DEVELOPMENT OF THE SHIPPING INDUSTRY: THE EAST AFRICAN CASE[1]

by

C.R. Mahalu
Faculty of Law
University of Dar es Salaam

INTRODUCTION

A number of conferences have been held on the law of the sea, in an effort to keep up with new problems caused by rapidly changing technology. The rate of technological advance has outstriped the ability of the sluggish international legal superstructure to respond to new problems and issues.

These conferences are convened under the umbrella of international law, which is made up of all the rules determining the rights and obligations of the ruling classes. The basic aim of these conferences is to harmonize class interests when a clash occurs among the members of the international community. For example, the topics covered in conferences on the law of the sea vary over time, indicating a new level reached by the productive forces of one group, in opposition to another. Harmonisation is sought in conferences or conventions such as those which took place in Geneva - the 1958, Geneva Convention on the 1958 continental Shelf, the 1958 Convention on the High Seas, and the 1958 Convention on the Territorial Sea and the Contiguous Zone.[2]

International law, as it is continuously reformulated, manages to harmonise conflicting interests and uphold the interests of the most powerful classes, i.e., the imperialist powers. The interests of the weaker and economically dominated states are overwhelmed. In these conferences, however, controversial issues arise, indicating the extent of the contradictions existing

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1. This paper is a shortened version of Mr. Mahalu's original presented at the Workshop. It was prepared by Sidney B. Westley, Publications Editor at I.D.S.

2. Tanzania is not a signatory to any of these conventions. Kenya is a party to all of them.

between the rich and the poor states. The decisions reached on these issues lead some of the poorer states to doubt the actual role played by international law in protecting their interest.

Today these deliberations take place among three camps: the imperialist countries, the socialist countries and the developing countries. The imperialist West, apart from being the seat of the financial oligarchies, is generally held to be the architect of contemporary international law. International law was developed in Europe by the bourgeois class during the period of the bourgeois revolution against feudalism. At that time, productive forces reached a new level and the feudalist mode of production became a hindrance to the full development of capitalism. From this time onwards, national states emerged, reflecting the interests of the bourgeois class which were national, rather than local. International law in its general form today was derived from a system of rules based on the formal equality of independent and sovereign nation states. The ruling classes were served by this international legal superstructure, and it reflected the extent of their interest in the new economic system.

By the 1880s, capitalist society had turned international law into some kind of club for 'civilised' nations, thus paving the way for the invasion of the 'non-civilised' nations by imperialism. Imperialist activities were justified by international law which favoured the 'spheres of influence' concept and all forms of aggression aimed at furthering or protecting monopolistic interests. In its economic context, therefore, international law upholds the most basic interests of the bourgeois class and the domination of the economically weak.

The socialist countries, having revolted against the capitalist system, are strongly opposed to any form of imperialist economic aggrandisement. In most instances, they are firm supporters of the less developed countries in questions of international law.

The less developed countries (LDCs), once the victims of bourgeois international law's crude colonialism, are today victims of neo-colonialism. They are supposed to observe an international legal superstructure which, in most cases, runs contrary to their economic independence and political freedom.

Their traditional modes of production were crushed at the outset of colonialism, giving way to a colonial economic system which was extractive

and anti-developmental. The capitalist modes of production introduced into the LDCs were basically aimed at satisfying the needs of the metropolitan countries, so that today the LDCs are oppressed, dependent economies. International law assures them of some equality as sovereign states (see Article 2(1) of the U.N. Charter), although the success of their efforts in the international forum depends very much on whether their interests coincide with those of the major powers. This situation has often provoked the LDCs to act unilaterally to protect their economic or strategic interests. When such unilateral acts are carried out, for example the extension of the territorial waters beyond the twelve-mile limit, the imperialist powers claim that the LDCs are breaking international law and that their claims are illegal. For the imperialist powers, as long as the seas remain open to their exploitation, then international law has been observed. In this situation, however, only the strongest nations, equipped with sufficient capital, technological expertise and military force, can use international law to further their own interests and this is what the imperialist powers do in the area of navigation and other uses of the sea.

The current structure of the law of the sea is basically in the interests of the rich nations who have the capital and technological expertise to exploit the sea resources. The less developed coastal states lack capital and technology which makes their adjacent seas vulnerable to exploitation by alien powers to the detriment of their own interests. The less developed states need protection from this exploitation, but they do not achieve this in the international legal forums.

In this paper, we shall not deal with the law of the sea as such, but with an activity which is governed by international maritime law --the shipping industry. Historically, international maritime law originated before the general international law known today. Maritime interested led to shipping activities and hence to laws of the sea which were compiled in the Mediterranean region as early as 900 B.C. International maritime law today still reflects many traditional interests and practises which are now irrelevant, particular to the LDCs who wish to participate in the shipping industry. Yet the LDCs are compelled to observe these rules.

As the shipping industry has developed through the centuries, new laws have been made to reflect changing circumstances. According to Marx, 'Whenever, through the development of industry and commerce, new forms of intercourse have been evolved... the law has always been compelled to admit

them among the modes of acquiring property' (Marx and Engels, 1973p. 79). Today the shipping industry plays a major role in world trade and reveals the dominant role played by the imperialist forces.

The LDCs are dependent on the shipping industry to transport their raw materials (exports) to markets in the metropolitan centres. During the colonial era, cash crops were produced in the colonies to provide raw materials for industrial production in the metropolitan countries, and that pattern exists today, even though the former colonies are nominally independent. The LDCs rely on metropolitan markets for their cash crops because the domestic markets for these primary commodities are very limited. The LDCs must pay to ship their commodities to the metropolitan centres on vessels owned by the capitalists, thus reducing their foreign exchange earnings. These earnings are further reduced by the profits taken by metropolitan finance capital which finances the production of the commodities. In this way, the imperialist countries deny the LDCs any form of ownership because such ownership would challenge the very existence of imperialism.

The LDCs have taken several steps to reduce the cost of shipping their commodities, and one of these has been the founding of their own shipping lines. In these efforts, they have encountered many problems. For one thing, the new national shipping lines face a complicated system of regulations, to the extent that national lines are sometimes not free to carry the exports of their own countries. They also face strong competition from the long- established conference lines. Given this situation, the economic gains the LDCs hoped to achieve by founding their own national shipping lines have often been illusory.

This study of the shipping industry in East Africa follows a historical materialist approach, which is the most scientific way to analyse the actual causes of the problems underlying this industry. /Ed. note: At this point the original paper contains a long discussion of the history of the shipping industry in Europe. Because of space limitations, this has not been indluded./

THE POLITICAL ECONOMY OF SHIPPING

In the second half of the nineteenth century competition in the European shipping industry was acute and this led to a fall in the profit margins of the shipping companies. For this reason, in the 1870s the capitalist shipping companies formed combinations among themselves, known as conference lines, to regulate the traffic and fix the carrying rates, and to combat competition from shipowners who were not conference members. These shipping companies entered into agreements to standardise their tarrifs for an agreed period and to offer

deferred rebates to regular shippers on condition that they did not use vessels belonging to companies outside the conference system.

Today, membership in a conference varies from two shipping lines to forty or more. The members of the conference act in combination to admit or exclude applicants for membership, to share cargo among themselves, and to make common policy on such matters as the levels of shippers' discounts or rebates, methods to combat competition from non-members, pooling and sharing earnings, and problems of enforcement. There are two types of conferences -- the 'closed' type and the 'open' type. In the 'closed' type, which is typical of the system in Britain, new members can only join with the consent of the existing members. In the 'open' type of conference, as it exists in the U.S., new members may join so long as they meet the criteria laid down by the Federal Matitime Commission.

In the Indian Ocean, the conference system was first dominated by British shipowners. Because of the inherent contradictions in the capitalist system, competition increased among shipowners as the level of productive forces advanced, efficiency increased and many new ships were built. The first conference system in the area was formed in 1875 for the U.K. - Calcutta tea trade. This was followed by separate conferences for the Madras - U.K. and the Bombay/Karachi - U.K. routes, and the conference system expanded further as shipowners from other European countries began to participate. By 1948, there were over 100 different conferences operating in the Indian Ocean (Deakin, 1973, p. 23). Today, there are a total of about 360 conferences in operation.

In general, the inherent contradictions in the capitalist system have led over the years to increasing competition and a reduction in profits, and for this reason monopolistic organisations such as the conference systems were formed. The conferences blocked the 'loyalty contract' systems.

Freight rates are st by the conferences freely, without considering the effects on trade in general or on the interests of the less developed countries. Rates are high, to assure a substantial level of profits to the conference members, and they are often discriminatory. For example, commodities shipped from the LDCs to the metropolitan centres are often charged higher rates than similar commodities shipped in the opposite direction. Rates can be raised unilaterally, without consulting the shippers. Finally, the conferences are often highly restrictive in terms of admitting new members, since one of their primary aims is to avoid sharing the market too broadly.

During the colonial period, the conferences of the metropolitan countries were protected from competitiion on routes between their metropolitan centres and their colonies, both from shipping firms of the other colonial powers and from any shipping enterprise which might have started up in the colonies. At the time that many former colonies were gaining independence, the conference systems were firmly entrenched and competition among the established conferences was increasing.

On achieving independence, the LDCs gained a sovereign status which entitled them to become subjects of international maritime law. However, although the shipping industry is very important to these new countries, their participation has remained almost negligible (see Institute of Shipping Research Research, 1970, p. 6). As of 1969, the LDCs accounted for 64.7 per cent by weight of ocean-borne trade, but owned only 7 per cent of the world's merchant fleet (Review of Maritime Transport, UNCTAD 1971 TD/B/C.4/82). These figures are broken down in Table.

Table 1. Ownership of commercial shipping lines.

LDCs in Asia	4.4%
LDCs in Latin America	2.6%
LDCs in Africa	0.6%
Total	7.6%
Socialist Countries of Eastern Europe and Asia	8.9%
Developed Countries	83.5%
Overall Total	100.0%

Source: Review of Maritime Transport, UNCTAD 1971 TD/B/C.4/82.

In terms of registration, 17.9 per cent of the world fleet is registered in a small number of developing countries, such as Panama and Liberia, but these ships are largely under control of the traditional capitalist maritime powers.

The economic viability of the LDCs rests to a considerable extent on exporting commodities to the metropolitan centres in order to earn the foreign exchange needed to purchase the capital goods crucial for their industrial development. Their dependence on imperialist shipping lines means that their vital trade links may be cut off in time of war or international disturbance and that a certain percentage of their export earnings is lost in payments for shipping. This situation is exacerbated by the fact that the imperialist shipping lines are able to set their freight rates arbitrarily,

and in case of international disturbance there is nothing to prevent these prices from increasing exorbitantly. Thus the present pattern of ship ownership leads to a large net flow of foreign exchange from the LDCs to the imperialist countries year after year. As Iqbal describes the situation, 'Buying a commodity with transport increases the total foreign exchange outflow; selling a commodity and buying transport at the same time reduces the foreign exchange inflow' (p.59)

When the less developed countries trade with the developed countries, or even with each other, they have no alternative but to buy transport from the developed countries. Most of the conferences originate in the developed countries, and by now they have covered nearly all the world shipping routes. Some of the LDCs have tried to join these conferences, but most of the conference systems are 'closed' ones, as described above, and membership is very restrictive.

For some time there was no institution or organisation to check the activities of the conferences in any way. The Maritime Transport Committee of the Organisation for Economic Cooperation and Development (OECD) solved problems for the shipping companies as they occurred and served as a mouthpiece for the shipping policies of the developed countries. The Committee of European Shipowners and the Consultative Shipping Group represented the interest interests of shipowners and governments in Europe and Japan respectively. Although the LDCs accounted for 64.7 per cent of ocean-borne trade by weight as mentioned above, there was no institution to defend their interests.

After the General Agreement on Tariffs and Trade (GATT) proved to be little concerned with the interests of the LDCs, the United Nations Conference on Trade and Development (UNCTAD) was founded in 1964 to serve as a mouthpiece for the LDCs. These countries pressed for an international examination of trade activities, and especially of the shipping industry, so a Committee on Shipping was set up within UNCTAD. This committee has about 45 members. All the major maritime powers are represented, as well as the socialist countries, but most of the members are from the less developed c countries. Deliberations and negotiations are carried out according to the UNCTAD group system.

In this Committee, the developed countries opposed the formation of national shipping lines by the LDCs, claiming that with the establishment of national lines there would follow a preferential system for carrying cargoes from these countries which would impinge on the freedom of the high seas. The developed countries view the freedom of the seas as both the freedom of navigation and the freedom to load cargoes at any port.

freedom of the seas to them means the minimisation of governmental and international intervention in their monopolistic practises. The LDCS responded that, given their dependence on the shipping industry in which they had no say, their balance of payments position would be improved by the establishment of their own commercial fleets. Given the conferences' history of charging high, discriminatory and anomalous freight rates, the LDCs had a right to establish a protective system in order to establish their national shipping industries. The socialist countries have supported the LDCs in this Committee.

The Committee produced a document known as the Common Measure of Understanding (Proceedings of UNCTAD 1964, Vol. 1, p. 64). It was stated that the liner conferences were necessary for a regular and stable shipping services, which of course represented a victory for the developed countries. However, some measure of cooperation was demanded between shippers and shipowners for the smooth functioning of the system. The most important point was the establishment of consultative machinery whereby the shippers and shipowners would meet to discuss tariffs, freight rates and tying devices. The conferences would be represented in the ports they served, and the imperialist demand for the improvement of the ports was also included in the document. The new merchant marines of the LDCs would be included in the conferences, but their participation should be based on 'sound economic criteria'.

At the Second UNCTAD in New Delhi in 1968, the LDCs presented their views in a document called the 'Charter of Algiers'. They expressed their dissatisfaction with the arrangements of the international shipping industry, and demanded that the Committee on Shipping should discuss international shipping legislation and that studies should be carried out on freight rates, the activities of the conferences and the adequacy of shipping services. The governments of the developed countries should press shipowners to stop charging high rates for non-traditional exports from LDCs and to lower the rates on traditional exports. The LDCs demanded equal participation in any conference dealing with matters affecting their foreign trade ('Charter of Algiers', UNCTAD, U.N. Pub. E.68.11/D.15 1968, p.431). The Committee on Shipping discussed the establishment of national and regional consultative machinery, the establishment or expansion of the LDCs' merchant fleets, current and long-term aspects of maritime transport, and international shipping legislation.

UNCTAD has provided a platform from which the LDCs can express their views, but it has not effectively stimulated the development of the their new shipping industries. The only remedies which have been suggested are that the LDCs should charter full-load vessels and increase their bargaining power vis-a-vis the developed countries, which is difficult since the LDCs themselves are not united on all issues. Another issue is the discriminatory freight rates charged on LDC exports. Products, such as manufactured and semi-manufactured goods, which have not been shipped traditionally on certain routes, are generally charged particularly high rates, known as 'general cargo rates'. The LDCs have been asking for low 'promotional freight rates' for such goods, but no agreement has been reached.

All the groups participating in UNCTAD's Committee on Shipping have favoured the establishment of consultative machinery. The shippers and the conferences were to form councils which would consult with each other on such issues as freight rates, the adequacy of service, representtation in the conferences, and the rules and regulations covering shipping. In general, these councils have not proved successful. There has been a lack of unity among shippers, and the councils have tended to be dominated by the relatively large and well established shippers who have colluded with the conferences and received special favours. Even today, shippers are only consulted, but the real decision-making power rests with the conferences. In light of these problems, it still seems that the best solution for the LDCs would be to form their own shipping lines.

THE SHIPPING INDUSTRY IN THE LESS DEVELOPED COUNTRIES

It will not be an easy matter for a less developed country to start a shipping industry. A large amount of capital is needed which is generally not available in an LDC without the participation of international finance capital. In addition, the LDCs do not have a well established ship-building industry. Even in countries where ships are being built, the foreign exchange component can be as high as 70 per cent ('Charter of Algiers' 1968, p. 431). In this situation, it is debatable whether one can say that the ship has actually been built by the LDC or not.

In addition, the LDCs generally lack the skilled manpower necessary for the smooth running of a national shipping line, and some 'national' lines are in fact run by expatriates. Training of personnel for the LDCs' shipping industry is being carried out in some LDCs themselves and in the socialist countries, and UNDP and UNCTAD have also made available training facilities for seagoing personnel and managers, though these facilities do not meet all the demands of the LDCs.

Recognising that government support will be necessary to stabilise and expand the new shipping **industries,** the LDCs have favoured government financial assistance in order to establish large enough fleets to provide regular service and attract regular clients, and preferential treatment in cargo reservations. The developed countries have been reluctant to accept these demands, but they have not been united in this position.

Any discussion of national shipping lines in less developed countries should distinguish between true national lines, carrying national commodities and under the control of citizens of the country in question or the state, and fictitious national lines that are in fact foreign owned and foreign controlled. As mentioned earlier, 17.9 per cent of the world fleet falls under this fictitious category. This phenomenon will be treated in some detail.

Flags of Convenience

International customary law imposes a duty upon every state owning ships to register all ocean-going cessels and provide its protection to those vessels which are registered and fly its flag. Such ships carry the nationality of the state where they are registered, which is called the 'flag state'. However, there is no international convention governing the procedure for registering ships. This is left to the municipal enactments of the national states. The 1958 Geneva Convention on the High Seas provides a law governing the registration, flag and nationality of ships, but it does not set down registration procedures. It only refers to customary law as follows:-

> Art.5 (1) Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship; in particular the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag (emphasis added).
>
> (2) Each state shall issue to ships to which it has granted the right to fly its flag documents to that effect (Art.5)

The Convention, however, goes on to indicate that every state must take such measures for ships under its flag as are necessary to ensure safety at sea with regard, inter alia, to the manning of ships and labour conditions of crews in accordance with international labour regulations. These obligations are to be met through municipal enactments of the national states.

Registration carries an international legal significance in that any registered ship cannot, prima facie, be confiscated (Naim Movan v. Attorney General for Palestine, 1948 (AC) 351). Registration also determines state jurisdiction: vessels in the high seas are subject to no authority except that of the state whose flag they fly, as stated in the SS Lotus case (PCIJ, Series A, No. 10, p. 25). In most cases, the number registered is also a good indication of the number of ships owned by a particular country.

Although there are no uniform conditions governing domestic rules for registration, the practises of different states can be categorised as rigid, moderate and relaxed. Where the national legislation governing the registration of ships is rigid, the vessel must be owned within the country and a number of crew members and the captain must be nationals. Moderate legislation calls for ownership by nationals on a majority basis, but sets no other conditions relating the nationality of the crew or the captain. Under relaxed legislation, foreign owners may register ships almost on the same basis as nationals.

Today, the states with relaxed registration laws are causing a lot of international concern. Shipowners from states with rigid laws often prefer to register their vessels under these states. In Liberia, examples, according to the Maritime Code of 18 December 1948, as amended on 22 December 1949:-

> The following vessels are eligible to be documented:
>
> (1) A sea-going vessel whenever built, owned by a citizen or national of Liberia, or of any foreign country. The terms 'citizen' and 'national' shall include corporations, partnerships and associations of individuals.
>
> (2) Any vessel of twenty net tons or over engaged in trading on the inland waters of Liberia.

Such relaxed legislation leads to a grant of nationality to a ship with which the registering state has no genuine connection, apart from the formal certificate of registry. This system is known by the expression, 'flags of convenience'.

This practise is not new. As early as the sixteenth century, shipowners from states whose national regulations limited their commercial activities attached their vessels to a foreign fleet. They might also do

this to avoid the monopolistic regulations of the foreign nation: for example English nationals sailed under the Spanish flag in order to gain access to the lucrative West Indian trade then under a Spanish monopoly (Williams, 1941, p. 43). Again in Newfoundland, English fishermen risked deportation because of the competition they offered to the established fishing industry, so they sailed under the French flag (Williams, 1941, p. 144). In the nineteenth century, British trawlers registered their vessels under the Norwegian flag in order to avoid British legislation limiting trawling in the Moray Firth.

This practise has continued into modern times when, for example, during time of war shipowners from belligerent states have registered their ships under the flags of neutral states in order to avoid capture. Sometimes shipowners have avoided taxation in this way as well as legislation covering minimum wages health standard ' treatment of crews. With the internationalisation of capital, the nationality of a ship is now no longer necessarily the nationality of its owner. Countries which have relaxed registration procedures also tend to have relaxed legislation governing taxes, labour conditions, health requirements, etc. The most popular of these countries for registration are Panama, Liberia, Honduras and Costa Recently, Somalia has also relaxed its legislation in an attempt to encourage foreign shipowners to seek its flag protection. In 1969, 17 per cent of the world fleet was registered in these countries, and by 1976 they accounted for more than 30 per cent (see Daily News (Dar es Salaam) 14 April 1977, p. 2).

The term 'flags of convenience' came into use in 1954 in a report of the Organisation for European Economic Cooperation on the practises of Panama, Honduras and Liberia, among others (Boczek, 1962, p.5). According to this report, these countries permitted ships to operate under their flags at a nominal level of taxation and with lower standards of social security for their crews than those of most other countries (see OEEC, 1954, pp. 19 and 65). Boczek defined a flag of convenience as the flag of a country allowing the registration of foreign-owned and foreign-controlled vessels under conditions which are convenient and opportune for the persons who are registering the vessels (1962, p.2). In 1958, the Maritime Transport Committee of OEEC defined them as:-

> The flags of such countries as Panama, Liberia, Honduras and Costa Rica whose laws allow, and indeed make it easy for ships owned by foreign nationals or companies to fly these flags... in contrast to the practice in the maritime countries where the right to fly the national flag is subject to stringent conditions and involves far reaching obligations.

These definitions indicate the degree of corruption at the international level pursued by imperialist shipowners in order to reap higher profits. The flag of convenience enables a shipowner to increase his profits by ignoring the labour regulations for the welfare of his crew and the health regulations designed to protect his crew and passengers.

Naturally, the nations granting 'flags of convenience' resent this term. The Central American countries involved prefer the expression 'flags of necessity' while the Liberians prefer 'flags of attraction'. The U.S. maritime unions tend to call them 'runaway flags', and others 'tax-free flags', 'pirate flags', etc.

The practise of registering under these 'flags began in the inter-war years to avoid the complicated and stringent regulations of the ship-owners' home countries. The small registering states offered all the protection the owners needed and could not exercise any genuine control over their operations. The owners registering in this way have tended to be U.S. and Greek citizens. Panama and Liberia offer exeption from taxation to all ships registered under their flags, so that none of the profits made under this system are transmitted to these countries for economic develop-ment. All the profits go to the metropolitan centres.

Governments of the developed countries have been the strongest opponents of this system, since it intensifies competition for their own shipping industries. The system is so lucrative from the owners' point of view, however, that some countries, such as Greece, have had to offer concessions to their shipowners to keep them from registering under the 'flags of convenience'. The less developed countries, even those with more stringent registration requirements themselves, have not been strongly opposed to the system because any increase in competition serves to lower freight rates and because the countries offering relaxed terms for regi-stration of vessels are among the less developed. This whole situation will be discussed at the next meeting of UNCTAD's Committee on Shipping (Daily News (Dar es Salaam), 14 April 1977).

The LDC Shipping Industry within the Political Economy

The development of a shipping industry in the less developed countries is hindered by political economic factors at the world level. Although the LDCs may oppose the activities of the conferences, they must come to terms with them if they want to expand their own industry. They must also use capital and skilled manpower from the developed countries and in this way their state of dependency is perpetuated. Exploitation

by international monopolies is at the core of imperialism; for the LDCs to demand equality with the developed countries would mean the extinction of the imperialist system. Obviously, the imperialists will not negotiate their own extinction.

In opening a session of the UNCTAD Committee on Shipping, Garmani Corea, the Secretary General of UNCTAD, expressed his disappointment that the LDCs have not increased their participation in the shipping industry in the past few years. This situation is not surprising, though, when one considers fully the mechanisms of the imperialist system. The imperialist forces have no intention of allowing the LDCs to participate as equals in international economic activities. Thus, laws that indicate the rights and obligations of the LDCs are looked on with disfavour, and an international convention which actually seeks to rememdy the unfavourable position of the LDCs will not be ratified. For example, a 'Code of Conduct for Liner Conferences' has been formulated which sets out guidelines under which 40 per cent of merchant shipping would be under the control of exporting countries, 40 per cent controlled by importing countries and 20 per cent by so-called 'third flag' countries. Opponents of the code include Britain, the U.S. and the Scandinavian countries who argue that the code could cause ships to sail without full cargoes which would raise costs and reduce efficiency (Daily News (Dar es Salaam), 16 April 1977). So the shipowning countries have not ratified the code.

In an imperialist system, nothing really belongs to the poorer countries, as stressed above. This will be seen in the case of the East African shipping industry which will be discussed in the next section.

THE SHIPPING INDUSTRY IN EAST AFRICA.

The history of shipping in East Africa goes back to very early times. It started with the dhow traffic which linked the East African coast with the countries of the Persian Gulf, the Red Sea, India and even China. The dhows were owned and operated by foreigners mostly Arabs from countries with more highly developed forces of production than those of the East African coastal inhabitants, and in this situation East Africans were eventually shipped overseas to these countries as slaves.

In the fifteenth and sixteenth centuries, Europeans appeared on the East African Coast as one stop on their trade routes to the Orient. Apart from the Portuguese in Mozambique, they did not build permanent settlements.

However, with the tremendous rise in capitalist productive forces and relationships in Europe in the nineteenth century, the European traders came to overshadow the Arabs whose productive forces had remained static. Trade activities were stimulated to serve the interests of the Europeans.

The present boundaries of Kenya, Tanzania and Uganda were set in those days, under British and German colonial rule, and the inhabitants were forced to grow primary commodities, such as cotton, sisal and coffee, which were taken to the coast and shipped to the metropolitan centres. Railways and ports were built to bring commodities from the interior to the coast and thence overseas and finance capital was invested in agricultural production. A colonial economic pattern was established, aimed at turning the colonies into producers of raw materials and markets for European manufactured goods, a system which was not designed to assist the inhabitants of the colonies, but rather to exploit their state of relative underdevelopment. The money economy was introduced, and farmers were forced to cultivate cash crops or to work on European-owned plantations in order to raise the money they needed to pay taxes to the colonial governments. From this time onwards, East Africa was forced to look to Europe as the principle market for her exports.

The first World War marked the contradictions inherent in the capitalist system: it was the first imperialist war. A series of peace treaties followed designed to regulate the level of armaments and formalise the new division of territories. As one of the victors, Britain took control of Tanzania, as well as Kenya and Uganda, and the system of capitalist exploitation was formalised through the Kellogg-Briand Pact. As before, capitalist interests prevailed in East Africa. Africans were not encouraged to enter the commercial sector, and the British dominated every field of production. This was the situation when the East African states were granted formal independence.

With independence, the era of neo-colonialism was inaugurated; economic relationships remained the same as under the colonial system. The same commodities, coffee, cotton and sisal, were grown for export to the metropolitan centres, and if anything, dependence on foreign markets and foreign capital increased. The establishment of merchant marines, for example, relied wholly on the support of foreign capital and British and American shipping conferences continued to dominate the East African shipping

trade. In June 1967 the East African Community was founded through the signing of the Arusha Agreement, as an attempt by the three former colonies to improve their economic position through joint action.

As fully sovereign littoral states, Kenya and Tanzania became perfect or proper subjects of international maritime law. As a landlocked independent state, Uganda is a conventional subject of international maritime law, under the Barcelona Convention of 1921 and the New York Convention of 1965. Though lacking a maritime boundary, landlocked states may register their own vessels which fly their flags. Lacking national legislation to regulate merchant shipping, the three East African states relied on the U.K. legislation which was adopted as part of their domestic law. In 1966, the Central Legislative Assembly of the East African Common Services Organisation (predecessor to the East African Community) had enacted a Merchant Shipping Act, but shortly afterwards it was decided that maritime shipping should be governed by national legislation and the 1966 Act went out of effect. The national legislation **enacted** in Kenya (Cap. 389) and in Tanzania (Act No.43 of 1967) is similar, aimed generally regulating the orderly development of merchant shipping in the two countries. There are a few crucial differences, however.

Legislation in Tanzania and Kenya Covering the Registration of Ships

Both Tanzania's and Kenya's national maritime legislations closely follow the text of the East African Merchant Shipping Act of 1966, but with some important differences based on the two country's different national policies and philosophies. While Tanzania pursues a more socialist policy, Kenya is more openly capitalist and thus more open to private foreign investment. This important difference is reflected in the maritime legislation of the two countries covering the ownership and registration of ships. The registration clauses are contained in Tanzania's Sec. 3(1) of Act No. 43 of 1967 and in Sec. 3 of Kenya's Cap. 389.

In Tanzania, a ship is considered Tanzanian only if it is owned wholly by qualified persons, who are defined is Sec. 3(1) as 'a person who is resident in the United Republic', 'a body corporate, incorporated under and subject to the laws of the United Republic, or 'the Government of the United Republic'. The term 'resident' makes the intention of the legislation ambiguous. From a strict interpretation of this section, there is no indication of an intention to restrict the ownership of ships to Tanzanian citizens, as opposed to non-citizens who are resident in Tanzania. There is no definition of the

term 'resident' anywhere in the Act, neither is there a definition in the Interpretstion and General Clauses Ordinance, Cap. 1, nor in the Citizenship Act of 1961, Cap. 512. The term is found in the Income Tax Act, No.33 of 1973, but its meaning there is restricted to application to that particular Act. If the term is taken to mean both citizens and non-citizens residing in Tanzania, then there is no restriction on non-citizens carrying on shipping activities in Tanzania while receiving financial support and direction from outside the United Republic. The possible significance of the phrase 'wholly owned by qualified persons' is lost.

A body corporate, incorporated under and subject to the laws of Tanzania, and having its principal place of business in Tanzania, qualifies to be registered as the owner of a Tanzania ship. Again, we must ask whether the underlying interests in such a corporation would be national or foreign private investments in Tanzania must be approved by the relevant minister, according to the Foreign Investments (Protection) Act No. 40 of 1963 (Cap. 533). According to the Act, the minister may issue a certificate to an applicant at his discretion, considering whether the enterprise in question would further the economic development of Tanzania. This provides mechanism for approving of foreign interests before they can be incorporated under the Companies Ordinance (Cap. 212).

The use of the word 'wholly' would seem to exclude the registration of a ship in Tanzania owned by foreign interests under the cover of partial Tanzanian participation. The legislation seems to be aimed at establishing a close link between the ownership of the ship and the state of registration, but the use of the word 'resident' in the clauses which follow opens up some ambiguity.

The Kenyan legislation on the registration of ships reads as follows:-

3 (1) A ship shall be registered as a Kenya ship if it -

(a) is of twenty-five net register tonnage or more; and

(b) is owned by persons qualified to be an owner of a Kenya ship; and

(c) is not exempted from registration.

(2) The following persons are qualified to be an owner of a Kenya ship -

(a) a person who is resident in Kenya; or

(b) a body corporate, incorporated under the Laws of Kenya, which has its principal place of business in Kenya; or

(c) the Government

As with the Tanzanian legislation, the word 'resident' is used but not precisely defined. However, the world 'wholly' is missing, which would indicate a more receptive attitude towards foreign interests which can qualify to own a Kenya ship is they are incorporated under the laws of Kenya. Neither legislation openly invites foreign shipownership, and neither is so rigid as to prohibit foreign ownership expressly. Both legislations are of the moderate type, where foreign registration might be permitted in specific cases in pursuance of economic and political goals. Neither specificies that the masters or crews of registered vessels should be citizens of the flag state.

Legislations Covering Pollution from Ships.

Both national legislations have ten parts. Part IX in each country refers very briefly to the question of pollution. Neither legislation explores solutions to this problem or provides for any supervisory or controlling machinery. In the Tanzanian Act, which is no different from the **Kenya Act**, Sec. 309(1) provides that "discharge" in relation to oil or oily mixture means any discharge, escape or leak, however caused'. Section 309(2) prohibits:-

> the discharge of any oil or oily mixtures from any ship into a harbour or into the sea within 100 miles from the coast of the United Republic; or any Tanzanian ship into the sea within 100 miles of any land. If this provision is not observed, then the owner or master of the ship shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand shillings.

This section reflects the jurisdiction of a coastal state over all ships within 100 miles of its coastline and over its flag ships anywhere they may happen to be. However, without adequate patrolling of the coastal, areas, this legislation on its own will not provide an effective safeguard against pollution, since ships can discharge their oil or oily mixture without being detected, particularly and night. According to the 1954 International Convention on the Prevention of Pollution of the Sea by Oil*, facilities should be provided in ports for the discharge of oily wastes. Either the governments themselves should provide these facilities or the shipping lines should be required to do so in order to secure landing rights. Failure to provide these facilities and inadequate patrolling of the coastal areas would seem to invite ships to discharge their oily wastes illegally.

* The provision exists in the 1962 and 1971 amendments to the Convention.

The Tanzanian Shipping Industry.

Since the Arusha Declaration in 1967, the state in Tanzania has taken over most economic activities which were previously under private foreign control. Since it is a basic aim of the government to control the economy closely along socialist lines, foreign private investment has been held constant, although the participation of international finance capital has been increasing. At the time of the Arusha Declaration, international shipping of Tanzanian goods was almost entirely in the hands of foreign shipping companies. The Merchant Shipping Act, passed in the same year, was intended to provide generally for the control, the regulation and the orderly development of a national shipping industry. However, the developmemt of such an industry has been limited. Small-scale fishermen and traders have been active along the coast, but the government is increasing its participation in these activities with the aim of centralising them.

Before the collapse of the East African Community, the East African Railway Corporation operated a shipping line on inland waters, particularly on Lake Victoria. This provided facilities for communication and transport-ation of passangers and goods along the lakeshore of each member country and be between countries. Now the Tanzanian government has provided three ships to continue this service on the Tanzanian lakeshore.

For international maritime trade, the governments of Tanzania, Kenya, Uganda and Zambia have founded a joint shipping line, the Eastern African National Shipping Line in 1966. This line was originally intended to handle all imports and exports to and from Eastern Africa but it has fallen short of this goal, due to the activities of the conference lines which it has joined.

The Eastern African National Shipping Line. The Eastern African National Shipping Line was founded and started operations in 1966, under the ownership the governments of Tanzania, Kenya Uganda and Zambia and of the Southern line, a private company incorporated in Kenya and owned by a number of European conference lines. The EANSL is a limited liability company registered in Tanzania with offices in Dar es Salaam and Mombasa. Mombasa serves as the headquarters and the centre of operations.

According to its articles of association, the line is supposed to Establish and maintain regular services by steamships or other vessels, to act as shipowners and ship managers and to enter into contracts to carry mail, passengers, goods or cattle by any means, either on its own or by other

vessels (see UNDP/UNCTAD, 'East African Shipping Study Report', p.380.) The management of the company was originally contracted to the Southern Line, but as of 1 December 1973, the company has been run by its own designated staff. All the managerial staff of the company are nationals of the four Eastern African countries, but assisted by expatriate technical personnel who have been hired on a contract basis since December 1974.

The company owns four ships and also operates one chartered ship, as follows:-

1. Harambee - owned and registered by Kenya. Built in 1953. Dead weight is 10,181 tons; bale capacity 533'; speed 13.5 knots; passanger capacity 12.
2. Uganda - owned and registered by Uganda. Built in 1953. Dead weights is 9,115 tons; bale capacity 500'; speed 15 knots; passenger capacity 12.
3. Ujamaa - owned and registered by Tanzania. Built in 1959. Dead weight is 9,113 tons; bale capacity 500'; speed 15 knots.
4. Mulungushi - owned and registered by Zambia. Built in 1960. Dead weight is 9,110 tons; bale capacity 500'; speed 15 knots.
5. Eva - chartered. Registered in Liberia. Built in 1957. Dead weight is 10,500; bale capacity 610'; speed 12 knots (see UNDP/UNCTAD, 'East African Shipping Study Report', preliminary report, 1974,p.2115).

The objectives of the participating governments were stated at the founding of the Eastern African National Shipping Line in a policy paper entitled 'Shipping Policy in East and Central Africa' (see the Inter-governmental Standing Committee on Shipping, 1966). They are as follows:-

1. To conserve and earn foreign exchange to help stabilise the balance of payments position of the participating countries,
2. To provide diversified employment opportunities for nationals of the participating countries ,
3. To reduce economic dependence,
4. To influence the decisions of foreign conference lines relating to freight rates,

5. To promote exports from the participating countries,

6. To help ensure national security in times of international hostilities or war, and

7. To own and control the shipping industry of the participating countries.

Unfortunately, these objectives have not been met because from the beginning the company was managed by a traditional foreign shipping firm which favoured the long-standing shipping monopolies and undermined the aspirations of the four participating governments.[3] As of 1973, the company's participation in East Africa's overall ocean traffic was about 2 per cent. This was made up exclusively of general cargo transport in cooperation with the European/East African Conferences and the Far East Conferences. By 1975 in cooperation with the European Conference, the company shipped about 5 per cent of the total exports from East African and 10 per cent of the total imports (UNDP/UNCTAD, 'East African Shipping Study Report', p.384).

The company has had to join the East African Conference, but in spite of this does not have its own berths in the East African ports. (Kamanzi, 1975, p. 109). Through the allocation of berths, the company has been kept in a subordinate role and denied full access to shipping activities to and from East Africa. The company has to rely on foreign agents for consignments, and these agents tend to reserve the best paying cargoes for foreign shipping firms, leaving the Eastern African National Shipping Line with the poorly paying cargoes. This situation was described in the Sunday News (Dar es Salaam) on 27 February 1977 as follows:-

> According to people conversant with liner shipping, the EANSL is an economic mess because it also does not get adequate customers, even from East Africa, due to imperialist manouvres.
>
> Apart from facing tough competition with well-established conference lines, the EANSL is forced by rules of the conference to operate her vessels during the off season only. Regulations are laid down which require vessels of the line to operate on certain routes only in particular periods when there is no substantial cargo to ship.
>
> The national line finds itself in further economic problems due to the fact that it has virtually no berths of its own; hence it has to pay high berthing commissions every time it enters a harbour. Furthermore, the line pays $7\frac{1}{2}\%$ of its net freight as management commission to its agents.

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3. The Board of Directors has three members from rival shipping lines.

Since it was established in 1966, the company has consistently shown a financial loss. Its influence on the overall shipping trade in Eastern Africa and the American continent, handling some 10 per cent of Tanzania's total export trade. As of 1 July 1977, the American and Japanese members of this conference raised their freight rates by 10 per cent unilaterally, without consulting the Eastern African National Shipping Line or individual importers or exporters in Eastern Africa. Such a move indicates the power these monopolies hold over the interests of developing countries.

The Eastern African National Shipping Line was founded in the hope of setting up a national shipping industry in a context of capitalist free competition. However, given the development of imperialist forces today, compatition is only possible between well established monopolies, and not for an infant shipping industry, although, paradoxically, it has been strongly supported by international finance capital.

Tanzania has responded to this situation with plans to purchase an additional ship. Negotiations are underway with a shipbuilding firm in West Germany, with finance provided by the Tanzanian Investment Bank. Tanzania has also started an independent shipping service which competes with the established conferences. Finally, Tanzania has made a number of bilateral arrangements which assure equal participation in the traffic between Tanzania and another country in both directions. The socialist countries of Eastern Europe, the USSR and communist China have been making bilateral shipping agreements for some time, including agreements with a number of less developed countries. As might be expected, the imperialist countries regard any departure from their own multilateral shipping industries as less efficient and leading to higher costs, but Tanzania has found that bilateral shipping arrangements can lead to an efficient organisation of overseas trade (Journal of World Trade Law, 6 (1), p. 87).

The Sino-Tanzanian Joint Shipping Company. The company was founded in January 1967 with an initial share capital of TShs 30 million, based on a bilateral agreement between Tanzania and communist China. Two Tanzanian vessels were acquired with an interest-free loan from China, and half of the cost of a third vessel was met through the company's profits. The company now has four ships - Ushirika, Zun Hua, Asia Africa and Chamwino - operating between the Tanzanian coast and the Far East, the Persian Gulf and ports on the Mediterranean and Western Europe.

There is not a great deal about this company. According to information from one official, the circumstances surrounding its founding were 'very special', hence confidential. In his 1974/75 budget speech, the Minister for Communication and Transport, Ndugu Alfred Tandau, described the activities of the company as encouraging and derserving applause. However, the company faces stiff competition from the conferences in attracting cargoes. The General Manager, Ndugu Buhatwa, has noted that buyers and sellers in Tanzania are still using the conference lines and 'there is no way of persuading them to have their cargo transported by non-conference members'. The line is not given any preferential treatment in the allocation of cargo from Tanzania. Figures on cargo carried from 1967 to 1975 are as follows:-

Year	Tons of General Cargo
1967	31,000
1968	73,998
1969	63,296
1970	82,000
1971	79,998
1972	-
1973	106,478
1974	99,000
1975	118,000

Although these figures seem to indicate a general upward trend, there is a long-standing shortage of cargo. For example, in 1967 one ship carried 31,000 tons of cargo in six months, while in the whole of 1974, three shi's carried only 99,000 tons. The ships are apparently operating at about 50 per cent capacity (see Sunday News (Dar es Salaam) 27 February 1977).

With such an independent, bilaterally controlled shipping line, the freight rates charges should reflect more closely the interests of the shippers than is the case with the conference lines. With interest-free loans made available for the founding of the line, this company should be able to form the basis of a truly East African shipping industry once the problem of cargoes is solved.

The Tanzanian Coastal Shipping Lines, Ltd. This company was founded in 1973 with the aim of organising the Tanzanian coastal trade as a government

monopoly. It is wholly owned by the Tanzanian government. There is only limited information concerning the company's organisation or financial support.

The company owns three ships. Two of them, one at 650 tons dwt. and the other ar 550 tons, were bought with a grant from Norway. The third, at 2,200 tons, was purchased through a loan from the Tanzania Investment Bank, which in turn is supported by the World Bank.

The two smaller ships carry passengers and cargo, and the larger ship only carries cargo. They operate along Tanzania's southern coast, between Mafia, Kilwa, Lindi and Mtwara, but recently their operations have been extended to Mombasa in the north and Comoro in the south. Plans are also underway for the company's vessels to operate in Mozambique.

At first glance, this might appear to be a truly independent national operation. However, on closer inspection of the formation and operation of this firm, Tanzania seems to a sphere of interest for the operation of international finance capital.

CONCLUSION

We have seen that it is basic to the imperalist system that the less developed countries be denied ownership and control of economic activities which would enhance their own development. Imperialism can only function if some nations remain economically backward, and thus the imperialist nations can never be expected to assist the LDCs to attain full economic development.

It follows that the shipping industry in Eastern Africa is dominated by monopolistic conference lines from the imperialist nations. The formation of the Eastern African National Shipping Line represented one attempt to break this domination, but the conferences participated in the new line from the outset and prevented it from ever offering any serious competition. Theconferences control the allocation of cargoes, even of national exports, and reduce the national line to carrying less well-paying cargoes and operating during the off season. Although the national line has worked within the conference system from the outset, it has never had any influence on the operations of the conferences. This leaves the shipping industry in Eastern Africa today still dominated and exploited by the conferences, and a substantial independent national or regional shipping industry has yet to emerge.

As already described, the shipping industry needs a great deal of finance capital which is not available in Eastern Africa. It also needs skilled personnel whose training is often long and expensive. Training institutions established in Eastern Africa must be funded by foreign capital, and loans must also be provided to train nationals overseas. Thus, the development of the local shipping industry can be seen as an investment of foreign capital which perpetuates dependency and ultimately generates more profits for the developed countries.

The laws regulating the shipping industry themselves reflect the neo-colonial economic order. These laws apply to a level of productive forces which the local population has not yet attained. Therefore, the industry established under such laws is not Eastern African: it is only an extension of the economic activities of the metropolitan centres into economically backward countries.

How will an Eastern African shipping industry be established. The countries of the region must become self-reliant because they can never hope for substantial support from the imperialist nations who would not work against their own best interests. UNCTAD remains the only international forum which deals with this issue, as the Law of the Sea Conferences never consider the problems of the shipping industry as whole. And international opinion, as reflected in the deliberations of UNCTAD, remains divided, so that a concention which might reverse the present situation of imbalance and dependency has yet to be agreed upon.

What is needed is to change the international economic pattern which now reflects the domination of metropolitan interests over those of countries in Eastern Africa. National economies need to be diversified, based on production for local consumers, using local natural resources and promoting rural development and local employment. Trade in the region needs to be encouraged, to reduce the reliance on foreign suppliers and markets. Capital and technological assistance should be sought from other less developed countries or from only those developed countries ready to offer interest-free loan. This means a primary target must be a stronger unity among the less developed countries themselves.

In addition, shipping lines must be set up, often on a bilateral basis, which are independent from the monopolistic conferences. When such

lines are established, it is important that the participating countries reserve their cargoes for their vessels, rather than those of the conference lines. We have seen that the Sino-Tanzanian Joint Shipping Company must operate well below capacity because Tanzanian exports, such as coffee, cotton and sisal, are not reserved for this line. Tanzania is now setting up another similar bilateral arrangement with India, and an Indo-Tanzanian Joint Shipping Company will soon be in operation.

Finally, a truly national shipping industry in a less developed country will be possible with the overthrow of the international imperialist system by the world's working class. Although this will take some time, it it important to mobilise the workers and make them aware of their real enemies because in the last analysis it is the workers who will be responsible for a national shipping industry.

REFERENCES

1. Boczek, B.A. 1962. Flags of Convenience: An International Legal Study. Cambridge, Mass., Harvard University Press.

2. Deakin, B.M. 1973. Shipping Conferences: A Study of their Origins, Development and Economic Practises, Cambridge University Press.

3. Institute of Shipping Research, 1970. 'The Controversy over the Division of Labour in International Sea-borne Transport'. Bergen.

4. Iqbal. Law. . Journal of World Trade Law Vol.6

5. Kamanzi, S.E. 1975. 'Shipping Monopolies and Underdevelopment: A Case Study of Shipping in East African Ports with Special Reference to Tanzania'. University of Dar es Salaam. mimeo.

6. Marx, K. and Engels, F. 1973. Selected Works. Volume 1. Progress Publishers.

7. Williams. 1941. The Ocean in English History.

8. UNDP/UNCTAD. 'East African Shipping Study Report'.