting was private, the outcome was not made public. But between April and July 1948, the Stettinius group drafted the Corporation Code for Liberia and worked out modalities for the formation of a service corporation through which foreign companies could be established. However, the drafting of the key Maritime Code that was entrusted to Klein and Mackey had not been completed.

Even while the drafting of the various legal documents by the Americans was in progress, contacts were already made with shipowners to enlist in the Liberian registry. Delta Shipping, Gulf Oil, Ludwig and Onassis were amongst those contacted and lined up for registrations under the Liberian flag. A well worked out plan for ship transfers from the Panamanian registry was awaiting execution. The only hitch was completing the Maritime Code.

The drafting of the Maritime Code was completed on 21 July 1948; but was delayed to early August to permit the leaders of the major US shipping interest to peruse and approve it. Later, copies of the Corporation Code, the Charter of the International Trust Company (ITC) and a charter for the "Liberian Merchant Marine Company" as drafted by the Americans were sent to the Liberian Legislature in Monrovia for adoption (Carlisle, 1981, 124).

It is important to note that the laws were initially tailored to provide joint ownership and profit sharing of the ship registration fees with the Liberian government through the "Liberian Merchant Marine Company" – in addition to tax

exemptions and other privileges of the Open Registry system. This meant double profiteering. Fortunately, the Truslow Committee(see below) scrapped that provision to provide for an equitable arrangement in the interest of Liberia. Throughout the drafting process, there exists no historical evidence that the administration of President William V. S. Tubman or its designate participated in the preparatory discussions to secure the commercial interest of the country. The final documents therefore reflected in their entirety, American shipping and commercial interests only. The Tubman legislature, without due diligence, speedily adopted the Codes in November 1948 and he (Tubman) signed them into law on 16 December 1948.

It is doubtful whether President Tubman and his Legislature subjected the provisions of the American-designed Codes to democratic debate. However, the American State Department later expressed legitimate concerns about the entire process and demanded a review of the Maritime Code in particular in light of its international legal significance. The Stettinius Associates bowed to the State Department's pressure and the State Department subsequently appointed Frances Adams Truslow as head of a Review Committee (Carlisle, 1981, 126).

Truslow, following an assessment of the Maritime Code was frustrated at its hasty preparation and described it as "amateurish legal work" which reflected "ignorance of both maritime law and the international business operations of ships". He noted that the drafters just lifted some particular passages verbatim from the US 1936 Merchant Marine Act and in their haste, littered the document with gross typographical and other grave mistakes (Carlisle, 1981, 127).

Truslow recommended that instead of the questionable "Liberian Merchant Marine Company" proposed in the Klein and Mackey Code, the services of the International Trust Company (ITC) be contracted to manage the Registry. He further recommended that a Bureau with a Commissioner be set up instead of the amorphous arrangement proposed by drafters of the Code. The most significant contribution of the Truslow Committee to the Liberian Maritime Law was the system for the registration and recording of mortgages – a provision that the Stettinius Associates had failed to provide (Carlisle, 1981, 127). Truslow's recommendations were later incorporated into Liberian law in 1956.

The Liberian Shipping Registry began operation, in earnest, in 1949 when the first ship – *World Peace* – officially registered under the Liberian flag (International Trust Company, 1975, 6). The *World Peace* was owned by Stavros Niarchos and under charter to Gulf Oil, one of the oil companies originally contacted and enlisted during the formative stages of the Liberian registry. Several other shipping companies which had also been contacted such as the Ferrell Lines, Delta Shipping and Ludwig-owned National Bulk Carriers, later joined the Liberian registry. Consequently, from 1949 the registry grew steadily and surpassed Panama's about 1956 in both tonnage and number of ships registered.

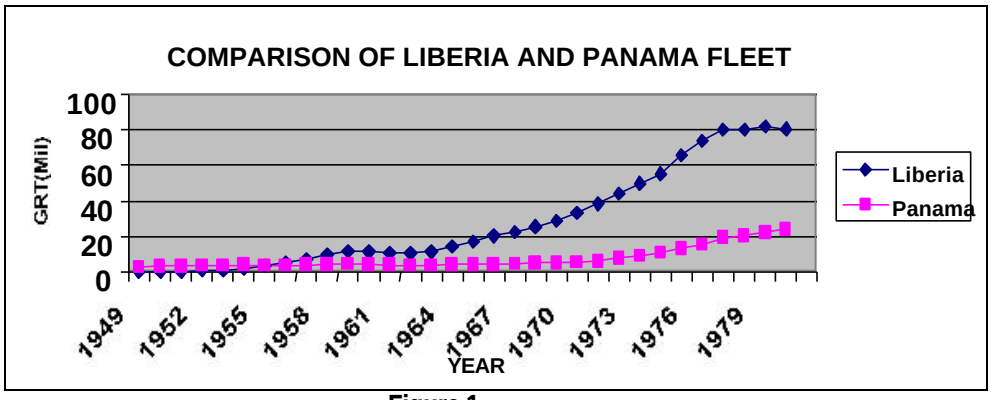

Figure 1

Figure 1 above compares the growth trends in the Liberian and Panamanian registries from 1949 to 1979.

The next Chapter reviews the Flag State implementation process by means of which compliance with mandatory international safety and pollution prevention conventions are realised.

3. FLAG STATE IMPLEMENTATION

3.1 LIBERIA AS A FLAG STATE

Liberia, as a sovereign state, enjoys the right to sail ships under its flag. This right, guaranteed under Article 90 of the United Nations Convention on the Law of the Sea (UNCLOS), is neither negotiable nor transferable. The Liberian flag symbolises the conferring of Liberian nationality on ships which fly that flag. Thus, there exists a relationship between the Liberian State, its Flag and the nationality of ships flying that flag.

Concomitant with these rights, are duties which Liberia, as a Flag State, must perform in compliance with international law. These duties require every state to exercise jurisdiction and control in Administrative, Technical and Social matters over ships flying its flag. Below is a summary of Flag State duties as spelled out in Article 94 of the United Nations Convention on the Law of the Sea, 1982:

Administrative Matters

- maintaining a register of ships,
- training, certification and manning of ships,
- developing, implementing and complying with mandatory international safety standards.

Technical matters

- the construction, equipment and seaworthiness of ships,
- surveys, inspections and certification,
- charts and nautical publications,
- navigational equipment and instruments,
- investigation of casualties.

Social Matters

- labour conditions of seafarers,
- manning and hours of work,
- wages and benefits,
- insurance

3.2 THE BUREAU OF MARITIME AFFAIRS

The United Nations Convention on Conditions for Registration of Ships[1] (UNCCRS) requires that the "Flag State shall have a competent and adequate national maritime administration which shall be subject to its jurisdiction and control"(Article 5, 1986). A competent national administration is thus a vital requirement for the effective implementation Flag State duties.

When the Liberian shipping registry was established in 1948, this requirement was non-existent. The organisational arrangement of the new registry was either a mimicked version of the American Maritime Commission or a contraption of the Stettinius Associates. What was proposed in 1948 by the Stettinius Associates - a small structure headed by a Commissioner who reported to the Secretary of Commerce and at the same time, "consulted" with the Liberian Merchant Marine Company - was unacceptable to the Tubman Administration. The Administration altered the arrangement, placing the Commissioner under the Secretary of the Treasury whilst deleting the aspect relating to "consultation" with the Liberian Merchant Marine Company. The US State Department's Review Committee chaired by Frances Truslow effected additional alterations in 1949. Truslow recommended that a Bureau be established headed by a Commissioner who would promulgate rules and regulations from time to time instead of the International Trust Company (ITC) as the Associates' proposal suggested. Truslow expressed misgivings about the role earmarked for the Liberian Merchant Marine Company i.e., to collect the initial registration fees and the annual tonnage tax, and share them with the Government of Liberia. His recommendation that it be scrapped was accepted by the Tubman administration and implemented accordingly (Carlisle, 1981, 124-128).

What remained of the 1949 Liberian maritime administration was the Office of the Commissioner under the Secretary of the Treasury as depicted in Figure 2 and the International Trust Company (ITC) as a contracted management agency to administer the affairs of the registry. The new maritime administration was named the Bureau of Maritime Affairs (BMA).

[1] Not in force

BUREAU OF MARITIME AFFAIRS
(1949)

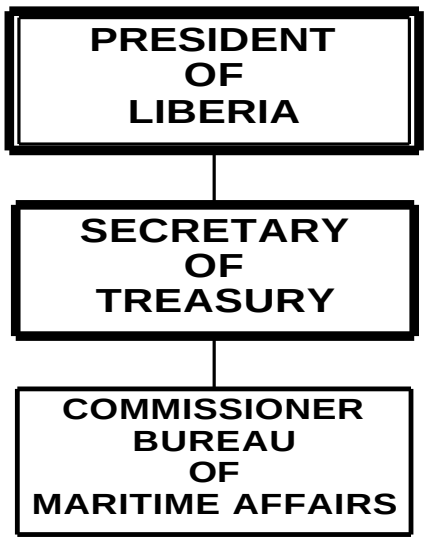

Figure 2

Over the succeeding years, the Bureau operated from a tiny enclave in the then Treasury Department but was later shifted under the Ministry of Transport in central Monrovia. In 1989, four decades and one year following its establishment, the Bureau was granted an autonomous status by an Act of the Liberian National Legislature. The wording of the Act suggests that the decision to grant autonomy was primarily motivated by the overriding need to reconcile a longstanding conflict of authority between the Ministry of Finance(formerly the Treasury Department) and the Ministry of Transport in a bid to save the institution. The Act also reveals the determination of the Liberian government to make the Bureau "less bureaucratic, more responsible and responsive to the commercial environment", implying that it was largely inefficient in the performance of its responsibilities. To attain these ends, the Commissioner of the Bureau became directly answerable to the President of Liberia instead of the Minister of Transport or the Secretary of the Treasury, as was the case in 1949 (The Maritime Act, 1989). Figure 3 is the conceptual organogram of the Bureau of Maritime Affairs in 1998 in lieu of an official organisational chart.

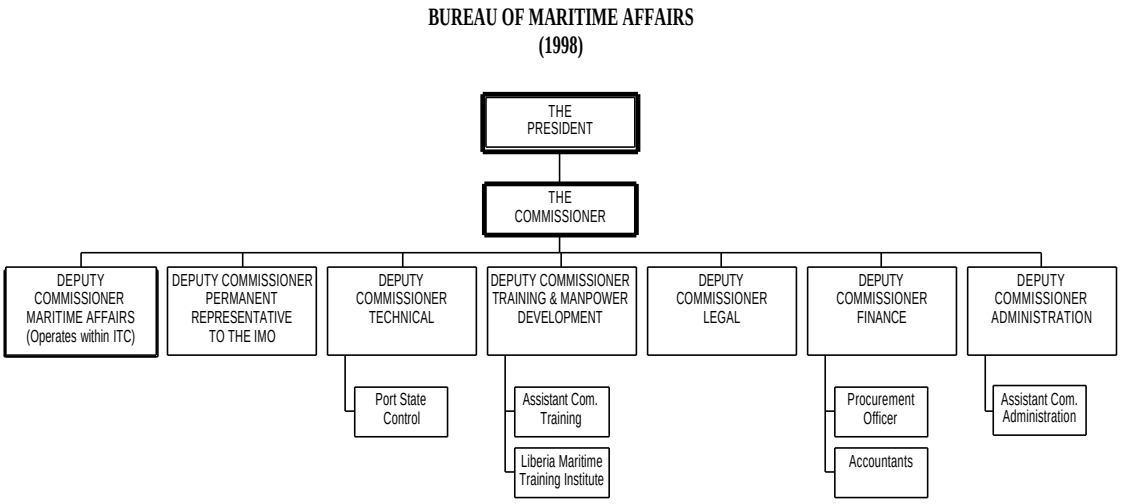

Figure 3

Apart from the statutory enactment making the Commissioner directly answerable to the President of Liberia, the organisation has undergone little re-organisation. At the central office in Monrovia, departmental responsibilities were not clearly defined and job descriptions were hardly available. It is acknowledged however that the *Deputy Commissioner for Technical Affairs* discharges Port State Control functions. The *Deputy Commissioner for Training and Human Resource Development* is responsible for training. The *Deputy Commissioner for Legal Affairs* handles legal matters while financial management duties restricted to the Bureau's Central Office reside with the *Deputy Commissioner for Finance*. *The Deputy Commissioner for Administration* performs routine administrative tasks. *Liberia's Permanent Representative* to the International Maritime Organisation (IMO) enjoys the status of a Deputy Commissioner and reports to the Commissioner of the Bureau.

3.2.1 Liberian Maritime Legislation

The Liberian Maritime Law(LMA) forms the fundamental basis for the administration of the Liberian shipping registry. Chapter 1, Article 2 of the Liberian Maritime Law declares it as governing "all matters affecting the internal order and economy of Liberian Flag ships, including labour relations" (Liberian Maritime Law, 1998). An adaptation of the General Maritime Law of the United States of America, the Liberian Maritime Law was considered an improvement over its contemporaries because

it was apparently tailored to meet the needs of the modern international shipping industry. It addresses ship registration, preferred ship mortgages and maritime liens on Liberian vessels, the responsibilities and liabilities associated with the carriage of goods by sea, the limitation of liability for maritime claims and vessel inspection and certification. Other provisions address safe navigation, maritime investigations and the rights and duties of masters and seamen.

The Liberian Maritime Law is supplemented by Regulations issued by the Commissioner. The Regulations are basically international safety standards promulgated at the IMO and adopted by the Government of Liberia. Between 1948 and 1999, the Government of Liberia ratified and adopted numerous relevant IMO conventions on maritime safety and environmental protection. Appendix I provides details of the status of ratification by Liberia of IMO and IMO-related instruments.

Jurisdiction in the enforcement of all matters arising out of or under the Liberian Maritime Law and Regulations resides in the Circuit Courts of Liberia. However, Section 33 of Chapter 1 of the Liberian Maritime Law empowers "other courts of Liberia or elsewhere to enforce such causes of action"(Liberian Maritime Law, 1998). This implies that enforcement of the Law may take place in foreign countries.

3.2.2 ITC's role as an Agent of Government

Core Flag State duties have been performed by the International Trust Company (ITC) under an agency contract with the Liberian Government since 1949. The idea to create an agent for the administration of the Liberian Maritime Law and Regulations was carved into the Liberian Maritime Code by the legal drafters of the Stettinius Associates in 1949 and remains indelible. The Liberian Maritime Law stipulates:

> "The Regulations promulgated by the Commissioner of Maritime affairs of the Republic of Liberia pursuant to the provisions of Section 11 of this Chapter shall be administered by an agent of the Liberian Government, to be designated and appointed by the Minister [of Finance] for the effective administration of the provisions of the [Liberian Maritime] Law" (The Liberian Maritime Law, Chapter I, Section 13,1998,).

Section 11 refers to the Commissioner's authority to issue Regulations.

All contracts between the Government of Liberia and ITC over the past 50 years enshrined the agency role of ITC. In the 1975 Consolidated Agreement, the Government of Liberia explicitly designated ITC as its "agent for the effective administration of the provisions of the [Liberian Maritime] Law" and delegated to ITC the

"authority to administer such rules and regulations as shall be made and promulgated by the Commissioner" (GOL-ITC Consolidated Agreement, 1975). In addition, the ITC performed corporate management services on behalf of the Liberian government.

Until the eruption of the GOL-ITC controversy in 1998, ITC's operations were shrouded in secrecy. As a result, very little was known about its organisational structure between 1949 and 1998. However, a 1979 publication - *Economic Impact of Open Registry Shipping* - of the International Maritime Associates, Inc., commissioned by the Bureau of Maritime Affairs, gave the only available insight into the structural arrangement of the organisation as shown in Figure 4.

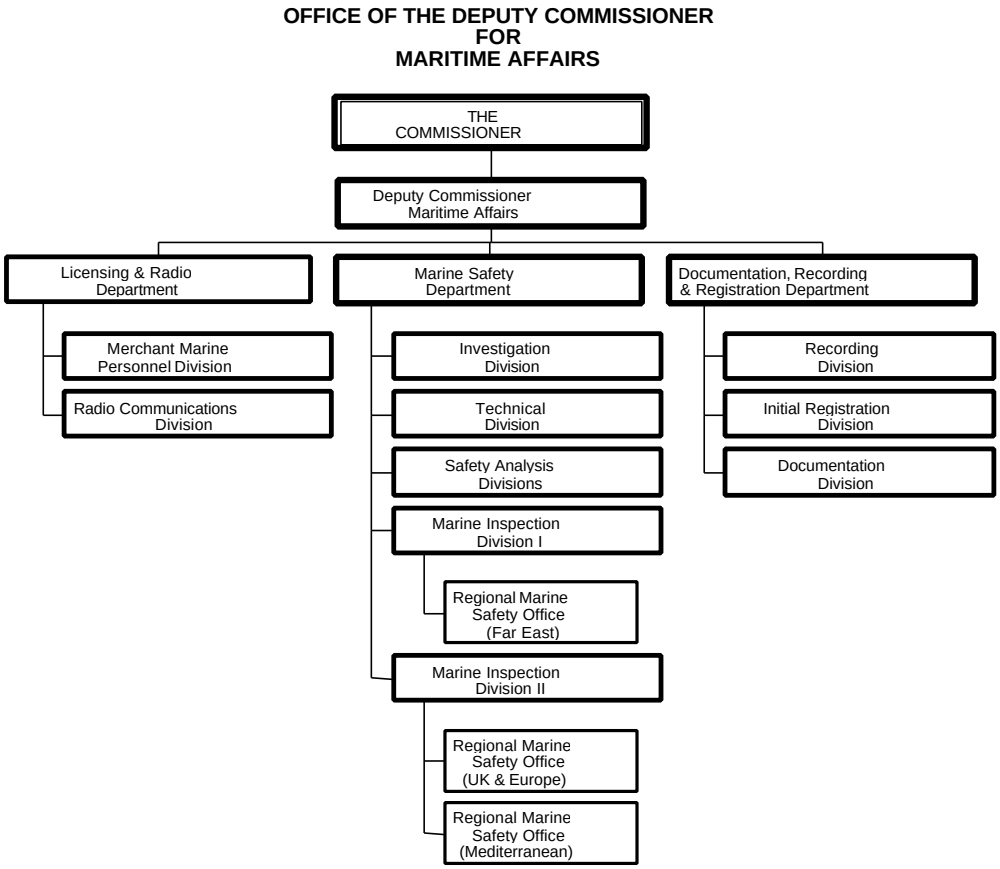

Figure 4

A critical appraisal of the chart reveals a number of concealed contradictions. Firstly, it portrays the Bureau of Maritime Affairs via the Commissioner as exercising *direct* control over the implementation of the Flag State duties when, in fact, it was ITC which did. Secondly, it conveys the mistaken impression that the Deputy Commissioner

[for Maritime Affairs] was directly answerable to the Commissioner of the Bureau. This assertion may be theoretically true, but the reality is that the ITC had exercised *practical* control over the Office of the Deputy Commissioner for Maritime Affairs based at its New York headquarters since the inception of the Liberian Registry. It is recalled that Edward Stettinius in 1949 instructed E. Stanley Klein of the Stettinius Associates to appoint Fred Leninger, an American national and close friend of Stettinius, as the first Deputy Commissioner for Maritime Affairs responsible for the operational(Flag State Implementation) aspects of the Liberian Registry. Leninger occupied the post for over 30 years during which he was directly answerable to directives from ITC's management although the Bureau often theorises a direct line of supervisory authority (Carlisle, 1982, 130). Thirdly, the chart omits a diagrammatic description of the relationship between the Bureau and Classification Societies to which technical matters, i.e., surveys, inspections and certification, are severally delegated. Unlike most maritime administrations in nations with unitary state structures, the Liberian maritime administration implements Flag State duties *indirectly* through the International Trust Company (ITC) which in turn *directly* delegates to Classification Societies as shown in Figure 5.

STRUCTURE OF FLAG STATE IMPLEMENTATION

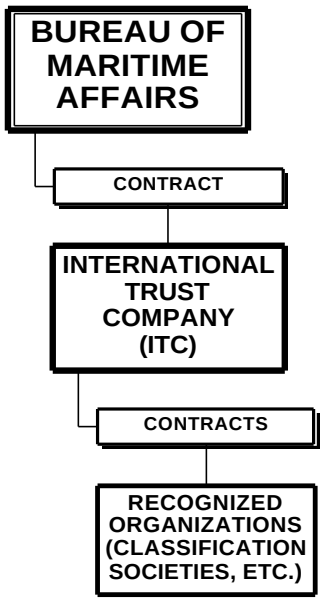

Figure 5

The distinction is blurred by the extensive use of Liberian letterheads, envelopes, insignia, certificates, etc., usually by foreigners designated to sign on behalf of the Liberian Flag State. For example, the American national, Fred Leninger, appended his "Liberian" signature to various types of documents as Deputy Commissioner for Maritime Affairs for over 30 years. Admittedly, the structure reflects the inability and incapacity of the Liberian Government to manage its own fleet with qualified Liberian personnel. ITC's role as the "middle-man" agency has, *inter alia*, estranged the central administration from key international institutions and personalities essential to the growth of the Liberian registry. It is understandable and tolerable that due to the lack of technical and entrepreneurial expertise, ITC could have served positive ends in 1949 and a few years afterwards. However, that the need to maintain ITC or its likes still exists after 50 years, is totally inexcusable.

3.3 DELEGATED FLAG STATE DUTIES

As indicated earlier, the International Trust Company (ITC) over the past 50 years has been authorised by the Government of Liberia to perform certain Flag State duties on its behalf in accordance with Section 13, Chapter 1 of the Liberian Maritime Law. The Law provides the legal framework for the implementation of Flag State duties and provisions thereof are consistent with the requirements of Article 94 of the UN Law of the Sea Convention regarding *Duties of the Flag State*. This section analyses some of the various Flag State duties undertaken by the ITC on behalf of the Government of Liberia.

3.3.1 Registration of Ships

Chapter 1, Section 14 of the Liberian Maritime Law provides for the maintenance of a "central office where there shall be recorded or filed, in properly indexed public registers, all documents of the following nature: (1) Bill of Sale and other instruments of conveyance of vessels, (2) Mortgages or hypothecation of vessels, (3) Assignment of mortgages, (4) Certificates of permanent and provisional registry, (5) Licenses and certificates of officers and members of ship's crew, and (6) All other documents relating to vessels and mortgages which are entitled to recordation"(Liberia Maritime Law, 1998).

Registration of vessels is undertaken in the Vessel Registration Division in New York and Reston, Virginia, USA although vessel registration is also carried out in a network of overseas offices in London, Rotterdam, Piraeus, Tokyo, and Hong Kong.

Ships of more than 1,600 net tons and not more than 20 years of age engaged in foreign trade are eligible for registration under the Liberian flag. Additionally, any vessels of 20 net tons and over engaged in coastal trade between ports in Liberia or within the West African region are eligible for registration. Also qualified for registration are yachts and other vessels of 100 net tons or more used exclusively for pleasure. An important pre-condition for registration is that the owners of vessels must be citizens or nationals of Liberia. Section 51 of sub-Chapter 1 of the Liberian Maritime Law describes the terms "citizen" and "national" as synonymous to a corporation, partnership or Association incorporated under various titles of the Liberian Business Law. However, a *Foreign Maritime Entity* – a business entity registered under the law of a foreign country – can register vessels in Liberia provided it submits *inter alia* a certificate of Good Standing and certified copies of Articles, Charter or other documents upon which the existence of the foreign entity is based.

All vessels applying to be registered in Liberia are required by the Liberian Maritime Law to be classed with members of the International Association of Classification Societies (IACS). Additional requirements where relevant and applicable, must be fulfilled to entitle ships to a Liberian Permanent *Certificate of Registry*. These requirements are contained under Section 4, Chapter III of the Liberian Maritime Regulations: -

- An Initial Safety Inspection
- Classification Certificate
- International Tonnage Certificate
- International Load Line certificate
- International Oil Pollution Prevention Certificate(MARPOL Annex I-V) and the Noxious Liquid Substances(NLS) Certificates
- Cargo Ship Safety Construction Certificate
- Cargo Ship Safety Equipment Certificate
- Cargo Ship Safety Radio Certificate
- Document of Authorisation for the Carriage of Grain
- International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk(for chemical tankers)
- International Certificate of Fitness for the Carriage of Liquefied Gas in Bulk(for chemical tankers)
- Safety Management Certificate
- CLC Certificate

- Minimum Safe Manning Certificate
- Liberian Ship Radio Station Certificate
- Certificate of Cancellation of Vessel's Former Registry(for existing ships)
- Acceptance of International Tonnage Certificate(for existing ships)
- Certificates of Financial Responsibility (COFRs)

Given the large number of passenger ships registered under the Liberian flag, it may be necessary to include as a requirement for a Certificate of Registry, a *Passenger Ship Safety Certificate* in accordance with Chapter 2, Regulation I, of SOLAS.

3.3.2 Inspection, Survey and Certification

The Liberian Government delegates the functions of survey and certification to classification societies recognised by it through the ITC. Chapter II, Section 2.58 of the Liberian Maritime Regulations grants authority to all full members of the International Association of Classification Societies to survey Liberian vessels and issue international statutory certificates on behalf of the Liberian Government. The validity of the statutory certificates range from 12 months to 5 years. The list of the approved members of IACS is as follows:

(1) American Bureau of Shipping(ABS)
(2) Bureau Veritas(BV)
(3) Det Norske Veritas(DNV)
(4) Germanisher Lloyd(GL)
(5) China Classification Society(CS)
(6) Maritime Register of Shipping(MRS)
(7) Lloyds Register of Shipping(LR)
(8) Nippon Kaijai Kyokai(NKK)
(9) Registro Italiano Navale(RINA)
(10)Korean Register of Shipping (KRS)
(11)Polski Rejestr Statkow(PRS)

It is difficult to ascertain whether ITC deploys surveyors in its employ or those of classification societies under contract. Very little is mentioned regarding inspection of Liberian ships in the Liberian Maritime Law and Regulations of 1956 except for the authority of the Commissioner contained in Section 7.191 of the Liberian Maritime Regulation to appoint nautical surveyors to board and examine or inspect Liberian vessels. The apparent limitations of detailed provisions on ship inspection must have led to an amendment of Section 7.191 in 1986. Further revisions, carried out in 1988 were incorporated in Marine Notice No. 7-191-2. The Notice requires Annual Safety Inspections for all Liberian vessels excepting Cargo vessels under 500 gross tons,

pleasure crafts, unmanned barges and fishing vessels within Liberian jurisdictional waters. It also requires passenger vessels including High-Speed Passenger ferries to undergo quarterly safety inspection. Other provisions are periodic safety inspection for special purpose vessels and unscheduled safety inspection of all Liberian vessels. The requirements are in fulfilment of Regulations 6,7,8,9 & 10 of Chapter I of SOLAS.

By adopting the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974 (the 1998 SOLAS Protocol) and the Protocol of 1988 relating to the International Convention on Load Lines, 1966 (the 1988 Load Lines Protocol), Liberia accepted to introduce the harmonised system of survey and certification (HSSC). The HSSC is designed to simplify the survey and certification requirements and alleviate the burden on administration, operators of ships and crew. Although the HSSC has not entered into force, the Liberian maritime authorities advised shipowners/operators in Marine Notice No. 2-035-7, to commence early implementation of the HSSC scheme in accordance with Resolution A.718(17) while awaiting its entry into force.

3.3.3 Maritime Casualty Investigation

The Liberian Maritime Law and Regulations contain procedures for investigating maritime offences arising out of marine accidents. Chapter IX of the Maritime Regulations defines a Marine Offence as “any act, failure to act, or offence contrary to the Maritime Law or any regulation thereunder, including any rules made as provided by law and any international convention or agreement to which Liberia is a party or which it has implemented” (Liberian Maritime Regulations, 1998).

The Regulation requires the owner or master of a Liberian vessel involved in a marine accident or casualty to submit a formal report to the Commissioner or Deputy Commissioner of Maritime Affairs. Any of these officials may institute an investigation. The investigation may be preliminary or formal. In the event of a preliminary investigation, an investigating officer is appointed with full authority to determine whether there are grounds for a formal investigation into the casualty or offence. All owners of Liberian vessels and certificated personnel are required to co-operate in any investigation involving the collection of evidence, interviewing of witnesses, etc.

A formal investigation may be launched and when the casualty is considered major, a Marine Board of Investigation comprised of three or more members may be set up by the Commissioner, Deputy Commissioner or an appointed investigating officer.

Any of these officials is authorised to designate a chairman of the Marine Investigation Board. The Board is statutorily empowered to:

> *"set hearings, administer oaths, require the attendance of witnesses, require persons having knowledge of the subject matter of the investigation to answer written interrogatives, require the production of relevant evidence including but not limited to books, papers, documents and records, rule upon the nature and admiralty of the evidence, board and inspect vessels and their appurtenances and visit the scene of casualty or offence"*[Liberian Maritime Regulations, Chapter IX, Section 5(13)].

An Investigative Report is required to be submitted to the Commissioner following a formal investigation. The Report is normally required to contain findings, conclusions and recommendations. The Commissioner then proceeds to take the appropriate decision in the matter, which may be made public if judged necessary. The Liberian Maritime Law contains detailed *Rules for Marine Investigation and Hearings (1998)* which are accessible to shipowners and operators.

Resolution A.849(20) adopted by the IMO on 27 November 1997 entitled "Code for the Investigation of Marine Casualties and Incidents" is recommended as a standardised global approach for guidance in the investigation of marine accidents and incidents.

3.3.4 Training, Certification and Manning of Ships

Minimum standards for seafarers' training and certification have been internationally unified under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW '95) and supplementary STCW Code to which Liberia is a party. Consistent with the provisions of the Convention and Code, the Liberian maritime authorities, hereafter referred to as "the Bureau" issued a number of Marine Notices providing policy guidance for the implementation of the new requirements.

Accordingly, all training and certification must conform to the revised STCW '95 standards on 1 February 2002. However, the "Grandfather Clause" provides that seafarers that have received sea-going training or commenced sea-going services prior to 1 August 1998 may be documented under the requirements existing prior to the STCW 95 amendments until 1 February 2002. Unlike other statutory certificates, the *Certificates of Competency* are issued by the Bureau(Marine Notice No. 10-325-3, 1998).

Two forms of certificates are issued. One is an *Original Certificate*, issued on the basis of an examination administered by the Bureau or a renewal of a Liberian

certificate. Another is an *Endorsement Certificate*, issued predicated upon an original equivalent certificate good to the expiration date of the original certificate. Both certificates are required to specify the respective functions to be performed and the level of responsibility of the seafarer. Certificates issued on the basis of examination and evaluation by the Bureau are valid for 5 years. Certificates based on "equivalent" to an original national document are valid only for the period of validity remaining on the equivalent certificate. High Speed Craft (HSC) rating certificates are valid for 2 years (Marine Notice No. 10-325-3, 1989).

The Bureau also requires maritime training institutions seeking course and programme approval to conform to the requirements of STCW '95. Some of the requirements are: - a programme that is monitored by a quality standard system acceptable to the Bureau or is certified by an International Maritime Organization (IMO) "white-listed" national government; course curricula which meet at a minimum the requirements of the STCW Code to the equivalent standard of "model" courses developed by the IMO; sufficient training to refresh candidates knowledge, understanding and proficiency in the areas required by the STCW Code; an efficient and effective instructor/trainee/equipment ratio; and, written or practical examinations. The maritime training institute is also required to allow a representative of the Bureau to inspect its facilities, equipment and records; conduct interviews and survey of students, assign personnel to observe or participate in course instruction; and supervise or administer the required examination or practical demonstration. No unilateral change is permitted in the maritime institute's curriculum without written approval of the Bureau (Marine Notice No. 10-325-3, 1998).

The STCW '95, the Collision Regulations and SOLAS 74/78 prescribe strict manning requirements. Primary responsibility is placed upon the master of the ship to ensure that watchkeeping arrangements are adequate for maintaining safe navigational watches. Officers on watchkeeping duties are responsible for navigating the ship safely during the period of duty. The chief engineer in consultation with the master is responsible to ensure that watchkeeping arrangements adequately maintain safe engineering watches. The officer in charge of the watch, as representative of the master, is responsible at all times for the navigation of the ship. To ensure fitness for duty on board the ship, the requirements provide a minimum of 10 hrs. rest period in any 24 hrs. for all persons assigned on duty as officers in charge of a watch or as rating

forming part of the watch. A proper *look-out* is also required to be maintained to avoid collision or stranding (Marine Notice No. 10-292-1, 1998).

These conditions must be satisfied by the shipowner before acquiring a minimum *Safe Manning Certificate,* which is a pre-requisite for the issuance of a Liberian *Permanent Certificate of Registry* (see Registration of Ships). The minimum safe manning requirements for Liberian vessels of various categories are shown in Table 1 below.

GENERAL	
APPLICATION	**BASIC MANNING**
All ships over 8000 GT/3000kW Non-automated	Master Chief Mate Second Mate Third Mate Radio Officer/GMDSS 3 Able Seamen 3 Ordinary Seamen Chief Engineer First Assistant Second Assistant Third Assistant 3 Oiler/Motormen
REDUCTIONS FROM BASIC MANNING – DECK	
APPLICATION	**SCALE**
Category D/1	
Vessels over 5000 GT but under 8000 GT (3-watch ships)	Master Chief mate Second Mate Third Mate Radio Officer/GMDSS Two(2) Able Seamen Two (2) Ordinary Seamen
Category D/2	
Vessels over 3000 GT but under 5000 GT (3-watch ships)	Master Chief Mate Second Mate Third Mate Radio Officer/GMDSS Two (2) Able Seamen Two (2) Ordinary Seamen
Category D/3	
Vessels under 3000 GT but over 500 GT (2-watch ships can go into 3 watches if necessary)	Master Chief Mate Second Mate Third Mate Radio Operator(s)/GMDSS Two (2) Able Seamen One (1) Ordinary Seaman
Category D/4	
Vessels under 50 GT on passages of less than 72 hours Over 72 hours, Category D/3 applies)	Master Chief Mate Radio Operator(s) Two(2) Seamen

Category D/5	
Vessels engaged in special or unusual operations	By direction of the Administration upon application

REDUCTIONS FROM BASIC MANNING – ENGINE	
APPLICATION	**SCALE**
Category E/1	
Vessels over 3000 Kw and certified for unattended operation	Chief Engineer First Assistant Two (2) Oiler/Motormen
Category E/2	
Vessels under 3000 kW but over 750 kW not equipped for unattended operation	Chief Engineer Second Assistant Third Assistant Three (3) Oiler/Motormen
Category E/3	
Vessels under 3000 kW but over 750 kW and certified for unattended operation	Chief Engineer Second Assistant Two (2) Oiler/Motormen
Category E/4	
Vessels under 750 kW and equipped for unattended operation	Chief Engineer Third Assistant Two (2) Oiler/motormen
Category E/5	
Vessels under 750 kW and certified for unattended operation	Chief Engineer Three (3) Oiler/Motormen

Source: Marine Notice No. 10-292-1

Table 1

3.3.5 The International Safety Management(ISM) Code

The implementation of the International Safety Management (ISM) Code is an obligatory Flag State duty in accordance with Resolution A.741(18) of the IMO. The ISM Code focuses on the human factor and its influence on the prevention of marine disasters. It involves the application of management techniques to the operation of ships and shipping companies, realising that personnel training and competence are critical to the prevention of maritime casualties and pollution. The objectives of the ISM Code are:

> *"To ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property"*(ISM Code, 1994, 2).

As an amendment to the SOLAS 74 Convention, the ISM Code came into force on 1 July 1998 as Chapter IX of SOLAS. Its provisions are mandatory and applicable to all ships and shipping companies but an extension has been granted to all cargo ships and MODUs of 500 tons and over until 1 July 2002.

Evidence exists that the Bureau had commenced application of the provisions of the Code to Liberian flag ships before it entered into force in July 1998. Marine Notice No. 2-035-3 of January 1997 contained advice and guidelines to shipowners, operators and masters of Liberian flag ships regarding the application and implementation of the ISM Code. The Code requires shipowers/companies to develop, implement and maintain a Safety Management System (SMS) to ensure compliance with mandatory rules and regulations and provide procedures for the safe operation of ships. A Liberian ship's SMS is required to consist of the following elements: -

- ***A Safety and Environmental Policy***
  A policy that provides safe practices in ship operation and a safe working environment; establishes safeguards against all identifiable risks; and continuously improves the safety management skills of personnel ashore and aboard ships. The Bureau requires the policy to be signed by the company's Chief Executive or other senior executive officer.

- ***Company Responsibility and Authority***
  Detailed information on the company's identity, which documents the responsibility, authority and interrelationship of all personnel working both ashore and onboard. The owner of a Liberian flag vessel is obligated to provide to the Bureau the name, address, telephone, FAXES and TELEX number of the company responsible for the operation of the vessel.

- ***Designated Person(s)***
  Designation of a person or persons ashore who would enable direct and immediate contact at all times between the company and the Bureau. The Bureau requires that the person(s) should have the independence and authority to report to the highest level of management.

- ***Master's Responsibility and Authority***
  Clearly defined duties and obligation of the master including the authority and discretion over shipboard operations. Chapter 10, Section 296 - 299 of the 1998 Liberian Maritime Law as well as IMO Resolution A.443(XI) contains applicable provisions regarding this requirement.

- ***Resources and Personnel***
  Recruiting and employing qualified personnel, and providing adequate support so that the Master's duties are performed safely. The Bureau requires that joining crewmembers have proper seafarer's certification including licences, special qualification certificates, seamen's identification and record books and training.

- ***Development of Plans for shipboard operations***
  Establishing procedures for the preparation of plans and instructions for key shipboard operations including the definition of tasks and assignment of qualified personnel.

- ***Emergency Preparedness***
  Establishing procedures for drills and exercises to prepare for hazards, accidents and emergency situations.

- ***Reports and analysis of non-conformities, accidents and hazardous occurrences***
  Putting in place procedures for reporting to the company non-conformities, accidents and hazardous situations and ensuring proper investigation and analyses.

- ***Maintenance of the ship and equipment***
  Developing procedures to maintain the ship and equipment in compliance with the requirements of the relevant international safety standards by ensuring that prescribed inspections are carried out, non-conformities are reported, corrective actions are taken and records are maintained.

- ***Documentation***
  Maintaining on board a Safety Management Manual, which should contain descriptions and implementation procedures of the Safety Management System.

- ***Company Verification, Review and Evaluation***
  Conducting periodic internal safety audits to verify the effective and efficient implementation of the SMS and ensure that deficiencies arising therefrom are corrected with the relevant personnel fully involved.

When the company has successfully developed and implemented the SMS and complied with the provisions of the ISM Code, an *initial safety management audit* is undertaken. A satisfactory initial safety management audit normally entitles the company to a *Document of Compliance (DOC)* which forms the basis for the issuance of a *Safety Management Certificate (SMC)* by the Bureau. Both the DOC and the SMC are valid for five (5) years and are renewed after a renewable safety management audit is conducted at least six (6) months before the expiry of the DOC and SMC.

Like most statutory certificates, the Bureau have delegated to members of the International Association of Classification Societies (IACS), the authority to carry out annual and intermediate verifications of company compliance with the provisions of the SMS and ISM Code. The Societies are also authorised to issue Documents of Compliance (DOC) and Safety Management Certificates (SMC). Both the DOC and SMC can be invalidated and withdrawn only by the Flag State in the event the company fails to conduct periodic verifications and fully conform to the requirements of the ISM Code.

Crafted to meet the needs of the increasingly complex shipping industry, the ISM Code is regarded as a modern management tool capable of providing the most effective means of identifying non-conformities both ashore and onboard and ensuring that corrective measures are instituted to prevent maritime accidents and protect the marine environment.

3.3.6 Labour Conditions

The maintenance of improved conditions of work and life for seafarers is an important responsibility of the Flag State, especially in light of the recognition that 80% of all maritime accidents are caused by human-related errors. The International Labour Organisation (ILO), a specialised agency of the United Nations, has pioneered work in this area and co-operated closely with the IMO and other international organisations in developing standards for improving the labour conditions of seafarers. Some of the measures developed by the ILO have not entered into force but a number of important conventions have been ratified by Liberia with respect to the living and working conditions of seafarers employed onboard Liberian flag vessels.

Chapter X of the Liberian Maritime Law contains numerous provisions on seafarers' living and working conditions. Below is a summary of the essential provisions:

- ***Accident Prevention***
  The Master of every Liberian vessel is required to appoint from amongst the crew a suitable person or a committee responsible for accident prevention. Unsuitable conditions onboard, when identified by the person or committee are to be brought to the prompt attention of the Master.

- ***Food and Water***
  Sufficient supply of water and food of suitably nutritive quality and variety are required to be maintained onboard the ship and such food are to be hygienically prepared, dispensed and served.

- ***Medical Examination and Certificates***
  Each seafarer is required to possess a physical examination certificate signed by a medical practitioner, attesting to the holder's medical fitness for duty.

- ***Seamen's Article of Agreement***
  An Article of Agreement must be signed between the Master as representative of the shipowner and the Seaman before employment is effected onboard a Liberian vessel. The Article normally covers conditions regarding wage scale, an eight- hour working day, conditions for repatriation, etc.

- ***Accommodation of Crew***
  The living conditions of crew on board a Liberian flag vessel are set by the Bureau and are in conformity with provisions of relevant international Conventions.

- ***Competency of Officers***
  It is required that every master, mate, chief engineer, assistant engineer and radio officer display their respective Licence of Competence onboard in a conspicuous location.

In accordance with ILO Conventions 87 and 98 to which Liberia is a party, seafarers on Liberian ships are guaranteed the right to organise and bargain in addition to the freedom of association. Appendix II shows the ILO Conventions on maritime labour issues to which the Government of Liberia is a signatory.

Flag State Implementation is perhaps the most important maritime obligation of any Flag State since the safety of life at sea, the prevention of marine pollution and the protection of the marine environment depend primarily on how effectively these duties are discharged. The foregoing analyses show an apparent organised and effective Flag State Implementation process; however, on-the-scene verification the process was not possible.

Chapter 4 assesses the management of the Liberian Registry by ITC and the supervisory role of the Government of Liberia in the context of the 1975 GOL-ITC Consolidated Agreement.

4. THE MANAGEMENT OF THE LIBERIAN REGISTRY

4.1 THE GOL – ITC CONTRACT[2] AND THE PERFORMANCE OF THE ITC

A brainchild of the Stettinius Associates, the International Trust Company (ITC) was conceived and established to serve as the service agency through which the Liberian registry would be administered. In 1949, its character was slightly modified by the Truslow Review Committee commissioned by the U. S. State Department. Between 5 January through 8 February 1949, George Schaeffer, an American appointed by the Stettinuis Associates, incorporated the ITC in Liberia. Schaeffer also served then as Vice President of Chase National Bank in the United States and had a history of long years of work in Panama (Carlisle, 1981, 129).

Three factors may have given rise to the establishment of ITC as a service agency in 1949: -

1. The lack of trained and experienced Liberian maritime personnel,

2. The desire to avoid the mistakes of the Panamanian registry in using consular personnel to manage its shipping business;

3. To ensure that the interests of American shipowners were protected by exercising effective control over the vital aspects of the registry's operation.

The first contract between the Government of Liberia and the International Trust Company was signed on 8 February 1949 for a 10-year term ending in 1959. It was extended on four separate occasions in the last 50 years. Table 2 gives a detailed breakdown of the contractual agreements between the Government of Liberia and the International Trust Company since 1949.

[2] Contract between the Government of Liberia(GOL) and the International Trust Company(ITC).

GOL-ITC CONTRACTS 1949-1999		
No.	**EFFECTIVE DATE OF CONTRACT**	**CONTRACT TERM (YRS.)**
1.	8 February 1949	10 years (1949 – 1959)
2.	3 June 1953 (First Extension)	10 years (1959 – 1969)
3.	12 November 1965 (Second Extension)	10 years (1969 – 1979)
4.	1 January 1975 (CONSOLIDATED AGREEMENT) (Third Extension)	10 years (1979 – 1989)
5.	1 January 1989 (Fourth Extension)	10 years (1989 – 1999)

Source: GOL-ITC Consolidated Agreement, 1975 & Seatrade Review, 1998

Table 2

"Special contracts", such as the 29 May 1950 GOL-ITC Agreement and the 27 February 1957 GOL-LSI[3] Contract, were entered into outside the framework of the main contracts. However, an attempt was made in 1975 to assemble the separate contracts into a Consolidated Agreement with the same force and effect (GOL-ITC Consolidated Agreement, 1975).

4.2.1 Contractual obligations of the ITC

Under Section I of the 1975 Consolidated Agreement, ITC was contractually obligated to perform ***Maritime*** and ***Corporate*** functions.

Maritime Functions

The Maritime functions performed by ITC as an agent of the Government of Liberia are Flag State duties spelled out under sub-Section 3.1 (*Liberia's Flag State Duties*) and discussed in detail under sub-Section 3.3 (*Delegated Flag State Duties*) of Chapter 3 of this paper.

Corporate Functions

The Corporate functions of the ITC entailed serving as register agent for Liberian offshore corporations. In carrying out this function, ITC was empowered to promote

[3] Liberian Services Inc.(LSI), a company incorporated in the United States to which the Government of Liberia and ITC had sub-contracted certain maritime duties.

Liberia as an offshore corporate jurisdiction in support of the maritime programme and collect the following taxes and fees: -

- Annual and Initial Tonnage taxes,
- Initial Ship Registration and Change-of-Name fees,
- All other fees required under the Liberian Maritime Law and Regulations.

Administration of the 1975 Consolidated Agreement

The 1975 Consolidated Agreement contained detailed procedures regarding the management of maritime taxes and fees collected by ITC. The Agreement required ITC to deposit all tonnage taxes collected in an ITC Account and subsequently remit 80% of the total deposit to a special "Government Tonnage Tax Account". The remaining 20% was allocated for ITC as compensation for the collection of tonnage taxes. In 1998, the Annual Tonnage Tax stood at $0.40 per net ton (Marine Notice No. 1-019-1, 1998).

Similar procedures applied in the handling of Initial Ship Registration and Change-of-Name fees except that the 80% entitlement of the Government of Liberia was required to be deposited in a different account, the "Government Maritime Fee Account". For rendering this specific service, ITC was assigned 20% of all fees collected. In 1998, the Initial Registration Fee was $2,500.00 while Change-of-Name fee varied between $25 and $150.00 depending on the net tonnage of a vessel (Marine Notice No. 1-019-1. 1998, 1-2).

According to the Consolidated Agreement, a third set of fees – the so-called "Section 2.90 fees" – were to be deposited by ITC in a third, separate account and monies therein were not to be co-mingled with monies in other accounts. However, Section 2.90 of Chapter II of the Liberian Maritime Regulations refers to "Required Agreement by Liberian Shipowner and Foreign Bareboat Charterer", and not to fees. The only reference to a fee is contained in Marine Notice No. 1-019-1, regarding a Certificate of permission for Foreign Bareboat Charter Registration. It is likely that an alteration was effected in the subsequent GOL-ITC contract for the term 1979–1989 to reflect a reference to Section 2.40 of Chapter II of the Liberian Maritime Regulations relating to "Cost of Marine Investigation, International Participation and Nautical Training". According to the provisions of this Section, each Liberian registered vessel is required to pay an annual fee of $1,000.00 in addition to 5 cents per net ton of the vessel's registered tonnage. Despite the apparent alteration, the purposes for which the fees were allocated are identical with respect to Section 2.90 fees mentioned in the 1975

Consolidated Agreement and Section 2.40 fees mentioned in the Liberian Maritime Regulations. The fees were allocated, *inter alia*, for the following purposes: -

- To pay contributions assessed to Liberia by the IMO,
- To underwrite the cost of marine investigation,
- To defray the expenses associated with the participation of Liberian delegations in international meetings, conferences, etc.,

Section V of the Consolidated Agreement also required ITC to collect Annual Corporation Registration fees payable by corporations registered in Liberia. Fees collected under this arrangement were to be paid by ITC directly to the Ministry of Finance in Monrovia. The Agreement provided no compensation to ITC for services rendered with respect to Sections 2.40 (Section 2.90) and V activities as mentioned above.

Other fees collected by the ITC include: - Marine Safety Inspection fees and fees relating to the documentation of vessels, the recording of instruments, radio communication, merchant marine personnel certification, special services and miscellaneous activities. It is not clear whether ITC received compensation for rendering these specific services. According to Marine Notice No. 1.019-1, Liberian Consuls in various ports of the world, who performed specific maritime functions, were also entitled to collect *consular fees* independent of the ITC. The Consular fees are used to defray the cost of diplomatic services rendered.

4.2.2 Conformities

In the absence of an adequate mechanism for verification, it is inherently difficult to objectively identify conformities or non-conformities with respect to contracts, prescriptive standards and procedures. Thus, evaluating the performance of the ITC regarding its contractual obligations poses obvious problems. One way of surmounting these problems is by using available data to compare Liberia's performance with other Flag States in terms of safety standards, growth of the registry and casualty figures over the last 50 years. With respect to corporate responsibilities, ITC's performance may be rightly measured against the comments and reservations of the Government of Liberia (as a party to the Contract) and individuals or institutions associated with the Liberian registry.

The effective discharge of Flag State responsibilities is a complicated and herculean task at which many great nations have failed. It requires a competent administrative structure, massive infrastructure and an international network of offices

with highly trained marine personnel. Significant financial resources are also needed to facilitate operations on an international scale. Since 1949, ITC has had the onerous task of establishing such a structure and ensuring its effective operation.

Table 3 shows the fluctuating trend in gross tonnage and number of ships registered in Liberia from 1949 to 1998 under ITC's management.

LIBERIA					
Year	Number of ships registered	Gross Tonnage (Millions)	Year	Number of ships registered	Gross Tonnage (Millions)
1949	5	0.05	1974	2332	55.32
1950	22	0.24	1975	2520	65.82
1951	69	0.59	1976	2600	73.48
1952	105	0.90	1977	2617	79.98
1953	153	1.43	1978	2523	80.19
1954	245	2.39	1979	2466	81.53
1955	436	4.00	1980	2401	80.29
1956	582	5.58	1981	2284	74.91
1957	743	7.47	1982	2189	70.72
1958	975	10.08	1983	2062	67.56
1959	1085	11.94	1984	1934	62.02
1960	977	11.28	1985	1808	58.20
1961	903	10.93	1986	1658	52.65
1962	853	10.57	1987	1574	51.41
1963	893	11.39	1988	1507	47.89
1964	1117	14.55	1989	1455	47.89
1965	1287	17.54	1990	1688	54.70
1966	1436	20.60	1991	1536	50.90
1967	1513	22.60	1992	1545	52.60
1968	1613	25.72	1993	1548	54.50
1969	1731	29.22	1994	1518	53.10
1970	1869	33.60	1995	1525	56.80
1971	2060	38.55	1996	1579	58.87
1972	2234	44.44	1997	1574	58.14
1973	2289	49.40	1998	1599	58.71

Sources: "Flag of Convenience: A Study of Internationalism" & ISL (1992, 1994, 1996 & 1998)

Table 3

As indicated in Table 3 and illustrated in Figures 6 and 7, the Liberian registry under ITC's management grew steadily between 1949 and 1979. The number of ships registered increased from 5 in 1949 to 2,466 in 1979. The combined gross tonnage of all Liberian registered vessels also skyrocketed during the same period from 50,000gt to 81,530,000gt.

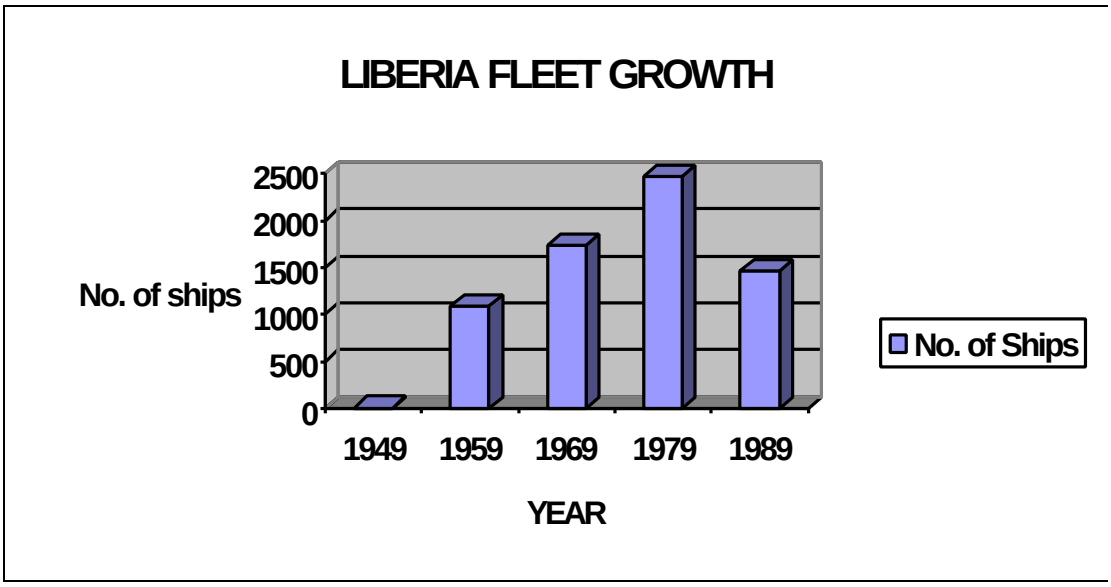

Figure 6

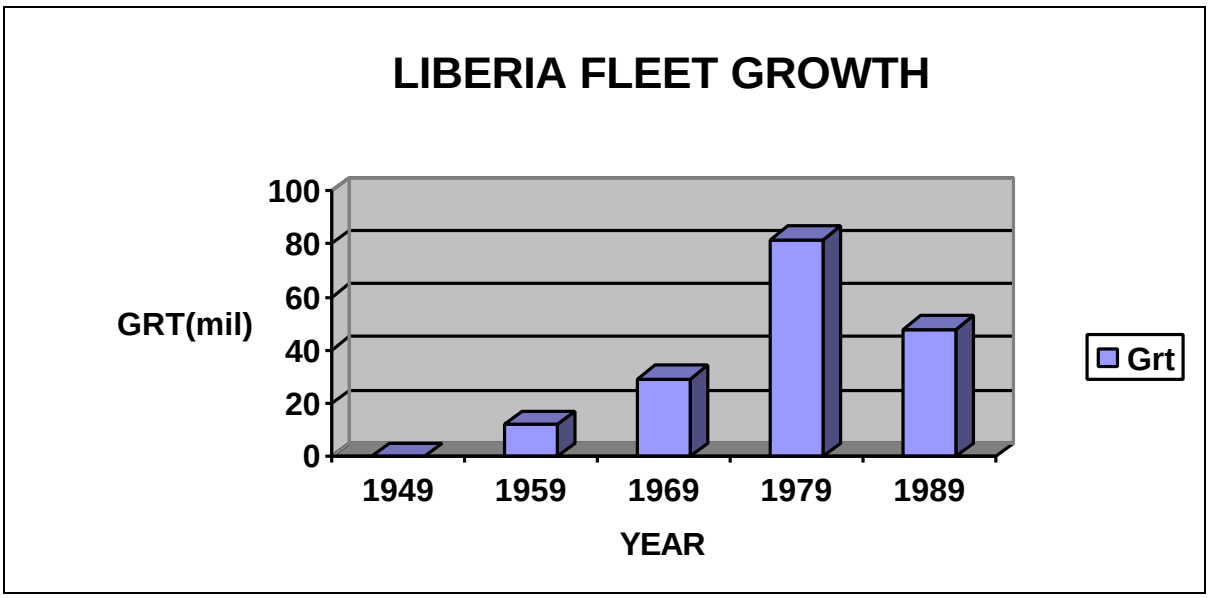

Figure 7

By 1979, Liberia had gained the enviable status of the world largest maritime nation, accounting from approximately 19.74% of the world's merchant fleet. Figure 8 illustrates the trend in growth of the Liberian and world merchant fleets.

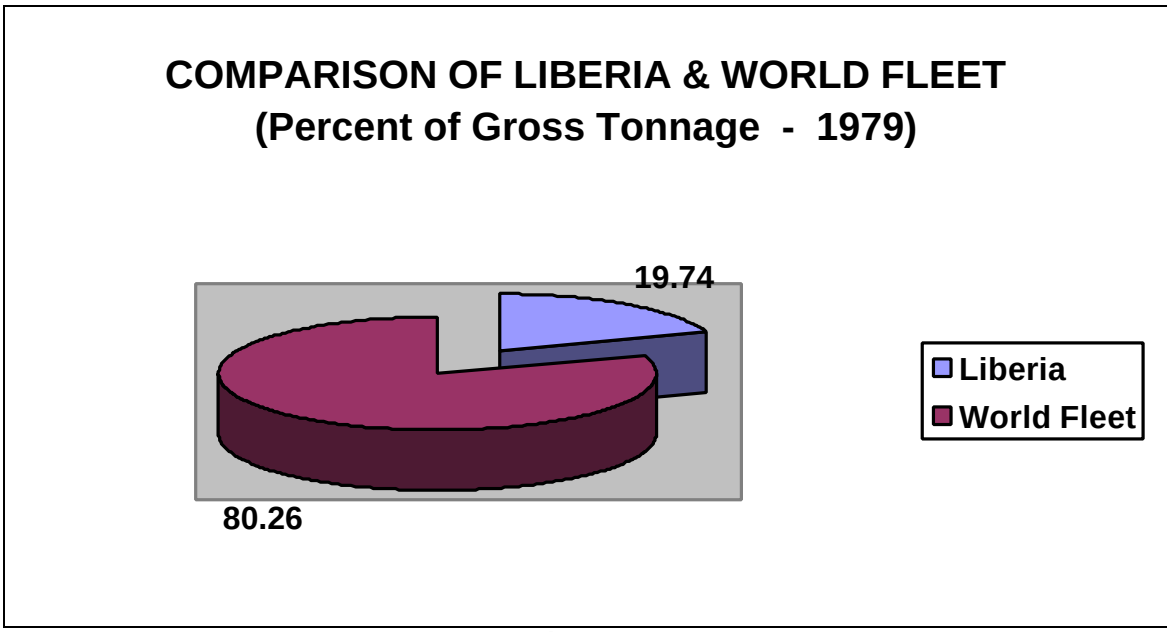

Figure 8

Further demonstration of the laudable performance of the Liberian registry in comparison to that of Panama between 1949 and 1979 is shown in the graphic presentation below in Figure 9.

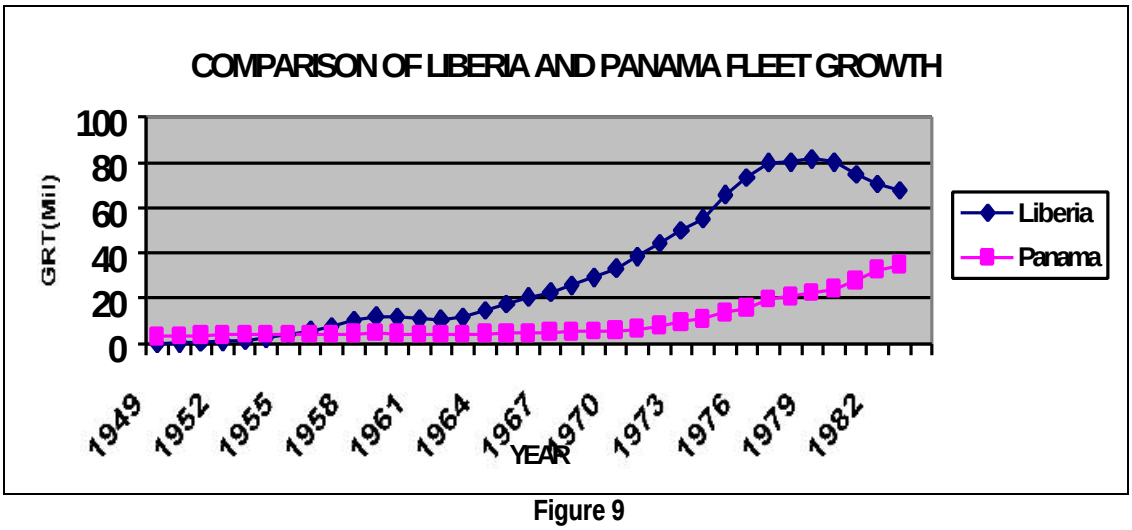

Figure 9

In terms of maritime safety, Liberian flag vessels have had an outstanding record. Through the aid of classification societies to which certain statutory duties are delegated, Liberian ships have been regularly surveyed and inspected to conform to high international safety standards. However, although Liberia's relatively impressive safety standards are widely acknowledged in the international maritime community, credible statistics have been unavailable or inadequate until the early '80s.

The establishment of the Paris Memorandum of Understanding on Port State Control (Paris MOU) in 1982 brought tremendous changes in the way data is collected and presented. Through its SIRENAC computerised information system, the 18-nation Paris MOU has successfully harmonised inspection procedures which enables it to track and target sub-standard ships that occasionally call at various ports of the MOU member states. Sub-standard vessels, when identified, are detained by the port state control authority until the deficiencies leading to their detention are corrected. Detention is based on proven deficiencies regarding life-saving and fire-fighting appliances, ship certificates, crew competency, seafarers' living and working conditions, navigation, pollution prevention and the like. Table 4 provides a summary of the number of detentions per Flag State related to the total number of ships inspected by Port State control officers in ports of Paris MOU countries from 1990 to 1997.

SUMMARY OF DETENTIONS PER FLAG STATE, RELATED TO INDIVIDUAL SHIPS INVOLVED

Flag State not mentioned in this table had no ships involved in detention in the period 1990-1997

Flag State	Number of detentions 1990 - 1997	Number of individual ships involved 1990 - 1997	8-yr rolling average detention % (per Flag State)	8-yr rolling average detention % (global)
Albania	13	19	68.40	11.04
Algeria ?	64	328	19.51	11.04
Angola	5	17	29.41	11.04
Antigua & Baruda	223	2,272	9.92	11.04
Antilles, Netherlands ?	78	521	14.97	11.04
Argentina	8	79	10.13	11.04
Australia	1	3	33.33	11.04
Austria	8	229	3.49	11.04
Azerbaidzhan	16	85	18.82	11.04
Bahamas	312	4,255	7.33	11.04
Bahrain	1	9	11.11	11.04
Bangladesh	9	15	60.00	11.04
Barbados	23	135	17.04	11.04
Belgium	3	65	4.62	11.04
Belize ?	92	160	57.5	11.04

Bermuda	4	179	2.23	11.04
Brazil	21	157	13.38	11.04
Bulgaria ?	61	462	13.20	11.04
Cambodia	10	26	38.46	11.04
Cameroon	3	15	20.00	11.04
Canada	4	26	15.38	11.04
Cape Verde	18	47	38.30	11.04
Cayman Islands	11	93	11.83	11.04
Chile	1	14	7.14	11.04
China	91	926	*	11.04
Columbia	7	26	9.83	11.04
Costa Rica	4	3	133.33	11.04
Croatia	27	136	19.85	11.04
Cuba ?	57	166	34.33	11.04
Cyprus ?	1,017	6,584	15.44	11.04
Czechian Republic	1	5	20.00	11.04
Denmark	76	2553	2.98	11.04
Equador	3	21	14.29	11.04
Egypt ?	89	392	22.70	11.04
Equatorial Guinea	5	7	71.43	11.04
Estonia ?	68	474	14.35	11.04
Ethiopia	4	55	7.27	11.04
Faeroer Islands	9	103	8.74	11.04
Fiji	1	1	100.00	11.04
Finland	26	684	3.80	11.04
France	21	559	3.76	11.04
Gabon	4	13	30.76	11.04
Georgia	21	34	61.76	11.04
Germany	122	4,200	2.90	11.04
Ghana	4	20	20.00	11.04
Gibraltar	11	46	23.91	11.04
Greece	351	3,407	10.30	11.04
Guinea-Bissau	5	4	125.00	11.04
Honduras ?	371	1,028	36.09	11.04
Hong Kong	22	639	3.44	11.04
Hungary	1	12	8.33	11.04
Iceland	5	46	10.87	11.04
India ?	68	484	14.05	11.04
Indonesia	8	24	33.33	11.04
Iran ?	36	204	17.65	11.04
Iraq	2	9	22.22	11.04
Ireland	11	432	2.56	11.04
Israel	5	74	6.76	11.04
Italy	94	1,255	7.49	11.04
Ivory Coast	6	10	60.00	11.04
Japan	8	336	2.38	11.04
Korea, Democratic Republic of	2	8	25.00	11.04
Korea, Republic of	15	278	5.40	11.04
Kuwait	3	37	8.11	11.04
Latvia ?	54	443	12.19	11.04

Lebanon ?	60	222	27.03	11.04
Liberia v	271	4,508	6.01	11.04
Libyan Arab Yamahiryia	29	137	21.17	11.04
Lithuania	56	410	13.67	11.04
Luxembourg	9	188	4.79	11.04
Malaysia	20	150	13.33	11.04
Maldives	1	1	100.00	11.04
Malta ?	817	3,989	20.48	11.04
Man, Isle of	34	366	9.29	11.04
Marshall Islands	16	233	6.87	11.04
Mauritius	11	26	42.31	11.04
Mexico	3	36	8.33	11.04
Morocco ?	84	288	29.17	11.04
Mozambique	1	1	100.00	11.04
Myanmar, Union of	10	110	9.09	11.04
Netherlands	130	2,858	4.55	11.04
Nigeria	34	58	58.62	11.04
Norway	234	4,886	4.79	11.04
Pakistan	13	69	18.84	11.04
Panama ?	894	6,395	13.98	11.04
Peru	3	8		11.04
Philippines ?	42	774	37.50	11.04
Poland	66	1,375	4.80	11.04
Portugal ?	37	273	13.55	11.04
Quatar	1	26	3.85	11.04
Romania ?	282	816	34.56	11.04
Russian Federation	686	8,000	8.58	11.04
Saudi Arabia	3	38	7.89	11.04
Senegal	4	5	80.00	11.04
Singapore	30	775	3.87	11.04
Slovakia	2	2	100.00	11.04
South Africa	1	4	25.00	11.04
Spain	30	546	5.49	11.04
Sri Lanka	5	46	10.87	11.04
St.Vincent & Grenadines ?	487	1,894	25.71	11.04
Sudan	10	30	33.33	11.04
Sweden	55	1,601	3.44	11.04
Switzerland	2	105	1.90	11.04
Syrian Arab Republic ?	136	301	45.18	11.04
Taiwan	10	275	3.64	11.04
Thailand	26	78	33.33	11.04
Tunisia	22	97	22.68	11.04
Turkey ?	604	1,974	30.59	11.04
Turkemistan	4	4	100.00	11.04
Tuvalu	6	51	11.76	11.04
Ukraine ?	151	1,077	14.02	11.04
United Arab Emirates	3	19	15.79	11.04

United Kingdom	47	1,378	3.41	11.04
Uraquay	2	6	33.33	11.04
U.S.A.	12	390	3.08	11.04
Vanuatu	30	335	8.96	11.04
Venezuela	9	44	20.45	11.04
Vietnam	6	10	60.00	11.04
Yugoslavia	15	365	4.11	11.04
TOTALS	**9,257**	**83,882**	**11.04**	**11.04**

? Flag States with detention percentages exceeding 8-yr rolling average are within the target range for sub-standard ships set by the Paris MOU. Only Flag States with 160 or more ships involved in port state control inspections are indicated (Annual Report of Paris MOU, 1990, 1993, 1996 & 1997).

v Liberia's detention average falls below the 8-yr rolling average and is therefore not subject to specific targeting for sub-standard ships.

Table 4

As is vividly illustrated in the Table above, Liberia fell below the threshold 8-yr detention average of 11.04 by 5.03 percentage points. Unlike Liberia, it can be seen that Panama, Malta and Cyprus - all large open registries - exceeded the 8-yr detention average due to a greater number of sub-standard ships on their registers. Liberia's outstanding safety record is also reflected in statistical tables contained in the 1996 and 1997 Annual Reports of the Tokyo Memorandum of Understanding which comprises Asian-Pacific countries. Liberia's performance was commendable as it once more fell below the threshold level of the Tokyo MOU 3-yr (1995 - 1997) rolling average detention percentage of 6.00% by 2.07 percentage points. Because most open registry countries have performed dismally over the last two decades, Liberia occupies a unique position and is placed in league with such European maritime giants as Denmark, Norway, Greece, Italy and the United Kingdom and has a better safety record than several of them.

Ostensibly, as a direct result of an effective safety network, Liberia's marine casualty[4] record is correspondingly impressive especially when compared with other maritime nations. Table 5 contains a summary of fleet loss data sorted and compiled for a 20-year period - 1977 to 1997.

FLAG STATE	**TOTAL LOSSES**	
	NUMBER OF SHIPS	**GROSS TONNAGE**
Argentina	19	217102
Australia	24	29580
Bahamas	23	174750
Belgium	20	69244
Brazil	20	160202
Canada	73	76885
China	36	255264
China (Taiwan)	105	286884

[4] A marine casualty may include grounding, stranding, collision, fire/explosion or contact with external objects(s) which leads to a total loss or a vessel.

Cyprus	263	298429
Denmark	75	32980
Denmark (DIS)	6	25700
Finland	10	14024
France	63	220576
Germany	79	153452
Gibraltar	7	49098
Greece	508	5069167
Honduras	105	133597
Hong Kong	10	330146
India	61	651423
Indonesia	53	85915
Italy	152	712820
Japan	1349	912031
Korea (South)	250	2169907
Liberia	351	6731907
Malaysia	13	36136
Malta	96	1102083
Mexico	6	18496
Netherlands	50	148630
Norway	130	314588
Norway (NIS)	15	203324
Panama	929	5129531
Peru	8	10017
Philippines	119	467823
Poland	35	86202
Portugal	14	37141
Russia	114	395561
Saint Vincent	73	249070
Saudi Arabia	15	371013
Singapore	82	382788
Somalia	1	7,464
Spain	196	682540
Sweden	19	34317
Turkey	82	698255
United Kingdom	199	563197
U.S.A.	378	780791
Other Flag States	1,045	3515776
TOTALS	7,265	36676241

Source: Compiled from Lloyd's Register Statistical Summary of Casualties for 1977-97

Table 5

As indicated in the Table above, Liberia lost 351 vessels between 1977 and 1997, constituting a meagre 6.80% of the total losses sustained by all maritime nations. In comparison, Panama lost 929 vessels, more than 21/2 times as many as Liberia did while the losses of Japan and Greece in the same period far exceeded Liberian fleet losses by 998 and 157 vessels respectively. Moreover, the United States, despite its laudable safety performance record and smaller number of registered vessels, lost 27 more ships than Liberia in the same period.

Considering the remarkable achievements of the Liberian registry in terms of growth between 1949 and 1979, an enviable safety record and low casualty figures vis-à-vis other maritime nations in the same period, it is safe to conclude that ITC performed its maritime functions commendably. However, as would be revealed later, most

allegations of breaches of the Contract stem from ITC's management of corporate responsibilities. The next Section discusses the spheres in which ITC is alleged to have committed breaches of its contractual obligations.

4.1.3 Breaches

The steady growth of the Liberian registry ceased after 1979. Since then, the registry's decline has been substantial throughout the 1980s and has remained leveled in the late 1990s. Figure 10 shows the declining trend of the Liberian registry from 1979 to 1998.

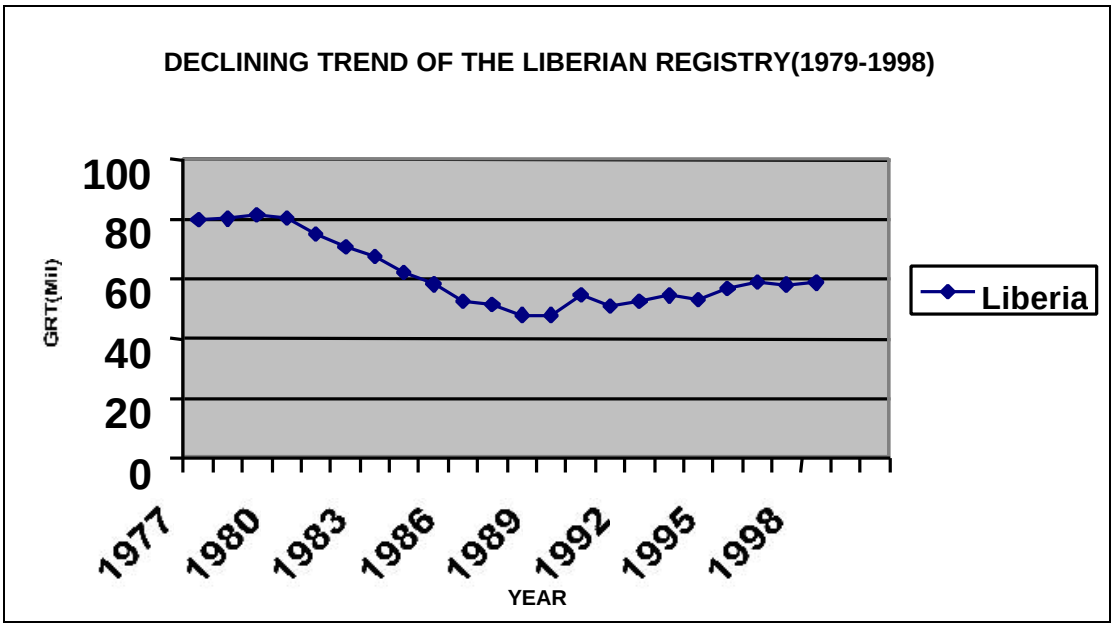

Figure 10

The decline in growth of the Liberian registry may be attributed to both endogenous and exogenous factors. The exogenous factors giving rise to the decline may be: -

- The rise or the competitiveness of other open registers such as Panama,, Malta, Cyprus, Singapore, etc.,
- The Arab-Israeli crises, which unsettled the oil trade and therefore the tanker market (most Liberian flag vessels are oil tankers),

- The Arab League boycott of all Liberian flag ships in 1983 when Liberia re-established diplomatic relations with Israel.

These exogenous factors may have had varying degrees of impact on the Liberia registry in the early 80's but not significant enough to occasion the scale and continuity of the decline throughout the 80's. George Cooper, former Commissioner of the Bureau of Maritime Affairs provided perhaps the most plausible explanation for the phenomenon when he indicated that:

> "nearly all of our problems are endogenous in that they are either inherent in the existing contractual arrangement between the Government and ITC or are due to blatant disregard of contractual provisions or due simply to an attempt by ITC to negate or reduce the role and authority of Liberia in the operation of its maritime program"(Cooper, 1992, 3).

Substantiating the allegation of blatant disregard for contractual provisions is ITC's management of the Marshall Islands registry alongside Liberia's. Managing two competing shipping registries is unconventional and constitutes not only conflict of interests but also bad business. Evidence of bad business is the reported transfer of several Liberian-registered ships including the diversion of new vessels to the Marshall Islands registry since the early '90s. Further evidence is the use of Liberian manpower and financial resources by ITC to administer and promote the Marshall Islands registry at Liberia's expense (Cooper, 1992, 4).

Statistical data on the Marshall Islands registry were previously incorporated in U.S. statistics but have been separately quoted since 1990. Between 1990 and 1996, the growth of the Marshall Islands registry was phenomenal, as it "outstripped all the other developing open registries by far"(The London Shipping Consultancy, 1998, 5). In that period alone, the registry grew a mammoth 315% (R. L. vs. IRI et al, 1998, 8). During the same timeframe, Liberia registered a sustained decline of about 3%, as a result of losing about 60 vessels, thereby lagging behind other open registries particularly since 1994 (The London Shipping Consultancy, 1998, 11,13, & 15). Figure 11 and 12 illustrate clearly the trend of change in the Liberian and Marshall Islands Registries under ITC's management in the 1990s.

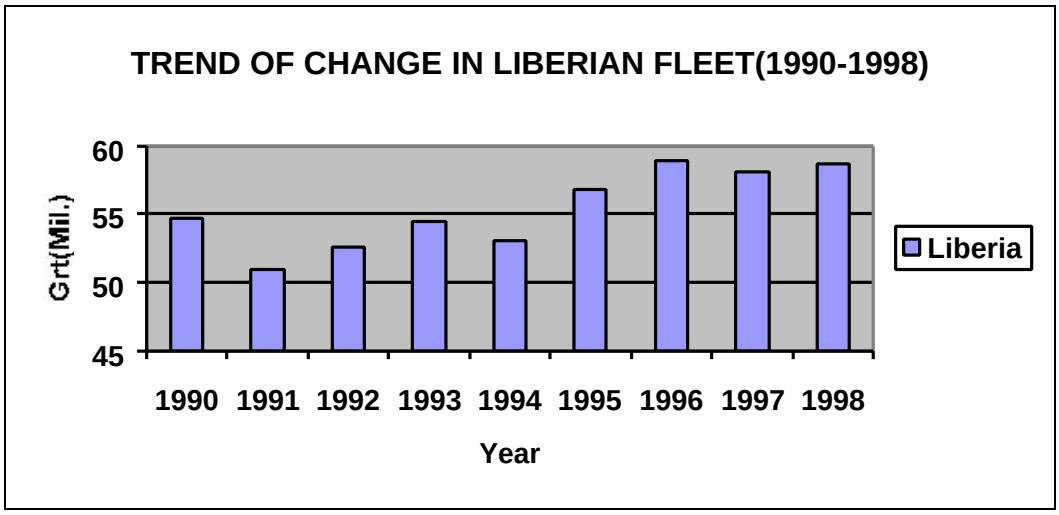

Figure 11

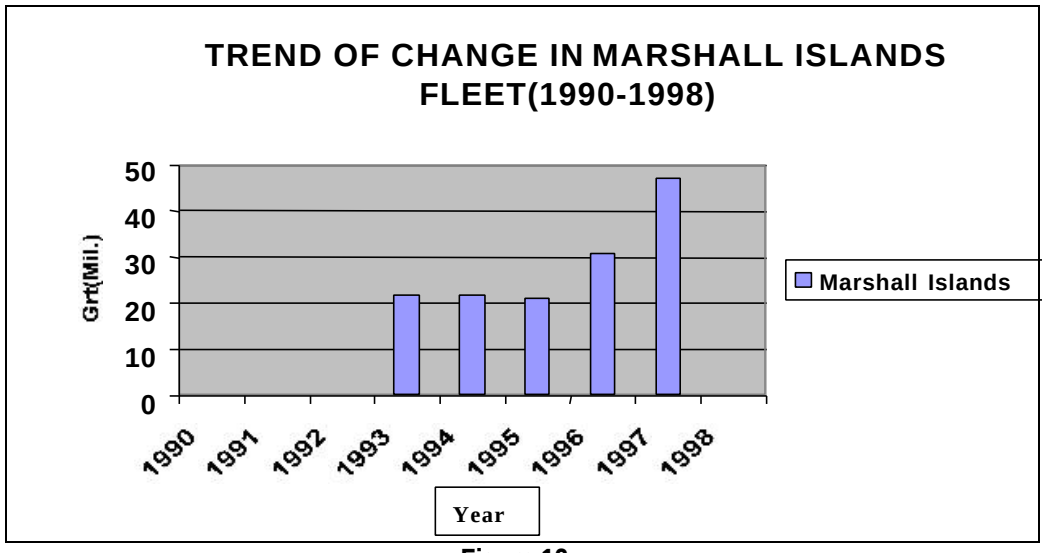

Figure 12

As a direct consequence of ITC's alleged mis-management, Liberia gradually abdicated her status as world leader in merchant shipping to Panama. Figure 13 shows the inverse development of the Liberian and Panamanian registries between 1980 and 1997.

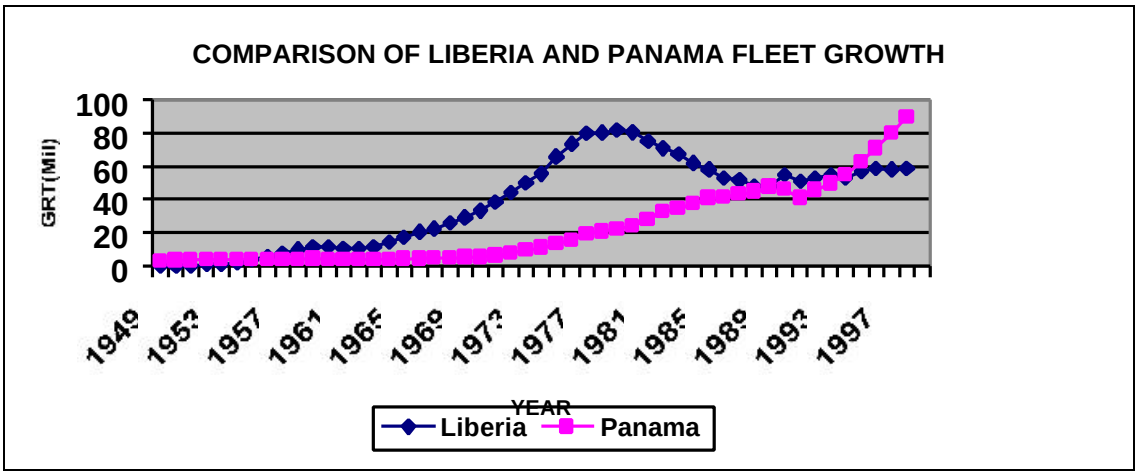

Figure 13

Another endogenous factor worth mentioning is ITC's chameleonic character. In the past 50 years, ITC has undergone several corporate transformations, which may have impacted adversely on its corporate direction. In 1954, a few years after its incorporation in Liberia, the International Bank (IB) in Washington bought ITC. A corporate group headed by retired General George Olmsted subsequently purchased the Bank (IB) in 1956 (Carlisle, 1981, 131). Later, it was apparently acquired in part or whole by the United States Life Insurance Company (USLICO). By the 1990s, Archibald Stewart catapulted to the helm of ITC and in collaboration with his associates fabricated a peculiar international network of companies, unprecedented in the history of open registry shipping. The International Registries, Inc. (IRI), the Marshall Islands Maritime and Corporate Administrators Inc., (MIMCA), the Trust Company of the Marshall Islands, Inc. (TCMI), the Administrative Control Services Inc. (ADCON) and DUNOON were companies formed and operated by Stewart and his associates, in addition to ITC, to administer the Liberian and Marshall Islands registries simultaneously. Interestingly, all the companies, including ITC, operated from the same office and bore the identical address: 11495 Commerce Park Drive, Reston, Virginia 22091 (RL vs. IRI et al, 1998, 2-3).

Stewart and his associates shared the leadership and interests of these companies in an amazing and curious manner. According to the *Bill of Complaint* filed by the Government of Liberia against IRI et al, Archibald Stewart, apart from his responsibilities at ITC, served as President and Chairman of IRI, owned 50% of Dunoon, served also as Chairman of MIMCA and Chief Executive Officer of ADCON. One of his associates, F. A. Guida, served as Executive Vice President of IRI, owned 20% of

DUNOON, served as Director and Vice President of MIMCA, an officer of TCMI and President of ADCON. Another associate, Guy E. C. Maitland served as Vice President of IRI, owned 20% of DUNOON, served as President of MIMCA and President of TCMI. The *Bill of Complaint* further refers to DUNOON as wholly owning IRI, TCMI and ADCON and indirectly owning 80% of MIMCA (RL vs. IRI et al, 1998, 1,2 & 3). Undoubtedly, ITC has been a minor adjunct to this complex array of companies.

In retrospect, it appears that much of the corporate metamorphosis of ITC over the last 50 years occurred without the knowledge or approval of the Bureau of Maritime Affairs or the Government of Liberia in contravention of sub-Section 17.1a of the 1975 Consolidated Agreement which states: -

> "This Agreement shall not be assigned, in whole or in part, by ITC nor shall ITC delegate or sub-contract to others any of the responsibilities, duties or services herein undertaken by ITC without the written consent of Government"(Consolidated Agreement, 1975).

In the absence of proper control, ITC's direction became a function of the dominant shareholder, not the Government of Liberia. This experience suggests that while ITC has remained unchanged in name, it has radically transformed in purpose. As the dominant interests changed, so had the purpose of ITC. Accusations relating to the replacement of Liberian insignias, signs, letterheads, etc., with those of IRI and the unilateral issuance of marine notices, correspondences to shipowners, etc., by the IRI without the approval of the Commissioner as required by the Liberian Maritime Law, are testimonials to the unchecked, unregulated and largely irreversible corporate direction of the ITC under the IRI management. As George Cooper aptly predicted, the intention of the IRI

> "is to negate the prominence of Liberia in the international maritime community, thereby reducing or eliminating its importance as a responsible Flag State"(Cooper, 1992, 5).

Other breaches of the contract cited in Cooper's "Report of Determination and Comprehensive Analysis of problems and potential conflict facing the Liberian Maritime program/suggested measures for solutions" include: -

- The co-mingling and misapplication of Section 2.40 fees regarding Marine Investigation and International Participation (MIIPS), and Nautical Training Funds (NTF).

- The lack of accountability which had made the government of Liberia unable to meet IMO assessments, among other international obligations,

- The policy of making unilateral changes in the organizational structure of the Office of Deputy Commissioner and the subordination of Liberian Deputy Commissioners to so-called "Special Assistants" appointed by ITC,

- The false claim of ITC/IRI to assets of the Liberian registry acquired through fees allocated for the Office of Deputy Commissioners (Cooper, 1992, 6-8).

IRI/ITC denied all the allegations. In a 7 January 1999 press release posted on IRI's web page, the ITC argued in response to the allegation of lack of transparency and accountability in its operation as follows:

> "We are audited annually by a mutually agreed upon independent accounting firm of international stature. Since 1986, the accounting firm of KPMG Peat Marwick has conducted these independent audits. The purpose of the audit is to ensure that government has received its correct share of the gross revenue generated and we have submitted annual audit reports to the government no later than 30 June of each year"(http://www.register.iri.com/press-release.html, 4/8/99).

In a dramatic turn of events, the IRI/ITC group alleged that the Government of Liberia of misappropriated nearly US$10 million allocated annually for Marine Investigation & International Participation (MIIP) which were used to pay IMO assessments and underwrite Liberia's participation in international conferences. The IRI/ITC claimed that,

> "Despite repeated requests from the Liberian Shipowners' Council to the Commissioner and other Government's lawyer, Mr. Lester Hyman, to provide an accounting of the GOL's use of the funds, no such accounting as yet has been forthcoming from the Commissioner's office or Mr. Hyman" (http://www.register.iri.com/press-release.html, 4/8/99).

The 1975 Consolidated Agreement has no provision obliging the Government of Liberia or the Commissioner's office to account to the Liberian Shipowners' Council for MIIP funds or any other funds whatsoever under the Contract.

These claims and counter-claims reflect the acidity of the acrimony between the parties as they prepared for litigation.

4.2 THE GOL-ITC CONTRACT AND THE PERFORMANCE OF THE GOL

Dr. William V. S. Tubman, the 18th President of the Republic of Liberia, signed the first GOL-ITC Contract on February 8, 1949 in Monrovia. Tubman's election to the helm of political power in 1944 significantly changed the conduct of Liberian politics. Admired as a strident advocate of the cause of the common man, the incumbent

President Edwin Barclay campaigned vigorously for the nomination of Tubman at the primaries of the ruling True Whig Party's (TWP) National Convention on the eve of the 1944 elections, convinced that the youthful barrister would follow his footsteps. Barclay's term ended in 1944, having upheld the tenets of democracy and bowed to the dictates of the Liberian Constitution. Barclay's personal clout in the ruling True Whig Party and charismatic leadership style convinced the party that his choice of successor was well inspired. Tubman's election in the 1944 presidential elections was therefore a foregone conclusion.

Tubman, however, did not live up to the expectations of President Barclay. Apart from violating the Constitutional term of the Presidency, Tubman systematically suppressed opposition parties and their leaders in subsequent electoral contests to the extent that opposition to his administration virtually vanished. Unchecked, Tubman ruled Liberia for 27 unbroken years. He died in office in 1971 and was succeeded by Dr. William R. Tolbert, the incumbent Vice President who promised to hold democratic elections after he had completed Tubman's term but failed to fulfil his promise. Opposition to the Tolbert Administration increased leading to the calamitous 1979 rice riots in Monrovia, leaving scores dead and hundreds wounded. The aftermath of the carnage set off a chain reaction throughout the country, igniting revolts in certain parts and eventually leading to the intervention of the military in a *coup d'etat* on April 12, 1980. M/Sgt. Samuel K. Doe, a non-commissioned officer, whose level of illiteracy reflected the general status of the Liberian army, spearheaded the coup. Doe capitalised on the latent chasm between the indigenous Liberian population and the African-Americans who had ruled Liberia since 1847. He promised to reverse the ills of the past and carve a new future beginning with democratic elections in a few years. Doe, like Tubman and Tolbert reneged on his promise, thereby sparking opposition to his government during 10 years of traumatic rule. He responded frequently by using unrestrained military force against the growing opposition. Tribalism surfaced resulting into bloody ethnic conflicts fought in every form conceivable. Having no democratic outlet, the opposition took up arms and began an insurgency on 24 December 1989 led by Charles G. Taylor, a former cabinet-ranking official of Doe's government. The ensuing civil conflagration lasted for 8 years, at the end of which, general and presidential elections were held in July 1997. Mr. Charles Taylor, leader of the National Patriotic Party (NPP), one of 13 contending political parties won the elections by an astounding 75%. The elections, evaluated by the US-based Carter Centre and other

credible international observers were adjudged free and fair. When inaugurated in 1997, President Taylor and his government inherited what was left of the Liberian shipping registry following nearly 50 years of political turbulence and a devastating bloody civil war.

Thus, the nature of every GOL-ITC contract since 1949 was largely influenced by the domestic political circumstances surrounding the existing government. For example, the Tubman Administration, in negotiating with the Stetitnius Associates in 1948-49, seemed more inclined towards revenue-generation than any long-term strategic maritime goals in a bid to upstage his political opponents by showing visible signs of economic progress. The subsequent 1953 and 1965 contracts were perhaps replicas of the 1949 Agreement, the terms of which, evaluated currently, would have left much to be desired. Although previous GOL-ITC contracts were unavailable for thorough analysis, the available 1975 Consolidated Agreement concluded during the "enlightened" leadership of former President William R. Tolbert and thus considered a marked improvement over previous contracts, left much more to be desired, not only with respect to the inadequacy of provisions but also the implementation of existing obligations of the Government of Liberia under the contract. Nevertheless, it can be discerned from the contents of the 1975 Consolidated Agreement that it was a sincere attempt to rectify some of the deficiencies and limitations of previous contracts but it seems that the penchant for a constant flow of revenue from the registry to maintain a solvent government amidst burgeoning opposition may have beclouded objectivity and compromised the government's position to negotiate a fair deal on behalf of the Liberian people. The situation was not different during the 10-year reign of Samuel K. Doe.

4.2.1 Contractual obligations of the GOL

Section 10 of the 1975 Consolidated Agreement contained what amounts to the key contractual obligations of the Government of Liberia. According to sub-section 10.3, the Government of Liberia was empowered to *inspect at any time* the books and records of ITC and all operations of ITC or its permitted assignee. ITC was obliged to *facilitate such inspection* and make its employees available for said purpose.

In addition, the contract provided for an *audit* of the Books of Account of the ITC. sub-section 10.2 of the contract obliged the Government of Liberia to cause an audit to be carried out "promptly after the close of each fiscal year by internationally recognised independent auditors mutually satisfactory to Government and ITC". Under that

provision, the Government of Liberia could, if deemed necessary, also conduct an audit of ITC's books and accounts *independently.*

Sub-section 10.1 of the contract required the Government of Liberia to *approve* ITC's *accounting system* and ensure that ITC maintained at its office in Monrovia, "complete, accurate and systematic financial records of its world-wide operations" as required by law or as the Government of Liberia required. The accounting system was required to show, *inter alia,* all revenues received and expenditures made, and that the balance sheets and profit and loss statements of ITC be kept in terms of Liberian currency*(US Dollars)*.

The Agreement also contained provision for periodic reviews of the contract. Section 14 sets forth the right of either party to request "at any time, but not less often than 6 years", consultation with one another for the purpose of considering changes in or clarifications to the Agreement.

These checks - unregulated inspections, audits, approval of ITC's accounting system, and periodic reviews of the contract - could have ensured and guaranteed the full compliance of ITC with its corporate contractual obligations if the Government of Liberia had taken its responsibilities under the contract seriously and discharged them effectively. But, as discussed in the next section, the Government of Liberia failed to live up to its obligations under the contract.

4.2.2 Failures

Although the 1975 Consolidated Agreement required the Government of Liberia to conduct inspections of ITC's records "at any time", it is difficult, based on the evidence available, to identify any time in the 50 year history of the Registry when the Government of Liberia undertook an *inspection* of ITC's records. Furthermore, the requirement that ITC "facilitate" the inspection of its *own* records is a gross mistake because it devolved upon ITC the authority to dictate the conduct of inspections and rendered pointless the applicability of the statement under sub-section 10.3: - *'Government may at any time inspect the books and records of ITC*". Obviously, the Government of Liberia could not conduct an inspection *at will* if ITC reneged or procrastinated on its obligation to "facilitate" the inspection. To undertake an effective inspection intended to genuinely discover the facts, the principal party, i.e., the Government of Liberia, must facilitate it *independently*. Failure to act prudently has contributed to the GOL-ITC crises.

Another failure is discerned in Government's apparent complacency in ensuring that periodic audits were conducted and the findings of the audits were critically reviewed and appropriate remedial actions taken to rectify any deficiency. The provision of sub-section 10.2 is patently silent on which of the two parties was responsible to pay the "internationally recognized auditors", aware that the independence of auditors is not unusually compromised by the underwriter. The fact that ITC was obliged to facilitate GOL's inspection implies that ITC may have been expected also to pay the auditors. This arrangement was fraught with the propensity to compromise the objectivity of audits. Due to the blanket of secrecy that surrounded the GOL-ITC partnership in the past, very little evidence exists about the audits conducted by the independent auditors and the extent to which the Government of Liberia appraised and responded to the results. Until the GOL-ITC crises erupted, it seemed as if all audits of ITC's records showed perfect results. It was "discovered" in 1998, however, that gross financial mismanagement had occurred and ITC might have been liable to pay damages of up to 70,000,000.00 USD if it had lost the court case filed by the Government of Liberia. How was it possible for ITC to mismanage the finances of the Registry for so long when the Government of Liberia was contractually obliged to approve ITC's accounting system and audit the system annually? Is there any evidence that the GOL ever requested a review of the Agreement in light of the numerous discrepancies?

It is important to note that the 1975 Consolidated Agreement, while containing provisions for the inspection and auditing of the corporate records of ITC, failed to make specific mention of inspections and audits of maritime-specific records such as those regarding surveys and inspections, ship registration, casualty investigations, the labour conditions onboard Liberian-flag ships, implementation of international safety and pollution-prevention conventions, etc. These are perhaps the most important functions of any credible maritime administration. But the 1975 contract was drafted with overwhelming emphasis on financial matters, thereby conveying the impression that the verification of the conduct of maritime activities by ITC was secondary or non-essential.

The wording of the contract, in some instances, is vague and in dire need of clarification. The contract provided for both *inspection* and *audit* under separate titles but for the same purpose - to check the financial books and records of ITC. Also, a particular segment of the Contract required ITC to "provide for a clear understanding of the financial aspects of such operations". What did *clear understanding* mean? Which specific *financial aspects* were referred to? Confusion sets in when the provisions of

Sub-Section 10.2 are also considered. ITC is urged to "take all reasonable measures to ensure that the auditors *co-operate* (with the Government of Liberia) to the maximum extent in such discussion (of the audit results). Did the *co-operation* of the auditors, supposedly mutually appointed, depend solely on ITC's whims?

Like its predecessors, the 1975 Consolidated Agreement reflects the apparent complacent and lackadaisical attitude of certain government functionaries responsible for securing the financial and maritime interests of Liberia, not only with respect to the drafting of the contracts but also to the process of verification of compliance through audits, inspections, and periodic reviews of the contracts. The Government's failure to effectively utilise these important levers has inevitably led to a one-sided and unfair evaluation of ITC's performance in terms of delegated flag state duties, at which ITC performed excellently, and corporate responsibilities, at which it erred miserably. While failing to objectively appraise ITC's performance, the Government has failed to evaluate its own performance with respect to retained Flag State duties, Coastal and Port State responsibilities, not to mention its failure to live up to its contractual obligations. When did the Liberian Government conduct an audit and/or inspection of its own maritime administration since 1949? In consideration thereof, it may not be entirely unreasonable to argue that any move toward litigation ought to have objectively taken into account the very appalling performance of both parties to the contract in which case blame should be shared in proportion to the discrepancies discovered. Moreover, it may have been advisable to submit the conflict to *arbitration* as provided for under Section XVI of the 1975 Consolidated Agreement, although it would have been time-consuming.

4.2.3 Litigation

The Government of Liberia, however, decided otherwise. On 17 February 1998, the Government filed a lawsuit against the ITC's parent company – the International Registries Inc. (IRI) – in the Circuit Court of Virginia, Fairfax County, U.S.A. The *Bill of Complaint* named the International Registries Inc., Marshall Islands Maritime and Corporate Administrators, Inc., the Trust Company of the Marshall Islands, Inc., Administrative Control Services, Inc., Dunoon, LLC., Archibald Stewart, F. A. Guida and Guy E. C. Maitland as defendants (RL vs. IRI et al, 1998). The IRI and affiliates responded by filing a request for arbitration against the Government of Liberia in May 1998 at the International Centre for Settlement of Investment Disputes (ICSID) in Washington D. C. Both Liberia and the US are signatories to the ICSID Convention

meaning that neither party can challenge the verdict of an arbitral tribunal. By filing for arbitration, IRI intended to halt court proceedings but the judge of the Fairfax Circuit Court ruled that he could not stay action since the matter was already before the court and ITC, a party of the GOL-ITC Agreement was not a party to the suit (Seatrade Review, 1998, 9).

In the Bill of Complaint, the Government of Liberia accused the defendants through Stewart, Maitland and Guida of the following acts: -

1. the wrongful transfer of Liberian shipping registrants to the Marshall Islands registry with the view to operate and manage the same freely without Liberian oversight and retain a large percentage of the net revenue accrued therefrom;

2. the management and operation of competing shipping registries – Liberia and Marshall Islands – using Liberia's assets, personnel and other resources;

3. the diversion of both Liberian-flag ships and new ships to the Marshall Islands registry;

4. the wrongful utilisation of Liberian registry offices at 11495 Commerce Park Drive, Reston, Virginia, personnel and equipment to operate the Marshall Islands registry;

5. the illegitimate use of Liberia's proprietary information in the form of registrants lists, methods of operation and administration, computer software and other confidential documents for the Marshall Islands registry;

6. the joint marketing of the Liberian and Marshall Islands flags and the employment of forms, rules, regulations and licences identical to those used by Liberia;

7. the construction of a large new facility in the Marshall Islands intended to be used as base of operation to complete the transfer of new ships and Liberian ships to the Marshall Islands registry;

8. the misappropriation and mismanagement of finances and trade secrets (RL vs. IRI et al, 1998).

The Complaint claimed that Liberia has suffered and will continue to suffer damages as the result of the improper and unauthorised use of Liberia's property and funds. It outlined some of the damages Liberia has suffered as: -

(a) loss of revenue from ships diverted to the Marshall Islands registry;

(b) loss of revenue for incorporators diverted to the Marshall Islands offshore corporate programme;

(c) loss of future profits based on the creation of the competing Marshall Islands registry and wholesale disclosure of Liberia's proprietary business information to the Marshall Islands;

(d) unjust enrichment of IRI, Dunoon, MIMCA, TCMI, ADCON, Stewart, Maitland and Guida;

(e) loss of title to property in the form of computer hardware, software and other assets (RL vs. IRI et al, 1998).

Taking into account the severe damages caused to the Liberian registry by the actions of Stewart, Maitland and Guida, the Liberian Government sought judicial relief by requesting the Fairfax County Circuit Court to declare the following: -

- a judgement that the defendant appropriated secrets, assets and information and conspired to misappropriate such secrets, assets and information;

- a preliminary and a permanent injunction prohibiting all defendants from: -
  - transferring any Liberian flag ship or assets or funds to the Marshall Islands registry,
  - jointly marketing or promoting the Marshall Islands registry with the Liberian registry,
  - using or disclosing any of Liberia's trade secrets.

- compensatory damages of US 10,000,000.00, treble compensatory damages of US 30,000,000.00 and punitive damages of US 30,000,000.00;

- damages in the amount by which defendants have been unjustly enriched by misappropriation of Liberia's trade secrets and conversion of Liberian property;

- imposition of a constructive trust upon all assets, including computer hardware and software held by defendants (RL vs. IRI et al, 1998).

The legal processes involved in the adjudication of the matter would undoubtedly be lengthy, cumbersome and could have continued well past the expiry of the 1989-1999 Contract. In an apparent pre-emptive move, the Liberian Government terminated the extension Contract (1999-2009) signed by the ITC and the Interim Government of National Unity (IGNU) under the leadership of Dr. Amos Sawyer (Seatrade Review, 1998, 9). On February 27, 1999, the Liberian President, Charles G. Taylor, submitted a draft Agreement to the Liberian Senate between the Government of Liberia and a new company, the *Liberian International Ship and Corporate Registry (LISCR)* to manage the

Liberian registry beginning 1 January 2000 (Star Radio News, 27.02.99). On 5 March 1999, the Liberian House of Representatives ratified the GOL-LISCR Agreement (Star Radio News, 5.03.99).

The new arrangement, however, faced a number of critical challenges. Firstly, it was practically impossible to operate the Liberian registry without vital assets such as dedicated computer software, databases, operational procedures and methods, etc., which were still in the possession of the International Registries Inc. In fact, far from bowing to legal pressures, IRI sued LISCR in the Federal District Court in Delaware on 7 January 1999, charging it with "conspiring to steal the register management contract by wrecking IRI's relationship with Liberia"(Lloyds' List, 1999, 1). IRI's contention stems from allegations that Lester Hyman, Chairman of the LISCR was an attorney of the *Swindler and Berlin* law firm that filed the lawsuit on behalf of Liberia against IRI in Fairfax County in February 1998 (Seatrade Review, 1998, 6-9).

Secondly, in the absence of a settlement prior to 1 January 2000, LISCR's ability to operate the registry in time would be jeopardised, leading ultimately to the loss of revenue since annual ship registration billings begins in October. By withholding the vital proprietary assets, IRI played its cards close to the chest and used them as strategic bargaining chips. However, given the constraints of time, it was neither in the interest of the Liberian Government nor LISCR to prolong litigation. It seemed advisable to seek an out-of-court settlement not necessarily satisfactory to any party but which would enable the uninterrupted and continuous operation of the registry come 1 January 2000.

While the legal battle raged, subterranean manoeuvres were made by influential maritime personalities and the parties themselves to reach an out-of-court settlement. Mr. Jim Davis, Chairman of the International Maritime Industries Forum (IMIF) and also Chairman of the Liberian Maritime Advisory Board intervened occasionally to end the dispute. In an interview with *Fairplay* in February 1999, Mr. Davies expressed optimism that a settlement was achievable,

> "It is a monumental waste of time and it would be lovely if the whole thing were called off. There will be a settlement, there always is"(Fairplay, 1999, 52).

Portraying Mr. Davis as a soothsayer, the *Lloyd's List* on May 4,1999, reported that an *out-of-court* deal was in the offing between IRI, LISCR and the Government of Liberia. According to the reputable journal, the deal involved the dropping of all claims and counter-claims by all sides in exchange for the swift transfer of the vital operational

software and other assets. It also included co-opting IRI employees into LISCR's system and a substantial payoff to IRI (Lloyd's List, 4.05.99, 1).

In an announcement on its web page, an IRI press release dated 11 May 1999 revealed that,

> "the Government of Liberia, IRI and its affiliates and [the] Liberia International Ship and Corporate Registry (LISCR) signed a settlement agreement on May 7, 1999 resolving all outstanding disputes between LISCR, IRI and GOL subject to the performance of certain terms and conditions. As a result of the agreement, all litigation between the parties and their principals is being terminated"(http://www.register-iri.com/press-release.html, 5/26/99, 2).

That the International Registries Inc., deleted all acidic commentaries on its web page to announce the settlement is sufficient grounds to believe that it was reasonably satisfied with the "terms and conditions" of the deal.

LISCR broke its silence when it issued what amounted to a circular letter on 1 June 1999 to several shipowners, re-affirming the consummation of the deal and setting forth its immediate policy objectives: -

> "while there will be complete financial transparency between LISCR and GOL, the company will be entirely independent of the Government [of Liberia] in its management of the Registries. We have an excellent working relationship with the GOL and our contract specifies that we manage only the Liberian Registries. All management decisions, with respect to both corporate and maritime programs, will be made solely by LISCR, which will also be responsible for the collection and payment of IMO dues"(Hyman, 1999, 2).

These pronouncements seem to have closed the bitter chapter of acrimony involving the Government of Liberia, the LISCR and the ITC/IRI but the *Litmus Test* of the settlement resides in the ability and sincerity of the parties to deliver on the "terms and conditions" agreed.

5. THE BUREAU OF MARITIME AFFAIRS IN THE 21ST CENTURY

The beginning of the 21st Century is a defining period for the Bureau of Maritime Affairs. Contracting the services of a new management company on the eve of the 21st Century may embody positive prospects for the future; it certainly offers the best opportunity to re-shape the Bureau and its direction to meet the enormous challenges of the new millennium. The need for fundamental change cannot be ignored although differences of opinion may exist regarding the precise nature of the change required.

This Chapter elaborates concepts, which may be helpful in the transformation of the administration of maritime affairs in Liberia in the period ahead. The ideas contained herein are not sacrosanct; they form a basis for discussion in a dynamic business.

There exists an overwhelming misconception that the Bureau of Maritime Affairs has a sole function; i.e., to run the Liberian registry[5]. This misconception is held by some Liberian policymakers and is even reflected in numerous official documents including the June 20, 1989 Act of the National Legislature, which granted autonomy to the Bureau for the sole purpose of ensuring the "competitiveness of the maritime registry" (The Maritime Act, 1989, 2). The reality, however, is that the Liberian registry is only one of the multiple functions of the Bureau. The Bureau of Maritime Affairs, like most maritime administrations world-wide perform statutory functions based on the requirements of international and national legislation. In general terms, the functions of the Bureau can be grouped in three categories: Flag State, Port State and Coastal State functions.

Flag State Functions

Article 94 of UNCLOS requires every Flag State to exercise jurisdiction and control in administrative, technical and social matters over ships flying its flag. A summary of these functions can be found under Chapter 3, sub-Section 3.1 of this paper.

[5] Technically, the Bureau runs the Registry indirectly via a private management company.

Because most of these Flag State duties have been delegated to private organisations, Liberia's Flag State functions can be grouped into two distinct categories; namely,

Delegated Flag State Functions

- those functions delegated through contractual agreements to private organisations such as ITC or LISCR.

Retained Flag State Functions

- those functions performed by the Bureau itself such as representation at the IMO.

It is important to clarify that the dichotomy relates only to the Liberian registry vessels of 500 gross tons and above. The Liberian Small Watercraft Registry of less than 500 gross tons is expected to be operated directly by the Bureau of Maritime Affairs.

Coastal State Functions

Liberia, by virtue of its geographical location, is a coastal state entitled to a Territorial Sea (TS) of 12 nautical miles and an Exclusive Economic Zone (EEZ) of 200 nautical miles consistent with Articles 56 & 57 of the UN Law of the Sea Convention. The administration of effective jurisdiction over both areas falls primarily in the purview of the Bureau of Maritime Affairs although the enforcement of international and domestic law may be accomplished in conjunction with the Liberian National Coast Guard and other law enforcement agencies. The Bureau's structure and activities should incorporate these vital coastal state functions.

Port State Functions

Liberia is also a Port State and should exercise appropriate jurisdiction in accordance with Article 218 of UNCLOS and other applicable international instruments. The administration of Port State functions is also the responsibility of the Bureau although enforcement may be undertaken in conjunction with law enforcement agencies. Realisation of this responsibility is evident at the Bureau but effective implementation may require additional work.

5.1 STRATEGY AND STRUCTURE

The effective implementation of Flag, Coastal and Port State functions should form the broad, fundamental objectives of the Bureau of Maritime Affairs in the administration of maritime matters. These broad objectives should be reduced to specific, clear and unambiguous tasks, documented and communicated to all in the Bureau. As its strategy, the Bureau should prioritise these objectives and focus on those elements which secure Liberia's sovereign maritime interests, promote maritime safety, prevent pollution of the marine environment, guarantee the effective exercise of Liberia's rights and jurisdiction in ports and coastal waters and ensure full compliance with mandatory international safety standards.

The Bureau's organisational structure should therefore be dictated by the strategies designed to attain these essential objectives. In the construction of an ideal organogram, it must be borne in mind that Liberia delegates a significant portion of Flag State functions to private organisations while retaining a few. The ideal Bureau's structure should therefore reflect *Retained Flag State* duties, *Port and Coastal State* functions as well as supervision of *Delegated Flag State duties*. Of equal importance is the new Small Watercraft Registry, the operation of which, in addition to other reasons justify the establishment of a new Shipping Department. Figure 14 shows a conceptual organisational chart, which identifies and organises the key tasks, which the Bureau of Maritime Affairs is responsible to administer.

THE PRESIDENT

The President of the Republic of Liberia is head of the Executive Branch of Government and the ultimate decision-maker in all maritime matters. He appoints the Commissioner of the Bureau of Maritime Affairs who is directly answerable to him. Like all public entities, all Deputy Commissioners should be appointed by the President and confirmed by the Senate to ensure a degree of managerial independence and transparency in the discharge of their respective responsibilities.

THE BOARD

The 1989 Act by the National Legislature granting autonomy to the Bureau of Maritime Affairs transformed it into an independent agency of Government with its own sources of funding and decision-making. This suggests a need for an oversight body - a BOARD - to serve as a review organ and make sure that realistic objectives are set and workable strategies developed to guarantee the growth and efficient

management of the Bureau. Peter Drucker, in *MANAGEMENT: Tasks, Responsibilities and Practices*, stressed the importance of the Board's review role:

> "Without such an organ of review, top management has no way to control itself. It has no true legitimacy"(Drucker, 1985, 631).

The Board should also serve as an advisor, providing counsel to the Bureau's leadership in planning and policy-formulation, and ensuring that the leadership does what it set out to do. Additionally, the Board should from time to time advise the President on the performance of the Bureau and recommend the removal of incompetent or non-performing top management personnel.

The kind of Board being suggested is an advisory body with no powers to control the Bureau's leadership or dictate its direction and decision. The last adjunct the Bureau needs is a Board that is adversarial and obstructively imposing. The envisaged Board should be dedicated to working, counselling, advising and deliberating with the Bureau's leadership and making recommendations when appropriate to the President regarding maritime and shipping-related issues. It is expected that men and women with experience, integrity, stature and proven performance and capability should be appointed by the President to the Board. No former Commissioner or member of the top management of the Bureau should be eligible for Board membership.

THE COMMISSIONER

By virtue of the autonomous status of the Bureau, the role of the Commissioner must be properly re-defined. Prior to acquiring autonomy, the Commissioner served in a subordinating role, with supervisory authority exercised by the Minister of Finance or Transport. The Commissioner, as head of an autonomous Bureau should not only assume the full responsibilities assigned previously to the Minister as contained in Chapter 1, Article 10 of the Liberian Maritime Law but also new functions embodying far-reaching responsibilities that are relevant and cogent to the effective administration of maritime matters. These responsibilities should be clearly defined and linked, in a holistic manner, to the rest of the organisation's national and international networks.

DEPARTMENTS

It is envisaged that the following Departments would aid the Commissioner in the realisation of Flag, Port and Coastal State objectives of the Bureau of Maritime Affairs: -

- SHIPPING,
- LEGAL,
- TECHNICAL,
- TRAINING, AND
- ADMINISTRATION.

SHIPPING DEPARTMENT

Two reasons justify the creation of a Shipping Department in the Bureau of Maritime Affairs; namely, (a) the transfer of the Division of Shipping and (b) the establishment of the Small Watercraft Registry.

The transfer of the Division of Shipping to the Bureau was effected by a Presidential Directive, EM/LA/JEP/11-02/'98/RL, to the Minister of Transport to have "all maritime-related offices presently still operating in your Ministry transferred to the Bureau of Maritime Affairs…"(Presidential Directive, 1998). The decision was overdue; the Division ought to have formed an integral part of the Bureau when it was made autonomous in 1989 since its functions were crucial to the regulation and operation of shipping and shipping-related institutions in Liberia.

The establishment of the Small Watercraft Registry of less than 500 gross tons by an Act of National Legislature on 14 July 1992, should have necessitated the establishment of a Shipping Department at the time to pioneer work in the key administrative and operational aspects of the Registry. The fact that the Registry has had limited success up to now is attributable directly to the absence of an appropriate structure and mechanism through which the administration of the Registry's affairs could be conducted.

Three vital Sections are proposed under the Shipping Department: -

- Ship Registration,
- Shipping Policy & Regulation,
- Marketing.

Ship Registration Section

The prime focus of the Ship Registration Section should be to organise and maintain a composite public register of ships under the Small Watercraft

Registry both at the national and international levels. The use of the Internet for distance ship registration including the advantages of trade by e-mail in providing accelerated customer services should be explored.

Shipping Policy & Regulation Section

It is envisaged that this Section would concentrate on the formulation of commercial shipping policies geared towards creating a conducive atmosphere suitable to the development and stimulation of Liberian shipping and shipping-related businesses. Additionally, it should regulate, *inter alia*, the establishment and operations of shipping agents, stevedores, shipchandlers and freight forwarders, and discharge facilitation duties in accordance with the relevant international instruments.

Marketing Section

Operating the Small Watercraft Registry is a competitive enterprise. To seize the competitive edge in this niche market requires aggressive marketing and promotion. This Section should assume the responsibility of developing marketing strategies and promotional activities nationally and internationally to attract registrants thereby increasing the revenue-generating capacity of the Bureau.

LEGAL DEPARTMENT

Although a Legal Department exists, its scope of responsibility needs to be widened in the direction of investigating casualties and playing a proactive role in the formulation of domestic and international legislation. Three Sections are proposed under the Legal Department: -

- Casualty Investigation,
- International Legislation,
- National Legislation.

Casualty Investigation Section

Investigation of casualties involving Liberian flag ships is a statutory requirement under Articles 2 and 94 of the UN Convention on the Law of the Sea. The operation of the Small Watercraft Registry will inevitably result in casualties and incidents leading to loss of life and property, loss of ship and pollution of the marine environment. This Section should be devoted to investigating and properly analysing casualties for the purposes of identifying the possible causes and taking remedial actions thereby enhancing safety at sea and the protection of the marine environment.

International Legislation Section

Liberia's status as the second largest Flag State bestows upon it enormous responsibilities for the development and enforcement of international maritime law and policies. Despite the best endeavours of particularly the international Maritime Organization (IMO), incidents resulting to loss of life, loss of ships and marine pollution continue to occur. This Section should play a pro-active role in the formulation of maritime policies and legislation, and putting in place effective implementation mechanisms that would ensure global compliance with safety and pollution prevention standards by Liberian flag vessels and associated companies. The Section should also assume the responsibility for reviewing and codifying all primary legislation, rules and regulations relating to the main Registry.

National Legislation Section

National legislation is also required especially with respect to the operation of the Small Watercraft Registry in spheres where international maritime law is silent or non-applicable. The development of relevant legislation to the Liberian Maritime Regulations for small watercrafts should take precedence in the work of this Section in a bid to strengthen and update the existing legal regime governing Liberian ships below 500 gross tons.

ADMINISTRATION DEPARTMENT

At present, the functions of the Administration Department of the Bureau are relegated to mere routine personnel management matters and a ceremonial "Officer-in-Charge" role. The administration arms of most successful maritime administrations play crucial roles in the management of important functions critical to the effective implementation of maritime policies. To meet the great challenges ahead of the Bureau, the Administration Department should perform relevant tasks beyond those token roles mentioned earlier. Its terms of reference should include the following: -

- IT & Documentation,
- Quality Assurance/Internal Audit,
- Budget and Finance,
- Public Relations,
- Personnel Management.

IT & Documentation

The Information Technology and Documentation Section should embark upon identifying hardware and software systems for data processing. Advanced computer systems such as the ORACLE data base system can be used to computerise the Small Watercraft Ship Register, marine and shipping statistics from ports and shipping agencies, payroll processing, administrative-assisted data processing, etc. Additionally, this Section should also devote attention to the development and management of a top-of-the-line

Documentation Centre - a sort of reference library containing publications, conventions, resolutions, conference proceedings and other documents from the IMO, ILO, UNEP and other maritime-related and environmental organisations. Private maritime publications and journals such as Seatrade Review, Maritime Policy and Management, Lloyds' List, etc., should be made available for the Bureau's personnel and interested persons for research, reference and other educational purposes. The Internet is another useful information resource that should be made available to and exploited by as many personnel as possible.

Quality Assurance/Internal Audit Section

The process of Quality Assurance is one that guarantees organisational self-evaluation and self-correction. A Quality System is required at the Bureau of Maritime Affairs to ensure that defined functions and objectives are carried out and a continuous review of the processes and procedures involved are undertaken through periodic internal audits. The Quality Assurance Section should focus on designing and implementing a quality system that would bring a consistent approach in the administration and operation of the Bureau for the purposes of efficiency and effectiveness. At least every 5 years, a credible auditing firm should conduct an external audit of the Bureau as part of the quality system. Reports and recommendations of both the internal and external audits should be accorded serious consideration and prompt corrective measures instituted to rectify areas in which deficiencies are identified.

Budget and Finance Section

The tasks of budgeting and financial management need improvement at the Bureau of Maritime Affairs. The Budget and Finance Section should ensure that an Annual Budget is formulated reflecting allocations for the various Departments and other cost centres of the Bureau and procedures are put in place for disbursements based on the Budget. This Section should ensure that the financial management of the Bureau's incomes from both Registries and other sources should be properly accounted for and managed in accordance with documented procedures and processes to guarantee transparency and accountability.

Public Relations Section

This Section should direct attention to image-building and information-dissemination, and establish a system for gathering and analysing feedback information from the public, the government and the shipping community as to the perceptions and interpretations of the Bureau's policies, and the resultant impact on their own activities, if any. Findings derived therefrom may be useful in re-assessing relevant policies and decisions.

Personnel Management Section

This Section should maintain a database of personnel of the Bureau of Maritime Affairs and ensure that job descriptions are exhaustive,

unambiguous, non-conflicting and documented. A comprehensive Directory of the job description for each employee should be developed and made available to all in the Bureau. This Section should select appropriate insurance policies and a social security scheme for all employees and ensure their proper management in collaboration with the Budget and Finance Section.

TECHNICAL DEPARTMENT

The Technical Department is a vital organ of the Bureau and its potential needs to be harnessed. The Department has been principally involved with Port State Control activities but it lacks trained PSC officers and is under-equipped and under-funded. The Technical Department should expand its role to the regulation of coastal and internal waters and the co-ordination of Search and Rescue operations. Three Sections are proposed under the Technical Department: -

- Port State Control,
- Coastal State Control/SAR,
- Survey, Inspection and Certification.

Port State Control Section

The conduct of Port State Control is a statutory function of every Port State under Article 218 of the UN Convention on the Law of the Sea. The purposes of Port State Control at the ports in Liberia are to monitor compliance with applicable maritime safety and pollution prevention standards, and assess the ability of ships' crew to perform their duties with respect to operational requirements. To achieve these purposes, Port State Control operations in Liberia should be well-organised and properly co-ordinated by trained and qualified PSC officers. Coverage of PSC activities should encompass all Liberian ports with sub-offices provided and equipped in each port. Most of those currently serving as PSC officers do not meet the qualification requirements of IMO Resolution A.787(19) that specifies the criteria for PSCOs. The need for training of PSCOs is dire and should be urgently addressed if high standards are to be maintained to ensure conformity with international safety standards. This Section should concentrate on the development of programmes for training at recognised training institutions and strengthen Port State Control operations at ports throughout the country.

Coastal State Control/SAR Section

The exercise of control in coastal waters is a statutory function of the Coastal State under Article 220 of the UN Convention on the Law of the Sea. This Section should assume responsibility for regulating the use of coastal waters and inland waterways and develop projects for the utilisation of the sea and navigable rivers. Additionally, this Section should be involved with the protection of fisheries and marine life in the Territorial Sea and EEZ of Liberia

in collaboration with the Ministry of Agriculture. This Section should also institute measures to ensure that vessels navigating in coastal waters comply with international standards on maritime safety and pollution prevention. The responsibility for undertaking Search and Rescue operations in coastal waters should also be co-ordinated by this Section with the National Coast Guard of the Ministry of Defence.

Surveys, Inspections and Certification Section

This Section is envisaged to primarily serve the Small Watercraft Registry. Its purposes should be to conduct periodic surveys and inspections and certification of Liberian vessels as required by the statutes. The main handicap is the lack of trained Liberian surveyors and inspectors at the Bureau to perform the technical tasks required. It is envisioned that surveyors forming part of this Section would be used also for Port State Control inspections. The Bureau should urgently consider investing in training surveyors and inspectors so as to facilitate their deployment not only in the Small Watercraft Registry but also in the large ship registry of 500 gross tons and more. Policy makers should realise the long-term economic and technical benefits to the Liberian maritime programme of trained Liberian surveyors and inspectors especially with respect to the development of the requisite technical skills and capacity to eventually take full charge of surveys and inspections of Liberian ships in both the large and small ship Registries.

TRAINING DEPARTMENT

Much of the requirement for an effective Bureau lies in training and manpower development. The Training Department should play a leading role in assessing training needs and elaborating plans for training personnel to fill the needs. Two Sections are proposed under the Training Department: -

- Domestic Training,
- International Training.

Domestic Training Section

One key area in which urgent progress is required is the re-commencement of domestic training programmes. Emphasis should be placed on the re-opening of the Liberian Maritime Training Institute (LMTI) in Margibi County and the evaluation of the numerous seafarers training schools mushrooming in Monrovia with the view to harmonise their curriculum with the requirements of the STCW '95 Convention. The Section should certify domestic training institutions and assume supervisory responsibility over the LMTI, which ought to have an independent administration.

International Training Section

While attempts are being made to operationalize the LMTI, the facilities and opportunities offered by the Regional Maritime Academy in Ghana should be exploited. But training, if it is to be useful, must not be undertaken haphazardly; it has to be systematically planned to address the short, medium and long-term needs of the Bureau's objectives and priorities. For example, the Bureau should consider identifying potential candidates for training in MET (Maritime Training and Education) courses in light of its commitment to re-open the LMTI so as to have qualified teaching staff available at the appropriate time. This Section should assume the duty of planning and co-ordinating international training programmes with training institutions like the World Maritime University, the International Maritime Law Institute, etc in addition to exploring avenues for scholarships, fellowships, grants, studentships, etc., for potential candidates.

LIBERIAN PERMANENT MISSION TO THE IMO

As one of the largest shipowning nations, Liberia is usually represented on the IMO's Council in various categories, a responsibility requiring permanent representation at the IMO headquarters in London. Moreover, the Liberian Permanent Mission as the co-ordinator of IMO matters with relevant units of the central administration in Monrovia has a crucial role, which should be strengthened and enhanced.

5.2 DELEGATING AUTHORITY: AVOIDING THE PITFALLS OF THE PAST

Since 1949, the Government of Liberia through its national administration has delegated certain Flag State duties to private management companies. The new contractual arrangement between the Bureau of Maritime Affairs and the Liberian International Ship and Corporate Registry (LISCR) is the latest manifestation of the practice. LISCR is a private, 100% US-owned and managed company based in the United States whose functions form a vital part of the Bureau's Flag State responsibilities. LISCR's organisational relationship to the Bureau is depicted diagrammatically in Figure 15.

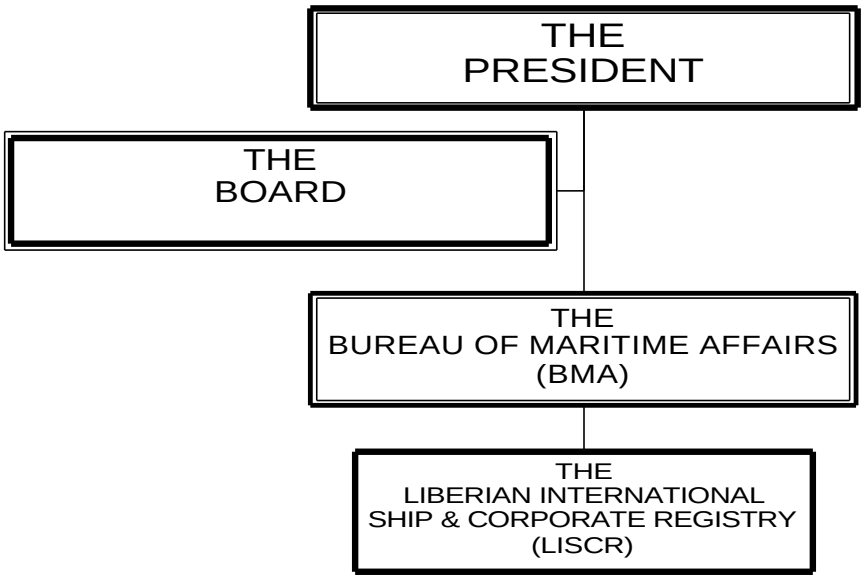

Figure 15

The bitter experiences of nearly 50 years of corporate marriage with the International Trust Company (ITC) and its parent company, the International Registries Inc. (IRI) make it imperative that the new corporate partnership with the LISCR be conducted with caution. Although an agreement has been reached, its provisions are not accessible for analysis, scrutiny and comment. Nevertheless, to be considered an improvement over previous agreements, the new contract should avoid the pitfalls of the past that nearly led to the abyss. The following suggestions may be useful in this regard.

CONTROL MECHANISMS

Indisputably, the failure of previous agreements can be traced not to their contents but to the abject failure of the Government of Liberia through the Bureau of Maritime Affairs to exercise effective control over the operations of the company to which it had delegated authority to perform certain Flag State functions. Delegating authority is not an end in itself; the Bureau of Maritime Affairs must assume full responsibility for the actions and activities of the company in the discharge of delegated duties since it (the company) is, in effect, an extension of the Bureau which is the competent authority recognised under international law to assume these duties.

The following control measures are proposed:

Monitoring

The Agreement should be monitored regularly and in its entirety by an inter-departmental team or whatever organ may be deemed appropriate. A key area of emphasis should be evidence of change in LISCR's corporate ownership and direction. In an age of mergers, synergies and take-overs, no corporate entity is immune to change. The case of the ITC and IRI are omnipresent and instructive. No such change, however, should be allowed to adversely impact upon the implementation of the GOL-LISCR Contract. Another area of concentration should be ensuring that the new company is restrained from administering the affairs of another registry or creating a plethora of dubious companies engaged in parallel businesses, which the Agreement may not have explicitly mentioned. Developing a checklist and monitoring the specific corporate and maritime activities contained therein should be emphasised. A bi-annual report of findings should be submitted to the Bureau's leadership for discussion and, if necessary, appropriate remedial action.

Inspections and Audits

The Bureau of Maritime Affairs should conduct annual inspections and audits of the LISCR. *Inspections* should focus on the *maritime* aspects while *audits* should focus on the *corporate* dimension of LISCR's functions. Unscheduled inspections and audits should not be ruled out. Qualifications and competence criteria should be set for inspectors and auditors. Funding for inspections and audits should be provided by the Bureau of Maritime Affairs to guarantee objectivity and independence in the performance of these functions. Findings of both activities should be submitted to the Bureau's leadership, the Board and the President for remedial action, if necessary.

External Audits

An External Audit of the LISCR should be undertaken every five (5) years by a credible auditing firm mutually agreed to and financed by both the LISCR and the Bureau. Findings of the audit exercise should be made available to both the Bureau and LISCR.

6. EXPLORATORY MARKET RESEARCH & RESULTS

This Chapter focuses on the Exploratory Market Research exercise and the results derived therefrom. The rationale for conducting a market research that is exploratory rather than descriptive or causal in nature is to gain insight and ideas about the marketability of the Liberian Shipping Registry. Moreover, the fact that little or no market research of this nature is known to have been undertaken since the inception of the registry makes it a timely undertaking in clarifying certain concepts, increasing familiarity with the problems of the Registry and establishing priorities for further research.

The scope of the research was originally intended to be large, covering shipowners from all major shipowning nations in Europe, America and the Far East including Japan. However, the lack of financial support substantially undermined the thoroughness and effectiveness of the exercise. Nevertheless, the outcomes are indicative of the potential benefits the Liberian maritime programme stands to accrue from projects of such kind.

6.1 METHODOLOGY

Two methods were employed in conducting the exploratory research; namely,

(1) Field Surveys, and
(2) Literature Search.

6.1.1 Field Surveys

Field Surveys were conducted by means of mailed questionnaires. Twenty (20) questionnaires were sent to shipowners in each of the following countries: - Liberia (Liberia Shipowners' Council), Finland, Greece, France and the Netherlands.

Out of a sample size of 100, 21 responses were received but only 11 were usable. The unusable responses were generally unfilled questionnaires returned for reasons ranging from company policy constraints to unavailability of the appropriate personnel. Two variants of questionnaires were mailed: one for Liberian shipowners and another for non-Liberian shipowners or shipowners who have not used the Liberian registry. Three usable responses were received from members of the Liberian Shipowners' Council while eight usable responses were received from non-

Liberian shipowners. The response rate of 11% is fairly representative of the population and may have been better if the requisite resources were available to survey more shipowners worldwide.

6.1.1.1Summary of Results

The summary of the results of the field surveys of shipowners is presented below:

- The **political stability** of Liberia is critical to the growth and success of the Liberian Registry.
- **Bureaucratic redtape** is encountered by shipowners with respect to certain aspects of documentation.
- The Registry enjoys a **fair safety record**.
- **Information** about the services offered by the Registry is not widespread.
- **Awareness** of the services provided by the Registry can be realised by:-
  - Printing and distributing information brochure
  - Holding meetings with shipowners
  - Using the Internet
- **Good US-Liberia relations** is an important ingredient for the success of the Registry.
- The **level of tonnage tax, crewing policy and trading flexibility** are vital factors in attracting potential registrants to the Registry.

Appendices III & IV contain detailed results of the survey of Liberian and non-Liberian shipowners respectively.

6.1.2 Literature Search

Several marketing concepts were generated from the search of relevant literature; but for the purpose of brevity, two outcomes are presented below: -

6.1.2.1The Focus Group Approach

The Focus Group Approach entails bringing together a small group of specialist individuals with a view of exchanging ideas and thoughts (Marketing Research, 1987, 231). Focus group discussions may be productive in,

- Generating hypothesis that can be tested quantitatively,
- Generating information and data about the services provided,
- Securing impressions about the performance of the Liberian Registry,
- Stimulating ideas for new creative concepts,
- Clarifying and intepreting previously obtained results and concepts.

A typical Focus Group may consist of both current and former trained personnel of the Bureau of Maritime Affairs, Liberian maritime professionals not employed by the BMA, foreign maritime experts with interest in the Liberian Registry and select members of the Liberian Shipowners' Council and the Liberian Maritime Advisory Board. Envisaged to be held at a regular interval not exceeding five years, such a forum can be productive in stimulating and generating new ideas, insights and concepts hitherto uncontemplated to improve the performance of the registry and increase its competitiveness.

6.1.2.2Global Maritime Fairs

Seizing the opportunity to play a major role in international maritime fairs and exhibitions is a cost-effective and penetrating marketing technique. It would *inter alia* avail personnel of the Bureau a rare opportunity to interact with key global players in the ever-changing shipping industry thereby forging strategic alliances and building corporate networks essential to the success of the Registry in the medium and long terms.

7. CONCLUSIONS AND RECOMMENDATIONS

The objectives of this dissertation were to appraise the potential causes of the decline in tonnage recorded by the Liberian Registry in the 1980s and 1990s, review the Flag State implementation process with emphasis on the safety aspects and explore avenues for increasing the marketing prospects of the Registry.

In appraising the potential causes of the decline, the provisions of the 1975 GOL-ITC Agreement were analysed. The analysis revealed that the decline in tonnage recorded in the '80s and '90s was due to breaches of the Agreement by the International Trust Company (ITC) and its parent company, the International Registries Inc. (IRI), on the one hand and the failure of the Government of Liberia to live up to its contractual obligations on the other hand.

The IRI/ITC breached the Agreement through the mismanagement of the corporate assets of the Registry and the operation of two competing registries - The Marshall Islands and Liberia - side by side. The facts showed that while the Liberian Registry declined 3% in gross tonnage between 1990 and 1996, the Marshall Islands Registry increased in gross tonnage by a mammoth 315% in the same period. It was also determined that while ITC remained unchanged in name, it had radically transformed in purpose. In the last 50 years, ITC has fallen under the control of a plethora of interests including the International Bank (IB) of Washington D. C. in 1954, ULISCO in subsequent years and the International Registries Inc. (IRI), in the late '80s and '90s.

Although the 1975 Consolidated Agreement spelled out the Liberian Government's obligations to conduct regular audits, inspections and approve ITC's accounting system, the Government failed to discharge these obligations properly thereby giving the IRI/ITC group *carte blanche* to administer the Registry unchecked and unregulated.

The dissertation also reviewed the statutory Flag State duties of Liberia and the process by which they have been implemented. Based on the provisions of Article 94 of the UN Law of the Sea Convention, Liberia's Flag State duties were categorised into administrative, technical and social duties. The administrative duties entail the tasks of Ship Registration, seafarers' training and certification under the STCW '95 Convention, implementation of the International Safety Management (ISM) Code and the development of national and international safety and environment

protection legislation. The technical duties encompass Tonnage Measurements, Surveys, Inspections and Certification under SOLAS, MARPOL and other relevant international instruments, Casualty Investigation and the like. The social duties involve ensuring adequate living and working conditions for seafarers aboard Liberian ships and compliance with relevant ILO Conventions.

The fundamental basis for the implementation of Flag State duties is the Liberian Maritime Law and Regulations. In accordance with Article 13, Chapter 1 of the Law, ITC was designated as an Agent in 1949 and has since then administered Flag State duties delegated to it by the Government of Liberia. An appraisal of the performance of ITC with respect to the implementation of Flag State duties revealed that the Liberian Registry recorded remarkable achievements in terms of growth between 1949 and 1979, a good safety record and low casualty figures compared other maritime nations since 1949. However, despite the commendable performance, ITC's services terminate on 31 December 1999. On 1 January 2000, a new Agent, the Liberian International Ship and Corporate Registry (LISCR), assumes administration of these Flag State duties.

To avoid the pitfalls of the past and ensure the maximum supervision of the Agent, i.e., LISRC, a number of control mechanisms are proposed. They are regular monitoring of the provisions of the GOL-LISCR Contract, annual inspection and audit of delegated maritime and corporate functions and an external audit of the LISCR by a credible international auditing firm, mutually agreed by the GOL and LISCR. It is emphasised that reports emanating from these exercises should be submitted to the Commissioner, the proposed Board and the President for review and prompt remedial action, if necessary.

In the context of its statutory responsibilities, a revised organisational structure has been designed and proposed for the Bureau of Maritime Affairs. Key features of the organisational structure include a Board with oversight authority and a Shipping Department responsible for ship registration as part of the Small Watercraft Registry, shipping policy and regulation, and marketing. The existing Legal, Technical, Administration and Training Departments were assigned added tasks directly related to the principal statutory Flag, Port and Coastal State functions. The terms of reference of each proposed department and section in the new structure were elaborated.

An exploratory marketing research exercise was conducted by means of mailed questionnaires and literature search of relevant texts. Twenty (20) shipowners each from Greece, Finland, France, Liberia and the Netherlands have been surveyed. The results reveal that political stability and good US-Liberia relations

are critical to the growth and development of the Registry. The lack of awareness about the services provided by the Registry and bureaucratic redtape in certain documentation processes are key findings derived from the results of the field surveys. The literature search generated two marketing concepts; namely, the Focus Group Approach and participation in Global Maritime Fairs. It was noted that Focus Group discussions bring together a small group of specialist individuals, are productive in stimulating ideas and creative concepts, and generate information about the services provided by the Registry. Participation in Global Maritime Fairs and exhibitions is considered a penetrating marketing technique, which promotes interaction with key players in the shipping industry and fosters the creation of strategic alliances.

The foregoing are the essential highlights of the dissertation and should be viewed as building blocks upon which further studies can be conducted. The ideas and concepts espoused are not meant to be sacroscant but are intended to stimulate constructive discussion and debate on the key questions facing the Liberian maritime establishment as it enters the new millennium.

The recommendations contained in Chapter 5 and the results of the exploratory market research presented in Chapter 6 may be useful in the transformation of the administration of maritime affairs in Liberia, if accorded due attention and consideration by the appropriate Liberian Government authorities. A few supplementary suggestions may also be helpful in this regard:

- ***Reviewing and updating the Liberian Maritime Law and Regulations***

  Despite a review conducted in 1998, the Liberian Maritime Law and Regulations still contain antiquated and or inadequate provisions. For example, Article 10, Chapter 1 of the Liberian Maritime Law entitled “Administration of the Law; Minister of Finance” is antiquated by virtue of the statutory changes effected by the 1989 Act of the Liberian National Legislature which granted autonomy to the Bureau of Maritime Affairs and made the Commissioner directly answerable to the President of Liberia. This Article and corresponding provisions in the LMA should be revised to reflect the changes.

  Additionally, the “Statement of Policy” contained in Article 1; Chapter 1 of the Law should be amended to incorporate an expressed commitment of the Liberian Government to “maritime safety, pollution prevention and environmental protection”. The purpose is to demonstrate that the Liberian government’s policy regarding maritime matters extends beyond the stated commercial and national

security objectives to the promotion of safety at sea and the protection of the marine environment.

Moreover, the provisions of the Amendment to Title 22 of the Liberian Code of Law of 1956 effected in 1922 to create the Small Watercraft Registry, require updating to incorporate relevant new provisions of international legislation with respect to vessels below 500 gross tons. For example, the new STCW '95 Convention contains additional requirements, *inter alia,* for the certification of officers and masters on vessels of less than 500 gross tons.

Either as part of the Act or an Executive Order, the allocation and management of revenue generated by the Small Watercraft Registry should be spelled out to ensure transparency and proper management, as is the case with the large Registry.

- ***Defining lines of authority***

The apparent confusion that existed over the reporting structure of Deputy Commissioners appointed by GOL but operating within the ITC system ought to be clarified and the lines of authority clearly defined. It is recalled that in the late '80s, the commissions of the former Senior Deputy Commissioners Fred T. Lininger and James McGuire of the Liberian Services Inc. (LSI), were revoked by the Government of Liberia through the Commissioner but ITC/LSI ignored the revocation directives thereby undermining the Commissioner's authority. Moreover, there exists evidence that ITC appointed a number of "DCO/Special Agents" to usurp the functions of GOL-appointed Deputy Commissioners. Resolving the apparent crisis of authority is pivotal to the future exercise of effective central administration control and authority in the administration of maritime matters.

- ***Marketing the Registry***

The need to create a Marketing unit either in the LISCR structure or that of the BMA, is a necessity in light of the increased competitiveness of traditional competitors like Panama and the Bahamas and the rise of new challengers like the Marshall Islands and the Isle of Man. Given the overwhelming competitive challenge posed to Liberia's position, marketing the Liberian registry is no more a pastime engagement. The proposed Marketing unit should focus exclusively on developing marketing strategies and organising promotional programmes targeted at shipowners and shipowning interests in major maritime centres in the

US, Canada, the European Union and the Far East to attract registrants to enlist in the Liberian registry. Building a strong, aggressive and effective international marketing network is an imperative challenge of the new millennium.

- ***Employment of qualified Liberians***

  The Agreement should explicitly provide employment opportunities for qualified Liberian citizens in the LISCR system in such areas as ship registration and documentation, casualty investigation, surveys and inspections, marketing, etc., by mutual agreement between the Bureau and the LISCR. This is important for the acquisition of the requisite experience, knowledge and expertise in the practical operations and administration of the Liberian registry. Without Liberian participation and access to key operations, Liberia's dependence on foreign, private companies like ITC, IRI and LISCR will be perpetual.

BIBLIOGRAPHY

Carlisle, R P (1981). *Sovereignty for Sale*. Annapolis: Naval Institute Press.

Churchill, G A (1987). *MARKETING RESEARCH, Methodological Foundations*. New York: Holt, Rinehart and Winston.

Cooper G B (1992*). Report of determination and comprehensive analysis of problem and potential conflicts facing the Liberian Maritime Programme/suggested measures for solution*. Monrovia: Bureau of Maritime Affairs.

Drucker, P (1985). *Management: Tasks, Responsibilities and Practices*. New York: Harper & Row.

Fairplay, http://www.fairplay.co.uk, 18/2/99

Food and Agriculture Organisation (1987). *Fishing Country Profile – Liberia.* FAO: Rome.

GOL-ITC Consolidated Agreement, 1975, Monrovia, Liberia.

Hyman, L S (1999). *Liberia's Corporate and Maritime Clients*. Washington D. C: Liberia International Ship & Corporate Registry.

Institute of Shipping Economics and Logistics (1992). *Shipping Statistics Yearbook*. Bremen: Institute of Shipping Economics and Logistics.

Institute of Shipping Economics and Logistics (1994*). Shipping Statistics Yearbook*. Bremen: Institute of Shipping Economics and Logistics.

Institute of Shipping Economics and Logistics (1996). *Shipping Statistics Yearbook.* Bremen: Institute of Shipping Economics and Logistics.

Institute of Shipping Economics and Logistics (1998). *Shipping Statistics Yearbook*. Bremen: Institute of Shipping Economics and Logistics.

International Maritime Associates (1979). *Economic Impact of Open Registry Shipping*. Washington: International Maritime Associates.

International Trust Company (1975). *Liberia: 25 years as a Maritime Nation*. New York: International Trust Company.

IRI Press Release, http://www.register-iri.com/press-release.html, 4/8/99.

IRI Press Release, http://www.register-iri.com/press-release.html, 5/26/99.

Liberian Maritime Law, 1998, Monrovia, Liberia

Liberian Maritime Regulations, 1998, Liberian Maritime Law, Monrovia, Liberia

Lloyds' Register of Shipping (1977-97). *Lloyd's Register Statistical Summary of Casualties.* London: Lloyds' Register of Shipping.

Lyons, C (1998). 'The Flag Question'. *Seatrade Review*, pp 6-9

Marine Notice No. 1-019-1, 1998, Monrovia, Liberia.

Marine Notice No. 2-035-3, 1998, Monrovia, Liberia

Marine Notice No. 2-035-1, 1998, Monrovia, Liberia

Marine Notice No. 2-035-7, 1998, Monrovia, Liberia

Marine Notice No. 7-191-2, 1998, Monrovia, Liberia

Marine Notice No. 10-325-3, 1998, Monrovia, Liberia

Marine Notice No. 10-292-1, 1998, Monrovia, Liberia

McLaughlin, J (1999). 'Agreement reached to end bitter Liberian register row'. *Lloyds' List*, No. 57,258, p 1.

Metaxas, B N (1985). *Flags of Convenience: A Study of Internationalism*. Croft Road: Gower Publishing Company Limited.

Paris Memorandum of Understanding on Port State Control (1990). *Annual Report.* The Hague: Paris Memorandum of Understanding on Port State Control.

Paris Memorandum of Understanding on Port State Control (1993). *Annual Report.* The Hague: Paris Memorandum of Understanding on Port State Control.

Paris Memorandum of Understanding on Port State Control (1996). *Annual Report.* The Hague: Paris Memorandum of Understanding on Port State Control.

Paris Memorandum of Understanding on Port State Control (1997). *Annual Report.* The Hague: Paris Memorandum of Understanding on Port State Control.

Republic of Liberia(RL) v. International Registries In.(IRI et al) (1998). *Bill of Complaints*. Fairfax County, Chancery No. 153647, Virginia, U.S.A.

Star Radio News. http://www.hirondelle.org: Bulletin air (27.02.99), 1999

Star Radio News. http://www.hirondelle.org: Bulletin air (5.03.99), 1999

Taylor, C (1998). *Presidential Directive, EM/LA/JEP/11-02/'98/RL*. Monrovia, Executive Mansion.

The London Shipping Consultancy Ltd (1998). *An Analysis of Open Registry Development.* London: The London Shipping Consultancy Ltd.

The Maritime Act, 1989, Monrovia, Ministry of Foreign Affairs.

Tokyo Memorandum of Understanding on Port State Control (1997). *Annual Report.* Tokyo: Tokyo Memorandum of Understanding on Port State Control.

UN Convention on Conditions for Registration of Ships, 1986, Geneva.

UN Convention on the Law of the Sea, 1982. New York, United Nations.

APPENDIX I

IMO AND IMO-RELATED CONVENTIONS RATIFIED AND/OR ADOPTED BY LIBERIA

KEY	
*	**Applied by Liberia, in whole or in part, under national law.**
NR	**RL has not ratified or deposited an Instrument of Accession.**
NIF	**Not in force**
TA	**IMO Tacit Acceptance procedure brought treaty into force**
TA[NA]	**Tacit Acceptance not applicable to Liberia**
TA[NO]	**RL has no objection to IMO Tacit Acceptance**

IMO CONVENTIONS

CONVENTION/ PROTOCOL		DATE OF DEPOSIT	DATE OF ENTRY INTO FORCE
1.	**CONVENTION ON THE INTERNATIONAL MARITIME ORGANIZATION(IMO CONSTITUTION) AND SUBSEQUENT AMENDMENTS**	06 JAN 58	06 JAN 59
2.	**INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974(SOLAS 74) AS AMENDED**	14 NOV 77	25 MAY 80
	1981 Amendments (Resolution MSC.1)(XLV) IBC Code [Bulk Carrier Code]	TA	01 SEPT 84
	1983 Amendments [Resolution MSC.4(48)(IBC Code), 5(48)(IGC Code), 6(48)]	TA	01 JUL 86
	1987 (IBC Code) Amendments [Bulk Chemicals: Built on/after 1 Jul 86] [Resolution MSC.10(54)]	TA	01 JUL 86
	1988 (April Ro-Ro) Amendments [Resolution MSC.11(55)]	TA	22 OCT 89
	1988 (October Ro-Ro) Amendments [Resolution MSC.12(56)]	TA	29 APR 90
	1988 (GMDSS) Amendments [Resolution MSC.13(57)] (GMDSS Conference 31 Oct to 11 Nov 88)	TA	01 FEB 92
	1989 (April) Amendments [Resolution MSC.13(57)]	TA	01 FEB 92
	1989 (IBC Code) Amendments [Resolution MSC.14(57)]	TA	13 OCT 90
	1990 (IBC Code) Amendments [Resolution MEPC.40(29)] [Resolution MSC.16(58)]	TA(NO)	NIF
	1990 (IGC Code) Amendments [Gas Carrier Code] [Resolution MSC.17(58)]	TA(NO)	NIF
	1990 (Chapter II-I) Amendments [Resolution MSC.19(58)]	TA	01 FEB 92
	1991 (Chapter II-2, III, IV, VI, VII) Amendments [Resolution MSC.22(59)]	TA	01 JAN 94
	1992 (Chapter II-1, II-2) amendments [Resolution MSC.24 & 26(69]	TA	01 Oct 94
	1992 (December) Amendment Resolution MSC.27(61)]	TA	01 Oct 94

	1992 (IBC Code) Amendments [Resolution MSC.28(61)]	TA	01 JUL 94
	1992 (IGC Code) Amendments [Resolution MSC.30(61)]	TA	01 JUL 94
	1994 (Enhanced Surveys) Amendments [Resolution A.744(18)]	TA	01 JAN 96
	1994 Chapter V, II-2) Amendments [Resolution MSC.31(63)]	TA	01 JAN 96 (Annex 1)
	1994 (IGC Code) Amendments [Resolution MSC.32(63)]	TA	01 JUL 98 (Annex 2)
	1994 (Chapter IX) Amendments, [Resolution A.741(18)] ISM Code	TA	01 JUL 98 (Annex 2)
	1994 (Chapter X) Amendment, [Resolution MSC.36(63)] HSC Code	TA	01 JAN 96 (Annex 1)
	1994 (Chapter XI) Amendment [Resolution A.739(18)]	TA	01 JAN 96(Annex 1) 01 JUL 98(Annex 2)
	1994 (Chapter VI, VII) Amendments [Resolution MSC.42(64)]	TA	01 JUL 96
	1995 (Chapter V) Amendments	TA	01 JAN 97
	1995 (Chapter II-2, III, IV, V, VI) Amendments (CONF.: 29 Nov 95)	TA	01 JUL 97
	1997 (Chapter XII) Amendment (CONF.: 27 Nov 97)	TA	01 JUL 99
3.	**PROTOCOL OF 1978 TO SOLAS 74**	28 OCT 80	01 MAY 81
	1981 Amendments	TA	01 SEP 84
	1988 (GMDSS) Amendments (CONF.: Nov 88)	TA	01 FEB 92
4.	**PROTOCOL OF 1988 TO SOLAS 74** **(SOLAS PROT 88)**	26 FEB 97	NIF
	NOTE: Harmonised System of Survey Certification. Early implementation of HSSC is applied in accordance with A.718(17) – having ratified the 1988 Protocols to both SOLAS, 74 and Load Lines 66.		
5.	**STABILITY REQUIREMENTS FOR RO-RO PASSENGER SHIPS UNDER REGULARLY SCHEDULED INTERNATIOAL VOYAGES BETWEEN, TO OR FROM DISIGNAGED PORTS IN NORTH WEST EUROPE AND THE BALTIC SEA, 1966 (STOCKHOLM AGREEMENT 96)**	NR	01 APRIL 97
6.	**CONVENTION ON THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972 (COLREGS 72)**	28 DEC 73	15 JUL 77
	1981 Amendments [Resolution A.464(XII)]	TA	01 JUL 83
	1987 Amendments [Resolution A.626(15)]	TA	19 NOV 89
	1989 Amendments [Resolution A.678(16)]	TA	19 APR 91
	1993 Amendments [Resolution A.736(18)]	TA	04 NOV 95
7.	**INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973 AS MODIFIED BY THE PROTOCOL OF 1978 (MARPOL 73/78)**	28 OCT 80	02 OCT 83
	Annex I 1984 Amendments [Resolution MEPC.14(20)]	02 NOV 73 07 SEP 84	02 OCT 83 07 JAN 86
	Annex II 1985 Amendments (Protocol I) [MEPC.21(22)]	02 NOV 73 05 DEC 85	06 APR 87 06 APR 87
	1985 Amendments [Annex II] [MEPC.16(22)]	05 DEC 85	06 APR 87

	Annex III	05 OCT 95	05 JAN 96
	Annex IV	NR	NIF
	Annex V	12 JUN 95	12 SEP 95
	1987 Amendments [Annex II] [Resolution MEPC.29(25)]	TA	01 SPR 89
	1989 Amendments (IBC Code) [Resolution MEPC.32(27)]	TA	13 OCT 90
	1989 Amendments (BCH Code) [Bulk Chemicals] [Resolution MEPC.33(27)]	TA	13 OCT 90
	1989 Amendments [Annex II] [Resolution MEPC.34(27)]	TA	13 OCT 90
	1989 Amendments [Annex V] [Resolution MEPC.36(29)]	TA	18 FEB 91
	1990 Amendments (HSSC) [Annexes I& II] [Resolution MEPC.39(29)]	TA(NO)	NIF
	1990 Amendments (IBC Code) [Resolution MEPC.40(29)]	TA(NO)	NIF
	1990 Amendments (BCH Code) [Resolution MEPC.42(31)]	TA(NO)	NIF
	1990 Amendments (Annexes I & V) [Resolution MEPC.42(30)]	TA	17 MAR 92
	1991 Amendments (Annex I) [Resolution MEPC.47(31)]	TA	04 APR 93
	1991 Amendments (Annex VI) [Resolution MEPC.48(31)]	TA	04 APR 93
	1992 Amendments (Annex I) [Resolution MEPC.51(32) & MEPC.52(32)]	TA	06 JUL 93
	1992 Amendments (IBC Code) [Resolution MEPC.55(33)]	TA	01 JUL 94
	1992 Amendments (Annex II) [Resolution MEPC.57(33)]	TA	01 JUL 94
	1992 Amendments (BCH Code) [Resolution MEPC.56(33)]	TA	01 JUL 94
	1992 Amendments (Annex III) [Resolution MEPC.58(33)]	TA	28 FEB 94
	1994 Amendments (Annex I, II, III, IV) (CONF.: 2 NOV 94)	TA	03 MAR 96
	1996 Amendments (Annex V) [Resolution MEPC.65(37)]	TA	01 JUL 97
8.	**CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME TRAFFIC 1965 (FAL 65)**	14 FEB 78	05 MAR 67
9.	**INTERNATIONAL CONVENTION ON LOAD LINES, 1966 (LL 66)**	08 MAY 67	21 JUL 68
	1971 Amendments (Resolution A.231) (VIII)	25 SEP 72	NIF
	1983 Amendments (Annex II) (Resolution A.513(13))	31 OCT 91	NIF
10.	PROTOCOL OF 1988 (LL PROT 88)	26 FEB 97	NIF
	NOTE: Harmonised System of Survey Certification. Early implementation of HSSC is Applied in accordance with A.718(17) – having ratified the 1988 Protocols to Both SOLAS, 74 and Load Lines, 66.		
11	**INTERNATIONAL CONVENTION ON TONNAGE MEASUREMENT OF SHIPS, 1969 (TMS 69)**	25 SEP 72	18 JUL 82

12.	**INTERNATIONAL CONVENTION RELATING TO INTERVENTIOIN ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASULTIES, 1969 (INTERVENTION 69)**	25 SEP 72	06 MAY 75
13.	**PROTOCOL RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF POLLUTION BY SUBSTANCES OTHER THAN OIL, AS AMENDED (INTERVENTION PROT 73)**	17 FEB 81	30 MAR 83
14.	**INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969 (CLC 69)**	Denounced as required on 21 Apr 97	Effective 15 May 98
15.	**PROTOCOL OF 1976 (CLC PROT 76)**	17 FEB 81	08 APR 81
16	**PROTOCOL OF 1992 (CLC PROT 929**	05 OCT 95	05 OCT 96
17.	**INTERNATIONAL CONVENTION RELATING TO SPECIAL TRADE PASSENGER SHIPS AGREEMENT, 1971 (STP 71)**	NR	02 JAN 74
18.	**PROTOCOL ON SPACE REQUIREMENTS FOR SPECIAL PASSENGER SHIPS, 1973 (SPACE STP PROT 73)**	NR	02 JAN 77
19.	**CONVENTION RELATING TO CIVIL LIABILITY IN THE FIELD OF MARITIME CARRIAGE OF NUCLEAR MATERIAL, 1971 (NUCLEAR 71)**	17 FEB 81	18 MAY 81
20.	**INTERNATIONAL CONVENTION ON OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION, 1990 (OPRC 90)**	05 OCT 95	03 JAN 96
21	**INTERNATIONAL CONVENTION FOR SAFE CONTAINERS, 1972 (CSC 90)**	14 FEB 78	14 FEB 79
22	**ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974 (PAL 74)**	17 FEB 81	28 APR 87
23	**PROTOCOL OF 1976 (PAL PROT 76)**	28 APR 87	30 APR 89
24	**INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978, AS AMENDED (STCW78)**	28 OCT 80	28 APR 84
	1991 Amendments [Resolution MSC.21(59)]	TA	01 DEC 92
	1994 Amendments [Resolution MSC.33(63)]	TA	01 JAN 96
	1995 Amendments (STCW Code) (CONFERENCE)	TA	01 FEB 97
	1996 Amendments (STCW Code) [MSC.67(68)]	TA	01 JAN 99
25	**INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE, 1979 (SAR 79)**	NR	22 JUN 85
26	**CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988 (SUA 88)**	05 OCT 95	03 JAN 96
27	**PROTOCOL OF 1988 (FIXED PLATFORM ON CONTINENTAL SHELF) (SUA PROT 88)**	05 OCT 95	03 JAN 96
28	**INTERNATIONAL CONVENTION ON SALVAGE, 1989 (SALV 89)**	NR	14 JUL 96
CONVENTIONS ASSOCIATED WITH IMO			
29	**INTERNATIONAL CONVENTIONON THE ESTABLISHMENT OF AN INTERNATIIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971 (FUND 71)**	Denounced as required on 21 April 97	Effective 15 May 98
	PROTOCOL OF 1976 (FUND PROT 73)	17 FEB 81	22 NOV 94
	PROTOCOL OF 1992 (FUND PROT 92)	05 OCT 95	05 OCT 96

30	**INTERNATIONAL CONVENTION ON THE PREVENTION OF MARITIME POLLUTION BY DUMPING OF WASTES AND OTHER MATTER, 1972 (LDC/LC 72)**	NR	30 AUG 75 Reg. 2.38
31	**CONVENTION ON THE INTERNATIONAL MARITIME SATELLITE ORGANIZATION, (INMARSAT-C)**	14 NOV 80	14 NOV 80
32	**OPERATING AGREEMENT ON THE INTERNATIONAL MARITIME SATELLITE ORGANIZATION, 1976(INMARSAT-OA)**	14 NOV 80	14 NOV 80
33	**INTERNATIONAL AGREEMENT ON USE OF INMARSAT SHIP EARTH STATIONS WITHIN THE TERRITORIAL SEA AND PORTS, 1985**	13 JUN 95	13 JUN 95
34	**INTERNATIONAL CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976 (LLMC 76)**	17 FEB 81	01 DEC 86
35	**1985 VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER**	15 JAN 96	14 APR 96
36	**1987 MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER**	15 JAN 96	14 APR 96

Marine Notice No. 2-035-1

APPENDIX II

ILO CONVENTIONS RATIFIED AND/OR ADOPTED BY LIBERIA

KEY	
*	**Applied by Liberia, in whole or in part, under national law.**
NR	**RL has not ratified or deposited an Instrument of Accession.**
NIF	**Not in force**
TA	**IMO Tacit Acceptance procedure brought treaty into force**
TA[NA]	**Tacit Acceptance not applicable to Liberia**
TA[NO]	**RL has no objection to IMO Tacit Acceptance**

	ILO CONVENTIONS		
1.	ILO CONVENTION NO. 22 CONCERNING SEAMEN'S ARTICLES OF AGREEMENT, 1926	21 JUNE 77	21 JUN 78
2.	ILO CONVENTION NO. 23 CONCERNING REPATRIATION OF SEAMEN, 1926	21 JUN 77	21 JUN 78
3.	ILO CONVENTION NO.53 CONCERNING THE MINIMUM REQUIREMENTS OF PROFESSIONAL CAPACITY FOR MASTERS AND OFFICERS ON BOARD MERCHANT SHIPS, 1936	09 MAY 60	09 MAY 61
4.	ILO CONVENTION NO.55 CONCERNING THE LIABILITY OF THE SHIPOWNER IN CASE OF SICKNESS, INJURY OR DEATH OF SEAMEN, 1936	06 MAY 60	09 MAY 61
5	ILO CONVENTION NO.58 CONCERNING THE MINIMUM AGE FOR ADMISSION OF CHILDREN TO EMPLOYMENT AT SEA, 1936	09 MAY 60	09 MAY 61
6.	ILO CONVENTION NO.73 CONCERNING THE MEDICAL EXAMINATION OF SEAFARERS, 1946	NR	08 JUL 82
7.	ILO CONVENTION NO.87 CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE, 1948	25 MAY 62	25 MAY 63
8.	ILO CONVENTION NO.92 CONCERNING ACCOMMODATION OF CREWS (REVISED), 1949	21 JUN 77	21 JUN 77
9	ILO CONVENTION NO. 98 CONCERNING THE RIGHT TO ORGANIZE AND TO BARGAIN COLLECTIVELY, 1949	25 MAY 62	25 MAY 62
10.	ILO CONVENTION NO. 108 CONCERNING SAFARERS' IDENTITY DOCUMENTS, 1958	06 JUL 81	08 JUL 82
11.	ILO CONVENTION NO.111 CONCERNING DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION, 1958	22 JUL 59	22 JUL 60
12.	ILO CONVENTION NO.112 CONCERNING THE MINIMUM AGE FOR ADMISSION TO EMPLOYMENT AS FISHERMEN, 1959	16 MAY 60	07 NOV 61
13.	ILO CONVENTION NO. 113 CONCERNING THE MEDICAL EXAMINATION OF FISHERMEN, 1959	16 MAY 60	07 NOV 61
14.	ILO CONVENTION NO.114 CONCERNING FISHERMEN'S ARTICLES OF AGREEMENT, 1959	16 MAY 60	07 NOV 61

15.	ILO CONVENTION NO. 133 CONCERNING ACCOMMODATION OF CREWS (Supplementary Provisions), 1970	08 MAY 78	27 AUG 91
16.	ILO CONVENTION NO. 134 CONCERNING PREVENTION OF ACCIDENTS TO SEAFARERS, 1970	NR	08 JUL 82
17.	ILO CONVENTION NO. 152 CONCERNING THE OCCUPATIONAL SAFETY AND HEALTH OF DOCK WORKERS, 1979	NR	05 DEC 81
18.	ILO CONVENTION NO. 147 CONCERING THE MINIMUM STANDARDS IN MERCHANT SHIPS, 1976	08 JUL 81	08 JUL 82
19.	ILO CONVENTION NO. 166 CONCERNING THE REPATRIATION OF SEAFARERS (REVISED), 1987	NR	03 JUL 91

Source: Marine Notice No. 2-035-1

APPENDIX III

Results: *Survey of Liberian Shipowners*

The responses obtained from the survey of Liberian shipowners are presented below unedited:

1. You have affiliated with the Liberian registry for some time now. What do you* like *about the services it provides?

- Reasonable ease of registering a ship in Liberia
- Speedy administration, efficient administration, good international acceptance, relatively low cost

2. What do you* dislike *about the services offered by the Liberian registry? What services are needed that are not being offered?

- There is a great deal of paperwork and cost related to seafarers licenses [and] documentation
- The entire political situation in Liberia. The services are excellent, we are seriously disturbed about the present discussion with the Liberian government

3. In your opinion, what factors would encourage shipowners to register ships with the Liberian registry as opposed to other open registries?

- Stability of the registry, safety, taxes, environmental controls, crew/manning regulations
- The registry has been open and easy to communicate with
- Speed administration

4. What is your impression about the safety standards maintained by the Liberian registry in the last 20 years?

Very Good	Good	Fair	Poor	Very Poor
-	33%	67%	-	-

5. In terms of quality, which of the following factors reflect, as closely as possible, your impression of the services provided by the Liberian registry?

A Good Safety Record	A reputation for high standards	A slow level of bureaucracy and paperwork	A good inspection system	All of the above	Other(s)
-	-	100%	-	33%	-

APPENDIX IV

Results: ***Survey of non-Liberian Shipowners***

The responses obtained from the survey of Non-Liberian shipowners are presented below unedited:

1. The Republic of Liberia runs an Open Registry of ships of over 500 gt. Are you aware of the variety of services (financial privileges, incentives, etc.) offered by the Liberian registry to shipowners?

Yes	No	Partly
-	25%	75%

2. What do you think can be done to make shipowners in your country aware of the services provided by the Liberian registry?

Open an office	Print and distribute informa-tion brochure	Advertise on TV and in News-papers	Use the Internet	Hold meetings with ship-owners	All of the above	Other(s)
-	50%	-	12.5%	50%	12.5%	-

3. In your opinion, what would encourage shipowners in your country to register their ships with the Liberian registry?

- Tonnage tax, crew composition/cost, trading acceptability
- This is partly dependent on trading area and also on eventual advantages in the Liberian registry compared to those "convenient" flag state registries
- Strong unions inhibit registration with flag of convenience
- Nothing
- Change of image of Liberia
- More information about financial privileges, incentives, etc., offered by the Liberian registry

4. What in your opinion is the singularly unique feature of the Liberian registry that differentiates it from other open registries?

- I do not know
- Differences are not big from the others
- Better track record
- United States orientation
- Image - no too good
- Nothing so far we know

5. In your opinion, what aspects of the Liberian registry do you think need serious attention and improvement?

- I do not know
- Lack of political stability
- We have too little know of this matter
- Maritime safety and environmental reputation