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**GUIDELINES FOR  
MARITIME DEVELOPMENT  
IN GUATEMALA**

WORLD MARITIME UNIVERSITY  
MALMO - SWEDEN

GUIDE - LINES  
FOR MARITIME DEVELOPMENT  
IN GUATEMALA

By  
Maria Isabel Fernandez

GUATEMALA

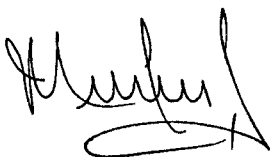
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A paper submitted to the Faculty of the World Maritime University in partial satisfaction of the requirements for the award of a

MASTER OF SCIENCE DEGREE  
in  
GENERAL MARITIME ADMINISTRATION

The contents of this paper reflect my personal views and are not necessarily endorsed by the UNIVERSITY

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## CHAPTER I INTRODUCTION

Guatemala is third largest of the Central American Republics, bordered on the north and west by Mexico, on the east by Honduras and El Salvador, and on the south by the Pacific Ocean. The country also has a short coast line on the Caribbean (Gulf of Honduras). The capital is Guatemala City, the largest city in Central America. Because of its consistently temperate climate, Guatemala has been called the 'Land of the Eternal Spring'.

It has a great wealth of mineral resources besides many other natural resources, as well as marine resources in its own territorial waters and on its continental shelf.

As the land based resources are being fairly well developed and are in constant process of development, it is the marine sector which is much neglected, and essentially needs to be attended.

As Guatemala does not have its own national fleet, almost 95% of Guatemala international trade is presently carried by the foreign line services, as a consequence, the country spends a sizeable amount of its foreign exchange on maritime transport which has an adverse effect on its balance of payments.

Presently Guatemala's maritime administration is spread through several ministries, with little or no direct coordination between them.

So far, the government policies do not attach much importance to developing the maritime activities or to exploit its marine resources, as many others priorities are ahead of it.

Thus, development of maritime activities has tended 'sporadic' development, and often lacks in coordination, and also sometimes characterized by constitute unnecessary duplication of expensive investment.

There is an essential need of awareness in the maritime sector to an adequate level within the framework of the national plan.

To achieve this objective, three salient points can be identified. They are as follows:

- To develop the maritime activities in Guatemala as one of the components of an integrated strategy;
- To maximize the contribution of the maritime sector to enhance the country's economic development;
- To protect and preserve its marine environment and resources.

This paper is an attempt to provide guidelines for the achievement of such objectives. This paper begins with a brief introduction to Guatemala giving general information and the maritime historical background of the country.

The chapters that follows constitute a critical study and a broader analysis of the existing situation of the maritime affairs indicating mainly administrative and legislative aspects respectively.

As the paper progresses the relevant maritime policies, administrative reforms and updated managerial skills which are required for the development of the maritime activities in Guatemala is highlighted.

In the final chapter it has been suggested that a suitable body be established , which would be to develop the required maritime infrastructure within the country; legal framework, making policies conducive to national maritime development which can have a positive effect an national economy.

It is considered, that by following some of the recommended points in this work mingled with a conscious effort from every person involved in this important activity, will prove, to be, beneficial to the country by offering a chance to develop quickly into a modest maritime nation from its present state of infancy.

## **CHAPTER II**

### **BACKGROUND**

#### **2.1 GENERAL INFORMATION ABOUT THE REPUBLIC OF GUATEMALA**

Guatemala is the most northern and third largest of the Central American Republics. It extends from latitude 13 degrees north to almost 18 degrees north and from longitude 88 degrees west to 92 degrees west.

The country is bordered to the north and west by Mexico, to the east by Honduras and El Salvador, and to the South by the Pacific Ocean. Its north eastern border is with British Honduras (Belize). The country also has a short coast on the Caribbean. Its total area is 108,889 square kilometers and its coastline is 400 kilometers.

The population at the beginning of 1984 was 8.3 million, divided into 41.4% indigenous and 58.6% mestizo and westernized indigenous.(1)

Guatemala's economy is still basically a rural agriculture one, although its natural resources are considerable. The leading crops are bananas, cardamom, citronella, coffee, sugar, maize and cotton.

Despite depletion, the forests are still among Guatemala's richest natural resources; they cover nearly 42% of the total area. The forests yield cab net woods, timber, extracts oils and gums. Mahogany, cedar balsam and Chicle for chewing gum are exported.

Official surveys of Guatemala's mineral wealth show

deposits of coal, gold, chromium, copper, iron, asbestos, quartz and uranium all waiting to be extracted. The principal commercial minerals are: antimony, nickel, marble, silver, and petroleum which are exported.

Guatemalan waters are rich in fish, including shrimps, snapper and tuna. The main seafood export is shrimps.

The principal industries in the country are: Cement, sugar, flour, food processing, textiles, furniture, chemicals products, clothes, alcohol and metallurgy.

Guatemala trades mainly with the United States both regarding imports and exports. Significant trade also exists with the other Central American Republics and with Japan, West Germany and Venezuela.

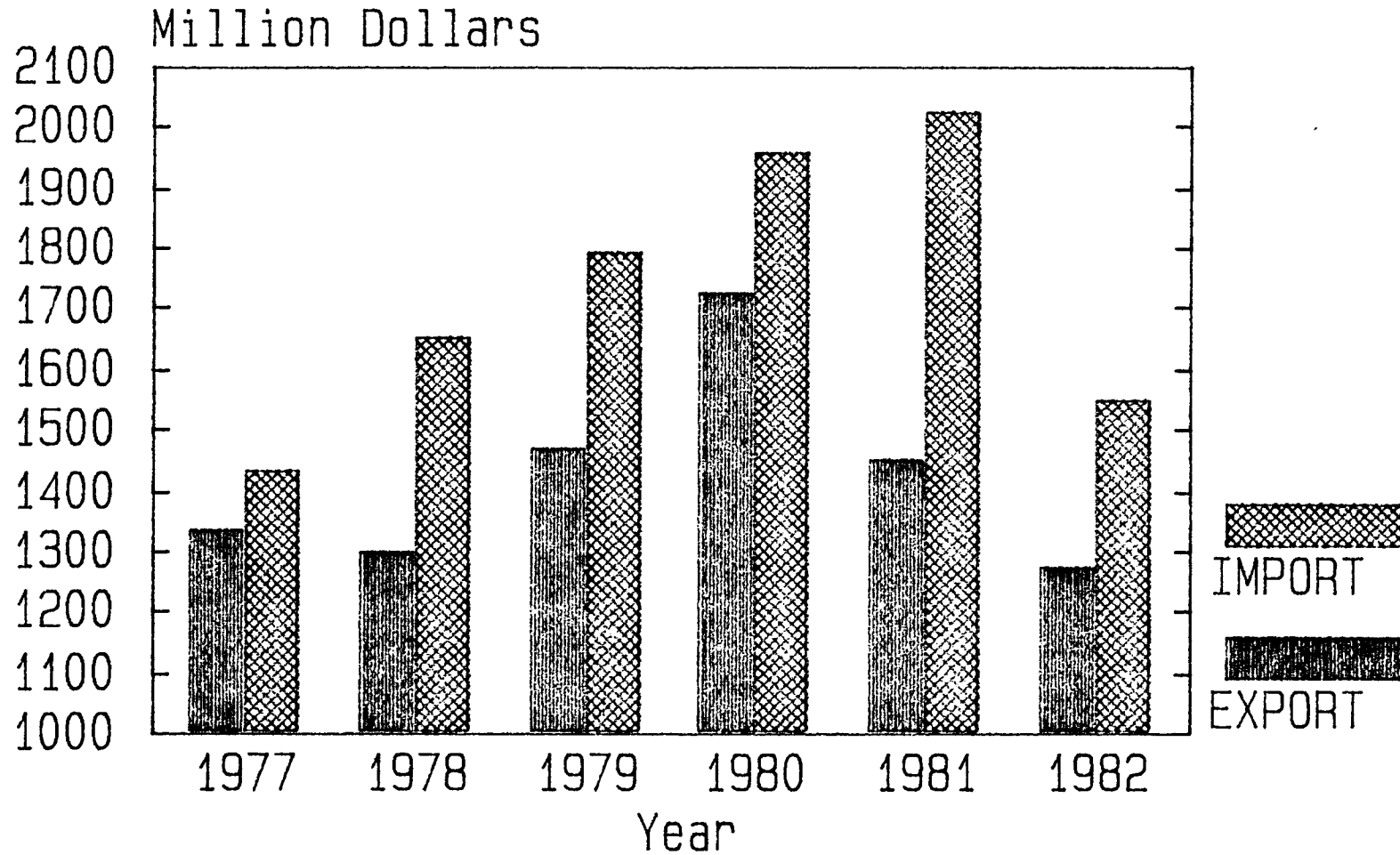
The leading exports are: coffee, cotton, sugar and bananas. The main imports are: manufactured goods, machinery, chemicals and transport equipment. (2) (See Graph 1)

In 1985 Guatemala's road system was 26429 km long; of which 11% was paved. Two international highways cross Guatemala, the Panamerican Highway System and the Pacific Highway. Guatemala railways operates 866 km of public track extending from the Pacific ports to the Atlantic ports and to the Salvadorean border, and there is also a 290 km banana plantation line.

The ports on the Atlantic are Puerto Barrios and Santo Tomas de Castilla, the latter port having good facilities for loading and unloading and being the main port of the country. The Pacific ports of Champerico, mostly for

# GUATEMALAN FOREIGN TRADE

## Export-Import



Source: UN Survey 84 (Graph 1)

fishing, and San Jose are of lesser significance. There is a new port on the Pacific, Puerto Quetzal, but it is not fully operative because the infrastructure is not yet finished.

There is one international airport, which is in Guatemala city. It is modern and functional and has adequate runways for jet services.

Guatemala became independent in 1821, after 300 years of Spanish rule. The constitution defines the country as a sovereign democratic republic. The constitution also established three branches of government which are executive, legislative, and judicial.

## 2.2 HISTORICAL BACKGROUND OF THE MARITIME ACTIVITIES IN GUATEMALA

The history of Guatemalan maritime activities began in 1535 AD when the Emperor Carlos V, issued a royal law in which the Spanish emperor allowed the Guatemalan citizens to build their own vessels and sail wherever they wanted. At the beginning of 1534 AD Pedro de Alvarado, Guatemala's conquistador, founded under Spanish royal order, the first port on the northern coast of the country. The aim was, quite simply, to develop maritime trade. During XVI century Guatemala had intensive and reciprocal trade with Panama, Colombia, Peru and Chile. From 1561 maritime transport was strongly affected due to piracy which occurred as a consequence of the Spanish problems with

France and the United Kingdom. Thus, in very few years Guatemala lost all the maritime development it had built up.

In 1604 AD a Royal law established that the trade between Guatemala and Peru should be carried only by Peruvian ships limited to two ships per year each of 200 tons.

In 1807 AD the Consejo Supremo de Almirantazgo was founded, which was put in charge of regulating all the aspects regarding navigation and maritime trade especially the carriage of goods to Spain or its colonies in Spanish vessels. However, these measures were not advantageous for Guatemala because of Spanish restrictions on the importation of products from Guatemala.

In 1822 AD after Guatemala received its independence, the first government decreed a law regarding freedom of trade which saw the number of ships calling at national ports rise considerably.(3)

In 1959 AD by government decree the national merchant marine was created and given the name "Empresa Naviera Gran Centro Americana S.A." (FLOMERCA Shipping Co.) as part of the Central American shipping company. It was government owned. In the same decree the Guatemalan Navy was also created.(4)

There was a study and proposal in order to build up a Central American shipping company which would serve regional trade and protect the interests of the users in the five Central American countries. However this proposal did not succeed, due to different interests among the countries.



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- (2) UNITED NATIONS" Economy Survey of Latin America and the Caribbean 1982" Volume I; Economic Commission for Latin America and The Caribbean; Santiago Chile 1984. page 370.
- (3) Martinez, Gabriel; "La Marina Mercante en Guatemala su Historia y sus Leyes"; Papelera Fuentes; Guatemala, 1974. pages 1 to 3.
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## CHAPTER III MARITIME ADMINISTRATION

Maritime administration may be understood in different ways, as it may mean management of everything in relation to the use of the sea, seabed, offshore and their resources.

In this way Guatemala's maritime administration should focus on an integrated planning, organizing, directing, coordinating and controlling of the above mentioned maritime activities.

In this case it could be said that the maritime administration today in Guatemala is spread throughout many different governmental institutions. These are:

- The Ministry of Communications and Transport;
  - The Ministry of Economy;
  - The Ministry of Defense;
  - The Ministry of Finance;
  - The Ministry of Foreign Affairs;
  - The Ministry of Health and Public Wealth;
  - The Ministry of Agriculture;
  - The National Public Registry (Property).
- The Ministry of Communications and Transport. Which is in charge of:
- a) Economic and feasibility studies for developing ports and maritime transport.
  - b) Constructing ports, dredging of channels, buildings and maintenance of navigational aids.
  - c) Surveying of vessels and of safety navigation.

- d) Conducting oceanographic studies and charts for navigation.
- e) Controlling four of Guatemala's ports: Puerto Quetzal, San Jose, Champerico and Puerto Barrios.

-The Ministry of Economy which is responsible for:

- a) The Maritime Transport Department.
- b) The registration of the national shipping companies, routes and freight rates.
- c) Economic and feasibility studies for the development of ports and maritime transport.
- d) Issuing of export licences.

-The Ministry of Defense which is concerned with:

- a) The coast guard.
- b) Security in ports and territorial waters.
- c) Visits of vessels calling at national ports.

-The Ministry of Finance which is engaged in:

- a) Approving budgets for operating and investing in ports, maritime transport and all the other ministries.
- b) Controlling Port Santo Tomas de Castilla.
- c) Analysing and financing the national shipping companies.
- d) Creating national plans for development and exploitation of ports and maritime activities.
- e) Issuing of national policies for the exploitation of national resources.
- f) Technical assistance and training of personnel through fellowships.
- g) Financing of projects.

- The Ministry of Foreign Affairs which is responsible for:
  - a) Boundaries and international waters.
  
- The Ministry of Health and Public Wealth which is responsible for:
  - a) The prevention and control of pollution in territorial waters.
  - b) Health requirements for ports and ships.
  - c) Health inspections of ships in ports areas.
  - d) The issue and control of the compulsory documents which should be carried by all the vessels calling at Guatemalan ports.
  
- The Ministry of Agriculture which deals with:
  - a) All matters related to fisheries.
  - b) Controlling and preventing pollution in territorial waters.
  
- The National Public Registry (Property) which is responsible for:
  - a) The registration of ships.
  - b) Issuing certificates of property of the vessels. (1)

In spite of this distribution of maritime activities among the above mentioned ministries there is a national legislation in force which provides the framework for this matter. All the aspects as far as maritime activities are concerned have not been administered either in a permanent or specialized way by any of the government institutions.

The absence of a national plan and inadequate coordination of maritime activities has resulted in many expensive

investments using foreign currency. Moreover, there has been a deterioration in services, for instance in ports with low productivity and careless cargo handling and this directly affects the users of maritime transport and even more the consumers.

In the following pages the current situation regarding maritime administration will be examined in more detail. At the same time it will focus on how the activities have been performed up to now.

The following breakdown will be used:

3.2.1 Maritime Transport Administration

3.2.1.1 Foreign Carriers

3.2.1.2 National Carriers

3.2.2 Ports Administration

3.2.3 Fisheries Administration

3.2.4 Territorial Waters Administration.

### 3.1 MARITIME TRANSPORT ADMINISTRATION

The objective of this subject is to examine the maritime transport situation in Guatemala. In order to do so, the foreign carriers, as well as the national carriers, will be taken into consideration. Moreover, maritime transport as the action of carrying goods will be considered.

#### 3.1.1 Foreign Carriers

In Guatemala's government administration there is a Maritime Transport Department, which is located under the General Directorate of National and International Trade, in the Ministry of Economy.

This Maritime Transport Department was created in 1979 with the following main responsibilities:

- a) To carry out all the necessary studies related to maritime transport.
- b) To be a coordinator between government institutions in all matters as far as maritime transport is concerned.
- c) To register the freight rates and routes of the national shipping lines.
- d) To elaborate on drafts for new laws for national and international maritime transport.
- e) To control the operations of the international companies which work with the ro/ro and container systems. (2)

The scarcity of skilled personnel, resources and financial

support, has meant that this department has not been able to live up to expectations.

A number of the deficiencies as regards maritime transport in Guatemala, are caused by an unawareness of the needs of the maritime transport sector and its importance to the country. In addition, the absence of proper motivation has led to a scarcity of expertise and trained personnel who may be able to develop and administer maritime transport activities.

Guatemala has ratified the "Code of Conduct for Line Conferences", but it has not been implemented or incorporated into the national legislation.(3) In addition the non existence of an administrative government institution which might have been able to enforce and control the code has meant that no changes for the better have occurred.

At the same time, there is no users organization which looks after their interests. So the national traders have adopted the easy way of buying CIF and selling FOB conditions, then they allow in other people to handle the sea transportation. Therefore, the national traders lose the opportunity of negotiating with the carriers in order to obtain better freight rates, which can put their products in a more competitive position for exports as well as for imports.

### 3.1.2 The National Carriers

Regarding of the national carriers, the analysis will be based on information for the years 1978 and 1981 because of the lack of adequate statistical information on this subject for other periods.

In order to be a national shipping company it is compulsory to have at least one vessel over 2000 GRT under the Guatemalan flag and 75% of the shareholder must be Guatemalan. It is also a requirement that the head office is located in the country.(4)

Thus at the beginning of 1978, there were three national shipping companies, as follows:

"Flota Mercante Gran Centro Americana" (FLOMERCA Shipping Company.) government owned.

"Armadores de Guatemala" (ARMAGUA Shipping Company) private owned.

"Lineas Maritimas de Guatemala" (LIMAGUA Shipping Company) Private owned.

At those times the national fleet was composed of seven vessels with an average age of 20 years and an average of 2274 GRT. Five of these vessels were sailing under the Guatemalan flag and the other two under the Liberian and Greek flags respectively. The total tonnage of the fleet was 15,920 tons of which 72% was under the Guatemalan flag.(5) (See Table 1)



By the middle of 1981, the national fleet had decreased from 7 to 6 vessels. Four of which were sailing under the Guatemalan flag and two of which were being time chartered under a flag of convenience. At this time the average age of the vessels was still 20 years and the overall size had increased to 4656 GRT. The total tonnage of the fleet was 27,936 tons, 48% of which was registered in Guatemala. In other words the national fleet had lost 24% of its gross registered tonnage, although the cargo carrying capacity had increased owing to the chartered ships. (6) (see Table 2)

In the same year the ARMAGUA Shipping Company, had stopped operating as to its ships were out of order and also because of a deteriorating financial situation.

The Guatemalan fleet was incorporated in two companies which enjoyed a conference line calling at ports in Central America and the Caribbean region.

As was said before, the national fleet was composed of ships with an average age of 20 years. Consequently not only were operating and maintenance costs of the fleet high but similarly so were the insurance premiums for both the vessels and the cargo. As a result the national fleet was in a disadvantaged position in competing with foreign lines.

At the beginning of 1985 FLOMERCA Shipping Company, sold its remaining two ships for scrap. No new vessels have been acquired or chartered since. The FLOMERCA Shipping Company, still has an office with a small staff but no vessels to operate. No decision, no action has been taken from the government as regards this situation.

The LIMAGUA Shipping Company is thus the only company still operating two bulk dry carriers.

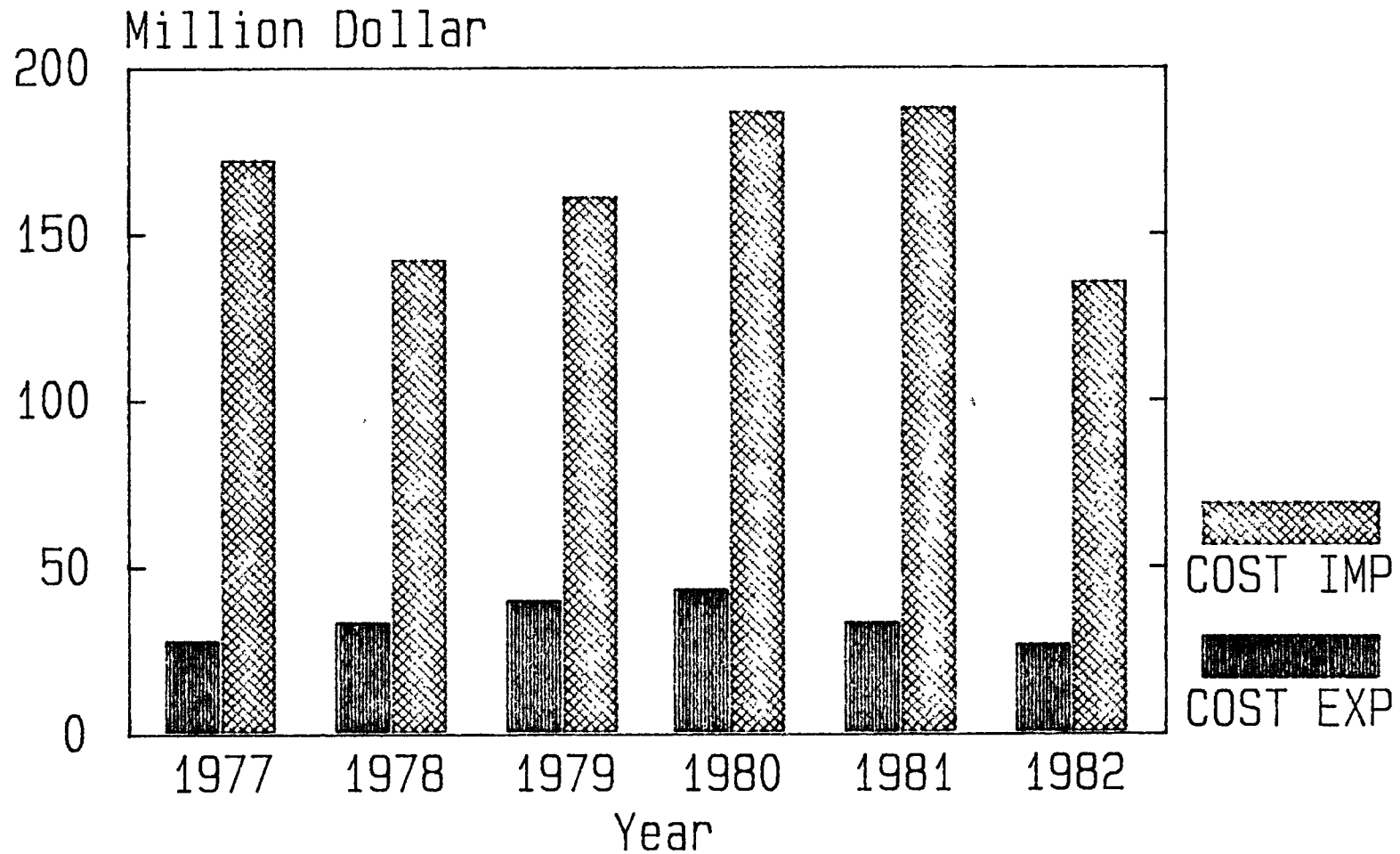
As a result Guatemala has become almost totally dependent on foreign carriers for its international trade. Thus, the country has paid in 1982, 162 millions of US dollars for maritime transport and insurance. (7) (See Graph 2)

In addition to this there is no institution which controls foreign carriers or to look after shippers interests.

In such circumstances the foreign liner conferences, which carry about 95% of the Guatemalan international trade, have no opposition, consequently they establish the freight rates unilaterally.

The absence of control and bargaining power in front to the conferences has meant that, the expenses that the country had incurred on improvements to port facilities has not been compensated by any reduction of the freight rates. Therefore, the conferences continue establishing their freights on the region basis.

# COST OF SEA TRANSPORT AND INSURANCE



Source: UN Survey 84 (Graph 2)

### 3.2 PORTS ADMINISTRATION

In the development of the maritime industry, ports have taken over the role of an adapting factor than a moving one giving impetus to developments themselves.

Technological and operational investments in ports are resulting mainly from changes in shipping.

In the same way, problems relating to the shipping service are inseparable from problems relating to ports, and this is true when a current situation is to be assessed, as is the case in this project.

Here the problem which the ports have been faced with in their development and performance from the point of view of their administration, will be examined and analysed.

It is important to keep in mind that, ports are the foremost maritime activity for Guatemala for two main reasons: first, almost 95% of the international trade is carried by foreign liners. Therefore the expenses which it represents for the country are great. Second, Guatemala needs this international trade for its day to day life as well as for its development.

Guatemala has five ports. Two of them on the Caribbean Sea Coast, Puerto Barrios and Santo Tomas de Castilla and three on the Pacific Ocean: Champerico, San Jose and Puerto Quetzal which is not yet completed. All the ports are government owned and they are semi-autonomous with a board of managers which issues the policies for development, approvals of the budget and controlling the achievements of the ports. Each port is a separate enterprise with its own resources and personnel. Santo

Tomas de Castilla has good facilities for loading and unloading and it is the leading port in the country. Puerto Quetzal will have good facilities when it becomes fully operational.

A National Port Commission exists and was created in 1972, with the following functions:

- Co-ordination among the ports.
- Establishing a national plan and policy for port development.
- Conducting studies and evaluating the port tariffs and dues.
- Representing the national interest as far as port activities are concerned, nationally and internationally.
- Advising the president in all matters as regards ports.

The National Ports Commission is integrated by representatives of the following institutions:

- The Ministry of Finance (Chairman);
- The Ministry of Economy ;
- The Ministry of Transport and Communications;
- The Port Santo Tomas de Castilla;
- The Port of Champerico;
- The port Quetzal;
- The Guatemalan Railway Company (FEGUA);
- The Coordinator of Chambers of Agriculture, Commerce, Industry and Finance (CACIF). (8)

The lack of a comprehensive administrative structure, plus the technical and financial limitations have meant that the National Port Commission has not yet achieved the purposes for which it was created.

The government's strategy to encourage maritime transport has almost always concentrated on the expansion and development of port facilities. Consequently only aspect port operations have shown a certain degree of development and have had the full backing from the government.

However, this is not sufficient. Ports have had problems achieving their goals, as well as their integrated development. Furthermore many deficiencies still exist.

For example, four of the ports come under the Ministry of Transport and Communications, while the other comes under the Ministry of Finance. The relationship between the ports and the ministries is concerned only in approving the annual budget and the ministries do not coordinate between themselves regarding the ports performance and development.

On the other hand neither the ministries nor the National Port Commission have issued any strategy or plan for port development and control their efficiency. It appears as though ports have been making investments without coordination, consequently there are certain duplications in port facilities on the same coast and for the same purpose even though they are rather near to one another, and often serve the same interland.

The above shows the need of a national ports plan in the long-term, and adequate communication among the ports. Moreover it is also necessary to establish a national strategy for distribution of the existing cargo and to attract other cargoes to Guatemalan ports.

Although the ports have tried to increase their efficiency and improve their installations and facilities many problems still have to be solved. Specifically, there is no individual plan or policy for development of ports in accordance with the changes in the trade and shipping. These changes can have a tremendous impact on the nature of services required by port users. In the same way, the ports today look for solve the day to day problems, so it reduce the efficiency on port operations in the long-run.

One of the main problems which the ports are facing regarding finances, is the cost control system. It does not reflect the real expenses which the ports incur in order to handling the cargo.

For example the case of Santo Tomas de Castilla, it was operating with tariffs of 1965 until 1980. This year some studies were carried out, and the out come of all this is that the management of the port decided to increase tariffs in 30%. However, the tariff set in 1980 still applied today. In these 20 years the price of the equipment, spare parts and fuel have increased considerable, therefore the port is operating with higher costs than in 1980. So this system cannot be used for evaluating the tariffs and port dues since it is not a realistic indication of the costs of the port.

The problems regarding port operations are, congestion in the harbors, delay in the operations and consequently low productivity. All the above mentioned occur due to an inadequate planning in berth allocation, assignment of both storage areas and handling equipment. Therefore, it occurs in handling containers to a great extent.

At the same time, the cargo handling equipment is not sufficient for the operations. This is due to two main reasons viz: firstly, insufficient planning and programming in acquiring equipment, which has been aggravated with the control of the dollars in the country. Secondly, the lack of an effective maintenance programme for the equipment aggravated by the scarcity of spare parts in stock.

Regarding cargo handling safety, the lack of rules and regulations in this matter, means that many accidents occur during these operations often resulting in damage to the cargo. Therefore, it some times halts the operation of the vessel.

Furthermore the lack of knowledge and unawareness about safety codes for handling dangerous goods, the documentation and marks required place the lives of the dock workers in danger and jeopardize installations. Also there is no special place for the storage of dangerous goods in the port.

In addition to this contingency plans does not exist there, either for handling unexpected flow of cargo or if any casualty might occur.

Regarding the training of personnel, many courses and seminars have been given with the assistance of international and regional programs with the coordination of the National Port Commission. However, the constant personnel changes, an inadequate remuneration system and trained personnel away from the ports, makes the building up of an established body of experts in specific areas very difficult indeed.



### 3.3 FISHERIES ADMINISTRATION

The purpose of the fisheries administration should be to control the fisheries in a manner which will continue to yield net benefits for the community. It is directed towards two main goals:

-Maintaining the biological stability of the stocks. In other words preventing over-exploitation by controlling effort.

-Achieving economic efficiency and productivity in operations.

This administration should take into account planning of this according to national policy in order to fulfil the above mentioned goals.

Guatemalan waters are rich in fish, including shrimps, snappers and tuna. However, a lot still needs to be done in order to develop fishing into a viable industry.

The main real commercial catch of the country is that of the shrimp by national companies. 90% of this catch is for export to the U.S.A. There are also fisheries cooperatives which catch mostly fish for domestic consumption.

The industrial fishing is done by foreigners who are granted licences for this the by Guatemalan authorities. Tuna is caught by the Japanese and Americans.

The Ministry of Agriculture is in charge of the fishery administration and the regulations. They also issue the licences for fishing in the territorial waters. These licences lasts for a period of time no longer than 10 years.

The same Ministry also regulates the kind of nets, tools, etc., which are allowed to may be used for fishing. Apart of designating closed areas where no fishing be done close seasons are also set out there. (9)

The prawn are the main product for exportation and in fact nowadays there is a U.S. company which is investing in the farming of prawn in an industrialized way.

Moreover, there exists a permanent commission which is in charge of the control of the technological process and marketing of sea food. (10)

### 3.4 TERRITORIAL WATERS ADMINISTRATION

Regarding the administration of the territorial sea, it can be said that it is the practice to develop and control marine resources, and also to a certain degree to protect the ocean.

There is a National Commission for Oceanographic Studies which is appointed to the Ministry of Communications and Transport, and its formed with representatives of the following institutions:

- The Ministry of Foreign Affairs
- The Ministry of Agriculture
- The Ministry of Defense

This commission was created in 1972, in addition this commission should carry out the necessary studies for the following purposes:

- Security and defense;
- Control of territorial sea and continental shelf;
- Investigation, evaluation preservation and protection of the Guatemalan resources (renewable and non-renewable).

(11)

Thus, this administration should cover the following areas:

3.4.1 Safety of Navigation

3.4.2 Protection of the Marine Environment, which includes:

- waste disposal

- pollution by ships

### 3.4.3 Mineral Development

#### 3.4.1 Navigation Safety

Even though ports are in charge of the navigational aids in Guatemala, they are not enough. However, the lighthouses and the buoys can be reliable to a certain degree and they are in a rather good condition. Radio communication is also deficient in its operation with a low capacity. Also the radio operator usually speak only in Spanish, which is not a great help for foreign vessels calling for information and sometimes assistance in stress conditions.

As far as vessel surveys are concerned, a great deal of action has to be taken in order to develop a body which will be able to perform this activity.

According to the ministries responsibilities, the Ministry of Transport and Communications should carry out these surveys. However, this Ministry does not have either a maritime transport section or specific surveyors who are able to conduct port state control.

#### 3.4.2 Protection of The Marine Environment

Pollution at sea comes in many forms from many sources; not only from the spilling of oil into the water, but mainly from the constant and increasing arrival of land-based man-made wastes, such as : sewage, effluents and

toxins. In this regard the Ministry of Public Health and the Ministry of Agriculture are responsible for the prevention of pollution. However, a lot of work still needs to be done in this respect.

Consequently there are some areas, for example Puerto Barrios, which have a pollution problem, provoked primarily from land-origins and there is a possibility of inflicting irreversible damages on the bay. No action has as yet taken in order to solve this problem.

Regarding oil spill from vessels, in Guatemala one of this accidents took place on the Amatique bay. It was quite difficult to clean the water and to settle the claims for two main reasons. Firstly, the country is not a party to the International Compensation Fund for Oil Pollution Damages and secondly, the national legislation in this respect is not extensive enough.

### 3.4.3 Marine Mineral Development

The Ministry of Energy and Mining is in charge of the research, administering and development of the mineral resources in Guatemala. However, it is necessary for the country to become more aware of the great possibilities of its ocean resources and to use its ocean space as a complement to its land resources and space, so that, potential resources of Guatemala may be transformed into actual resources.

Therefore, it is necessary to consider the ocean within the framework of the land space in the country and to promote the use of the sea in this field.

TABLE No. 1  
 GUATEMALAN FLEET COMPOSITION  
 January 1978

VESSEL'S NAME	TYPE	COMPANY	FLAG	YEAR	GRT	SPEED
Quetzaltenango	GC	Flomerca	Guat	1956	1813	10
Gran Lempira	GC	Flomerca	Guat	1959	1816	10
Peten II	GC	Armagua	Guat	1951	2214	13.5
Lago Izabal	BC	Limagua	Guat	1964	3458	19.5
Lago Atitlan	BC	Limagua	Guat	1959	2104	14
Provincia de Yipu	GC	Armagua	Lib	1958	2553	14
Marabu	GC	Armagua	Lib	1957	1962	12

GC = General cargo      BC = Bulk carrier

Guat = Guatemalan      Lib = Liberian

GRT = Gross registered tonnage

Source: COCATRAM 6/

TABLE No. 2  
 GUATEMALAN FLEET COMPOSITION  
 July 1981

VESSEL'S NAME	TYPE	COMPANY	FLAG	YEAR	GRT	SPEED
Maya	GC	Flomerca	Guat	1957	3964	13
Coban	GC	Flomerca	Guat	1956	3998	13.5
Lago Izabal	GC	Limagua	Guat	1964	3458	14.5
Lago Atitlan	BC	Limagua	Guat	1959	2104	14
La Minerva	BC	Limagua	Bahamas	1969	4129	13.8
Zacapa	GC	Flomerca	Panama	1960	10283	18.5

Source: COCATRAM. 6/

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## CHAPTER IV MARITIME LAW

Law is a very important factor in formulating the framework and guidelines under which the administration operates, thus if there are any shortcoming in the legal system they could be a limiting factor on the development of the maritime activities of the country.

Guatemalan Maritime Law, is generally speaking not very modern. Some of the laws have been in force since 1898 and 1939 and they are still in force and have never been revised or brought up to date.

On the other hand, maritime activities in general are nowadays highly regulated and standardized internationally being a complex system with legal implications at all levels.

Therefore, Guatemalan Maritime Law is not fully harmonized with these international system. This is evidenced by the absence of regulations concerned with safety on board ships or the prevention of pollution of the marine environment and inadequate maritime commerce legislation. The main reason for this has been to the country turning it's back on the sea.

Consequently, it has been difficult for Guatemala to participate in international conferences and fora, as the delegations most of the time are not able to take part in the substantial work. Guatemalan representatives usually from the foreign service have had to take part without the necessary information being made available and also

without the appropriate technical support in this regard.

Few conventions have been ratified and some of those that have been, have not even been implemented. At present the benefits which Guatemala derives from its marine environment are few, consequently, it is difficult to convince the authorities to implement the maritime conventions on a wide scale.

The Maritime Law analysed in this chapter is based on the legislation in force in the country up to January 15, 1986 and it will be work out with the following break down:

4.1 Maritime Transport Legislation

4.2 Port Legislation

4.3 Fisheries Legislation

4.4 Aquatic Spaces Regime

4.5 Labour Legislation

4.6 Maritime Health Legislation

## 4.1 MARITIME TRANSPORT LEGISLATION

Maritime transport legislation could be broken up as follows:

### 4.1.1 Code of Commerce Book III

Maritime Commerce Decree 2946 15/9/1942

### 4.1.2 Legislation in order to promote national shipping

### 4.1.3 Legislation for registration of ships

### 4.1.4 Navigation and safety at sea legislation

All the above mentioned decrees and regulations will be analysed in detail later in this chapter.

### 4.1.1 The Maritime Commerce Code

"Code of Commerce Book III

Decree 2946 15/9/1942

The origin of Guatemala's Code of Commerce is the French code of 1807 and the Spanish code of 1829. Book III of this code refers to maritime commerce which come into force in 1942. This code in general was reviewed and brought up to date in 1970. However, book III of this code has remained exactly the same as in 1942.

In fact this code is in need of revision to be adequate for the current conditions of international trade. It was intended to cover sailing vessels and steam ships and thus suited the characteristics of trade at that time.

Consequently it does not take into account the new technological developments in sea transport such as roll-on roll-off, container system, bulk and oil carriers, and the advanced communication system on board ships. For example, the increased automatization of vessels has meant a reduction in crewa required. The code has not made the necessary adjustments to the manning scales.

In the same way, the national regulations concerning international trade as in the contract of affreightment especially in the case of charter party, time charter and bareboat charter have not been brought up to date.

With regards to insurance, this also needs to be updated, due to the fact that in the actual code, marine insurance is considered just as any other kind of transport insurance whereas, in the international market there are special conditions for cargo as well as for hull and machinery.

As for the matter of pollution very little is regulated, due to the fact that pollution is a rather new topic in international regulations. Thus none of the international safety regulations has found it's way into the national legislation.

Moreover, Guatemala is not a party to many of the international conventions that concern shipping activities. Among these are:

-Carriage of Goods by Sea Conventions:

-Rules of Law Relating to Bill of Lading

- Brussels, 1924 (Hague Rules 1924)
- Protocol to amend the Rules of Law Relating to Bills of Lading Brussels, 1968 (Visby Protocol 1968)
- United Nations Convention on the Carriage of Goods by Sea Hamburg, 1978 (Hamburg Rules 1978) no yet in force
- United Nations Convention on Multimodal Transport of Goods Geneva, 1980. Not yet in force

**-Collision Conventions:**

- Rules of Law with Respect to Collisions between Vessels. Brussels, 1910
- Regulations for Preventing Collisions at Sea IMO, 1972
- Rules concerning Civil Jurisdiction in Matters of Collision. Brussels, 1952.
- Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation. Brussels, 1952.

**-Conventions on the Limitations of Liability:**

- Limitation of the Liability of Owners of Seagoing Ships. Brussels, 1957.
- Protocol Amending the Convention of Limitation of the Liability of Owners of Seagoing Ships. Brussels, 1959 1979.
- Limitation of Liability for Maritime Claims. London, 1976 Not yet in force.
- Civil Liability for Oil Pollution Damage, London 1969.

**-Salvage Conventions:**

- Rules Concerning Salvage and Assistance at Sea. Brussels 1910.
- Improving of Shipwrecked, Sick and Wounded Members of Armed Forces at Sea, Geneva 1949.
- Maritime Search and Rescue, Hamburg, 1979
  
- Rules Relating to the Arrest of Seagoing Ships, Brussels, 1910.
  
- Rules of Law Relating to Maritime Liens and Mortgages, Brussels, 1926. (New convention 1967)

As may be realized, this maritime code does not provide the legal framework to facilitate national shipowners or foreigners who are interested in making investments in the country especially as the legal aids which they can use are few.

Moreover, this code does not reflect a policy for the development of shipping in the country since it totally falls out side the provisions and regulations which apply internationally to sea transport activities.

Therefore the maritime code needs an urgent general review to bring it up to date in order to provide the necessary provisions for the legal aspects and also to have a policy for the encouragement of investment in the country.

#### 4.1.2 Legislation in order to Promote National Shipping

The main regulation implemented by the government of Guatemala in order to promote the development of a

national merchant marine are related to the following matters:

- Creation of the national merchant marine;
- A large regime of fiscal benefits;
- Government financial facilities;
- Fund for the promotion of the national shipping;
- Cargo reservation measures;
- Compulsory employment of the national fleet on government import;
- Registration of the national shipping companies, freights and routes;
- Preferential treatment of the national shipping companies. (1)

Even though, the legislation for promotion of the national shipping is broad and provides many advantages to the national shipowners, shipping has not been successful mainly due to the following reasons:

- Unawareness of the importance of the maritime transport for the country.
- Scarcity of trained personnel a shore who are willing to manage it.
- Absence of national officers and training schools.
- Lack of know-how to run the business.
- Absence of a maritime authority which can support shipping and help in its development.
- Scarcity of capital.

#### 4.1.3 Legislation for the Registration of Ships



Regarding the legislation for registration of ship there is a decree from 1932 and also some forms for the certification of registration. For the purposes of registration, the legislation consider a ship to be: the hull and keel, gears, tools and equipment of the vessel whatever her denomination and magnitude, sailing, rowing or steam.

This decree states the procedures for the registration of ships under the Guatemalan flag. The registration is carried out by the National Public Register ( Property) Office and entries made in a special book for vessels. The requirements are the following:

**About the vessel:**

- Name and dimensions of the ship.
- Certificate of port of registry.
- call signal.
- Name of the master and his nationality.
- Number of crew members on board.
- Year of build, material and building certificate.
- Classification of the ship.
- Mortgages over the ship. (2)

**About the Owner:**

- Proof of ownership of the vessel (Bill of sale, contract of building, etc)
- Name and address of the shipowner or shareholders.(3)

There is another decree in this regard which establishes the duties of the Port Captain. In the Chapter 13 of the government decree, says that the port captain should carry out the registration ships which are to be registered in the port and to issue of the certificates. (4)

Even though there are existing regulations, its necessary to develop adequate regulations in order to ensure that the vessels flying the Guatemalan flag comply with the minimum international standards and regulations .For example:

- The minimum standards and regulations for preventing maritime pollution and ensuring safety of life at sea. - The manning of the vessel in accordance with the minimum international standards.
- The terms and conditions of employment on board to meet with international standards.

All of these minimum standards are required especially in Europe where the Port State Control is executed in accordance with the Memorandum of Understanding on Port State Control; Paris 1982.

Then, there is a contradiction between the national and international regulations which affect the Guatemalan vessels. On one hand, the country does not ensure that the ships which are flying its flag fulfil these minimum standards. On the other hand, these ships have to do it, if they wish to call at European and American ports.

In this matter it can be said that, the legislation for the registration of ships and the regulations for the promotion and development of the national shipping already existent in Guatemala, can be found within the new Convention on the Conditions for the Registration of Ships.

The present legislation estates that, the shipowner must

be Guatemalan or at least 75% of the capital of the shipping company must be owned by nationals and the head office must be located in the country. (5)

The person who wants to register a ship should prove ownership of the property of the vessel. This means that, in order to take advantage of any concessions which the government may give to the shipping companies, they must be nationals and there must be a genuine link between the shipowner, vessel and government.

It also considers the question of mortgages on the vessels and the possibility to issue a mortgage certificate for legal purposes when it is required.

However, this decree must be brought up to date in respect of the certificates required for example the tonnage measurement certificate. Besides it is also necessary to consider the registration of a vessel under construction and to include other floating installations, for example offshore platforms, etc.

In addition, the legislation should establish the minimum requirements and standards as far as safety of life at sea and protection of the marine environment are concerned.

#### 4.1.4 Navigation and Safety at Sea Legislation

As regards legislation of the navigation and safety at sea there are two regulations:

1. Limitation on the minimum tonnage for international navigation in the Atlantic Ocean 1935. (6)

2.- Equipment required for vessels registered in Guatemala 1932. (7)

In the first regulation concerning limitation of the tonnage it is stated that only commercial vessels over 20 tons are allowed in international navigational waters, this law came about in order to control smuggling activities in the Atlantic Ocean.

As for the second issue, it affects only vessels less than 65 feet in length. Obviously this regulation concerns only the small vessels which sail in territorial waters. However, even for small vessels this regulation is not sufficient, especially when it refers to passenger ships.

In national law it is established that the Ministry of Transport and Communications must carry out the surveys of the vessels. Nevertheless, the absence of any law which determines what the surveyors should do and the fact that the international standards and regulations have not been implemented in this regard has led to inadequate control.

As far as the international conventions -which are the basis of port state control- are concerned, Guatemala is not party to the following:

- Load Lines, 1966 (LL66)
- Prevention of Pollution from Ships 73 and Protocol 78 (MARPOL 73/78)
- Standards of Training, Certification and Watchkeeping for seafarers, 1978 (STCW 78)
- Prevention of Collisions at Sea, 1972 (COLREG 72)
- Safety of Life at Sea Protocol 78 (SOLAS 78)

-The Merchant Shipping (Minimum Standards) Convention, 1976. ILO Convention No.147.

Guatemala is only party of the convention of:

-Safety of Life at Sea 74 (SOLAS 74)

Consequently none of these regulations are required according to national legislation even though they are internationally accepted.

As a result, the maritime transport legislation does not provide the necessary infrastructure to regulate, control and help build up the affairs of the country. such legislation is badly needed in maritime transport as a whole; because even if Guatemala does not have a fleet today it has had one previously and may have one in the future.

Besides, there are ships calling at national ports and almost 95% of international trade is carried by foreign lines. Consequently, all of the maritime transport activities must be regulated in order to protect national property such as ports, harbors, etc, as well as the private property and cargoes. Finally and most important of all, standards for the protection of life at sea and the marine environment must be carefully covered.

## 4.2 PORTS LEGISLATION

In the matter of the administrative aspects of the ports it is considered that this legislation is rather appropriate. There are the port's statutes, and regulations for each one of them, and their autonomy is also established.

As regards tariffs and port dues these are also established there. (8) However, in this respect ports face the problem that the legislative process is slow and bureaucratic. If one of the ports makes a request for modification or increasing in the tariffs, it might take one year before it is approved and published.

Consequently, the revenue of the ports is often less than their costs. They therefore make losses while having all the other problems related to the need for money, such as the acquisition of equipment and investments in general.

### 4.2.1 Harbour Master and Port Police

Government Resolution 21/ 4/1939

In this decree the functions of the port master and the port police are laid down in this decree. The port master is also technically the commander of the port although it no longer works like this. Now there is a commander in the port who belongs to the navy. The port master also belongs to the navy but now has different functions.

Regarding port police, this is different from port to port. For example in Santo Tomas de Castilla the port police belong to the port and come under the general

manager. However, in Puerto Quetzal it is the navy which acts as the port policeforce.

Furthermore this decree also lays down the functions of the port master regarding the control of smuggling, theft, robbery, etc.

There is also a chapter dealing with the sanitary conditions of the ship, documents required for immigration and customs.

The harbour master is also in charge of the registration of the ships in the port, and must fulfil the records in this respect and also issue the certificates of the port of registry.

Moreover, the assistance of vessels in distress by any ship which is berthed in the port is also attributed to him.

As far as safety regulations are concerned nothing is included. Regarding the contingency plan, in the event of casualty occurring, the port master does not have this as one of his tasks in accordance with this decree.

#### **4.2.2 Migration and the Customs Law**

As far as immigration is concerned there are some decrees and regulations referring to the control of passports, on passengers on board and in transit. There are also special regulations for shipping companies which employ seafarers. These include the obligation of repatriation of the seafarers and also some labour conditions in the

whole country. (9)

In the matter of customs there are some regulations which are internationally applied as well as the unification of a Central American Code. These codes are specific and clear. Also established are the tasks of the customs, the way their activities should be carried out and the taxes which should be paid. (10)



### 3.3 FISHERIES LEGISLATION

Fisheries legislation should provide the framework and guidelines for the optimal exploitation of the resources and provide a guarantee that the ocean's food resources are not wasted and misused.

In this regard, the national legislation establishes that, the Ministry of Agriculture is responsible for the national exploitation of the fisheries resources of the country.

In order to do so, this ministry must carry out the following main tasks:

- Issue licences for fishing;
- Limit the number and tonnage of the fishing vessels, national as well as foreign;
- Establish and collect the fisheries fees;
- Determine the close seasons and closed areas;
- Regulate the fisheries tools such as nets, tackles, etc;
- Regulate all piscicultural activities;
- Control the activities and sanctions. (11)

Furthermore, there are regulations for sport fishing and domestic consumption.

Guatemala, is a member of two of the FAO bodies. They are:

- The Commission for Inland Fisheries of Latin America CDPESCAL 1976.
- The Western Central Atlantic Fishery Commission

WEDAFIC 1973. (12)

#### 4.4 AQUATIC SPACES REGIME

Territorial Sea and Contiguous Economic Zone

Decree 20-76 9/5/1976

This decree establishes that the territorial sea is 12 nautical miles and the exclusive economic zone is 200 nautical miles, both measured from the base line along the coast. It is also defined the obligations and rights which the country hopes to derive from having these limits.

This decree also acknowledges the right of innocent passage according to international law.

In addition it is stated that, sovereignty exists over research, exploitation, preservation and management of the resources in this area. Moreover, Guatemala has exclusive jurisdiction on the preservation of the maritime environment as well as control and elimination of marine pollution.

The Guatemalan Navy is responsible for the coast guard as well as for the security of the territorial water.

Furthermore, regarding public property there is a decree by Act which defines as public property for the common wealth the following:

- Harbours, quays, piers, bridges and other structures owned by the government.
- Territorial water, land shore and the continental shelf, in dimensions which are set by law. (13)

The two above mentioned decrees are established as far as sovereignty of the territorial waters, continental shelf and contiguous economic zone are concerned.

Regarding the Law of the Sea Conventions Guatemala has implemented two of the four issues of the 1958 Geneva Conferences on this matter. Those are:

- One relating to the Continental Shelf
- and the other to the High Seas (14)

However, the 1982 Law of The Sea Convention has not as yet been considered.

#### 4.4.1 Pollution Prevention Legislation

##### Decree No 1004 10/8/1953

Regarding pollution prevention this states that:

It is forbidden to dispose of the wastage of agriculture and industrial products in lakes, rivers, rivulets and other flowing waters.

However, there is a gap regarding the sea since it is not included in this decree, so that all pollution damages derived from ships, for example the dumping of wastages and oil spills is ignored. Thus when an oil spill took place in Amatique Bay. It was quite difficult to claim against the oil company, owing to the lack of a procedure established in the legislation, and also because Guatemala is not party to the International Fund for Oil Pollution Damage (FUND) and also to the Convention on Civil

Liability for oil Pollution Damage (CLC).

Moreover, more attention should be paid to domestic, agricultural and industrial effluents and the waste loads of the rivers, since they are a great sources of maritime pollution under certain circumstances.

At the same time, pollution from land is indeed increasing and its effects might be irreversible. Furthermore, these effects may no longer be merely confined to national waters, and may spread to the coastal waters of neighboring countries.

Consequently the damage to the environment can become greater and as a result problems with neighboring countries might arise from this reason. This possibility of pollution should be taken into consideration in the legislation.

Furthermore untreated waste contains large amounts of bacteria and viruses which can cause diseases of various kinds. This may affect the health of the population in a negative way, as well as reducing the fisheries resources.

However, no regulations exist which control the dumping of wastes by ships and there are no reception facilities in the port areas.

As can be noted from the above, prevention of marine pollution is one of the topics which needs more attention and to be taken more seriously because of the great damage which might result.

Actually, shipping is coming into a very much more

regulated era, in order to establish greater navigational safety as well as to reduce pollution by ships to the lowest possible levels.

Therefore, Guatemala should seriously consider accepting a number of the international provisions, and it must participate actively and take advantage of the international regulations, technical assistance and protection.

It is advisable that Guatemala become party to the both following conventions;

- Civil Liability for Oil Pollution Damage (CLC); and
- International Fund for Oil Pollution Damage (FUND);

In order to obtain the benefits which they provide to the contract states.

The CLC convention creates a special regime of strict liability for the national shipowners and their ships also provides for claims to be brought in states where the oil pollution damage is suffered.

The FUND gives to the state the potential and actual benefits of membership for a very cheap price, due to contributions being based on the amount of oil entering the country by sea. Thus contribution is calculated on the amount of oil received. Further more the FUND pays when the damage exceed the shipowner's liability.

As a consequence these conventions ensure to the contracting state the payment of the claim in the event that any oil damage should occur.

#### 4.4.2 Marine Mineral Legislation

Mining Code Decree Law 342 22/4/1965

Marine mineral differ from fish in that most of these minerals are non-renewable resources. If exploited indiscriminately it is possible that these resources can be depleted.

This decree law only considers the national property of the marine mineral within territorial waters. It does not take into consideration the regulations for exploitation of the marine resources.

As a result of legislation should be made in order to prevent this depletion from occurring too soon.

Unfortunately the national legislation has not considered this question as yet. Even though sovereignty over the continental shelf and contiguous economic zone have been established and the rights of research and management of these areas is covered.

Thus, the necessary steps must be taken in order to develop the marine mineral activity so as to control the exploitation of the marine resources.

#### 4.5 LABOUR LEGISLATION

Labour Act Chapter Seventh "Work at Sea"

Decree Law 45 29/4/1961

On the matter of labour, this act generally covers aspects regarding the contracting of seamen. It includes:

- The seaman contract of hire.
- Duties and rights of the shipowner or operator.
- Duties and rights of the seaman.
- Captain's duties and rights.
- Repatriation.
- Leaving the vessel voluntarily.
- Reasons and conditions for cancelling the contract.
  - From the shipowner or operator
  - From the seaman's side
- Sickness of seafarers on board.
- Illegal Strikes.
- Ways of compensation to seafarers in the event of public auction off of the ship.

Related to this question it is noted that the minimum salary for a seaman is not settled and neither is the currency in which it should be paid determined.

Also there are no regulation regarding the minimum qualifications required for employment and nothing is said about a seafarers' identity documents.

Furthermore this act does not include the medical certificates regarding hearing, eye-sight of the person and his color vision.

Even though the country does not have a great number of

seafarers this legislation should be improved in order to ensure that the conditions of employment for them are satisfactory.

#### 4.5.1 Seafarers' Social Security

Guatemalan Social Security Board of Managers  
Resolution No. 369 (106) 4/5/1961

There is a resolution for the Guatemalan Social security which states that crew members in the service of a sea-going vessels registered in Guatemala do not come under the national social security system./18

Consequently, Guatemalan seafarers are not entitled to the following benefits:

- Medical care
- Incapacity for work, whether due to injury at work or old age.
- A pension during retirement
- Cash benefits to the seafarers' dependants in the event of death.

This situation, it may be argued, is somewhat unfair as seafarers need more benefits than industrial workers, owing to the intrinsic risks which this activity entails.

In addition the absence of safety regulations in the legislation means that seafarers are totally without protection.



#### 4.5.2 Regulations for Practicing Pilotage in Territorial Waters

##### Governmental Resolution 1/7/1908

This resolution refers to the qualifications required in order to practice pilotage, however, these requirements are very simple and do not match the conditions needed today, owing to the technological changes in ships and shipping.

The duties of the pilot are set out as well as the defaults and sanctions. Nevertheless, the liability of the pilots and safety measures which should be taken during operations are not taken into account.

This decree also establishes compulsory pilotage for any sea-going ship over one hundred tons and the method of payment to the pilot.

Thus it can be said that this is an old regulation designed for the needs of ships at the beginning of this century. Perhaps it was sufficient then, but for today's purposes it needs to be reviewed and brought up to date. This must be done in order to meet the current requirements as far as safety and efficiency in pilotage operations are concerned.

#### 4.5.3 International Conventions

Regarding ILO conventions Guatemala has ratified the following:

-Minimum Age (sea) No 58 - 1936

-Seafarers Identity Documents no. 108 - 1958

-Wages, Hours of Work and Manning (sea) No.109- 1958  
(15)

As regards IMO conventions Guatemala has ratified only:

-Safety of Life at Sea, 1974 SOLAS 74

-Prevention of the Marine Pollution by Dumping of Wastes  
and other Matters, 1972 DUMPING 72 (16)

#### 4.6 MARITIME HEALTH CODE

Decree 1877 7/9/1936 and  
Governmental Resolution 14/ 12/1932

Regarding maritime health regulations there is a code for the requirements of maritime health in port areas and vessels calling at national ports.

In this code the minimum sanitary conditions which the ports as well as ships have to meet in order to be able to operate in the country are stated.

In the same regulation the procedures for official visits to a ship and documents required are defined.

Furthermore, in the code the procedures and prevention methods which must be taken in case of an infected or contaminated vessel are set out.

Finally the sanitary code states that the maritime health services and their control will be carried out in accordance with the international conventions in force on this matter.

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1355 17/12/1931; "Determinase el equipo que debe llevar las embarcaciones en la Republica"
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- Government Resolution 24/6/1899; "Reglamento para los Servicios de Muelle";
- Decree 334 29/6/1955; "Ley Organica de la Empresa Portuaria Nacional Champerico";
- Resolution 11 2/9/1979; (Champerico's Tariffs);
- Government Resolution 23/1/1956; "Reglamento, clasificacion de desembarques y servicios en el Puerto de San Jose de Guatemala";
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- Decree No.792      2/ 2/1932      (Migracion)
- Decree No.2039    2/11/1937      (Pasaportes)
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- Decree-Law            19/1/1935      (Codigo de Aduanas)
- Decree-Law 179        18/2/1964
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- Decree 550             22/2/1956
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## **CHAPTER V**

### **MARITIME POLICY IMPROVEMENT**

Having examined and analysed the current situation regarding administration and legislation of the maritime activities in Guatemala, the following policies and guidelines are suggested for the improvement and integration of maritime activities in the country.

It should be emphasized, that the following suggestions require, as a primary condition, a process of awareness and recognition within Guatemala regarding the relevance of the maritime affairs for the national economy.

The policies and suggestions will cover separately the following areas:

- 5.1 Maritime Transport
- 5.2 Ports
- 5.3 Territorial Waters

#### **5.1 MARITIME TRANSPORT**

Regarding maritime transport the suggestions made will be based on the matters which are of the Guatemala's interest. In other words, the protection of shippers' interests, the safety of navigation in order to avoid damages to the national resources and properties. The necessary regulations for facilitation of the international maritime traffic and the protection of Guatemalan seafarers.

### 5.1.1 Shipping Policy Improvement

As it is very well known, the increased costs of marine transport has had an adverse effect upon the balance of payments of countries which do not have their own merchant fleet, resulting from two main reasons. First, it has caused a reduction in the receipts because the exporters receive less for the goods they sell overseas. Secondly, it has increased the amount that they have had to pay more for their imports.

As long as Guatemala does not have a national fleet which can take part in the carriage of its international trade, foreign carriers are required.

Consequently an appropriate national policy as far as shipping is concerned has to be based on protection of the Guatemala's shippers interest. The shippers' interests might be summarized as follows:

- To obtain the greatest possible reduction on the cost of marine transport; and
- To obtain an adequate and efficient service from the liner operators.

#### 5.1.1.1 Shippers Council

In Guatemala shippers are numerous, often dispersed and with poor commercial relations among them, so their bargaining power with shipowners is weak. Consequently, the absence of effective pressure from the shippers and government on the conferences and liner operators has



resulted in rising freight rates by the conferences serving Guatemala's trade, unilaterally.

Hence, there are two main reasons for establishing a shipper's council in Guatemala. Firstly, to unite shippers and give to them the necessary power to bargain with the conferences so as to obtain an adequate and efficient service at the minimum possible cost. Secondly, the shippers' council would provide a means of communication among government, ports, shipowners and shippers and the opportunity to express the shippers' point of view.

However, the shippers' council should represent the interests of the shippers properly, otherwise the problems may be solved to the advantage of the other parties but not the shippers.

The shippers' council has to be legally recognized by the government as a consultative party.

This council must represent all or nearly all, of the shippers of the cargo who need to consult with the conference, in order to be able to deal with the conference and strengthen their power of bargaining.

To be sure that all the shippers are members of the council, the government should carry out a statistical survey, in terms of the value and tons of cargo moving by lines operators.

The kind of organization might be determined by may either be a specific commodities association, -for example coffee-or a general trade or industrial

association. For this organization would be of great help the existing Guatemalan Chamber of Commerce and Industry and the Guatemalan Coordinator of Associations of Agriculture, Commerce, Industry and Finance.

#### 5.1.1.2 The UNCTAD Code of Conduct for Liner Conferences

The Code of Conduct would mean more orderly institutionalization of the conferences as follows:

- a) Membership, as per stated equitable criteria;
- b) Shares of cargo, preserving rights of exporting, importing and "Third - Flag" criteria;
- c) Freight levels determinable on the basis of publicly acknowledged criteria;
- d) Freight increase notification as per specified notice periods and subject to consultation procedures;
- e) The institutionalization of consultation between conferences and shippers on all major aspects of liner services;
- f) The legal recognition of shippers' organizations as consultative parties;
- g) A monitoring role for government authority;
- h) A mandatory dispute settlement machinery;
- i) Regular public reporting of conference activities and practices. (1)

Consequently, along with the creation of the shippers' council, it is necessary to implement in the legislation the Code of Conduct for Liner Conferences; in order to be able to take advantage of all the above mentioned.

Moreover, the government should give the appropriate

staff, support and monetary resources to the existing Maritime Transport Department in order to this department to be able to look after the governments' interests. In addition this department has the right to request from the liner operators and conferences, their agreements and tariffs, so as to analyse this information.

Afterwards, the Maritime Transport Department should initiate the consultation procedures between liner operators, conferences and shippers' council on all matters of common interest and supervise the negotiations.

Furthermore, this department should be also in charge of all the aspects belonging to maritime transport i.e, ratification and implementation of the conventions which might be of benefit of the country as well to shippers, be aware of the changes which take place in shipping and in trade and also to carry out the necessary studies in order to assist the government to harmonize its policy pertaining to shippers' interest with its policy on ports and transport in general.

In addition, the Maritime Transport Department must assist the government in the promotion of regional cooperation so that the governments of the countries in the region together with the shippers' council may be able to form a strong negotiating body within the conference area so as to strengthen the shippers bargaining position.

#### 5.1.1.3 Shipping Research Unit

The Purpose of the shipping research unit may be summarized as follows:

- a) Obtain and analyse the facts and figures of maritime transport in Guatemala, also to have a reliable data system with this information which should be the base for decision making and adopting policies in maritime transport;
- b) Examine the existing shipping services as well investigate possible alternatives;
- c) Provide the necessary information to shippers council for the process of consultation with the conferences;
- d) Obtain and give the shippers' council, ports, maritime transport department and other institutions involved up to date information of the shipping market situation world wide;
- e) Provide the necessary information and assist to shippers council for the process of consultation with the conferences;
- f) Participation in international fora and conferences concerning maritime transport;
- g) Advise the government on the ratification and implementation of the international conferences and regional treaties;
- h) Cooperation with the regional bases for the shipping investigation so the countries in the region will need to pool their data and reach a joint assessment of the situation;
- i) Coordinate with the Maritime Transport Department the various action which are taken to protect shippers interest.

As a result this shipping investigation unit should provide an effective back-up to the shippers' council in dealing with the conferences. It provides the shippers' with the information necessary to confront the conferences

with soundly-based arguments in order to achieve its goals of reduction of freight rates and improving the service as well moderate the effect upon the demands which shipowners make.

Finally the long range purpose of the shipping research unit's work is to enable the council and the government to take long-term policy decisions which must be soundly based.

This Shipping Research Unit could be located in the Maritime Transport Department or under the shippers' council. The decision for allocation of this unit should be a matter of agreement between the government and shippers. Even though this unit should be reliable where ever it is allocated.

#### 5.1.2 National Merchant Marine

Regarding a national merchant marine, the question of whether Guatemala should promote it and to what extent the country may be able to succeed in shipping cannot be discussed in this work, because it is beyond its scope.

However, in Guatemala there exists a tax on the freight rates which the shippers pay. This tax is 6% of the freight and it was established in order to promote the national shipping company -FLOMERCA Shipping Company-, but as was mentioned before, FLOMERCA Shipping Company is out of operation, today.

As a result of this and in accordance with the policy to

protect the shippers interest this tax should be abolished, since it is increasing the already high freights which the Guatemalan shippers are paying.

### 5.1.3 Safety of Navigation

Regarding safety of navigation in Guatemala, the policy has to be based on assuring that vessels calling at national ports are safe and that they comply with applicable international rules and standards concerning, the safety of ship, persons and cargoes on board and the prevention of pollution of the marine environment. In that way, the occurrence of accidents which can jeopardize Guatemalan lives, properties and resources can be avoided.

In order that Guatemala is able to apply and enforce the minimum safety rules and standards, it is required that the country become a party of the following conventions:

- Load Lines, 1966 (LL 66)
  
- Safety of Life at Sea Protocol 1978 (SOLAS Protocol 78)
- Prevention Pollution From Ships, 1973 and Protocol 1978 (MARPOL 73/78)
  
- Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78)
- Prevention of Collisions at Sea, 1972 (COLREG 72)
- The Merchant Shipping (Minimum Standards), 1976 ILO convention No. 147
- Civil Liability for Oil Pollution Damage (CLC)
- International Fund for Oil Pollution Damage (FUND)

The next measure which has to be taken, is the implementation in the national legislation of the above mentioned conventions and their enforcement. This new Act will provide the suitable legal framework and the authority for the application of these safety requirements on navigation in territorial waters.

Besides, with the implementation and enforcement of the above safety regulations and standards, Guatemala will take a step towards harmonizing its national legislation with the international legal system as far as safety of navigation is concerned.

However, legislation by itself does not ensure that the minimum safety standards are complied with, by ships sailing and calling at national ports. Therefore, along with the legislation, an effective survey system must be established in the country, so as to ensure that ships fulfil the safety standards required.

Apart from surveys, it will be possible to take measures and establish sanctions for those ships which do not comply with these regulations.

Moreover, the laws dealing with the safety of navigation should also establish minimum safety standards for fishing vessels and to ensure that such ships fulfil these minimum standards.

#### 5.1.3.1 Navigational Aids

Regarding navigational aids great coordination is necessary among the parties involved which are -Ports,

Institute of oceanographic studies and charts and Ministry of Transport and Communication-, to provide efficient management of the aids to navigation. This covers installations, maintenance and indication on the navigational charts of any changes which may occur as far as lighthouses and buoys are concerned.

In relation to dredging of channels and docks coordination and adequate communication among the parties involved in the work is also required, so that any changes in depth will be registered and published. Thus the navigational charts would be current and also it will be an effective aid to ships sailing or calling at the national ports.

With respect to the radio communication system it needs a great improvement so that it might become fully effective navigational aid. This radio communication system requires suitable equipment which would be more powerful and the radio operator need special training in this field. One of the improvements which must be executed is to ensure that the radio operators are able to communicate in Spanish as well as in English so that the radio communication will be a real help for the vessels which may require it. Moreover, this radio communication system must be designed so as to be able to assist fishing vessels and recreational boats.

#### **5.1.4 Facilitation of the International Maritime Traffic**

In the process of establishing policies for maritime transport improvement in Guatemala, it is necessary to take some measures to facilitate the international maritime transport.



This can be achieved through standardization of the documentation required for customs, immigration, health and other public authorities, pertaining to the ship, her crew and passengers, cargo baggage and mail.

To achieve this standardization of the documentation system is to adopt appropriate measures to:

- facilitate international maritime traffic;
- prevent unnecessary delays to ships, their crew, passengers and cargoes;
- secure the highest practicable degree of uniformity in formalities, documentary requirements and procedures; and
- keep to a minimum any alterations needed to meet special national requirements. (5)

This documentation should be applied on arrival, stay and departure to the ship in national ports.

With the purpose of standardization of the documentation system some measures must be taken:

- Ratification of the IMO Convention on Facilitation of International Maritime Traffic, 1965;
- Adjustment of the Guatemalan laws accordingly with the convention if it is necessary; and
- Adoption of the model forms. They are IMO general declaration, cargo declaration, ship's stores declaration, crew's effects declaration, crew list and passenger list, and the documents required under the Universal Postal Convention and the International Health Regulations.

The adoption of this convention should be reflected in an improved reputation of the Guatemalan Ports by reduction in the time for clearing ships inwards and outwards, as it eliminates delay and contributes to a quick turn-around.

This adoption of the convention also has the following advantages for the shipper:

- the efficiency of clearing ships and cargo save time and money;
- cargoes awaiting shipment or collection are exposed for a shorter time to the risk of damage or pilfering within port facilities;
- time savings reduce the charge for services.

Therefore the adoption of this convention and its forms will be reflected in the improvement of the maritime activities in the country with special advantage to ports and shippers.

#### **5.1.5 Seafarer's Affairs**

Even though Guatemala does not have fleet, the country has two ships flying its flag and there are nationals working on board of them. Consequently the policy regarding seafarers should be based on protecting them and encouraging them to remain in the field of activity.

For example, coverage by Guatemala's social security, and also the contract of hiring seamen needs to be reviewed

and made current including the necessary provisions in order to protect their rights and to ensure that the working conditions comply with the minimum internationally accepted standards.

#### 5.1.6 Training and Participation on International Fora

Guatemala has a scarcity of skilled personnel as far as shipping activities, enforcement of safety regulations and maritime legal aspects are concerned. For the purpose of developing the maritime activity, a well planned training programme must be set up in the country.

This training programme might be carried out with international cooperation and technical assistance which exist in many institutions and organizations whether in sending the people abroad and/or giving lectures and courses in the country.

Along with the training it is necessary to establish the opportunity to make a career in the maritime field for the people who have been trained, in order to use the national experts in developing and improving maritime activities in the country, otherwise the people trained would look for other jobs. This means that their training would not be fully utilized.

With respect to participation in international fora and conferences the policy must be to take an active part in them. To know what is going on and what are the changes in maritime matters which can be used for the benefit of the country or whether they are against the national interest.

In that way, the ratification and implementation of the conventions and the provisions given by them will be executed in a quicker way and Guatemala's legal system will be harmonized with the international system applied in shipping and kept updated. Also with the participation in international fora, there is a possibility of knowing where technical and other assistance are available and for which subjects it may be granted.

## 5.2 PORTS POLICY IMPROVEMENT

Ports are an important factor in the integrated maritime development in Guatemala, because of the following reasons:

- Ports are the linkage point between sea and land transport;
- Ports costs have a direct influence on sea transport costs;
- Port capacity is a limiting factor of the trade development, whether to restrict it or to enable trade expansion;
- Ports make a direct contribution to the country's economic development; and
- Ports can stimulate industrial development in Guatemala.

In order for ports to fulfil their important national role and make their contribution to the development of the country effective, the following conditions are required:

- 1) The port should be well "planned" and "developed"; and
- 2) The port should be well "run"

The first condition should be accomplished at the national level within the framework of a national ports plan. As far as port development is concerned the primary objective should be to provide cargo handling facilities, which would be adequate for Guatemala's present and future trade needs, at the lowest possible cost.

In addition, the ports plan should be part of the Guatemala's wider development plan. In other words to

harmonize with the policy to protect shippers' interests, and to maximize the ports' contribution to the economic development of the country.

The second condition should be performed at the port level. The main function of the port is the transfer of goods quickly and economically from maritime to land transport. According to UNCTAD Secretariat almost two-thirds of the shipping costs initially borne by the ship operator, are in fact incurred in ports. Consequently improved port performance can be the basis for reduction in the costs of sea transport.(3)

Therefore, the primary objective of Guatemalan ports should be to ensure efficient operations under the present and future condition, at the lowest possible cost.

The main purpose of the suggested guidelines is to improve Guatemala's port performance.

#### 5.2.1 The National Port Commission

The Guatemalan Ports Commission already exists, however, this commission has not been able to fulfil all of its tasks as was shown in chapter three of this paper.

Thus, the primary step which has to be taken at the national level is to give to the National Ports Commission the necessary means and adequate support, so that it is able to execute the coordination and regulation of the Guatemalan ports.

The primary function of this coordination and regulation among the ports, is to prevent duplication of the port investments, since the resources of the country are limited.

In order to prevent duplication of the investments the ports commission should set up a national ports plan. This plan is essential for an integrated development of the ports within the national framework and policies; as well as to avoid over-investment which may result from competition among the ports with the increase of expensive cargo-handling technology.

Moreover, the national ports plan should define the role of each port, its hinterland and ensure that Guatemalan resources are used in the most economical and efficient way.

The main activities which should be worked out, to settle a national port plan are; first, forecasting of the Guatemalan demand for maritime transport. Second, surveying of the existing ports capacity and facilities. Third, surveying of the means of transport available for maritime traffic.

Accordingly with the above research the national ports plan should set up the following main aspects:

- a) A policy for port infrastructural development;
- b) A strategy for maritime transport assignment;
- c) A national plan for ports investments;
- d) An inland routing plan.

Also, an effective coordination and cooperation among the institutions involved is demanded so that the national ports plan will be executed within the Guatemalan plan for development as a whole.

In addition, the National Ports Commission should fulfil the coordination and regulation functions among the ports in matters as:

- to approve proposals for ports investments;
- to study and set a common tariff structure in Guatemala,
- to carry out or assist the ports on the activity of research;
- to take the necessary steps and coordination among the ports in order to accomplish the national ports plan, and review it from time to time;
- to set up a well planned programme for development of skill personnel, and coordination of consultancy and technical assistance programmes;
- to establish a common nomenclature and statistical system among the ports which permit comparisons among the ports and other kind of transport.

### 5.2.2 Port Planning

Port planning at this stage should be conducted at the port level.

Planning in any case is oriented towards future objectives and development. The aim generally will be associated with a criteria of value, the optimization of which is aimed at. (4)



It is necessary to establish and execute a master plan for development in each one of the Guatemalan ports in coordination with the national ports plan.

The master plan should be designed for a long-term period as well as in stages of implementation. The master plan must be realistic in terms of the Guatemalan policy for maritime transport and development in general and especially in terms of the resources available in the country.

Moreover, the master plan should be an instrument for the purpose of port planning, concerning the enlargement of the ports or replacement of facilities. It will coordinate the needs of the operational and financial matters and it should be flexible.

It is important to bear in mind that the first step in planning is to identify problems excluding any inefficiencies which may exist in the port.

In Guatemala, special attention should be given to improving the operations and efficiency of the existing facilities, rather than making physical expansions. In the same way, a programme of immediate improvements for the use of existing facilities must be established, through the introduction of new cargo-handling equipment. This programme for immediate improvements should not be delayed until the master plan is finalized.

It is important for the port planner to know at all times the most recent developments in trade and shipping, since they will change the kind of services required by ports

users. In other words, the port planners must be aware of the technical developments and changes in shipping and the trade.

Finally, coordination and communication among port users, and official bodies is essential to ensure they all contribute to the common aim of increasing port efficiency and port development matching with users needs.

### 5.2.3 Port Operation Management

With regards to port operations the main goal must be increased efficiency, that is to improve the utilization of the existing resources, so that more capacity is created, costs reduced and service improved.

To describe a detailed plan for increased efficiency in each of the Guatemalan ports is a wide topic for this paper because operational procedures and port performance differ from port to port. As a result here will be given the main aspects which the management of the operational department should consider and analyse in order to find more economical and efficient procedures of operations and to be prepared to meet demands of the growing traffic in the port, according to its local and specific conditions.

As a result each port should compare its current performance with its performance of previous years and try to improve it.

In the same way, the operational planning is required as primary condition for improved performance. That is to carry out the pre-planning on the basis of optimum

allocation of the available resources to guarantee a quick and economical dispatch of the vessel. (5)

Regarding the optimum allocation of the resources the berth, storage area, tools and the equipment required for each vessel, should be considered. It is also necessary to review the time allowed for storage of commodities in the port especially in the case of containers, since the storage of empty containers in port areas is a common practice for the shipping companies operating there. Consequently an increase of tariffs for empty containers could be a solution for storage area in the yards.

Moreover, a contingency plan is required, in order to meet the unexpected increases in traffic demand. This contingency plan must be well coordinated and analysed in order to solve the overflow of traffic, also the contingency plan should be elaborated in such a way that the arrangements for this overflow of traffic will be cheap and simple. This contingency plan is strongly recommended because of the high costs which result from the congestion in port and which may result in the temporary or permanent loss of traffic, and increasing costs of operation.

At the same time shippers are affected since the shipments are delayed, the cargo might be damaged due to such delay and also due to higher shipping charges. On the side of shipping liner conferences, congestion in national ports give them justification for extra charge in freight rates to Guatemala.

#### 5.2.4 Maintenance

Adequate and planned maintenance of civil engineering structures, buildings and equipment is indispensable for the good performance of the port and its proper functioning. Consequently such maintenance must be included in the policy for improvement.

However, good maintenance is not cheap and it needs substantial investment in spare parts and manpower. As a result the selection of the equipment is also an important factor, since port equipment is usually expensive and its standardization could be a solution for reduction of costs in spare parts. Moreover a preventive maintenance policy should be established, so that the equipment will last longer and will be able to function properly in the port.

As far as maintenance of structures is concerned it should be based on regular inspections and reports upon which a routine maintenance system can be built up. The main purpose of this maintenance system is to keep the structures in good repair rather than allow them to deteriorate over a long period. Furthermore accidents, which occur in the port should be reported immediately in order to remove unsafe or dangerous conditions as well as to establish financial responsibility.

It is advisable that the maintenance be carried out by the port itself whether with permanent personnel or with a contracting company specialized in the matter. Otherwise the maintenance will not fulfil its purpose and requirements.

### 5.2.5 Environmental and Safety Aspects

Guatemala's marine environment protection within the port should be considered and the necessary rules and regulations set up in order to reduce to minimum level the pollution and other damages which belong to port development and operations.

For example dredging could have such effects as destruction of the habitat of some species, alteration of salinity, change of currents and increased turbulence. As a result it is necessary to assess the dredging impact, and to select the dumping grounds for dredged products and to control the damage.(6)

In the same way regulation of dumping of wastes by ships within port areas, can be achieved through the implementation of the Convention on the "Prevention of Marine Pollution by the Dumping of Wastes and other Matter (IMO, 1972.) Such convention regulates the disposal of dredged materials at sea as well as dumping by ships.

Similarly, it is recommended that adequate facilities to receive and treat wastes from ships be developed in Guatemalan ports, so that dumping of such wastes at sea can be avoided. Consequently it will be a measure for the protection of the marine environment.

In order to create the appropriate reception facilities in ports the "IMO, Guidelines on the provision of Adequate Reception Facilities in Ports" could be used as a guideline for assessing their needs in this regard.

Furthermore the implementation and enforcement of the

convention of DUMPING-72 will be of great help in the prevention of marine pollution. In the same way it is advisable to ratify and implement the conventions of "Civil Liability for Oil Pollution Damages (CLC)" and the "International Fund for Oil Pollution Damage (FUND)". The above two conventions are a kind of insurance for oil pollution damage.

The FUND will compensate Guatemala in case of any damage occurring in its territorial waters and also during the operations for loading and discharge of oil products. This has a further advantage, since the persons who receive the oil in the country are the ones who pay the calls for the fund. As a result Guatemala and its related interests will be protected for any oil spill at little cost.

Dangerous good, can be defined as any substance that threatens the safety of people and facilities by fire, explosion, combustion, toxicity, infection, radioactivity, corrosion or pollution; also any substance that presents risks during its transport. (7)

Consequently, the way to prevent accidents in handling dangerous goods is, on one hand introduction and strict enforcement of codes and procedures for all parties concerned, establishing guidelines for packing, handling and storage of such goods. On other hand, the adequate pre-planning of the operation of dangerous goods in port. This pre-planning should consider:

- to establish clearly the risk involved during handling and storage of dangerous goods;
- to analyse the preventive measures which should be taken

- in order to reduce the risk;
- to consider the measures and actions to be taken in case of an accident.

In IMO regulations the operational safety standards and applicable procedures both for ships and shore facilities are stipulated. This IMO regulation for handling dangerous goods may be implemented in Guatemalan ports in this regard.

At the same time, one of the most important measures which has to be taken is the appropriate communication between ship and shore, to coordinate activities during loading and unloading operations.

Finally, the Guatemalan port activities should establish a regulation for the declaration of all dangerous goods entering the port area.

As far as nautical aspects are concerned, it can be said that adequate navigational aids such as: buoys, lighthouses, pilotage and towage, should be given special attention in order to prevent accidents. Moreover, the berth allocation should be analysed carefully for those ships which are carrying dangerous goods, so that collision with other vessels will be impossible.

#### **5.2.6 Ports Financial Management**

Port financial management is an important factor since ports need to generate and retain sufficient income in order that development and operations are never hindered by lack of funds. This means firstly, efficient

operations; secondly, maintaining the port assets in good working condition; and finally, investigating ways of financing future investments for proper functioning and development of the port.

Consequently ports should first, analyse the investment in port facilities and development; secondly, it should establish an efficient cost control system and thirdly, review and up-date the port tariffs and dues.

An efficient cost control system is able to reduce costs, to analyse the tariffs and bring benefits for the countries as a whole.

#### 5.2.7 Port Statistics

With respect to port statistics, it is necessary to produce reliable data and to promote its use as often as possible. In Guatemala this is one of the basic tools which could be used much more than it presently is.

Therefore, the implementation of the use of information as a primary tool of management is strongly recommended. The information system would help to increase the present and future efficiency, through the use of facts and figures concerning basic indicators on performance and costs which will be available for the decision making process, so decisions will thus be made using current information.

Moreover, statistics are the base for traffic forecasts and planning as well as assisting the shipping research. Thus the port statistics are not only important for the ports themselves; on the contrary a reliable information



system will help in planning and taking decisions as far as maritime transport is concerned for Guatemala, in an integrated policy.

The data system of information in Guatemalan ports might consider the following matters:

- data about the organizational structure of the port, i.e. number, and in particular port facilities, handling equipment and physical description of the port including all necessary information for example age, capacity, working conditions, costs, etc. The first purpose of this data is to have constant control of port resources, so that it would provide the basis for a maintenance plan, renovation of the resources and planning for development of the port;
- data about ship traffic is required since ports have to adopt their performance and facilities, to the demand of port users. Thus, accurate shipping statistics will indicate which facilities have to be at the disposal of the users or have to be planned and constructed in order to meet such demand efficiently;
- cargo traffic data. This data describes the performance of the port and should give the necessary information on the volume and composition of the cargo handled in the port. Moreover, this cargo traffic data should show the relevant changes in the cargo flow, i.e. seasonal or structural effects. In other words cargo traffic data gives a full picture of the port activity;
- other important data for the Guatemalan port is on one hand a real picture of the revenues and profits, i.e.

tariffs and port dues and on the other hand a data of the expenses incurred to provide the services such as operating costs, maintenance costs, labour, etc.

Consequently, statistics are a tool of the port operators especially in planning as well as a measure of port performance.

#### 5.2.8 Training

Ports have to adapt to the changes in shipping in order to be able to meet the new requirements of the port users, besides taking into consideration the technical changes of shipping as regards cargo handling, continuous development of suitable skills should be given close attention in Guatemalan ports. This training should assure a maximum flexibility of the work force available.

In Guatemala's ports special attention should be given to the training of managerial and operational staff for handling containers in order to increase efficiency on the current situation and also to have skilled personnel to operate a container terminal.

### 5.3 TERRITORIAL WATERS POLICIES IMPROVEMENT

Guatemala should establish an effective plan and policy directed at development of its territorial waters, exclusive economic zone and continental shelf, within the framework of national development planning.

In order to achieve this plan for development, the following aspects should be taken into consideration:

- a) To promote the use of opportunities in the exclusive economic zone and continental shelf, i.e. fisheries, oil, gas and minerals exploitation;
- b) to preserve Guatemala's living and non-living resources in the exclusive economic zone and continental shelf;
- c) to protect and preserve the marine environment for the interest of fisheries, water quality, the conservation of the ecosystem and other coastal related activities;
- d) to establish a balanced control among uses of the sea;
- e) to promote international and regional cooperation
- f) to establish an adequate programme of training as a prerequisite for development.

However, this plan for marine development requires the support of legislative framework. Consequently, it is necessary to review the legislation and make it current so that it will be harmonized with the new policy for development.

### 5.3.1 Exclusive Economic Zone

Regarding the exclusive economic zone, Guatemala has in the legislation the definition of its zone and also the rights and duties in this area. However, in order to derive maximum benefits from this area it is required to strengthen the conservation and management to maintain the living resources there. Besides, Guatemala must promote the objectives of optimum utilization of the living resources in its exclusive economic zone so as to avoid the over-fishing and to ensure that these resources are not wasted and misused.

In the matter of foreigners fishing in Guatemala exclusive zone, the same measures for the optimum utilization and protection of the living resources shall apply. Therefore, some measures could be taken in order to have a better control of the fishing, catch and effort statistics and vessel position reporting. In addition a programme for training fishermen by placing trainees on board foreign vessels would be useful where possible. This would result in the transfer of fishing technology to the country.

Guatemala must give due notice of conservation and management measures, law regulation which may be taken in this respect.

Even though Guatemala does not have artificial islands, installations and structures in its exclusive economic zone provisions should be taken in this regard. Thus, the country will have exclusive jurisdiction over such installations and also establish safety zones around such installations and structures.

### 5.3.2 Continental Shelf

As a policy of development and for exploring and exploiting the natural resources as well as for safeguarding sovereign rights over the continental shelf Guatemala should include these consideration in the legislation and give the relevant information to the United Nations including geodetic data and the limits of its continental shelf.

These provisions must be taken in order to make sure that no one may undertake exploration and exploitation without the express consent of the country. Furthermore, by these provisions Guatemala will have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

Consequently by instituting provisions such as the ones mentioned above a country is able to regulate these activities on its continental shelf and to have the benefits of these activities.

### 5.3.3 Protection and preservation of the marine environment

According to the national legislation and international law Guatemala has an obligation to protect and preserve its marine environment.

Consequently, Guatemala must establish an efficient management system for the preservation of the marine environment, taking into account all sources which can cause marine pollution. In order to preserve the marine

environment, it is necessary to design a system which minimizes the impact of pollution from residuals on the environment. Thus, the system must consider the following aspects:

- a) the release of toxic, harmful or noxious substances, especially those which persistent, from land-based sources, from or through the atmosphere or by dumping;
- b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges and regulating the operation and manning of vessels;
- c) pollution from installations and devices used in exploration or exploitation of the natural resources of the sea-bed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
- d) pollution from other installations and device operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

In addition, these measures taken in accordance with protection of the marine environment must include those required to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, endangered species and other forms of marine life. (8)

Guatemala must bring up to date its legislation regarding pollution from land-based sources, including rivers and structures, so as to prevent, reduce and control it. In the same way, attention must be paid to the release of toxic, harmful or noxious substances, and especially those which are persistent in the marine environment. It is advisable that, first, the legislation on this matter should be reviewed from time to time as necessary; second, take account of international rules, standards and recommended practices when such legislation will be updated, and third, to harmonize the legislation and policies regarding pollution prevention of the marine environment with the other countries in the region.

In the matter of pollution from vessels, Guatemala must set down in its legislation rules and standards to prevent, reduce and control pollution of the marine environment, including the coastline, exclusive economic zone and continental shelf and also damages to related interests of the country caused by ships.

The national legislation must be in accordance with internationally applied law. Also the regulations and measures taken to reduce and control pollution need to be as effective as the international rules and standards.

Along with the legislation, Guatemala must implement those actions stated in the law which may be undertaken when a violation has occurred within its territorial waters or its exclusive economic zone, that is the proceeding for enforcement of its law and regulation.

#### 5.3.4 Marine Scientific Research

Marine mineral development, has rapidly become one of the

most valuable ocean activities, since many of the land-based reserves are being depleted. In that case Guatemala should set up a defined policy and legislation in respect of marine research in its territorial water, exclusive economic zone and continental shelf. As a result of this legislation Guatemala should regulate, authorize and conduct marine research.

Legislation and an appropriate policy must be implemented in the country so that the results of such research will be for the benefit of all parties concerned and will contribute to the development of the country.

Furthermore, adequate provision should be taken in order to ensure the transfer of technology to Guatemala and the acquisition by nationals of the necessary skills and know-how in this field.

#### **5.3.5 Regional and International Cooperation**

Regional cooperation may bring advantages to the countries which share the same ocean, common coastal and ocean problems and also, due to the borderless nature of the sea and presence of migratory species, as in the case of the Central American Republics.

As a result regional cooperation should promote and establish a solid basis for the benefit of all the countries in the region.

This regional cooperation might consider the following matters:

a) common programmes that is data, collection, enforcement



of legislation, pollution control, commercial shipping, etc;

- b) joint sponsorship of training programmes in maritime management, so that there is a reduction of the individual expenditures on these programmes;
- c) exchange of information and experience on maritime problems to avoid conflicts of use problems;
- d) establishing a common contingency plan in case of pollution;
- e) joint purchase and operation of ships to carry out research, surveillance at sea;
- f) mutually -supportive programmes in marine research, preservation of the living resources, protection of the marine environment, data collection and other related activities.

However, in order to achieve this regional programme for cooperation successfully two basic elements are required; firstly, the harmonization of national laws in this respect; secondly, establishment of effective linkages among the regional institutions involved and international bodies.

Moreover, international cooperation will be of great help in the accomplishment of this regional plan for development in different fields, for instance in the harmonization of the national laws, training and technical assistance.

### **5.3.6 Training and Technical Assistance**

To ensure national control of the marine national resources and their integration into the national economy,

it is required that there be fully trained nationals with the necessary expertise and experience to execute this management.

Therefore, Guatemala must establish a balanced programme for training experts in functions that cover all areas required, so that the nationals will be able to develop and administer the marine resources in the country.

To be mutually beneficial, the trained nationals should be committed to performing long term service in the country, and adequate support for these trained personnel must also be provided by the Government.

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## **CHAPTER VI**

### **NATIONAL COMMITTEE FOR MARITIME AFFAIRS**

In order for Guatemala to implement the policies for improvement established in Chapter V and accomplish the goal of an integrated maritime development in the country; it is necessary to set up a National Committee dealing with maritime affairs.

#### **6.1 Objectives of the Committee**

The objectives of the Committee would be, to develop the maritime resources and activities in Guatemala in a comprehensive plan. The maritime component should be included as an integral part of the country's policy making and planning for development, to maximize the contribution of the maritime resources and activities, to Guatemala's economic development. The committee should also protect and preserve Guatemala's marine environment, its resources and related interests.

#### **6.2 Maritime Activities**

Maritime activities which have to be considered and developed for the National Committee for maritime affairs can be divided into three main areas as follows:

- maritime transport
- ports
- territorial waters

### Maritime transport

Regarding maritime transport, this Committee should be in charge of the protection of Guatemalan shippers interest to obtain an adequate and efficient service at the minimum possible cost from the conferences. The creation and implementation of safety regulations in order to avoid injures losses of lives and damage to the country resources and property. Furthermore, harmonization of the national regime with international ones applicable in shipping, i.e. commercial, pollution prevention , safety of life at sea and the training of experts.

### Ports

Regarding ports, the aims of the Committee would be to improve port performance i.e. increase efficiency and reduce costs; development of port facilities in accordance with the changing patterns of trade and technological developments, avoiding duplication of investments in ports. Safety standards for handling dangerous cargo in port areas should also be established.

In addition to this, training and recruitment of skilled personnel at all levels is a prerequisite for operational improvement as well as for the maximization the ports' contribution to the economy of the country.

### Territorial waters

With respect to territorial waters the Committee would seek to preserve and protect the marine environment, living and non-living resources. Promote the use and exploitation of the ocean resources, i.e. fisheries, oil, gas, minerals, etc.

It is important that along with promotion of greater use

of the sea and its resources the Committee would also need to establish a balanced control among the various uses of the sea, so as to prevent over exploitation of its resources, conflicts and possible damage to the marine environment, from occurred usage.

In order to achieve these goals the Committee also has to develop personnel with the skill necessary to perform the activities required for the fulfilment of its goals. It also needs to establish the appropriate legal framework to support its procedures and activities. Moreover, it should also promote regional cooperation in research and development.

In order to establish the National Committee for Maritime Affairs it is required to define:

- The Committee functional responsibilities;
- The parties involved in the Committee;
- The appropriate legislative framework;
- The structure of the Committee;
- The means for communication and coordination with other national, regional and international institutions.

### **6.3 Functional Responsibilities of the Committee**

The Committee would have a number of tasks, one of which would be to advise the Council of Ministers in policy making. This policy making should result from:

- considering the interest and objectives of national development policy in the maritime sector;
- harmonization with other objectives and policies;

- settling priorities and strategies for maritime development; and
- providing necessary information for planners.

The planning aspect of the Committee would have the following scope:

- To develop an integrated planning within the framework of the objectives settled in the policies in the short and long term;
- To establish the appropriate procedures for the preparation and implementation of programmes and projects; - Delimitation of responsibilities among the parties involved;
- Provide the necessary information for policy-makers this means that there should exist a continuous flow of information between the Council of Ministers and the Committee;
- To develop a well planned programme of training and technical assistance, identifying in which fields it is necessary to have trained personnel and assistance.
- To develop a reliable information data system for planning and for a sound base for policy making.

The Committee also has to coordinate and harmonize the development of resources and uses of the sea, to ensure that the projects meet the common goals. There is also needed to control the implementation and execution of the programmes. Thus, ensuring efficiency of the executing bodies. The degree to which a body or programme is accomplishing the policy goals also needs to be assessed.

Moreover, the Committee has to analyse and discuss problems brought to it by any of the parties involved;

develop an adequate legislative framework which would enable it to achieve its goals; and take actively part on international fora and meetings. It should also evaluate its performance in relation to its established policy goals.

The Committee would be also in charge of the process of cultivating a general awareness of the importance of the sea for Guatemala's development.

#### 6.4 The Parties Involved

The Committee would be formed basically from those institutions which are related with maritime affairs. Such institutions would be the following:

##### Public Institutions

- Ministry of Communications and Transport in the following activities:
  - Ports, Quetzal, Champerico and Barrios
  - Inland transport and railway
  - Oceanographic studies
  
- Ministry of Finance
  - Planning
  - Ports (Santo Tomas de Castilla)
  - Customs
  
- Ministry of Economy
  - Maritime transport department
  - Internal and foreign trade
  - Licences for export
- Ministry of Agriculture



- Protection of the marine environment
- Fisheries
  
- Ministry of Public Health
  - Protection of marine environment
  - Health regulations for ports and vessels
  - Laboratories for research
  
- Ministry of Energy and Mining
  - Mining regulations
  
- Ministry of Foreign Affairs
  - Boundaries and international waters delimitation
  
- Ministry of Defense
  - Search and rescue
  - Coast guarding
  
- National Commission for Oceanographic Studies
- National Ports Commission
- Fisheries Commission

Private Institutions

- Chamber of Commerce and Industry
- Coordinating Associations of Agriculture, Commerce, Industry and Finance (CACIF)
- Coffee Growers Association
- Banks
- Insurance Companies
- Shipping Companies

The institutions which would support the Committee are:

- The national and private universities

- The National Institute for Technology and Training  
(INTECAP)

#### Regional Organizations

- Central American Commission of Maritime Transport
- Central American Institute for Nutritional Research  
(INCAP)

### 6.5 Legislative and regulatory framework

The legislative and regulatory framework of the Committee should be such as to:

- determine which governmental and private bodies would be involved and also the extent of their representation;
- set down the committee's functional responsibilities;
- settle the committee's structure;
- establish the committee's hierarchy;
- set up the committee's autonomy;
- establish the norms which regulate the communication and coordination among the parties involved and also in which levels;
- establish the monetary resources, staff and means required for the proper functioning of the committee
- unify the legislation between land and maritime resources;
- unify the administrative bodies -land and maritime-;
- establish the real and effective control in the application of the existing regulations;
- set up the procedures for the arbitration and settlement of conflicts which may arise among the existing and potential users of the sea and its resources.

## 6.6 Structural Factors

In building up the National Committee for Maritime Affairs some measures should be taken into consideration so as to assure the efficient and effective performance of its work. The measures may be summarized as follows:

- to avoid competition and conflicts among the parties involved;
- to use the existing technical and staff capability being careful to avoid duplication or overlapping activities;
- to establish the appropriate linkage among the parties involved and the different sectors, so as to ensure adequate coordination and communication at all levels;
- to harmonize, well conceived projects and their integration into a national programme in accordance with the policy goals;
- to secure adequate staff and budgetary resources;
- to seek adequate financing for the projects and programmes;
- to compile reliable information data system on which policy choices can be made;
- to develop a real and firm national commitment;
- to give to the existing bodies i.e. the Maritime Transport Department and the National Ports Commission the appropriate support, such as its staff and budgetary resources, so that these bodies would be able to perform well within the committee;
- to establish the necessary provisions in order to secure the participation of the same person to deal with a specific topic, over a long period of time, to ensure continuity of the work

The Committee should be appointed to the Council of Ministers or at least at a high enough level to ensure direct communication with the policy-makers. The Committee should be a working organization which requires a permanent secretariat which would coordinate and carry out its the administrative functions.

In order to facilitate its work two specialized sub-committees, one for Maritime Traffic and Ports and an other for Territorial Waters and Exclusive Economic Zone should be appointed. Consequently each sub-committee would work on specified and related matters.

#### 6.7 Regional and International Cooperation

The National Committee for Maritime Affairs will need the support and cooperation of other national, regional and international institutions which deal with maritime or related matters in order to achieve its goals. The training of personnel in different fields and the adequate financing would be obtained through this cooperation, as well as technical assistance for development, research and implementation of projects.

Therefore, this Committee would need to establish the appropriate communication and look for technical and financial assistance.

## CHAPTER VII CONCLUSIONS

1. In Guatemala the institutional growth in the land sector has progressed faster than of the maritime sector. Thus, it has not encouraged and allowed the diversification and expansion of the maritime and related activities in the country. This unbalanced growth has meant that:
  - In Guatemala there is an absence of clear cut policies related to the maritime affairs, and the development of that sector is offered a very low priorities;
  - Low priority is also given to the development use of maritime resources as a whole;
  - Development of maritime activities has been executed on a project-by-project basis without appropriate coordination among the parties involved and also with inadequate effort made to integrate projects;
  - Coordination and communication among the different ministries and sectors involved is inadequate; resulting in fragmentation of efforts and resources, duplication of investments and overlapping of activities.
  
2. In the Guatemalan institutional organization, responsibility for maritime activities has been located at considerably low level in the bureaucratic hierarchy, with limited staff and budgetary resources which need an attention.
  
3. The policy making and planning activities are carried

out, based on scanty information. Consequently, programmes have been composed of individual projects which lack in their linkages and their impacts are not identified or analysed.

4. The legislative framework for maritime activities is not adequate, to cope with the complexity of such activities and it is not harmonized with the international maritime scene.
5. The lack of required motivation has resulted in lack of expertise in maritime fields, who are capable to assist in its growth.
6. The prime need is to bring awareness amongst those people involved in the maritime and its related activities, and to illustrate the advantages there are to be gained through its development.
7. Guidelines do not solve problems by themselves; it is their systematic applications by staff with appropriate knowledge and experience in ways that contribute to sound decision making that can be of value. Consequently, as prerequisite for maritime development it is necessary to build up a programme to acquire the know-how by nationals.
8. Much attention must be paid to the protection of the shippers interest. In order to strengthen the country's power of bargaining in the liner service conferences shippers must be collectively supported. It is also necessary that the government design their policies pertaining their future business prospects.

9. It is of paramount importance to make Guatemalan ports as operational efficient and cost effective as possible in order to attract the foreign shipping. The increase in the port -productivity- must be given a due importance in the future.
  
10. Lastly but nevertheless the least, the maritime policies without an adequate importance given to the protection and preservation of the national marine environment would be incomplete. That is an urgent need to create a regime, to ensure and monitoring the protection and preservation of the country's natural maritime resources from the sea-bed mining rights as well as to control the accidental or intentional oil pollution, affecting the invaluable natural resources.
  
11. It is hoped that this paper will serve not only as starting-point for the conscious development of the maritime activities in Guatemala, but also as a way of monitoring the extent to which those maritime activities have actually been developed.

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## **ANNEX I**

### **INTERNATIONAL ORGANIZATIONS RELATED TO MARITIME ACTIVITIES**

- Office of the Special Representative for the Law of the Sea Convention (LOS).
- Ocean Economics and Technology Office (UNOETB) of the Department of International Economic and Social Affairs (DIESA) U.N. Secretariat.
- Center on Transnational Corporations (UNCTC) U.N. Secretariat.
- Food and Agriculture Organization (FAO).
- World Wealth Organization (WWD).
- United Nations Development Programme (UNDP).
- United Nations Environment Programme (UNEP).
- Division of Marine Sciences (UNESCO).
- International Maritime Organization (IMO).
- International Hydrographic Organization (IHO).
- World Meteorological Organization (WMO).
- United Nations Conference on Trade and Development (UNCTAD).
- United Nations Industrial Development Organization (UNIDO).
- International Bank for Reconstruction and Development (IBRD).