UNIT 15 MARITIME FRAUDS AND UNETHICAL PRACTICES

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15.0 OBJECTIVES

After studying this unit you should be able to:

- define a maritime fraud
- explain the various dimensions and causes of maritime frauds
- describe the common precautions which the various parties should take while undertaking any international trade transaction
- cite a few cases and examples on maritime frauds
- describe the role of International Chamber of Commerce and International Maritime Bureau in providing assistance to affected parties in respect of maritime frauds.

15.1 INTRODUCTION

Over the years, there have been many cases of fraudulent practices in international maritime trade. For example, sinking of an overinsured vessel carrying a highly valued non-existent cargo had been encountered at regular intervals and there have been incidents of unusual during periods of political upheaval and depression in the shipping business. But, by and large, the level of such practices remained within manageable proportions and most incidents have been local in origin. However, as world trade expanded and trade patterns shifted, the problem of cargo transportation became much more complex and international in nature. During the last several years, these and other factors like use of multimodal transport system involving international marine transport companies, multiplicity of parties, lack of opportunities to verify statemens of parties, unwarranted secrecy on the part of shipping companies have led to a significant escalation in the number of incidents that can be termed as maritime frauds. During 1979, although the exact figures are not available, it is said that an average of three frauds a month occurred

Not only that, frauds are now found to be more complex and involve much larger sums than ever before. Of all incidents examined, the average amount of direct loss has been about US $ 5 million, and this average is on the increase. In this unit, you will learn about the dimensions and causes of such frauds, the precautions to be observed and the role of International chamber of Commerce and International Maritime Bureau in eliminating the maritime frauds.

15.2 WHAT IS MARITIME FRAUD?

An international trade transaction involves several parties, viz., traders (buyers and sellers of goods), shipowners, charterers, agents, bankers, insurers, port authorities, and custom authorities. The maritime fraud occurs when one of these parties succeeds, unjustly and illegally, in obtaining money or goods from another party to whom he has undertaken specific trade, transportation or financial obligation. In some cases, several parties act in collusion to defraud another. In fact there are numerous combinations and permutations for fraud. But those which have taken place in recent years can essentially be put into four categories: (a) fraud committed by a trader against another trader, shipowner, bank or insurer, (b) fraud committed by a charterer against a shipowner, (c) fraud committed by a shipowner or trader against insurers, and (d) fraud committed by a charterer or shipowner against a trader. A resolution adopted by the Assembly of the Inter-Government Maritime Consultative Organisaion also referred to 'barratary and the unlawful seizure of ships and their cargo' as another type of fraud; but this is only a part of the wide phenomenon that ICC (International Chamber of Commerce) considers to be a maritime fraud.

In nearly all cases of fraud, there is some aspect of documentary fraud. Let us look at this example. A buyer in country A wanted to buy 15,000 metric tonnes of steel round reinforcing bars. He approached a seller in country B. The seller in country B could not himself supply in time and so contacted a seller in country C, who agreed to supply. An irrevocable confirmed letter of credit for over US $5 million was opened by the buyer in country A in favour of the seller in country C. The payment was to be made against the following documents:

1. Certificate of non-blacklisted vessel;
2. Mill certificate;
3. EEC certificate of origin;
4. Packing list; and
5. Bill of lading;

The seller in country C was supplying from a company in a fourth country D. The seller presented all the necessary documents to the confirming bank in country C and received the payment. Four months later, the buyer in country A had not received the steel and made inquiries with the original company in country B. The company in country B immediately put an investigator on the trail. It was found that the vessel on which the steel was supposed to have been shipped was actually in country D at the right time but did not load the steel in question. The shipowner and charterer were not involved in the fraud. The company in country D knew nothing about the affair and had never had any dealings with the seller in country C. The mill certificate had been forged as had the EEC certificate of origin, the certificate of a non-blacklisted vessel and the bill of lading. In fact, the fraudulent documents were very crude forgeries. The seller in country C was untraceable. Result - the buyer in A had been defrauded of over US $ 5 million.

Maritime frauds are usually committed by persons outside or on the fringe of the maritime community. There are exceptions, but pitfalls are more likely to be avoided by dealing only with companies with an established reputation in the field.

15.3 DIMENSIONS AND CAUSES

Maritime frauds are as old as the shipping business, but these have grown manifold in dimension and scope with the growth in the shipping business as well as the growth and development in technologies specially during the last decade. The subject has been of

great interest and concern to nations all over the world at various international forums, specially those concerned with growth and development of business.

You know that in liner trade the individual cargo parcels/consignments are very small, ranging from a few kilos to upto, say, 2/3 tonnes. Thus the parcel size is never adequate enough to fill a whole ship and the shipowner aggregates the parcels of various shippers in a ship from one port or from various ports enroute. The various types of cargoes and various modes of transportation used in carrying them from one destination to another make them highly vulnerable. It provides enough scope for cheats and fraudulent people to deceive the seller by either parting with his cargo or defrauding the shipowner or not making the payment to the seller after receiving the goods. The parties indulging in fraudulent practices use various modus operandi including forging of documents, creating fake letter of credit/bill of lading, impersonation, false representation, either directly or through their bankers, etc. The possibilities and probabilities are innumerable. In fact, it poses the biggest threat to international trade and business.

In majority of fraud incidents the nation of "apparent bargain" has been evident. That is to say that the buyer of goods has been initially attracted by the exceptionally favourable price and conditions quoted by a seller or by a transport provider. The attraction of apparent bargain made traders often neglect precautionary measures ususally adopted to avoid fraud. However, the factors leading to commitment of maritime frauds are numerous. Some of the important ones are as follows:

1 Multiplicity of the parties involved;

2 Too much trust leading to lack of verification of documents and standing of the parties involved, and adoption of other precautionary measures;

3 Problems of liner trade involving various types of cargoes and use of various types of transportation in carrying them from one destination to another;

4 Lack of timely detection leading to lack of timely action;

5 Inadequacy and lack of timely surveys and expert evidence;

6 Indifferent attitude of concerned governments;

7 Jurisdiction problem and other legal complexities in handling international disputes; and

8 Lack of sharing information.

Commercial crime services extended by various specialised agencies including consultancy companies, marine fraud detective agencies and by the concerned cell of International Chamber of Commerce and International Court of Arbitration have saved many companies and individual investors, billions of dollars in potential frauds and thefts. Through their ability to recognise early warning signals, these fraud detection skills have been developed over almost 20 years at the forefront of the fight against commercial crime. In spite of this, the fact remains that a large number of maritime frauds and sea piracy incidents remain untraceable because of lack of infrastructure, lack of timely action, indifferent attitude of the concerned governments and motivated approach of international agencies in those cases.

Check Your Progress A

1 What is a maritime fraud?

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2 List the various modus operandi used by parties indulging in fraudulent practices.

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3 Fill in the blanks.

i) Maritime fraud occurs when one of the parties involved in international trade or transport succeeds unjustly and ..... in money or goods from another party.

ii) In nearly all cases of maritime frauds, there is some aspect of ..... fraud.

iii) Specifically in case of liner trade, the various types of cargoes and modes of transportation used make the parties highly .....

iv) Commercial crime services extended by various specialised agencies have helped in saving billion of dollars in .....frauds and thefts.

15.4 CASES AND EXAMPLES

It is the golden principle of Maritime Arbitration & Litigation that arbitration is better than litigation, conciliation is better than arbitration and prevention of legal disputes is better than conciliation. Therefore, both international sellers and buyers should keep this principle in mind as litigation is not only extremely expensive but also time consuming. Apart from directly causing substantial drain on the existing financial resources of both the parties, it also deprives them of loosing business opportunities. Therefore, litigation should be resorted to as a measure of last resort.

Admiralty Jurisdiction

The maritime litigation historically started with the admiralty jurisdiction granted by the Queen of England initially for all the countries worldwide in general and, later on, with Commonwealth countries in particular. The admiralty jurisdiction in regard to claims may be invoked in an action in rem where the person who would be liable on the claim in an action in personnam was when the cause of action arose. When the owner or the charterer is in possession, or in control, of the ship such an action may be instituted against him. The jurisdiction applies to all ships, whether British or not and whether registered or not, and wherever the residence or the domicile of the owner may be, in relation to all the claims wheresoever arising.

Until 1991, it was held by various High Courts in India that the admiralty jurisdiction of High Courts was frozen to the Admiralty Act of 1890. Specific Jurisdiction of the High Courts did not expand like those of English High Courts because none of the acts subsequently passed were applicable to India. Therefore, it was thought that the Indian High Courts did not have jurisdiction to arrest a foreign flagship owned and operated by foreign companies even in Indian waters for claims over outward cargo loaded in Indian ports. But, in 1991 it was held by the Supreme Court in the landmark case of the 'Elizabeth' that this was wrong. R.M. Sahai, Judge remarked in the judgement: "What is surprising to hear even in 1991 that the admiralty jurisdiction exercised by the High Courts in the Indian Republic is still governed by the obsolete English Admiralty Courts Act, 1861 and adopted by Colonial Court of Admiralty (India) Act, 1891. Yet there appeared no escape from it, notwithstanding its unpleasant echo in ears. The shock was still greater when it transpired that this state of affairs is due to lack of legislative exercise. A citizen's right to carry on business is a fundamental right and he cannot be rendered helpless on premise that the jurisdiction of High Courts stood frozen either under statue of England or any custom or practice prevailing there or the High Court of England cannot exercise the jurisdiction." After this decision, Admiralty jurisdiction in India really came in from the cold.

In the same case Thomen, Judge said "legal history is good guidance for the future but to surrender to the former is to loose the latter."

The judgement further says:

"The admiralty jurisdiction of High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrest of that ship. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business or the cause of action arose, wholly or in part, within the local limits of the jurisdiction. Once a foreign ships is arrested within local limits of the jurisdiction of the High Court and owner of the ship has entered appearance and furnished security to the satisfaction of

the High Court for the release of the ship, the proceedings continues as a personal action."

"No Indian statue defines a maritime claim. The Supreme Court Act, 1981of England has catalogued maritime claims with reference to the unified rules adopted by the Brussels Convention of 1952 on the Arrest of Seagoing Ships."

Although India has not adopted the Brussels Conventions, the provisions of these conventions are the result of international unification and development of the maritime laws of the world. In the absence of the general maritime code, these principles aid the courts in filling up the lacunae in the Merchant Shipping Act and other enactment concerning shipping. "Procedure is but a handmaiden of justice and other cause of justice can never be allowed to be thwarted by any procedural technicalities." [S.P. Gupta (1982)]" M.E. Elisabeth & Others Harwan Investment & Trading Pvt. Ltd. (AIR 1993 S.C.).

In the judgement of the Elizabeth the Apex Court has observed "A ship may be arrested (1) to acquire jurisdiction, or (2) to obtain security for satisfaction of the claim when decreed, or (3) in execution of a decree. In the first two cases the court has the discretion to insist upon security being furnished by the plaintiff to compensate the defendants in the event of it being found that the arrest was wrongful and was sought and obtained maliciously or was bad in law. The claimant is liable for wrongful arrest. The attachment being only a method of safeguarding the interest of the plaintiff, it is not likely to be ordered if the defendant agrees to accept service and to put in bail or to pay money into court in lieu of his bail."

The Mumbai High Court in the case of M.V. Mariner Inc. & Others v. Videsh Sanchar Nigam in 1997, turned down the challenges to the jurisdiction of the Mumbai High Court to order the arrest of the sister ship of the offending ship belonging to the defendant. In case of an action for limitation of liability, however, situation is somewhat different, as an action for limitation of liability is a defensive action. Two vessels, The New World and the Ya Mawlaya, both belonging to foreign owners, collided about 200 miles off the coast of Portugal. The New World had loaded cargo at New Orleans where a claim was filed against her after the collision. The owner of Ya Mawlaya had entered into management agreement with SNP Shipping and Indian Company which recruited the crew and officers through sub-contractors, also a foreign company. During the pendency of proceedings against both the owners and vessels in foreign countries, SNP Shipping, the Indian company filed Admiralty suit in Mumbai High Court for limitation of liability. Owner of Ya Mawlaya also filed suit for setting up limitation fund. Held, Mumbai High Court had no jurisdiction to entertain Admiralty suit as no part of cause action accrued in India. As all the claims had been filed in other countries the limitation of liability can be set up as defense only in those courts.

The source of the admiralty jurisdiction in the United States is Art.3 of the Constitution. The U.S. Supreme Court has held in Peoples Ferry Co. vs. Beers 20 Howards U.S. and in a series of subsequent cases that a contract to build a vessel is not a maritime contract (the "Robert W. Parsons") and the contracts to furnish ships to carry the cargoes are maritime contracts (Graham vs. Oregon R & N Co. 1905).

Excessive Freight Charges

Me Thierry Van Dooselaere v. Unispeed Group Inc. and SGS Supervision Services (January 27, 1997) No. T-1452-92 (F.C.T.D.) : This was an action by the Plaintiff shipper against the carrier and surveyors for excessive freight charges. The Plaintiff negotiated a freight rate for 1486 metric tonnes of creosoted poles. During the course of loading the poles it was discovered that the cargo occupied more space than anticipated and the carrier demanded additional freight which the Plaintiff was forced to pay. The Plaintiff subsequently retained a surveyor to measure the cargo. The surveyor did so and the Plaintiff paid on the basis of the survey. Upon delivery, two independent surveyors again surveyed the cargo and both of whom agreed that the original survey significantly overstated the amount of cargo. The Court held that the carrier and the surveyor were jointly and severally liable for the excessive freight charges the Plaintiff was forced to pay.

Assessors and Expert Evidence — Content of Canadian Maritime Law

Porto Seguro Companhia De Seguros Gerais v. Belcan S.A. et.al. (December 18, 1997) No. 25340 (S.C.C.) : This was an appeal from the Federal Court of Appeal. The issue was whether a party may call expert evidence when the Court has appointed assessors. At trial, the trial Judge applied a well established rule of admiralty and, pursuant to that rule, she refused to disclose to the parties the questions put to assessors and refused the parties the right to call their own expert evidence. On appeal, the Court of Appeal held that the admiralty rule prohibiting expert evidence was restricted to situations where the issues of the assessors were appointed to deal with were issues of navigation and seamanship. The Court of Appeal nevertheless refused the appeal, as there had been no prejudice to the Appellant. On further appeal to the Supreme Court of Canada, the Supreme Court allowed the appeal and ordered that there may be a new trial. The Supreme Court of Canada held that there was a strong argument that procedural matters, such as the admiralty rule prohibiting expert evidence, were not incorporated into Canadian Maritime Law by Section 42 of the Federal Court Act. Section 42 of the Federal Court Act and its predecessor provisions, incorporate only the substantive aspects of admiralty law as administered by the High Court of England on its Admiralty side. Further, the Court held that even if the rule against expert evidence was incorporated as part of Canadian Maritime Law it was not immutable. "The Courts may change common law rules where this is necessary to achieve justice and fairness by bringing the law into harmony with social, moral and economic changes in society and where the change will not have complex and unforeseeable consequences." Such changes are more readily made where the rules are procedural rather than substantive. Applying this test, the Court found that the rule against expert evidence required modification as it violated the parties' right to be heard and was out of step with modem trial practice. The Court, therefore, modified the rule to permit assessors to give the Judge assistance on technical matters and even to give advice on matters of fact but such advice is to be disclosed to the parties, who are to have a right of response. Further, in all cases, the parties are at liberty to call their own expert evidence.

Wrongful Arrest

Armada Lines Ltd. v. Chaleur Fertilizers Ltd., (June 26, 1997) No. 24351 (S.C.C.) : This important case concerns the question of when an arresting party is liable for wrongful arrest. In a landmark judgement decision reported at (1995) I.F.C. 3, the Federal Court of Appeal held that an arresting party could be liable for wrongful arrest merely upon a finding that the arrest was "illegal" or "without legal justification". The Supreme Court of Canada, however, reversed this ruling and re-established the rule from The "Evangelismos(1858) 14 E.R. 945, that damages for wrongful arrest may only be awarded where the arresting party acts with either bad faith or gross negligence. The Supreme Court noted that a change in such a long standing rule should only be made by the legislature.

Arrest of Chartered Ship

Margem Chartering Co. Inc. v. Cosena SRL and The "Bocsa", (March 5, 1997) T-2418-96 (F.C.T.D.) : This was a motion by the shipowner to strike out the In Rem Statement of Claim and set aside the arrest. The Plaintiff had entered into a charter party agreement with the disponent owner of the ship for the carriage of coal. Upon arrival at the port of loading the vessel was detained by coast Guard and was unable to load the cargo. The Plaintiff then commenced the action against the owners and arrested the ship for the breach of the charter party. The main issue in the case was whether the charter party was with the shipowners or with the disponent owner. Upon reviewing the evidence the Prothonotary held that the charter party was with the "disponent owner" and struck out those portions of the Statement of Claim alleging breach of contract by the shipowner. The Prothonotary, however, did not set aside the warrant for arrest as the Plaintiff had a possible cause of action against the shipowner in tort and such a claim was enforceable *In Rem* pursuant to Section 22(2)(i) of the Federal Court Act.

Further Examples

Case of Vessel X: This vessel loaded 3,000 tonnes of steel on 10th December 1978 at a port in country A. It left there and proceeded to a port in country B, where it arrived on 28th December and laid up. In early March, a company from a third country C was

offered 3,200 m.t. of steel which they resold to buyers in a fourth country D. The bills of lading were presented showing that the steel was loaded in a fifth country E on 26th March on board the vessel with some delay due to Easter holidays and some repairs. The prospective receiver of the cargo finally found that the vessel was in the port in country B. He took matters into his own hands by flying to country B and going on board the ship. Arriving on 20th May, he was shown the steel on board and assumed it was the steel loaded is the port in country E. Of course, it was the steel loaded nearly six months earlier in country A. That very night the vessel sailed from country B and disappeared. The next information that was received was that on 2nd July she had changed her name to "Y' and was discharging at a port in country F completely out of reach of normal law enforcement agencies.

These investigators were not informed of the problems of the above vessel or transportations until 7th June, when the situation had gone beyond the point of no return. Additionally, the buyers were not completely above board because at the time they were talking to the investigators about arrests, they were negotiating also with the villains to try to get their money back. If these investigators had been informed earlier, even on 19th May, they could have known in a matter of seconds/minutes that the whole transaction was fraudulent and could have arranged for the ship to be placed under arrest until matters were properly adjudicated.

Case of Vessel Y : On or about 29 August 1979, investigators were informed that the vessel Y which had been chartered for a voyage from country A to a port in country B, was put into port in country C and was a suspect vessel. The investigators did not, at that time, have any stronger information, and to inform the police in country C would not have had the necessary impact to initiate an investigation. On 12th September, the investigators were informed that the vessel Y with cargo estimated to be valued at $3 million was at a port in country E, discharging her cargo and selling it Ex Quay.

Case of Vessel Z : This vessel sank in the Indian Ocean, supposedly with a cargo of 6,500 tonnes of scrap brass, PVC resin and clothing, en route from country A to country B. She left country A on 10th August giving arrival date in country B as 8th September. The value of the cargo was estimated as being over 6 million Sterling. Some time after loading in country A, she reported that she was delayed with engine trouble. For fourteen days she was apparently floating around the coast off country C until at 01.00 hour on 5th September the master reported that she had sunk off the east coast of that country. All crew were safe. There were only fourteen of them and they were supposed to have landed in country C in two motor boats. These motor boats were disposed of by the master before agents could find them.

The crew were lodged in a hotel in country C, but agents were refused access to them, and were, therefore, unable to set details of the loss. Arrangements were made to fly the crew out of C by special plane very quickly to another country presumably to disperse them.

Once again, the investigators were made aware of the situation when it was too late to take any constructive steps. At the very time the investigators were attempting to contact the police in C, a plane with the crew on board was already leaving.

In nearly all incidents of maritime fraud that have come to light and that have been examined, it is evident that dishonesty of one party is combined with misplaced trust and short-sightedness by another.

Reasonable precautions must be taken by all those who engage in international trade. It must also be recognised that generally, if the price of a service is a bargain, the guarantee of its true value will be less. It is also true that improvements can be made in the overall international trading system. It is generally the unquestioning acceptance of present day practices in international trade that exposes innocent and inexperienced persons to act of dishonesty. But there can be no question today of moving backwards in time by rendering international trade procedures more cumbersome. The necessary tightening-up of the system must come through the facilitation and simplification of international trade procedures and a greater understanding of these procedures. More standard practices and rules are required that can be easily understood by all parties and translated into the various national languages.

Check Your Progress B

1 State which of the following statements are True or False.

i) The admirality jurisdiction of High Court is dependent on the presence of the foreign ship in Indian waters and founded on the arrest of that ship.

ii) The surveyor is not responsible for excessive freight changes.

iii) A ship may be arrested to acquire jurisdiction or to obtain security for satisfaction of the claim on execution of a decree.

iv) In all cases, the parties are at liberty to call their own expert evidence.

v) Damage for wrongful arrest can only be awarded where the arresting party acts in good faith.

vi) It is generally the unquestioning acceptance of present day practices in international trade that expose innocent and inexperienced persons to acts of dishonesty.

15.5 PRECAUTIONS TO BE OBSERVED

There is an old saying that prevention is better than cure. Industry and trade cannot stop doing international business because of sea piracy and maritime frauds. Therefore, it is advisable that are international sellers and buyers, their cargo and shipping agents, shipowners, insurance agents, insurance companies and custom authorities of the respective countries should be more vigilant in keeping a check on the genuineness of various documents. They should also closely monitor the transactions through its various stages so as to prevent, if not eliminate, the possibility of frauds and cheating.

15.5.1 Common Areas of Fraud

Some of the common areas where fraud and disputes normally take place in international marine transactions and commercial shipping are as under:

A. Carriage of Goods by Sea

i) Carriers' liability
ii) Sea-worthiness and cargo worthiness
iii) Limits on liability and carriers' defence

B. Bills of Lading

i) Bill of Lading as a contract
ii) Bill of Lading as a document of title
iii) Bill of Lading as a receipt of goods shipped
iv) Effects of endorsement

C. Charter Parties (Voyage)

i) Notice of readiness
ii) Commencement and laytime
iii) Calculation of period of laytime
iv) Demurrage and despatch
v) Exception clauses
vi) Layman

D. Charter Parties (Time)

i) Description of vessel
ii) Payment of hire
iii) Delivery, redelivery and withdrawal of vessel

iv) Off-hire

v) Bunker consumption and speed warranties

vi) Employment and last voyage

E. Other Matters

i) Freight/Hire, when due and payable

ii) Dead Freight

iii) Non-payment of Freight/Hire

iv) Lien and cesser clause

v) Stoppage of transit

vi) Liberty clause, delays and deviations

vii) Damage to cargo/ship

viii) Safe port warranties

ix) Options in nominating port/berths

x) General average/salvage/towage

xi) Maritime frauds and piracy

F. Issues of Interpretation of Shipping Rules and Practices, Contract Clause, Performance/Non-performance of Contracts and Damage

15.5.2 Precautionary Measures by Parties Involved

There is much to be done by the parties themselves in improving their own trading, shipping and payment procedures, and by taking the necessary precautions when dealing with little-known traders, transporters and agents. The usual precautionary measures to be adopted by various parties involved are enumerated as follows:

Buyers and Sellers: The best way for buyers and sellers to prevent their possible involvement in frauds is that before entering into any binding commitment they should make enquiries so as to satisfy themselves as to the standing and integrity of the parties they deal with. The following precautions are strongly recommended for them in case of all international business transactions executed through maritime transportation:

1 Shipment of goods by well established shipping companies and other reliable transportation companies should be encouraged, and when chartered vessels are used the traders should insist on chartering only through agents.

2 Small traders should engage reliable and well known forwarding and clearing agents.

3 The terms of shipment should be carefully selected.

4 The goods should be properly packed so as to prevent any damage to them during normal course of voyage and normal wear and tear arising therefrom.

5 A transhipment inspection of the goods should be carried out by independent inspectors who are not in any way connected with the buyer or seller.

6 A comprehensive written contract should be entered into with the buyer covering various kinds of risks during different stages of the sales transaction. It should cover transportation of goods from premises of seller to the port of embarkation, risk during maritime transportation specifically highlighting the act of negligence by the ship-owner or his agents, and transportation of goods from port of dis-embarkment to the premises of buyer.

7 The contract should specifically highlight as to which party shall bear the total cost of insurance or, if different parties are to cover different facet of transaction, it should be clearly mentioned in the contract and it should be so understood by the concerned parties, leaving no scope for ambiguity or misinterpretation.

8 The insurance policy should be comprehensive covering all kinds of risks i.e., risk due to act of God, risk due to negligence of parties, and risk due to normal wear and tear during maritime transportation. It should also cover damages to the goods due to theft, piracy, fraud, accident, improper packing or improper storage, insurance against non-payment or delayed payment, etc.

9 The transaction should be processed, as far as possible, through a known banker with whom both the parties should have good past experience so as to eliminate the possibility of fraud, either by tampering with documents or producing fake documents.

10 Both the parties and their agents should have a copy of insurance policy readily available with them so that they can understand the implication of various provisions of the policy and immediately lodge their claim in case of breach of any of its provisions.

11 The Bill of Lading, Seaway Bill or any ship delivery order should be properly read and understood by both the parties as well as their agents. As far as possible, these documents should be in the format as per the approved international customs and international law in this regard. To reassure themselves, the parties should try to verify the format of these documents with other exporters and importers who have successfully executed the international transaction based on similar documents.

12 Reasonable precaution should also be taken by the concerned parties by exchanging correspondence, documents and, if possible, visit by their agents to reassure themselves about the credential and status of the other party by visiting their commercial establishment. Suitable help in this regard should also be taken through the chambers of commerce and industry prevailing in the country of the other party.

13 It is also advisable that, as far as possible, such transactions should be done through government agencies or trade promotion authority/councils or members of international chamber of commerce which guarantee coverage of risk to a certain extent.

14 The relevant information about the other party could also be collected in the current electronic and computer age through e-mail and visiting the web-site which normally gives the basic details about the infrastructure, credibility and the standing of the other party.

The above guidelines are only illustrative and not exhaustive, as any amount of precaution and any amount of detailed guidelines can only reduce the risk associated with such transactions but cannot eliminate them completely. After all, if the international trade and business were so easy then everyone would try the same. It reminds the old principle of economics "Higher the risk, higher the gain. Lower the risk, lower the gain."

Freight Forwarders: Freight forwarders or similar intermediaries are often well placed to know the conditions of local transport markets. On the one hand, they have a close relationship with the shipper of the cargo (seller or buyer) and, on the other, they have continuing contacts with the shipowners, charterers and their port agents. Freight forwarders now act, and must increasingly do so as the shippers' antenna in the port of loading, reacting not only when a specific transport problem is submitted to them but permanently to keep their customers aware of any information that could be of use to them. These include new developments in shipping services, tendencies in freight rates, working situation in the ports of loading and discharge, etc. Quite often, the freight forwarders are called upon to express their options about the quality of services offered by the respective maritime carrier, the quality of ships placed on berth and the quality of the stevedoring work performed by owners' stevedores. This means, of course, that the freight forwarder himself must take the necessary precautions and make the necessary checks before proposing a particular maritime service to his customers.

Banks: Banks encounter two types of frauds: (1) presentation of genuine documents but with subsequent fraudulent action by a third party in respect of goods, and (2) presentation of fraudulent documents in respect of inferior goods or non-existent goods. In both types of frauds, the documents are presented under documentary credits. Where these documents appear to be in accordance with the terms and conditions of the credit, the banks are obliged to pay. It may be noted that in documentary credit operations, all parties concerned deal in documents and not in goods (Article 8a of the ICC'a Uniform Customs and Practice for Documentary Credits, publication No. 290). When documents are presented to a bank against a documentary credit, it is not possible for the bank concerned to verify either the genuineness of any such document including the bill of lading or the signatures thereon. The vast number of shipping companies and their agents make such a

check totally impracticable. However, careful choice of a carrier or a forwarding agent greatly reduces the risk of fraud.

Vessel Owners and Charterers: As stated with respect to buyers and sellers, the best way for vessel owners and charterers to avoid their involvement in incidents of fraud is tc make the necessary inquiries as to the standing and integrity of the parties they are dealing with, before entering into any binding commitments. The following recommendations are made in this respect:

1 The owners should seek advice on time charterers before agreeing to a charter. BIMCO, the Baltic Exchange and similar organisations can often assist with such inquiries. Only reputed ship brokers should be used.

2 The owners should check on the financial status of a charterer and, in certain circumstances, demand a bank guarantee covering estimated hire to be delivered to them on signing the charter party.

3 The owners should very firmly resist requests by unknown time charters for the inclusion of a clause in the time charter-party giving the time charterers or their agents the right to sign bills of lading on behalf of the master.

4 Charterers should know the disponent owners or be able to check on their record.

5 The master should ensure that the cargo signed for is on board. Great care should be exercised to ensure that bills of lading are signed only by the authorised personnel and are duly authenticated. Though impractical in the established liner trades, the master should, whenever possible, exercise the power to sign the bills of lading.

6 When a bill of lading is issued, masters should ensure that the cargo is released only against the original duly endorsed. Where a copy of the bill of lading is available, the original should be checked against it. Delivery of cargo without presentation of the original bill of lading renders invalid any defences or limitation under the contract of carriage and, therefore, presents a considerable commercial risk. Where the release of cargo is requested against a letter of indemnity, it should cover 200 per cent of the CIF value and guaranteed by a first class bank acceptable to the carrier and the owner's P & I Club.

7 The master should be encouraged to radio his position through certain periods of the voyage and be bound to report to the Lloyds Agents at each port of call giving his ETA at the next port.

Insurers: Basically, under the normal method of providing cargo insurance, the insurers are the last parties to be aware of any fraud that may have been perpetrated. In majority of cargo contracts, the insurers insert a classification clause which restricts the acceptance, at contract rates, of cargo carried on vessels of a certain age and type, otherwise an additional premium must be paid or, in certain instances, the conditions of insurance may be varied. An example of what has been written regarding vigilance of contracting parties is that CIF purchasers would be well advised, financially and commercially, to instruct the seller that the consignment of the goods must be carried on a vessel approved under the terms of a classification clause. This alone is a good reason for an additional safeguard on the part of the shippers and insurers to check the vessel for compliance with the terms of such a clause. However, this will not be a fully effective measure unless the insurer states very clearly his requirement that the name of the vessel must be declared to him at the earliest possible time and unless the insured fulfils his obligation to do so. On occasions, the special knowledge of insurers has served the shippers well to enable him to decline a vessal, thereby preventing another incident of maritime fraud.

The present emphasis on the incidence of maritime fraud has highlighted the cargo problem but, in most cases, a ship is also involved and it is likely that the insurers' interest also extends to it. Problems of a different nature arise with the ship, but the principle that the insurer must exercise every care to check background details of the vessel itself (its ownership, management and trading record) is the same.

15.5.3 Steps to Follow if a Vessel does not Arrive

It is most important that, as a matter of normal trade practice, a shipper/seller/buyer (whosoever is at risk) monitors the course of the voyage being undertaken. Indeed it is an

obligation under most insurance contracts for an insured party to take all measures to mitigate loss. If a vessel does not arrive, it should be a warning that a potential loss is likely.

It is suggested that the party at risk should calculate an estimated time of arrival for the vessel on which cargo is carried and this estimate should be a carry-forward item in the office diary. If the vessel does not arrive by this date, there should be an immediate enquiry of agents at the port of arrival and, if nothing is known, reference should be made to the various intelligence services available. Shipping movements are recorded daily in Lloyd's List and in many local journals, and there are agents in every port in the world who can help if such information is not easily obtainable. If, despite such endeavours, there is no news of the vessel it is possible that the situation is one that gives rise to an insurance claim and insurers and/or brokers should be advised immediately.

If and when the vessel's whereabouts are known, it is quite possible that there are reasons why the owner was unable to complete the voyage or failed to meet his obligation. In the absence of any success in compelling him to do so, it is better to arrange onward carriage, and, in these circumstances, it is advised that the services of a recognised ship-broker be utilised. Reliability is even more important when a voyage is already in trouble and the cargo suffering extra hazards through exposure, delays and deterioration. The principal should follow the advice given by these brokers and should also allow them to appoint the agents at loading and discharging ports. Again, it is important to stress that most cargo policies require variations in the insured voyage to be advised promptly to insurers as failure to do so may prejudice the rights of recovery. Indeed, any failure to act as a prudent uninsured party may have the same result.

Check Your Progress C

1 How can freight forwarders help prevention of maritime fraud?

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2 State the two types of maritime frauds faced by banks.

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3. State the steps to be followed if a vessel does not arrive.

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15.6 INTERNATIONAL CHAMBER OF COMMERCE

International Chamber of Commerce is an international body of various chambers of commerce and industries prevailing all over the world and has membership of more than 150. It undertakes various commercial activities for promotion of international trade and commerce, and deals with concerned agencies on behalf of its members. International Chamber of Commerce is a non-profit making organisation based in London and Kuala Lumpur. It works in close co-operation with the governments of member chambers as well as various international organisations such as World Trade Organisation (WTO), General Agreement on Trade and Tariff (GATT), World Bank (WB), International Monetary Fund (IMF) and United Nations Conference on Trade and Development

(UNCTAD). One of the major concerns of International Chamber of Commerce has been to eliminate international marine fraud by studying its various dimensions and causes and suggest effective remedial measures to prevent its occurrence.

15.6.1 Structure

International Chamber of Commerce (ICC) has many specialised agencies helping it in discharging its specialised functions including maritime fraud detection and prevention. These agencies are : (1) Commercial Crime Services (CCS), (2) International Maritime Bureau (IMB), (3) Commercial Crime Bureau (CCB), (4) Counterfeiting Intelligence Bureau (CIB), (5) Cybercrime Unit (CU), and (6) Commission on Maritime Transport (CMT). Their roles played in detection and prevention of fraud can be summarised as follows.

Commercial Crime Services

It is made up of three specialised bureaux and a cybercrime unit which cover all aspects of commercial crime. It provides regular advice on criminal methods and the ways to counter them.

International Maritime Bureau

International Maritime Bureau was set up in 1981. It combats all types of maritime and trade crimes including documentary credit fraud, charter party fraud, cargo theft and the deviation of ships. It has a regional office in Kuala Lumpur which acts as the home of the Piracy Reporting Centre. The Piracy Report Centre responds immediately to acts of piracy and collects evidence for the law enforcement agencies.

Commercial Crime Bureau

It provides personal fraud consultancy services including vetting, authentication of documents, investigations and training in crime prevention. Commercial Crime Bureau was set up in 1992, primarily as a service to banks and other financial service providers. It keeps the members abreast with the growing complexity of frauds and alerts the financial community as soon as criminal ingenuity devises a new scheme to trap the agencies and individuals indulging into fraudulent maritime practices.

It is a direct private sector response to the globalisation and resultant increased sophistication in the organised crime. The Bureau's creation was also prompted by the epidemic of commercial crime in countries new to the market economy system. Secrecy laws often deny banks, regulators and law enforcement agencies information that is relevant for the fraud prevention. To allow financial service providers to protect themselves against fraud, Commercial Crime Bureau gives members access to its own confidential database compiled from a variety of international sources.

It is a key point of contact for a world-wide membership of banks, financial institutions, regulators and law enforcement agencies in all matters concerning frauds and malpractices. Frauds involving bogus banking instruments, which have reached epidemic proportions, form a large part of the Bureau's work. Its specific tasks are as under:

a) Authentication of documents;

b) Analysis of financial transactions;

c) Vetting companies trace and recovery of assets;

d) Providing expert testimony in courts of law; and

e) Organising training, seminars and lectures.

A monthly confidential report on current frauds and criminal methods goes exclusively to all its members. This restricted service is complemented by special reports designed to raise public awareness of the fraudulent techniques so that people are less likely to fall victim to phoney get-rich-quick schemes. Commercial Crime Bureau's staff investigates financial frauds and the recoveries to be made. In conjunction with the Bureau's work to trace and recover assets, senior staff members can provide expert testimony at court hearings anywhere in the world. It also undertakes due diligence investigations.

The ability of Commercial Crime Services to help members combat commercial crime is

underpinned by the unit's efficient gathering of relevant up-to-date intelligence. This information ranges from a list of providers of anti-counterfeiting technology to details of the latest criminal methods in use around the globe. While Commercial Crime Services disseminates this knowledge to members through seminars, workshops, publications and advice services, it has also compiled a number of registries and databases which are maintained by the unit's specialised bureaux.

Counterfeiting Intelligence Bureau

Counterfeiting Intelligence Bureau was formed in 1985 as a focal point for industries exposed to counterfeiting world-wide. Counterfeiting is one of the fastest growing economic crimes threatening business and jobs, undermining trade relations, scaring off vital new investment and endangering public health and safety. What was once a cottage industry has developed into a sophisticated network of organised crime, affecting a broad range of industries. It was the first private international business initiative to go beyond political lobbying with practical prevention and enforcement support for police and customs authorities. As such, the Bureau has become a vital element in the campaign against the manufacture and distribution of counterfeit goods.

It's services benefit multinational companies, trade associations, law firms and providers of anti-counterfeiting technology. It has now extended its activities to include intellectual property fraud. The specific tasks of the Counterfeiting Intelligence Bureau are as under:

a) Gathering and evaluating intelligence;

b) Investigating sources and distribution of fake products;

c) Providing expert advice and training; and

d) Supplying evidence to enable police to make arrests and seize counterfeit goods.

It provides its members with a confidential monthly bulletin on the provenance and distribution networks of counterfeit products. Investigators trace products back from the point of sale to the place of manufacture and provide necessary information to the police to enable them to make arrests.

The Bureau is the hub of three anti-counterfeiting networks which together constitute a global resource to combat counterfeiting and fraud. The counterforce links leading law firms specialising in intellectual property issues. While the Countertech groups anticounterfeiting technology providers, the Countersearch brings together specialist investigators. It also operates a Hologram Image Register.

It assists companies in preventing counterfeiting of their products. It carries out investigations, provides intelligence and monitors counterfeiting worldwide.

Cybercrime Unit

The decision to set up a cybercrime unit within Commercial Crime Services meets growing demand from ICC's worldwide membership. With the number of computers linked to the Internet, growing at a spectacular rate, business has become increasingly concerned at the prospect of a corresponding explosion in crime involving information systems and the Internet.

Cybercrime constitutes a change of method rather than a change in purpose, with criminals exploiting the extra leverage offered by information technology. Victims face not only direct financial losses, but may also incur increased insurance costs, negative publicity, loss of data and exposure to criminal and civil liability. The ICC Cybercrime Unit, which became operational in the last six months of 1999 and which can benefit every company that wants to remain competitive in the digital age, carries out the following specific tasks:

a) Keep track of criminal methods and brief CCS members;

b) Provide expert advice on security of information systems;

c) Identify criminal interference in corporate computer networks;

d) Constitute a prime source of information, research and intelligence; and

e) Work closely with national and international law enforcement agencies.

The Cybecrime unit also provides operational support to the three specialised bureaux of Commercial Crime Services. Confidential information packages keep members abreast of

developments in a particularly fast changing area of crime. The Cybercrime Unit holds regular consultations with senior international police officers. It is a conduit for exchanges between law enforcement agencies and business community. It carries out investigations, devises security procedures and keeps itself abreast of developments in the rapidly changing area of crime.

Commission on Maritime Transport

The Commission on Maritime Transport brings together shippers, carriers, intermediaries, ports, etc. to examine and issue policy recommendations to tackle issues such as liberalisation, competition and the environment. The Commission maintains that shipping can best serve the world trade, if allowed to operate on a commercial basis in a competitive market, free from protectionism and other forms of market-distorting government support.

It provides an industry interface with all relevant intergovernmental organisations on maritime transport such as the Organisation for Economic Co-operation and Development (OECD), the European Commission (EC), the International Maritime Organisation (IMO), the United Nations Committee on Trade and Development (UNCTAD) and the World Trade Organisation (WTO). It also promotes market access to trade in maritime services and explore the possibilities of further liberalisation including (through the WTO address competition) issues affecting maritime transport, and monitor legislative and regulatory developments affecting shipping worldwide. It also runs the ICC Bill of Lading Review Committee which issues decisions on the conformity of transport documents with the UNCTAD/ICC Rules for Multi-modal Transport Documents.

15.6.2 Activities

Apart from the above mentioned activities through its various wings, the International Chamber of Commerce also provides the following services to its members:

Authentication of Documents

International trade is based almost entirely on documentation, be it bills of lading, documentary credits or some other form of written contract. Authentication of these documents is, therefore, a vital fraud prevention measure for buyers, sellers, banks and financial institutions. Commercial Crime Services can carry out the authentication services quickly and efficiently, and its specialised bureaux have already identified and prevented potential frauds adding up to billions of US dollars. Most documents can be authenticated within 48 hours, enabling banks and financial institutions to verify the documents they receive before making the payments therefor, but without causing undue delay to their clients.

Commercial Crime Services, while working closely with law enforcement agencies, puts its own extensive resources at the disposal of its members. It co-operates with customs authorities under a Memorandum of Understanding with the World Customs Organisation. The international reach of Commercial Crime Services takes the fight against commercial crime to every corner of the globe. Its services can be tailored or combined to meet individual company's security and protection needs.

The first responsibility of Commercial Crime Services is to its members and those who enlist themselves for its services. Often, the specialised bureau can identify vulnerable points in corporate defences against commercial crime and help management to stop a costly seam without exposing the company to any damaging publicity. Commercial Crime Services has greater reach than similar organisations and can react faster for the following reasons:

a) Unencumbered by bureaucracy, Commercial Crime Services responds swiftly to alerts anywhere in the world.

b) Commercial Crime Services acts on its own initiative, needing no go-ahead from government or law enforcement agencies.

c) Commercial Crime Services enjoys the confidence of senior police and customs officers of many nations.

Members who are concerned about the validity of documents can submit them to the

Bureau for authentication. Commercial Crime Bureau document experts authenticate contracts, trading documents, promissory notes and other financial instruments. The decision by banks and financial institutions to have documents authenticated by Commercial Crime Services is taken in their own interest and is in addition to the obligations of UCP 500.

Investigation and Recovery of losses

The investigation of commercial crimes, committed on land or at sea or in cyberspace is a core activity of Commercial Crime Services. Unencumbered by bureaucracy, and at the request of clients from the worlds of international finance, trade and transport, Commercial Crime Services multidisciplinary staff are in a unique position to respond swiftly to alerts anywhere in the world.

Investigations are carried out by Commercial Crime Services for clients with a view to recovering losses. In addition, victims of fraudulent transactions are given help to extricate themselves and to minimise damage. Back-up services provided by the commercial crimes division of ICC include legal advice, support in litigation and expert testimony in courts of law. Commercial Crime Services specialised bureaux offer the following investigative and debt recovery services:

a) ICC Commercial Crime Bureau International Cheque Fraud Registry to identify patterns in cheque fraud and confidential due diligence database to enable members to protect themselves against fraud;

b) ICC Counterfeiting Intelligence Bureau list of law firms who specialise in intellectual property and anti-counterfeiting work;

c) The Countertech list of providers of anti-counterfeiting technology;

d) Hologram Image Registry to provide protection against the duplication of these security devices; and

e) Confidential database with information on counterfeiting and the modus operandi of counterfeiters.

Publication of Commercial Crime Services

International Chamber of Commerce publishes its own monthly newsletter to curb international commercial crime by the name of 'Commercial Crime International'. The publication keeps readers up- to-date with developments in the world of commercial crime. The newsletter contains articles on the latest frauds and illegal techniques which come to light, on commercial crime trials, on developments in crime prevention techniques and equipment and on general criminal trends. The publication has regular sections on general and maritime news as well as focuses periodically on selected topics ranging from organised crime and money laundering, to internet fraud and counterfeiting. The monthly newsletter also gives advance notice of conferences, seminars and workshops relating to commercial crime.

ICC Commercial Crime Services produces a wide range of publications covering many of the issues tackled by its specialist bureaux. Commercial Crime Services periodically publishes books and special reports on topical issues ranging from piracy to counterfeiting and cybercrime. Recent publications deal with prime bank instrument frauds and money laundering.

Seminars, Workshops and Conferences

Commercial Crime Services currently runs three annual courses focusing on specific areas of commercial crime. These are:

a) A five-day residential course on prevention of frauds in banking is held every October. The course aims at providing delegates with an insight into the nature of fraud and to emphasise the procedures and methods used to prevent and tackle it. The fraud prevention workshops are designed for bank personnel responsible for operations, audit, compliance and corporate security. The courses are also of interest to middle managers of financial institutions and to regulators and law enforcement officers.

b) A five-day residential International Maritime Bureau workshop on Pitfalls and

Remedies is designed for senior/middle managers in trading houses, banks, shipping companies, and insurance companies with an interest in international trade. With the risk/return equation for the international trader upset by the continued recession in the shipping market, the course aims to make participants fully aware of the new pitfalls confronting them and at the means by which they can be avoided.

c) Ten-day Port State Control courses are designed for shipping companies, port authorities and government departments involved in improving the quality of shipping. They aim at updating delegates on the latest regulations from the International Maritime Organisation, looking at how inspections are carried out and examining the law as it relates to the detention of vessels under port state control.

15.7 INTERNATIONAL MARITIME BUREAU (IMB)

International Maritime Bureau covers all types of frauds and malpractices in trading and transport. In cases of maritime fraud or when ships fall victim to pirate attacks, the bureau reacts swiftly using its staff and contacts worldwide. The Bureau, which has observer status with INTERPOL, also investigates suspicious cargo losses from containers during sea, road and rail transits.

International Maritime Bureau's legal department advises on bill of lading/charter party disputes and on the most effective way to recover debts. International Maritime Bureau provides confidential due diligence database with information relating to fraud or other suspect practices in international trade and maritime transport.

The first ICC anti-crime bureau, the International Maritime Bureau, was founded in 1981. It quickly received the support of the International Maritime Organisation in a resolution urging governments and law enforcement agencies to co-operate with the new body. Its main task is to prevent fraud in international trade and maritime transport, reduce the risk of piracy and assist law enforcement in protecting crews. It tracks cargoes and shipments and verifies their arrival at scheduled ports.

Much of International Maritime Bureau's work relates to prevention in the form of timely advice on how to reduce corporate vulnerability to frauds and malpractices. In the event of frauds and piratical attacks, it carries out investigations with a view to bringing perpetrators to justice and recovering losses. Other specific tasks of International Maritime Bureau are as under:

a) Authentication of suspected bills of lading and other documents;

b) Disseminating information on maritime that has been collected from commercial, government and international sources;

c) Offering due diligence advice;

d) Proposing ways for victims of fraudulent transactions to extricate themselves and minimise the damage;

e) Providing legal advice and support for litigation; and

f) Raising awareness of the dangers of maritime crime and providing training in counter measures.

The governments of the world's leading trading nations fully support Bureau's work. International Maritime Bureau's multidisciplinary staff and contacts worldwide gather information and respond swiftly in cases of maritime fraud or when ships are attacked on the high seas. As of today, it covers all types of frauds and malpractices in international trading and transport.

A fortnightly confidential bulletin lists frauds, commercial failures and non-payment of debts. This is supplemented by a credit report service on companies engaged in shipping and trading. Additionally, the Bureau runs a ship monitoring and supercargo service. Another programme checks the credentials of shipowners and prospective charterers before a vessel is hired.

International Maritime Bureau verifies documents presented under documentary credits and investigates insurance losses. The most recent innovation is an inexpensive satellite

tracking system known as SHIPLOC. The system allows shipping companies to monitor the exact location of their vessels. All that a user requires is a personal computer with internet access to make use of this facility.

The IMB Piracy Reporting Centre: Outrage in the shipping industry at the alarming growth in piracy on the world's oceans prompted the creation of the IMB Piracy Reporting Centre in October, 1992. Located at International Maritime Bureau's Far East Regional Office in Kuala Lumpur, the Centre is financed by voluntary contributions from shipping and insurance companies. Its services are free of charge to all vessels irrespective of ownership or flag.

The Centre supplies investigating teams which responds immediately to the acts of piracy and collect evidence for law enforcement agencies. This service is funded by the International Transport Workers' Federation. The Centre has the following tasks to perform :

a) Reporting of piracy incidents and armed robbery at sea to law enforcement agencies;

b) Locating vessels that have been seized by pirates and recover stolen cargoes;

c) Helping ship-owners to get justice and to ensure prosecution of sea pirates;

d) Assisting owners and crews of ships that have been attacked; and

e) Collating information on piracy in all parts of the world.

The Centre maintains a round-the-clock watch every day of the year. In close collaboration with law enforcement agencies, it acts on reports of suspicious shipping movements, piracy and armed robbery at sea anywhere in the world. It also broadcasts daily status bulletins via satellite recording pirate attacks on shipping in the East and South East Asian region. Quarterly reports are made available to interested bodies, including the International Maritime Organisation.

Check Your Progress D

1 Name the specialised agencies of International Chamber of Commerce.

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2 What are the specific tasks of the Commercial Crime Bureau?

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3 State the specific tasks of the counterfeiting Intelligence Bureau.

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4 State which of the following statements are True or False.

i) The Commercial Crime Services provides regular advice on criminal methods and the ways to counter them.

ii) Security laws often deny banks' regulators and law enforcement agencies information that is relevant for fraud prevention.

iii) The Commission on Maritime Transport maintains that shipping cannot serve the world trade if allowed to operate on a commercial basis in a competitive market.

iv) Members who are concerned about the validity of documents can submit them to ICC Commercial Clrime Services.

v) The International Maritime Bureau combats all types of maritime and trade crime.

15.8 LET US SUM UP

Although business through sea route is the oldest mode of transportation, it is infected with a variety of maritime frauds and cheating incidents. These are as old as the shipping business and occur primarily due to the complex nature of cargo transportation in international trade involving multiplicity of parties, lack of verification of documents and standing parties, lack of sharing information, lack of timely detection, problems of liner trade, etc.

In nearly all incidents of maritime fraud that have come to light and that have been examined, it is evident that dishonesty of one party is combined with misplaced trust and shortsightness by another. Hence, reasonable precautions must be taken by all those engaged in the international trade — the buyers , the sellers, the freight forwarders, the banks, the insurance companies, the vessel owners and the charterers. The traders should normally act through reputed firms of agents, satisfy themselves as to the genuiness of the documents and the standing the parties, ensure a transhipment inspection by independent inspectors, share information, take comprehensive insurance policy covering all kinds of risks, act through well known bankers and take immediate steps to ascertain its whereabouts when the vessel is delayed.

International chamber of Commerce, through its various bureaux such as Commercial Crime Bureau, Counterfeiting Intelligence Bureau, Cypercrime Unit and Commission on Maritime Transport, and the activities such as authentication of documents, investigation and recovery of losses, publication of commercial crime service and holding workshops for sharing information and experiences, plays an important role in detection and prevention of maritime frauds.

The Internations Maritime Bureau, with its regional office in Kuala Lumpur which acts as the home for its piracy reporting centre, also combats all type of maritime and trade crimes including documentary credit frauds, charter party frauds, cargo thefts and deviation of ships. Its main task is to prevent frauds in international trade and maritime transport, reduce the risk of piracy and assist law enforcement agencies in protecting crews. It tracks cargoes and shipments and verifies their arrival at scheduled ports. Much of its work relates to providing timely advice on how to reduce corporate vulnerability to frauds and malpractices and making quarterly reports available to the interested parties.

15.9 KEY WORDS

Apparent Bargain : Advantage such as exceptionally favourable price and conditions quoted by a seller or a transport provider.

Barratary : Wrongful acts wilfully committed by the master or crew of a vessel to the prejudice of the owner or charterer.

Cessar : A clause relieving the charterers from liability from the time a vessel has completed loading and the Bill of Lading signed, except with regard to payment of freight, dead freight and demurrage at the loading port.

Disponent Owner : A person to whom ownership has been disponed (conveyed legally).

Maritime Fraud : Frauds relating to transportation of goods from seller to buyer by sea route and financial and documentary transactions involved therein.

15.10 ANSWERS TO CHECK YOUR PROGRESS

A3 (i) illegally (ii) documentary (iii) vulnerable (iv) potential

B1 (i) True (ii) False (iii) True (iv) True (v) False (vi) True

D4 (i) True (ii) True (iii) False (iv) True (v) True

15.11 TERMINAL QUESTIONS

1 What is Maritime Fraud? State the various factors that lead to commitment of maritime frauds.

2 Enumerate the common areas where frauds and disputes normally take place in international marine transactions and commercial shipping, and state the common precautions to be taken by international buyers and sellers to prevent the possibilities of maritime frauds.

3 "The best way for vessel owners and charterers to avoid their involvement in incidents of fraud is to make the necessary enquiries as to the standing of the parties they are dealing with, before entering into any binding commitment." Discuss.

4 Outline the role of International Chamber of Commerce in preventing and restricting the maritime frauds.

5 Discuss the various activities and services provided by International Maritime Bureau.