

# A SYSTEMS APPROACH TO DOCUMENTARY MARITIME FRAUD

by

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Thesis submitted to the Council for National Academic Awards  
in partial fulfilment of the requirements for the degree of  
Doctor of Philosophy

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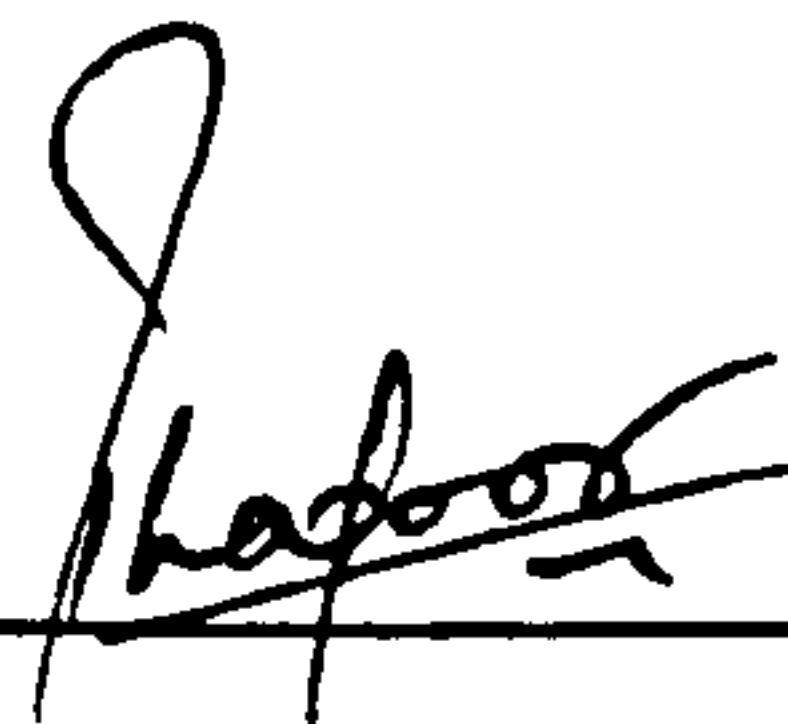
March 1987

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Signed

A handwritten signature in black ink, appearing to read 'Kapoor', written over a horizontal line.

Peter Kapoor

O what a tangled web we weave,  
When first we practice to deceive.

[Sir Walter Scott (1771-1832)]

## CONTENTS

	Page
List of Illustrations	iv
List of Tables	vi
List of Appendices	viii
Declaration	ix
Abstract	xii
Acknowledgements	xiii
Key to Abbreviations used	xvi
<b>CHAPTER 1 : INTRODUCTION</b>	<b>1</b>
<b>CHAPTER 2 : OVERVIEW OF MARITIME FRAUD</b>	<b>6</b>
2.1 : Historical Background	6
2.2 : Maritime Fraud	11
2.3 : Resurgence of Maritime Fraud	14
2.4 : The Nature of Maritime Fraud	16
2.5 : Types of Fraud	23
2.6 : Problems in Investigation & Prosecution	33
Chapter 2 Appendix	43
<b>CHAPTER 3 : SYSTEMS THEORY</b>	<b>44</b>
3.1 : Introduction	44
3.2 : Definitions of a System	46
3.3 : Classes of Systems	48
3.4 : Properties of a System	51
3.5 : Boundaries of a System	58
3.6 : Systems Modelling	61
3.7 : Systems Failures	69
3.8 : The Value of Soft Systems	74

## CONTENTS

	Page
<b>CHAPTER 4 : CONTRACT OF CARRIAGE, INSURANCE &amp; PAYMENT</b>	<b>76</b>
4.1 : International Trade as a System	76
4.2 : People Involved in Various Types of Contracts	79
4.3 : Contract of Carriage	83
4.4 : Contract of Insurance	112
4.5 : Contract of Payment	137
4.6 : Conceptual Model of the System of International Trade	172
Chapter 4 Appendix	176
<b>CHAPTER 5 : ANALYSIS OF FRAUD CASE DATABASE</b>	<b>180</b>
5.1 : Introduction	180
5.2 : Charter Party Fraud	181
5.3 : Deviation Fraud/Illegal Sale of Cargo	183
5.4 : Marine Insurance Fraud	188
5.5 : Documentary Maritime Fraud	192
5.6 : Analysis	197
5.7 : Conclusions	209
5.8 : Weak Links	211
5.9 : Recommendations to Combat Fraud/Commercial Crime	219
Chapter 5 Appendix	225
<b>CHAPTER 6 : RESEARCH METHODOLOGY</b>	<b>226</b>
6.1 : Introduction	226
6.2 : Enlarged Concept of a Model	227

## CONTENTS

	Page
6.3 : Group Techniques for Problem Solving	233
6.4 : The Delphi Technique	237
6.5 : Inquiring Systems	243
6.6 : Screening Criteria for the Questionnaires	248
6.7 : Questionnaire Design	250
6.8 : Selection of the Panel	253
<b>CHAPTER 7 : ANALYSIS OF THE FIRST QUESTIONNAIRE</b>	<b>257</b>
7.1 : Introduction	257
7.2 : Analysis of Section A	260
7.3 : Analysis of Sections B & C	272
<b>CHAPTER 8 : ANALYSIS OF THE SECOND QUESTIONNAIRE</b>	<b>295</b>
8.1 : Introduction	295
8.2 : Design of Second Questionnaire	295
8.3 : Analysis of Second Questionnaire	295
8.4 : Screening Criteria	298
8.5 : Analysis of Statements	308
<b>CHAPTER 9 : CONCLUSIONS &amp; RECOMMENDATIONS</b>	<b>357</b>
9.1 : Introduction	357
9.2 : Conclusions	357
9.3 : Recommendations	367
<b>REFERENCES :</b>	<b>375</b>

## LIST OF ILLUSTRATIONS

	Page
Figure 2.1 : Various Classifications of Maritime Fraud	18
Figure 2.2 : Classification of Maritime Fraud	20
Figure 2.3 : Known/Suspicious sinkings 1963 - 1983	30
Figure 3.1 : System Taxonomy	49
Figure 3.2 : Flow-block diagram showing movement of goods from Shipper to Receiver	52
Figure 3.3 : International Transport as a sub-system of of the Order Cycle System	54
Figure 3.4 : Conceptual Model of Documentary Fraud	71
Figure 4.1 : Simplified, Conceptual Model of the System of International Trade	78
Figure 4.2 : Personnel involved in various types of contracts	80
Figure 4.3 : Two Approaches to a Contract of Carriage	85
Figure 4.4 : Conceptual Model of the Contract of Carriage, evidenced by a B/L, and the process of shipment of goods	86
Figure 4.5 : Conceptual model of the process of entering into a Contract of Carriage governed by a Charter Party	87
Figure 4.6 : Conceptual Model of the Commercial Operation of a Charter Party	88
Figure 4.7 : Sequence of Events in the "Life of a B/L"	95
Figure 4.8 : Direct and Indirect Approaches to the Insurance Market	124

## ILLUSTRATIONS

	Page
Figure 4.9 : Conceptual Model of Placing Insurance of Goods	127
Figure 4.10: Conceptual Model of the Process of Issuing a Letter of Credit	143
Figure 4.11: Conceptual Model of the System of International Trade	174
Figure 5.1 : Conceptual Model of Charter Party Fraud : Charterer Defrauds the Shipowner	185
Figure 5.2 : Conceptual Model of Charter Party Fraud : Shipowner Defrauds the Charterer/Cargo Owner	186
Figure 5.3 : Conceptual Model of Deviation Fraud	187
Figure 5.4 : Conceptual Model of Documentary Fraud	198
Figure 5.5 : Conceptual Model of Documentary Fraud	199
Figure 5.6 : Analysis of 101 cases of Maritime Fraud	202
Figure 5.7 : Analysis of 72 cases of Maritime Frauds	203
Figure 5.8 : Weak Links within the System of International Trade	221
Figure 6.1 : Flow Diagram of the Delphi Technique	242
Figure 6.2 : The Inquiring System	244
Figure 7.1 : Flow Diagram Explaining the Analysis of the First Questionnaire	260
Figure 8.1 : Flow Diagram Explaining the Analysis of the Second Questionnaire	306
Figure 8.2 : Overview of the Analysis of the First and Second Questionnaires	307



## LIST OF TABLES

	Page
Table 2.1 : Cases handled by ICC-IMB from 1982 - 1984	16
Table 5.1 : Analysis of 93 Cases of Fraud	222
Table 5.2 : Analysis of 52 Cases of Non or Mis-delivery of Cargo	222
Table 5.3 : Analysis of 70 Cases of Known/Suspicious Sinkings	223
Table 5.4 : Annual Losses due to Maritime Fraud	224
Table 6.1 : Categories and Numbers of Participants	256
Table 7.1 : Categories and Number of Participants at the end of the First Round	282
Table 7.2 : Analysis of Questionnaire No.1 - Section A	283
Table 7.3 : Analysis of Opinions Expressed in Section A	285
Table 7.4 : Analysis of Questionnaire No.1 Sections B & C	287
Table 7.5 : Analysis of Opinions Expressed in Sections B & C	288
Table 7.6a : Analysis of Statement No. 39a	289
Table 7.6b : Analysis of Statement No. 39b	289
Table 7.6c : Analysis of Statement No. 39c	290
Table 7.6d : Analysis of Statement No. 39d	290
Table 7.6e : Analysis of Statement No. 39e	291
Table 7.6f : Analysis of Statement No. 39f	291
Table 7.6g : Analysis of Statement No. 39g	292
Table 7.7 : Analysis of Statement No. 40	292
Table 7.8 : Analysis of Statement No. 41	293
Table 7.9 : Analysis of Statement No. 42	293
Table 7.10 : Analysis of Statement No. 43	294

## TABLES

	Page
Table 8.1 : Categories and Number of Participants at the end of the Second Round	298
Table 8.2 : Analysis of Questionnaire No. 2	353
Table 8.3a : Explanation of the Importance Scale	299
Table 8.3b : Explanation of the Unanimity Scale	300
Table 8.3c : Calculation of the Agreement (n) for each Sub-statement	300
Table 8.3d : Explanation of the Agreement Scale	301
Table 8.3e : Explanation of the Certainty Scale	301
Table 8.3f : Calculation of the Delphi Index	302
Table 8.3g : Example of Screening Criteria	304
Table 8.4 : Analysis of Statement 1	308
Table 8.5 : Analysis of Statement 2	310
Table 8.6 : Analysis of Statement 3	312
Table 8.7 : Analysis of Statement 4	314
Table 8.8 : Analysis of Statement 5	316
Table 8.9 : Analysis of Statement 6	318
Table 8.10 : Analysis of Statement 7	320
Table 8.11 : Analysis of Statement 8	322
Table 8.12 : Analysis of Statement 9	324
Table 8.13 : Analysis of Statement 10	326
Table 8.14 : Analysis of Statement 11	328
Table 8.15 : Analysis of Statement 12	330
Table 8.16 : Analysis of Statement 13	332
Table 8.17 : Analysis of Statement 14	334
Table 8.18 : Analysis of Statement 15	336

## TABLES

	Page
Table 8.19 : Analysis of Statement 16	338
Table 8.20 : Analysis of Statement 17	341
Table 8.21 : Analysis of Statement 18	343
Table 8.22 : Analysis of Statement 19	345
Table 8.23 : Analysis of Statement 20	347
Table 8.24 : Analysis of Statement 21	349
Table 8.25 : Analysis of Statement 22	351

## LIST OF APPENDICES

	Page
Appendix 1 : Fraud Case Database	A 1
Appendix 2 : Letter of Invitation to the Experts	A 33
Appendix 3 : First Questionnaire and the letter accompanying it	A 34
Appendix 4 : Second Questionnaire and the letter accompanying it	A 57
Appendix 5 : The Author's Publications	A 82
Appendix 6 : Sample Fraudulent Documents	A106
Appendix 7 : Copy of an Electronic Bill of Lading in Plain Language and its Encrypted version	All6

## DECLARATION

I hereby declare that :

- A. While registered as a candidate for the Council for National Academic Awards (CNAA) degree of Doctor of Philosophy (Ph.D.) I have not been a registered candidate for another award of the CNAA or of a University during the research programme.
- B. The material contained in the thesis has not been used in any other submission for an academic award and is solely my work.
- C. During the course of the investigation, the following advanced studies have been undertaken in connection with the programme of research in partial fulfilment of the requirements of the degree of Ph.D. :
  - a. Attended selected lectures on the M.Sc. (International Shipping) programme at the Plymouth Polytechnic.
  - b. Attended a Short Course on Export Practice & Procedure at the Freight Transport Association's Training Centre.
  - c. Attended the "Paperwork or Profit" Workshop organised by the Simplification of International Trade Procedures Board (SITPRO).
  - d. Attended the Training Course on SPEX 2 - software for document production - at the distributor's training centre.

e. Attended the following conferences/lectures/seminars :

1. Seminar on "Maritime Commercial Malpractice", Cardiff, February 1981.
2. Conference on "Fraud & Evasion", London, April 1983.
3. Seminar on "Maritime Law Enforcement", London, November 1983.
4. First ICC - International Maritime Bureau Lecture, London, March 1984.
5. Conference on "Revised Uniform Customs & Practice for Documentary Credits", London, June 1984.
6. "International Commercial Crime Symposium", Cambridge, July 1984.
7. "The London International Conference on Maritime Fraud", London, April 1985.
8. Second ICC - International Maritime Bureau Lecture, London, June 1985.
9. Third ICC - International Maritime Bureau Lecture, London, March 1986.
10. Seminar on "Troubleshooting Letter of Credit", London, March 1986.
11. "The London International Conference on Modern Bills of Lading", London, November 1986.

f. Delivered the following lectures :

1. "Maritime Fraud & Documentary Credits"  
M.Sc. (International Shipping), D.M.S. (Shipping)  
Courses at the Plymouth Polytechnic, 1983 - 1986.

2. "Maritime Fraud & Piracy"

Meeting of the South West Branch of the Nautical Institute, Plymouth, January 1986.

3. "International Maritime Fraud"

International Trade, Contracts & Malpractices Course, at the S.G.S. Training Centre, Windsor, March & November 1986.

4. "International Maritime Fraud"

Galbraith Shipping Course, at the Ashridge Management College, Berkhamsted, July 1986.

D. Appendix 5 contains copies of the papers published by the author.

Signature of Candidate



Peter Kapoor

Date

2nd. March, 1987.

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## ABSTRACT

During the last decade documentary maritime fraud has caused considerable financial loss. The internationality of the crime and the difficulties experienced in the investigation and prosecution of offenders has caused serious concern both nationally and internationally.

The aim of this research was to examine the system of international trade in terms of flow between institutions, and to develop a model of the system to identify areas of system failures in terms of actual or potential frauds.

A database consisting of 101 fraud cases was compiled. Detailed examination of the cases identified features common to different classes of fraud. Systems approach was used to investigate the system with particular reference to Bills of Lading and method of payment under documentary credits. Conceptual models of the three main contractual sub-systems i.e. carriage, insurance and payment, and of the total system were developed. The latter was used in conjunction with the database to pin-point the weak links both within the system and its immediate environment.

Using a multi-disciplinary international Panel of Experts the Delphi technique, appropriately modified, was employed to test the hypothesised weak links, determine feasibility of implementing the recommendations and seek information to assist in introducing measures to combat fraud.

The analysis supports the hypothesised weak links identified in the environment and recommendations to strengthen them. Factors creating an environment for fraud are identified, along with reasons for not reporting the crime. Information required to combat fraud is identified. Prior to payment under documentary credits banks should carry out factual checks. The Bill of Lading is not a weak link but the people handling the document are unaware of its importance.

Establishment of a Commercial Crime Research Unit specialising in international trade is recommended, as is the development of an educational programme to increase commercial awareness.

## ACKNOWLEDGEMENTS

I would like to express my gratitude to all the people, from various sectors of the international trade, who have found time in their very busy schedules to answer questions and give me an insight into the working practices of their respective fields of expertise. Whilst it is not possible to mention the names of all the individuals some deserve a special mention for their continuous support over the five and a half years of this research programme.

I am very grateful to Mr. J. Abhyankar, Assistant Director, ICC-International Maritime Bureau, for sparking my interest in the topic. I am deeply indebted to Mr. E. Ellen, Director, ICC-International Maritime Bureau, and all the members of his staff for putting up with my continuous interruptions : without their help this research programme would not have been possible.

I am also indebted to the United Nations Conference on Trade & Development for giving me access to all their publications.

I owe my deepest thanks to the 39 members of the Panel of Experts from all sectors of international trade, who found time to participate in this in-depth study by answering the questionnaires. Unfortunately they must remain anonymous.

I am grateful to my supervisors, Professor G.J. Davies, and



Captain C.A. Rich for their support. I am especially indebted to my Director of Studies, Dr. R. Gray, for keeping me on course and for his continuous encouragement throughout the research programme.

I am indebted to the following for all the help and advice they have given me :

Mr. C. Freebury, Director, Documentation & Commercial Procedure, SITPRO, London.

Mr. C. J. Parker, Secretary, The Nautical Institute, London.

Mr. J. W. Richardson, Marine Risk Analyst, Overseas Container Line, London.

Mr. B. S. Wheble, Chairman, ICC Commission on Banking Technique and Practice, Paris.

Mr. J. S. Wilson, Head - Security & Investigation Services, London.

The Baltic & International Maritime Council, Copenhagen.

The Company Fraud Department, Metropolitan & City Police, New Scotland Yard, London.

Lloyd's Shipping & Information Services, Colchester.

National Westminster Bank, International Banking Division, Bristol.

The Salvage Association, London.

In addition, I would like to thank the following :

ICC-International Maritime Bureau for their kind permission to include some of the cases investigated by them, and also for copies of fraudulent documents which they supplied.

Baltic & International Maritime Council, Denmark, for their kind permission to include copies of fraudulent documents published in the BIMCO Bulletin.

Legal Studies & Services Ltd, Oyez - International Business Communications, London, for their kind permission to include copies of fraudulent documents presented at the "Lost at Sea" conference in February 1982.

And last but not least, I am deeply indebted to my companion and friend Hilary, for her continued support through the period of this research programme.

Peter Kapoor

## KEY TO ABBREVIATIONS USED

ACL	Atlantic Container Line
B/E	Bill of Exchange
BIBA	British Insurance Broker's Association
BIMCO	Baltic and International Maritime Council
B/L	Bill(s) of Lading
C.A.P.	Common Agricultural Policy
CCCU	Commonwealth Commercial Crime Unit
c & f	Cost and freight
c.i.f.	Cost, insurance and freight
CISBA	Chartered and International Shipbrokers' and Agents' P & I Club.
Co.	Company
C/P	Charter Party
C/R	Charterer
CRF	Clean Report of Findings
D/A	Documents against acceptance
DFR	Data Freight Receipt
D.I.	Delphi Index
DISH	Data Interchange for Shipping
D/P	Documents against payment
DPP	Director of Public Prosecutions
EBL	Electronic Bill of Lading
ECE	Economic Commission for Europe
EDI	Electronic Data Interchange
EEC	European Economic Community
FALPRO	Facilitation of International Trade Procedures

FERIT	Far East Regional Investigation Team
filo	Free-in-liner-out
f.o.b.	Free on board
FONASBA	Federation of National Associations of Shipbrokers and Agents
GIC	General Insurance Corporation of India
ICC	International Chamber of Commerce Institute Cargo Clauses (Marine Insurance)
IGG	Ad hoc Intergovernmental Group
IMB	International Maritime Bureau
IMO	International Maritime Organisation
INTERTANKO	International Association of Independent Tanker Owners
J.	Justice
L.C.	Lord Chancellor
L/C	Documentary Letters of Credit
L.J.	Lord Justice
L.JJ.	Lord Justices
M.C.A.	Monetary Compensatory Amounts
MFPE	Maritime Fraud Prevention Exchange
M.I.A.	Marine Insurance Act
M.R.	Master of the Rolls
M.V.	Motor Vessel
P & I	Protection and Indemnity
S.G.	Ship and Goods
SIS	Security Investigation Services
SITPRO	Simplification of International Trade Procedures Board

S/O	Shipowner
TIM	Transport Intermediaries Mutual (P & I Club for Ships' Agents)
UCP	Uniform Customs and Practice for Documentary Credit
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe

### Law Report Abbreviations

A.C.	Appeal Cases
All ER	All England Reports
All E.R.	All England Reports
AIR (Madras)	All India Reporter Madras Series
A.L.R.	American Law Reports
A.M.C.	American Maritime Cases
App. Cas.	Appellate Cases
App. Div.	Appellate Division New York Supreme Court Reports
B. & S.	Best and Smith Reports
Burr.	Burrow's Reports
C.A.	Court of Appeal
Cir.	Circuit
Com. Cas.	Commercial Cases
Cl. & Fin.	Clark & Finnelly Reports
F	Federal Reports
F.Supp.	Federal Supplement
F.2d	Federal Reports Second Supplement

H. & C.	Hurlstone & Cottman Reports
H.L.	House of Lords
Ir.R.Eq.	Irish Reporter Equity Series
K.B.	King's Bench
Ll.L.Rep.	Lloyd's Law Reports
Lloyd's Rep.	Lloyd's Law Reports
L.R.	Law Reports
L.T.	Law Times Reports
Mass.	Massachusetts Supreme Judicial Court Reports
N.E.	North Eastern Reporter (U.S.A.)
New Rep.	New Reports
N.Y.	New York Court of Appeals Reports
N.Y.S.	New York Supplement
N.Y.S. 2d.	New York Second Supplement
Pa.	Pennsylvania Supreme Court Reports
P.D.	Law Reports, Probate, Divorce and Admiralty Division
Q.B.	Queen's Bench
Q.B.D.	Queen's Bench Division
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen (Ger.) [Reports of Decisions of the Reich Supreme Court in Civil Cases 1880 - 1945]
S.D.N.Y.	Southern District of New York
S.J.	Solicitors' Journal and Reporter
W.L.R.	Weekly Law Reports
W.N.	Weekly Notices

The numbers in brackets thus {1} refer to details of legal citations and foot notes, which are placed at the end of a chapter in a chapter appendix.

In chapter 4 there are three major sections. Separate numbering is used for each of the three sections, i.e. contracts of Carriage, Insurance and Payment.

## CHAPTER 1 - INTRODUCTION

From time immemorial society has been plagued by fraud and the shipping industry is no exception : fraud has always been known to exist in shipping. In the past, it was generally the underwriter who was the target of fraud, the intent being the collection of insurance on ship and cargo. In some cases the ship was scuttled; in others insurance was effected after the ship was lost. In more recent frauds, however, the victim can be anyone connected with the transaction but usually the importer and particularly the State trading organisations of developing countries. The banks and underwriters are, in general, indirectly involved.

During the last decade maritime fraud has been given considerable publicity at both national and international level by the media. To indicate the scale of losses due to maritime fraud various figures have been quoted, ranging in values in excess of \$ 200 million per annum in the middle-to-late 1970's to about \$ 13 billion per annum in 1985 [Sundaresan (1985)]. Kapoor (1986a) estimates the minimum loss due to maritime fraud to be in excess of \$ 31 billion per annum.

Maritime fraud has, therefore, caused serious concern at both national and international levels, resulting in a series of international conferences and seminars, and the formation of the



International Chamber of Commerce's (ICC) International Maritime Bureau (IMB).

The relative ease with which such frauds can be perpetrated and the difficulties faced by the investigators and prosecutors, highlight the weaknesses of the international trading system [Kapoor (1986b)]. There have been several calls for changes/improvements in existing practices and recognition of the need for systematic examination of international trade procedures and documentation [Kerr, J. (1979), Kihlbom (1981), Schultsz & Thomas (1983)].

This research project is an attempt to answer such calls and investigate international trade from a systems point of view. The aim of the research project is to examine the system of international trade in terms of flows between institutions and to develop a model of the system. This model is used to identify the weak links which lead to the failure of the system - defined as actual or potential fraud.

This project is important for the following reasons :

- a) it examines the system of international trade as a whole, which previously has not been attempted,
- b) it considers the problems of implementation of the

recommendations as part of the study,

- c) it introduces the use of the Delphi technique into the area of international trade to consider policy issues,
- d) it considers the use of information technology to combat fraud, and
- e) the particular combination of experts it uses should provide one of the most comprehensive analyses of maritime fraud to date.

Whilst this research is concerned with Documentary Maritime Fraud, other types of frauds have been investigated for the reasons given in chapter 2 which examines the historical background to determine the factors which could have contributed to the resurgence of maritime fraud; the problems faced by the investigators and prosecutors are also examined. The chapter is based on a Working Paper of the Department of Shipping & Transport, entitled "Maritime Fraud : An Overview" [Kapoor & Gray (1985)], published by the Plymouth Polytechnic.

Chapter 3 reviews the systems theory with particular reference to soft systems and defines fraud as a failure of the system of international trade. It emphasizes the need for a systems approach to determine the causes leading to the failure of the system, and also identifies the problems of examining the elements of the system in isolation.

Chapter 4 examines in detail the three major sub-systems of the system of international trade, namely carriage, insurance and payment. Conceptual models of the sub-systems are developed to show the flow of information, documents, goods and money in order to focus attention on areas which can be seen as potential weak links, leading to the development of the conceptual model of the total system.

Chapter 5 analyses the fraud case database in order to identify the weak links both within the system of international trade and its immediate environment. The section on analysis is based on a paper, entitled "Analysis of Losses due to Maritime Fraud" [Kapoor (1986a)], published in the BIMCO Bulletin (see Appendix 5).

Chapter 6 discusses the research methodology to be utilised for the purpose of testing the hypothesis that the weak links identified contribute to and facilitate the occurrence of actual or potential fraud. An empirical approach of data-gathering is used because of the dearth of information and the constraints imposed on researchers investigating commercial and criminal activities. Whilst it is still in its infancy the Delphi technique was selected as the most appropriate method to study the problem of maritime fraud because of :

- the complexity of the problem,
- the international nature of the crime,

- the complex socio-political and economic aspects, and
- the involvement of several disciplines.

Furthermore, as anonymity of the experts is guaranteed by this approach they do not feel inhibited and this may produce new and creative ideas.

Chapters 7 and 8 contain the details of the analysis carried out on the empirical data. In order to obtain the data a multi-disciplinary international panel of forty experts was set up to answer two Delphi questionnaires. The most important benefit of using a multi-disciplinary panel in the Delphi technique is a comprehensive coverage of a complex issue even though each respondent contributes a small part of the overall picture [Ludlow (1971)].

Chapter 9 draws conclusions from the research findings and makes recommendations based on them. In addition it recommends areas for further research.

	Page
<b>CHAPTER 2 : OVERVIEW OF MARITIME FRAUD</b>	<b>6</b>
2.1 : Historical Background	6
2.1.1 : Revolutionary Changes in Shipping	6
2.1.2 : Specialisation/Surplus Capacity in Shipping	7
2.1.3 : International Trade Documentation	9
2.2 : Maritime Fraud	11
2.3 : Resurgence of Maritime Fraud	14
2.4 : The Nature of Maritime Fraud	16
2.4.1 : Definition	16
2.4.2 : Classification	17
2.4.3 : Elements of Fraud	22
2.4.4 : Proof of Fraud	22
2.5 : Types of Fraud	23
2.5.1 : Charter Party Fraud	23
2.5.2 : Deviation Fraud/Illegal Sale of Cargo	24
2.5.3 : Tariff Manipulation & Cube-cutting	26
2.5.4 : Marine Insurance Fraud	28
2.5.4.1 : Scuttling	28
2.5.5 : Documentary Maritime Fraud	29
2.5.6 : Miscellaneous Frauds	31
2.5.6.1 : Arson	31
2.5.6.2 : Theft of Oil by Deception	31
2.6 : Problems in Investigation & Prosecution	33
Chapter 2 Appendix	43

## CHAPTER 2 - OVERVIEW OF MARITIME FRAUD

### 2.1 HISTORICAL BACKGROUND

#### 2.1.1 Revolutionary Changes in Shipping

From about the middle of the 19th. century to the beginning of the 20th. century all ships were general purpose cargo carriers which could be employed on any trade. The shipowners were not faced with any problems of obsolescence. The introduction of steamships led to the first signs of specialisation in shipping, giving rise to liners and tramps. There was little change during the early part of the 20th. century but from about 1955 changes in shipping have revolutionised the industry. Examples of major changes affecting the industry are :

- freer availability of credit for the purchase of ships
- introduction of specialised, capital intensive ships
- faster turn-around times
- changing role of the shipowner  
shipowner → ship operator → multimodal transport operator
- instantaneous communications
- simplification of documentation, and
- widespread use of computers.

As a result, the industry which for nearly 300 years had been developing on evolutionary changes based on custom and commercial practice has been totally overhauled in less than

thirty years.

In the past it was possible to make long-term plans with reasonable accuracy but, nowadays, it is becoming increasingly difficult to manage any activity orientated towards the future. The industry is now concerned with two dimensions of uncertainty - that of the innovation itself, leading to technological obsolescence, and that of the political and economic environment into which that innovation will be launched at some future date. This indicates that any study into international trade should take an overall view, i.e. a systems approach is called for.

### 2.1.2 Specialisation/Surplus Capacity in Shipping

Unforseeable political and economic crises have resulted in market depressions, which, as in the present prolonged situation, have affected not only shipping but every aspect of life. This has provided a spur to technological advance and the development of :

a) very large specialised ships [such as Ultra Large Crude Carriers, Ore-Oil Carriers, Ore-Bulk-Oil Carriers, etc.] which were introduced to take advantage of the economies of scale due to :

- a vast increase in the tonnage and distance of the raw

materials moved by sea, and

- steady increase in the size of bulk parcels;

b) advanced cargo handling systems to reduce the turn-around time in order to minimise increasing port costs, and this resulted in the introduction of pallet, roll-on roll-off, container and barge carrying vessels.

The pattern of shipping's increasing specialisation resulted in the shipping industry becoming highly capital-intensive and thus very vulnerable to changes in the politico-economic environment. In spite of this it would appear that shipowners forget that "booms" in shipping are of limited duration and also fail to take into consideration the time lag between placing new-building orders and the delivery of ships. Witness the large investment in new-buildings in the latter part of the seventies and the subsequent massive surplus of tonnage, the effects of which are likely to be felt to the end of this decade and beyond.

The ready availability of credit has made it possible for the volume of orders placed to get totally out of line with shipping requirements [MTR (1977)]. This surplus capacity is reflected in the number of ships which are laid-up and/or slow steaming. This seems to indicate that orders placed were not based upon a sound and realistic evaluation of the demand for shipping services but



upon purely speculative motives.

### 2.1.3 International Trade Documentation

In the past, trade was conducted on trust and contracts were entered into by word of mouth - as can be seen by the motto of the Baltic, Our Word is Our Bond - with very little, or no documentation in some cases. Nowadays paper abounds in international trade. Different documents, sometimes in different formats, can be required for different types of cargo, different modes of transport, different carriers and different markets [SITPRO (1981)].

However, the inherently conservative shipping industry was reluctant to undertake the examination and revision of long-established procedures made necessary by the dramatic changes outlined above (see section 2.1.1). Documentation could not keep pace with faster turn-around times of vessels and the result was delays at ports in discharging vessels, in clearing goods through customs and thus in moving goods to their final destinations. These delays lead to :

- a) delay in obtaining payment,
- b) increased costs for demurrage or surcharges, increased interest charges, increased port charges, etc.,
- c) loss of customer or even an export market,
- d) loss of revenue for the shipowner if the vessel is placed

"off-hire", and

e) possible introduction of the commercial malpractice of delivering cargo without bills of lading (B/L) with the attendant problems which accrue therefrom.

In June 1970 the Simplification of International Trade Procedures Board (SITPRO) was set up in the United Kingdom (UK) to simplify international trade procedures. An UNCTAD "Advisory Services on Trade Facilitation" pamphlet says :

When it takes

- 360 pieces of paper to get a consignment to its destination
- 54 signatures for export clearance
- 6 weeks to obtain an import licence
- 8 hours to type the forms for one consignment
- 3 weeks for commercial documents to arrive
- 21 days on average for the Customs clearance of containers
- U.S.\$ 375 average cost for paperwork per export consignment
- etc., etc.

then there is an urgent need for remedial action.

SITPRO's findings indicate that improving the efficiency in the shipping office is a management imperative and that, in particular, the preparation of international trade documents receives little attention from senior management [SITPRO (1981)]. In fact, on average 50% of all documents presented

under documentary credits are rejected on first presentation [SITPRO (1985)].

It can be argued that the two major problems facing the industry are: that it is loathe to change established practices and, its continued reliance, in this day and age, on paper documents - in particular the B/L. This point was highlighted by Connell & Sutherland (1978) :

The Chinese affair had left Savundra convinced on one thing - that the vulnerability of the European world of high finance lay in the participants' implicit trust in pieces of paper. Provided things looked right, the most preposterous fraud could long go undetected. (Emphasis supplied)

This has been proved to be so time and again, particularly during the last decade, with alarming regularity.

## 2.2 MARITIME FRAUD

Fraud has always been known to exist in shipping. For example, in his diary Pepys (1663) relates the story of a master who borrowed money to twice the value of his ship upon a bottomry bond and insured the ship and goods for twice their value. The vessel was then "cast away" off the coast of France. When the ship was recovered it was found that the cargo was not butter but barrels of tallow with a layer of butter on top. The crew was paid by the master to swear in court that the weather was

very stormy and that they did everything to save the vessel.

From time to time a variety of measures have been introduced in an attempt to contain and/or combat fraud : for example, the introduction of a number of statutes, committees and organisations. The following were the major developments :

- a) Gambling policies on ships and cargoes offered such obvious temptation to fraud that they were taken in hand by the legislature : and as early as 1747 an Act was passed prohibiting insurances on ships and goods by persons having no insurable interest in the ship [Wright & Fayle (1928)].
- b) In 1856 the Salvage Association was formed to deal with marine casualties and losses on behalf of the underwriters and to investigate suspicious or "doubtful" losses and marine frauds.
- c) Gambling Policies Act, 1909 made it an offence to effect insurance without having direct or indirect interest in the safe arrival of the ship. This was introduced to curb the outbreaks of fraud and criminal conspiracy in the course of which vessels were deliberately sunk to claim insurance.
- d) In the American cotton trade the fraudulent conspiracies between cotton dealers and railway agents who issued bills of lading for cargo never received led to the Liverpool Cotton

Bill of Lading Conference in 1907. As a result, a committee was established to lay down rules for the issue of a negotiable B/L, leading to agreements in 1911 with the American Railway Companies and with shipowners, regulating the issue of B/L in the cotton trade. The agreements were followed by the State Uniform Bills of Lading and the Federal Bills of Lading Acts in 1916 [Schultsz & Thomas (1983)].

e) The Far East Regional Investigation Team (FERIT) was set up in 1979 to investigate the apparent pattern to some if not all of the losses in the Far East i.e. small old vessels carrying high value cargoes and sinking in deep water in good weather without apparent loss of life.

f) Series of seminars/conferences on fraud prevention.

g) The Commonwealth Commercial Crime Unit (OCCU) was formed in 1981 with terms of reference which include the facilitation and conduct of international investigations into commercial crime and related matters and the development of strategic and tactical criminal intelligence; the conduct of special studies; the dissemination of information concerning modus operandi and other matters to Governments; liason with other national and international agencies and the development of training [Rider (1984)].

h) The IMB was formed in 1981 with the objective of receiving, collating and disseminating information relating to

fraudulent and other suspect practices; also to advise, and to conduct investigations on behalf of members involved in transactions which they suspect may be suspicious.

- i) Establishment of an Ad hoc Intergovernmental Group (hereinafter referred to as IGG) by the UNCTAD Secretariat in 1982 to consider means of combating all aspects of maritime fraud, including piracy. The author considers this method of problem-solving has weaknesses. These weaknesses will be discussed in chapter 6.

### 2.3 RESURGENCE OF MARITIME FRAUD

The general unexpectedness of the crisis leading to the present recession left the world with a massive surplus of tonnage and was further accentuated by the re-opening of the Suez Canal in 1977. The oil rich States, such as some of the States in the Arabian Gulf and Nigeria, finding themselves in a buyer's market, continued to import cargo at very competitive rates. This sudden increase in trade, in conjunction with poor port infrastructure, led to port congestion and delays of up to, or exceeding, 180 days were not unusual. Port congestion poses a number of economic and practical problems to an owner whose vessel is delayed. The economic problems being :

- a) Delays are extremely costly and have the power to tip the profit to loss balance.

b) The ship is not earning revenue - yet the shipowner has expenditures in the form of all fixed costs as well as the less tangible "opportunity cost".

When faced with the above-mentioned problems, the owners of tramp ships were the hardest hit. They were usually of "singleton ownership" and probably little experience, therefore, in a desperate attempt to keep their vessels operational, they had entered into contracts at break-even or uneconomic rate. They soon found their vessels were losing money as the delays at discharging ports continued to increase.

In order to free their vessels for further trading, the cargoes were discharged at the nearest/intermediate ports. What probably started as a desperate but innocent attempt by the owner/charterer to avoid bankruptcy gradually developed into a way of making untold profits at very little or no risk for the unscrupulous operators. The scale of the problem has been illustrated by Ellen (1979a) when he said that "never a week goes by without at least one and sometimes up to three different cases being notified to me". The numbers of cases handled by the IMB from 1982 - 1984 are shown in table 2.1.

Table 2.1 : Cases handled by ICC-IMB from 1982 - 1984

Nature of case	1982	1983	1984
Documentary Frauds	21	19	15
Charter Party Frauds/Disputes	19	16	13
Scuttling	4	6	2
Deviation/Illegal Sale of Cargo	9	6	15
Insurance Frauds	-	26	23
Voyage/Container Monitoring	-	15	6
Negotiation	-	3	2
Others	25	14	33
<b>Totals</b>	<b>78</b>	<b>105</b>	<b>109</b>

Source : ICC - International Maritime Bureau.

## 2.4 THE NATURE OF MARITIME FRAUD

### 2.4.1 Definition

Courts are of the opinion that once fraud is defined strictly their jurisdiction would be cramped and perpetually eluded by new schemes which the fertility of man's invention could contrive [Kapoor (1983)]. However, to combat fraud one must get a better understanding of it; both Ellen (1979b) and Kapoor (1983) agree that it is virtually impossible to prevent something that has not first been defined [Hill (1983)].

Maritime fraud has been defined by various people in a number of ways. Kapoor (1983) has looked at the definition of fraud in great detail, and in his proposed definition of maritime fraud



points out :

Maritime fraud is a generic term commonly used to describe the obtaining of money, or property in the goods, or a pecuniary advantage by one or more parties to the detriment, loss or injury of the other party or parties, by any one of the following means ...

Kapoor goes on to list 21 different ways in which maritime fraud could be committed [see Appendix 5]. He has justified the inclusion of "pilferage by stevedores" and "theft" by pointing out that :

By common usage within the industry, and in the media, it (i.e. maritime fraud) sometimes includes certain acts and offences which are, strictly speaking, not fraudulent according to the definition of "fraud" in general.

Kapoor (1985b) has since amended and simplified his definition of maritime fraud to :

Maritime fraud is a generic term commonly used to describe the obtaining of money, or services, or property in the goods, or a pecuniary advantage by one or more parties to a transaction from the other party or parties, by unjust or illegal means.

#### **2.4.2 Classification**

Classification of maritime frauds is necessary to facilitate their exposition and thus assist in the detection process. Maritime frauds can be classified in a number of ways, see figure 2.1 , and those classifications are descriptive with a

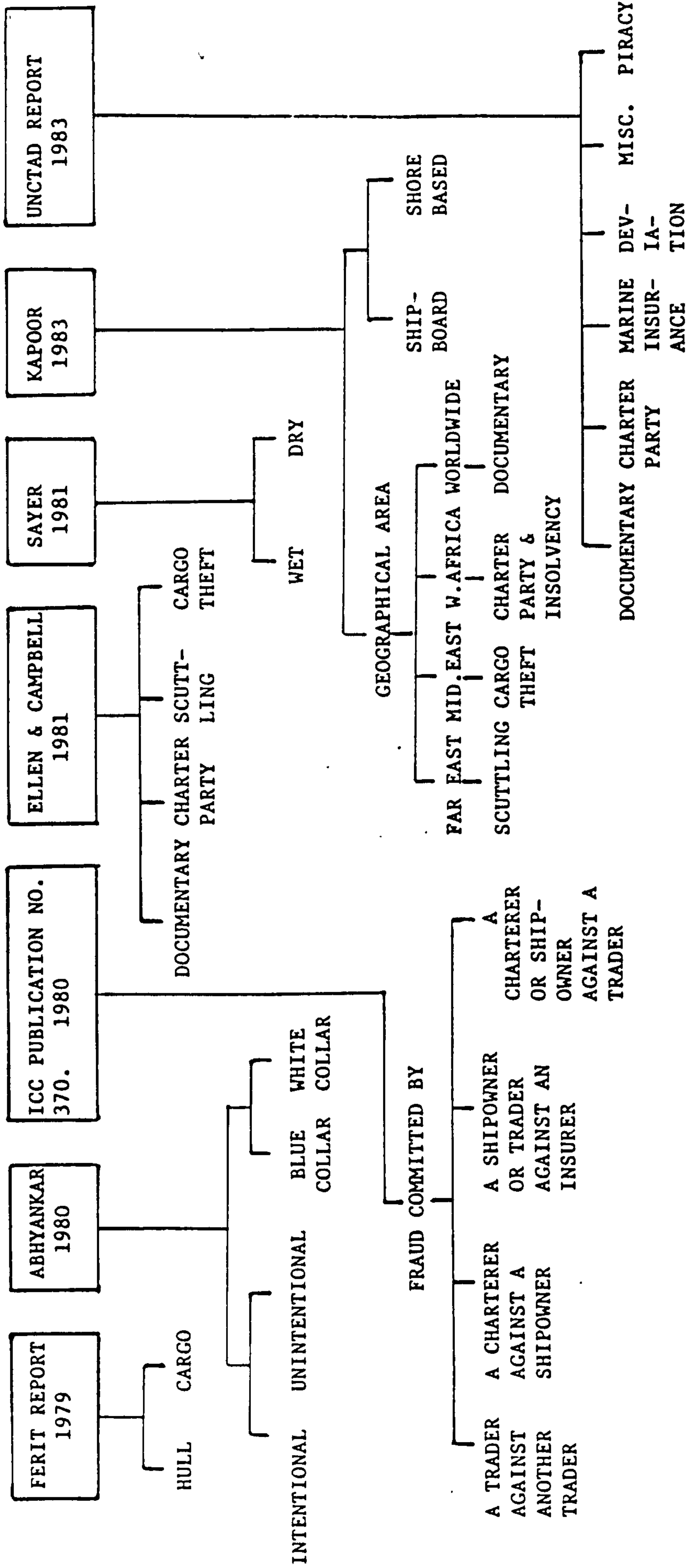


Figure 2.1 - Various Classifications of Maritime Fraud

considerable amount of overlap amongst the various classes. Maritime fraud has been classified by various people according to their requirements, for example, the FERIT Report (1979) used its classification (see figure 2.1) because it was commissioned by the insurance market and as far as the underwriters are concerned the two classes of "hull" and "cargo" would be satisfactory.

Kapoor (1983) points out that it would be possible to classify maritime fraud according to geographical areas to indicate which type of fraud was most commonly perpetrated in those regions. He goes on to say that maritime fraud can be broken down into two broad classes and that this method of classification would highlight the importance of documentary maritime fraud, see figure 2.2.

The importance of documentary fraud cannot be over-emphasised as the success of most other types of frauds depends upon the fraudster's success in deceiving the victim by the use of false/fraudulent documents to induce payment, or part with the property in the goods, or to enter into a contract, or in the case of a public official to induce the incumbent to act contrary to his duty.

Ellen (1983) points out that it is necessary to differentiate

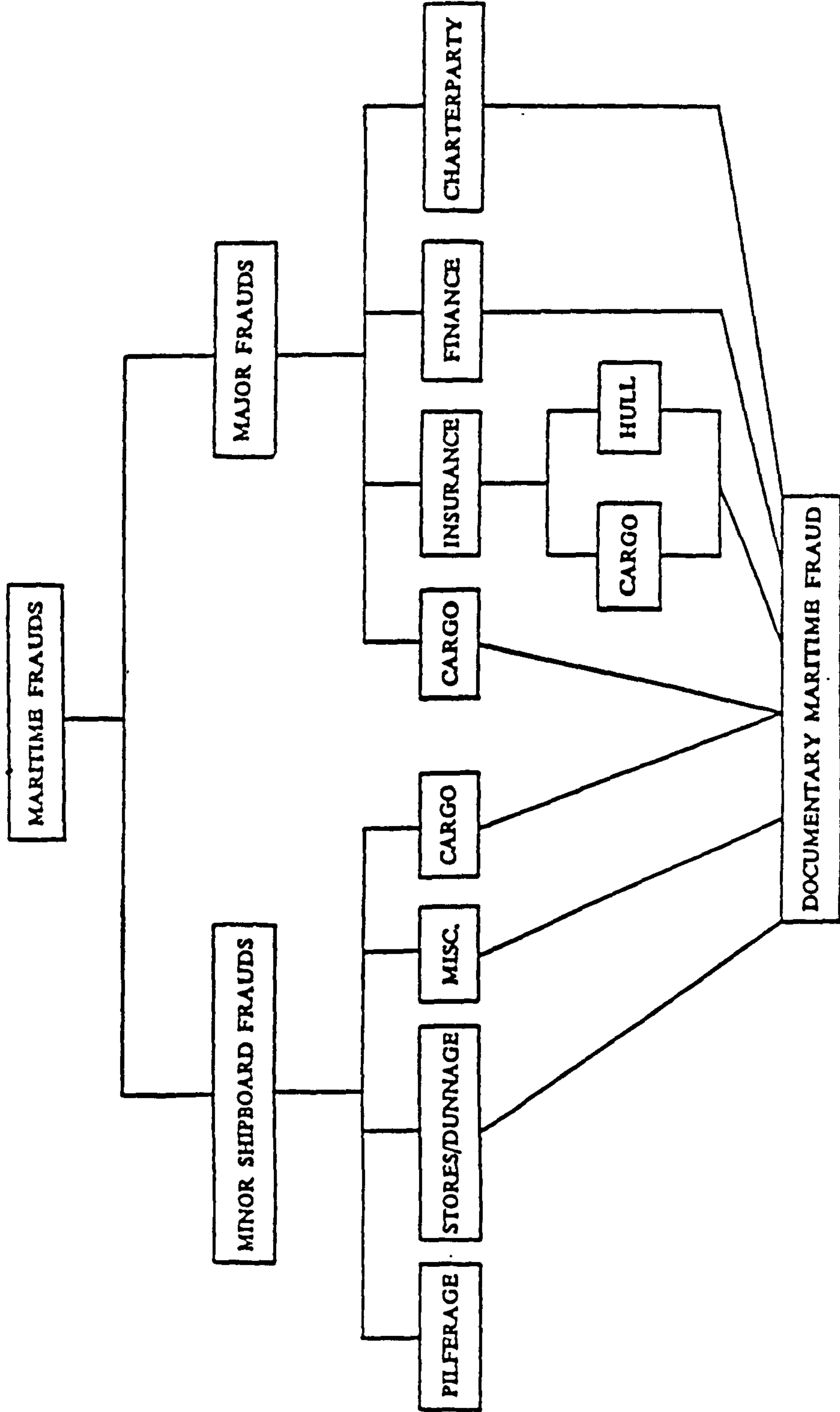


Figure 2.2 - Classification of Maritime Fraud

Source : Kapoor (1983)

between fraud, misrepresentation and malpractice, for their causes and remedies differ. He goes on to say :

Although one cannot endorse these misrepresentations or malpractices, on certain routes these have become acceptable customs of the trade. In the present recession, if the owner does not please the shippers by issuing back dated bills, the business is likely to be lost. Container traffic to West Africa invariably involves misrepresentation of goods. Carriers not complying with this practice will simply lose their market share. ... It is safe to assume that the above misrepresentations and malpractices are largely accepted by the shipping industry.

It is submitted that as fraud is a species of misrepresentation, and a fraudulent misrepresentation is a fraud [Hacking (1980)], there is no need to distinguish between them. Furthermore, if the malpractice is such that it is intended to deceive a third party to his detriment, then it should be treated as fraud.

Whilst it is appreciated that in the current recession the carriers might find themselves losing business or their market share, these malpractices and misrepresentations have acquired the status of being acceptable as customs of the trade and must have been in vogue prior to the recession. Therefore, it is submitted that in the past, in the shipping industry fraud was being committed for commercial expediency, but in this recession, fraud is being committed for survival.

### 2.4.3 Elements of Fraud

From the previous section it can be seen that in order to determine what constitutes fraud one must know the elements of fraud. Kapoor (1983) has identified three elements of fraud, namely :

- a) loss or injury to, prejudice or deprivation of property or proprietary rights,
- b) loss suffered due to deceit, fraudulent misrepresentation, concealment, or an act of deliberate dishonesty, and
- c) the injured party must have acted on the deception.

### 2.4.4 Proof of Fraud

Article 1116 of the Code Civil (1974) lays down that fraud can be a ground for avoiding a contract and states that fraud is not presumed, it has to be proved. In *Derry and Others v Peek* {1}, delivering the judgement of the court, Lord Herschell said that to sustain an action of deceit, there must be proof of fraud and went on to say :

- Fraud is proved when it is shown that a false representation has been made :
- a) knowingly, or
  - b) without belief in its truth, or
  - c) recklessly, careless whether it be true or false.

A similar view is held in the American Courts, where Justice Chimera {2} citing Arthur v Griswold {3} and Lowendahl v Baltimore & Ohio R.R. {4} said :

Fraud may not be presumed. It may not be based merely on suspicion, conjecture or doubtful inference. It must be established by clear convincing proof of each and every element prescribed by law; representations, falsity, scienter, reliance and damage.

Citing Ochenkowski v Dunaj {5} Justice Chimera {6} said that "where evidence is equally as consistent with innocence as with wrong doing, the innocent construction must be adopted".

## 2.5 TYPES OF FRAUD

### 2.5.1 Charter Party Fraud

A charter party (C/P) fraud may be described as the obtaining of money :

- a) By the charterer from the shipowner by the non-payment of charter hire and the collection of freight belonging to the shipowner, by the issue of "freight prepaid" B/L instead of "freight collect" B/L, or
- b) By the shipowner from the cargo owner or charterer, in the form of extortionate additional freight by deception.

The importance of documentary fraud is further highlighted by point (a) above. The variations to the above themes include a sub-charterer defrauding the time charterer, shipowner and cargo interests [UNCTAD (1983)].

There is a very thin line between what is failure of a C/P and what is fraud. Failure of a C/P can be due to frustration of the contract caused by insolvency, which in turn can be due to unforeseen factors such as excessive delays in port caused by congestion. Fraud, on the other hand, is a deliberate default on the part of one of the parties to the contract [Abhyankar (1985)]. Some of the so-called insolvencies may be deliberate.

#### **2.5.2 Deviation Fraud/Illegal Sale of Cargo**

It was pointed out in section 2.3 that this type of criminal activity started as an innocent attempt by a desperate shipowner to avoid bankruptcy but later developed into a premeditated crime. However, there have been a number of cases where the shipowners have resorted to illegal deviation when they have found themselves in financial difficulties due to one of the following causes :

- a) Frustration of the Charter Party due to unpaid hire, or demurrage or deadfreight.



For example, a vessel loaded cargo in Spain for Saudi Arabia. The Spanish agent, who was also the charterer, received freight from the shippers. The vessel then proceeded to Italy on the charterer's advice and loaded 400 tonne of wire netting. The shipowner, who was owed a significant amount of demurrage and dead-freight under the charter-party, received no freight. When the owner did not receive any money after repeated appeals, he ordered the ship to Famagusta, in Turkish Cyprus, and discharged the cargo under court order to exercise his maritime lien under the charter party. In this case the innocent party, i.e. the Spanish shipper suffered.

b) Finding out after sailing that unexpected/excessive delays were likely at the discharging port.

For example, a vessel loaded steel in Bulgaria for Bandar Abbas under free-in-liner-out (filo) terms, i.e. the shipowner is responsible for the expenses at the discharging port. After sailing, the shipowner learned that the vessel could be delayed at Bandar Abbas for over four weeks, and that there were no facilities for bunkers, fresh water or provisions. The delay would almost certainly wipe out his profits. This prompted him to divert the vessel to Sharjah and the cargo owners had to incur the additional cost of warehousing and on-shipment to Bandar Abbas.

In addition, there are several cases of premeditated deviation/illegal sale of cargo or, in other words, the theft of cargo.

Where a carrier resorts to illegal or unjustifiable deviation his action amounts to repudiation of the contract of carriage. He is therefore liable for breach of contract for which the cargo owner has redress at law in the form of damages. As a result of the repudiation the carrier cannot rely on any of the terms of the contract which limit his liability. However, the cargo owner has no chance of recovering his loss by this action as the shipowner usually has no assets or has gone into liquidation.

Illegal deviations have had some far reaching consequences. For example, in October 1979 a unilateral order was issued by Saudi Arabia, banning any vessel from entering her ports which had first called at Lebanon, because several vessels had deviated to Lebanese ports to sell their cargo. This was the first ban imposed by a country for non-political reasons [Kapoor (1986b)].

### **2.5.3 Tariff Manipulation & Cube-cutting**

Tariff manipulation is the practice whereby a freight forwarder obtains money by deception from the shipper and causes loss to

the shipowner by either :

- a) Describing the goods as one thing to the shipping company and paying less freight but subsequently describing them in a different way to the shipper, and claiming a higher freight reimbursement, or
- b) Grouping dissimilar items (possibly in a container) under one name to induce the shipping company to charge freight at one rate for all the items, to their detriment. When claiming reimbursement from the shipper, freight is charged at the correct rate for each item and thereby the freight forwarder obtains more money from the shipper than he actually paid to the shipping company.

Cube-cutting is the practice whereby a freight forwarder obtains money by deception from the shipper and causes loss to the shipowner by giving to the shipping company reduced measurements of cargoes on which freight is charged by volume. When claiming reimbursement from the shipper, the freight is charged on the correct cubic measurement.

The shipper can also deceive the shipping company in order to pay less freight by either or both of the above methods. Containerisation can be said to have made the use of these malpractices easier.

#### **2.5.4 Marine Insurance Fraud**

Frauds of this type are very diverse and usually overlap with the other types of fraud that have been considered. The frauds are perpetrated with the sole object of monetary gain under the insurance policy. Insurance frauds may be broken down into two categories, namely cargo and hull frauds, see figure 2.2. Cargo frauds usually involve the use of false/fraudulent documentation and therefore, may also be classified under documentary frauds, which further highlights the importance of documentary frauds.

Examples of hull frauds would cover scuttling, deliberate stranding of the vessel, arson, deliberate machinery damage, non-disclosure or fraudulent misrepresentation of material facts to the insurer. In this type of fraud scuttling was most frequently encountered and therefore must be considered in greater detail.

##### **2.5.4.1 Scuttling**

Scuttling is defined as the wilful casting away of a vessel with the privity or connivance of her owners. Ship scuttling is not a new phenomenon. The first reference to this crime was reported in 215 B.C. [Haddon-Cave (1981)].

Figure 2.3 shows that the increase in the recent spate of known/suspicious sinkings started around the mid-seventies, that is, about the same time as the increase in maritime fraud [Kapoor (1986a)].

#### 2.5.5 Documentary Maritime Fraud

Kapoor (1983) has defined documentary fraud as :

The obtaining of money, property in the goods or a pecuniary advantage by the issuance of forged and/or falsified documents such as : Bills of lading, Certificates of quality, origin, or insurance, Commercial invoices, Mate's receipts, or Letters of indemnity, or the creation of worthless entities by one party to induce the other party to act on it to his detriment.

In some cases the documents may be forged or fraudulently altered after their execution, in others they may be genuine documents but with false information [Kapoor (1985)].

In Singapore, 45 maritime fraud cases involving documentary credits were investigated during the period 1974 - 1981, of which 37 occurred in the last four year period [Ho Peng Kee (1983)], indicating a dramatic increase in documentary frauds. This point was further highlighted by Sir John Cuckney, Chairman of IMB, when he said that the IMB investigated about 110 cases last year, involving some \$288 million, and of this in value terms documentary fraud covered \$116 million, i.e. 40%

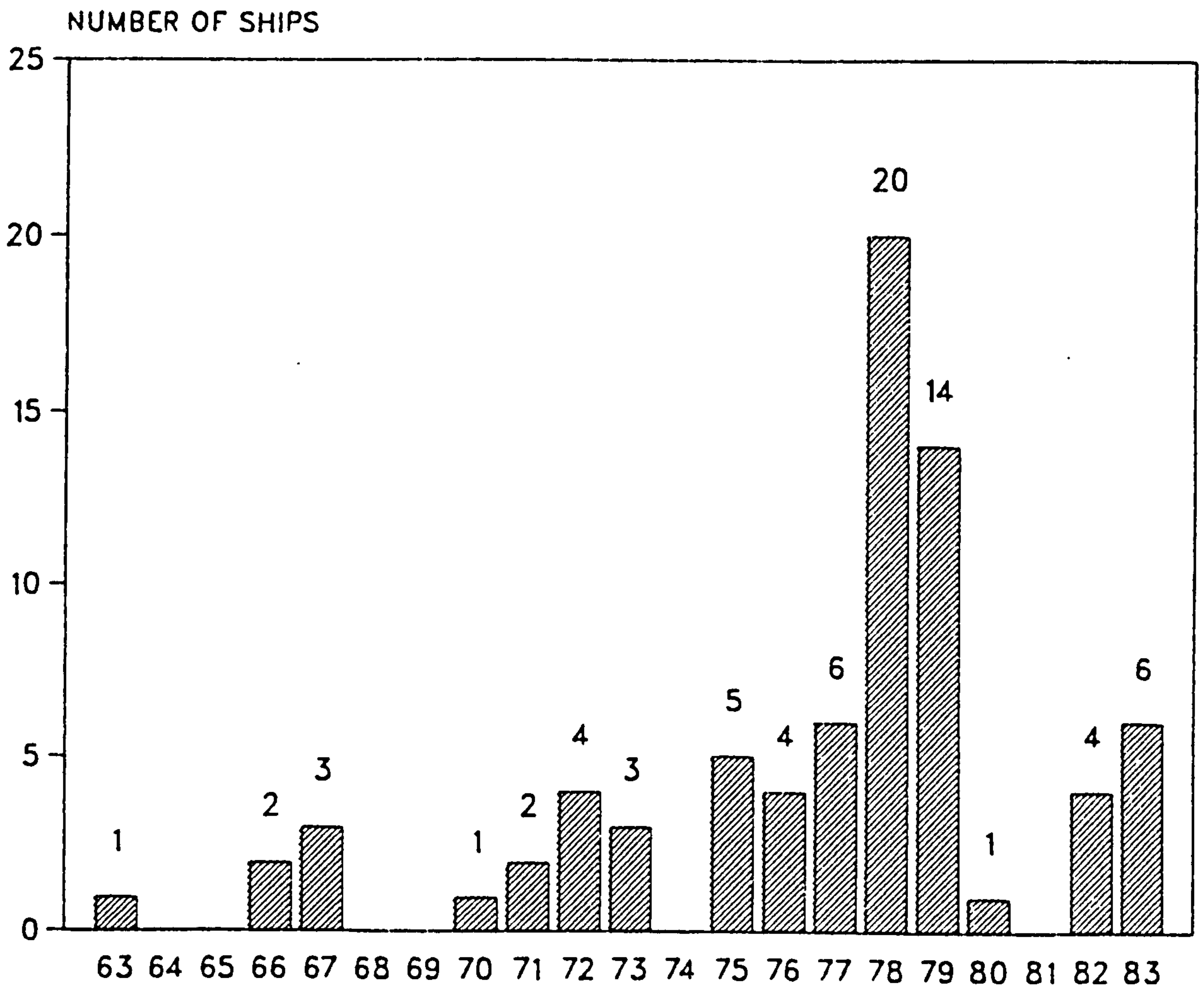


Figure 2.3 - Known/Suspicious Sinkings 1963 - 1983

Dates of 13 Sinkings untraced

Source : Various

[Sundaresan (1985)]. Kapoor's (1986a) analysis of 101 cases of maritime fraud, covering the period 1974 - 1983, indicates that over 62% of the cases involved the use of forged/fraudulent documents.

## 2.5.6 Miscellaneous Frauds

### 2.5.6.1 Arson

The Shorter Oxford English Dictionary (1983) defines Arson as "the act of wilfully and maliciously setting fire to another man's house, ship, forest, etc.; or to one's own, when insured, with the intent to defraud the insurers".

Whilst fires at sea are extremely dangerous, they have, on occasions, been used as a means to defraud the insurers. For example, in *The Campello* {7} it was held that the vessel was deliberately set on fire with the privity of the owner in order to gain from the over-valuation of the vessel.

### 2.5.6.2 Theft of oil by deception

The quadrupling of the price of oil following the Arab oil embargo has made its theft a very attractive proposition. Oil is appropriated illegally in two ways :

a) Theft of bunkers by ship's personnel for personal gain

It has been alleged that ship's officers on dynamically positioned supply ships siphon off bunkers to sell them to ships. In order to conceal the operation, false entries are made in the log books [Kapoor & Gray (1985)].

b) Theft of crude oil for use as ship's bunkers

Apart from being illegal, this practice is extremely dangerous, because crude is very volatile, i.e. has a low flashpoint, whereas ship's fuel oil being non-volatile has a high flashpoint.

Allegations that crude oil was being transferred to bunker tanks gave rise to formal investigations, which were carried out by the Liberian Bureau of Maritime Affairs. The investigations revealed that on a number of vessels under the same apparent management and trading under the Liberian flag, crude oil was being introduced into the fuel oil tanks on a regular basis at the instigation of or with the complicity of the owners [IMB (1985)].

In the Liberian tanker "Athena" permanent pipelines, concealed beneath the floor plates, were fitted for the purpose of diverting oil cargo into the bunker tanks. The



vessel misappropriated 725 barrels of oil worth \$ 21,829  
[Lloyd's List, 15th. May, 1985, p.3].

Investigations of fraud cases were carried out to determine the modi operandi in each of the above types of frauds. They are discussed in chapter 5.

## 2.6 PROBLEMS IN INVESTIGATION & PROSECUTION

Having looked at the various types of frauds it is necessary to examine the problems faced by the investigators and prosecutors. The international nature of the crime of maritime fraud makes it very difficult to identify, let alone to apprehend and prosecute the perpetrator(s). This is due to a combination of the following factors :

- a) Long distances involved between the buyer and seller.
- b) Limited contact between the perpetrator(s) of the fraud and the victims.
- c) Ability to disguise identities behind corporate shields, for example by the "creation of worthless and spurious but outwardly impressive entities" [Kerr, J. (1979)], or the use of foreign nominees to obscure the commission of the crime and thereby avoid detection or, if perchance detected,

greatly hamper investigation [Rider (1980)].

- d) Multi-jurisdictional nature of most frauds. Investigations of cases shows that in most situations between four and ten countries may be involved, for example :

A vessel, M.V. "Scuttle", is owned by I.M. Ignorant & Co. Ltd. in country A and is registered in country B. The vessel is bareboat chartered to Van Ishing Inc. S.A. in country C, who spot charters it to Goodwill & Co. Ltd. in country D to carry a cargo to be loaded in country E and delivered to country F. The officers and crew are from countries G and H supplied by Scuttlers Anonymous in country I. The cargo insurance is placed by brokers in country J with a company in country K. The vessel, on sailing from E, deviates and sells cargo in country L, and is then scuttled [Adapted from Cooper (1980)].

- e) Lack of response from the victims. It is estimated that one-third of cases are not reported due to the commercial attitude of the victims. Some cases are not reported in order to avoid adverse publicity. At times the authorities are informed too late or the victims negotiate with the perpetrators to re-purchase their own goods [Ellen (1982)].

- f) The expense of gathering information and bringing witnesses from abroad for trial. Prior to an investigation, the officer-in-charge must submit a report of the facts, views and intended course of action to the Director of Public

Prosecution (DPP) and seek his advice on the cost and eventual result of the investigation and also on extradition agreements. As a result very few investigations are completed from complaint to eventual prosecution because of the international nature of the crime. Chaikin (1983) points out:

There is a disturbing trend for domestic law enforcement agencies, for a variety of reasons, to almost give up when a substantial foreign element is involved in the commission of a crime.

The Roskill Report (1986) points out that the average cost of a commercial fraud case from the beginning of a police investigation to verdict, based on a sample of 10 cases lasting more than 25 days in which verdicts were reached in 1981-1984, is £ 500,000. The report goes on to say that this does not include the cost of any inquiries carried out by external inspectors under sections 431 and 432 of the Companies Act 1985. The average cost of the reports produced by these inquiries is £ 463,000.

- g) The problems of extradition of offenders from different jurisdictions.
- h) There are certain basic offences, such as theft and piracy, which are universally recognised as crimes, but even in such cases individual nations have various ways of treating the offenders. For example, in the case of the "Salem", despite the conclusive evidence of scuttling, the master and the chief engineer were released by the Liberian authorities.

Whilst civil law has the ability to resolve complex disputes between merchants in international transactions, civil actions are not considered by the victims of maritime fraud because their success depends upon, inter alia, factors such as [UNCTAD (1983)] :

- a) Ability to bring civil action in a court with jurisdiction.
- b) Ability to obtain a judgement in their favour, for which - depending upon the type of fraud - major difficulties of proof may exist.
- c) Ability to enforce the judgement against the perpetrator(s) of fraud, and
- d) Finding sizeable assets on which to enforce the judgement, because of the ease with which the proceeds of the fraud can be "laundered".

Developments in communications, technology, transportation and the increased mobility of individuals, companies and capital have all contributed to a situation where the conception and commission of ordinary criminal law offences involve two or more jurisdictions [Chaikin (1983)]. These changes have not been matched by changes in domestic or international legislation. The investigators are not able to compete with the sophisticated organisation of the international commercial criminal because of

the lack of facilities to exchange information between countries.

Unfortunately, the Criminal Law, when looked at from an international point of view, is so unco-ordinated that actions against criminals involving two or more jurisdictions are very difficult or even impossible to resolve. This is because laws are territorially orientated and thus do not take into account organised or international commercial crime using two or more jurisdictions [Chaikin (1983)]. This lack of harmonisation in international laws and procedures is exploited by the criminals [Kapoor & Gray (1985)].

The need for international mutual assistance is also highlighted by the fact that whilst "conspiracy to defraud" is an offence at common law [section 5 (2) - The Criminal Law Act, 1977], "a conspiracy to obtain a lawful object by unlawful means" is not a crime and thus not triable in England {8}. As a result anomalies exist even within the legal system of individual countries. Imagine the problem when dealing with the legal systems of some 200 countries. As Dr. Rider (1984), Chief Commonwealth Fraud Officer, quite rightly points out :

Apart from the disturbing inability to detect and locate crime of a commercial nature, most countries seem to suffer from difficulties in getting cases before criminal courts and attaining satisfactory results. In the absence of judicial determination it is extremely difficult to discuss a particular instance of

suspected fraud. The laws relating to defamation serve as a major brake to this kind of analysis. (Emphasis supplied).

In this connection it must be stressed that a recent decision of the Court of Appeal {9} was very welcome indeed. The facts of the case are :

In late 1981 IMB had received information that a named, infamous fraudster was connected with a new company called Grecian Lines, managed by a company called Maritime Tradition S.A. The IMB verified the information and posted a notice in the Baltic Exchange, stating that information regarding the activities of Grecian was available from the Bureau to members contemplating doing business with the company. As a result of this an action for defamation was brought against the Bureau, and Grecian obtained a temporary injunction restraining the Bureau from further disseminating the allegedly defamatory information about the company.

The IMB appealed to seek relief from the injunction imposed upon it by the lower court. The Appeal judges - Lord Denning M.R., Lord Justices Griffiths and Kerr - unanimously found that the Bureau's actions were justified and that it could issue warnings to its members about shipping concerns, even if it did not have concrete proof of fraud providing there were "reasonable grounds for an honest belief" [Unreported case].

Delays in investigation and prosecution due to lack of resources are compounded by a lack of power to obtain evidence, and delay is also a weapon in the armoury of the fraudsters. Many of them try to put off their trials for the following reasons :

a) To enable them to commit more offences in the knowledge that the prosecuting authorities are unlikely to charge every offence and that even if charged with further offences, concurrent sentences are likely to be imposed. For example, in *R v Savundranayagan and Walker* {10} the Court of Appeal affirmed the decision of the lower court, and dismissed the appeal against both conviction and sentence. Savundra was found guilty on five counts and given a sentence totalling 36 years, all sentences to run concurrently, so that he was to serve only 8 years imprisonment. Similarly Walker was sentenced for only 5 years when the total sentence was 18 years.

b) To ensure that offences are so stale that the sentences will be minimised, and

c) The hope that witnesses will for one reason or another become unavailable, thereby giving a greater chance of acquittal.

In some countries there may be delays in maritime fraud cases where the judiciary is unfamiliar with the concepts and requests instruction. In a number of cases the fraudsters, instead of

being remanded to custody, are granted bail and subsequently, they on occasions not only fail to appear but carry on their activities once again under another name.

The increase in the length of trials - cases of commercial fraud which last 100 working days are fairly common these days - gives greater opportunity for something to go wrong - illness or even "nobbling" of jurors, which may mean that after many weeks of trial the case has to be started all over again at public expense. Another problem facing the prosecutors is that of getting a jury which is able to understand the complexities of financial transactions, let alone pass verdict on whether deception has taken place. This indicates that that the present system of lay jury in commercial fraud cases is inadequate [Lawton, L.J. (1983)]. Rider (1985) points out that similar views have been expressed by the Court of Appeal of New Zealand and also at the Commonwealth Law Ministers meeting in Sri Lanka.

A Fraud Trials Committee was set up under the Chairmanship of Lord Roskill. The committee was to consider the ways in which criminal proceedings arising from fraud could be improved, and also the changes required in the existing law and procedure which would be desirable "to secure the just, expeditious and economical disposal of such proceedings" [Roskill Report (1986)].



The Roskill Report points out that the present legal system is archaic, cumbersome and unreliable for dealing with serious frauds, and suggests that fundamental change is required in some areas of the law. One of its recommendations is that for complex fraud cases falling within certain guidelines, trial by judge and two lay members should replace trial by judge and jury. The Report was backed by the Lord Chancellor, Lord Hailsham and by Lord Denning, former Master of the Rolls, in the House of Lords debate on the Report [Abrun (1986)].

The recommendation of the Roskill Report (1986) regarding the abolition of trials by juries in serious fraud cases has not been accepted by the Government as the report failed to present any hard evidence that complex fraud trials were being wrongly decided because of the failure of the juries to grasp the issues [Wolman (1986)]. However, some of the other recommendations of the report have been accepted. For example in serious fraud cases, the forthcoming Criminal Justice Bill makes provisions for:

- a) overseas witnesses to give evidence using live satellite links.
- b) the use of evidence taken on overseas commissions in criminal trials.
- c) abolition of committal trials in serious fraud cases.

Furthermore, the Government is to set up a Serious Fraud Office, with powers of investigation similar to those available to the Department of Trade & Industry under section 447 of the Companies Act 1985.

The foregoing sections have highlighted the complexity of the problem. Whilst there have been several calls for reform [Ellen (1979b), Kerr (1979), Kihlbom (1981), Prakash (1981), Schultz & Thomas (1983)] and a number of short-term solutions found and it has been discussed at great length at several fora, there has been a lack of positive action to deal with the problem of maritime fraud [Kapoor & Gray (1985)]. Jones (1983) considering the problem of cargo losses in the United States has stressed the need for systems analysis, and the same applies worldwide.

Investigations of the fraud cases have also indicated the complexity of the problem. Therefore the author decided to examine the system of international trade transactions as a whole using the systems approach, with particular reference to the B/L and the method of payment under documentary credits. Therefore, the next chapter looks at the systems theory.

## CHAPTER 2 APPENDIX

1. [1886-90] All E.R. Rep., 1.
2. *Freedman Bros. v Norddeutscher Lloyd* [1960] A.M.C. 154.
3. 55 N.Y. 400, at p.410.
4. 247 App. Div. 144, 287 N.Y.S. 62, 76.
5. 232 App. Div. 441.
6. Op. cit. (2).
7. (1925) 20 Ll.L.Rep. 437.
8. *Board of Trade v Owen* [1957] 1 All E.R., 411.
9. *Harakas & Others v Baltic Mercantile & Shipping Exchange & Another* (1982) 1 WLR, 958.
10. [1968] 3 All E.R., 439.

	Page
<b>CHAPTER 3 : SYSTEMS THEORY</b>	<b>44</b>
3.1 : Introduction	44
3.2 : Definitions of a System	46
3.3 : Classes of Systems	48
3.4 : Properties of a System	51
3.5 : Boundaries of a System	58
3.6 : Systems Modelling	61
3.6.1 : Systematic and Systemic	61
3.6.2 : Systems Analysis, Systems Engineering & Systems Approach	62
3.6.3 : Systems Models	65
3.6.4 : The Use of Diagrams for Conceptual Models	68
3.7 : Systems Failures	69
3.7.1 : Fraud as a System Failure	70
3.8 : The Value of Soft Systems	74

## CHAPTER 3 - SYSTEMS THEORY

### 3.1 Introduction

The rapid increase in documentary maritime fraud during the last decade has created the need to review the system of international trade documentation using a fresh approach. This point was highlighted by Ellen (1979) when he pointed out that one of the two things which would go some way towards "getting to grips" with the problem of maritime fraud was an in depth study into the operation of the Bill of Lading and documentary credit system. Kihlbom (1981) pointed out that unless the present system of international trade under documentary credits is made more secure against fraud and forgery it runs the risk of collapse.

It was shown in the last chapter that a number of short-term solutions have been devised to deal with the problem. This suggests that the various constituent parts have been considered as self-contained units. It is submitted that in order to find long-term solutions the system of international trade documentation should be examined from a systems point of view, i.e. as a whole. This point was emphasized at the first session of the IGG [UNCTAD Report (1984)].

The UNCTAD Report (1986c) in considering the system of

administration of investigation and prosecution, points out that it is always composed of several different agencies. The Report goes on to say :

The system of investigation and prosecution of maritime fraud is one of a very few systems in which several different independent agencies are essential to, and intricably (sic) involved in, its operation. In this respect, it can be said that this division of responsibility between various agencies in each Government actually hinders efficient administration of justice and criminal proceedings in maritime fraud cases, which are usually very complex.

The disadvantage of this division of responsibility is highlighted by Shikita (1982) :

... each agency tends to isolate itself from the rest and works within water-tight compartments. None usually pays sufficient attention to the possible consequences of its activities on other agencies and on the entire system.

In addition to agreeing with Shikita, Kapoor (1986a) points out that despite the publicity given to international trade frauds by the media and conferences over the last few years, the participants of the system of international trade have failed to respond collectively; their reaction has been to tighten up specific procedures in isolation without considering their impact on other elements of the system.

Another advantage of this approach is that the the effect of any changes recommended can be studied. This would be in keeping

with the UNCTAD recommendation [UNCTAD (1982)], which states :

... any suggestions finally put forward will need very careful consideration to ensure that the benefits they offer by reducing the occurrence of fraud will clearly offset whatever additional operational costs they might give rise to in international commerce.

This chapter, therefore, outlines the systems theory with particular reference to soft systems and defines fraud as a failure of the system of international trade. It also emphasizes the need for a systems approach to determine the causes leading to the failure of the system.

### 3.2 Definitions of a System

The word 'system' is used in various ways and its meaning changes according to the context. Systems literature is inundated with definitions of the term 'system' [Ackoff (1960), Hall (1962), Ackoff (1971), Kline & Lifson (1971), von Bertalanffy (1973), Checkland (1975), Gasparski (1975), McCaul (1975), Jordan (1981)]. Jones (1982) points out that these definitions remain largely abstract and that a newcomer to the field would admit to serious difficulty in applying the general definition to specific cases, even though he may find them to be so straightforward as to be rather obvious and empty. However, Jordan (1981) says "the difficulty in defining 'system' results from misusing a word that has a simple, clear meaning in a general context for a specific, concrete context."

The word 'system' originates from the Greek word 'systema', which derives from 'synistanai' (syn + histanai) meaning "to bring together" or "to combine" [Webster's Third New International Dictionary (1966)]. The Oxford English Dictionary (1961) defines system as, among other things, "a set or assemblage of things connected, associated, or inter-dependent, so as to form a complex unity." Checkland (1975) defines it in very broad terms when he says :

System is the name of a general model or paradigm which can usefully be employed to understand, explain or engineer aspects of the real world.

McCaul (1975) defines a system as :

Something which is a dynamic combination of sets of things in an ordered relationship, such that it can repetitively change these sets of things into different combinations of themselves.

However, Checkland (1979c) in his definition includes both static or dynamic components and concrete or abstract components and connections. He says :

Systems are wholes characterised by connections between their components, whether static or dynamic, and this is true whether or not these components and connections are concrete or abstract.

Systems are most usefully defined in terms of their components and these will be considered in chapter 4. Before doing this however it is necessary to examine the different types of



systems.

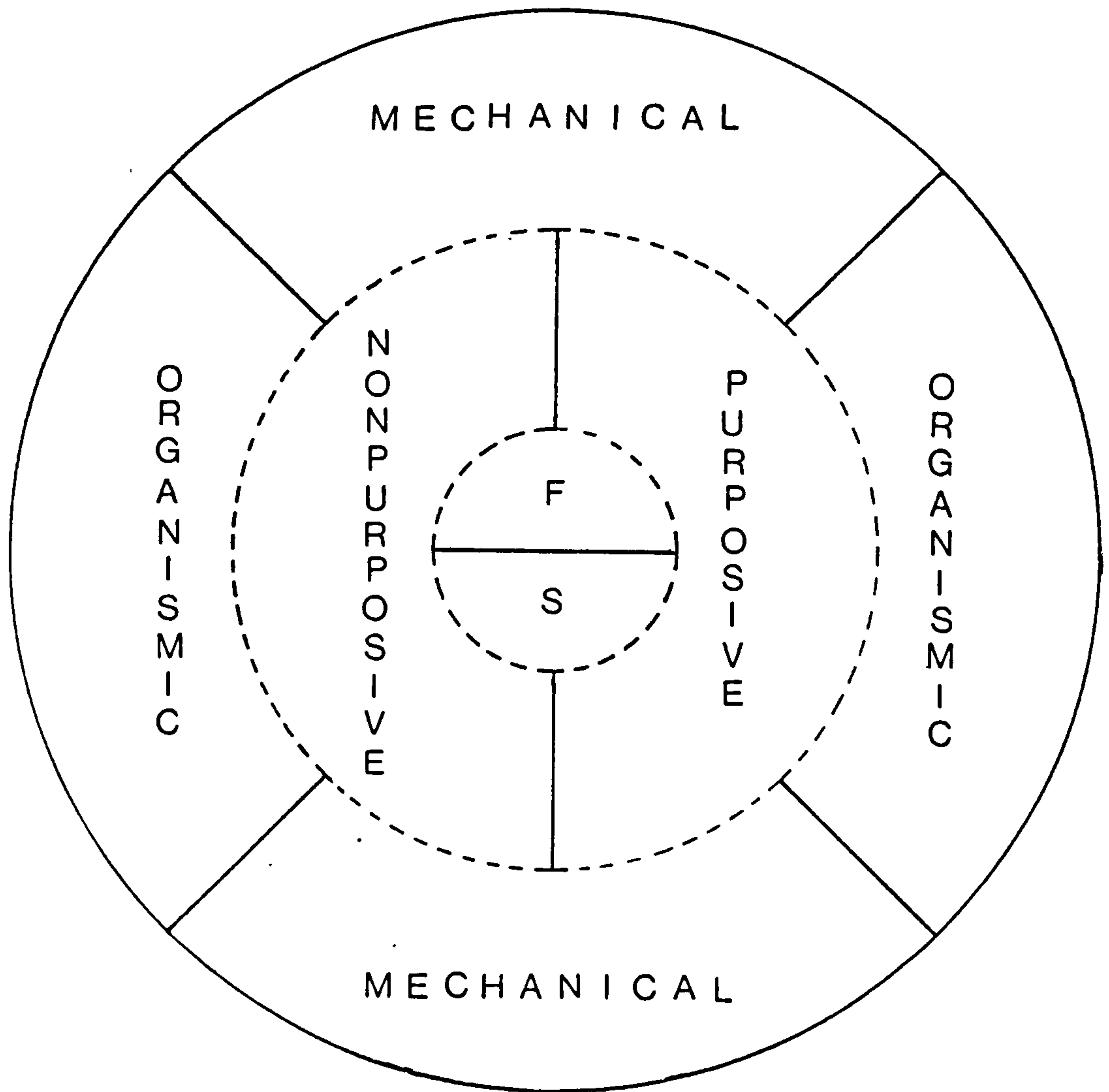
### 3.3 Classes of Systems

Jones (1967) and Burton (1968) have given systems classifications which are useful in their respective fields of interest. More generalised classifications have also been produced. For example, Boulding (1956) provides useful classification based on a hierarchy of complexity, identifying nine levels of complexity, whilst Jordan (1981) has attempted to construct a systems taxonomy based on three bipolar dimensions which generate eight cells as shown in figure 3.1. However, neither the scale of complexity nor the ability to fit the systems in one of the eight cells would be useful in tackling complex real world problems.

Checkland (1971) has developed a systems map of the universe identifying five basic classes of systems :

#### a) Natural Systems

These are the physical systems which make up the universe, for example crystal systems, sun-planet systems, individual human beings, seas, etc. Naughton & Peters (1976) however, distinguish between Physical and Natural Systems; for example, they treat the solar system or an atom as a Physical system and a living cell or organism as a Natural system.



F = Functional

S = Structural

1. Functional, Purposive, Organismic
2. Functional, Purposive, Mechanical
3. Functional, Non-Purposive, Organismic
4. Functional, Non-purposive, Mechanical
5. Structural, Purposive, Organismic
6. Structural, Purposive, Mechanical
7. Structural, Non-purposive, Organismic
8. Structural, Non-purposive, Mechanical

Figure 3.1 : System Taxonomy

Source : After Jordan (1981)

**b) Designed Physical Systems**

These are man-made systems; for example, equipment systems, mechanised operational systems, individual tools.

**c) Designed Abstract Systems**

These may be treated as theoretical systems; for example, philosophical systems and knowledge systems.

**d) Human Activity Systems**

These are systems in which people or the activities) of people are involved; for example, information systems , transportation systems, legal systems, man-machine systems.

**e) Transcendental Systems**

These are systems beyond the present level of knowledge.

Using Checkland's terminology, and in keeping with the objectives of this work, the international trade system is clearly a Human Activity System involving a large number of sub-systems of the same class. Examples, by no means exhaustive, include : trading and commercial systems, transportation systems, information systems, administrative and planning systems.

In common with other Human Activity Systems, the international trade system influences and is influenced by other classes of system, for example, ships, cargo handling equipment, which are designed physical systems, and seas and weather, which are natural systems.

### 3.4 Properties of a System

In order to analyse a subject using the systems approach it is necessary to know the properties or components of a system. Jenkins (1969 & 1971) listed ten important properties of a system. These properties are :

a) A system is a complex grouping of human beings and machines.

For example, the international trade system comprises, among other things, ship-operators, ships, cargo handling equipment, shippers, trucks, insurers and bankers.

b) A system may be broken down into sub-systems. The amount of sub-system detail depending on the problem being studied. Flow-block diagrams provide a readily understood way of describing these sub-systems.

For example, figure 3.2 is a flow-block diagram of the international trade system showing the flow of goods from the shipper to the receiver.

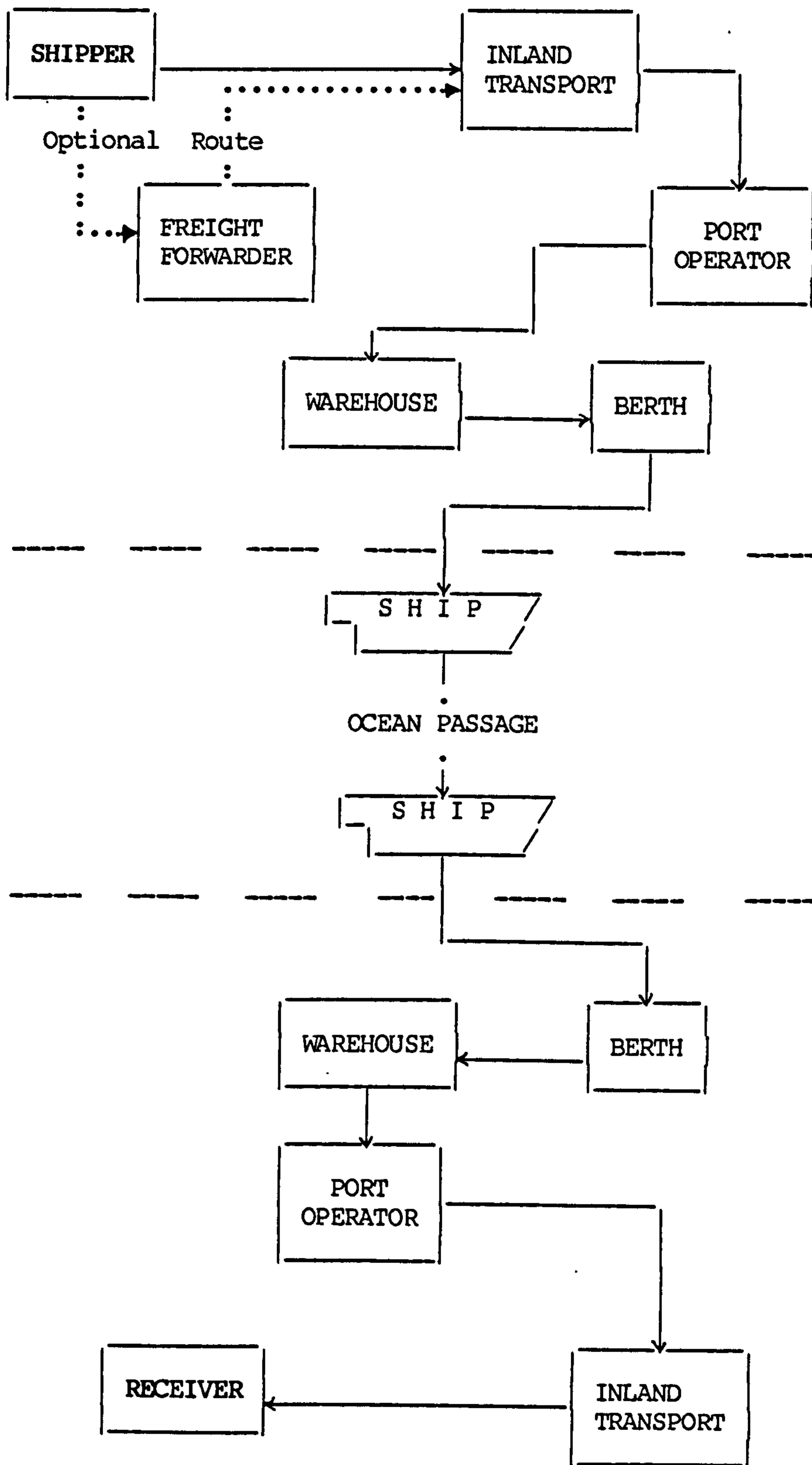
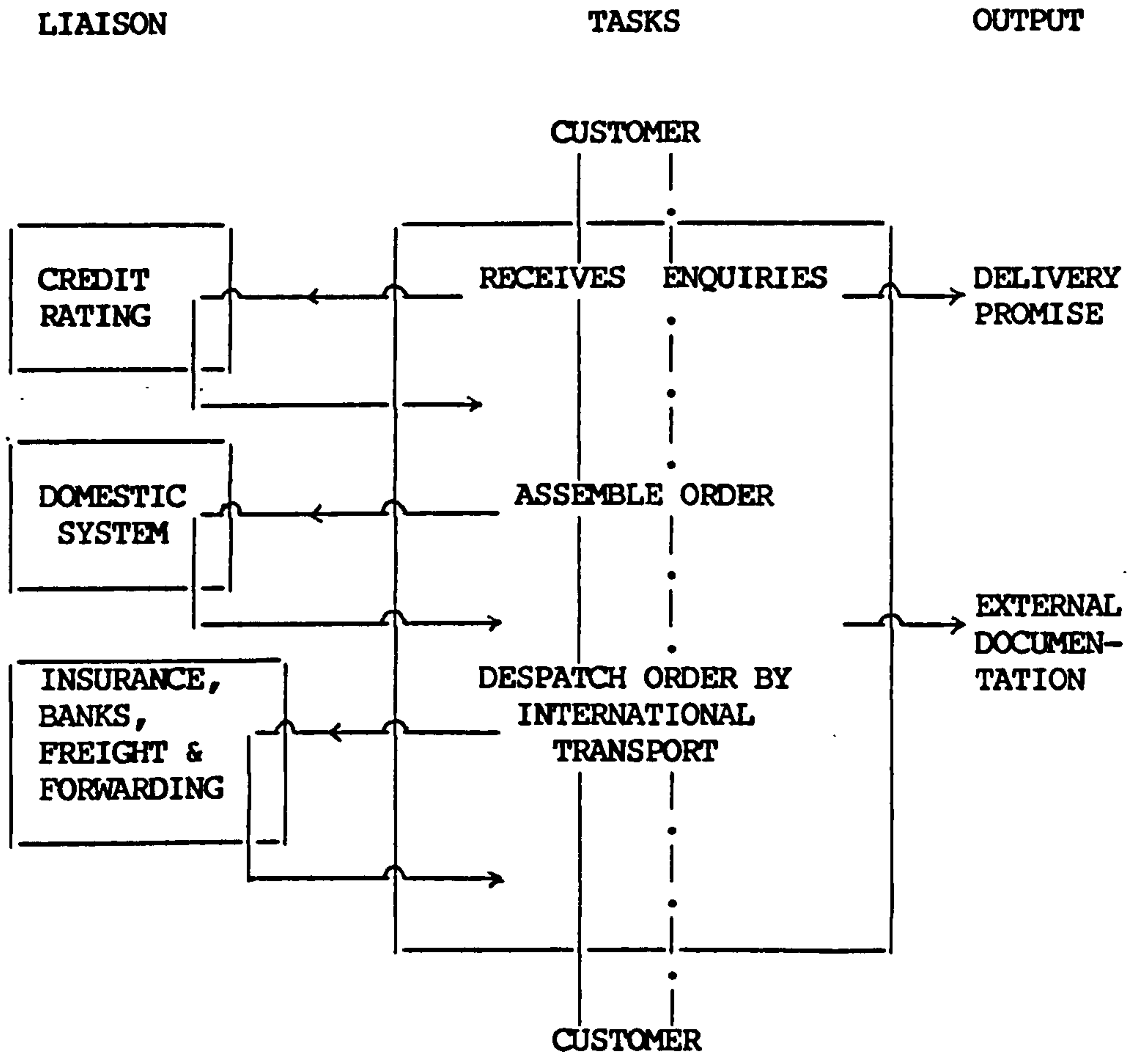


Figure 3.2 - Flow-block diagram showing the movement of goods from the Shipper to the Receiver

- c) The outputs from a given sub-system provide inputs for other sub-systems. Thus performance of a given sub-system interacts with the performance of other sub-systems and hence can not be studied in isolation.
- d) The system being studied will usually form part of a hierarchy of such systems. The systems at the top are very important and exert considerable influence on the systems lower down.
- e) To function at all the system must have an objective, but this is influenced by the wider system of which it forms part. Usually, systems have multiple objectives which are in conflict with one another, so that an overall objective is required which effects a compromise between these controlling objectives.

As the above three properties are interlinked their examples in the international trade system will be examined together. From the standpoint of the exporter, international transport is a sub-system of the order cycle system, see figure 3.3. From the figure it can be seen that the order cycle consists of a number of interacting stages, which interact further with other systems, or with sub-systems of a wider trading system depending on where the system's boundary is drawn. At the order entry stage goods may be processed from stock - interacting with the inventory or stock control system - or may be held for confirmation awaiting a letter of credit advice, thereby



Key to the figure | The Order | Management Information

Figure 3.3 - International Transport as a sub-system of the Order Cycle System

Source : Adapted from Davies & Gray (1985)

interacting with the banking system.

Since the less common destinations are infrequently served by international sea transport, it may be necessary for the exporter to interact with the international shipping system to

match delivery dates with the departure dates of vessels. There may also be interactions with the designed physical systems; for example, in matching the consignment sizes to suit the twenty foot standard containers.

At the order assembly stage there may be interactions with the political system. For example, the international regulations regarding special marks and labels on packages or the need to obtain specialised documentation, such as the Certificate of Origin and invoices may have to be certified by the Chamber of Commerce and/or legalised by the Embassy of the country of import.

At the despatch stage the order cycle system interacts with the administrative and operational systems of the local and/or international transport carrier. Figure 3.3 could, of course, be expanded to take account of all these interactions.

The problem of conflict of objectives in international trade can be identified in a number of instances. For example, the conflicting objectives of the buyer and seller, which are discussed in detail in the next chapter. Another example of conflicting objectives relates to the total flow of goods through the international transport system. These conflicts have been rife for many years and a number of attempts have been made to adopt a more systematic approach. This has resulted in the development of such concepts as the total distribution concept, the through transport concept, the delivered price concept and



total distribution costing [Adapted from Davies & Gray (1985)].

For example - the main theme of the through transport concept, advocated by the National Economic Development Office (NEDO) in its report [NEDO Report (1966)], was that the export markets should be seen as extensions of the home markets, and in the movement of goods from exporter to importer the involvement of intermediaries should be minimised. This resulted in changes in both the role of the traditional shipowner and the freight forwarder either through diversification or integration [Kapoor (1975), Davies & Gray (1985)].

f) The system must be designed in such a way that it is capable of achieving its overall objective.

For example, the safe arrival of goods at the destination specified by the customer would be the overall objective of the system of international transport and the system must be designed to achieve that objective.

g) The system must have a decision taking process to manage or manipulate.

For example, in international transport decisions are made by the management of a company. The organisational structure would be different for different types of firms. One problem in examining the decision-making process of transport companies is that they are often part of a larger organisation with

non-transport activities. In such cases management decision-making policy may be influenced by the Group's overall objectives rather than specific transport related issues.

h) The system must have clearly defined boundaries which delineate the area to be studied. (See section 3.5).

i) The system must have a performance criterion, which measures the extent to which the system is achieving its objectives.

For example, the performance criterion of the system of international transport could be the profits earned by a shipping company :

- on a particular voyage, or
- on a particular trade, or
- over a year.

However, the performance criterion would vary for different approaches, for example, to maintain its market share in the long term a liner company may consider that maintaining customer goodwill by running a very efficient scheduled service without any delays would be a better performance criterion than profit.

Sometimes it may be necessary to establish a fairly complex range of performance criteria. For example, Davies & Gray (1985) consider that an international logistics audit by a shipper should include the following criteria :

- Total expenditure on freight by product market or

individual customer

- Volumes shipped (compared to costs)
- Cost per kilometre
- Vehicle/container capacity utilisation
- Costs of bought-in non-freight services (i.e. documentation, packing, insurance, etc.)
- Bought-in costs per unit of freight cost
- Customer complaints by product and market
- Delivery time
- Delivery availability
- Loss and damage rates.

j) A system will have an environment, over which it has no control but with which it may have important interactions.

The environment of the international trade system is very complex and varied. It can be seen that the market structure, state of the economy, the political state of the countries involved, legal requirements, exchange rates and many other factors influence the nature of international transport. In particular, politico-economic instabilities can give rise to traffic fluctuations.

### 3.5 Boundaries of a System

One of the important properties of a system is that it should have clearly defined boundaries; this facilitates the

delineation of the area to be studied. Naughton & Peters (1976) point out that the most common way of defining a system is by drawing a boundary around it and listing the elements and/or sub-systems that are inside. In Human Activity Systems boundaries are not easily definable and are usually determined by functions and activities of the system as perceived by the designer, researcher or analyst.

Jones (1982) points out that the perception of a system is not reached in one jump but in stages, by trial and error. She goes on to suggest that the behaviour of certain elements and sub-systems should be identified as constituting the 'behaviour of interest' and that these and their inter-relationships should be included within the system. Kast & Rosenzweig (1981), however, point out that "frequently, in the study of social organisations, where to draw the boundaries is a matter of

convenience and strategy". *(Handwritten note: This is an arbitrary decision which is made in both directions. One can also say that the system is not a system as such but that the system is a system as a result of the way it is defined. The system is a system as a result of the way it is defined.)*

For example, when examining and attempting to classify the diverse organisational structures of shipping companies, different boundaries can be established dependent upon which viewpoint has been adopted, a decision which is determined by the objective of the exercise. The following are possible classifications :

- a) The purpose for which the vessels are used.

- b) The type of company ownership, i.e. government enterprise, independent shipping company or a unit within a national or international conglomerate.
- c) The nationality of the ownership and its relation to the country of registration of the vessels.

This area can be of particular importance to the study of maritime fraud, as in the case when an owner decides to register vessels in a different country for economic or legal reasons, it brings about a situation in which there is a lack of a genuine link between the ship and the State of its registration and, among other things, the lack of effective control by the State over the activities of shipowners and the operation of ships. Also the simplicity of registration of ships and the difficulty of tracing the beneficial ownership have all created favourable possibilities for all kinds of maritime fraud [UNCTAD (1984)].

However, the difficulty of where to set the boundary remains and there is little practical guidance about how to set a boundary in a particular systems study [Jones (1982)]. What lies outside the boundary is the system's environment. The environment consists of elements and/or systems which may or may not be interrelated but which may interact with the system. While the system cannot control the environment it may influence and interact with some of the elements and/or systems of the environment. Feibleman & Friend (1969) discuss the interaction

between a system and its environment at great length.

Jones (1982) argues that if an element in an environment is affected by the system, it must be included within the boundary. However if this was done, the system could end up, in the extreme case, including everything in the Universe.

### 3.6 Systems Modelling

#### 3.6.1 Systematic and Systemic

The two words "systematic" and "systemic" are adjectives which derive from the word "system", the former meaning 'arranged or conducted according to a plan or organised method' and the latter meaning 'belonging to, supplying or affecting the system as a whole'. These two words form the basis of two parallel but complimentary approaches. The systematic approach is used :

- a) in the analysis of routine operations, typically those which attempt to increase the efficiency of a man-machine system [Shubnell (1971)], and
- b) to make an effective contribution to the overall optimisation of a problem.

Examples of this approach are operational research (OR), control engineering, systems analysis, mathematical modelling.

The systemic or 'holistic' approach stems from the thinking of the 'organismic' biologists whose ideas led to what became "systems thinking" in the 1940's [Checkland (1979a)]. Naughton & Peters (1976) point out :

Systems thinking means being able to perceive system in a given situation. It is a kind of insight which enables one to look at a complex, confused situation and to perceive some degree of order, or interconnectedness, in the apparent chaos. The order which one perceives is the system and the activity of perceiving is what we call systems thinking.

### 3.6.2 Systems Analysis, Systems Engineering & Systems Approach

The two approaches to systems, by their nature, give rise to two different types of systems thinking, viz. 'hard' and 'soft' systems thinking. 'Hard' systems are systems, often involving industrial plants, characterised by easy-to-define objectives, with clearly defined decision-taking procedures and quantitative measures of performance [Checkland (1971)], whereas 'soft' systems are systems characterised by complex and involved interactions, conflicting objectives and qualitative variables replete with value judgements and subjective assessments [Bolton et al (1977)] and where decision-taking is uncertain and human behaviour may appear irrational [Checkland (1971)].

The extreme differences between the nature of the two types of systems has led to the development of different types of methodologies for dealing with the problems. Checkland (1971)

stressed the need to develop methodologies appropriate right across the spectrum from hard systems to soft systems. Bolton et al (1977) have constructed a hierarchy of methodologies and point out that there is no clear dividing line between hard and soft categories, one shades into the other and most systems have a combination of hard and soft sub-systems.

The expressions systems engineering (SE), systems analysis (SA), and the systems approach seem to have been used synonymously, as can be seen from the following quotes :

Systems analysis is the overall process for arriving at the best mix of equipment, personnel, and procedural requirements for a system design [Chase (1974)].

Systems Engineering provides a framework within which to tie together many separate and possibly divergent disciplines, which otherwise might fail to make an effective contribution to the overall optimisation of the problem [Jenkins (1969)].

What do I mean by a systems approach ? .....  
It is identical with what I have called systems analysis elsewhere. That is, it is a way to investigate how best to aid a decision maker faced with complex problems of choice under uncertainty ..... [Quade (1971)].

Systems analysis studies are addressed to situations of policy and strategy where the problems and objectives are less structured and greater reliance is placed upon assumptions and judgements [Shubnell (1971)].

On this lack of uniformity, Quade et al (1978) write that what the International Institute of Applied Systems Analysis (IIASA) calls "systems analysis" is elsewhere referred to as policy



analysis, operations research, cybernetics, qualitative planning or possibly something else. Checkland's (1979b) analysis of the initial phases in a dozen accounts of 'hard' systems methodology published between 1955 and 1976 also shows that the three expressions have been used synonymously.

Checkland (1981) has traced the systems movement leading to the development of the various methodologies for dealing with problems and, he has differentiated between SE and SA. Discussing the nature of SE and SA Checkland (1978) points out that SE is concerned with "creation of a complex man-made entity and/or the procedures and information flows associated with its operation", whereas SA is the "systematic appraisal of the costs and other implications of meeting a defined requirement in various ways". He goes on to say that both are systematic and that both seek alternative ways of achieving a desired end which is efficient and if possible economically efficient.

From the foregoing it can be seen that after nearly thirty years the systems movement has not been able to agree on the meaning of the expressions SE, SA and the systems approach. Therefore, the following meanings will be ascribed to them in this dissertation :

Systems Approach is an approach to a complex problem which employs 'divergent thinking', that is, does not view the problem

in isolation but attempts to consider all aspects of it, and which recognizes the importance of and concentrates on the interactions among the various parts.

**Systems Engineering** is a systems approach which is used in the design of hard systems. It is characterised by the definition of 'the need' or 'the aim to be achieved', and the selection of the most economic and efficient way of meeting the defined end.

**Systems Analysis** is a systems approach which is used in tackling soft systems where the problems are 'ill-structured' and where great reliance is placed upon subjective assessments and value judgements, but where an attempt is made to establish measures of performance.

### 3.6.3 Systems Models

A systems model is a simplified description of a system which still retains the overall structure of the system, and in which "a loss of resolution is preferred to a loss of breadth" [Martin (1980)]. Tate & Jones (1975) have defined a model as follows :

A model is a representation of reality made sufficiently explicit for one to be able to examine the assumptions embodied in it, to manipulate it and to experiment with it, and to draw inferences from it which can be applied to reality.

Ackoff & Sasieni (1968) identify three types of models which are

commonly used in operations research as well as in most sciences. Bolton et al (1977) introduce another class of models which are very important in systems thinking. The four types of models are :

- a) **Iconic models** generally look like what they represent but differ in size, for example photographs, and are generally specific, concrete, and difficult to manipulate for experimental purposes.
- b) **Analogue models** use one set of properties to represent another set of properties, for example, contour lines on a map are analogues of elevation. In general they are less specific and less concrete, but easier to manipulate than iconic models.
- c) **Symbolic models** use letters and numbers and other types of symbols to represent variables and the relationships between them. They are the most general and abstract type of models, and are usually the easiest to manipulate experimentally.

Symbolic models are used in many areas of transport in scheduling problems, cost-benefit analyses etc. For example, a symbolic model may be used in the shipping industry to convert the World Scale Index to Time Charter Rate for the comparison of costs. A standard model used is :

$$Ws = \frac{(T/C \text{ Rate} \times Dwt. \times TPM) + \text{Bunker Costs} + \text{Port Charges}}{(\text{Flat Rate} / 100) \times \text{Cargo tonne}}$$

Where :

Ws = Worldwide Tanker Nominal Freight Index, or simply World Scale Index. It is used as an index for the comparison of different voyage charter (hire) rates.

T/C Rate = Time Charter Rate is the rate per deadweight (Dwt.) tonne per month which the hirer (known as the charterer) pays to the shipowner for the use of the ship for a fixed period of time.

TPM = Time Period Multiplier

d) Conceptual models are representations of a system as perceived by the designer and are used in the early stages of design. They include diagrams which illustrate :

- i) relationships among various parts of the system
- ii) interaction and flow of energy, materials and information both within the various elements of the system and between the system and the environment, and
- iii) processes within the system to indicate the sequence of activities.

Conceptual models are used to assist the designer in understanding the system and to explain to others how he perceives the system. Conceptual models of the various sub-systems of the systems of international trade are shown in the next chapter.

#### 3.6.4 The Use of Diagrams for Conceptual Models

Conceptual models are best presented as diagrams because they represent an overall picture of the system, supporting the adage - a picture is worth a thousand words.

Checkland (1979c) points out that diagrams are very important in the use of systems concepts and that the "state-of-the-art" in drawing diagrams pertaining to soft systems is deplorable. He lays down simple common sense guidelines for the process of drawing such diagrams. The guidelines are :

- a) decide what type of diagram is appropriate,
- b) decide on a convention for the diagram's entities and relationships, and strictly adhere to that convention, and
- c) provide a key which ensures that different readers will interpret the diagram in the same way.

Bolton et al (1977) draw attention to common mistakes in the drawing of diagrams and then go on to say that the diagrams should be simple, clear, straightforward and thought-provoking, and that they should be continually revised as the study progresses.

### 3.7 System Failure

A system failure may be defined as the inability of a system to meet its desired objectives or the production of undesirable outputs. These may be caused by weaknesses inherent within the system and/or weaknesses created by changes in the environment.

Once a failure has occurred, it must be analysed to determine the weaknesses of the system which could have caused the failure, so as to "find coherent explanations in order to predict future disasters" [Naughton & Peters (1976)]. Naughton & Peters also point out :

From a policy or planning point of view, ad hoc analyses of failures are of little value. They may serve valuable functions as ritual investigations of tragedies or as face-saving bureaucratic exercises. But all too often they amount to little more than bolting the proverbial stable door after the horse has gone.

From the above it can be seen that the underlying weakness of a system, which could have caused the failure, can only be determined by taking a systems approach, and that one should look at all aspects of the operation of the system and not try to focus on the most obvious cause. At the first session of the IGG [UNCTAD Report (1984)] the representative of Lebanon highlighted the need for a systems approach to determine the causes of failure of the system of international trade. He said :

International shipping trade resembled a chain with several links and each faulty link could cause a break in the chain; a shipper who failed to supervise loading of his goods; a container the contents of which were unknown; a careless customs service; a bank which did not take the trouble to verify or to gather information; an insurance company whose representative was interested only in the percentage of premium; a shipping agency that failed to exercise proper control; and a buyer lured by a low price. All those elements were an encouragement to defrauders. In order to prevent the failure of any one of the links in the chain, it was necessary to seek out the weaknesses and to correct them. It was for that reason that he felt the UNCTAD secretariat could be called upon once again to prepare an extensive and in-depth study of the whole process ....

### 3.7.1 Fraud as a System Failure ✓

From the above it can be seen that maritime fraud is an example of the failure of the system of international trade. In the majority of cases of maritime fraud the buyer, without having conducted suitable inquiries regarding the integrity of the seller, has entered into a contract where payment is arranged under a confirmed irrevocable documentary credit, and the bank has paid the seller on presentation of the documents, which have been forged or falsified. Figure 3.4 shows an example of documentary fraud.

There have been several calls for reform of the existing system of documentary credits [Ellen (1979a), Kerr (1979), Kilbohm (1981)], and also for the re-examination of the Uniform Customs and Practice for Documentary Credits (UCP) view of the

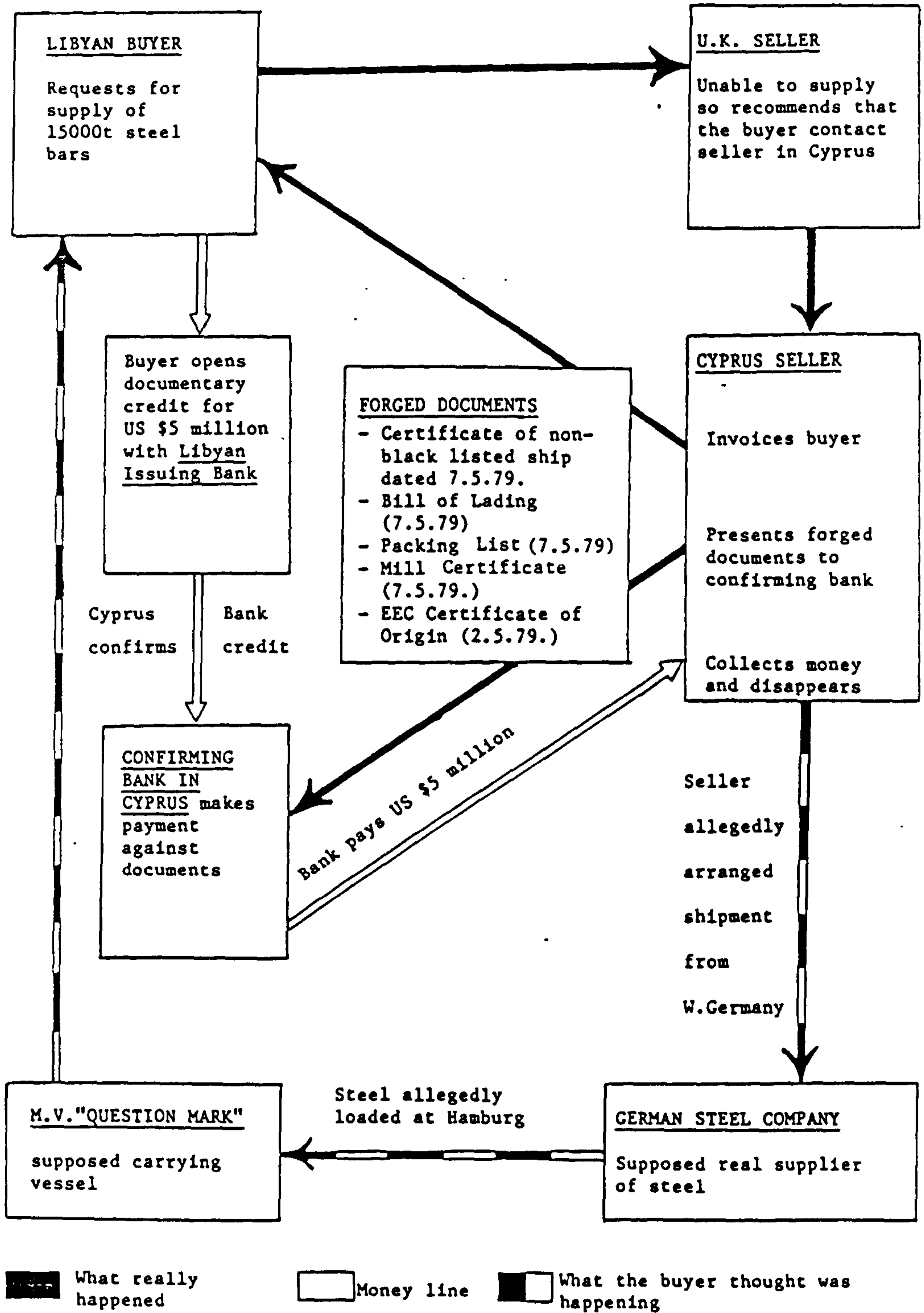


Figure 3.4 - Conceptual Model of Documentary Fraud

Source : Adapted from ICC Publication No. 370



equitable allocation of responsibilities between the parties (i.e. banker/buyer) with regard to their respective functions, duties and opportunities to act to prevent the occurrence of fraud [UNCTAD Report (1983)]. It has, however, been argued that the buyer should undertake the necessary checks himself and not rely on the banks to do more checking because "the main burden of preventing fraud should, and does, lie with the buyer" [Wheble 1982)].

From the above it can be seen that the failure of the system of international trade results in the occurrence of fraud. The underlying cause(s) of the failure can only be determined by taking the systems approach and not apportioning the blame on one party or the other, as Bignell & Fortune (1984) point out that looking into the circumstances and background of failures would indicate that they are multi-causal and arise from complicated, interactive and interdependent prior activities. Kapoor & Gray (1985) have shown that the resurgence of maritime fraud, i.e. failure of the international trade system, can be traced back to the following interactive and interdependent prior activities :

- a) The freight market 'boom' in 1972 led to massive investment in new ships.
- b) The unpredictability of the crises leading to the present recession left the world with massive surplus tonnage which

was further affected by the re-opening of the Suez Canal.

- c) With the quadrupling of oil prices the oil-rich States, which were unaffected by the depression, found themselves in a buyer's market, and continued to import large quantities of cargo at competitive prices.
- d) The sudden increase in trade, in conjunction with poor port infrastructure led to port congestion. Delays of up to and sometimes exceeding 6 months were not unusual.
- e) Due to the recession the traders, particularly those from developing countries, were looking for cheap goods and services.
- f) Due to surplus tonnage, 'singleton shipowners' in a desperate attempt to keep their ships operational entered into contracts at break-even or uneconomic rates. They soon found themselves losing money as delays at the discharging ports continued to increase. In order to free their vessels for further trading the cargoes were discharged at the nearest/intermediate ports. What probably started as a desperate but innocent attempt by the owner/charterer to avoid bankruptcy gradually developed into a way of making untold profits at very little or no risk for the unscrupulous operators.

The above is a brief outline of the various aspects which have to be examined in detail in a systems analysis. It does, however, show how a systems approach would help in determining the causes leading to the failure of the system of international trade. It emphasizes the need for a 'soft' systems approach and also the need for the identification of the interaction between the elements of the system and its environment.

### **3.8 The Value of Soft Systems**

A mathematical model, by definition, should be precise and would use logic in arriving at a solution. In view of this it seems to be an impossible task to develop a mathematical model to illustrate the apparently irrational and often illogical behaviour of Man. Perhaps an example would serve to illustrate the point :

An entrepreneurial shipowner wants to close a 'deal' quickly, and his decision to accept or reject the offer depends, among other things, on "the feel of the market" and "gut feeling" that against all odds the deal is very good. Both "the feel of the market" and "gut feeling" are intangibles, neither of which can be quantified to be put into a mathematical model to assist the shipowner in his decision-making. Whereas, with a systems diagram in front of him he could systematically assess all the relevant factors and, if necessary, come to virtually an instantaneous decision whether to accept or reject the offer.

Such an approach helps clarify an apparently complex situation and may assist the shipowner in identifying flaws in his "gut feeling". It should be pointed out that such an approach meets resistance from practitioners in many areas of activity since it tends to demystify their work and it may result in subsequent loss of status or even in the disappearance of much of the work.

Therefore it is submitted that Checkland (1978), quite rightly, recommends abandoning the 'hard' systems or mathematical approach in the area of 'soft' systems problems. This view is also substantiated by Quade (1971). In view of the foregoing, and bearing in mind that the system of international trade is a Human Activity System which operates under conditions of uncertainty, as pointed out in chapter 2, it was decided to use the soft systems approach to determine the causes leading to the failure of the system.

Charterparties are demonstrably effective instruments of fraud. Bill of Lading, however, are superlative.

[Zetterman (1983)]

The numbers in brackets thus {1} refer to details of legal citations and foot notes, which are placed at the end of a chapter in a chapter appendix.

In chapter 4 there are three major sections. Separate numbering is used for each of the three sections, i.e. contracts of Carriage, Insurance and Payment.

	Page
<b>CHAPTER 4 : CONTRACT OF CARRIAGE, INSURANCE &amp; PAYMENT</b>	<b>76</b>
4.1 : International Trade as a System	76
4.2 : People involved in the various types of Contracts	79
4.3 : Contract of Carriage	83
4.3.1 : C.i.f. Contracts	84
4.3.2 : Importance of Intermediaries	90
4.3.3 : Importance of a Bill of Lading	92
4.3.4 : Signing Bills of Lading	101
4.3.5 : Factors Facilitating Fraud involving Bills of Lading	104
4.3.6 : The Future of Bills of Lading	107
4.4 : Contract of Insurance	112
4.4.1 : Introduction	112
4.4.2 : The Marine Insurance Act, 1906	115
4.4.2.1 : Insurable Interest	117
4.4.2.2 : Utmost Good Faith	118
4.4.2.3 : Indemnity	120
4.4.2.4 : Proximate Cause	121
4.4.3 : Effecting Insurance	123
4.4.4 : The New Marine Policy (1982)	128
4.4.4.1 : Analysis of Institute Cargo Clauses (1982)	129
4.4.5 : Fraud and Marine Insurance	132
4.5 : Contract of Payment	137
4.5.1 : Introduction	137
4.5.2 : Documentary Credits	139
4.5.3 : Operation of a Documentary Credit	141
4.5.4 : Types of Documentary Credits	146
4.5.4.1 : Revocable Credits	147
4.5.4.2 : Irrevocable Credits	147
4.5.4.3 : Confirmed Irrevocable Credits	148
4.5.5 : Contractual Relationships in Documentary Credit Operations	149
4.5.5.1 : Relationship between Buyer & Issuing Bank	153
4.5.5.2 : Relationship between Seller & Issuing/Confirming Bank	154
4.5.5.3 : Relationship between Buyer & Seller	159
4.5.5.4 : Relationship between Issuing Bank & Advising Bank	160
4.5.5.5 : Relationship between Advising Bank & Seller	161
4.5.6 : Refusal to pay the Beneficiary	162
4.5.7 : Fraud & Documentary Credits	163
4.5.8 : Bank Super-service	169
4.6 : The Conceptual Model of the System of International Trade	172
Chapter 4 Appendix	176

## CHAPTER 4 - CONTRACTS OF CARRIAGE, INSURANCE & PAYMENT

### 4.1 International Trade as a System

This chapter uses the soft systems approach to develop a simplified, conceptual model of the system of international trade. The system is then made dynamic by developing conceptual models of the three main sub-systems to show the flow of information, documents, goods and money. Then a dynamic model of the system of international trade is developed for analysis in the next chapter.

An international trade transaction is made up of a number of different transactions, each of which form separate contracts in their own right. However, the individual contracts, though separate and distinct in their own right, originate as a result of the primary contract for the international sale of goods.

Under a contract for the international sale of goods a seller in one country undertakes to supply specified goods to a buyer in another country against payment of an agreed sum. To protect their respective interests there is need for security. The buyer does not want to part with the money before he receives the goods and similarly the seller does not want to part with the goods before he receives payment. This situation is resolved by the use of internationally recognised standard terms of



delivery and payment, which are incorporated in the contract of sale.

The terms of delivery are governed by standard conditions known as "trade terms". These terms are shorthand expressions of rights and obligations of the buyer and seller [ICC Publication No. 354 (1980)]. Their main function is to determine at what point the seller has fulfilled his obligations so that the goods in a legal sense could be said to have been delivered to the buyer. Their secondary functions being to identify :

- whose duty it is to provide export/import licence,
- the nature and type of documents,
- the extent of insurance protection, etc.

The most commonly used trade terms are "free on board" (f.o.b.), "cost & freight" (c & f) and "cost, insurance & freight" (c.i.f.).

The goods have to be transported to their final destinations and also insured against loss and/or damage, thereby giving rise to contracts of carriage and insurance. Thus in its simplest form, the international trade system may be represented as shown in figure 4.1.

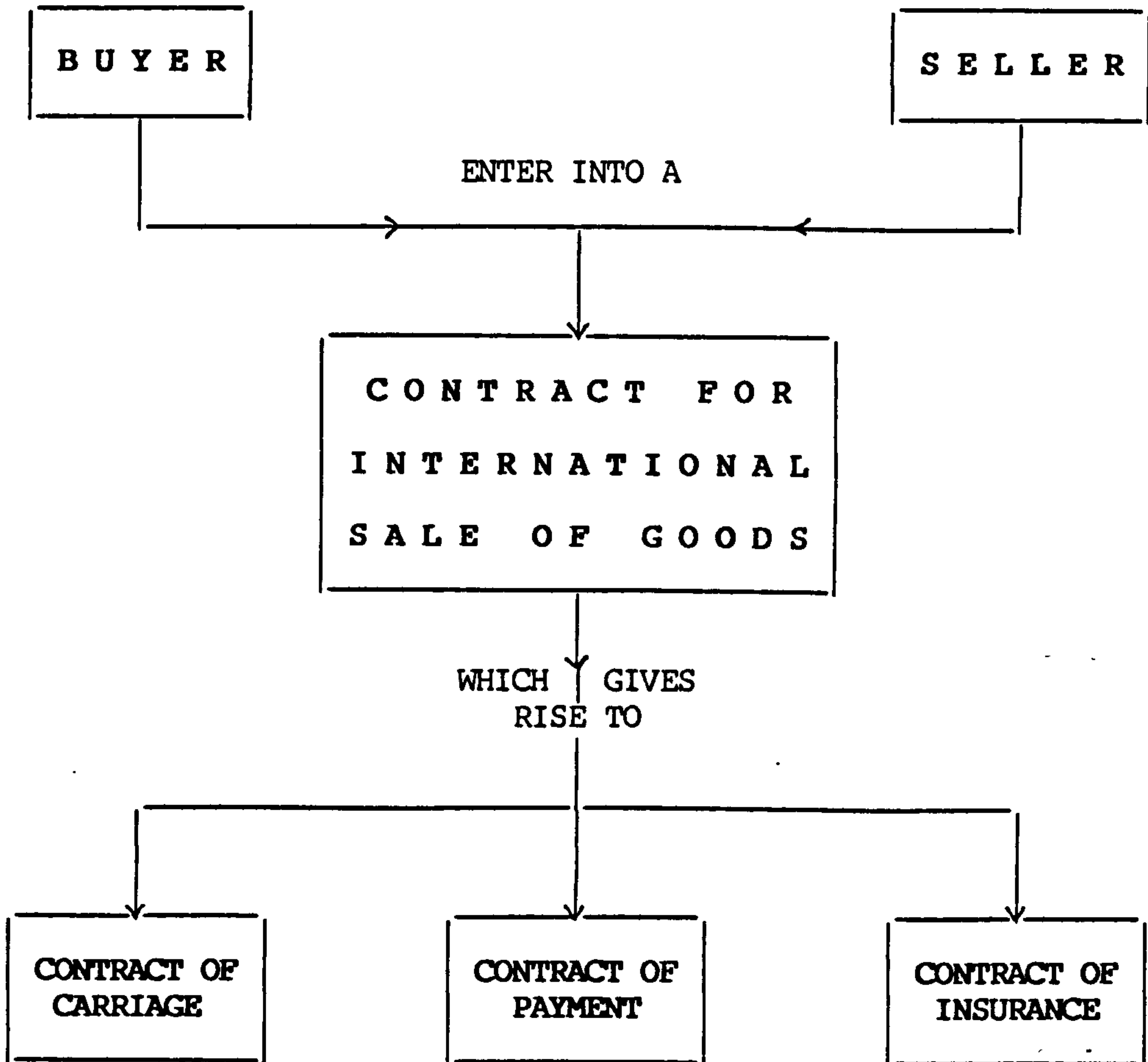


Figure 4.1 - Simplified Conceptual Model of the System of International Trade

However, this model can become very complex depending on the number of people involved in the transaction, and this, in turn, gives rise to further subsidiary contracts, such as the contracts of agency, freight forwarding, etc. In addition, since the goods on passage may cross several national boundaries, the official requirements with reference to customs and other local formalities have also to be taken into account; these are some of the sub-systems in the immediate environment of the system of international trade which interact with it.

#### **4.2 People involved in the various types of contracts**

The principal actors involved in the three main contractual sub-systems are now considered to show the complexity of the system and the difficulties involved in determining the weak links in the system.

Figure 4.2 shows the different personnel who may be involved in the the main sub-systems. However, depending on the exporting and importing countries, the type of goods and the documents requested by the buyer, some or all of the following would also be involved : Customs, Port Authorities, Health Authorities, Embassies/High Commissions, Stevedores, Port Security Officers, Chamber of Commerce, Department of Transport, Inspections/Survey Agency.

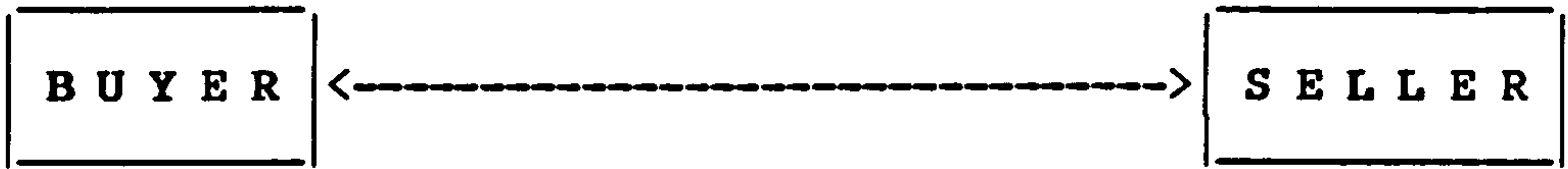
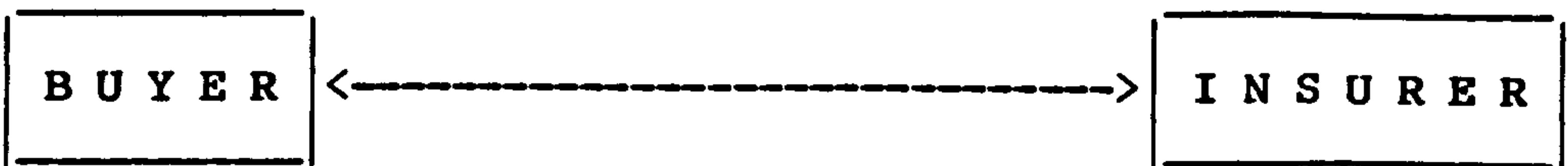


Figure 4.2a - Personnel involved in the Contract of Sale

**Cost, Insurance & Freight (c.i.f.)**



**Free on Board (f.o.b.) / Cost & Freight (c & f)**

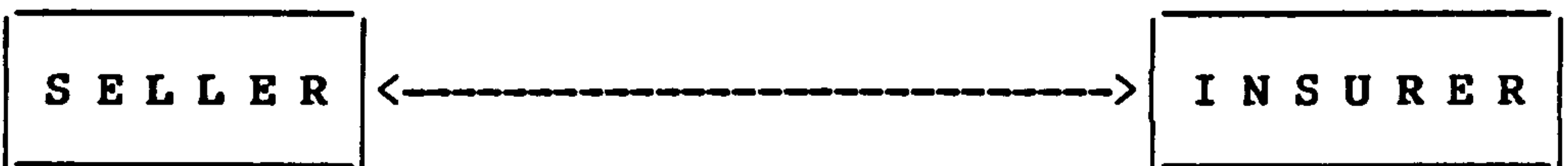
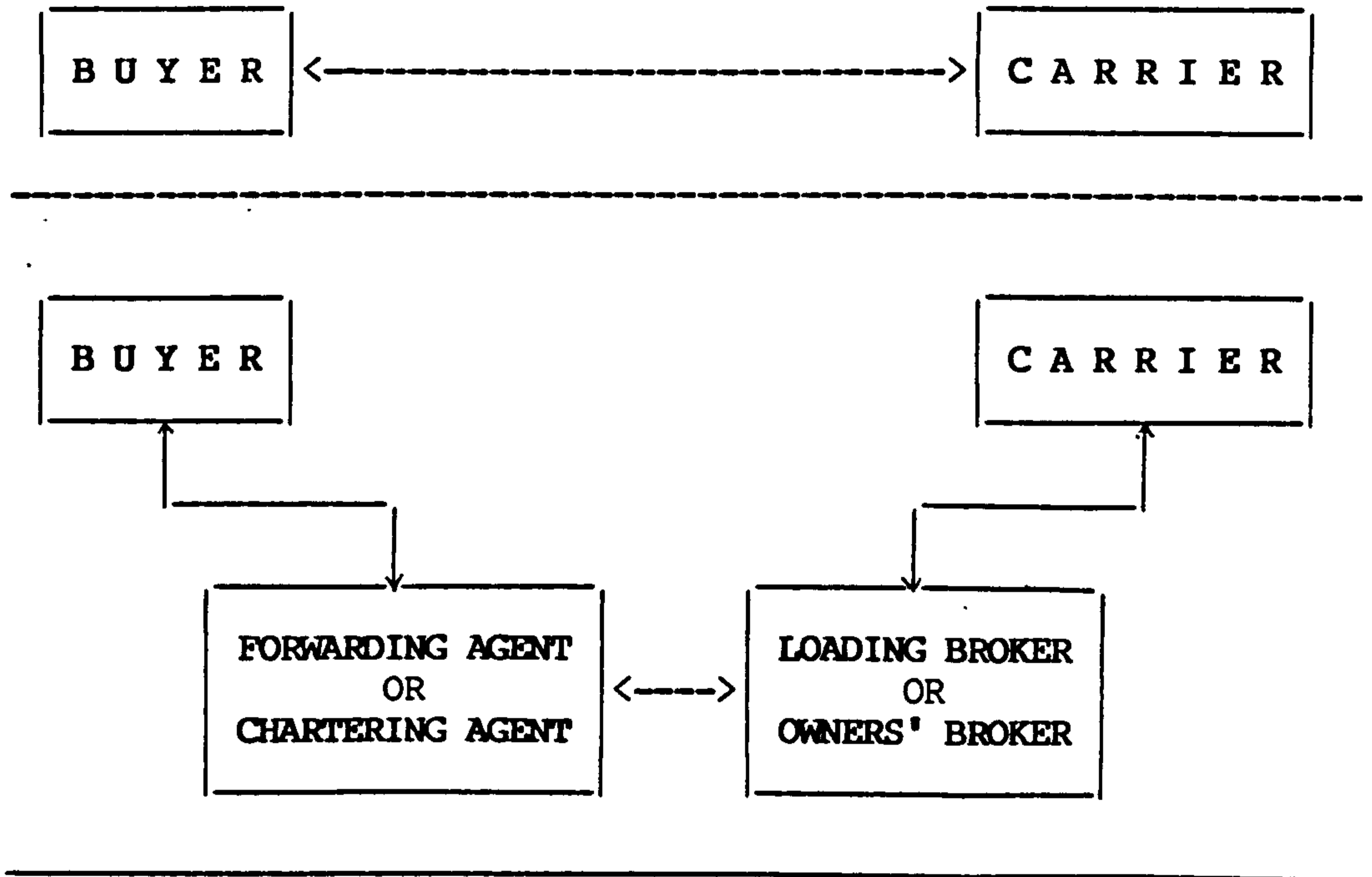


Figure 4.2b - Personnel involved in the Contract of Insurance

Free on Board (f.o.b.)



Cost & Freight (c & f) / Cost, Insurance & Freight (c.i.f.)

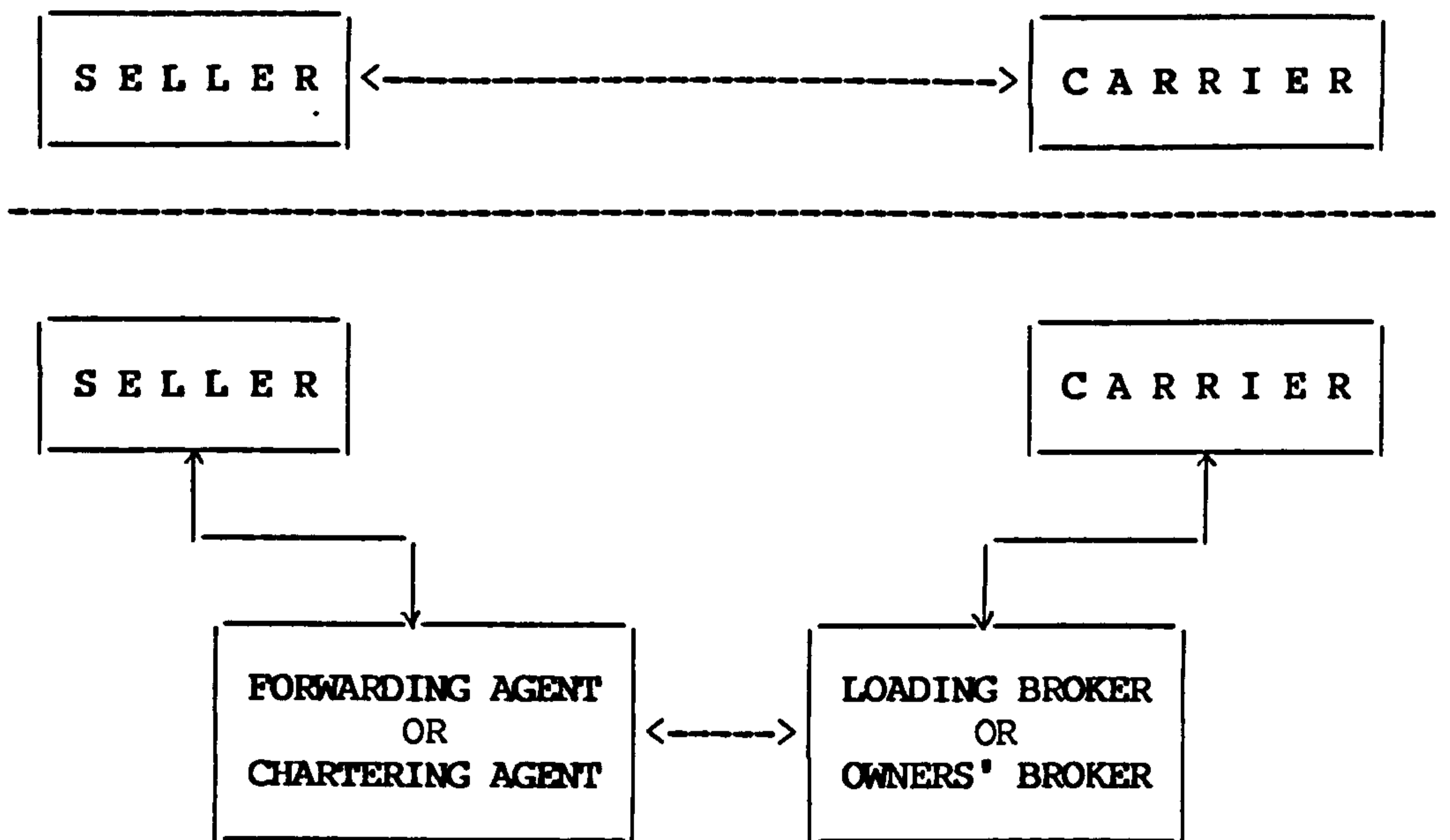


Figure 4.2c - Personnel involved in the Contract of Carriage

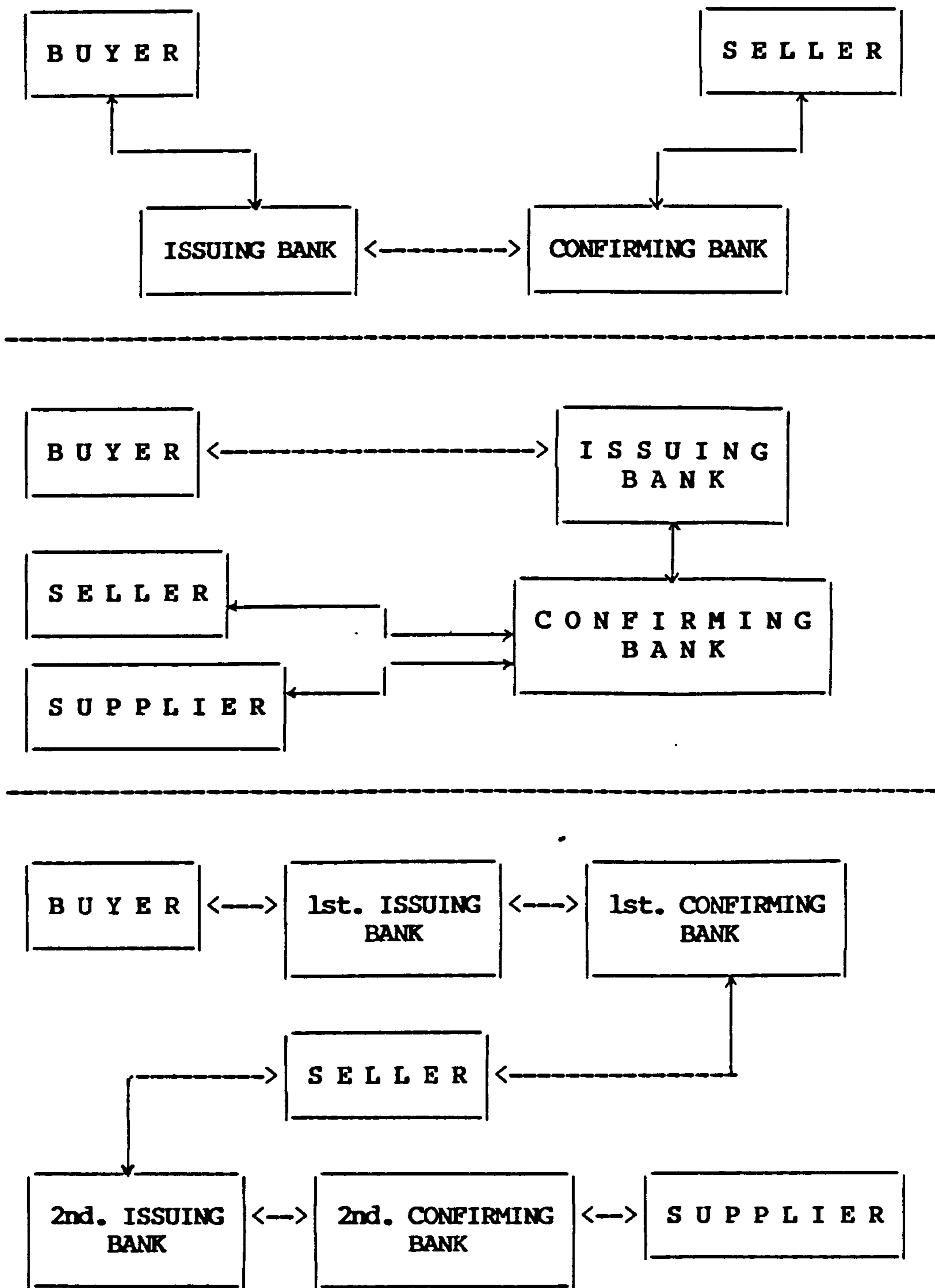


Figure 4.2d - Personnel involved in the Contract of Payment

Having identified the personnel who may be involved in the international trade transaction, each of the contractual sub-systems will now be considered in detail.

#### 4.3 CONTRACT OF CARRIAGE

The contract of carriage is one of the three subsidiary contracts under the contract for the sale of goods. The contract is between the carrier (who may be the shipowner or the charterer) and the buyer or seller depending on the trade terms.

There are two basic types of contracts by which a ship can be employed for the carriage of goods at sea - a contract of carriage evidenced by a Bill of Lading (B/L), and a Charter Party (C/P). Although the two contracts are separate, frequently a ship under a charter is carrying goods under a B/L.

A c.i.f. contract, which contemplates the carriage of goods by sea, lends itself to the seller-perpetrated documentary frauds because :

a) for the better part of this century it has constituted the most important instrument of overseas trade [Sassoon (1975)], and is most frequently used in international seaborne trade [Abhyankar (1980)], and

b) the salient characteristic of this contract is that "the property in the goods not only may but must pass by delivery of the documents against which payment is made" {1}.

It is for this reason that the contract of carriage under a c.i.f. contract is considered.

#### 4.3.1 C.i.f. Contracts

Under a c.i.f. contract it is the duty of the seller to arrange for the shipment of the goods. He can enter into a contract of carriage with the carrier in one of the two ways shown in figure 4.3. Figure 4.4 is a conceptual model of the process of entering into a contract of carriage, evidenced by a B/L, and the shipment of goods. Figure 4.5 is a conceptual model of the process of entering into a contract of carriage governed by a C/P. Figure 4.6 is a conceptual model of the commercial operation of a ship under charter carrying goods under a B/L.

When the goods are being transported by sea actual possession of them cannot be delivered. In such cases "the bill of lading is considered to be a symbol of the goods, and its delivery to be a delivery of the goods" {2}.



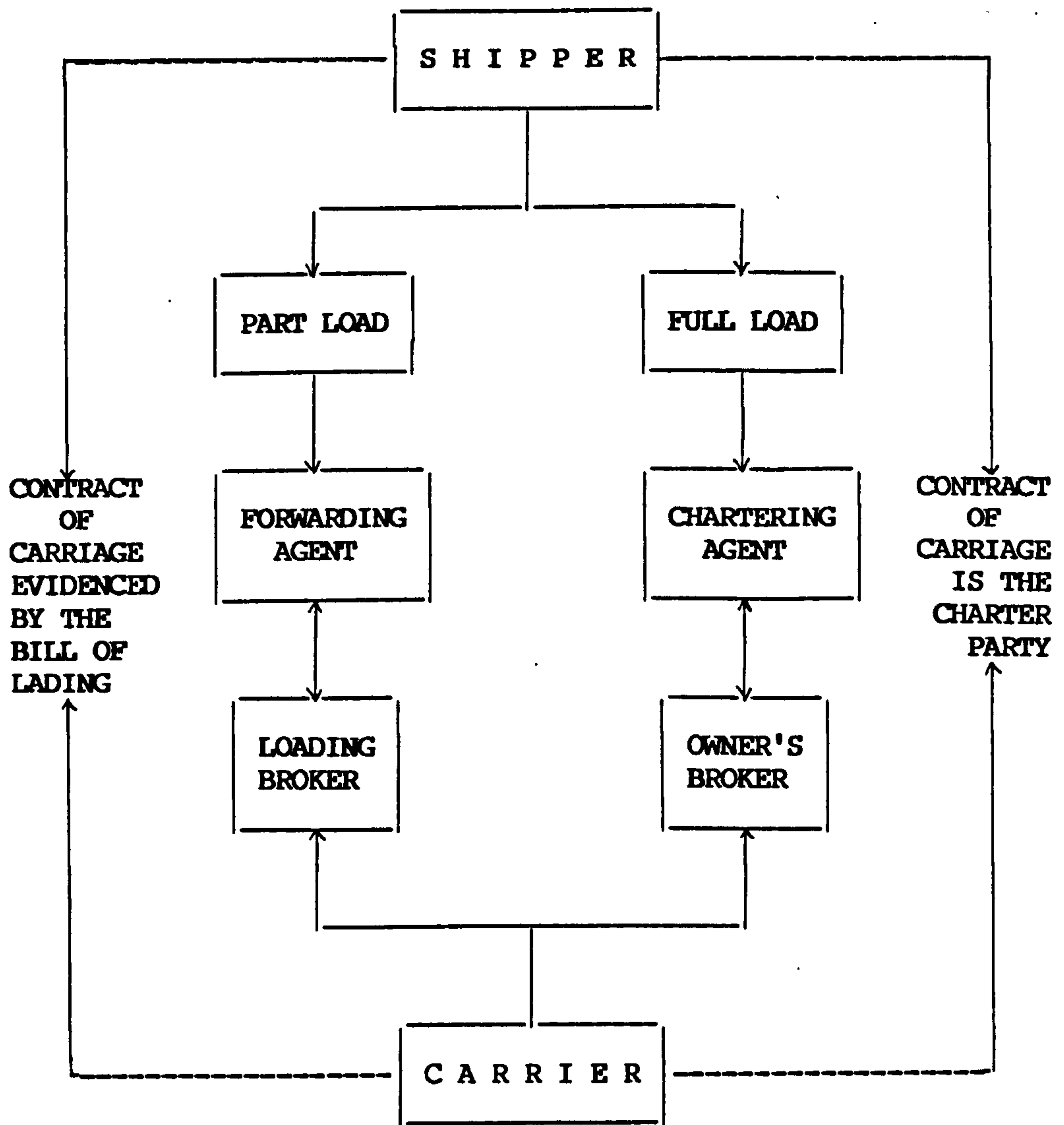


Figure 4.3 - Two approaches to a Contract of Carriage

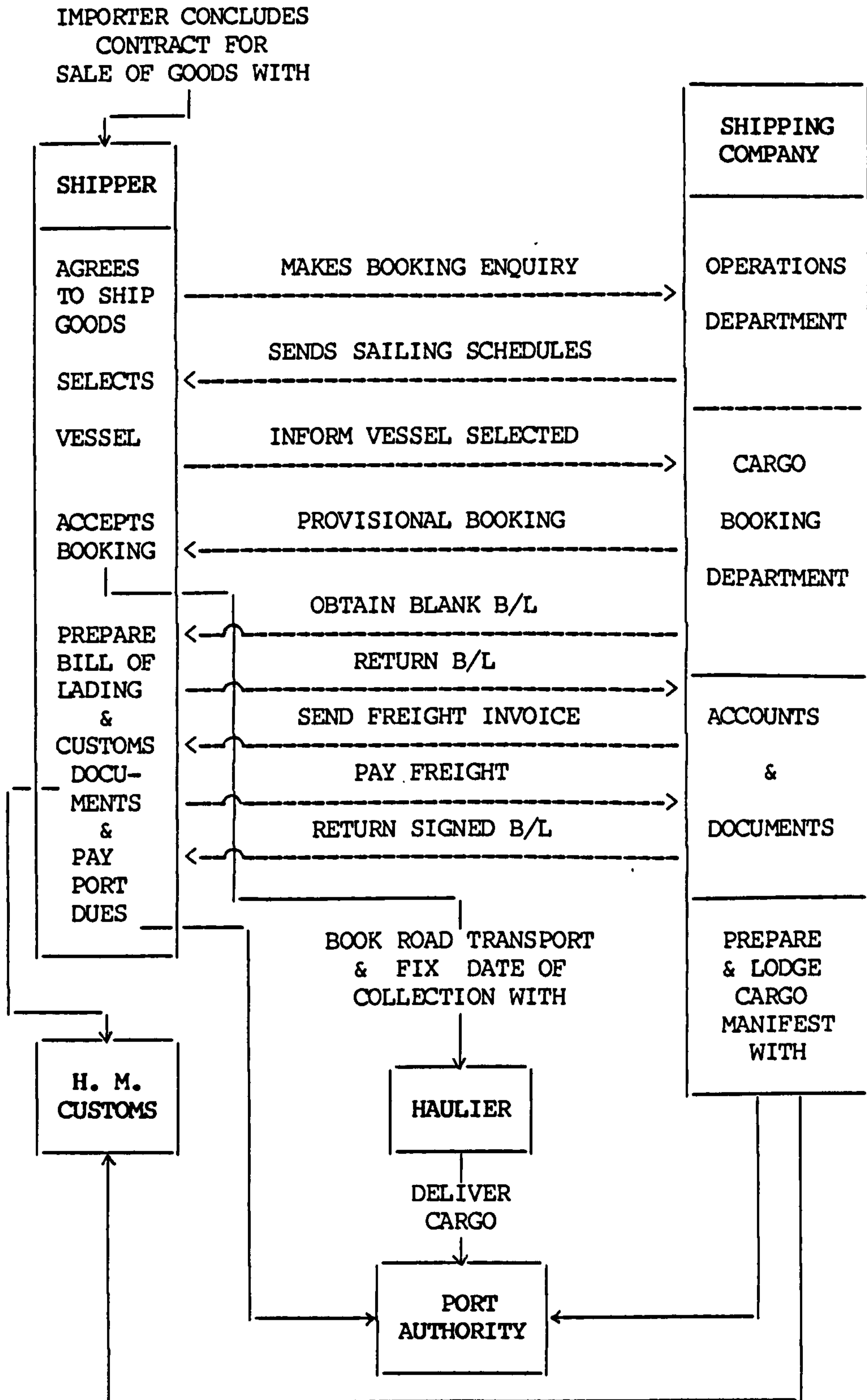


Figure 4.4 : Conceptual Model of the Contract of Carriage, evidenced by a B/L, & shipment of goods

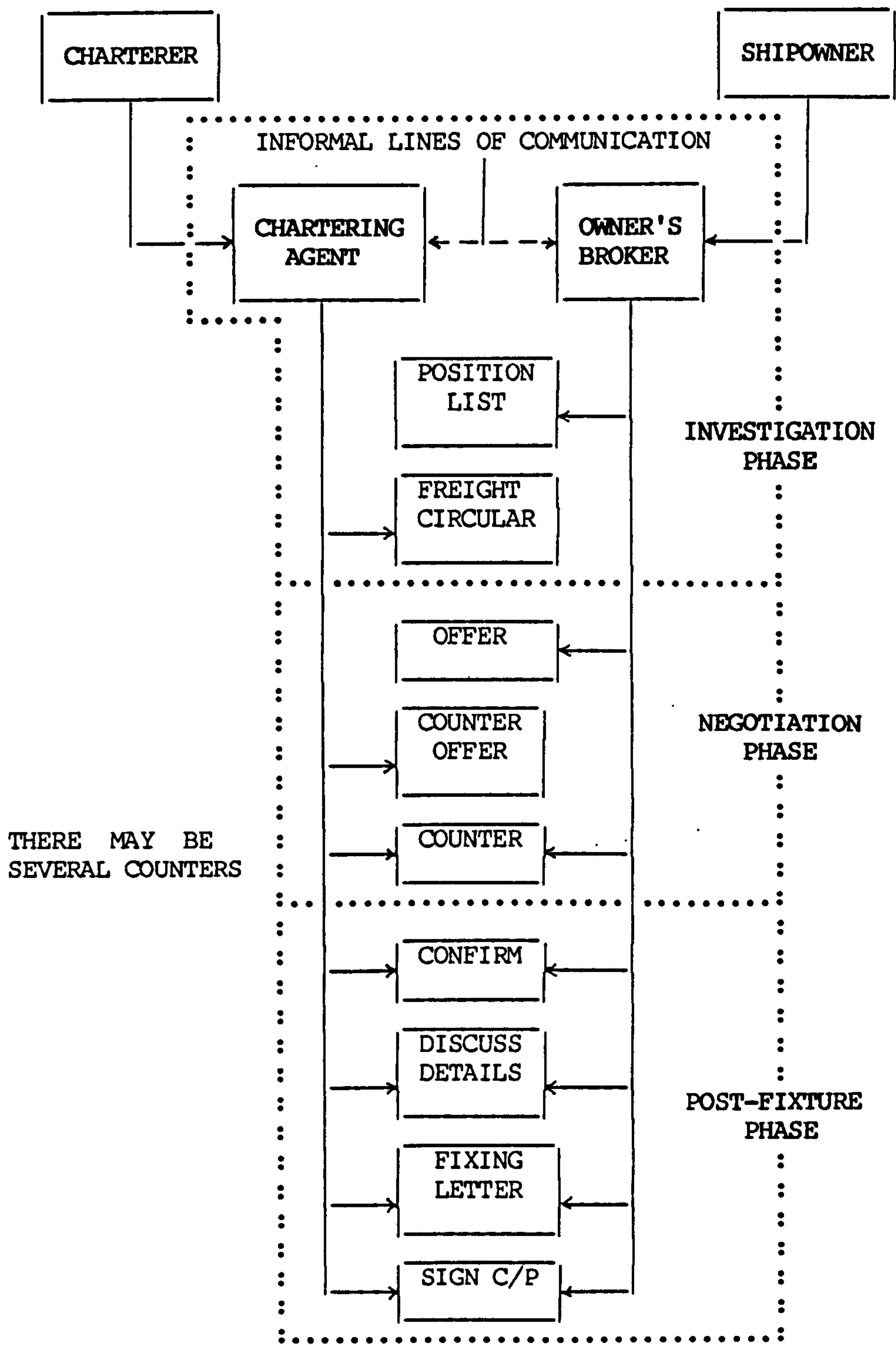


Figure 4.5 - Conceptual Model of the process of entering into a Contract of Carriage governed by a Charter Party

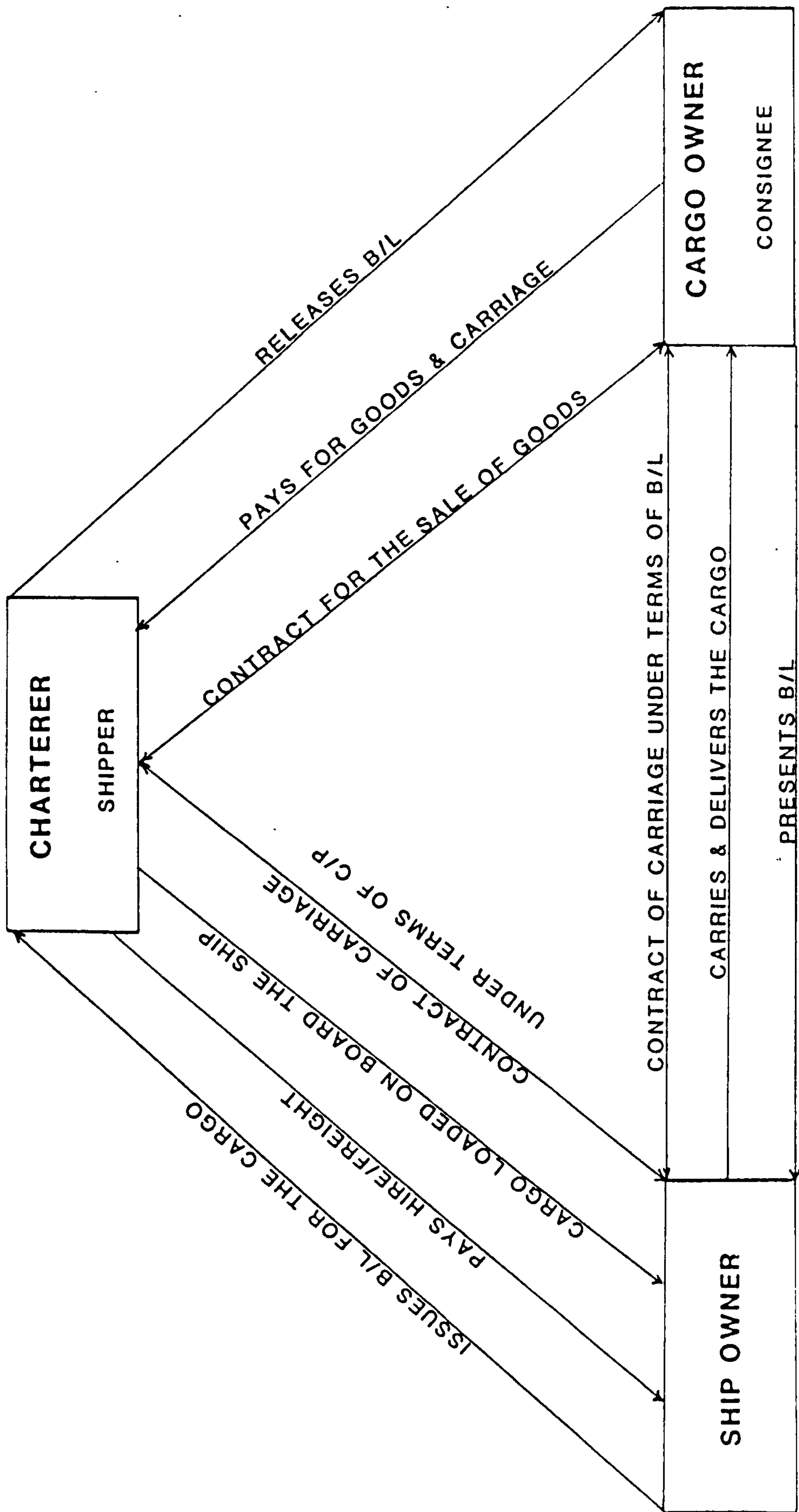


Figure 4.6 - Conceptual Model of the Commercial Operation of a Charter Party

Therefore, under a c.i.f. contract "all that a buyer can call for is delivery of the customary documents. This represents the measure of the buyer's right and the extent of the vendor's duty" {3}. In *Johnson v Taylor Bros. & Co.* {4} Lord Atkinson pointed out that in a c.i.f. contract, in the absence of any special provision to the contrary, the vendor is bound by his contract to do the following things :

- a) To make out an invoice of the goods sold,
- b) To ship at the port of shipment goods of the description contained in the contract, within the time named in the contract,
- c) To procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract,
- d) To arrange for an insurance upon the terms current in trade which will be available for the benefit of the buyer, and
- e) With all reasonable despatch to send forward and tender to the buyer these shipping documents, namely, the invoice, bill of lading and policy of insurance.

### 4.3.2 Importance of Intermediaries

From figure 4.3 it can be seen that under both approaches to the contract of carriage the two principals, i.e. the shipper and the carrier, have to rely on the competence and integrity of their agents who act as intermediaries.

In the charter market a good shipbroker is worth his weight in gold to his principals. He must know the sources of information and must be able to get information for both local and international markets. In addition, he must ascertain and evaluate all the likely business quoted to him and advise his principal, not only of the availability of ships or cargo but also give him his personal views of the strength of the market, the prevailing market rate and what he thinks of the other party to the contract.

Prentis (1979) points out that members of the Baltic Exchange would check and re-check the credentials of the principal whose business they quote. He goes on to say :

Many charterers seldom enquire of the financial or operating records of Disponent Owners or even bother to enquire the name of the actual Owners of the vessel in order that they might check on the experience of the said operator.

Furthermore the use of the so-called "Kerbside Brokers", i.e.

those who are not members of any Exchange or national or international professional associations should be avoided, because the "kerbside broker" is only interested in fixing the ship as soon as possible and receiving his commission. For example, in the majority of fraud cases the chartering has been routed through the "kerbside brokers" [Prentis (1979)].

Overlaet (1985) points out that the continued decline in the ship agency work during the last two decades and the generally reducing moral standards of doing business have provided :

Pretty fertile ground for agents, who saw closure or worse, bankruptcy of their old business staring them in the face, to succumb to perhaps less than totally honest business methods when they saw the opportunity.

Therefore, to protect the interests of the principals some form of control over the intermediaries is necessary. One organisation, known as Multiport Ship Agencies Network, based in Rotterdam, meticulously scrutinises its members before joining and monitors their accounts annually.

The UNCTAD Secretariat in its report [UNCTAD Report (1983)] suggested that :

In order to put an end to various frauds and malpractices attributable to agents who provide intermediary services, consideration should be given to the formulation of minimum standards concerning financial and professional

qualifications, as well as of standards of conduct, which could be used as guidelines for national action in establishing a national licensing system or compulsory membership requirements in a professional association.

At the Bombay seminar on "International Maritime and Commercial Frauds" (March 1985) one of the resolutions was that shipping related intermediaries "should be registered and licenced and should provide indemnity bonds for the due performance of the voyage by the ship or shipping company whose agents they are". And, at the "London International Conference on Maritime Fraud" (April 1985) at the Ships' Agents Workshop session it was agreed that "some form of licensing was desirable", and one of its recommendations was "consideration should be given to the requirements as to proof of financial resources and reliability as well as posting a performance bond or guarantee".

Therefore, the principle of "Caveat Emptor", i.e. let the buyer beware, must apply here as well, as in any other business. Whilst the choice of a shipping intermediary rests entirely with the principal, he should not deal with anyone who is not a member of a national or international association.

#### 4.3.3 Importance of a Bill of Lading

When the goods for shipment would only comprise a part of a general cargo the seller will enter into a contract of



affreightment and will simply receive a B/L for the goods shipped. When the seller has sufficient quantity of goods to fill a ship he may charter or hire the ship for the voyage. In such cases the contract of carriage is the C/P and the seller may issue his own B/L or use the carrier's B/L.

In the transaction for the international sale of goods, after the contract of sale, the most important document is the B/L. The importance of a B/L was highlighted by Lord Justice Bowen in *Sanders Brothers v Maclean & Co.* {5} where he said that "it is a key which in the hands of a rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be".

Whilst a B/L has three functions, namely :

- a) it is a receipt for the goods shipped and contains certain admissions by the carrier as to quantity, condition and also the date of shipment,
- b) it is prima facie evidence of the contract of carriage for the goods, and
- c) it is a document of title, without which neither payment for the goods nor their delivery can be obtained. During transit, it enables the holder to transfer title to the goods merely

by endorsing the B/L,

its importance lies in the fact that it is a document of title to the goods, without which neither payment for the goods nor their delivery can be obtained. During transit, title to the goods can be transferred by the holder merely by an indorsement on the B/L, and as a result goods can be bought and sold in transit by successive indorsements. Figure 4.7 shows the sequence of events in the life of a B/L.

In the majority of trades the B/L is usually issued in two or three originals, and as many as 50 copies in some trades. The indorsement and transfer of one B/L out of a "set" is sufficient to pass the property in the goods which the B/L represents, and that subsequent indorsement of any others of the "set" is ineffective for that purpose {6}. As delivery of the cargo is effected on production of only one of the originals, the shipowner protects himself against wrongful delivery by stating on the B/L :

In witness whereof the Master, Owner or Agent of the ship has affirmed to the number of Bills of Lading stated below, all of this tenor and date, one of which being accomplished, the others to stand void.

**In Glyn Mills Currie & Co. v The East and West India Dock Co.**

{6} Earl Cairns said that he understood the above statement to mean that if the shipowner had delivered the goods on one of the Bills of Lading in good faith, he will have fulfilled his

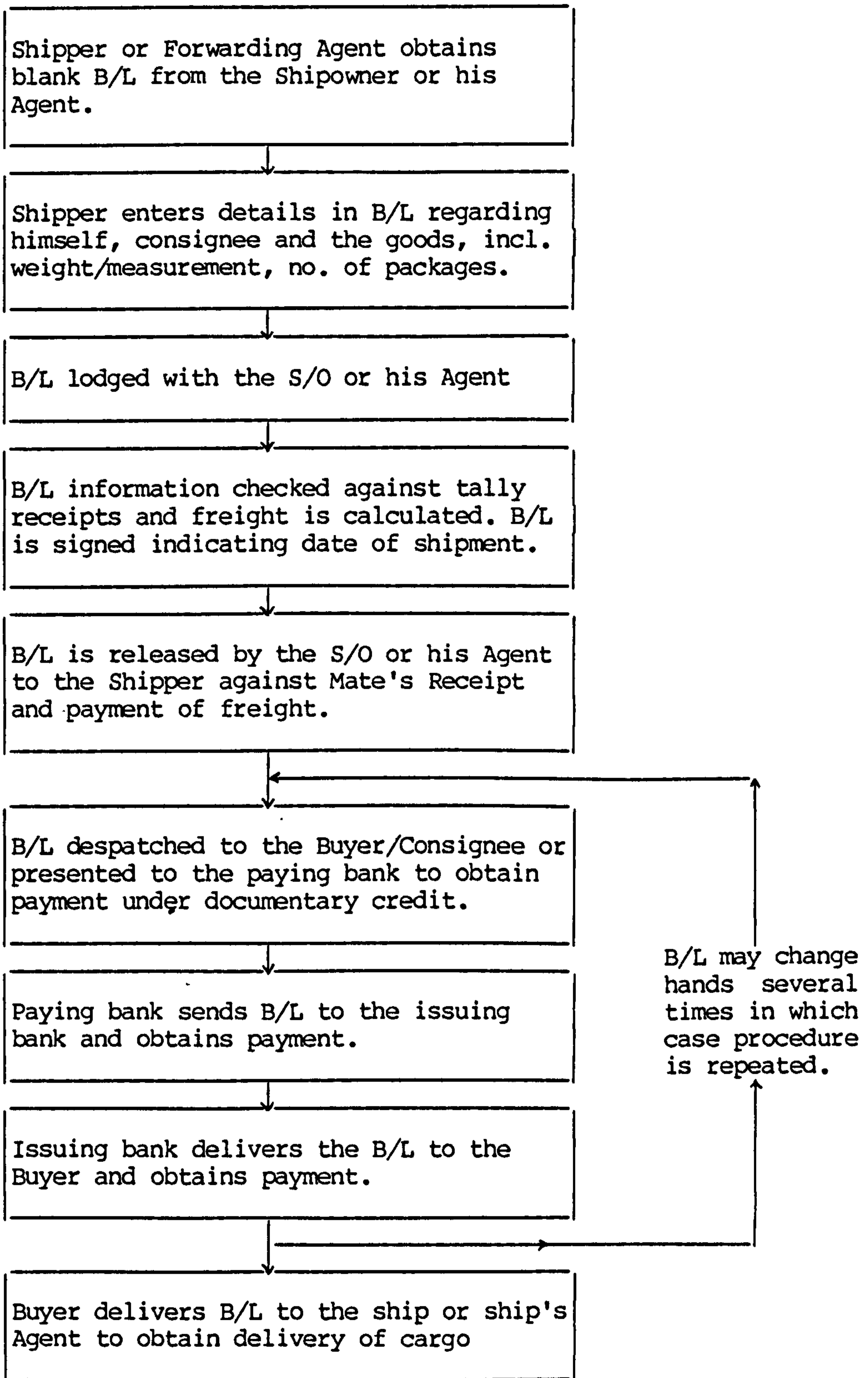


Figure 4.7 - Sequence of Events in the "Life of a B/L"

contract and would not be answerable upon any of the others. In the same case Lord Blackburn {7} said :

... when the master has no notice or knowledge of anything but that there are other parts of the bill of lading, one of which it is possible may have been assigned, he is justified or excused in delivering according to his contract to the person appearing to be the assign of the bill of lading which is produced to him.

In *Sanders Brothers v Maclean & Co.* {8}, where the buyer refused to pay for a cargo of iron rails because only two out of a set of three Bills of Lading were tendered to him, Bowen L.J. said :

... a tender is at all events in compliance with the present contract, by which all the effective bills of lading in existence are tendered. If, indeed, the absent original had been misused so as to defeat the title of the indorsees of the tendered residue of the set, the tender would have been bad. But the vendee was not entitled to reject the tender of the only effective documents on the bare chance that a third effective bill of lading might possibly have been dealt with when in fact it had not. The person who rejects effective and adequate documents of title on the ground that another document may possibly be outstanding, does so at his own risk.

In view of the above, it is submitted that in all cases the use of more than one original should be abolished, because the position of the holder of only one original out of many is weakened. The risk that the person holding another original may succeed in taking delivery of the cargo was exemplified in the *Glyn Mills* case cited above - in this case the consignee deposited one B/L with a bank as security for a loan, and with a

second B/L obtained delivery from a dock company in whose warehouse the goods had been stored after being landed. Therefore, as Gram (1983) points out under the present practice:

The shipper is furnished not only with one key to the goods but with a number of additional keys which may be used or abused. There is a risk of double transactions.

As attempts within the International Chamber of Commerce to stop the practice of issuing more than one original have failed [Gram (1983)], it is submitted that anyone purchasing goods or giving loan on the strength of a B/L should demand the full set.

In a contract that called for the tender of a full set of bills of lading, the buyer was held entitled to reject the tender if the requirement is not fulfilled, even though the seller was offering an indemnity or an undertaking to produce the third {9}. However, in *Dixon, Irmaos & Cia Ltd. v Chase National Bank of the City of New York* {10}, an indemnity of a responsible New York bank was accepted in lieu of a missing part of a full set of bills of lading, because it was the custom among New York banks to accept such guarantee.

However, a shipowner is not entitled to deliver goods to the consignee without production of the B/L {11}. Even the rightful owner of the goods cannot claim the goods if he is unable to

produce a B/L. In *Trucks & Spares Ltd. v Maritime Agencies (Southampton) Ltd.* {12} Denning, L.J. (as he then was) said :

Whether the property has passed or not, in my opinion, they (the buyers) ought to produce bills of lading duly endorsed in order to make a good title at this stage.

The reason for the presentation of the B/L is that, as pointed out previously, it is "the key" to the warehouse where the goods may chance to be. The presentation protects the carrier in that he can, normally, rely on the document being presented by the right person. Even then, Gram (1983) points out that the carrier must act carefully because :

He may be liable for misdelivery if he is informed or should have understood that the document has been forged, or that the person claiming delivery is not the last endorsee.

In multiple sale transactions for the same cargo, especially where the sea voyage is short, it will be very difficult for the ultimate buyer to present the B/L to the carrier to obtain delivery, because the shipping documents, including the all-important B/L, would not have reached him by the time the transaction is completed. The reason for the delay can be seen in figure 4.7, namely, two banks may be involved for each transaction, and documents cannot pass through the hands of a number of traders and their banks in time [Gram (1983)].

As a result, a system of indemnities has grown, particularly in the oil trade, both as between the seller and buyer to whom the seller is unable to deliver the B/L, and as between the ultimate buyer of the cargo and the carrier for the latter's willingness to deliver the cargo without presentation of the B/L [De May (1986)].

The indemnity given to the carrier will not, however, protect him against an action for misdelivery, where it transpires that the B/L is not delayed but is being held by a party who has reason to assert a claim to the cargo [13]. De May (1986) points out that the inequity of the situation was publicised by the Chairman of the Documentary Committee of Intertanko, and resulted in the formation of SeaDocs Registry Limited. The purpose of the Registry is to provide custody, information transfer and handling services for shipping documents in the oil trade and eventually, other bulk trades, by the various parties concerned with shipping, trading and financing the cargoes in question.

Furthermore, the law and practice are in conflict when a cargo, which is financed by a banker's credit is sold before the voyage is completed; the seller is under an obligation in the terms of the banker's credit to transmit the B/L promptly. In such a situation how can the seller comply with his obligation to transmit the B/L to the buyer, when the bank, as pledgee, has a

right to retain the B/L as security until it has been paid ? In *Gatoil International Inc. v Tradax Petroleum Ltd.* {14} it was held that under a c.i.f. sale it was one of the seller's (Tradax's) obligations to take all reasonable steps to forward to Gatoil, without delay after shipment of goods, the shipping documents needed to obtain actual possession of the cargo. The Court also held that failure to transmit one original B/L for each parcel held by Tradax's bank was a clear breach of a c.i.f. contract.

The situation created by the Gatoil case could also be resolved by the use of the SeaDocs Registry. In 1986 SeaDocs successfully completed a Pilot Project for Ekofisk crude oil shipped from the Phillips Petroleum terminal at Seal Sands, and should be ready for live operations in 1987. While SeaDocs Registry is a trade facilitation measure, it is believed that it will provide a partial answer to maritime fraud [Stork (1985)]. In a publicity paper entitled "SeaDocs : Can Technology Beat Fraud ?", Mr. A.B.M. Albert, Marketing Director of SeaDocs Registry Limited, says that the three principal reasons why such a system can assist considerably in reducing the potential for fraud are - speedier and more accurate information, more secure communications and substantially improved audit trail.

At the London International Conference on Maritime Fraud (April 1985) the Workshop on Documentation concluded that "the use of



a guarantee to the carrier when an original bill of lading cannot be produced is an unsatisfactory solution and should be avoided", and also that "in bulk trades, a centre like the SeaDocs Registry might prove itself to offer a workable solution, but modern techniques of communication open up the road to more elegant and efficient solutions in the long run".

#### 4.3.4 Signing Bills of Lading

When presented with a B/L for signature, the Master or Agent must examine it for the following :

- a) The quantity of cargo - in bulk shipments it may be difficult to ascertain accurately the quantity loaded, in such cases it has been suggested that the common practice is that, if the B/L figure differs from the ship's figure by more than 0.5% the Master should question its accuracy [Bibby Line (1978)]. Inaccurate statements in bills of lading as to the quantity shipped would seriously prejudice the position of the Owner, for if he disputes them he has the burden of proving them inaccurate. In *Smith v Bedouin Steam Navigation Company* {15} Lord Halsbury said :

... the important point is that there is a receipt for the shipment of the goods by the persons authorized to give such receipt by the owners, and unless it could be shown that there was a mistake or some fraud in the receipt, the usual result must follow. If that were not so it would be impossible to conduct business at all; and in the case of a bill of lading, which involves the rights of other people, it is more

important to assert this doctrine than in the case of almost any other document (Emphasis supplied).

- b) Description and Condition of the Cargo - This is a very important point and the Master should ensure that as far as is possible the description contained in the B/L is consistent with what he believes it to be. He should also ensure that the goods loaded, including their packaging, are in apparent good order and condition; if there are any defects they should be noted on the B/L.
- c) Date of the B/L - The Master should not sign an inaccurately dated B/L unless as a matter of fact the vessel was physically loading on the date in question [Bibby Line (1978)]. This is because a stipulation as to time of shipment is a condition of the contract under section 13 of the Sale of Goods Act 1979. Furthermore, in *Ashmore & Son v C.S. Cox & Co.* {16} it was held that the stipulation as to time of shipment is a condition precedent. It is also an implied condition of the contract that the B/L shall be accurately dated with the date of shipment {17, 18}.
- d) Description of the Voyage - The Master should not sign a B/L which is inconsistent with any C/P governing the employment of the vessel or with his voyage instructions [Bibby Line (1978)]. This is particularly applicable in the case of a Voyage Charter, where the Charterer cannot instruct him to sign a B/L for a destination outside the range of ports allowed in the C/P. Furthermore, he should ensure that the

port of loading is also correctly entered. This can also affect the insurance cover (see section 4.4.4.1)

- e) Payment of Freight - The Master should not sign a B/L marked "Freight Prepaid" or with words of similar import, unless specifically instructed to do so by the Owners, Time Charterers (but not Voyage Charterers) or where the C/P explicitly requires him to do so, or where he has good evidence that freight had been paid and received by the Owners or Time Charterers.

It is very important for the Master to ensure before sailing that either he has issued a B/L under his own signature or delegated the signing to the Agent. Under no circumstances should the Master knowingly issue a misleading B/L as to quantity, description or condition of the cargo and/or date of shipment, even on the strength of an indemnity. An indemnity given to Owners by a shipper in consideration of their issuing clean bills of lading may be unenforceable because the Owners, by making in the B/L a representation of fact which they know to be false with intent that it should be acted upon were committing a tort of deceit {19}.

Charity (1986) points out that notwithstanding the fact that indemnities may be unenforceable, the practice of issuing such indemnities is nevertheless widespread, and the indemnity is

almost invariably honoured. From *Brown Jenkinson v Percy Dalton* {20} it does not follow that all indemnities against signing clean bills of lading are unenforceable. Indeed, Pearce, L.J. said :

In trivial matters and in cases of a bona fide dispute where the difficulty of ascertaining the correct state of affairs is out of proportion to its importance, no doubt the practice is useful. .... The practice is convenient where it is used with conscience and circumspection, but it has perils if it is used with laxity and recklessness. It is not enough that banks or the purchasers who have been misled by clean bills of lading may have recourse at law against the shipping owner. They are intending to buy goods, not lawsuits. Moreover, instances have been given in argument where their legal rights may be defeated or they may not recoup their loss. Trust is the foundation of trade; and bills of lading are important documents. If purchasers and banks felt that they could no longer trust bills of lading, the disadvantage to the commercial community would far outweigh any conveniences provided by the giving of clean bills of lading against indemnities.

#### 4.3.5 Factors Facilitating Fraud involving Bills of Lading

The foregoing sections show why B/L forgeries and falsifications feature in most cases. The perpetration of fraud involving B/L is facilitated by the following factors :

- a) Shipping documents can be obtained very easily on the open market; this includes the B/L - and in some cases those of reputable shipping companies. For example, Prentis (1979) points out "I have observed in some large Companies Bills of Lading lying around on counters awaiting collection". The

author has been told by a Director of a major Shipping Company that it was only after a massive fraud that they started locking up their signed B/L and blank B/L stationery.

b) Under section 3 of the Bill of Lading Act 1855, in the absence of fraud of the shipper or the holder, the B/L in the hands of a purchaser shall be conclusive evidence against the signatory.

c) Ship's agents around the world have shown a lack of understanding of the fact that the B/L is a document of title, and that delivery of cargo without return of an original B/L may involve delivery to a person who is not the owner of the cargo, or to a company which has in fact pledged the cargo to its bank [Hambro (1979)]. In the Documentation Workshop at the London International Conference on Maritime Fraud (April 1985) the author found that the people dealing with B/L in transactions daily were not fully aware of its importance.

d) For documentary credit purposes the shipper requests a clean B/L for the goods which are not in apparent good order and condition and undertakes in return to indemnify the master and the carrier for making a misstatement of fact. This indemnity, known as a "letter of indemnity", is considered fraudulent in many countries. For example, in *Ellerman & Bucknall Steamship Co. Ltd. v Sha Bhagajee Sunmull & Others* {21} the seller obtained a clean B/L on the strength of a

letter of indemnity and was able to obtain payment for sending coal dust and factory shavings instead of Polystyrene powder.

- e) The practice of ante-dating B/L to comply with the terms and conditions of the documentary credit regarding the date of shipment {22, 23}, or to beat the imposition of import restrictions commencing from a certain date [Large (1982)].
- f) The increase in the practice of delegating authority to charterers and agents to sign B/L on behalf of the master [Schultsz & Thomas (1983)].
- g) B/L are issued in sets of three originals and given to the shipper and he is at liberty, if he is dishonest, to sell the same cargo twice as only one original is required to obtain delivery of the goods.
- h) Excessive trust in the authenticity of the document at face value and implicit reliance upon its contents [UNCTAD Report (1986a)].
- i) In some cases, the laxity of the banks when accepting documents tendered under documentary credits..

#### 4.3.6 The Future of Bills of Lading

The B/L was in use in the early 16th. century [Bennett (1914)], and it is still being used in the same fashion despite the fact that technology has revolutionised the shipping industry [see chapter 2].

From the foregoing sections it can be seen that whilst the B/L is a very important document in international trade, it does give rise to a number of problems. One of these problems has been delay to the movement of goods. Dale (1986) points out that since the advent of the faster ships in the 1960's the historic B/L has been one of the documents causing delays. He goes on to say that it is estimated that these delays affect the arrived price of goods by 2% - 8%.

The document of title function of the B/L is often unimportant, for example in trades where payment is on open account terms, or where goods are consigned to a subsidiary or in the majority of liner trade shipments where goods are not sold during transit; or for example in the bulk trades, where the delay in the receipt of the B/L by the ultimate buyer increases the risk of misdelivery of the cargo or causes him to incur additional expenses in obtaining a indemnity countersigned by a bank - the cost in the case of a cargo of 100,000 tons of oil is as much as \$ 150,000 [Ventriss (1981)].

The solution to the problem where no document of title is required would be to use a non-negotiable Sea Waybill, because the production of the document is not required to obtain delivery. Similar recommendations were reached at two international conferences {24}. The United Nations Economic Commission for Europe (UNECE) Working Party on Facilitation of International Trade Procedures (FALPRO) adopted Recommendation No.18 {25} which stated :

Sea waybills ... should be called for by traders whenever the facility is available. Carriers should always offer a non-negotiable transport document, ...

Hogan (1987) points out that at a meeting of the Comité Maritime International, in London, the Chairman of the meeting, Lord Lloyd, said that governments appear to be favouring the adoption of a sea waybill rather than the B/L.

The other problem associated with the B/L is that of fraud. This is made possible by its function as a document of title, and as pointed out above [section 4.3.5 (h)] can be due to excessive trust placed on its face value. At its first session the IGG [UNCTAD Report (1984)] in its resolution requested the Trade Development Board to invite specialized organisations to develop studies, among others, on :

a) the feasibility of a central registry for bills of lading;



- b) development of secure bills of lading in order to avoid forgery;
- c) possibility of reduction in the number of bills of lading, or their replacement by another document.

The UNECE Working Party on FALPRO adopted Recommendation No. 18 {26} which stated :

To avoid delays and demurrage caused by the need to send documents by mail, facilities should be developed for the preparation of Bills of Lading in the country of destination, using automatic data processing and transmission.

Similar views were expressed at the Comité Maritime International Lisbon Conference in 1985 [UNCTAD Report (1985a)] regarding the use of "Paper-less" systems. The Atlantic Container Line (ACL) uses a computerised system for its non-negotiable Data Freight Receipt (DFR), however Grönfors (1977) points out that instead of using papers like the DFR the system can be "electronized".

Several authors [Ingemarsson (1977), Reinskou (1981), Henriksen (1982) and Kapoor (1985a)] have proposed the use of cryptography as a means of speeding the transfer of and maintaining the negotiability of the bill of lading as a document of title. However, Kapoor (1985a) has suggested that cryptography can also

be used as a protection against fraud (See Appendix 5).

The author has, in association with Dr. V. Varadharajan - formerly of the Department of Communications Engineering, Plymouth Polytechnic, developed an Encrypted Bill of Lading using an encryption interface unit employing the Data Encryption Standard : this employs an Apple micro-computer as an intelligent terminal. The project is still in its early stage and a framework for further development has been formulated. Appendix 7 shows a copy of an Electronic B/L in plain language and its encrypted form.

The last decade has seen increasing use of computers and electronic data interchange in international trade and transport. The most recent example is the Data Interchange for Shipping (DISH) Project in which about thirty major shippers, carriers and freight forwarders in the U.K. are taking part. The system uses international syntax rules, developed by the UNECE, so that information can be transferred between incompatible computers. Dale (1986) points out :

This type of paperless transfer of structured data, known as EDI (Electronic Data Interchange) is expected to grow rapidly in the near future, both within the UK and with its links to mainland Europe.

The use of standardised trade data elements and harmonized rules

for their interchange have been developed recently by the United Nations Joint Electronic Data Interchange Working Group. The decision to adopt a universal language for Electronic Data Interchange has been taken unanimously by major trading powers including Europe, United States and Russia [Interchange (1986)].

Davies' (1985) findings indicate that by 1995 transport and trading documents will be replaced by computer-stored information, except in developing countries and when tangible proof is required in a transaction. This latter point would imply legal issues. Several independent sources [Ingemarsson (1977); Henriksen (1982); Kapoor (1985a)] have pointed out that the legal problems in Electronic Data Interchange can be overcome.

In view of the foregoing, it can be seen that the traditional B/L has outlived its usefulness as a document of title as there is very little or no security in it, and that by 1995 the conventional B/L will be replaced by the "Electronic Bill of Lading" by the use of data interchange via computers.

Having considered the contract of carriage and the factors which facilitate the perpetration of fraud involving Bills of Lading, the next section examines the contract of insurance.

## 4.4 CONTRACT OF INSURANCE

### 4.4.1 Introduction

The contract of insurance is the second of the three subsidiary contracts which follow from the contract for the international sale of goods. The contract is between the buyer (in f.o.b. and c & f. contracts) or the seller (in c.i.f. contracts) and the insurer.

Whilst the "origin of marine insurance is veiled in antiquity and lost in obscurity" the concept of marine insurance has been traced back to 215 B.C. by Livy. Even in those early days fraudulent claims like false statements about losses and deliberate scuttling of ships were known to exist [Dover (1975)].

It is very difficult to define insurance in simple terms. Basically insurance may be treated as a financial arrangement between one party (the assured) and another party (the insurer), whereby the insurer agrees to indemnify the assured for a fortuitous loss sustained by him (the assured) as a result of certain unforeseen events. The insurer, for a small fee (the premium), distributes the loss among a number of persons who may be exposed to the same risk, but who do not suffer a loss at the same instant as the assured. In marine insurance the unforeseen

events are the fortuitous maritime perils.

In addition to the normal perils of the seas, the ships in the seventeenth century were haunted by pirates and privateers. They also encountered the following perils which added to their burden of loss [Barbour (1929-30)] :

- a) insufficiency of navigational marks along the coasts;
- b) arrests, embargoes, seizures, or ruinous fines and levies arbitrarily imposed by princes;
- c) the use of convoys to protect the merchant ships meant that all vessels sailing under convoy arrived at their destination at the same time and thus competition for markets turned to the disadvantage of the merchants as freight rates fell to unprofitable levels;
- d) fully laden ships had to wait weeks for their convoys and this led to an increase in the costs incurred and loss of profits, and catastrophic losses if the goods were perishable; and
- e) the captains of the convoyers sometimes exacted fees from the masters of the merchant ships, though the service was supposed to be financed by customs dues.

To overcome these losses and to lessen the risks of their adventures the merchants and shipowners introduced the following measures :

- a) the practice of distribution of investments in shipping by buying shares in a ship which could be divided into a number of shares,
- b) shipment of a consignment in a number of ships, and
- c) merchants interested in a certain trade agreed to share pro-rata one another's losses by mischances at sea.

These measures were in addition to the practice of insuring ships and goods in transits through policies underwritten by persons not otherwise interested in the adventure, a practice which was prevalent in the thirteenth century in the Italian commercial cities. The advantage of the insurance policies was that they gave protection against all kinds of losses.

The large sums of money involved in the transactions led to fraudulent practices such as overvaluation by placing insurance in two or more places or with two or more groups of insurers or insuring ships known to be lost. This led to the introduction of legislation to prevent frauds and extortion. The insurers also practiced deception : for example, by starting rumours of the

capture of valuable ships they induced the owners to insure their ships at high rates. Some insurers evaded their obligations under the policy, forcing the assured to sue under the policy to recover the sum due to him when a loss had occurred. Frequently the insurers demanded proof of loss which the assured was unable to supply. In some cases, even when loss was proved, the insurers forced the assured to accept less than was due unto him so as to avoid lengthy and expensive court actions.

The following statutes were introduced to repress such malpractices and to impose penalties on individuals perpetrating fraud against the insurers, and also to prohibit speculative insurances and gambling on marine adventures :

- Prevention of Fraud Statute, 1725 [11 Geo.I Chap. 29]
- Marine Insurance Act ("Gambling Act"), 1745 [19 Geo.II Chap. 37]
- Prevention of Fraud Statute, 1803 [43 Geo.III Chap. 113]
- The Gaming Act, 1845 [8/9 Vict. Chap. 109].

#### **4.4.2 The Marine Insurance Act, 1906**

The contract of marine insurance is governed by the Marine Insurance Act (M.I.A.) 1906 [hereinafter referred to as the Act]. This section examines the basic principles of marine insurance to determine the liability of the insurer.

The Act codifies the Law relating to marine insurance. Section 1 of the Act defines marine insurance as a contract of indemnity, whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, losses incident to the marine adventure. Section 2 of the Act states that the contract of marine insurance may, by its express terms, or by usage of trade, be extended to protect the assured against losses on inland waters or on any land risk which may be incident to any sea voyage.

According to Section 3 of the Act there is a marine adventure, in particular, where any ship, goods or other movables are exposed to maritime perils, which are defined as perils consequent on, or incidental to, the navigation of the sea. That is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, detrainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy. The section also identifies the ship, goods or other movables as "insurable property".

When considering the question of fraud the following basic principles of marine insurance must be considered :



#### 4.4.2.1 Insurable Interest

This principle is embodied in Section 5 of the Act, which provides every person who is interested in a marine adventure has an insurable interest. In particular, a person who stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, and as a result of which he may benefit by safety or due arrival of the property, or be prejudiced by its loss or damage, or by its detention, or may incur a liability in respect of which. Sections 7 - 14 of the Act identify the persons who have or may have an insurable interest in the property at risk in a marine adventure.

It must be remembered that for an insurable interest to exist in the property, the property must exist. In a number of documentary frauds insurance has been effected on non-existent goods - it follows that as there is no insurable property the assured has no insurable interest and the risk does not attach, i.e. the insurer is not liable.

In view of the above, in order to claim under a policy of marine insurance the assured must have an insurable interest, otherwise the contract is void under Section 4 of the Act. Section 4 of the Act makes "gaming" and "wagering" contracts void. A gaming or wagering contract is one where the assured neither has an insurable interest nor has any expectation of acquiring such an

interest. Where a policy is issued "interest or no interest" or "without further proof of interest than the policy itself" (i.e. policy proof of interest) or with other similar terms, the policy is deemed to be a gaming or wagering policy, and is therefore void.

Section 6 of the Act provides that the interest must attach, i.e. the assured must be interested in the subject-matter, at the time of the loss, though he may not have been interested when the insurance was effected. Furthermore, the assured may recover although he may not have acquired his interest until after the loss, provided the subject-matter was insured "lost or not lost". The exception to this is if the assured was aware of the loss at the time of effecting the insurance and the insurer was not. This Section is very important in international transport where the property in the goods may be transferred from the buyer to the seller at a number of points depending on the "trade terms".

#### 4.4.2.2 Utmost Good Faith

This principle is embodied in Section 17 of the Act which provides that a contract of marine insurance is based upon utmost good faith (*uberrimae fidei*) and, if this utmost good faith is not observed by either party, the other party may avoid the contract. In *The Litsion Pride* {1} it was held that

"avoidance" in this section meant avoidance "ab initio", i.e. from the beginning.

Closely linked to this principle is Section 18 of the Act which imposes upon the assured a strict duty to disclose every material circumstance, which is known to him or which ought to be known to him, to the insurer before the contract is concluded. If the assured fails in this duty the insurer may avoid the contract. A circumstance is deemed to be material if it would influence a prudent insurer in fixing premium, or determining whether he will take the risk.

Section 20 of the Act provides that every material representation made by the assured or his agent during negotiations for the contract must be true. If they are untrue the contract may be avoided. In *Carter v Boehm* {2}, Lord Mansfield pointed out that the underwriter trusts the representations of the assured and believes that the assured is not holding anything back. The keeping back of any circumstance to induce the underwriter to estimate the risk as if it did not exist is a fraud. Lord Mansfield went on to say :

Although the suppression should happen through mistake without any fraudulent intention, yet still the underwriter has been deceived, and the policy is void because the risk run is really different from the risk understood and intended to be run at the time of the agreement.  
..... Good faith forbids either party, by concealing what he privately knows, to draw the other party into a bargain owing to his ignorance

of that fact, and his believing the contrary.

#### 4.4.2.3 Indemnity

As stated earlier, under Section 1 of the Act, marine insurance is a contract of indemnity i.e. this principle holds that the assured should not stand to gain as a result of the loss sustained. Section 32 of the Act provides that where two or more policies are effected on the same adventure and the sums insured exceed the indemnity allowed by the Act, the assured is not entitled to receive any sum in excess of the indemnity allowed. The exception being the valued policy, where "unless it is avoided the value is conclusive" {3}.

In practice, marine insurance policies are usually "valued policies", and are covered by Section 27 of the Act, which provides that a valued policy is a policy which specifies the agreed value of the subject-matter insured, and subject to the provisions of this, and in the absence of fraud, the value fixed by the policy is conclusive. Dover (1975), quite rightly, points out:

This Section (i.e. Section 27) has been the subject of some criticism, as it is regarded as presenting inducements towards over-valuation and correspondingly to fraudulent claims (Emphasis supplied).

Deliberate over-valuation with the intention of cheating the underwriter will, if discovered, make the contract void. However, it would be very difficult for the underwriter to prove that the over-valuation was fraudulent. It would also be very difficult for the insurer to avoid a hull policy on the grounds of excessive over-valuation because he should have a knowledge of the market value of ships.

If the over-valuation is so excessive as to make an ordinary risk into a speculative one, the policy may be avoided on grounds of non-disclosure or misrepresentation of a material fact {4}. The test for determining whether over-valuation is a material fact was laid down by Bailhache, J. {5} :

The test is whether the discrepancy between the insured value and the actual insurable value is of such a nature as to change the character of the risk from a business risk to a speculative risk. If the discrepancy is such as to change the character of the risk, then there ought to be disclosure, but not otherwise.

#### **4.4.2.4 Proximate Cause**

According to this fundamental principle, in order to establish a right of recovery in any claim, the loss must have been proximately caused by a peril insured against. This principle is embodied in Section 55 of the Act, which provides further that in particular, unless otherwise provided in the policy, the insurer is not liable for any loss attributable to the wilful

misconduct of the assured, or for any loss proximately caused by delay, though the delay may be caused by a peril insured against. However, the insurer is liable for any loss caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew.

The term "proximate cause" means the cause which predominates in efficiency and not the latest or closest in time {6}. However, the Act recognises the fact that there may be instances where due to the provisions of the policy the principle of proximate cause should not be applied [Templeman (1981)].

In scuttling cases i.e. cases where the vessel has been deliberately cast away with the privity of the owner, the proximate cause is the deliberate action which causes the loss. For example in *The Gregorios* {7}, the mortgagee's contended that the proximate cause of loss was the entry of water and not the act which caused the water to enter the ship. In his judgement Viscount Cave {8} said :

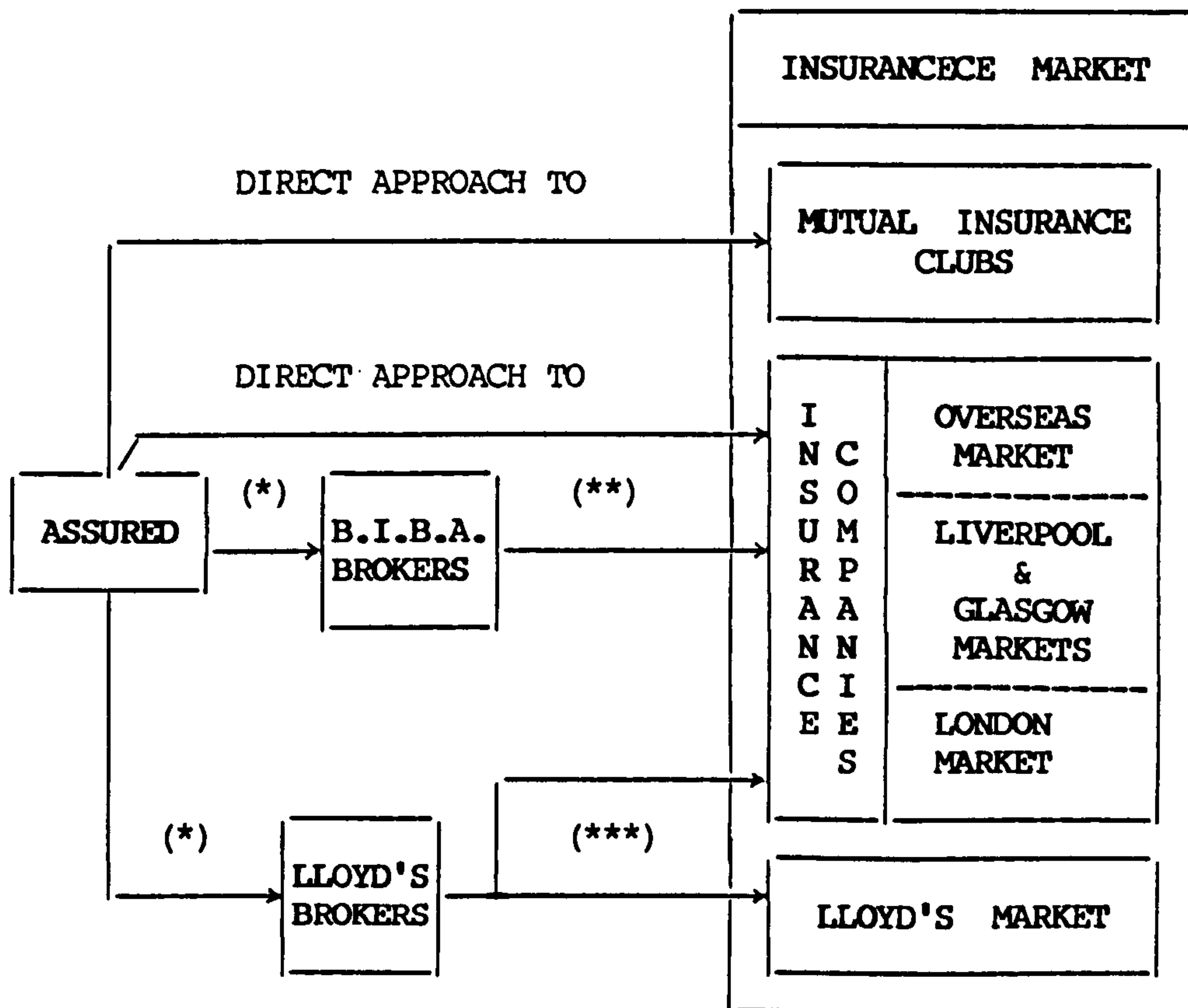
There appears to me to be something absurd in saying that, when a ship is scuttled by her crew, her loss is not caused by the act of scuttling, but by incursion of water which results from it. ... The scuttling is the real and operative cause - the nearest antecedent which can be called a cause; and the subsequent events are as much part of the effect ...

In general, the burden or onus of proof regarding the cause of loss or damage being an insured peril rests with the claimant, namely the assured {9, 10}. If however, the evidence submitted by the assured as to the cause of loss is different from that submitted by the underwriter, the Court has to review all the evidence and decide on a balance of probabilities which party is to succeed. In order to succeed the party upon whom the burden of proof rests must establish a preponderance of evidence in support of their case {11, 12, 13}.

#### **4.4.3 Effecting Insurance**

The practice of placing insurance on the market is outlined below :

The shipowner or cargo owner/shipper may make approaches to the insurance market either directly or indirectly. The direct approach is only possible with insurance companies and thus the market is limited. The indirect approach may be through a member of the British Insurance Broker's Association (BIBA) or through Lloyd's brokers. The advantage of using a broker, who is an agent of the assured, is that he has a much wider market available to him, especially if he is a Lloyd's broker - as the Lloyd's market is only open to members of Lloyd's, see figure 4.8.



(\* ) - Indirect Approach through Brokers

(\*\* ) - Only the Company Market available to B.I.B.A. Brokers

(\*\*\*) - Both the Company & Lloyd's Market available to Lloyd's Brokers

Figure 4.8 - Direct and Indirect Approaches to the Insurance Market



The Assured instructs the broker to effect insurance on his behalf, giving him all the information necessary, including the amount to be insured, to enable the broker to negotiate the best possible terms. The instruction is known as "the order". It is the duty of the broker to abide by the principle of utmost good faith and disclose all material facts and truly represent all material circumstances to the insurer. Similarly it is the duty of the assured to give to the broker all the necessary information.

Once the broker has received the order, he should make enquiries to ensure that there is no misunderstanding between the assured and himself. The broker now prepares "the slip", which is a piece of paper on which the broker writes the details of the risk he is placing. The information must be sufficient for the underwriter to identify and assess the risk.

The broker, armed with the details on the slip, approaches several underwriters to obtain quotations, to sound the market rate - especially where the business is new to the broker - and selects the most advantageous quote. However, if the broker knows the business he approaches the acknowledged leading underwriter to obtain the rate. Once the broker has obtained the lead (or the first line) i.e. the first underwriter has accepted a substantial proportion of the risk, he will go round the market obtaining lines from other underwriters till the

whole risk has been placed. In some cases the broker may have to use the services of another broker to complete the placing, and in some cases he may "over-place" the risk.

Once the placing of the risk is complete, the broker prepares a cover note for the assured advising him of the terms and conditions of insurance, and also the names of the insurance companies and the amount placed with each, except in the case of Lloyd's underwriters - where the total risk placed with them is shown as "placed with Lloyd's". At this stage the ship insurance is complete. However, cargo insurance can only be completed when the exact value of the goods shipped is known, unless the assured knew the exact value to be shipped at the time of giving the order. Figure 4.9 is a conceptual model of the practice of placing insurance in the marine market.

The broker has a duty to make a full disclosure of all material facts to the insurer. Failure to do so would enable the underwriter to avoid the contract. However, if the broker wilfully misrepresents a material fact, he is guilty of fraud and, therefore, liable to the insurers for the consequences {14}.

Under Section 43 of the Act, unless otherwise agreed, where a marine policy is effected through a broker he is responsible to

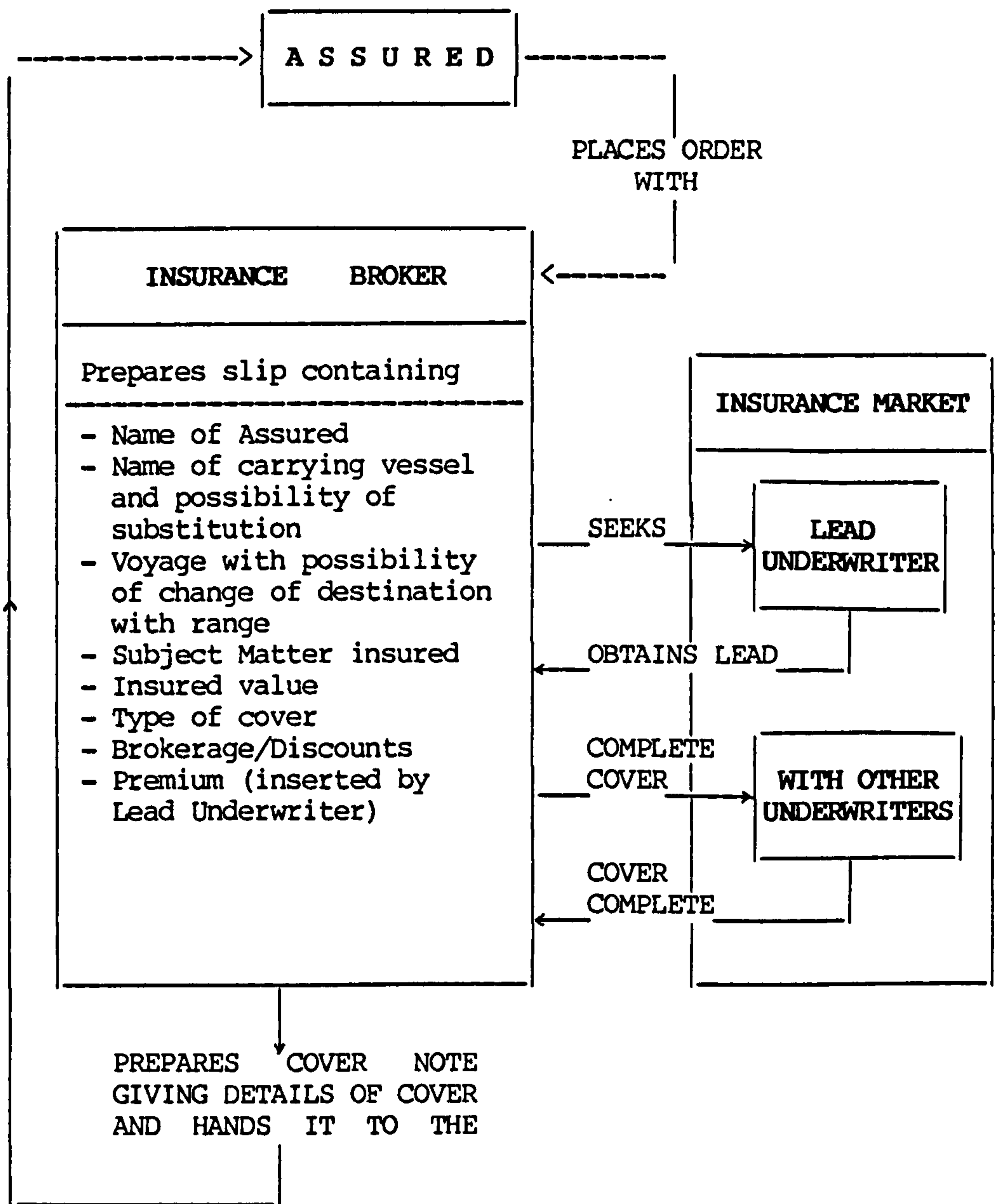


Figure 4.9 - Conceptual Model of Placing Insurance of Goods

the underwriters for the payment of the premium. Therefore, it is submitted that the broker should, before accepting business, check the creditworthiness and track record of the assured.

#### **4.4.4 The New Marine Policy (1982)**

The Lloyd's S.G. policy was adopted by the London insurance market in 1779. The letters S.G. stood for Ship and Goods respectively. Thus the S.G. policy was an insurance policy for both hull and cargo insurance. Although the policy wording was very complex and archaic it was used for over two hundred years with several adaptations and amendments, mainly because a vast number of court cases had established explicitly the meaning of the words and phrases used in the policy.

The antiquated wording of the Lloyd's S.G. Policy has been criticised and has been variously described as "being clumsy, imperfect and obscure" and "an absurd and incoherent instrument" [as quoted by Parks (1983)]; in *City Stores v Sun Insurance* {15} it was described as being tediously wordy, confused and a verbal mishmash. In its Report on Marine Insurance [UNCTAD Report (1978)] the UNCTAD Secretariat also criticised the S.G. Policy form.

In order to forestall UNCTAD's move towards international

uniformity the London insurance market decided to replace the S.G. Policy with a simple document containing blank spaces for the following information - Policy number, Name of assured, Vessel, Voyage or period of insurance, Subject-matter insured, Agreed value (if any), Amount insured, Premium, and Clauses, Endorsements, Special conditions & warranties. The new form of policy came into force on 1st. January 1982, and all business on the S.G. form was phased out by 1st. April 1983.

Three sets of cargo clauses were drafted to replace the existing "All Risks", "With Average" and "Free from Particular Average" clauses. The clauses are known as the Institute Cargo Clauses (1982) "A", "B" and "C", and are for use with the new marine policy form. They are easy to understand and "reflect a decidedly new approach" [Parks (1983)]. The risks covered and the statutory exclusions as per M.I.A. 1906, along with other practical exclusions are now shown in the clauses.

#### **4.4.4.1 Analysis of the Institute Cargo Clauses (1982)**

In each set of Institute Cargo Clauses the provisions are grouped under the following main headings :

Risks covered, Exclusions, Duration, Claims, Benefits of insurance, Minimising losses, Avoidance of delays, and Law & Practice.

The (C) Clauses provide the basic standard cover which is restricted to loss or damage reasonably attributable to major casualties, such as fire, stranding, sinking, collision, etc. The (B) Clauses provide an intermediate standard of cover which includes the cover provided by the (C) Clauses plus loss due to earthquake, volcanic eruptions or lightning, total loss of any package loss overboard or dropped during loading/discharging operations, and entry of water into hold or cargo compartment. The (A) Clauses provide the broadest standard of cover on an "all risks with exceptions" basis.

The (A) Clauses provide insurance against all loss or damage arising from fortuitous causes. The (B) and (C) Clauses name the risks to be covered with the proviso that these risks are subject to certain exclusions within the clauses under the exclusions heading, namely General Exclusions Clause, Unseaworthiness and Unfitness Exclusions Clause, War Exclusions Clause and Strikes Exclusions Clause.

When properly shipped in vessels of reputable and experienced carriers the (C) Clauses would provide adequate cover for low value-for-weight/volume cargoes or raw materials destined for further processing, e.g. copra, coal, ore, etc. Items suitable for cover under (B) Clauses would include goods normally resistant to general types of damage, e.g. heavy machinery, hides and skins, seeds, etc. The (A) Clauses would be the

preferred choice for consumer goods, finished products and high value goods. Where the assured feels that the (B) and (C) Clauses do not provide adequate cover the (A) Clauses should be used.

Certain exclusions have been introduced to protect the underwriters from loss due to the consequences of frauds and put the burden of loss with the assured. This will, it is hoped, induce the assureds to take greater care in selecting their trading partners. The risks not covered are :

- Loss, damage or expense arising from insolvency or financial default of owners, managers, charterers or operators of the vessel [Clause 4.6 in (A), (B) & (C) Clauses]
- Deliberate damage or destruction of the subject-matter insured by the wrongful act of any person or persons [Clause 4.7 in (B) & (C) Clauses]

However, a "Malicious Damage Clause" is available for use with the (B) & (C) Clauses where the underwriters agree to delete Clause 4.7.

Clause 5 in the Institute Cargo Clauses (A), (B) & (C) waives breach of warranty of seaworthiness and the implied warranty of fitness of the ship to carry the subject-matter insured, but

only where the assured or their servants are not privy to such unseaworthiness and unfitness to carry the goods at the time of loading.

Clause 10 in the Institute Cargo Clauses (A), (B) & (C) provides that where, after attachment of the insurance, the destination is changed by the assured, the subject-matter is held covered at a premium subject to prompt notice being given to the underwriters. But they are at liberty to change the conditions of the policy. Furthermore, the 1982 Clauses do not maintain cover where any omission or error has been made in the description of the interest, vessel or voyage.

#### **4.4.5 Fraud and Marine Insurance**

Marine Insurance was introduced to add an element of financial security so that the assured could conduct trade without the risk of loss. From the insurer's point of view, however, the large sums involved in transactions introduced another type of risk, namely that of fraud.

It was pointed out earlier (see chapter 1) that in the more recent frauds the victim can be anyone connected with the transaction for the sale of goods and that underwriters are involved indirectly. The underwriters become involved when



either the victims or the perpetrators of fraud make a claim against them under the insurance policy. Thus insurance frauds may be considered under two headings, namely :

a) Direct insurance frauds are those frauds which are perpetrated with the sole object of monetary gain under the insurance policy. Examples of this type of fraud would include :

- scuttling
- deliberate stranding,
- arson,
- deliberate machinery damage,
- non-disclosure /misrepresentations,
- false shortage/damage claims with the connivance of a surveyor/consignee.

b) Indirect insurance frauds are those frauds in which the victims of fraud look to the underwriters to recover their losses under the insurance policy. Examples of this type of fraud would include :

- issuing clean B/L for damaged goods
- deliberate omission of the fact, in the B/L, that goods have been stowed on deck,
- Fraudulent jettison claim - In the timber trade in the Far East, the B/L is issued stating that a certain quantity of cargo has been loaded, which is either not loaded at all or which is short-shipped. Log books will

record bad weather and for the safety of the adventure the non-existent cargo is jettisoned. On arrival at the port of destination a claim is lodged for the alleged cargo thrown overboard [Praksah (1981)].

The difficulty faced by an insurer in scuttling claims is that if he alleges fraud the onus of proving the privity of the owner rests on him. As pointed out earlier (see chapter 2), where the evidence is equally as consistent with innocence as with wrongdoing, the innocent construction must be adopted. In *The Zivonia* {16} Bingham, J. said :

The insurers and cargo-owners have not satisfied me, according to the high standard of proof required, that the owners wilfully cast away the vessel.

In *The Gloria* {17} Brandon, J. said :

Scuttling is a crime, and the Court will not find it has been committed unless it is proved with the same degree of certainty as is required for proof of a crime.

In addition to the above-mentioned difficulty, it is submitted that the practice by the insurers of settling out of court and maintaining a loss portfolio has given the modern fraudster opportunity to develop his line of business to perfection. These points were highlighted by two leading insurers, Schulz (1981) and, Rayakar (1982) who says :

The marine insurance market seems to have

developed an "ostrich policy" along with its more conventional policies. Competition and rivalry impose upon underwriters the golden rule of see no evil, hear no evil and speak no evil.

The complete lack of communication and co-operation between the underwriters on an international level is responsible for those who indulge in questionable trade practices and getting away with their loot. Insurers prefer to keep a stiff upper lip and pay out claims liberally rather than investigate doubtful claims.

Between 1975 and 1977 21 vessels were involved in some form of maritime fraud on cargo picked up from or destined to India [Desai (1985)]. Purely as a protective measure the Indian insurance industry devised an effective system of "approving" ships and shipping companies and charging a high premium for non-approved vessels [Rayakar (1982)].

Desai (1985) points out that in 1977 the General Insurance Corporation of India (GIC) took on the responsibility of screening vessels coming to Bombay in search of export cargo. On application from the ship's agent GIC would verify :

- the financial standing of the owners, operators, charterers etc. by calling for balance sheets and a confidential report from the banks.
- the ownership of the vessels including the number of vessels owned.
- the flag and tonnage of the vessel.
- the vessel's classification certificates and if the vessel is

not classed or is over 20 years of age, a satisfactory survey report by a Classification Society's surveyor is insisted upon.

- the details of P & I cover.
- the agency appointment of the ship's agent particularly when the agent signs the B/L.
- the vessel's operation and charter, and a copy of the C/P is obtained.

The application for approval is required for each voyage separately except in the case of regular lines and established ship agents. In case of singleton ownership or where there are other unsatisfactory features, GIC obtain an undertaking from the owners and their agents to withhold 80% of the gross freight earnings in India till the satisfactory completion of the voyage. The Reserve Bank of India is duly advised so that they do not allow transfer of funds. In cases of insurance for non-approved vessels the insurers charge 2% additional premium to discourage shippers from booking cargoes on that vessel.

This type of approach could succeed in the fairly sheltered market of India. It is hoped that both insurers and brokers in other countries would also check the credentials of the owners before accepting insurance. However, Ellen (1985) points out that in the last 18 months insurers have taken more notice of the risks.

## 4.5 CONTRACT OF PAYMENT

### 4.5.1 Introduction

Having obtained the documents under the contracts of carriage and insurance - namely the B/L and the insurance policy or certificate - the seller presents them to the confirming bank, along with the commercial invoice and other documents required by the credit, to obtain payment for the goods shipped. This section, therefore, examines the contract of payment which is the last of the three subsidiary contracts which follow from the contract for the international sale of goods.

Over the years businesses have developed various methods of payment ranging from payment in advance to trading on an open account. The open account is used where the exporter trusts the buyer and the buyer's country implicitly and treats him like a local credit-worthy customer to whom, either an account is sent for payment to be rendered within a fixed period of time (usually one month), or a "usance" Bill of Exchange (B/E) is sent with the shipment (i.e. the buyer is extended a period of credit the period depending on custom). Whitehead (1977) gives a list of the various methods of payments as follows :

- a) Cash with order
- b) Export House transactions
- c) Documentary Letters of Credit, or simply documentary credits  
(L/C)

- d) Transactions using Foreign B/E
  - i) Documents against payment (D/P)
  - ii) Documents against acceptance (D/A)
- e) Open Account.

and goes on to say that the methods are listed in order of trustworthiness of the distant customer, with the method advisable for an unknown customer placed first. However, it must be stressed that one should not deal with an unknown customer.

The majority of international payments are, however, either made by L/C or B/E or a combination of the two methods. When traders have confidence in each other, payment for foreign trade is under B/E but in less ideal situations they have to rely on the credit of a banker, in which case payment is arranged by L/C.

Redfern (1976) points out that L/C are also used for the following reasons :

- a) the beneficiary is forced to insist on a credit by government regulation - India is a case in point where everything must be paid by L/C due to Exchange Control Regulations. In Japan, with few exceptions, exporters must obtain payment on terms no less favourable than cash, and this requirement is most easily met by means of the credit.

- b) the seller may have a liquidity problem and needs the credit to discount with his bankers to enable him to purchase raw materials to execute the buyer's order; or on the strength of the credit he may purchase the raw materials.
- c) in the case of barter type deals in which the buyer and seller wish to both buy and sell. This can be covered by the buyer clausuring the credit to the effect that payment will only be made against evidence of specific counter purchase by the seller as stipulated by the buyer.

#### **4.5.2 Documentary Credits**

Buyers and sellers who know each other fairly well and trade regularly use the open account method of payment. In fact, 50% of all United Kingdom's (UK) exports are now conducted under open account. The disadvantage with open account is that there is risk of non-payment where foreign exchange is not available.

However, where the buyer and seller do not know each other and are trading for the first time - ideally the seller would like to receive payment before he parts with the goods and the buyer, on the other hand, would like the goods in his custody before parting with the money.

The conflicting interests of the buyer (also may be termed as - "accredited buyer", "applicant", "consignee", "importer" or "account") and the seller (also may be termed as - "accreditee", "beneficiary", "consignor", "exporter" or "shipper") with regard to the time of payment are reconciled by the use of a L/C. However, the terms applicant and beneficiary are in general use and, therefore, they will be used throughout.

The L/C offers a unique and universally used method of achieving a commercially acceptable compromise by providing for payment to be made against documents that represent the goods and make possible the transfer of rights to those goods [ICC Publication No. 305 (1981)].

Wheble (1976) explains very clearly how the documentary credit can assist both the buyer and the seller :

It interposes the bank's expertise on behalf of the buyer to secure constructive delivery in the form of documents of title representing the goods, or of non-negotiable documents evidencing their movement to the buyer. It substitutes the credit-worthiness of the bank for that of the buyer to assure the seller of payment, conditional upon him presenting the required documents and complying with all the other conditions set out in the credit.

Harfield (1958) describes a L/C as a legally enforceable promise to pay money upon performance of stated conditions. ICC Publication No. 305 (1981) defines documentary credit as



follows :

It is a written undertaking by a bank (issuing bank) given to the seller (beneficiary) at the request, and in accordance with the instructions, of the buyer (applicant) to effect payment (that is, by making a payment, or by accepting or negotiating bills of exchange) up to a stated sum of money, within a prescribed time limit and against stipulated documents.

#### 4.5.3 Operation of a Documentary Credit

A lucid description of the operation of a L/C, given by Lord Justice Scrutton in *Guaranty Trust Company of New York v Hannay* {1}, will be found in Gutteridge & Megrah (1984). The process of establishing a L/C is also known as "opening", "arranging" or "issuing" a documentary credit. As the term issuing is in general use it will be used hereinafter. The buyer and the seller upon reaching agreement enter into a contract for the sale of goods, which calls for payment to be made under a L/C.

The rules which interpret the current practice and create a framework for L/C operations are the Uniform Customs and Practice for Documentary Credits (UCP), formulated in 1933 and revised in 1951, 1962, 1974 and most recently in 1983 by the ICC Commission on Banking Technique and Practice. These rules were formulated to meet established and standard commercial needs based on established and standard methods (and documentation) of international trade. The 1983 Revision, which is found in the ICC Publication No. 400 (1983), came into force on 1st. October

1984. The UCP forms the basis of the contractual relationship which arises from the issue of a L/C.

Article 1 of the UCP provides :

These articles apply to all documentary credits, ... , and are binding on all parties thereto unless otherwise agreed. They shall be incorporated into each documentary credit by wording in the credit indicating that such credit is issued subject to Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication No. 400.

As a result of all documentary credits being issued subject to the UCP, Gutteridge & Megrah (1984) point out that "applicants for credits and beneficiaries must contract out if there is anything in them which is inappropriate or unacceptable".

It must be remembered that documentary credits do not form part of the contract for the sale of goods. Article 3 of the UCP makes this very clear and further states that banks are in no way concerned with, or bound by, such contract(s), even if any reference whatsoever to such contract(s) is included in the credit. This has been substantiated in both English and American courts {2, 3}.

Figure 4.10 is a conceptual model of the process of issuing a L/C. The buyer (applicant) approaches his bank (issuing bank) to

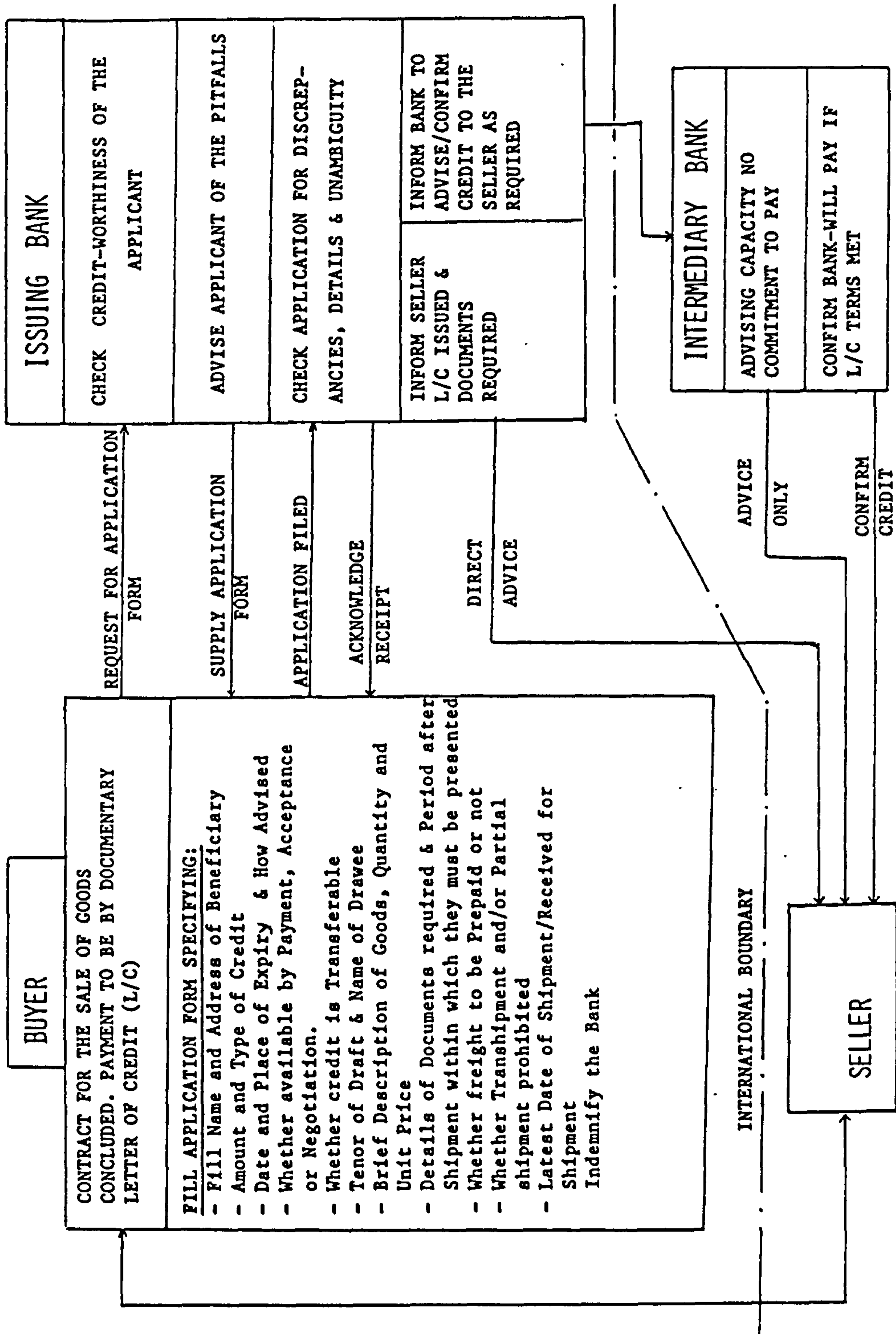


Figure 4.10 - Conceptual Model of the Process of Issuing a Letter of Credit

issue a documentary credit in favour of the seller (beneficiary). To do this the buyer completes an application form, which contains instructions for the buyer and on which he must specify the terms and conditions under which payment is to be made.

The buyer and the issuing banker must, in order to safeguard their positions, make sure that there is no ambiguity in the terms and conditions of the credit. Megrah (1977) points out, it behoves both the applicant and the issuing bank to exercise imagination to ensure that the credit issued is neither lacking in, nor includes, some feature which can later give rise to trouble.

Barlow (1977) points out that whilst it is readily adaptable in its own sphere of operation, a L/C must be recognised as a precision instrument. This is amplified in Articles 5 and 22 (a) of the UCP.

The issuing bank then draws up the advice for the beneficiary on standard forms, and sends it to its correspondent bank in the beneficiary's country to advise him of the existence of the credit and the terms and conditions against which payment is to be made. In this case the second bank is known as the "advising bank". The issuing bank sends the advice for the advising bank

on a similar form. At this stage the contract between the applicant and the issuing bank is complete.

The second bank may simply act as an advising bank in which case it advises the credit "without engagement" i.e. under no obligation to pay the seller. If this is the case it will so state in the advice. However in accordance with Article 8 of the UCP it shall take reasonable care to check the apparent authenticity of the credit which it advises. It appears that fraudulent credits usually come from the issuing bank direct to the beneficiary (discussion in Seminar on "Troubleshooting Letter of Credit", held in London, March 1986).

If the second bank is asked to add its own undertaking to that of the issuing bank's it is known as the "confirming bank" and the credit is called a "confirmed credit". This means that the confirming bank undertakes to make payment against correctly tendered documents.

On receipt of the advice the seller insures (if required under the contract of sale) and ships the goods, obtains a B/L and presents it with the certificate of insurance (if applicable), commercial invoice and any other documents specified by the credit, to the bank where the credit is available. Under Article 11 (b) of the UCP all credits must

nominate the bank which is authorized to pay (paying bank), or to accept drafts (accepting bank) or to negotiate the credit (negotiating bank). According to Article 11 (d) the paying (accepting or negotiating) bank checks the documents against the credit, and if they "appear on their face to be in accordance with the terms and conditions of the credit" it will pay (accept or negotiate) according to the terms of the credit. It will then forward the documents to the issuing bank for reimbursement.

The issuing bank examines the documents and, if satisfied that they meet the terms and conditions of the credit, it will reimburse the paying (accepting or negotiating) bank. Article 21 (c) of the UCP introduces timing regarding reimbursement by the issuing bank. The issuing bank will then release the documents to the buyer upon payment of the amount due, or upon other terms and conditions agreed between them.

#### **4.5.4 Types of Documentary Credits**

For the purposes of this dissertation it will be assumed that basically there are three types of documentary credits namely, revocable, irrevocable and confirmed irrevocable, because the UCP, which has been recognised by the banking communities in 156 countries [ICC Publication No. 305 (1981)], provides for only those three types, except the transferable credit, which has been provided for in Article 54.

#### 4.5.4.1 Revocable Credits

A revocable credit is a credit which can be amended or cancelled at any time without warning or notification to the beneficiary {4}. The issuing bank may amend or revoke the credit either at the request of the applicant or when it feels that the buyer will not be able to reimburse the bank.

This type of credit involves considerable risk for the beneficiary, as the credit may be amended or cancelled before payment, acceptance or negotiation has been effected, even though goods have been shipped. Conversely, this type of credit involves very little risk for the buyer and gives him maximum flexibility. Article 9 of the UCP governs this type of credit. As this form of credit involves a great risk for the beneficiary it is not in common use and therefore will not be considered.

#### 4.5.4.2 Irrevocable Credits

An irrevocable credit is a credit which constitutes a definite undertaking of the issuing bank to pay, accept or negotiate drafts, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with. According to Article 10 (d) of the UCP this type of credit can only be amended or cancelled if all the parties thereto agree.

From the seller's point of view there is greater assurance of payment with this type of credit, but he still remains dependent on the undertaking of a foreign bank. This undertaking is still subject to political, economic and commercial risks which may prohibit transfer of funds to the seller's country.

Due to various reasons, at the time the documents are tendered, the advising bank may realise that it would be unable to obtain reimbursement from the issuing bank for the money paid to the beneficiary [Watson (1981)]. In such circumstances, Watson says, no payment would be made, even if the documents tendered were in order. It is for this reason that the seller asks the buyer, and the buyer approaches the issuing bank to request a bank in the seller's country to add its own undertaking to that of the issuing bank.

#### **4.5.4.3 Confirmed Irrevocable Credits**

A Confirmed Irrevocable Credit is an irrevocable credit to which, at the authorisation or request of the issuing bank, another bank has added its confirmation; such confirmation constitutes a definite undertaking of such bank (known as the confirming bank), in addition to that of the issuing bank, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with. According to Article 10 (d) of the UCP this type of credit can



only be amended or cancelled if all the parties thereto agree.

From the seller's point of view this type of credit provides the greatest security, provided documents tendered meet the terms and conditions of the credit.

The addition of the undertaking of a bank in the seller's country does not affect the buyer in any way except when the confirming costs are to his account, in which case it is the most expensive type of credit.

#### **4.5.5 Contractual Relationships in Documentary Credit Operations**

The parties involved in documentary credit transactions are :

- a) The buyer or the applicant who requests and obtains the issue of the credit.
- b) The issuing banker who issues the credit.
- c) The correspondent banker who is the overseas representative of the issuing banker and acts as an intermediary between the issuing banker and the seller. He may undertake one of the following roles :
  - 1) He merely advises the beneficiary of the existence of the

credit, in which case he is known as the advising banker,  
or

- 2) He may advise and confirm the credit by adding his own undertaking to that of the issuing banker, in which case he is known as the confirming banker.

Normally the advising/confirming banker pays, accepts or negotiates the drafts tendered with the documents, in which case he also becomes the paying, accepting or negotiating banker as the case may be.

- d) The seller or beneficiary in whose favour the credit is normally issued.
- e) If the credit is freely negotiable by any bank another banker may be involved. This banker, who must be willing to negotiate the credit, is known as the negotiating banker. He may be any banker to whom the beneficiary takes his drafts and documents for negotiating.

Before one can consider the relationships between the various parties involved in documentary credit transactions, it must be remembered that all these relationships are based on the tender of documents specified in the credit, and not on the goods to which the documents relate. This is clearly specified in Article 4 of the UCP and has been substantiated by various court decisions, for example *Dexters Ltd. v Schenker & Co.* {5}.

Articles 15, 16 (a), and 17 to 20 inclusive, of the UCP provide :

#### **Article 15**

Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit.

#### **Article 16 (a)**

If a bank so authorised effects payment, or incurs a deferred payment undertaking, or accepts, or negotiates against documents which appear on their face to be in accordance with the terms and conditions of a credit, the party giving such authority shall be bound to reimburse the bank which has effected payment, or incurred a deferred payment undertaking, or has accepted, or negotiated, and to take up the documents.

#### **Article 17**

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any documents, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers, or the insurers of the goods, or any other person whomsoever.

#### **Article 18**

Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors arising in transmission of any telecommunication. Banks assume no liability or responsibility for errors in translation or interpretation of technical terms, and reserve the right to transmit credit

terms without translating them.

### Article 19

Banks assume no liability or responsibility for consequences arising out of the interruption of their business by Acts of God, riots, civil commotions, insurrections, wars or any other causes beyond their control, or by any strikes or lockouts. Unless specifically authorized, banks will not, upon resumption of their business, incur a deferred payment undertaking, or effect payment, acceptance or negotiation under the credits which expired during such interruption of their business.

### Article 20

- a. Banks utilising the services of another bank or other banks for the purpose of giving effect to the instructions of the applicant for the credit do so for the account and at the risk of such applicant.
- b. Banks assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank(s).
- c. The applicant for the credit shall be bound by and liable to indemnify the banks against all obligations and responsibilities imposed by foreign laws and usages.

From the above articles it can be seen that they have been designed to relieve the banks, in the absence of negligence, of virtually all liabilities and form the basis of contractual relationships which arise from the issue of documentary credits. Pennington et al (1978) while discussing the provisions of the UCP are of the same opinion and say :

In certain respects these provisions define the standard of care expected of issuing banks, but in other respects they absolve them from duties and liabilities which they would be under at

common law, particularly in respect of the acts and omissions of advising and confirming banks (Emphasis supplied).

#### 4.5.5.1 Relationship between Buyer and Issuing Bank

A banker who issues a documentary credit is under a contractual duty to the applicant to follow his instructions and to carry them out carefully. If there is a breach of this duty by the banker - either by taking up documents which do not conform to the terms and conditions of the credit, or refusing to accept correctly tendered documents - he is liable to the applicant in damages for the consequential loss he (the applicant) suffers, as well as losing his (the bankers's) right to reimbursement by the applicant.

The applicant is under a duty to put his instructions in a clear form {6}. This is reinforced in Article 14 of the UCP. If the instructions are ambiguous the banker will not be at fault if he can show that he adopted what was a reasonable meaning {7}. Furthermore, the applicant should be aware that the banker cannot be called upon to interpret trade customs and terms {8}.

The use of imprecise terms and loose phraseology is also disapproved of by the UCP in Articles 22 (b), 38 (a) and 50 (c). For example, terms such as "first class", "well known",

"qualified", "independent", "official" and the like should not be used to describe the issuers of any documents to be presented under a credit; imprecise terms such as "usual risks" or "customary risks" should not be used to describe insurance risks; and expressions such as "prompt", "immediately", "as soon as possible", and the like should not be used.

If for some reason the applicant cannot meet his contractual obligation of putting the issuing bank in funds when they become due, the banker has a general lien by the operation of law over all securities belonging to the applicant which are delivered to the bank by him or on his behalf or for his benefit {9}. Securities for this purpose have been held to include Bills of Lading and other documents representing the goods in transit {10}.

#### **4.5.5.2 Relationship between Seller & Issuing/Confirming Bank**

The letter of credit, when accepted and acted upon by the beneficiary, becomes the contract between the banker and himself {11} wholly independent of the contract of sale and the relationship between the buyer and the banker {12}. This is clearly specified in Article 6 of the UCP.

The beneficiary is under an obligation to tender the documents

which comply strictly with the stipulated documents, terms and conditions of the credit. They must be the usual shipping documents and be reasonably and readily fit to pass current in commerce {13}. Furthermore, as the documents are the security of the issuing banker for the money covered by the credit, they must be of "good merchantable order", so that if the money was not forthcoming the issuing banker would have realisable documents from which he could reimburse himself for the risk he had undertaken {14}.

The banker on the other hand, must comply strictly with the instructions contained in the credit {15, 16}, and must examine all documents with reasonable care, pursuant to Article 15 of the UCP, to ascertain that they comply with the terms and conditions of the credit and are consistent between themselves, otherwise they would not be good tender {17}. Similarly documents which, properly read and understood, called for further inquiry or are such as to invite litigation are bad tender {18}.

However, pursuant to Article 15 of the UCP, if the banker accepts documents which, on their face appear to be complete and regular and in accordance with the terms and conditions of the credit, but are in fact forgeries or contain false/fraudulent statements, he is not liable under Article 17 of the UCP. This

view has been substantiated in American {19}, English {20}, German {21} and Irish {22} courts.

**In Equitable Trust Company of New York v Dawson Partners Ltd.**

{23} Lord Sumner said :

There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk.

In view of Lord Sumner's {24} speech it may be construed, and quite rightly, that it is the bank's duty to ascertain that the documents tendered comply with the terms and conditions of the credit literally, in order to safeguard its position.

However, sometimes it may not be possible to comply literally with the terms of the credit due to an omission {25}. In such cases to refuse payment for an obvious mistake is to defeat the object and value of irrevocable documentary credits as a means of facilitating international trade.

**In Guaranty Trust Co. of New York v Van Denberghs Ltd. & Others** {26}, Mr. Justice Roche said that he was perfectly



satisfied that the trouble in the case was not due to divergence of documents but :

... by reason of general weakening of the produce markets which marked the close of 1920, was such that the trouble afterwards became acute. Therefore the divergence of the documents although it caused no trouble made a ready excuse and reason for the non-implementing of the contract in question.

This view is further substantiated by Bardenhagen's (1976) statement :

Economic conditions, poor ones that is, are blamed for a multitude of sins. One wonders whether this phenomenon has caused the increase over the past few years, in the number of rejections of documents by buyers (and perhaps issuing bankers).

Pennington et al (1978) point out that if the documents taken up by the banker do not correspond with the terms of the credit and the discrepancy is not obvious, the bank is liable only if a competent banker acting with a reasonable care would not have accepted the documents tendered {27}.

If, however, there are some discrepancies noticed - for example inconsistencies in the various documents {28}, or suspicious obliterations/alterations in the Bill of Lading {29}, or the documents do not conform to the terms of the credit {30}, or alteration without apparent authority [ICC Publication No. 371

(1980)] - the banker should be put on guard and, exercise reasonable care to scrutinize all the accompanying documents for clues which would aid him in determining whether the terms and conditions of the credit have been met {31}.

Article 23 of the UCP which deals with documents other than commercial invoice, transport and insurance documents states that the credit should stipulate by whom such documents are to be issued and their wording or data content. If this is not stipulated, banks will accept such documents as presented, provided that their data content makes it possible to relate the goods and/or services referred to therein to those referred to in the commercial invoice(s) presented. The documents referred to in Article 23 would be - Warehouse Receipts; Delivery Orders; Consular Invoices; Certificates of Origin, of Weight, of Quality or of Analysis.

Under Article 41 (c) of the UCP the seller is under an obligation to ensure that the description of the goods in the commercial invoice corresponds with the description in the credit. However, in other documents the goods may be described in general terms not inconsistent with their description in the credit.

The doctrine of strict conformity should not be taken to lengths

which will defeat the object of using documentary credits, which is to facilitate international trade, as pointed out by District Judge Wallace in *Bank of America National Trust & Saving Association v Liberty National Bank & Trust Co. of Oklahoma City* {32} :

Although there is a line of authority which could be interpreted to require that each "t" be crossed and each "i" be dotted by any and all banks dealing with letters of credit and drafts negotiated thereunder, such an interpretation of this line of authority is improper. Certain practical considerations must be taken into account in determining whether the terms of the letter of credit have in fact been met.

Similarly there is a line of authority which would indicate that practical considerations must be taken into account in determining whether the terms and conditions of the credit have in fact been met {33, 34, 35, 36}. The courts tend to frown upon cases of mere technical defences where in essence the contractual understanding between the parties has been met {37}. The banker must, however, accept correctly tendered documents, regardless of any dispute between the buyer and seller {38,39}.

#### **4.5.5.3 Relationship between Buyer and Seller**

In a contract of payment the only contractual relationship which exists between the buyer and seller is that derived from the contract of sale, which calls for payment by documentary credits, that is, the opening of the credit in favour of the

seller. Therefore this relationship is of no consequence to the banks and thus will not be considered further.

#### **4.5.5.4 Relationship between Issuing Bank & Advising Bank**

The relationship which exists between these two is that of the principal (issuing bank) and agent (advising bank). Article 11 sections (c) and (d) deal deal with the relationship between the issuing bank and the advising bank.

If the applicant should wish to include detailed instructions in order to protect himself he is discouraged from doing so under Article 5 of the UCP. If Article 5 is read in conjunction with Article 20 (b), which excludes the issuing bank's liability and responsibility should the instruction transmitted by them not be carried out by the intermediary bank, even if they were responsible for its choice, the applicant for the credit will bear the loss. This situation where the principal (issuing bank) is not responsible for the action of its agent (intermediary bank) is in conflict with the Law of Agency.

In *Maran Road Saw Mill v Austin Taylor & Co. Ltd.* {40} Ackner, J. said that "an advising bank is an agent of the issuing bank for advising the credit but acts as principal vis-a-vis the beneficiary". It is submitted that, as principal, the issuing

bank would be liable for the acts and omissions of the advising bank, i.e. the agent, as though it had done them itself, even though it had exercised due diligence in selecting the other bank (the agent).

In *Equitable Trust Co. v Dawson Partner's Ltd.* {41} and *Calico Printers Association v Barclays Bank Ltd.* {42} the issuing bank was held liable for the acts and omissions on the part of its agent i.e. the advising bank.

#### **4.5.5.5 Relationship between Advising Bank & Seller**

Russell (1986) points out that this relationship depends upon precisely what the advising bank has undertaken to do. Where the advising bank merely acts as the channel of communication between the issuing bank and the beneficiary, or where it pays or accepts the beneficiary's drafts, it does so as agent of the issuing bank. Under Article 8 of the UCP where the advising bank merely advises the credit without engagement, it shall take reasonable care to check the apparent authenticity of the credit it advises.

However, if the advising bank confirms the credit, it gives its undertaking as a principal to the beneficiary. In such a case its obligations are similar to those of the issuing bank.

#### 4.5.6 Refusal to Pay the Beneficiary

In view of the banker's definite undertaking, under an irrevocable credit to pay the beneficiary, the applicant cannot require the banker not to pay. Mr. Justice Megarry {43} pointed out that he would be slow to interfere with irrevocable credits specially in the sphere of international banking, unless a sufficiently grave cause was shown. He went on to say :

For interventions by the court that are too ready or too frequent might gravely impair reliance which, quite properly, is placed on such credits.

In *Hamzeh Malas & Sons v British Imex Industries Ltd.* {44}, the plaintiffs, a Jordanian firm, applied for an injunction restraining the sellers from drawing under the second of two letters of credit. The application was refused, Jenkins, L.J. stating :

.. the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods, which imposes on the banker an absolute obligation to pay, irrespective of any dispute which there may be between the parties on the question whether the goods are up to contract or not.

In the same case, Sellers, L.J. {45} pointed out, "there may well be cases where the Court would exercise jurisdiction, as, for example, where there is a fraudulent transaction". The same opinion has been expressed by the Supreme Court of Pennsylvania in *Transworld Industries Inc. v Girard Trust Bank* {46} :

.. the circumstances which will justify an injunction against honour (of a letter of credit) must be narrowly limited to situations of fraud in which the wrongdoing of the beneficiary has so vitiated the entire transaction that the legitimate purposes of the independence of the issuer's obligation would no longer be served.

In *Bank of America National Trust & Savings Association v Liberty National Bank & Trust Co. of Oklahoma City* {47} the defendant bank, who issued an irrevocable letter of credit on behalf of its customer, were instructed by their customer to refuse payment of the draft drawn under the credit, on the grounds that the terms of the credit had not been met. In his judgement District Judge Wallace said :

.. Where a material defect exists, even though avowedly the defense is raised to protect the customer of the bank urging the defense, there is no reason, moral or legal, why such a defense may not be urged, particularly where strict compliance doubtless would have fully protected the customer and assured the customer of receiving the quality of goods bargained for.

In view of the above the next section examines the effect of fraud on the relationship between the various parties to the contract of banking.

#### **4.5.7 Fraud & Documentary Credits**

Documentary credits are used as the vehicle for the majority of maritime frauds. The perpetration of the crime is facilitated to

a large measure by Articles 4, 15, 16 and 17 of the UCP.

Article 4 of the UCP provides that in credit operations parties deal in documents, and not in goods. Article 15 of the UCP requires banks to examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Article 16(b) imposes a duty on the banks to determine, on the basis of the documents alone, whether to accept or refuse them. However, Article 17 states that "banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effects of any documents ...".

Thus if a forged/fraudulent document, which appears on its face to comply with the terms and conditions of the credit, is presented to the bank, the bank is under a duty to pay the beneficiary {48}. If the appearance of compliance masks some fraudulent dealing with the goods, that is not the banks concern {49}. Furthermore, the bank is neither bound to see to the genuineness of the B/L, nor is it required to make inquiries at the office of the ship's agent as to whether the goods have, in truth, been received on board {50}.

Where the fact that the documents presented to the bank are forged or fraudulent is apparent from their face, the bank will



not pay. However, Russell (1986) points out that where documents are forged or fraudulent, the fact that they are not in conformity with the terms and conditions of the credit may be apparent from their face, or it may not. In the unlikely event the forgery or fraud the documents do not appear to comply with the terms and conditions of the credit, the bank pays on them at its peril. This is not because of the forgery or fraud, but because the bank failed to comply with the doctrine of strict conformity.

The only exception to the doctrine of strict conformity is when there is a clear fraud of which the bank has notice {51}. However, this exception is interpreted very strictly [Powles & Hazelwood (1984)]. The mere assertion or allegation of fraud would not be sufficient {52}. Russell (1986) identifies four situations under the "exception rule". They are :

a) The bank has no knowledge or even suspicion of any forgery or fraud,

In this situation the bank must pay, and is entitled to be reimbursed by the buyers {53}.

b) The bank suspects that fraud has occurred or an allegation of fraud is communicated to the bank by the buyers,

In this case, if nothing further can be established, the bank

must pay and is entitled to reimbursement by the buyer {54}.

c) It is clearly established to the satisfaction of the bank that a fraud has occurred, but there is no evidence before the bank to show that the seller knew of the fraud, and

Surprisingly, it was unanimously decided by the House of Lords in **United City Merchants (Investments) Ltd. v Royal Bank of Canada** {55}, that once again the bank must pay and is entitled to reimbursement by the buyer.

d) The bank has positive proof that a fraud has been committed and that the seller knew of this fraud.

It is only when both these facts are established to the satisfaction of the bank that it must not honour its obligations under the credit.

The decision in the **United City Merchants (UCM)** case {56} goes against both authority and reason. For example, in **Old Colony Trust Co. v Lawyers' Title & Trust Co.** {57} it was stated :

Obviously, when the issuer of a letter of credit knows that a document, although correct in form, is, in point of fact, false or illegal, he cannot be called upon to recognize such a document as complying with the terms of a letter of credit.

A similar reasoning has been put forward by Gutteridge & Megrah

(1984) and was adopted by the Court of Appeal in the UCM case {58}, and also by the American Court {59}. In the UCM {60} case the B/L gave a false date of shipment, i.e. the document was false; the invoice quoted double the actual price of the goods because the buyer wanted to exchange Peruvian currency for U.S. dollars. It was thus in breach of the Peruvian exchange control regulations, i.e. the document was illegal. It is submitted that, as the seller was party to the fraud of the buyer, the principle of the independence of the bank's obligations should not be extended to protect the unscrupulous seller (see *Sztejn v J. Henry Schroder Banking Corporation* {61}).

In his judgement in the UCM case {62} Lord Diplock stated that as the seller was not aware of the fraud of the loading broker, there was no cause of action against him. However, in a decision of the Judicial Committee of the Privy Council {63}, in which Lord Diplock was one of the presiding judges, it was held that the issue of a fraudulent B/L by the Shipping Company, apparently as agents, and presented by the seller (who had no knowledge of the fraud) under the credit gave a clear cause of action against the seller.

In his speech in the UCM case {64} Lord Diplock said :

The exception for fraud on the part of the beneficiary seeking to avail himself of the credit is a clear application of the maxim *ex turpi causa non oritur actio* or, if plain English is to be preferred, "fraud unravels all". The

Courts will not allow their process to be used by a dishonest person to carry out a fraud.

It is respectfully submitted that the decision in the UCM case seems to indicate that the Courts are prepared to allow fraud to be carried out by adhering strictly to the provisions of the UCP, which to all but the unscrupulous seller seem to be inequitable. For example, it has repeatedly been asserted that the current UCP is a significant aid to the commission of documentary frauds and that it should be revised or supplemented to offer better protection to the buyer [Ellen (1979a), Kerr (1979), Kihlbom (1981)]. The UNCTAD Report (1983) observes that in any review of the UCP, consideration may be given to whether the rules allocate the responsibilities between the parties in an equitable manner.

The American Courts are more liberal in their interpretation of the fraud exception because interlocutory relief appears to be more easily obtainable there {65}. In *United Trading Corporation S.A. v Allied Arab Bank* {66}, referring to the more liberal approach of the American Courts Ackner, L.J said :

There is no suggestion that this more liberal approach has resulted in the commercial dislocation which has, by implication at least, been suggested would result from rejecting the respondent's submissions as to the standard of proof required from the plaintiffs.

It is encouraging to note that the English Courts are beginning

to realise that the extremely strict interpretation of the fraud exception is not in the best interests of international trade. This can be seen from Lord Justice Ackner's {67} judgement in which he said :

... we would find it an unsatisfactory position if, having established an important exception to what had previously been thought an absolute rule, the Courts in practice were to adopt so restrictive an approach to the evidence required as to prevent themselves from intervening. Were this to be the case, impressive and high-sounding phrases such as "fraud unravels all" would become meaningless.

#### 4.5.8 Bank Super-service

It was pointed out in chapter 2 that SITPRO's findings [SITPRO (1981)] indicate that preparation of international trade documentation receives little attention from the senior management. The results of another study carried out by SITPRO and Midland Bank [SITPRO (1985)] show that on average 50% of all documents presented under documentary credits are rejected on first presentation. This would imply a lack of knowledge of the UCP by the parties dealing in international trade.

This lack of knowledge and the consideration of international trade documentation as a necessary evil, taken in conjunction with the fact that the banks conduct a superficial examination of the documents tendered under the documentary credits makes this method of payment one of the weakest links in the system.

This leads to a failure of the whole system of international trade : the failure within the context of this study is the occurrence of fraud. Therefore, there is a need to inform the participants of international trade about the shortcomings of this system as Barlow (1985) points out :

Buyers should be strongly advised that : where any doubts exist as to the genuineness of a seller, documentary credits should not be used unless the accountee can make his own arrangements within the documentary requirements of the credit to prevent its possible misuse.

This lack of knowledge can be overcome if the banks advise all applicants for the credit of the shortcomings of this system when the applicant is giving his instructions. They should also be prepared to offer an additional service of checking the authenticity of the documents before payment. This service has been referred to as the "bank super-service".

At its first session the IGG in its resolution [UNCTAD Report (1984)] requested the UNCTAD Secretariat to prepare an in-depth study on the feasibility of a bank super-service scheme. This super-service involved the bank carrying out additional checks before payment under documentary credits.

Prentis (1979) recommended that the banks should be encouraged to use the Lloyd's Register and Lloyd's Shipping Index as a means of preventing fraud. Tugwell (1985), a banker, has

supported this idea and suggests that :

In order to help minimize the success of such frauds and other abuses in documents represented, banks can certainly check the authenticity of details on the documents by consulting Lloyd's List, Lloyd's Register, Lloyd's Shipping Index and Lloyd's Intelligence Service.

Moreover, even those who do not support the super-service idea admit that a check of this nature could have prevented some frauds [Wilson (1979); Barlow (1985); Wheble (1985)]. Whilst there are both those who support the idea and those in opposition, it is submitted that each group is considering their limited and sectional interests.

In response to a questionnaire sent out by the UNCTAD Secretariat [UNCTAD Report (1985a)] the majority of the replies opposed the idea of a "bank super-service" without giving any particular reason, simply indicating that such a service would not be practically feasible. In response to the question - "Would such a procedure result in delaying payments under documentary credit transactions" ? one of the replies was - "Delayed payments resulting from the scheme could reduce the value of the documentary credits as a method of payment".

It is submitted that it would appear from that reply that some members of the banking community are more worried about the

damage that delays would cause to payment under documentary credits, rather than the damage that is being caused by the use of the system as an instrument of fraud.

However, it is still hoped that some action will be taken by the banks to introduce additional checks before payment is made, in order to prevent the fraudster from taking advantage with impunity of the system as it exists today, i.e. "loaded against the buyer". This point was stressed at the opening address to the Seminar on "Prevention of Shipping Fraud" by Mr. Justice Kerr (1979), as he then was, when he said :

The evolution of systematic changes in our everyday practices, particularly in relation to Banker's Documentary Credits, is what I see as the real objective (of the seminar).

This divergence of opinion between the different participants highlights the need for a 'holistic' approach in order to identify and eliminate the weaknesses of the system (see chapter 3).

#### **4.6 The Conceptual Model of the System of International Trade**

Having examined the conceptual models of the main contractual sub-systems of international trade, it was possible to develop the conceptual model of the total system. Figure 4.11 represents



a model of the total system. The model was shown to a number of practising managers dealing regularly with international trade transactions and there was general agreement that it helped to clarify the sequence of events. This model was used in conjunction with the fraud case database to identify the weak links within the system.

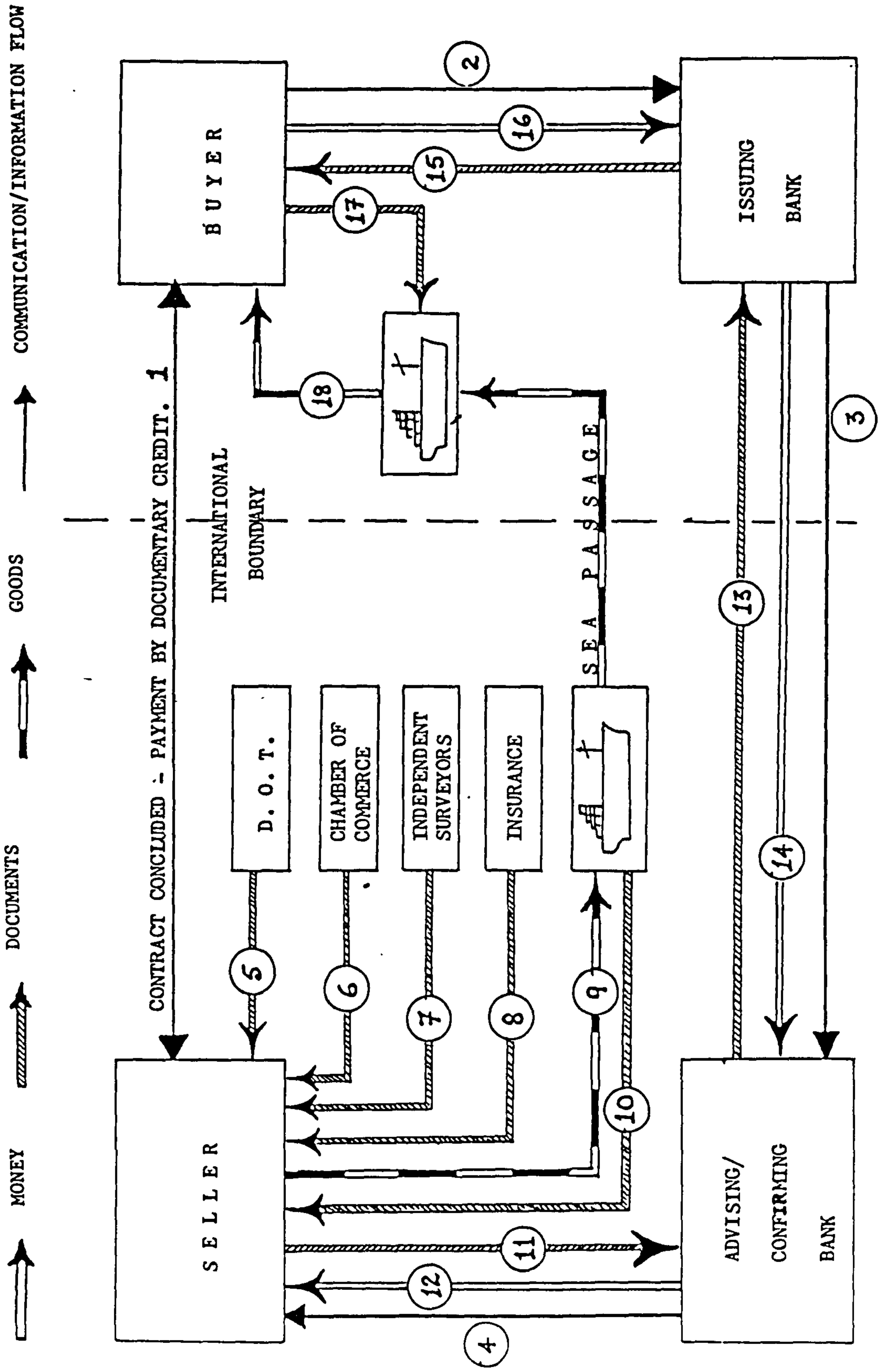


Figure 4.11 - Conceptual Model of the System of International Trade

### Key to Figure 4.11

1. Contract for the sale of goods concluded and payment to be by confirmed irrevocable credit.
2. The buyer requests his bank to issue a L/C in favour of the seller.
3. The issuing bank issues the credit and asks the intermediary bank to confirm the credit.
4. The confirming bank advises the seller that a confirmed irrevocable credit has been issued in his favour.
5. On being advised that the credit is available the seller, if necessary, approaches the Department of Trade or similar body to obtain an export licence.
6. The seller also obtains a certificate of origin from the Chamber of Commerce or similar body.
7. The seller gets a certificate of weight, quality, analysis, etc., as required by the terms and conditions of the credit, from an independent surveyor.
8. The goods are insured and a certificate/policy of insurance is obtained from the insurer. The risks insured against should be those required by the credit.
9. The goods are shipped.
10. A shipped Bill of Lading is obtained from the carrier.
11. The seller presents the documents mentioned above along with the commercial invoice and a draft to the confirming bank.
12. The bank checks the documents and pays, accepts or negotiates the credit as necessary.
13. The confirming bank forwards the documents and draft to the issuing bank.
14. On being satisfied with the documents the issuing bank pays the confirming bank.
15. The issuing bank advises the buyer that it has the documents and delivers them to him in lieu of payment or as agreed.
16. The buyer pays the bank and obtains the documents.
17. The buyer presents the Bill of Lading to the ship or the ship's agent.
18. The ship or the ship's agent delivers the goods in lieu of the Bill of Lading.

## CHAPTER 4 APPENDIX

### Contract of Carriage

1. **The Julia** [1949] 1 All E.R. 269, per Lord Simonds.
2. **Barber v Meyerstein** (1870) L.R. 4 H.L. 317, at p. 329 per Lord Hatherley L.C.
3. **Manbre Sacchrine Co. Ltd. v Corn Products Co. Ltd.** [1919] 1 K.B. 198, at p.202 per McCardie, J.
4. [1920] A.C. 144 at p.155.
5. (1883) 11 Q.B.D. 327 at p.341.
6. (1882) 7 App. Cas. 591, at p.599.
7. *Ibid.* at p.613.
8. *Op. cit.* No.5.
9. **Donald H. Scott & Co. Ltd. v Barclays Bank Ltd.** [1923] 2 K.B. 1.
10. 144 F.2d 759 (1944).
11. **The Stettin** (1889) 14 P.D. 142, at p.147, per Butt, J. (See also **Sze Hai Tong Bank v Rambler Cycle Co. Ltd.** [1959] A.C. 576).
12. [1951] W.N. 597.
13. **Mediterranea Raffineria Siciliana S.p.A. v Mabanaft G.m.b.H. & Others (The Sagona)**, [unreported], referred to in **A/S Hansen-Tangens Rederi III v Total Transport Corporation** [1984] 1 Lloyd's Rep. 196, at p.196.
14. [1985] 1 Lloyd's Rep. 350, at pp. 357 & 362.
15. (1896) A.C. 70.
16. [1899] 1 Q.B. 436. (See also **J. Aron & Co. v Comptoir Wegimont** [1921] 3 K.B. 435.
17. **James Finlay & Co. Ltd. v N.V. Kwik Hoo Tong H.M.** [1929] 1 K.B. 400.
18. **Toho Bussan Kaisha, Ltd. v American President Lines, Ltd.**, 1958 A.M.C. 577.
19. **Brown Jenkinson v Percy Dalton (London) Ltd.** [1957] 2 Lloyd's Rep. 1. (See also **Continex, Inc. v Steamship Flying Independent and Isbrandtsen Co., Inc.**, 1952 A.M.C. 1499; Cf. **The Carso**, 1931 A.M.C. 1497, where it was held that a clean bill, though false, did not create an estoppel because the misrepresentation was unconnected with the damage.
20. *Ibid.*
21. 1961 AIR (Madras) 442.
22. **Panchaud Frères S.A. v Etablissements General Grain Co.** [1970] 1 Lloyd's Rep. 53.
23. **Kwei Tek Chao v British Traders and Shippers Ltd.** [1954] 1 Lloyd's Rep. 16.
24. Comité Maritime International Colloquium on Bills of Lading, held in Venice on 30th. May/1st. June 1983; The London International Conference on Maritime Fraud, 29th./30th. April 1985. [Also see Recommendation No. 12 on "Measures to Facilitate Maritime Transport Documents Procedures" adopted by the United Nations Economic Commission for Europe Working Party on Facilitation of International Trade Procedures, Doc. TRDAE/WP.4/INF.61, March 1979].
25. ECE/TRADE/141/Rev.1, September 1982, para. 7.2.
26. *Ibid.*, para. 7.3.

## Contract of Insurance

1. [1985] 1 Lloyd's Rep. 437, at p.515.
2. (1766) 3 Burr. 1909.
3. *Loders & Nucoline Ltd. v The Bank of New Zealand* (1929) 33 Ll.L.Rep. 70.
4. *Ionides v Pender* (1874) 9 Q.B. 531.
5. *Mathie v Argonaut Marine Insurance Co. Ltd.* (1911) 16 Com. Cas. 270.
6. *The Iskaria* (1918) 23 Com. Cas. 190.
7. (1924) 18 Ll.L.Rep. 211.
8. *Ibid.*
9. *Felicione & Sons Fish Company v Citizens Casualty Company* (1970) 430 F.2d. 135 (5th. Cir.).
10. *The Padre Island* [1971] 2 Lloyd's Rep. 431.
11. *The Gloria* (1936) 54 Ll.L.Rep. 35, cited with approval in *The Gold Sky* [see (12)].
12. *The Gold Sky* [1972] 2 Lloyd's Rep. 187.
13. *The Vainqueur* [1973] 2 Lloyd's Rep. 275.
14. *Holland v Russell* (1863) 4 B. & S.; 2 New Rep. 188.
15. (1973) A.M.C. 44 (S.D.N.Y.).
16. [1984] 2 Lloyd's Rep. 264, at p.303.
17. *Op. cit.* (11).

## Contract of Payment

1. [1918] 2 K.B. 623, 659.
2. [1922] 9 Ll.L.Rep. 572.
3. [1923] 14 Ll.L.Rep. 586.
4. *Cape Asbestos Co. v Lloyd's Bank* [1921] WN, 272.
5. *Op. cit.* (3) at p.588. See also *United City Merchants (Investments) Ltd. v Royal Bank of Canada* [1981] 3 All ER 142, at p.167; *Sztejn v Henry Schroder Banking Corporation et al.* (1941) 31 N.Y.S. 2d. 631, at p.633.
6. *Midland Bank v Seymour* [1955] 2 Lloyd's Rep. 147, at p.153 per Devlin, J. (as he then was).
7. *Ibid.*
8. [1942] 2 All E.R. 694, at p.701.
9. As quoted by Pennington et al (1978) at p.371, *Brandao v Barnett* (1846) 112 Cl. & Fin. 787.
10. As quoted by Pennington et al. (1978) at p.371, *Sewell v Burdick* (1884) 10 App. Cas. 74.
11. *Moss v Old Colony Trust Co.* (1923) 140 N.E. 803, at p.808; 246 Mass. 139.
12. *Kingdom of Sweden v New York Trust Co.* (1949) 96 N.Y.S. 2d. 779, at p.791. See also *Norskog & Co. v National Bank* [1922] 10 Ll.L.Rep. 652, where the defendant issued a credit for £ 50,000 to cover a shipment of goods over a long period, it was held that the beneficiary could not treat the credit as a revolving credit on the strength of the arrangements between himself and the buyer, but had to show that by its express terms the credit was a revolving credit. Also see *J.W. Mitchell Ltd. v Ivan Pedersen Ltd.* [1929] 34 Ll.L.Rep. 310.
13. [1922] 10 Ll.L.Rep. 507, at pp.508 & 509.

14. *Skandinaviska v Barclays Bank* [1925] 22 Ll.L.Rep. 523, at pp.524 & 525 per Greer, J.
15. *Equitable Trust Co. of New York v Dawson* [1927] Ll.L.Rep. 49.
16. *Midland Bank v Seymour*, op.cit. (6), at p.151.
17. Ibid. at p.153.
18. *The Galatia* [1979] 2 Lloyd's Rep. 450, at p.456 per Donaldson, J.
19. *Brown v C. Rosenstein & Co.* (1923) 200 N.Y.S. 491; (1924) 203 N.Y.S. 922.
20. *Woods v Thiedemann* (1862) 1 H.& C. 478; *Gian Singh & Co. v Banque de l'Indochine* [1974] 2 All ER 754.
21. As quoted by Pennington et al. (1978) at p.366, (1922) RGZ 106 26.
22. *Ulster Bank v Synnott* (1871) 5 Ir.R.Eq. 595.
23. Op. cit. (15), at p.52.
24. Ibid.
25. [1925] 22 Ll.L.Rep. 112, at p.117.
26. Ibid. at p.114. See also *Second National Bank of Hoboken, New Jersey v Columbia Trust Co.* 3 Cir., 288 F 17, at p.22; 30 A.L.R. 1299.
27. See *Borthwick v Bank of New Zealand* (1900) Com. Cas. 1, where it was held by Mathew, J. that the bank had committed a breach of its contract with the plaintiff in negotiating a draft which was not accompanied by a policy of insurance in the proper form, and that the bank was liable to make good the loss to the plaintiff.
28. *Banque de l'Indochine et de Suez SA v J.H. Rayner (Mincing Lane) Ltd.* [1983] 1 All ER 468, at p.474.
29. *The American Accord* [1979] 1 Lloyd's Rep. 267.
30. Op. cit. (28).
31. *Bank of America National Trust & Savings Association v Liberty National Bank & Trust Co. of Oklahoma City* (1953) F.Supp. 233, at p.236; see also *Camp v Corn Exchange National Bank* (1926) 285 Pa. 337; 132A 189, at p.191.
32. Ibid.
33. *Hansson v Hamel & Horley Ltd.*, op. cit. (13).
34. *Sanders v Maclean* (1833) 11 Q.B.D. 327, at p.337.
35. *The Moorcock* (1899) 14 P.D. 64, at p.68.
36. *Skandinaviska v Barclays Bank*, op. cit. (14), at p.534.
37. Op. cit. (31), at p.237.
38. *Urquhart Lindsay & Co. v Eastern Bank* [1922] 1 K.B. 318.
39. *United City Merchants (Investments) Ltd. v Royal Bank of Canada* [1982] 2 Lloyd's Rep. 1.
40. [1975] 1 Lloyd's Rep. 156, at p.161.
41. Op. cit. (15).
42. (1930) 36 Com. Cas. 71.
43. *Discount Records Ltd. v Barclays Bank International Ltd.* [1975] 1 All E.R. 1071, at p.1075.
44. [1958] 1 All E.R. 262, at p.263.
45. Ibid., at p.264.
46. (1975) Pa. 336 A 2d. 316, at p.324.
47. Op. cit. (31).
48. *Woods v Thiedemann*, op. cit. (20).

49. *Gian Singh v Banque de l'Indochine*, op. cit. (20).
50. *Basse & Selve v Bank of Australasia* (1904) 90 L.T. 618.
51. *Edward Owen Engineering Ltd. v Barclays Bank International Ltd.* [1978] 1 Lloyd's Rep. 166, per Lord Denning, M.R. at p.172. (see also *United City Merchants (Investments) Ltd. v Royal Bank of Canada*, op. cit. (39); *Sztejn v Henry Schroder Banking Corporation*, op. cit. (5) above; *The United Trading Corporation S.A. v Allied Arab Bank Ltd.* [1985] 2 Lloyd's Rep. 554).
52. *The United Trading Corporation v Allied Arab Bank Ltd.*, ibid., at p.561, per Ackner, L.J. (see also *Bolivinter Oil S.A. v Chase Manhattan Bank and Others* [1984] 1 Lloyd's Rep. 251, at p.257 per Sir John Donaldson, M.R.).
53. Op. cit. (49).
54. Op. cit. (43).
55. Op. cit. (39).
56. Ibid.
57. 2 Cir., 297 F. 152, at p.158.
58. *United City Merchants (Investments) Ltd. v Royal Bank of Canada* [1981] 1 Lloyd's Rep. 604, at p.628, per Ackner, L.J. [see also *Sztejn v Henry Schroder Banking*, op. cit. (5)].
59. Op. cit. (57).
60. Op. cit. (39).
61. Op. cit. (5).
62. Op. cit. (39).
63. *George Kallis (Manufacturers) Ltd. v Success Insurance Ltd.* [1985] 2 Lloyd's Rep. 8.
64. Op. cit. (39), at pp.6 & 7.
65. *Dynamics Corporation of America v The Citizens and Southern National Bank* 356 F. Supp. 991 (1973).
66. [1985] 2 Lloyd's Rep. 554.
67. Ibid., at p.561.

Take an imaginative fraudsman, arm him with guile  
and a xerox machine, turn him loose in a  
commercial world where vast sums change hands on  
the strength of documents, and the sky is the  
limit.

[Haight (1980)]



	Page
<b>CHAPTER 5 : ANALYSIS OF FRAUD CASE DATABASE</b>	<b>180</b>
5.1 : Introduction	180
5.2 : Charter Party Fraud	181
5.2.1 : Charterer Defrauds the Shipowner	181
5.2.2 : Shipowner Defrauds the Charterer/Cargo Owner	182
5.3 : Deviation Fraud/Illegal Sale of Cargo	183
5.4 : Marine Insurance Fraud	188
5.4.1 : Scuttling	188
5.5 : Documentary Maritime Fraud	192
5.5.1 : Documentary Fraud Scenarios	194
5.6 : Analysis	197
5.6.1 : Losses due to Maritime Fraud	204
5.6.2 : Minor Shipboard Frauds	206
5.6.3 : Indirect Losses due to Fraud	207
5.7 : Conclusions	209
5.8 : Weak Links	211
5.9 : Recommendations to Combat Fraud/Commercial Crime	219
Chapter 5 Appendix	225

## CHAPTER 5 - ANALYSIS OF FRAUD CASE DATABASE

### 5.1 Introduction

Chapter 2 presented an overview of the problem of maritime fraud. This chapter analyses the fraud case database. The database was compiled from published literature, case law, information supplied by the ICC - International Maritime Bureau (the collaborating establishment) and personal interviews with special investigators of Security Investigation Services (SIS) and New Scotland Yard.

101 cases of fraud have been included in the database. It was possible to identify values of losses in only 72 cases : these ranged from \$ 30,000 to \$ 56 million (see section 5.6). The cases included in the database consist mainly of frauds where forged/fraudulent documents were used. A small selection of the cases analysed have been included in Appendix 1. As some of the cases are subjudice, the names of the parties have been omitted.

Analysis of the database was carried out to identify the modi operandi and also to pin-point the features commonly found within the different classes of fraud. The findings will be used in conjunction with the conceptual model of the system of international trade, developed in the previous chapter, to identify the weak links in the system which have contributed

to the failure of the system, i.e. the occurrence of actual or potential frauds.

## **5.2 Charter Party Fraud**

Investigation of the cases has revealed the following modi operandi :

### **5.2.1 Charterer Defrauds the Shipowner**

- a) A vessel is Time-chartered. The hire is paid at stated intervals, usually fortnightly or monthly, the first instalment being paid in advance.
- b) The vessel is either sub-chartered on a voyage charter or run on a liner service. A particularly advantageous freight rate is offered to shippers.
- c) Once the cargo is loaded, the charterer collects the freight and issues "freight prepaid" B/L, defaults on further hire payments and absconds or goes into liquidation. If the charter party calls for the issue of "freight collect" B/L and the shipowner issues such B/L, the charterer collects the freight and replaces the shipowner's B/L with a fresh set endorsed "freight prepaid". The substitution is done without the knowledge of the shipowner.

### 5.2.2 Shipowner Defrauds the Charterer/Cargo owner

- a) The vessel loads cargo, freight is collected and B/L issued.
- b) Instead of proceeding to the destination, the vessel diverts to a convenient port en route on the pretext of change of crew, provisioning or repairs.
- c) In port the vessel is arrested by an "accommodating creditor" for unpaid bills.
- d) The vessel is sold by a court order, to meet the claim which is greatly exaggerated by collusion between the two parties. In such cases the vessel is sold free of all encumbrances of the previous owner, including the contract of affreightment obligations - even as to the cargo on board.
- e) The purchaser, i.e. the new owner of the ship, demands additional freight from the cargo owner/charterer to complete the voyage. The previous owner, the creditor and the new owner are all part of a parent company.

A variation of this scheme is when the shipowner deviates to a small Greek port and sells the cargo under a court order to recover for the alleged loss of charter hire or the freight [IMB (1984c)]. For example, in 1977 at least 12 vessels under Greek beneficial ownership arrived at small Greek ports where they made application to the Courts to be allowed to discharge and

then dispose of the cargo under the contention that the owners had not been paid either the charter hire or the freight [Wright (1981)].

Figures 5.1 and 5.2 are conceptual models of the above two types of frauds.

### 5.3 Deviation Fraud/Illegal Sale of Cargo

Investigation of the fraud cases has shown that the following common features are found in deviation frauds :

- a) The shipowner is usually of "singleton ownership".
- b) The ship is sailing under a "flag of convenience", usually Panama, or under the Greek flag.
- c) Cargo is loaded usually, but not always, for a port where there is considerable delay due to port congestion.
- d) After sailing from the port of loading, there are changes to the vessel's name, flag and/or nominal ownership. This is usually achieved by selling the ship to a new company which the shipowner opens or purchases in, say Liberia or Panama. For example, the ship "Gale" changed her name four times in three months and changed her flag from Greek to Panamanian

[Ellen & Campbell (1981)]; the "Betty" on a voyage from Rijeka (Yugoslavia) to Jeddah (Saudi Arabia) made an unscheduled stop at Pylos (Greece), where she changed her name, flag and owners [Conway (1981)]. Vessels not only changed names, but put into small ports and changed the entire crew who completed the perpetration of the fraud. There is evidence that professional crews were maintained for this purpose [Wright (1981)].

e) The cargo is sold illegally, say in the Middle East where, due to political strife, the goods could be sold without questions being asked. For example, vessels deviated to Lebanese ports to sell their cargo. From the end of 1977 up to September 1979 vessels disappeared into Lebanon at the rate of about two to three every month [Wright (1981)], and then

f) The vessel sails and resumes operation under a new name, or is scuttled to hide the fact that cargo has been stolen, in which case there is an overlap with insurance frauds.

Figure 5.3 is a conceptual model of this type of fraud.

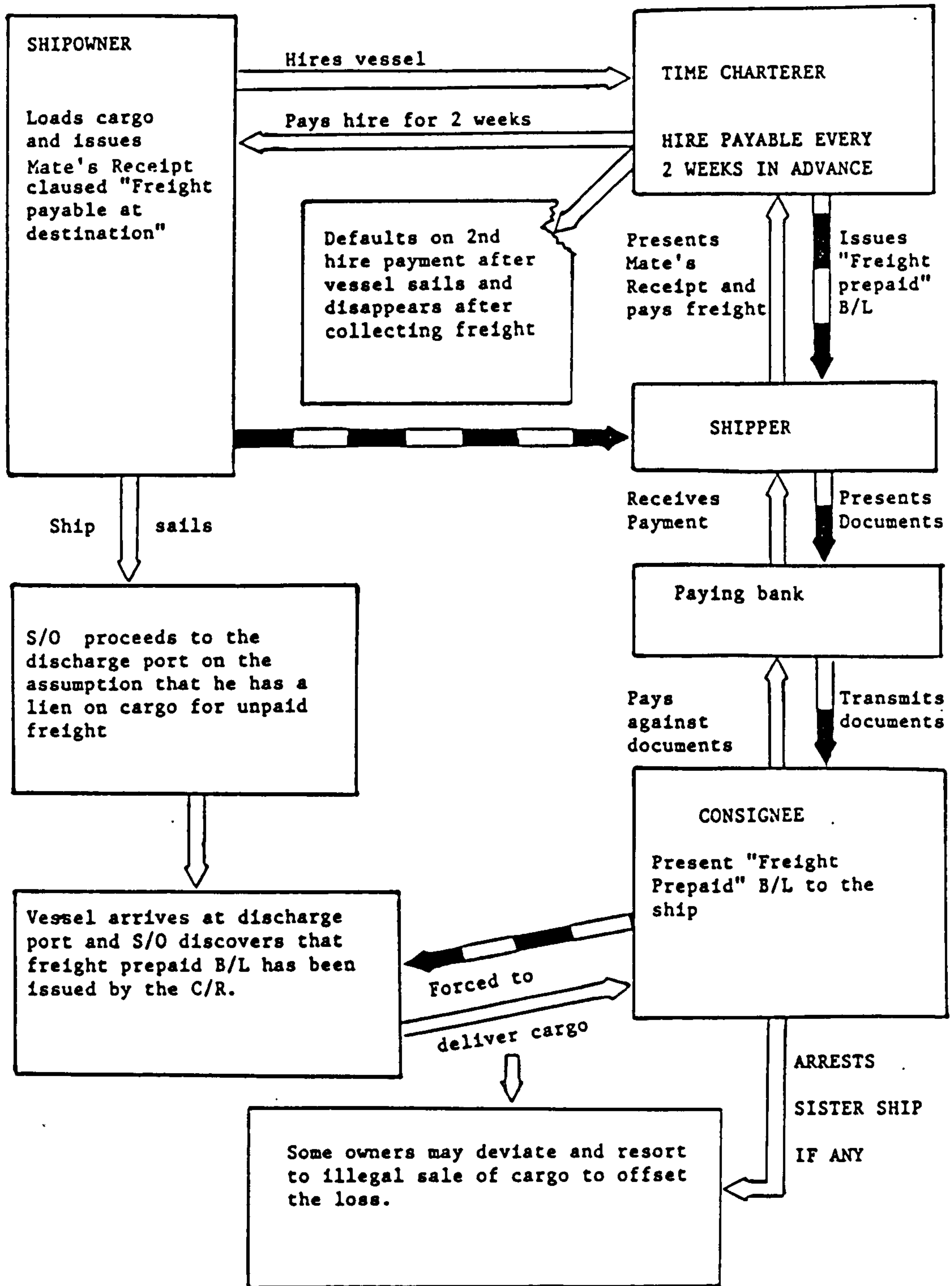


Figure 5.1 - Conceptual Model of Charter Party Fraud :  
Charterer Defrauds the Shipowner

Source : ICC - International Maritime Bureau

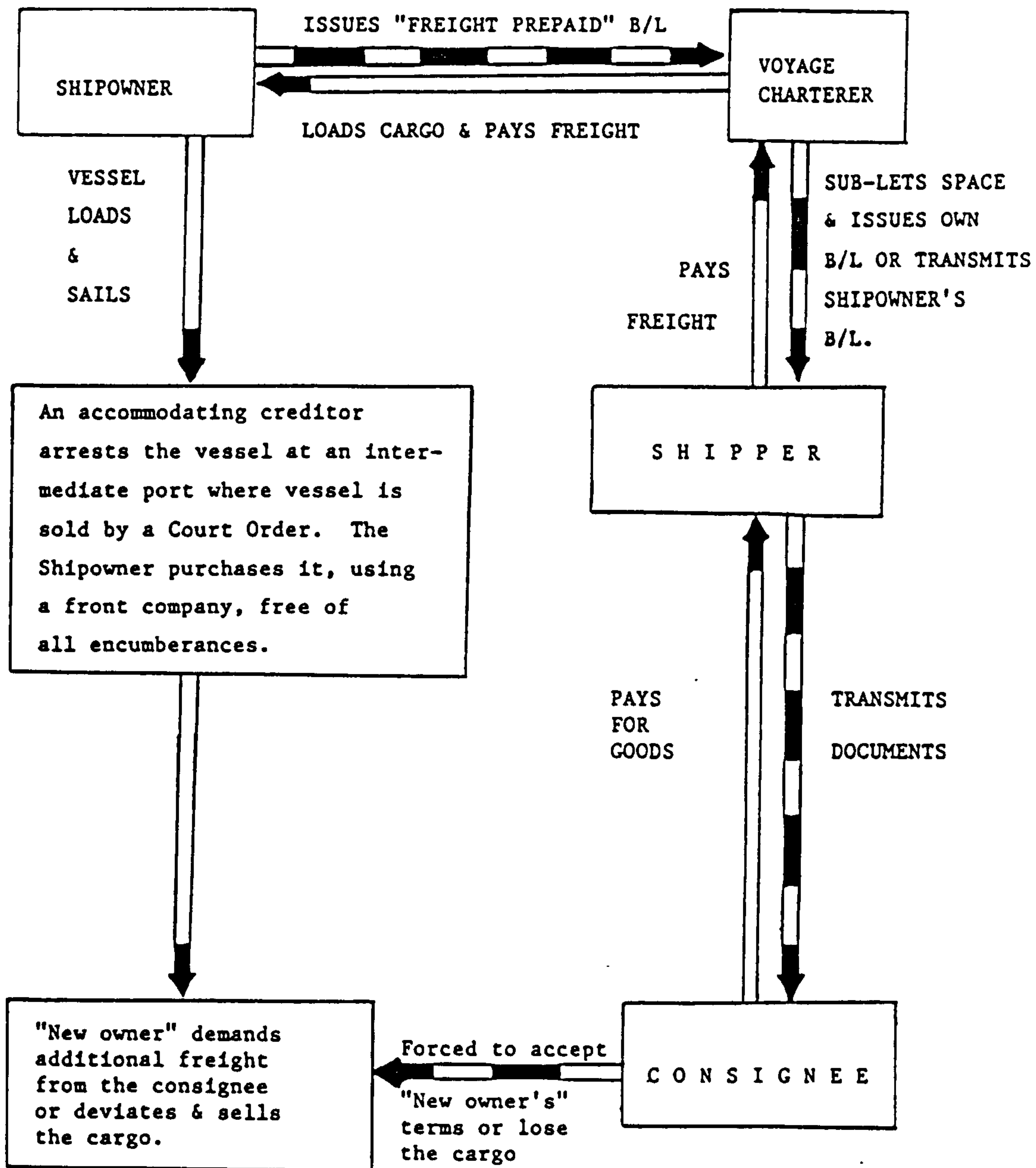


Figure 5.2 - Conceptual Model of Charter Party Fraud :

Shipowner Defrauds the Charterer/Cargo Owner

Source : ICC - International Maritime Bureau



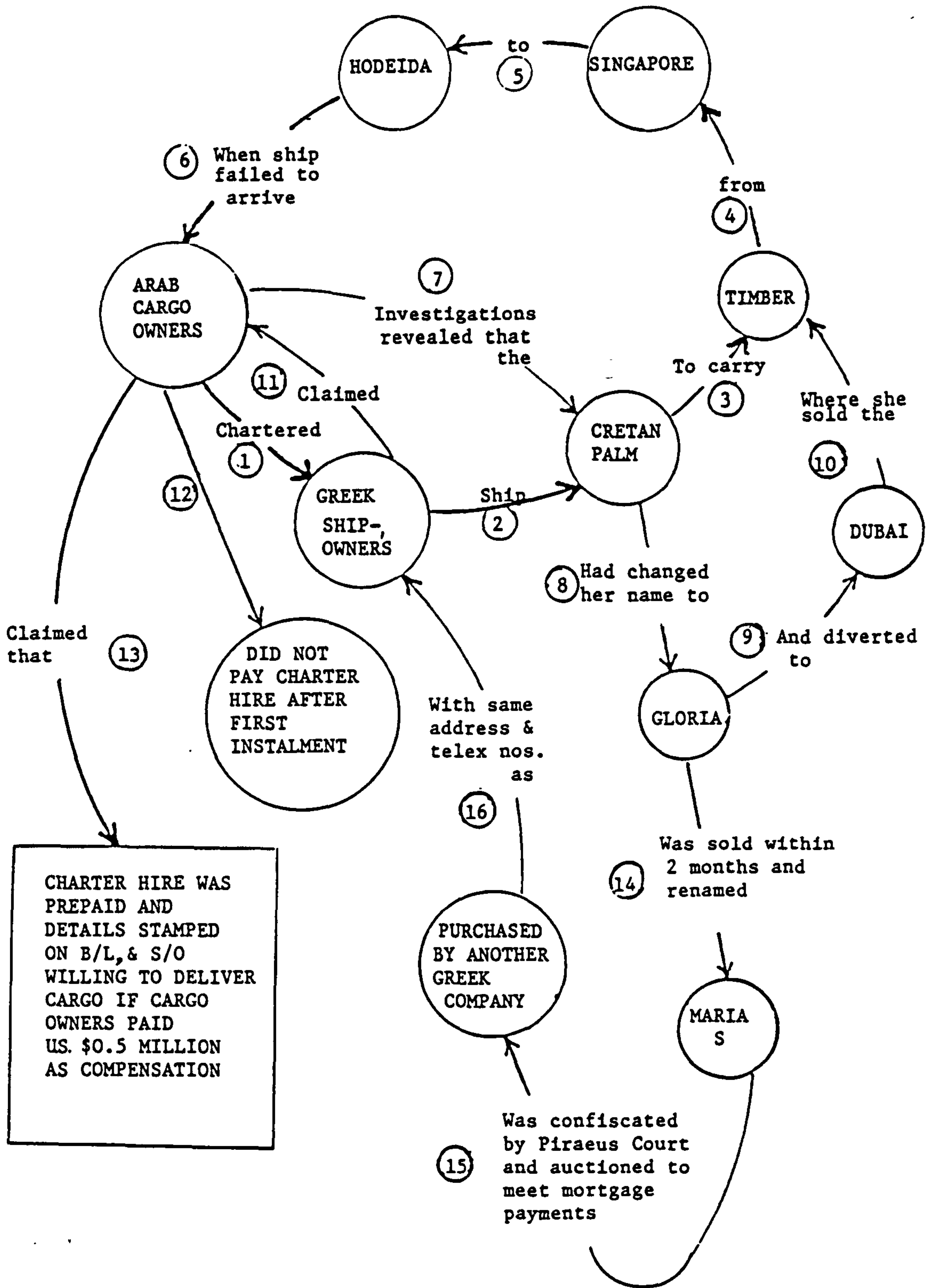


Figure 5.3 - Conceptual Model of Deviation Fraud

Source : Based on Dobson & Payne (1980)

## 5.4 Marine Insurance Fraud

In this type of fraud, scuttling was the factor most frequently encountered. Therefore it is being considered in greater detail.

### 5.4.1 Scuttling

During the 1920's there was a spate of scuttlings. Investigations reveal that in the majority of cases the following features could be found :

- a) The shipping company was in financial trouble and probably having difficulty in meeting the mortgage payments. For example, in **The Leonita** {1} the owners owed four-fifths of the purchase price of the vessel and the vessel had ceased to make any profit,
- b) The vessel was experiencing difficulties in contracting charters,
- c) The freight rates were low,
- d) The vessels were grossly over-insured. For example, **The Arnus** {2} which was worth £ 14,000 was insured for £ 174,000, and **The Leonita** {3} was worth £ 55,000 and insured for £ 245,000. Both vessels sank one month before the policy expired, and

e) Vessels sank in calm sea and fine weather {4, 5, 6}.

The sinking of the vessel resulted in :

- Payment of mortgage from the insurance proceeds,
- Recoupment of investment in the ship,
- Loss of a burdensome shipping venture, and
- "Windfall" profits.

It was shown in chapter 2 that the acceleration in the recent spate of known/suspicious sinkings started around the mid-seventies (see figure 2.3). In some of the modern day sinkings the above-mentioned features are present, but in the majority of cases, particularly in the Far East, some or all of the following features have also been identified :

- a) The vessels are usually more than 15 years old and are in very poor condition, hence the coining of the term "rust bucket".
- b) These vessels are usually registered under flags of convenience, particularly Panamanian. The Far East Regional Investigation Team's (FERIT) findings reveal that of the 48 cases investigated more than 80% of the vessels were under Panamanian flag [FERIT Report (1979)]. Kapoor's (1986a) analysis of 70 known/suspicious sinkings showed that about 63% of the vessels were under the Panamanian flag. He points

out that this figure could have been higher as the port of registry of 20 vessels was not known.

- c) The vessels allegedly carry high value cargoes (for example, "Averilla" and "Oh Dai" were purported to be carrying large quantities of cloves, palm oil, brass scrap and PVC resin [Sundaresan (1983)]) or the cargo may secretly be discharged at an intermediate port [IMB (1982)]. This overlaps with deviation fraud.
- d) The cargo owners may also be involved along with the shipowner. For example, the "Gulf Prosperity" and "Guru Angadh" were owned by companies in which the purported shipper B.S. Aujla had an interest [Conway (1981)].
- e) There is usually no loss of life and the crew normally save their personal effects, though the ship's papers are usually lost. For example, "when the crew of 'The Tropaioforos' were eventually rescued they were found to be astonishingly well dressed and clean-shaven for men who had hurriedly abandoned ship in the early hours of the morning" [Haddon-Cave (1981)].
- f) The ships usually sink in deep water and allegedly in bad weather.
- g) The ships are usually over-insured, for example "The Tropaioforos" {7} was valued at £ 38,000 but was insured for £ 200,000.

- h) The involvement of the same people (shipowners, agents, shippers and crew) in a number of cases indicates that a number of small syndicates are operating. For example, in the case of "Averilla" and "Oh Dai" the same shippers were involved, namely, B.S. Aujla Company, Bentrex & Co., and Palmex Enterprises and in each company B.S. Aujla had a controlling interest [Lauriat (1980)] (Cf. point (d) above).
- i) In some cases the company is specially set up for this purpose, a very good example of this was the case of "The Salem" {8}.
- j) The vessels usually develop leaks or there are unexplained explosions on board, for example, "The Tropaioforos" {9} was alleged to have struck "an unknown submerged object" as a result of which water began pouring into the holds; and "The Goldsky" {10} was supposed to have suddenly developed a large vertical crack in the port side shell plating of the engine room.
- k) In some cases the sinking is faked, i.e. the vessel does not sink but reappears elsewhere under a new identity.

The majority of such cases do not come to court for the following reasons :

- a) The difficulty of proving on a balance of probabilities that the vessel was sunk by a deliberate act of someone on board and that the shipowner was privy to the act, i.e. complicity of the shipowner. For example, in "The Michael" {11} the owner's privity could not be proved, even though it was common knowledge that the ship had been scuttled, and that Komiseris, who had also been on "The Goldsky" {12}, had boasted about his actions.
- b) A few unexplained sinkings are always accepted by the underwriters among their claims portfolio. It has been suggested that insurers pay out on claims they know to be fraudulent in order not to prejudice future business [Lauriat (1979)].
- c) Out of court settlements.

### 5.5. Documentary Maritime Fraud

Investigation has shown that some or all of the following features are commonly found in documentary fraud cases :

- a) Goods in high demand are offered at prices below the market rate, by a seller who or from a country which is not the normal source of supply. For example, the Cubans purchased coffee at \$1.39 per pound, 15 cents below world market price and were defrauded of \$ 8.7 million [Time (1979)].

- b) Dealing with and trusting hitherto unknown persons. For example, the Angolan government dealt with the unknown Perez (or Pires) not once but on three occasions, despite the fact that the cargo was not forthcoming on the first two occasions. As a result the Angolans lost \$ 8.4 million [Paxman (1979), Conway (1981)].
- c) Payment is always by means of irrevocable documentary credit.
- d) Sale is on cost insurance and freight (c.i.f.) or cost and freight (c. & f.) terms.
- e) Buyers are inexperienced and usually from developing countries. For example, Angola encountered five major maritime frauds in less than two years after gaining its independence [Abhyankar (1980)]. This could be attributed to their lack of commercial expertise in international trade transactions.
- f) The victims have no recourse against the underwriters or carriers. If there is no cargo the victims do not have an insurable interest and therefore, the risk does not attach. If the B/L is forged or fraudulent the carrier is not liable, or if the carrier is liable he may have no assets and thus the buyer has a worthless cause of action {13}. If the goods exist but do not start the contemplated voyage, and the buyer has paid out on the fraudulent B/L, the risk does not attach; therefore the victim cannot claim on the insurance {14}.

g) The shipowner and the crew are usually innocent.

#### 5.5.1 Documentary Fraud Scenarios

In the perpetration of documentary fraud any one of the following scenarios may be enacted :

a) Non-existent cargo on a non-existent ship

- Savundra defrauded the Chinese Government of \$ 1.23 million by allegedly shipping non-existent cargo of 45000 drums of lubricant on a non-existent ship [Connell & Sutherland (1978)].

- The Nigerian Government paid out \$ 6 million for a non-existent cargo of 94,000 tonne of cement apparently shipped on 8 non-existent ships [15].

b) Non-existent cargo on an existent ship

In this category there are two possibilities, namely, the vessel named in the B/L is actually at the port of loading (or even in the vicinity), but is loading cargo for some other port, or the vessel named in the B/L is trading in another area or is undergoing repairs. There have been several cases of both versions and some examples are given



below :

- B/L showed that the cargo was shipped on board "Anna" and a vessel called "Anna" was at the port of Wolgast on or about the correct date {16}.
  - B/L showed that a cargo of frozen chicken was loaded on board the "Multi-Frost" in Tampa (U.S.A.), but at that time the vessel was off Luanda in Angola [Brown (1982)].
  - B/L showed that a cargo of 1500 tons of beef was loaded on board the "Maco Viking" which at that time was undergoing refit in a Norwegian shipyard [Paxman (1979)].
  - B/L showed that a cargo of 1000 tons of palm oil was loaded on board the "Cool Girl" in Copenhagen. At that time the "Cool Girl" was in dry dock in Rotterdam [Paxman (1979)].
- c) Sending rubbish or inferior quality goods instead of the contracted goods

For example :

- In the case of **Equitable Trust Company of New York v Dawson** {17} it was revealed that instead of sending a full consignment of vanilla beans the cargo shipped consisted of only one percent vanilla beans and the rest was old iron, wood and rubbish.

- Cowhair, other material and rubbish was shipped in 50 cases instead of bristles {18}.
  - A certificate of analysis was issued based on the analysis of a sample of ore taken to the chemist but the ore shipped was worthless {19}.
- d) Date of shipment is fraudulently altered or a false date is entered on the B/L to show that the goods have been loaded within the contract period to meet the L/C requirements {20, 21}. This would be forgery under section 9(1)g of the Forgery and Counterfeiting Act 1981.
- e) The buyer may obtain delivery of goods from the shipowner on the strength of a letter of indemnity and then sell the B/L to an innocent third party
- f) The buyer may present a forged B/L to the carrier to obtain delivery of the cargo without payment for the goods to the bank where the original documents are being held.
- g) The issue of two sets of B/L for the same cargo.

For example, the owner of the "Viki K" issued two sets of B/L, one to the genuine Iranian consignees and the other to a "bonafide" Egyptian buyer [IMB (1982b)].

- h) The use of forged/fraudulent documentary credits. In this

type of fraud two possibilities exist :

- i) the seller and buyer conspire to defraud the paying bank,  
or
  - ii) the seller induces the buyer to send goods on the  
strength of the fraudulent documentary credit.
- j) False invoicing of goods to contravene exchange control  
regulations, or to pay less Customs duty on imports.
- k) Misdescription of goods in order to :
- i) export/import banned goods, or
  - ii) claim export subsidy on goods under the Common  
Agricultural Policy (C.A.P.) of the European Economic  
Community (EEC), or
  - iii) claim compensation under the Monetary Compensatory  
Amounts (M.C.A.) in the EEC.

Figures 5.4 and 5.5 are conceptual models of documentary fraud  
cases.

## **5.6 Analysis**

Analysis of the *modi operandi* and the common features of the  
various types of fraud reveals, *inter alia*, heavy involvement of  
Greek and Panamanian flag vessels. This has been substantiated  
by two independent analyses which show that in 75% of the cases  
Greek and Panamanian vessels have been involved, see tables 5.1

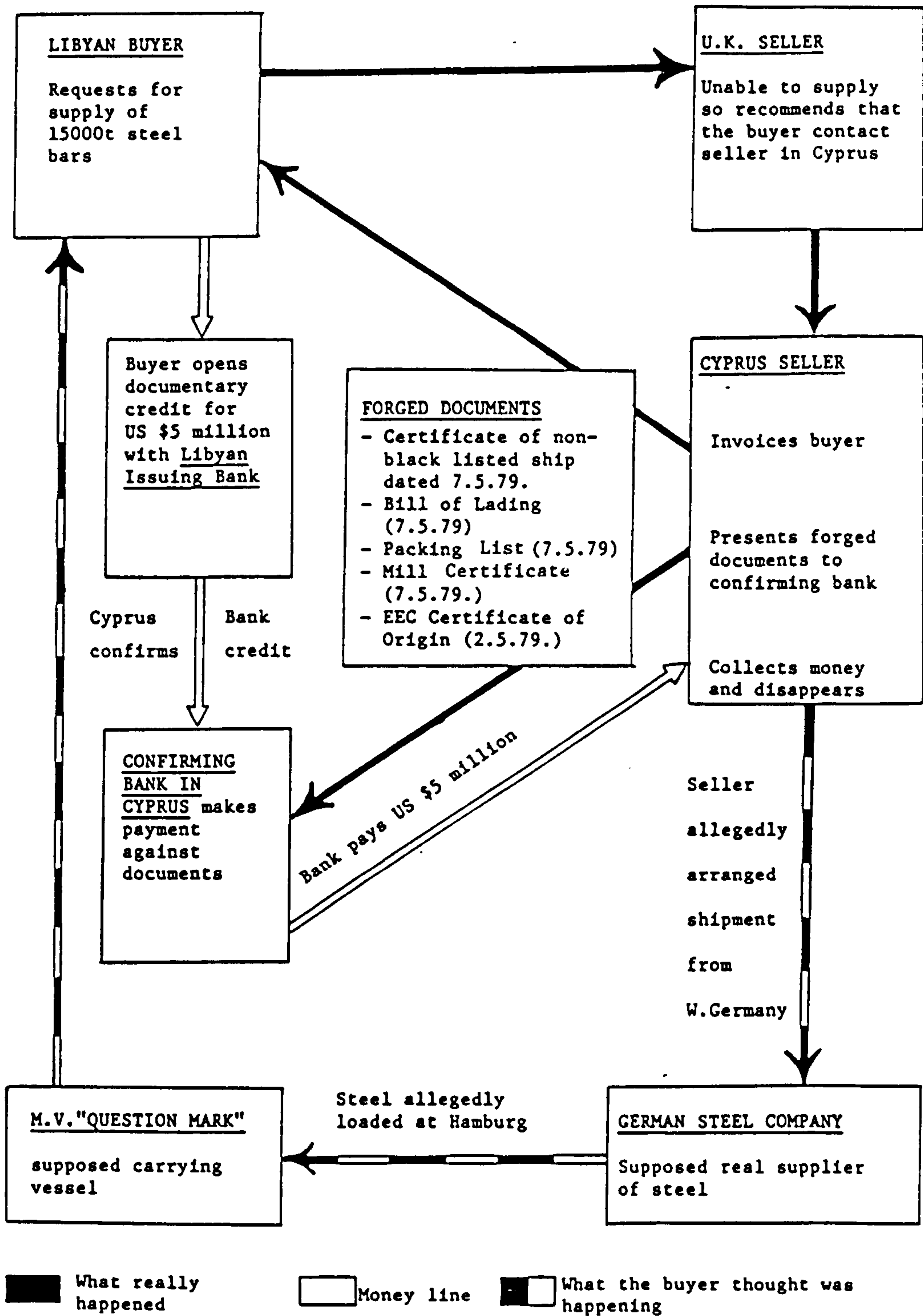


Figure 5.4 - Conceptual Model of Documentary Fraud

Source : Adapted from ICC Publication No. 370

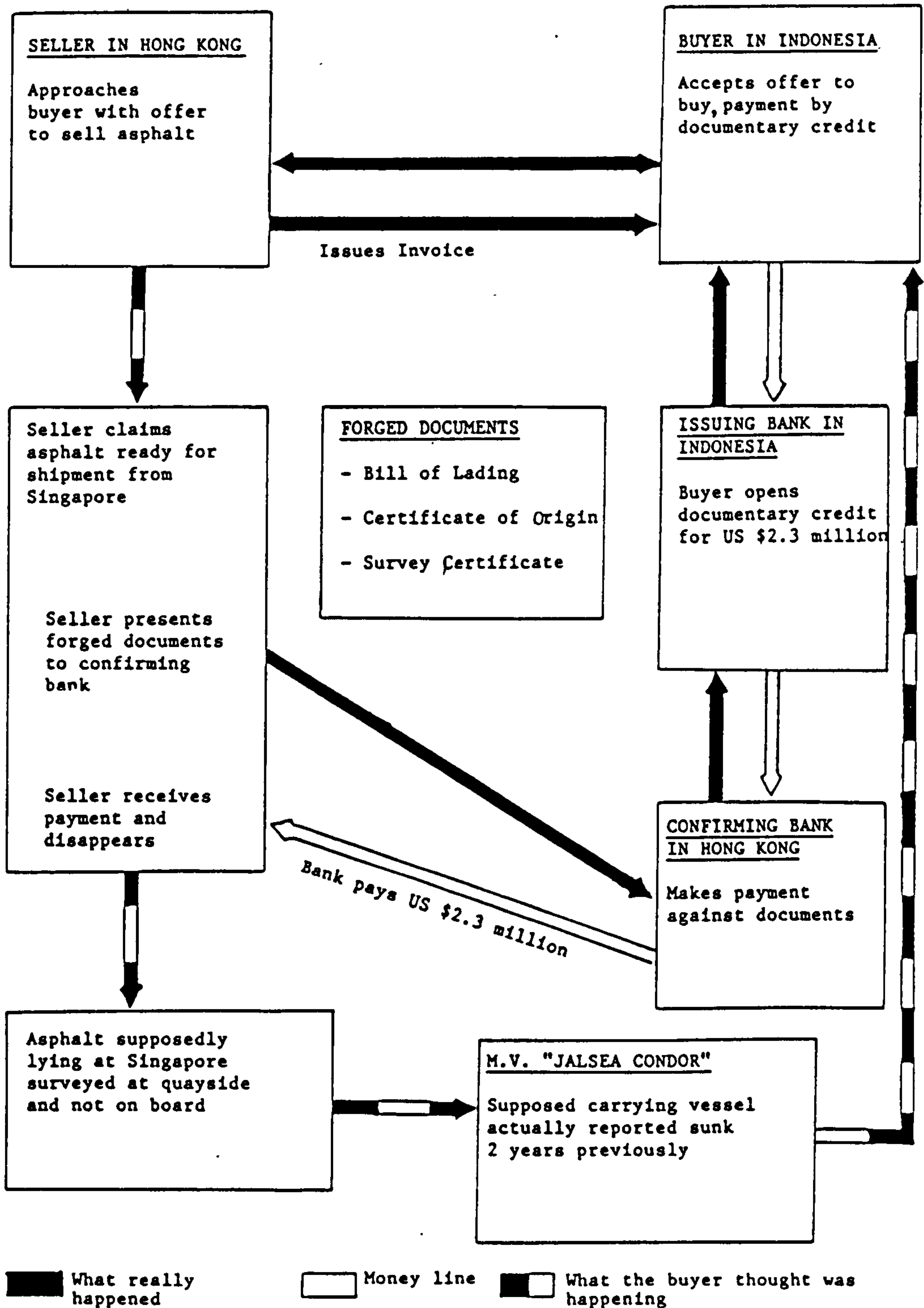


Figure 5.5 - Conceptual Model of Documentary Fraud

Source : ICC - International Maritime Bureau

and 5.2a (tables are placed at the end of the chapter). The results of Ellen & Campbell's (1981) analysis in terms of flag of vessels involved in 93 cases of Charter Party and Documentary Frauds reported up to November 1979 are shown in table 5.1. Table 5.2 shows the analysis of 52 cases of non- or mis-delivery of cargoes [Perry (1979)].

An analysis of 70 known/suspicious sinkings carried out - see table 5.3a - showed that 44 vessels were under the Panamanian flag. This figure could however be higher as the port of registry of 20 vessels was not known. As stated earlier (see section 5.4.1) FERIT's findings reveal that of the 48 cases investigated more than 80% of the vessels were under the Panamanian flag.

Tables 5.2b and 5.3b show that the majority of vessels involved in frauds have been over 15 years old. Kapoor (1986a) has shown that for ships of 500 G.R.T. and above the loss record of the Greek and Panamanian flag vessels is not very good (see Appendix 5).

During the course of personal interviews with fraud investigators it was suggested that in the majority of frauds the same people have been involved. Support for this view was found in the 70 cases of known/suspicious sinkings where 31

vessels which sank were under the agency of 5 companies and 4 companies were found to be involved with 6 or more vessels which sank, see table 5.3c. The findings of the FERIT Report (1979) also substantiate this view.

Figure 5.6 shows the analysis of 101 cases of maritime fraud by classification of fraud. Over 62% of the cases were of documentary fraud where the buyer was deceived by forged and/or fraudulent documents. However, in the insurance fraud cases the documents used contained false or fraudulent information, indicating the difficulty in classification due to overlap.

However, of the 101 cases of maritime fraud, drawn from the period 1974-1983, only 72 cases could be analysed in value terms in U.S. dollars (values ranging between \$ 30,000 and \$ 56 million), see figure 5.7. The difficulties in this type of analysis were found to be :

- a) The length of time between the actual perpetration of fraud and the discovery of the losses involved,
- b) In some cases the values are not quoted in dollar terms,
- c) Values are not quoted in all cases, and
- d) In some cases the total loss suffered by the victims of fraud

### TYPES OF FRAUD

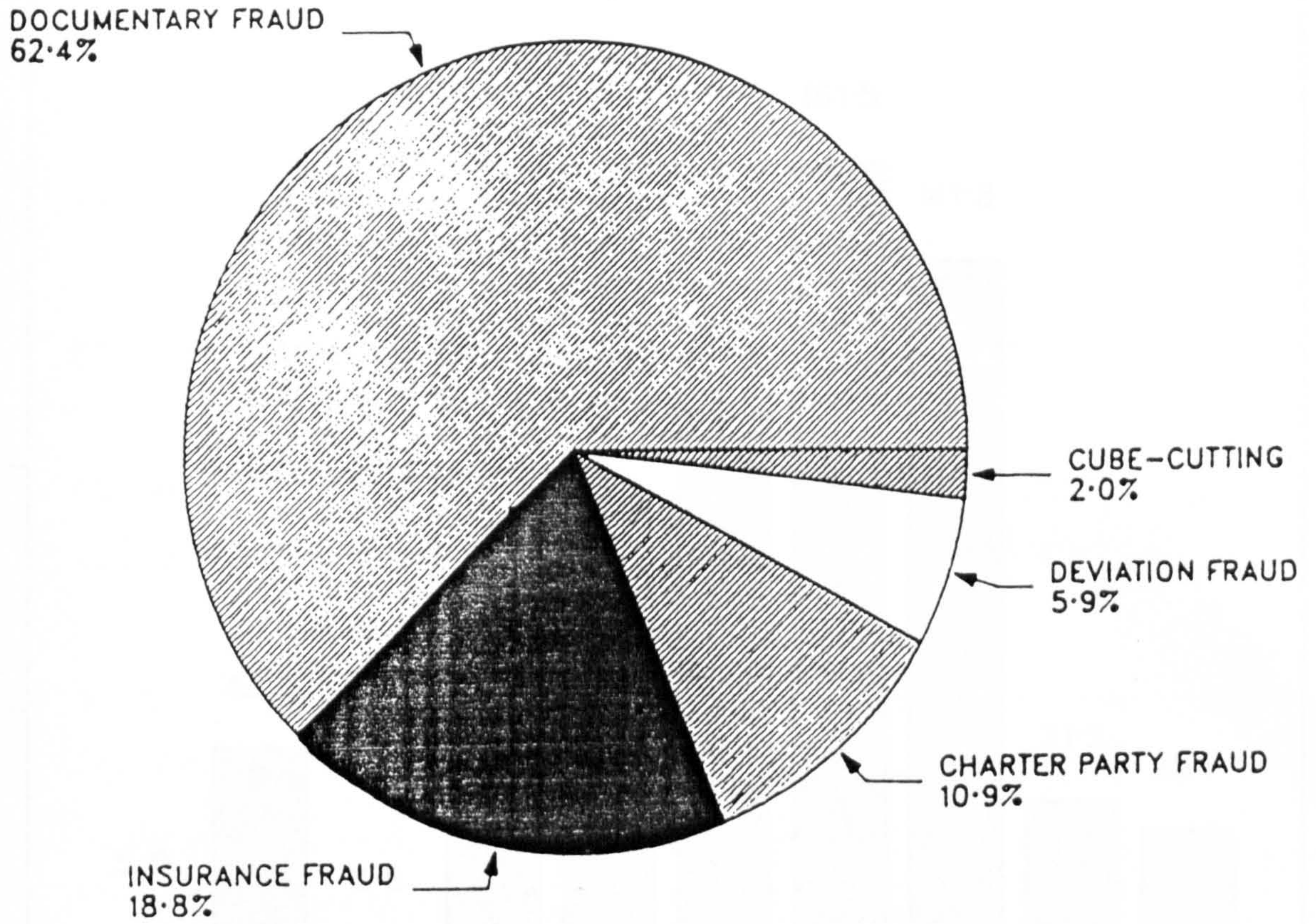


Figure 5.6 - Analysis of 101 Cases of Maritime Fraud



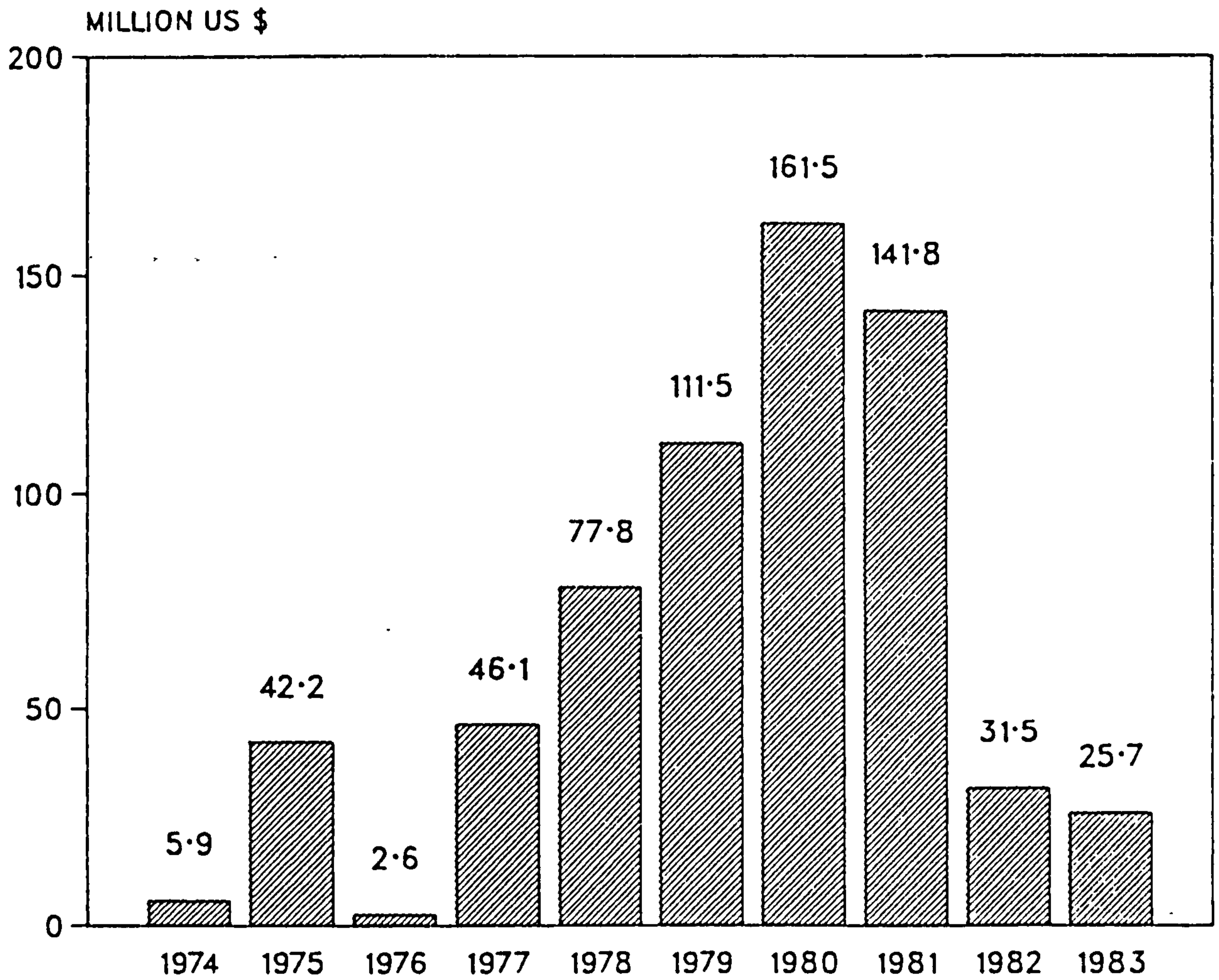


Figure 5.7 - Analysis of 72 Cases of Maritime Fraud

for the period 1974 - 1983

Total value of Losses = \$ 646.46 million

Average Loss per case = \$ 8.98 million

over a number of years is given. In such cases, for figure 5.7, the total value has been apportioned on a pro rata basis over the time involved.

Figure 5.7 shows that over the ten year period the average loss per case was about \$9 million.

#### 5.6.1 Loss due to Maritime Fraud

**What is the total annual loss attributable to maritime fraud ?**

In order to attempt to answer the question certain **basic assumptions** are made. They are :

- a) It is estimated that 30% of the cases are not reported entirely due to the commercial attitude of the victims. The reason for not reporting is that the victim is unlikely to get his money back. Therefore it does not make economic sense to incur extra expenditure - especially in view of the fact that the alleged fraudster may not be convicted, or if he is convicted he usually has no assets.
  
- b) An estimated 40% of the cases are not reported due to other reasons, e.g. to avoid adverse publicity, or the victims negotiate with the perpetrators to re-purchase their own goods.

c) Only about 30% of the cases are reported. It can be argued that this figure is too high, but the author feels it is better to err on the side of caution and not to exaggerate the issues.

d) The total number of cases reported per annum (allowing for overlap, i.e. same case is being investigated by more than one investigator) can be broken down as follows :

In the United Kingdom (U.K.)

- on average 100 cases per annum reported to IMB (see chapter 2, table 2.1)
- on average 150 cases per annum reported to Security Investigation Services [Wilson (1985)]
- assume another 250 cases to all the other investigators and lawyers

For the rest of the world

- assume double the U.K. figure, i.e. 1000 cases. It can be argued that this figure is too small, but has been selected for the same reason as above, i.e. to avoid exaggeration.

e) Of the estimated 1500 cases reported it is further assumed that only 70 percent actually represent fraud cases, i.e. 1050 cases.

If the estimated total number of cases reported is 1050 and this represents 30% of the losses suffered, the actual number of cases per annum is given by :

$$\text{Number of cases per annum} = (1050 \times 100) / 30 = 3500$$

If the average loss per case is \$ 9 million (see figure 5.7), the total loss suffered is 3500 x \$ 9 million, i.e. 31.5 billion dollars per annum. This figure increases dramatically if assumption (c) is incorrect and the cases reported are less than 30%, see table 5.4.

From table 5.4 it can be seen that losses due to maritime fraud are substantial. Therefore there is an **urgent need** for action at both national and international level and not for endless bureaucratic discussions over boundaries and jurisdictions. Any delay in arriving at a solution is to the benefit of the perpetrators of fraud for whom delay is a weapon in their armoury (see chapter 2) and also, for whom such boundaries do not exist, thus enabling them to exploit the weakness of the system to the fullest extent.

#### **5.6.2 Minor Shipboard Frauds**

The loss suffered by the shipping industry is not only due to

major frauds but also due to minor shipboard frauds. This type of fraud has not received any publicity because it does not make sensational headlines. However, it takes place on ships of virtually all nationalities. Examples of such frauds are :

- signing false receipts for stores/fuel/dunnage not received
- demanding inducement for preferential stowage
- demanding inducement for accepting poor quality stores on board.

Kapoor's (1986a) analysis shows that the minimum loss suffered by the industry due to minor shipboard frauds is nearly \$ 7 million per annum. He points out that in preliminary investigations he has found that practising seafarers quote figures in excess of \$ 1500 per ship per annum representing a minimum loss of over \$ 28 million per annum. (One seafarer quoted figures of the order of \$ 12,000 per annum on his last ship).

### **5.6.3 Indirect Losses due to Fraud**

It must be recognised that the minimum losses estimated in this analysis are the direct losses and do not take into account indirect losses such as :

- Cost of buying back the goods which have been sold illegally

to third parties.

- Transshipment and warehousing charges of goods discharged at a port other than the destination.
- Loss in the value of goods due to delay in delivery of goods.
- Damage to the goods.
- Cost of putting up a guarantee to have the arrest order lifted.
- Legal and ancillary expenses.
- Loss of customer goodwill.
- Loss of market.

In view of the above, it can be envisaged that the indirect financial losses suffered by the individual traders can be far greater than the direct losses. In addition such losses have a "knock-on" effect on the economy of the victim country. Rider (1985b) is in agreement with this and says :

The repercussions that the more serious commercial crimes can have on a national economy underlines the political significance of this sort of criminal activity. It can, and in some cases certainly does, have long-term detrimental effects on the political and economic stability of the country.

These effects would be particularly noticeable in the case of developing countries who appear to have been the primary targets of the fraudsters.

At numerous seminars and conferences it has been said that the losses due to fraud should not be exaggerated and that they are less than 1% of the total value of trade. It was stated in chapter 1 that in an attempt to quantify the scale of losses due to maritime fraud various figures have been quoted; these range in value from an amount in excess of \$ 200 million in the middle-to-late seventies to about \$ 13 billion in 1985. These values appear to have become widely accepted as estimates of the losses due to fraud. However, closer examination fails to uncover a sound basis for these estimates.

The results of the analysis carried out do in fact show that the minimum direct losses due to maritime fraud are closer to the 1% figure, see table 5.4, than the industry has hitherto been led to believe. In value terms, the author believes that, such losses should be unacceptable to the industry.

## 5.7 Conclusions

Prevention is better than cure. Therefore, the main burden of preventing fraud rests with the victims. In order to protect himself the victim must have access to information which would be adequate for the prevention of fraud. Whilst most of this information is available, the author feels that the feature that has been particularly noticeable is the apparent lack of will or determination on the part of the victims to protect

themselves. This can be attributed to either naivety/ignorance or laziness on their part, or the belief that information can be obtained free of charge.

However, in the defence of the victims it must be said that whilst the information is available it is :

- a) not available to all the interested parties, due to the lack of co-operation between organisations representing different sectors of the industry,
- b) sometimes unreliable, and
- c) it is fragmented, i.e. there is no centralised databank, and therefore it can be too expensive to obtain, particularly for the smaller firms who would have to become members of several organisations to acquire all the relevant information.

In view of the above there is an urgent need for concerted action on all fronts. This can only be achieved by positive co-operation between the various participants in international trade. This could take the form of a centralised databank, which would co-ordinate and collate statistics on fraud losses on a worldwide basis. This centralised pool of information would assist the investigators in the identification of emerging patterns and trends. The recent decision of the Baltic Exchange



and the Baltic and International Maritime Council (BIMCO) to pool their information on malpractice and fraud [ICCP (1986)] is a step in the right direction.

The UNCTAD Report (1983), submitted to the IGG, highlighted the inadequacy of relevant information for interested parties, and suggested that consideration should be given to means of improving the availability of ship-related information in order to facilitate trading parties' enquiries about the ship and its operations. As a result of this the UNCTAD Secretariat was asked to prepare a report on ship-related information. This preliminary study [UNCTAD Report (1985b)] was used as the basis for Section B of the first questionnaire sent to the Panel of Experts (see chapter 7). The final report [UNCTAD Report (1986b)] presents the problems which exist in relation to the present system of providing information and proposes the formation of a Maritime Fraud Prevention Exchange (MFPE) for improving the availability of shipping information as well as facilitating its dissemination.

### **5.8 Weak Links**

From the analysis of the fraud case data-base it was found that in addition to the weak links within the international trade system itself, further weak links could be identified in the immediate environment of the system. It is hypothesised that

these weak links, i.e. both within the system and its immediate environment contribute to, and facilitate the occurrence of, actual and potential fraud. The occurrence of fraud is a failure of the system.

The weak links identified will be tested using an international panel of experts to determine whether they are also considered to be the weaknesses of the system by the experts : their agreement would support the hypothesis. The weak links identified are given below and the number in the bracket refers to the statement number in the first questionnaire sent to the Panel of Experts.

Examples of weak links identified in the environment of the system are :

E.1 Ease with which name, ownership and port of registry of a vessel can be changed without proof of cancellation of the previous registry. (Statement No. 6)

For example, neither the deletion certificate nor a closed Transcript from the previous registry is asked for by the Registrar when a vessel is transferred from foreign flag to British Registry [Doraiswamy (1984)].

**E.2 Ease with which a vessel can be registered in some countries, particularly Panama, even when the vessel is unseaworthy. (Statement No. 7)**

Example of other countries are :

A ship of any type over 25 years old may be registered in Cyprus provided :

- the owner signs the Cyprus Collective Agreement for seamen,
- the owner undertakes to engage a crew consisting of 51% Cypriot seamen, if available,
- the vessel complies with the 1966 Loadline Convention [Doraiswamy (1984)].

In the Bahamas, Britain and Cyprus a vessel can be provisionally registered for a period of six months with ease. For example, for provisional registration in Britain the Convention Certificates are not called for; the vessel is expected to possess them and be seaworthy [Doraiswamy (1984)] (Emphasis supplied).

**E.3 Ease with which companies can be registered with complete anonymity for the directors, either by the use of foreign nominees or otherwise. (Statement No. 8)**

For example, in the Bahamas and Cyprus anonymity can be achieved by using nominees as shareholders. Both countries provide

adequate safeguards to maintain anonymity. To maintain anonymity in Liberia all or part of the stock may be in the form of registered or bearer shares; after incorporation, any change of shareholders or officers or directors need not be recorded in the Public Register [Doraiswamy (1984)].

**E.4 Lack of harmonisation in international laws and procedures.**

**(Statement No. 9)**

It was pointed out in chapter 2 that the Criminal Law when looked at from an international point of view does not have the ability to resolve actions against criminals where two or more jurisdictions are involved.

**E.5 Unfamiliarity of the judiciary, in some countries, with the concepts of maritime law. (Statement No. 10)**

**E.6 Inadequacy of the present system of the lay jury in commercial fraud cases. (Statement No. 11)**

This point was highlighted by Lord Justice Lawton [Lawton (1983)] at the conference on "Fraud & Evasion" (held in London on 14th. April 1983) and also at the Commonwealth Law Ministers meeting in Sri Lanka [Rider (1985)].

**E.7 The difficulties faced by prosecuting authorities in obtaining extradition orders from different jurisdiction.  
(Statement No. 12)**

For example, there is reluctance on the part of many countries to enter into extradition agreements with those countries who they believe adhere to different ideologies [Akinjide (1984)].

**E.8 Lack of control over ports due to political strife, particularly in the Middle East.**

**Statement No. 36 (see section 5.9) is a recommendation to combat this weakness.**

Examples of the weak links identified within the system are :

**S.1 The B/L has outlived its usefulness as a document of title and provides little or no security. (Statement No. 2)**

As the B/L is a document of title it represents the goods and delivery of the document implies constructive delivery of the goods (see chapter 4 - section 4.3.6). Therefore, a person intending to commit fraud knows that all participants in the international trade system will accept the B/L at face value and will implicitly rely upon its contents.

S.2 The Uniform Customs and Practice for Documentary Credits 1983 Revision does not provide adequate protection for the buyer against the unscrupulous seller. (Statement Nos. 4 & 5).

In chapter 4 (section 4.5) it was established that the UCP does not provide adequate protection for the buyer as the banks are not required to check the authenticity of the documents. Furthermore, in most frauds the payment is arranged under irrevocable documentary credits.

S.3 Lack of proper checks carried out by the parties involved in international trade transaction, including lack of independent checks. (Statement No. 13)

There have been a number of cases where checks into the existence, creditworthiness and track record of their trading partners would have prevented the subsequent frauds.

S.4 Shipowner's "track record" not checked either by the charterers and shippers before entering into a contract of carriage, or by the insurers before entering into a contract of insurance. (Statement No. 14)

**S.5 Secrecy of operations. (Statement No. 15)**

For example, referring to the Kaare Gilboe case (see Appendix 1) Tudball (1981) says "If the fixtures with the Chinese had been fully reported on The Baltic then I am convinced that the subsequent fraud would not have taken place".

**S.6 Ease with which B/L can be obtained on the open market or sometimes from the shipowners or their agents.**

As this is a fact it was not tested. Prentis (1981) and Kapoor & Gray (1985) have pointed out that blank B/L forms can be obtained with ease.

**S.7 Use of THREE original B/L in a set and delivering cargo on the production of only one. (Statement No. 16)**

In chapter 4 it was established that this practice weakens the position of the holder of only one original of a set consisting of more than one original.

**S.8 Lack of commercial expertise on the part of the victims of developing countries. (Statement No. 17)**

For example, the Angolans, and the Nigerians have been the

victims of a number of frauds (see Appendix 1).

**S.9 The need to cut cost has made buyers and shippers targets of unscrupulous brokers, sellers, shipowners and forwarding agents. (Statement No. 18)**

For example, the Cubans were the victims of buying coffee below the market rates [see section 5.5 (a)].

**S.10 Payment under documentary credits by the banks without proper checks. (Statement No. 19)**

For example, it has been acknowledged by bankers that certain checks prior to payment would have prevented some frauds (see chapter 4, section 4.5.8). Abhyankar (1980) points out that in the case of M.V. "Delwind" the banks paid out \$ 5.9 million 17 days after presentation of documents; if they had checked on the vessel's position when she apparently loaded the cargo they would have found that she was in dry-dock in Japan, and the company which issued the B/L was non-existent.

**S.11 Acceptance of commercial malpractices and at times fraudulent practices as custom of the trade in some countries for commercial expediency. (Statement No. 20)**



It was shown in chapter 4 that commercial malpractices had developed in international trade, particularly in relation to the use of letters of indemnity, to simplify some of the difficulties which arose as a result of using archaic practices.

In an interview with Mr. Freebury, Director, Documentation and Procedures, SITPRO, the author asked Mr. Freebury if simplification of documentation could have contributed to the increase in fraud. Mr. Freebury said that he did not think so but he would certainly like to confirm it. As a result Statement No. 21 was included to determine whether simplification of documentation had contributed to fraud.

The weak links identified within the system are shown in figure 5.8.

### **5.9 Recommendations to Combat Fraud/Commercial Crime**

As pointed out in chapter 3, when using the systems approach the feasibility and desirability of the changes recommended can be tested. Therefore taking into account the weaknesses outlined above some recommendations are put forward. Statement numbers 23 to 31 and 34 are recommendations put forward by the author (see Appendix 3).

In addition, one of the resolutions adopted at the Bombay Seminar on "International Maritime and Commercial Frauds" (March 1985) and the resolution adopted at the first session of the IGG [UNCTAD Report (1984)] were included in this section to verify their feasibility in combating fraud.

Statement numbers 22, 32 and 33 (see Appendix 3) were introduced as recommendations based on the IGG resolutions. Statement Nos. 37 and 38 were introduced as recommendations based on the resolution adopted at the Bombay Seminar.

Statement number 36 is a recommendation put forward by the collaborating establishment, ICC - International Maritime Bureau and statement number 35 is based on a proposal put forward by the UNCTAD [UNCTAD (1982)].

Having identified the weak links both within the system and its immediated environment the next chapter examines the methodology to be used to verify the validity of the hypothesised weak links.

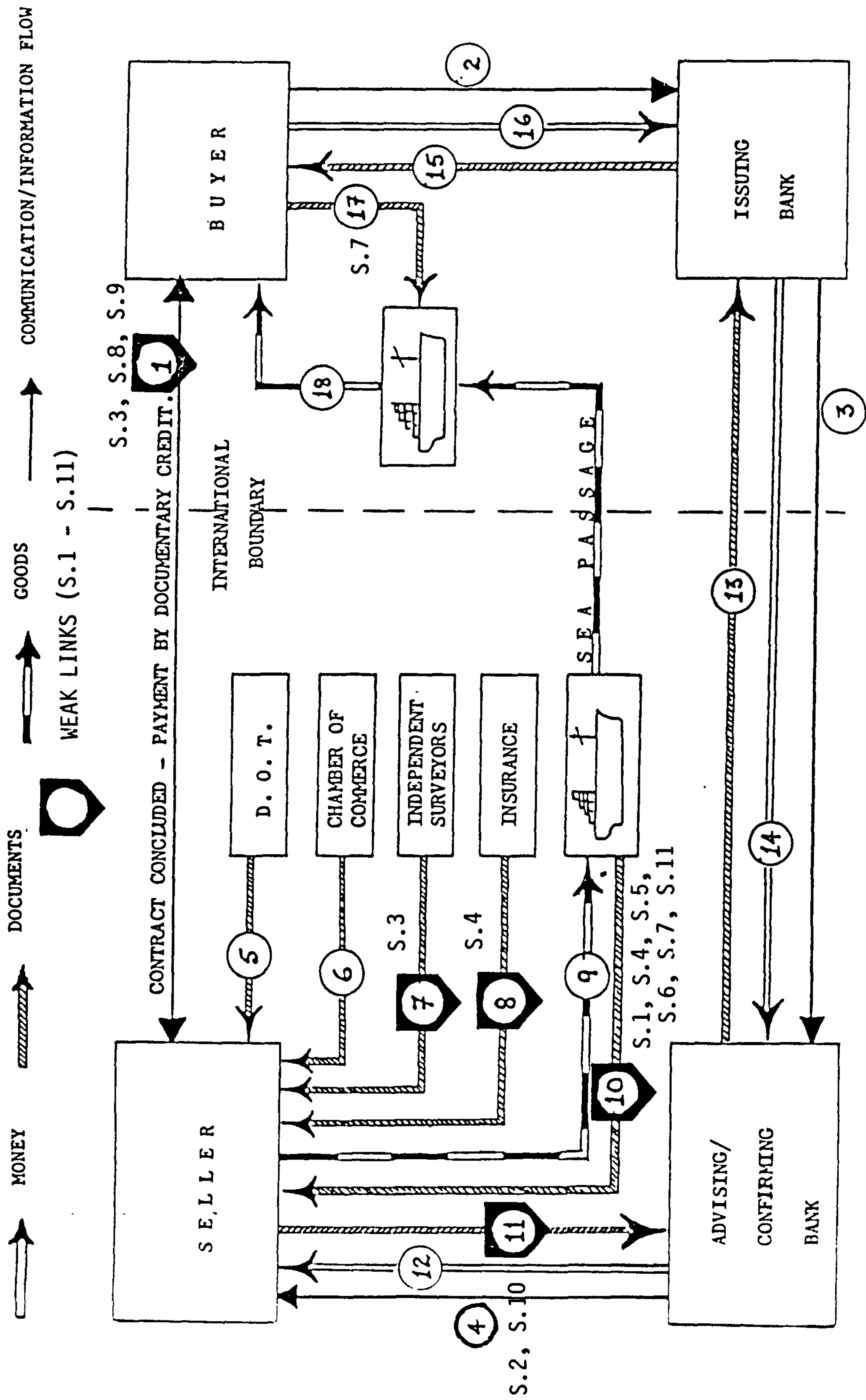


Figure 5.8 - Weak Links within the System of International Trade

Table 5.1 : Analysis of 93 Cases of Fraud

Source : Adapted from Ellen & Campbell (1981)

Country	Cases	Percentage
Greece	46	49.5
Panama	24	25.8
Cyprus	16	17.2
Spain	2	2.5
India	1	1.0
Liberia	1	1.0
Sharjah	1	1.0
Singapore	1	1.0
South Korea	1	1.0
<b>Total</b>	<b>93</b>	<b>100.0</b>

Table 5.2 : Analysis of 52 cases of Non or Misdelivery of Cargo

Source : Adapted from Perry (1979).

a)

Flag of Vessel	Number	Percentage
Greek	24	46.2
Panamanian	15	28.8
Cypriot	11	21.2
Liberian	2	3.8
<b>Total</b>	<b>52</b>	<b>100.0</b>

b)

Age of Vessel	Number	Percentage
0 - 15 years	9	17.3
16 - 20 years	14	27.0
21 - 25 years	17	32.7
26 - 30 years	10	19.2
31 - 35 years	2	3.8
<b>Total</b>	<b>52</b>	<b>100.0</b>

Table 5.2 Continued

c)

G.R.T. of Vessel	Number	Percentage
501 - 2500 tons	5	9.6
2501 - 5000 tons	10	19.2
5001 - 7500 tons	15	28.8
7501 - 10000 tons	16	30.8
Over 10000 tons	6	11.6
<b>Total</b>	<b>52</b>	<b>100.0</b>

Table 5.3 : Analysis of 70 cases of Known/Suspicious Sinkings

Source : Adapted from Marine Insurance Bulletin, July 1980.

a)

Flag of Vessel	Number	Percentage
Panamanian	44	62.9
Spanish	2	2.9
Cypriot	1	1.4
Greek	1	1.4
Japanese	1	1.4
Korean	1	1.4
Unknown	20	28.6
<b>Total</b>	<b>70</b>	<b>100.0</b>

b)

Age of Vessel	Number	Percentage
0 - 15 years	7	10.0
16 - 20 years	17	24.3
21 - 25 years	17	24.3
26 - 30 years	5	7.1
31 - 35 years	1	1.4
45 years & over	2	2.9
Unknown	21	30.0
<b>Total</b>	<b>70</b>	<b>100.0</b>

Table 5.3 Continued

Agents of Vessels	No. of ships
XYZ Steamship Company (*)	9
Goodwill Ltd. (*)	8
TT Steamships Ltd. (*)	6
Willing & Co. (*)	6
ABC Shipping Co. Ltd. (*)	2
16 Companies with 1 ship each	16
Names of 23 ships agents not known	23
<b>Total</b>	<b>70</b>

(\*) - Names of the companies have been changed.

Table 5.4 : Annual Losses due to Maritime Fraud

Reported Losses due to Fraud	Total Losses suffered due to Maritime Fraud (\$ billion)	Total value of International Trade in 1983 *	Loss as percent of value of International Trade
30%	31.5	\$ 3690 billion	0.9%
20%	47.25		1.3%
10%	94.5		2.6%
5%	189.0		5.1%

\* Values of Export (f.o.b.) and Import (c.i.f.)

\* Source : Shipping Statistics Yearbook, 1984,

Institute of Shipping Economics, Bremen.

## CHAPTER 5 APPENDIX

1. (1922) 13 Ll.L.Rep. 231.
2. (1924) 19 Ll.L.Rep. 95.
3. Op. cit. (1).
4. Op. cit. (1) & (2).
5. **The Katina** (1922) 12 Ll.L.Rep. 220, 266.
6. **The Palitana** (1924) 20 Ll.L.Rep. 74, 140.
7. [1960] 2 Lloyd's Rep. 469.
8. [1982] 1 Lloyd's Rep. 369.
9. Op. cit. (7).
10. [1972] 2 Lloyd's Rep. 187.
11. [1979] 2 Lloyd's Rep. 55.
12. Op. cit. (10).
13. **George Kallis (Manufacturers) Ltd. v Success Insurance Ltd.**  
[1985] 2 Lloyd's Rep. 8.
14. Ibid.
15. **Etablissement Esefka International Anstalt v Central Bank of Nigeria** [1985] 2 Lloyd's Rep. 445.
16. **Woods v Thiedemann** (1862) 1 H.& C., 478.
17. [1927] 27 Ll.L.Rep. 49.
18. **Sztejn v Henry Schroder Banking Corporation** (1941) 31 N.Y.S. 2d., 631.
19. **Basse & Selve v Bank of Australasia** (1904) L.T., 618.
20. **Kwei Tek Chao v British Traders & Shippers Ltd.** [1954] 1 Lloyd's Rep. 16.
21. **United City Merchants (Investments) Ltd. v Royal Bank of Canada** [1982] 2 Lloyd's Rep. 1.

	Page
<b>CHAPTER 6 : RESEARCH METHODOLOGY</b>	<b>226</b>
6.1 : Introduction	226
6.2 : Enlarged Concept of a Model	227
6.3 : Group Techniques for Problem Solving	233
6.4 : The Delphi Technique	237
6.5 : Inquiring Systems	243
6.6 : Screening Criteria for the Questionnaires	248
6.7 : Questionnaire Design	250
6.8 : Selection of the Panel	253



### 6.1 Introduction

The foregoing chapters have outlined the problem faced by the system of international trade. Systems theory was then employed to develop conceptual models of the three contractual sub-systems of international trade transactions, i.e. carriage, insurance and payment. This served to illustrate the various institutions involved and the flow of information, documents, goods and money, and thus focus attention on areas which can be seen as potential weak links. Having examined these areas in detail, a conceptual model of the total system was developed. This was used in conjunction with the fraud case database to identify the weak links which have contributed to failures of the system.

It is hypothesised that maritime fraud is a failure of the international trade system caused by the weak links identified in the last chapter. In order to test this hypothesis it is necessary to seek the opinions of potential victims (i.e. shippers, buyers, agents, freight forwarders, bankers, insurers, shipbrokers, etc.) and the investigating/prosecuting authorities. This empirical approach of data gathering is used because of a dearth of information and the constraints and limitations imposed upon researchers investigating criminal activities.

This is in keeping with Croft's (1978) findings. When investigating the criminal justice system in the United Kingdom (UK) he observed that regard should be paid to the limitations and constraints imposed on researchers and, that research on crime involves piecing together information and identifying the gaps in knowledge to be filled by empirical investigation.

He went on to say that whilst the research programme should challenge the assumptions and values in the system, confrontation should be avoided, and special efforts have to be made to ensure consensus about objectives. The reason for this is to remove possible dissatisfaction with the outcome of the inquiry and thus assist the acceptance of the findings of the research in question.

Since the primary objective of a systems study is to increase the effectiveness of the system during the planning horizon, forecasting has an important part to play. This chapter therefore investigates the research methodology which will fulfill this role.

## 6.2 Enlarged Concept of a Model

When trying to deal with the question of fraud, few organisations are prepared to talk about their experiences. As a

result, there is a considerable lack of statistical data on which to draw. Norman (1976) is of the same view and writes :

Where fraud is detected by management, police are seldom called in; even partial restitution is usually cheaper than the cost of investigation, litigation and damage to morale.

The fact that several parties have an interest in international trade transactions results in a working environment where conflicting goals and overlapping authority are complicating factors. International trade documentation has evolved to meet the needs of the industry, although always being based on past experience it has lagged behind the changes which have revolutionised the shipping industry during the past thirty years (see chapter 2): in other words, the volume and structure have grown without conscious design.

Quade (1971) points out that the systems approach is considered to be the panacea for many of the challenges of modern society, and that while it can be applied to specific well-defined problems and sub-systems it is not likely to be spectacularly successful in total problems. He goes on to say :

We may be able to design an efficient system but as yet we have no algorithms for finding ways to overcome the resistance offered by tradition, legal restrictions and a host of privileged interests that inhibit radical or even morphological change.

For example, the shipping industry was reluctant to undertake

the examination and revision of long-established procedures made necessary by the dramatic changes to the shipping industry referred to in chapter 2. Rider (1984) attempts to draw attention to what he refers to as the "blinkered and general parochial attitude" of many of those concerned with fighting serious international crime and goes on to say :

.... colleagues in the legal profession can occasionally be accused of being far more interested in the sterile and arid minutiae of jurisprudential conceptualisation than with actually taking the sort of steps through the legal system which would protect their societies from these evils. ... To confine ourselves to traditional and outdated procedures of Empire and the past will almost certainly result in defeat.

The systems approach may be described as a "divergent thinking" approach, that is, it does not view the problem in isolation but attempts to consider all aspects of it, recognising the importance of interactions among the various components of the system. In this approach models representing the system are used to assist the designer to understand the system and to explain to others how he perceives the system. Conceptual models were found to be best suited to the study of soft systems problems, particularly where reliance is placed on intuitive judgements of experts in the field.

Quade (1971) points out that when working with problems where goals are obscure and conflicting, where the authority is diffuse and overlapping, and where the structure has grown

without conscious design, the act of collection of data to discover the underlying model, may even bias the data collected. This is particularly true in the international trade system where the various sub-systems are separate industries in their own right. In addition the sub-systems are affected not only by the politico-economic environment but also by the legislation of the various countries involved.

While traditional models are very useful in providing detailed knowledge of the system interrelationships, their use would not be satisfactory in systems problems where international policy issues are involved because, as Quade (1971) points out :

The policymaking environment is such that there are likely to be many participants in any given decision, most of whom can counter any recommendation but none with the authority to implement it alone.

For example, Rider (1984) points out that :

... any international initiative against serious commercial crime will to a material extent depend for its success or failure on the adequacy and effectiveness of the mechanisms that exist and can be effectively and efficiently employed in the relevant national jurisdictions.

To overcome the problem of fraud one has to consider alternative courses of action and attempt, with the aid of experts, to forecast the outcomes of those actions and possibly indicate which of them would be preferable, acceptable and feasible. In

other words, the model on which the decision is based relies largely on the judgements and intuition of the experts.

In situations like this, Quade (1971) suggests that it may be possible to look for an unconventional scheme to fulfill the really essential functions of the traditional model. He goes on to say :

A model, by introducing a precise framework and terminology, serves as an effective means of communication, enabling analysts and various experts to exercise their judgement and intuition in a well-defined context and in proper relation to each other. In addition, it provides feedback to guide the participants in the revision of their earlier judgements. It is these features of the model that are essential to its role in supplying a route from hypotheses to prediction, not how explicitly it simulates the real world or whether or not it provides a formal or quantitative scheme for optimization. [Emphasis supplied].

In order to achieve the above mentioned features Quade (1971) suggests that "an enlarged concept of a model" be considered in order to escape from the traditional concept that it is simply a device to generate values of a "payoff" that can be used to determine preference. He goes on to say that :

... we take a broad view of the traditional concept of a model, accepting in practice any device that provides a means to predict and compare the outcomes of alternative actions, regardless of its representative features or how efficient it is at optimization.

The idea of moving away from the traditional model is not new; the introduction of business games was a first step in this direction. They have a predictive quality and allow for intuitive judgements to take into account intangibles which are often considered beyond analysis. However, Quade (1971) points out that whilst games sacrifice optimization they still retain the representative features of a model, and recommends using approaches that sacrifice representation.

From the above it can be seen that there is need for the use of a technique which would :

- a) Have a predictive quality,
- b) Take account of intangibles,
- c) Allow comparison of alternative actions,
- d) Provide feedback, and
- e) Consider feasibility of implementation of recommendations.

Jantsch (1972) has identified three most important contributions of special techniques related to forecasting, they :

- a) elucidate the role of individual input factors, compel a comprehensive consideration of such factors, and assure some homogeneity in the results,
- b) tend to reduce prejudice and bias, and

c) permit the evaluation of vast amounts of data and complicated patterns of input information and facilitate systematic evaluation of alternatives.

### 6.3 Group Techniques for Problem-solving

The need for alternative ways of solving a problem is a major point in the philosophy of the systems approach, particularly when dealing with complex systems problems under conditions of uncertainty [Athey (1982)]. Increasingly, the use of new techniques is being sought to generate new ideas, increase creativity, understand complex problems and their solutions [Delbecq et al (1975)].

As the complexity of the problem increases so does the need for pooling of judgements and opinions of experts. Delbecq et al (1975) are in agreement with this and further point out:

As the accumulation and specialization of knowledge increases, viable solutions to complex problems require the involvement of resource experts from heterogeneous disciplines or functions.

They go on to say that this explains the proliferation of ad hoc problem-solving groups. One such group was set up by the UNCTAD Secretariat to consider the problem of maritime fraud (see chapter 2). This ad hoc group, known as the Ad hoc



Intergovernmental Group (IGG), consisted of members from 69 countries and 11 International Organisations. The Chairman of the IGG in his opening statement [UNCTAD (1984)] pointed out that as maritime fraud had assumed international dimensions it should be dealt with on an international basis. At its first session it was pointed out that :

... maritime fraud often succeeded because of its very complexity, so that no solution to the problem could be found without making the best use of all the available expertise. [Para 8]

However in such situations, i.e. where interacting groups meet, with numerous individuals or groups having to review and approve the proposals put forward, a great number of ideas are proposed, but problems can arise in decision making because :

- a) the individuals have different values and conceptual orientation [Delbecq et al (1975)],
- b) lack of resources or other constraints may affect the implementation of the recommendations
- c) the individuals may lack the authority to agree to implement the recommendations [Quade (1971)]
- d) the individuals may feel inhibited [Dunnette (1964), Campbell (1968), Culbert (1968), Ludlow (1971)] and this may result in the loss of new and creative ideas.

Taylor et al (1958) have found that interacting groups are superior to individuals in problem-solving situations. However, Delbecq et al (1975) point out that research indicates that "nominal group technique" [i.e. where a number of people work face-to-face but write ideas independently rather than talk about them] is superior to interacting groups as far as generating information relevant to a problem because the interacting groups inhibit creative thinking.

In view of the above, to show the short-comings of ad hoc groups the IGG's first meeting is considered in detail. At the first meeting of the IGG, hope was expressed that the Group would be able to resolve the problem of maritime fraud where, by implication, previous meetings in other fora had not been successful [UNCTAD (1984) - para 11]. It is submitted that the recommendation, in the final resolution passed by UNCTAD Secretariat's IGG, is an example of the difficulties which arise when dealing with international policy issues, particularly in interacting groups. The recommendation was :

... that States members of UNCTAD should examine and, if appropriate, tighten their respective legislations to ensure that effective measures are available to prevent maritime fraud ....  
[Emphasis supplied].

Parry (1984) points out that the final resolution was criticised by Third World countries because it largely followed the guidelines laid down by the developed countries in a draft

submitted midway through the conference. The treatment of forged/fraudulent bills of lading was also found to be particularly unsatisfactory [Parry (1984)]. Parry goes on to say :

Western delegates pointed out that the inclusion of the phrase "and, if appropriate", in the resolution meant it could be ignored by any country which did not feel like complying.

"A toothless tiger", one western delegate said of the resolution.

Commenting after the meeting an IMB source described it as "a unique example of government and non-government bodies working together".

The report of the IGG's first meeting [UNCTAD (1984)] indicates that there was general agreement among the members of the group about the final recommendation. However, the above-mentioned comments indicate that the members of the group themselves were not satisfied with the outcome. This would be in agreement with Van de Ven's (1974) findings that in interacting groups the members of the group do not feel that they have achieved satisfactory results and as such there is a feeling of not having accomplished much. Van de Ven also found that this leads to a loss of interest in future phases of problem solving.

#### 6.4 The Delphi Technique

In keeping with the enlarged concept of a model and taking into account the need to consider the problem using the systems approach it was decided to use the Delphi technique.

The Delphi technique, in principle, lends itself to far reaching applications, particularly in the field of research - where Delphi surveys provide judgemental input data for use in cases where hard data are unavailable or too costly to obtain. Jantsch (1972) points out that the Delphi technique can be used for both exploratory (opportunity-oriented) and normative (need-oriented) forecasting. In normative forecasting it is used :

- a) to generate new information about needs, desires, values, functional requirements and structural relationships, and
- b) for simulation of implications of overall objectives, goals and specific operational targets in various systemic contexts.

Jantsch goes on to say that the use of Delphi in this normative mode exploits its best inherent potential because such a use of Delphi focusses in industry on questions of overall desirability and in societal context on values. As the system of international trade is a human activity system the problem

posed by maritime fraud affects both industry and society. Therefore, it is submitted that the Delphi technique would be the best approach to use for dealing with the problem of maritime fraud.

Whilst Delphi was developed as a forecasting technique it has, during its short life, gained recognition in a variety of other application areas. Linstone & Turoff (1975) point out that the need for utilizing Delphi is not determined by the nature of application but by one or more of the following properties :

a) The problem does not lend itself to precise analytical techniques but can benefit from subjective judgements on a collective basis.

For example, when considering the problem of maritime fraud one cannot rely on precise analytical techniques because of the lack of statistical data of the number of crimes, monetary values involved, geographical/regional variations, etc. But the problem can be tackled by utilizing the subjective judgements of the potential and/or actual victims, and the investigating and prosecuting authorities.

b) The individuals needed to contribute to the examination of a broad and complex problem represent diverse backgrounds with respect to experience and expertise.

As established earlier (see chapter 2), in order to combat fraud a systems approach is required due to the international and inter-industry nature of the crime. Therefore, the individuals required to examine the problem must be drawn not only from the different sectors of international trade but also from different countries. The need for diversity of experience and expertise is further justified by the fact that at the IGG's first meeting [UNCTAD (1984) - para 31] the representative of the Customs Co-operation Council (COC) criticised the UNCTAD Report on Maritime Fraud and Piracy [UNCTAD (1983)] in that the documentary fraud section was devoted mainly to B/L fraud, whereas he considered that documentary fraud was more often associated with false invoicing.

**c) More individuals are needed than can effectively interact in a face-to-face exchange, and time and cost make frequent group meetings infeasible.**

For example, the cost of the IGG meeting for a two week period was estimated to be \$150,000 [UNCTAD (1984)]. Particularly in view of the fact that the participants are practising experts in their respective fields, it would be extremely difficult to arrange suitable regular meetings to satisfy all concerned. Dunnette's (1964) research suggests that group meetings do not use the participants' time effectively and that higher quality solutions can be obtained by individual work. Thus the value of the Delphi technique is highlighted : participants are able to give individual consideration to the questionnaire and complete

it at their own pace.

d) Disagreement between the individuals are so severe or politically unpalatable that the communication process must be refereed and/or anonymity assured.

For example, at the first session of the IGG [UNCTAD (1984) - paras 19-29] one day was wasted debating whether an observer from the Gulf Co-operation Council could be permitted to make a statement : the representative of the Islamic Republic of Iran objected to an observer participating in the discussion of the IGG, and he also objected to the name of the Council as, in his view, it was contrary to the guideline issued by the Secretary General of the United Nations. This point highlights the limitations of interacting groups. Van de Ven (1974) found this to be one of the major negative characteristics of interacting groups. Furthermore, the anonymity of the participants is of particular importance in this research because of the laws of defamation.

Delphi has been described in a number of ways [Dalkey & Helmer (1963), Quade (1971), Salancik et al (1971), Delbecq et al (1975), Linstone & Turoff (1975)]. In the context of this dissertation, Delphi may be described as follows :

Delphi is a "framework" which replaces the traditional concept of a model and enables the analyst/researcher to seek solutions

to complex problems, and the feasibility of implementation of the recommendations, by soliciting the opinions, through a series of questionnaires, of an inter-disciplinary group of experts.

Figure 6.1 is a flow diagram of the Delphi technique. The technique is essentially a series of questionnaires sent to a panel of respondents of diverse experience and expertise. The questions in the first questionnaire focus on broad issues which might be problems, objectives, recommendations or forecasts. The responses to the questionnaire are analysed and based on this analysis subsequent questionnaires are designed. This would be in keeping with the systems approach; Athey (1982) has pointed out that in a systems study the analyst/researcher makes a series of progress reports, and each report builds successively on the previous ones. This method assists the analyst/researcher to explore the subject under discussion and to reach an understanding of the agreements and disagreements of the members of the panel. The disagreements can be explored to bring out reasons for the underlying differences so that they can be taken into account in the final evaluation. The final evaluation is then used to determine whether the system being examined requires modification or development.

However, any modification or development of the system of international trade should be such that it will not place



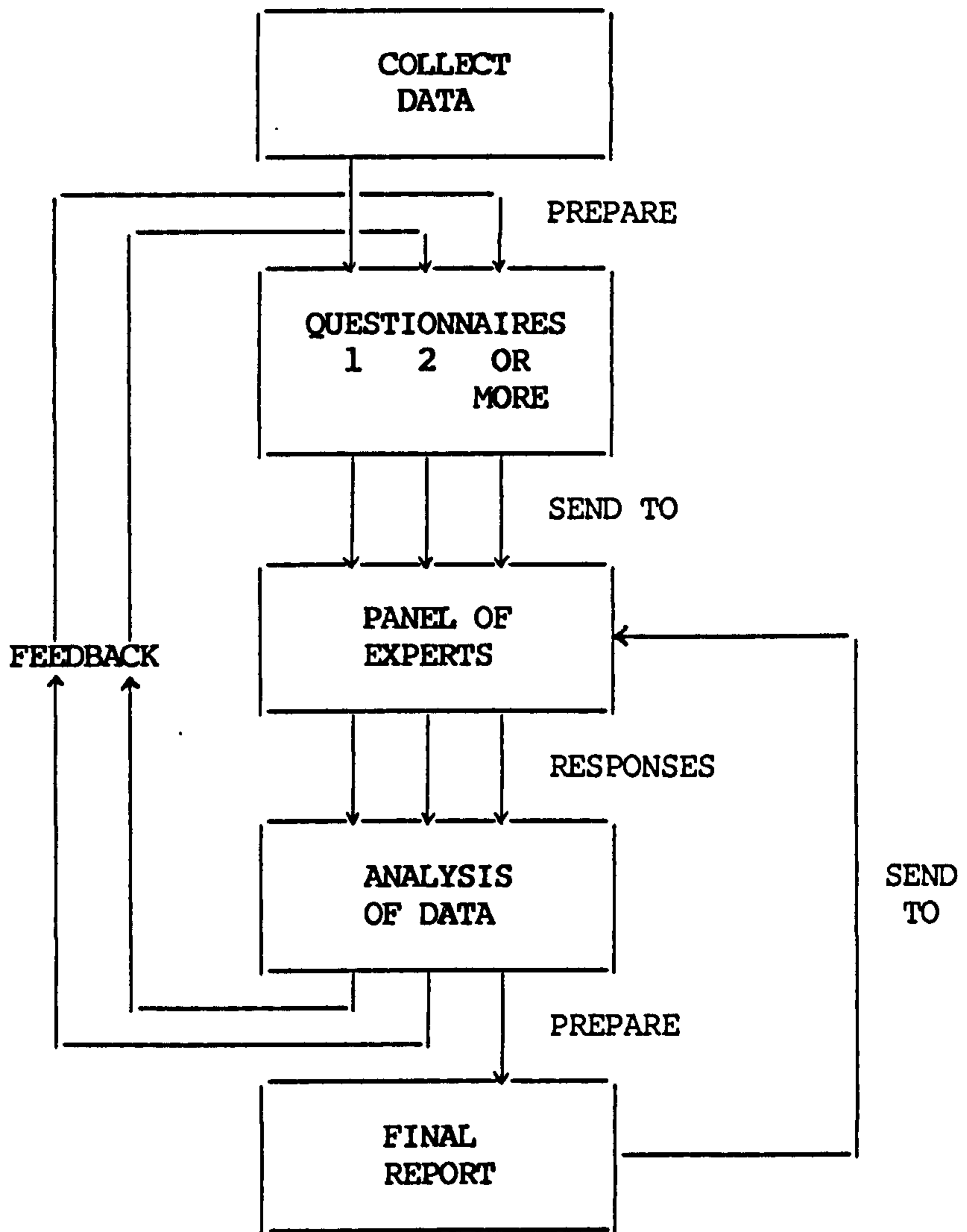


Figure 6.1 - Flow Diagram of the Delphi Technique

additional burden or restrictions on the legitimate participants, will not hamper trade and will be commercially acceptable. Radical or revolutionary changes are more likely to be opposed than modification of the existing design. Sagan (1977) points out that fundamental change can be accomplished by the addition of new systems on top of old ones. Athey (1982) points out that generally the evolutionary approach to change is most effective, because with complex systems it is often, difficult to predict all the consequences of making changes to the system.

Croft's (1978) findings [see page 227] taken in conjunction with the foregoing discussion strengthen the case for the use of the Delphi technique as the most appropriate research method for the investigation of the problem of documentary maritime fraud.

### **6.5 The Inquiring Systems**

Mitroff & Turoff (1975) observe that the process of inquiry may be represented by a very general system known as the "Inquiring System", see figure 6.2, and identify five types of inquiring systems. Vermuri (1978), whilst using different terminology, is of the same opinion.

The various types of Inquiring Systems (IS) are :

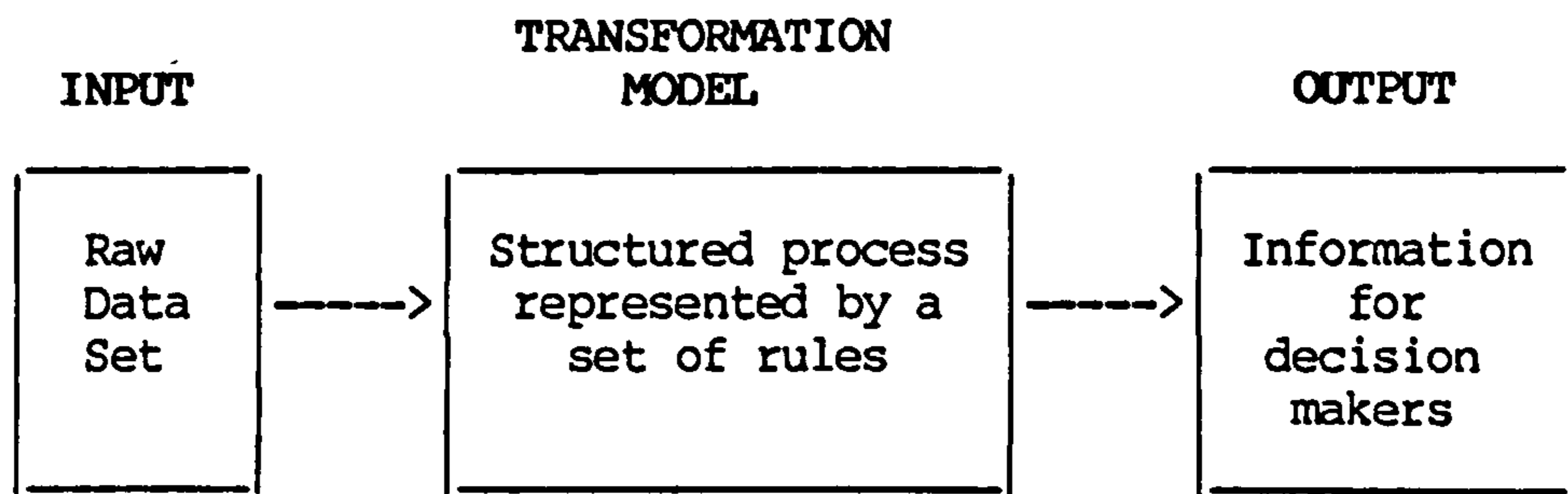


Figure - 6.2 The Inquiring System

Source : After Mitroff & Turoff (1975)

a) **Leibnizian IS** : is based on the premise that truth is analytic. Under this form of inquiry a system can be defined completely by a formal or symbolic procedure, i.e. the analyst/researcher will attempt to reduce any problem to a formal or symbolic representation. Mitroff & Turoff (1975) point out that in this approach it is assumed that the model of the IS is not based upon the raw data set (the input in figure 6.2) and that the formal model comes prior to the data input. They further state that in this form of inquiry empirical data is regarded as an inherently risky base upon which to found universal conclusions of any kind because one is never justified in inferring general propositions from a finite data set. In other words, this type of IS emphasizes theory to the detriment of data. This approach is suitable for problems involving a simple and well-defined structure [Vermuri (1978)]. As this type of IS is best suited for well structured problems it cannot be used in dealing with the problem of maritime fraud because it involves policy issues which are not well structured, and also because of the

complex interdisciplinary and international nature of the problem.

b) Lockean IS : assumes that truth is experimental. Under this form of inquiry the model of a system is not based upon theoretical considerations, i.e. it is an empirically-derived model. Mitroff & Turoff (1975) point out that in this approach the model of the IS is built up from the raw data set (the input in figure 6.2). In this approach statistical analysis (the transformation model in figure 6.2) is used to attempt to forecast future trends (the output in figure 6.2). As this IS is based on statistical analysis some form of correlation is being sought in the data, i.e. consensus/agreement among the participants.

The Delphi technique in its original form, as developed at the Rand Corporation, is a very good example of this approach. However, in its original form Delphi sought consensus of the subjective opinions of the experts and as a result the information obtained (the output in figure 6.2) may not be the best but, rather, a compromise position. Therefore, this type of IS is best suited to well-structured problem situations [Mitroff & Turoff (1975)]. As the problem of maritime fraud is not well-structured (see (a) above) this approach was not used.

c) Hegelian or Dialectical IS : is based on the premise that truth is conflictual, i.e. that the raw data set (the input in figure 6.2) can be transformed by two different models to produce diametrically opposing points of view (the output in figure 6.2). Mitroff & Turoff (1975) point out that in this approach it is presumed that conflict will expose the assumptions underlying an expert's point of view that are often obscured precisely because of disagreement among them. A very good example of this approach is the "Policy Delphi" introduced by Turoff (1970). This approach is best suited to problems where there is intense debate over the true nature of the problem. This approach was not used because there is general agreement as to the nature of the problem of maritime fraud [Ellen (1979a), Kerr (1979), Prakash (1981), Schultsz & Thomas (1983), & personal interviews with people working in the industry].

d) Singerian IS : assumes that truth is pragmatic, i.e. the model of a system is explicitly goal- or objective-orientated. Mitroff & Turoff (1975) point out that this approach is the epitome of synthetic multimodel interdisciplinary systems, i.e. ideal for the system of international trade. This approach has not been selected because it considers several different ways to achieve the objectives and at the end specifies new goals for further inquiry, i.e. it is non-terminating [Mitroff & Turoff (1975)] and is thus a never ending exercise. It would be extremely

difficult to get participants to co-operate in such a protracted exercise.

e) Kantian IS : assumes that truth is synthetic, i.e. the empirical data (the input in figure 6.2) and the theoretical base (the model in figure 6.2) are inseparable. This means that the model is based on the empirical data and that the collection of the empirical data is based on some theoretical consideration. In other words, this approach requires a conceptual model of the system on which to work. An important feature of this approach is that it requires at least two alternative representations or models from which the most suitable one is then chosen [Mitroff & Turoff (1975), Vermuri (1978)]. The Kantian approach to Delphi attempts to elicit as many alternatives to the problem as possible in order to obtain a comprehensive overview of the problem and thus recommend the solutions to it. In order to achieve that it utilizes as many interdisciplinary specialists as are required by the nature of the system under consideration. This approach is best suited to ill-structured problems, i.e. those which defy formal or simple analytic attack, for example, social problems.

This approach was selected as the most suitable to study the problem maritime fraud because of :

i) the complexity of the problem,

- ii) the international nature of the crime,
- iii) the complex socio-political and economic aspects, and
- iv) the involvement of several disciplines.

Ludlow (1971) points out that one of the most important benefits of using a multi-disciplinary group in Delphi exercises is a comprehensive coverage of a complex issue even though each respondent contributes a small part of the overall picture.

#### 6.6 Screening Criteria for the Questionnaires

In any survey which produces a wealth of data, some screening criteria have to be adopted in order to reduce the data set to manageable proportions, to draw conclusions and to make recommendations.

The Delphi technique seeks solutions to complex problems by soliciting the opinions of a group of interdisciplinary experts. In order to draw conclusions, one of the methods used is to seek consensus among the experts. To determine whether or not a consensus has been achieved any arbitrary figure could be used. For the purposes of the analysis of the first questionnaire an arbitrary figure of 80% was chosen as the "cut-off" point to determine consensus among the experts. This figure, i.e. 80%, was chosen because it represents a reasonably high proportion of

consensus among the members, taking into account the diversity of their experience and expertise.

Confirmation of this arbitrary figure can never be fully justified. However, some justification can be achieved if the consensus of the majority votes for all the statements represents 80% of the total opinions expressed. This confirmation is sought in the analysis.

Weisberg & Bowen (1977) point out that the no opinion category could be treated as "missing data" and excluded from analysis, provided it would not lead to misleading results, e.g. when this category is significantly large in comparison with the substantive categories.

Due to the fact that the experience and expertise of the participants was so diverse, it was decided, for the first round to consider only those responses where the participants had expressed an opinion, i.e. agreement or disagreement.

On the second and final round, more stringent criteria were used for screening of responses because the respondents were, on this occasion, commenting on the feedback from other experts. The screening criteria used on the second round are discussed fully



in chapter 8.

### 6.7 Questionnaire Design

The conceptual model developed in the last chapter was used to identify areas where modifications can be made to reduce the potential for fraud. The feasibility of these modifications and their capacity for reducing fraud had to be investigated by seeking the opinions of the legitimate participants of the system.

To achieve this, the Delphi technique was used to solicit the opinions of a group of experts from different areas associated with international trade. The Delphi technique is essentially a series of structured questionnaires sent to a panel of respondents of diverse experience and expertise.

Whilst questionnaires provide a structured approach, flexibility is built into the technique insofar as it is possible to contact the panelists should any of their responses require clarification or resolution of problems caused by misunderstandings. This further consultation can be conducted by telephone, telex or personal interviews.

The first questionnaire was designed to focus on broad issues, such as :

- a) Has the Bill of Lading outlived its usefulness as a document of title ?
- b) Is there a case for banks to look into their practices for checking documents before payment ?
- c) Should the insurance industry be more stringent in their checks before accepting insurance ?

Considering that the respondents were extremely busy in their respective fields, and would not be prepared to respond if the questionnaire was too time consuming, it was decided that instead of answering questions, the panel would be asked to respond to a series of statements. A similar approach was used by Davies (1985).

The respondents were asked to consider each statement. If they agreed with the statement or were unable to comment on it, they were asked to indicate this. If they disagreed with the statement, they were requested to make any alterations to the statements or add comments to indicate their view. The following format was used :

Qn. By 1995 the conventional Bill of Lading will be replaced by the "Electronic Bill of Lading" by the use of data interchange via computers.

AGREE

DISAGREE

UNABLE TO COMMENT

.....  
. COMMENTS (if you disagree) .  
. .  
. .  
. .  
. .  
. .  
. .  
.....

Once the questionnaire was designed, a pilot study was carried out to test the questionnaire. Students on shipping postgraduate courses at the Plymouth Polytechnic were used as respondents for the pilot study. On the basis of their responses and subsequent comments the structure and layout of the questionnaire was altered and some questions were deleted. It was decided to divide the questionnaire into three sections as follows :

- a) Section A - for testing the hypothesis, consisting of 38 statements, and
  
- b) Sections B & C - for seeking information, consisting of 5 statements. The reason for dividing the information seeking sections into two parts was that a different format was used in the two sections.

The second draft of the questionnaire was prepared and sent to

Mr. E. Ellen, Director of the ICC - International Maritime Bureau (the collaborating establishment), for his comments. In subsequent discussions with Mr. Ellen, every statement was considered and alterations were made to simplify the wording of some statements. See Appendix 3 for the final draft of the questionnaire.

### 6.8 Selection of the Panel

It was pointed out in chapter 3 that when using the systems approach a system should not be examined in isolation. The reason for this is that the system interacts with other systems within its immediate environment but outside the system's own boundaries. Therefore, to test the hypothesis that the weak links identified contribute to fraud (see chapter 5), the opinions of potential victims (i.e. elements within the boundaries of the system of international trade) and the investigating/prosecuting authorities (i.e. elements of other systems within the immediate environment of the system of international trade) was sought.

Although developed some 30 years ago, the Delphi technique is still in its infancy and Linstone & Turoff (1975) point out that "much still needs to be learned". One of the areas where there is still disagreement is on the number of panelists, e.g. Jain (1974) used 11, Davies (1985) used 38, and Ludlow (1971) had

three panels each with a different number - 33, 16 & 22.

To get a representative sample for this study, it was decided to use at least two experts from each component or sub-system of the system of international trade, and at least one from each of the systems within the immediate environment of the system. In addition, owing to the international nature of the system, the members of the panel were selected from as many countries as possible.

61 letters were written to experts in the different areas associated with international trade, inviting them to take part in the research and assist in an in-depth study of the problem of Documentary Maritime Fraud. It was stressed that anonymity of the panelists is of paramount importance and that the responses of the panelists would remain strictly confidential. See Appendix 2 for a copy of the letter.

Favourable responses were received from the majority of the recipients. However, no responses were received from the experts chosen in the following countries : France, Greece, Japan, Switzerland, West Germany and the United States of America. In some cases, where the recipient felt that there was another person who would be better qualified to respond, either the letter was passed on to that person or the author was requested

to contact that person.

One of the recipients established a panel of experts to formulate the responses to the questionnaire, himself acting as the chairman. In one case the recipient agreed to answer the questionnaire but not as a member of the panel. In another case the recipient felt that due to time constraints and the pressure of work he could not respond.

When the minimum requirements for each category were fulfilled, the number of members who had agreed to participate was to 40, but 44 questionnaires were sent out as the remaining four had requested to see the questionnaire before agreeing to participate; in the end they declined to participate.

Thus the panel was formed of 40 experts, representing 15 categories and 11 countries. The countries represented were - Australia, Denmark, Deutsche Demokratische Republik (DDR), Hong Kong, India, Malta, The Netherlands, People's Republic of China, Saudi Arabia, Singapore and the United Kingdom. Table 6.1 shows the 15 categories represented on the Panel and also the number of members selected for each category.

A high response rate was expected as the participants had

formally agreed to co-operate by answering the questionnaires over a period of some six to eight months.

**Table 6.1 : Categories and Number of Participants**

No.	CATEGORY	NO. OF PARTICIPANTS
1	Academics	2
2	Ancillary Services	4
3	Banking Specialists	2
4	Documentation	2
5	Freight Forwarders	2
6	Insurance Interests	5
7	International Organisations	2
8	Judiciary	1
9	Lawyers	2
10	Protection & Indemnity	2
11	Security Forces	2
12	Shipbrokers	4
13	Shipowners	4
14	Shippers	3
15	Ship's Agents	3
<b>TOTAL</b>		<b>40</b>

Imagine a Cuisinart of human nature : toss in equal measures of knaves and fools, season to taste with avarice, gullibility, trust and inattention; stir and pour; you have a recipe for business fraud, and the cooks are never idle.

[Haight (1980)]



	Page
<b>CHAPTER 7 : ANALYSIS OF THE FIRST QUESTIONNAIRE</b>	<b>257</b>
7.1 : Introduction	257
7.2 : Analysis of Section A	260
7.2.1 : Statement Deleted	271
7.3 : Analysis of Sections B & C	272
7.3.1 : Section B	274
7.3.2 : Section C	278

## CHAPTER 7 - ANALYSIS OF THE FIRST QUESTIONNAIRE

### 7.1 Introduction

The first round of questionnaires was posted in December 1985 to the members of the Expert Panel. See Appendix 3 for the questionnaire and the letter which accompanied it. To maintain anonymity the Panelists were given code numbers for identification purposes.

Some of the responses to the questionnaire were not received by the deadline specified, necessitating follow up telephone calls and telex messages to reduce the number of non-responses to a minimum. Two members had to be sent another questionnaire as :

- a) in one case the response was lost in the post. The response was subsequently received from the member, and
- b) in the other case the member did not receive the questionnaire. When no response was forthcoming after the second despatch, it was decided to delete this member from the Panel.

As a result the size of the sample was reduced from 40 to 39, i.e. a response rate of 97.5%. The Panel size at the end of the first round is shown in table 7.1. All the tables for this

chapter have been placed at the end of this chapter.

Upon receipt of the completed questionnaires, the data were analysed in two parts. The hypothesis testing section was analysed separately from the information seeking sections. Table 7.2 shows the responses received to the 38 statements in Section A. As pointed out in the last chapter, due to the fact that the experience and expertise of the participants was so diverse, only those responses were considered where the participants had expressed an opinion, i.e. agreement or disagreement. Table 7.3 shows the percentage in terms of opinions expressed.

On the basis of the screening criteria discussed in the last chapter, the first questionnaire was analysed using 80% as the "cut-off" point to determine whether the replies of the Panel supported the hypothesis or did not support it. As mentioned in the last chapter, choice of an arbitrary figure can never be fully justified but some justification of the choice can be achieved if the consensus of the majority opinions for all statements represents 80%. For Section A this justification was carried out as follows :

The number of responses which represented a majority opinion for each statement in table 7.3, whether agreeing or disagreeing, were added together for all the statements in the section, and the total number of opinions expressed for each statement was

also calculated. Then the average percentage of the majority opinions was worked out as follows :

$$\text{Average percent of majority opinions} = \frac{\text{Majority Agreements} + \text{Majority Disagreements}}{\text{Total opinions expressed}}$$

The breakdown of the figures for table 7.3 is given below :

Number of majority opinions agreeing	=	933
Number of majority opinions disagreeing	=	101
Total number of majority opinions	=	1,034
Total number of opinions expressed	=	1,293

Therefore,

$$\text{Average percent of majority opinions} = \frac{1,034}{1,293} = 79.97\%$$

It is submitted that the choice of 80% as the cut-off point was therefore justified. Thus any statement which had a majority opinion of 80% or over was said to have either supported or not supported the hypothesis. Statements on which the consensus among the experts was less than 80% were to be included in the second questionnaire to determine the importance of the disagreements between the experts, see figure 7.1.

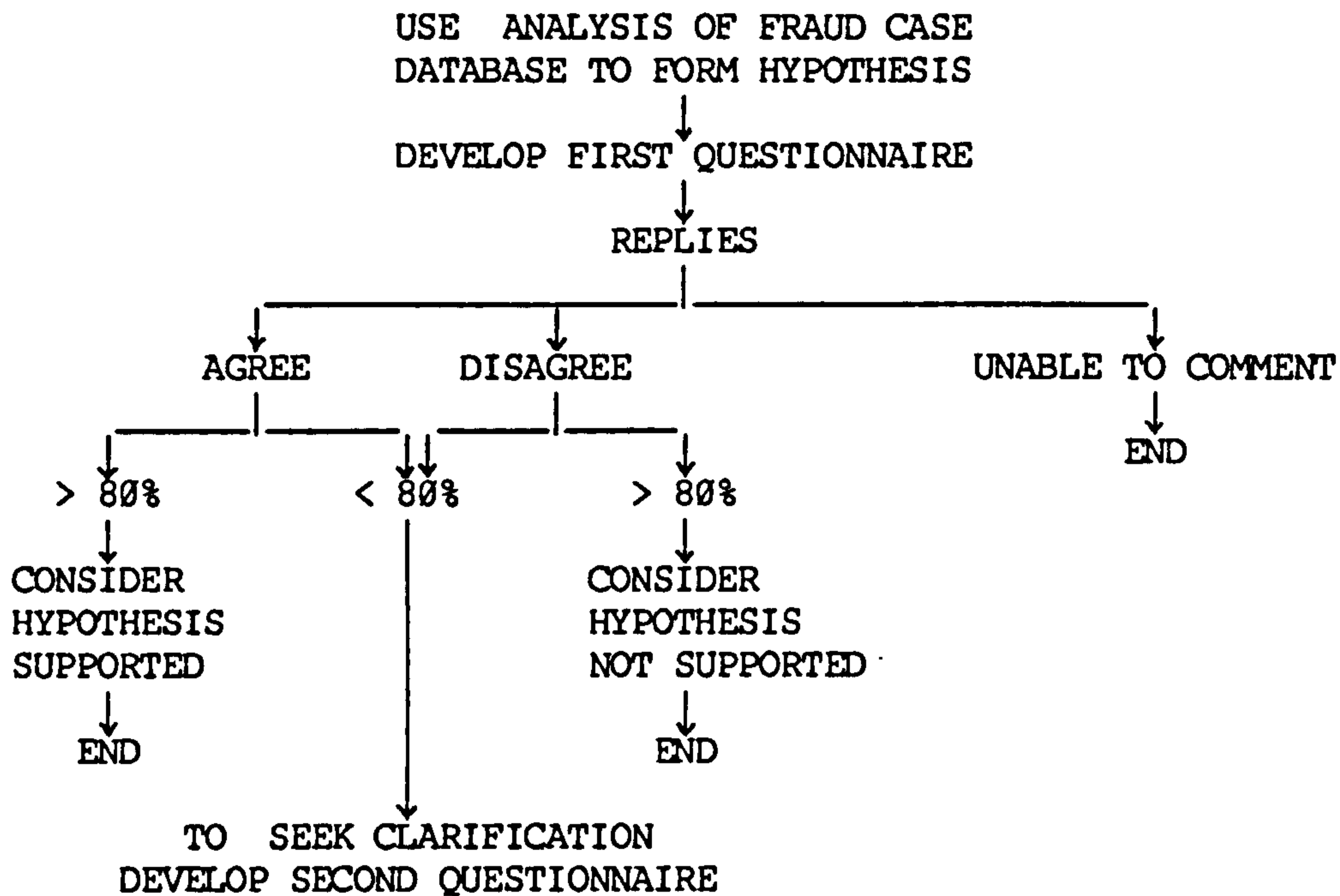


Figure 7.1 - Flow Diagram Explaining Analysis of the First Questionnaire

## 7.2 Analysis of Section A

Some important points were raised by the experts on the statements where 80% or more consensus was reached. Their comments are given below and the percentage of consensus reached is stated after the statement.

1. Considering the known and/or suspected cases of maritime fraud over the last decade (1975 - 1985) the pattern which has emerged indicates a considerable increase in the number of cases with an increase in the sums of money involved per case. (80.56% agree with the statement)

## Comments received from the Panel

Overall profitability and stability of the market prior to 1975 resulted in many cases not being reported, hence it is impossible to assess any increase.

Factors which could account for changes in the number of cases reported and their monetary value include : increase in trade, increase in prices, increase in reporting and increase in publicity given to the subject.

Reported cases have decreased in number since their height in 1979 - 80.

Where containerised cargo is involved fraud is rare. In the few cases we have experienced the sums involved per case have increased during the last decade.

Increase is perhaps due to improved methods of detection.

While one member of the Panel believes that growing awareness has held the position static, another member is of the opinion that growing awareness and action taken with the help of the ICC-International Maritime Bureau and the Commonwealth Commercial Crime Unit has resulted in the increase in the number of cases coming to light.

6. It is too easy to change the name, ownership and port of registry of a vessel without proof of cancellation of the previous registry. (88.89% agree with the statement)

#### Comments received from the Panel

In those countries where "proof of cancellation" is not required, other safeguards are taken.

Nowadays you need to cancel one Register (deletion certificate) before the Re-registration certificate will be issued elsewhere. This has not always been so, but presently all countries are very particular about this point.

7. It is too easy to register sub-standard vessels, the so-called "rust buckets", in some countries without surveys for seaworthiness. (93.55% agree with the statement)

#### Comments received from the Panel

National standards regarding ships surveys vary from state to state as do the requirements to be fulfilled prior to registration of the vessel in the state concerned. It is easier in some countries than others to register vessels. So far as I am aware it is not the deliberate policy of any state to allow so-called "unseaworthy vessels" on their registry.

In view of the above comment it is interesting to note that one member of the Panel has named Honduras and Panama as the countries where it is easy to register.

8. In some countries it is too easy to register a company with complete anonymity for the directors, either by the use of foreign nominees or otherwise. (93.75 agree with the statement)

### Comments received from the Panel

One member said that it is also too easy to move around and open new companies after bankruptcy.

9. The lack of harmonisation in international laws and procedures is exploited by commercial criminals. (97.22% agree with the statement)

### Comments received from the Panel

Cannot accept what you are leading to i.e. complete standardisation will reduce commercial crime.

10. In some trading countries the judiciary is not sufficiently familiar with the concepts of maritime laws. (96.55% agree with the statement)

### Comments received from the Panel

Especially the Arab countries and the Third World.

11. The present system of a lay jury is inadequate in commercial fraud cases. (87.5% agree with the statement)

### Comments received from the Panel

A jury can deal adequately with commercial fraud, provided that the case is competently presented and explained to them.



I believe a lay jury is adequate but they should select jurymen/women who have a commercial background from the normal jury panel.

Although I agree it is surprising that complex commercial frauds tried before the 7 member jury in the Hong Kong jurisdiction during recent years have resulted in verdicts of guilty.

It was reported that there was no jury system in India and Singapore.

12. The international nature of shipping and the lack of jurisdiction outside national boundaries assist the perpetrators of fraud to flourish. (97.44% agree with the statement)

#### Comments received from the Panel

In practical terms it is possible to achieve jurisdiction in almost all cases. Whether the place of jurisdiction is then effective is another matter.

13. The majority of frauds are caused by the lack of proper checks carried out by the parties involved in international trade transactions. (91.89% agree with the statement)

#### Comments received from the Panel

I doubt if fraud can be wholly prevented no matter how much checking is carried out beforehand.

Some frauds are so well done that even the "experts" are taken in.

Ignorance of and disregard for the basic principles and precautions is the root of many frauds.

Most victims of fraud are the needy and the greedy. The first are naive, the latter blind in sight of a fast buck.

14b. The ship owner/operator details are not checked properly by the Shipper/Freight Forwarder before entering into a contract of carriage. (88.46% agree with the statement)

Comments received from the Panel

Some forwarders are better than others ! Also size of transactions is a determining factor.

The shipper is often far away from the port and depends on the forwarder to protect his interests.

17. The lack of commercial expertise on the part of the State Trading Organisations of developing countries has made them targets of the fraudsters. (96.55% agree with the statement)

Comments received from the Panel

Is it the lack of or the disregard of commercial expertise ?

In addition to the above (i.e. the original

statement), all too often governmental requirements of inviting tenders and automatic acceptance of the lowest tender.

18. The need to cut costs has made buyers & shippers targets of the unscrupulous brokers, sellers, shipowners & forwarding agents. (90.00% agree with the statement)

#### Comments received from the Panel

The merchants' search for the lowest prices has encouraged the trend to "cut price" services and thus opened the door to the unscrupulous.

All organisations need to cut costs and this requirement does not make one party in the trade transaction more vulnerable to fraud. It should be appreciated, however, that cut price services may result in a higher risk. As in all aspects of trade people, generally, get what they are prepared to pay for. Too low a price, perhaps, equals too high a risk.

If you deal with third class operators it will be anyhow more expensive in the long run.

Sheer greed is another factor which must be taken into account.

20. The acceptance of commercial malpractices and, at times, fraudulent practices as custom of the trade, in some countries, has contributed to the growth in documentary fraud. (96.43% agree with the statement)

## Comments received from the Panel

I know of few countries that accept this. Officials within countries, yes.

This practice is prevalent especially in India and some third world countries.

Examples of this practice include :

- Issuing of an indemnity for not clausing transport documents
- Delivery of cargo without presentation of suitable documentation of identification
- Insistence by certain shippers on signing documents on behalf of the ship's master.

26. The carrying out of the following checks, before payment is made under documentary credits, would provide adequate protection against fraud (the cost of these services would be borne by the applicant requesting them at the time of opening the credit; the bank will carry out the checks without incurring any additional liability) :

a) Check the vessel's particulars, i.e. name, port of registry, ownership, and compare the deadweight with the quantity of cargo stated in the Bill of Lading.

(85.29% agree with the statement)

b) Check the vessel's geographical position at the time of loading. (88.24% agree with the statement)

## Comments received from the Panel

These checks would make fraud more difficult but

would not provide adequate protection.

Banks are neither willing nor competent enough to provide this service.

The cost of the service will also be a prime consideration.

Name, ownership and deadweight may all be irrelevant to the supporting documents, e.g. name changed as requirement of Time Charter, documents issued by operator or space/slot charterer, and part cargo loaded.

In many cases the bank is too late in the chain. It is the shipper's responsibility to do this as soon as possible. If he cannot do this himself, he will have to consider who best can help, e.g. bank, his forwarder, etc. What detail of information is required will depend on the type and value of transaction, and newness of the parties..

27. Commercial crime, including conspiracy to commit fraud, should be created as a universal crime by an international convention and should be made an extraditable offence.  
(91.67% agree with the statement)

#### Comments received from the Panel

It would take too long to achieve an international convention. Instead why not form closer and less formal links between police, fraud investigation units and prosecutors.

Commercial crime is not so serious that it should be treated like piracy, so that any State has jurisdiction.

Will never be supported by national legal bodies.

Conspiracy to defraud, if fraud is carried out wholly overseas, is not an offence in this country (.i.e. U.K.).

Many countries do include the offence of fraud as an extraditable offence. Britain is one of the countries that excludes an offence of conspiracy to defraud as an extraditable offence. U.S.A. and Japan in their treaty include conspiracy to defraud as extraditable.

28. In the event of a conviction in commercial crime, a policy of much heavier sentences should be adopted. (83.33% agree with the statement)

#### Comments received from the Panel

Commercial criminals should not be subject to any greater or lesser rule of law than other classes of criminals.

The penalty should be a matter for the judge to decide taking into consideration ALL the circumstances related to the offence(s) and background etc. of the convicted person(s).

Length of prison sentence does little or nothing to dissuade criminals - it is the prospects of being caught and convicted which matter.

30. The penalty for commercial criminals should be seizure of all assets from the proceeds of the crime. The burden of proving that some of his assets are not from the crime should rest with the criminal. (97.22% agree with the statement)

#### Comments received from the Panel

This concept has been introduced in respect of drug offences in some countries. Although I agree with the statement, it would be difficult to convince the legislature that commercial criminals should be treated differently from other criminals.

It must be remembered that this will not work unless all the countries concerned are prepared to co-operate.

34. Procedures for changing a ship's name should be more heavily supervised as a quick change of name suggests fraudulent intent. (81.82% agree with the statement)

#### Comments received from the Panel

Too sweeping a statement, but agree procedures should be more stringent.

In liner trades names are frequently changed in order to maintain fleet identity on chartered ships - a legitimate marketing tool.

A series of quick changes suggest sharp practice somewhere but not necessarily fraud. Bureaucracy involved in name change may slow down confirmations and make things worse.

35. Every ship should be issued with a unique international ship identification number which will remain the same throughout the life of a vessel regardless of changes of name, ownership or nationality. (87.88% agree with the statement)

## Comments received from the Panel

Each ship already has a unique identification number, issued by Lloyd's Register. The wider utilisation of this could prove useful.

36. The introduction of a system of port classification in accordance with levels of cargo losses will increase port security, and will also highlight high security risk ports.

(87.5% agree with the statement)

## Comments received from the Panel

Insurers already know high security risk ports. They are the only ones who can apply sanctions in the form of loaded premiums. Any other system would certainly upset countries, since security is largely common sense and therefore a matter of opinion.

Underwriters should be pressured to apply punitive ratings to bad ports.

The classification system would become impossible to maintain and lead to extensive problems.

### 7.2.1 Statement Deleted

32. The introduction of a difficult-to-forge Bill of Lading, with unique serial numbers, will provide a secure means of preventing fraud.

Over 50% of the experts disagreed with the statement, and one of the experts pointed out that the ICC - IMB working group working



on this topic have recommended dropping the idea. In view of this it was decided to delete the question and not to consider it on the second round. The objections raised by the Panel were :

Some excellent forged banknotes are regularly produced by expert forgers. I see no reason why any B/L could not be reproduced if the stakes were high enough.

This would certainly increase costs for those not directly responsible and also cause delays.

Theft of blank copies can still occur.

Some carriers have already introduced facets within their transport documents which make them impossible to photocopy. To this extent "difficult-to-forged" documents are already with us. The unique numbering scheme would add nothing to this in reducing or preventing fraud.

It is too difficult and too costly and no one will be willing to fund.

It might lead buyers to neglect essential precautions including pre-contract stage checks.

Would leave everyone putting too much trust in documents.

### 7.3 Analysis of Sections B & C

Table 7.4 shows the responses received to the statements in sections B and C. As these were information seeking sections and the format of sections B and C was different each section was analysed separately. As pointed out in the last chapter, due to

the fact that the experience and expertise of the participants was so diverse, only those responses were considered where the participants had expressed an opinion, i.e agreement or disagreement. The only exceptions to this rule were statement numbers 41 and 43 because of their different format. Table 7.5 shows the percentage in terms of opinions expressed for all the statements except statement numbers 41 and 43.

Justification for the 80% "cut-off" figure was again confirmed for Sections B and C. The number of responses which represented a majority opinion in table 7.5, whether agreeing or disagreeing were added together for all the statements and in the two sections, and the total number of opinions expressed for each statement was also calculated. Then the average percentage of the majority opinions expressed was worked out. The breakdown of the figures for table 7.5 is given below :

Number of majority opinions agreeing	=	193
Number of majority opinions disagreeing	=	16
Total number of majority opinions	=	209
Total number of opinions expressed	=	279

Therefore,

$$\begin{array}{l} \text{Average percent} \\ \text{of majority} \\ \text{opinions} \end{array} = \frac{209}{278} = 74.9\%$$

It is submitted that this calculation again justifies the

choice of 80% as the "cut-off" point. However, as the format of the statements in Section B and C was different, this screening criterion was applied to every substatement in these sections.

### 7.3.1 Section B

Statement 39 was designed to seek details of information which, the experts felt, would assist in combating fraud. Information was considered under the following headings :

- a) Ship Details
- b) Ownership Details
- c) Charterer's Details (including sub-charterers)
- d) Shipper's Details
- e) Broker/Agent Details
- f) Company Details
- g) Commercial Details

The experts were asked to indicate which items under each heading would be required to combat fraud. They were also asked to indicate any other items which they felt should be included under the different headings.

Tables 7.6a - 7.6g show the analysis of the responses for each item under the various headings. It was pointed out in the last section that the screening criterion of 80% was applied to each

sub-statement in this section. From tables 7.6a - 7.6g it can be seen that there was a consensus of 80% or more for every item. Some of the comments received from the experts are disagreeing are given below because they raise some important points :

#### Details of Ship Insurance

Shipowner's protection is his own affair. Some of the larger companies are self-insured.

Such disclosure infringes Shipowner's rights to privacy and confidentiality.

#### Creditworthiness/Reputation/Track Record

Extremely difficult to make a true, unbiased opinion. Also errors would lead to peoples' characters being besmirched, for which one could be sued for defamation.

This will set dangerous precedent.

Who decided these factors and how are they measured ?

Creditworthiness can vary from day to day.

Track record does not necessarily indicate owner's reliability as master's and manager's personal attitude affects this point.

Good but question practicability, and from experience would question the validity of creditworthiness/reputation information.

Subjective judgements. Strongly agree with the need to obtain credit opinions but those opinions are not facts.

## P & I Cover for Shippers

P & I is a carriers/charterers cover, not a shipper's.

In view of this, this item was deleted. However, as quite a few experts agreed with the item, it indicates that there is a general lack of knowledge on this point.

### Company Details

Knowledge of share capital does not help much as current asset value may be totally different.

Knowledge of the names and addresses of shareholders does not help much unless a known dubious individual appears.

### Commercial Details

All these items can be secret information which if disclosed, could affect shipper's selling or buying ability.

Some of these points could destroy confidentiality which is important in many cases.

On the positive side, some of the points that the experts felt should be included under the various headings are listed below :

### Ship Details

Last fixture and name of charterer; bale capacity; voyage

route; last drydock - when and where; main bunker supplier; the ship's position in port to also include berth name/number; insurance details to include underwriter's name.

#### Charterer's Details

Bunker suppliers; length of time in present business; credit analysis.

#### Shipper's Details

Length of time in present business.

#### Broker/Agent Details

Length of time in present business; reference from principals; liability cover if not entered in CISBA/TIM; check that annual returns lodged in accordance with Companies Act.

#### Company Details

Authorised and paid up share capital; last balance sheet; details of directors; name and address of legal advisors.

## Commercial Details

Governing law; who endorses Bill of Lading; letter of credit and bank details.

### 7.3.2 Section C

This section consisted of 4 statements seeking information on :

- a) Causes of increase in maritime fraud;
- b) Which type of maritime crime has caused the greatest financial loss;
- c) Reasons why fraud cases are not reported; and
- d) Adequacy of available information.

#### Statement 40

Table 7.7 analyses the responses relating to the increase in maritime fraud during the period 1975 - 85 due to a combination of causes. Whilst nearly 20% disagreed with statement g, it must be pointed out that some insurers agreed with it.

In the request for additional causes the following comments were received :

In the case of the United Kingdom, the repeal of the Exchange Control legislation, which makes it easy to transfer funds.

Fraudsters getting more imaginative, better educated and understanding the opportunities, whilst victims remaining naive, not sufficiently trained and not cautious.

Fraudsters fully aware of the inadequacies or absence of extradition treaties between even major trading countries, and also of the problems of jurisdiction.

Lack of law enforcement activity and failure to apply penal restrictions.

Some countries not prepared to bear the sometimes expensive cost of an investigation and prosecution.

Ease and cheapness of air travel.

We are trying to operate space age systems with the laws of wooden ships and iron men.

Adherence to a "My word is my bond" philosophy in a trading environment where this can no longer be true.

Increased involvement of State Trading Organisations with no traditions and little experience in seaborne trade.

Ease of entry by unscrupulous practitioners in the market place.

#### Statement 41

The responses to this statement are shown in table 7.8. This table shows that the subject of this research, documentary fraud, has caused the greatest financial loss.



However, two experts pointed out that in their opinion cube-cutting/tariff manipulation caused the greatest financial loss, because it is going on all the time, so that the sheer magnitude of incidents outstrips the few larger cases of other types of fraud. They also pointed out that it continues because it gets little attention.

One of the experts quite rightly pointed out that Arson, Insurance Fraud and Scuttling were all connected. However, they were kept separate to identify the importance that could be attached to these specific cases of insurance fraud. From the analysis it appears that scuttling cases have not caused any greater losses than other types of insurance frauds.

#### Statement 42

Table 7.9 shows the analysis of the responses relating to the reasons why fraud cases are not reported by the victims. From the analysis it will be seen that statements c and d should be deleted as the consensus among the experts was less than 80%.

Some of the other reasons given by the experts for not reporting fraud cases are :

- Loss of face or pride.

- Cost of pursuing a claim.
- To hide the fact that one was so naive as to be defrauded.
- Fear of being sued for defamation unless the facts are clear cut.

One of the experts said that :

The most important consideration for the victim in over 90% of the cases is whether reporting to the authorities will result in their recovering either all or part of their financial losses. They are not usually concerned about apprehension and prosecution of the offenders except when they think it will assist in such recovery.

#### Statement 43

The analysis of statements relating to the adequacy of the information is shown in table 7.9. In the "Others, please specify" category about 18% of the experts claimed that all the necessary information is available but is not taken up or investigated because of naivety, ignorance, and laziness.

Some of the other comments received from the Panel are :

Bankers tend to give references on clients who may be heavily involved already, which protects their viability without divulging the extent of their existing commitments.

There is lack of real, deep co-operation between the various organisations disseminating information.

The naive belief that such comprehensive information service can be provided at no cost, to anyone who cared to ask. Such information is a strong incentive attracting membership and hence each organisation serves its own members only.

Up-to-date flag registration details are not readily available, thus widely published information may not be reliable.

The information is not designed to be or could be designed to prevent fraud.

Information takes too long to obtain in a trading environment where deals are finalised within a very short time scale.

The statements on which 80% consensus was not achieved were used to develop the second questionnaire. The design and analysis of the second questionnaire is considered in the next chapter.

Table 7.1 : Categories and Number of Participants at the end of the first round

No.	CATEGORY	NO. OF PARTICIPANTS
1	Academics	2
2	Ancillary Services	4
3	Banking Specialists	2
4	Documentation	2
5	Freight Forwarders	2
6	Insurance Interests	5
7	International Organisations	2
8	Judiciary	1
9	Lawyers	2
10	Protection & Indemnity	2
11	Security Forces	2
12	Shipbrokers	4
13	Shipowners	4
14	Shippers	3
15	Ship's Agents (- 1)	2
<b>TOTAL</b>		<b>39</b>

TABLE 7.2 - ANALYSIS OF QUESTIONNAIRE NO. 1 - SECTION A

STATE- MENT No.	AGREE		DISAGREE		UNABLE TO COMMENT	
	No.	%	No.	%	No.	%
1	29	(74.36)	7	(17.95)	3	( 7.69)
2	9	(23.08)	23	(58.97)	7	(17.95)
3	7	(17.95)	19	(48.72)	13	(33.33)
4	18	(46.15)	5	(12.82)	16	(41.03)
5	15	(38.46)	4	(10.26)	20	(51.28)
6	24	(61.54)	3	( 7.69)	12	(30.77)
7	29	(74.36)	2	( 5.13)	8	(20.51)
8	30	(76.92)	2	( 5.13)	7	(17.95)
9	35	(89.74)	1	( 2.56)	3	( 7.69)
10	28	(71.79)	1	( 2.56)	10	(25.64)
11	28	(71.79)	4	(10.26)	7	(17.95)
12	38	(97.44)	1	( 2.56)	0	( 0.00)
13	34	(87.18)	3	( 7.69)	2	( 5.13)
14a	17	(43.59)	6	(15.38)	16	(41.03)
14b	23	(58.97)	3	( 7.69)	13	(33.33)
14c	12	(30.77)	6	(15.38)	21	(53.85)
14d	18	(46.15)	5	(12.82)	16	(41.03)
15	14	(35.90)	9	(23.08)	16	(41.03)
16	26	(66.66)	9	(23.08)	4	(10.26)
17	28	(71.79)	1	( 2.56)	10	(25.64)
18	27	(69.23)	3	( 7.69)	9	(23.08)
19	25	(64.10)	9	(23.08)	5	(12.82)
20	27	(69.23)	1	( 2.56)	11	(28.21)

TABLE 7.2 CONTINUED

STATE- MENT No.	AGREE		DISAGREE		UNABLE TO COMMENT	
	No.	%	No.	%	No.	%
21	7	(17.95)	14	(35.90)	18	(46.15)
22	11	(28.20)	14	(35.90)	14	(35.90)
23	22	(56.41)	12	(30.77)	5	(12.82)
24	20	(51.28)	8	(20.51)	11	(28.21)
25	26	(66.66)	10	(25.64)	3	( 7.69)
26a	29	(74.36)	5	(12.82)	5	(12.82)
26b	30	(76.92)	4	(10.26)	5	(12.82)
26c	26	(66.67)	7	(17.95)	6	(15.38)
27	33	(84.62)	3	( 7.69)	3	( 7.69)
28	25	(64.10)	5	(12.82)	9	(23.08)
29	13	(33.33)	15	(38.46)	11	(28.21)
30	35	(89.74)	1	( 2.56)	3	( 7.69)
31	20	(51.28)	12	(30.77)	7	(17.95)
32	15	(38.46)	16	(41.03)	8	(20.51)
33	17	(43.59)	8	(20.51)	14	(35.90)
34	27	(69.23)	6	(15.38)	6	(15.38)
35	29	(74.36)	4	(10.26)	6	(15.38)
36	28	(69.23)	4	(10.26)	7	(17.95)
37	24	(61.54)	9	(23.08)	6	(15.38)
38	17	(43.59)	14	(35.90)	8	(20.51)

43 x 0.77 = 1.77

TABLE 7.3 - ANALYSIS OF OPINIONS EXPRESSED IN SECTION A

STATE- MENT No.	AGREE		DISAGREE		OPINIONS EXPRESSED	
	No.	%	No.	%	No.	%
1	29*	(80.56)	7	(19.44)	36	(92.31)
2	9	(28.13)	23*	(71.87)	32	(82.05)
3	7	(26.92)	19*	(73.08)	26	(66.67)
4	18*	(78.26)	5	(21.74)	23	(58.97)
5	15*	(78.95)	4	(21.05)	19	(48.72)
6	24*	(88.89)	3	(11.11)	27	(69.23)
7	29*	(93.55)	2	(6.45)	31	(79.49)
8	30*	(93.75)	2	(6.25)	32	(82.05)
9	35*	(97.22)	1	(2.78)	36	(92.31)
10	28*	(96.55)	1	(3.45)	29	(74.36)
11	28*	(87.50)	4	(12.50)	32	(82.05)
12	38*	(97.44)	1	(2.56)	39	(100.0)
13	34*	(91.89)	3	(8.11)	37	(94.87)
14a	17*	(73.91)	6	(26.09)	23	(58.97)
14b	23*	(88.46)	3	(11.54)	26	(66.67)
14c	12*	(66.67)	6	(33.33)	18	(46.15)
14d	18*	(78.26)	5	(21.74)	23	(58.97)
15	14*	(60.87)	9	(39.13)	23	(58.97)
16	26*	(74.29)	9	(25.71)	35	(89.74)
17	28*	(96.55)	1	(3.45)	29	(74.36)
18	27*	(90.00)	3	(10.00)	30	(76.92)
19	25*	(73.53)	9	(26.47)	34	(87.18)
20	27*	(96.43)	1	(3.57)	28	(71.79)
<b>MAJORITY 1 - 20</b>	<b>525</b>		<b>42</b>		<b>668</b>	<b>OPINIONS EXPRESSED</b>

\* - Majority opinions for each statement

TABLE 7.3 CONTINUED

STATE- MENT No.	AGREE		DISAGREE		OPINIONS EXPRESSED	
	No.	%	No.	%	No.	%
21	7	(33.33)	14*	(66.67)	21	(53.85)
22	11	(44.00)	14*	(56.00)	25	(64.10)
23	22*	(64.71)	12	(35.29)	34	(87.18)
24	20*	(71.43)	8	(28.57)	28	(71.79)
25	26*	(72.22)	10	(27.78)	36	(92.31)
26a	29*	(85.29)	5	(14.71)	34	(87.18)
26b	30*	(88.24)	4	(11.76)	34	(87.18)
26c	26*	(78.79)	7	(21.21)	33	(84.62)
27	33*	(91.67)	3	( 8.33)	36	(92.31)
28	25*	(83.33)	5	(16.67)	30	(76.92)
29	13	(46.43)	15*	(53.57)	28	(71.79)
30	35*	(97.22)	1	( 2.78)	36	(92.31)
31	20*	(62.50)	12	(37.50)	32	(82.05)
32	15	(48.39)	16*	(51.61)	31	(79.49)
33	17*	(68.00)	8	(32.00)	25	(64.10)
34	27*	(81.82)	6	(18.18)	33	(84.62)
35	29*	(87.88)	4	(12.12)	33	(84.62)
36	28*	(87.50)	4	(12.50)	32	(82.05)
37	24*	(72.73)	9	(27.27)	33	(84.62)
38	17*	(54.84)	14	(45.16)	31	(79.49)
<b>MAJORITY 21 - 38</b>	<b>408</b>		<b>59</b>		<b>625</b>	<b>OPINIONS EXPRESSED</b>
<b>MAJORITY 1 - 20</b>	<b>525</b>		<b>42</b>		<b>668</b>	<b>OPINIONS EXPRESSED</b>
<b>TOTAL MAJORITY 1 - 38</b>	<b>933</b>		<b>101</b>		<b>1,293</b>	<b>TOTAL OPINIONS EXPRESSED</b>

\* - Majority opinions for each statement

TABLE 7.4 - ANALYSIS OF QUESTIONNAIRE NO. 1 - SECTIONS B & C

STATE- MENT No.	AGREE		DISAGREE		UNABLE TO COMMENT		
	No.	%	No.	%	No.	%	
39a	27	(69.23)	4	(10.26)	8	(20.51)	
39b	22	(56.41)	8	(20.51)	9	(23.08)	
39c	23	(58.97)	8	(20.51)	8	(20.51)	
39d	24	(61.54)	9	(23.08)	6	(15.38)	
39e	24	(61.54)	7	(17.95)	8	(20.51)	
39f	24	(61.54)	3	( 7.69)	12	(30.77)	
39g	26	(66.66)	3	( 7.69)	10	(25.64)	
40	23	(58.97)	13	(33.33)	3	( 7.69)	
41 *	CP2;CC2;DL1;DE3;D13;I3;S3					12	(30.77)
42	15	(38.46)	16	(41.03)	8	(20.51)	
43 **	1-9;2-3;3-7;4-10;5-19;6-10					5	(12.82)

Key to Statements 41 & 43 in Table 7.4

Statement 41 \*

CP - Charter Party Fraud  
 CC - Cube-cutting/Tariff Manipulation  
 DL - Deliberate Liquidation  
 DE - Deviation/Illegal Sale of Cargo  
 D - Documentary Fraud  
 I - Insurance Fraud  
 S - Ship Scuttling

Statement 43 \*\*

1 - Information not readily available  
 2 - Information is not reliable  
 3 - Information is too expensive to obtain  
 4 - Information is not available to all interested parties  
 5 - Information is not adequate for preventing fraud  
 6 - Others, please specify



TABLE 7.5 - ANALYSIS OF OPINIONS EXPRESSED IN SECTIONS B & C

STATE- MENT No.	AGREE		DISAGREE		OPINIONS EXPRESSED	
	No.	%	No.	%	No.	%
39a	27*	(87.10)	4	(12.90)	31	(79.49)
39b	22*	(73.33)	8	(26.67)	30	(76.92)
39c	23*	(73.19)	8	(25.81)	31	(79.49)
39d	24*	(72.73)	9	(27.27)	33	(84.62)
39e	24*	(77.42)	7	(22.58)	31	(79.49)
39f	24*	(88.89)	3	(11.11)	27	(69.23)
39g	26*	(89.66)	3	(10.34)	29	(74.36)
40	23*	(63.89)	13	(36.11)	36	(92.31)
42	15	(48.39)	16*	(51.61)	31	(79.49)
<b>TOTAL MAJORITY</b>	193		16		<b>TOTAL OPINIONS EXPRESSED</b> 279	

\* - Majority opinions for each statement

TABLE 7.6a - ANALYSIS OF STATEMENT NO. 39a

STATE- MENT 39a	AGREE No. %	DISAGREE No. %	OPINIONS EXPRESSED No. 31 = 79.49%
1	31 (100.0)	- ( - )	Ship's Name
2	31 (100.0)	- ( - )	Former Name(s)
3	31 (100.0)	- ( - )	Official Number
4	31 (100.0)	- ( - )	Call Sign
5	31 (100.0)	- ( - )	Port of Registry
6	31 (100.0)	- ( - )	Type of Ship
7	30 (96.77)	1 ( 3.23)	Age
8	31 (100.0)	- ( - )	G.R.T.
9	31 (100.0)	- ( - )	Deadweight
10	31 (100.0)	- ( - )	Classification Details
11	27 (87.10)	4 (12.90)	Details of Insurance
12	28 (90.32)	3 ( 9.68)	Details of P&I Cover
13	31 (100.0)	- ( - )	Position of Ship at the time of loading
14	30 (96.77)	1 ( 3.23)	Details of Agent

TABLE 7.6b - ANALYSIS OF STATEMENT NO. 39b

STATE- MENT 39b	AGREE No. %	DISAGREE No. %	OPINIONS EXPRESSED No. 30 = 76.92%
1	28 (93.33)	2 ( 6.67)	Name, Address, Tel. & Telex Nos. of : - Registered Owner - Beneficial Owner - Operator/Manager
2	27 (90.00)	3 (10.00)	Names of vessels owned
3	25 (83.33)	5 (16.67)	Creditworthiness
4	25 (83.33)	5 (16.67)	Reputation
5	24 (80.00)	6 (20.00)	Track/Claims Record
6	27 (90.00)	3 (10.00)	P & I Cover Details

TABLE 7.6c - ANALYSIS OF STATEMENT NO. 39c

STATE- MENT 39c	AGREE No. %	DISAGREE No. %	OPINIONS EXPRESSED No. 31 = 79.49%
1	30 (96.77)	1 ( 3.23)	Name, Address, Tel. & Telex Nos. of the Charterer
2	26 (83.87)	5 (16.13)	Creditworthiness
3	27 (87.10)	4 (12.90)	Reputation
4	26 (83.87)	5 (16.13)	Track/Claims Record
5	27 (87.10)	4 (12.90)	Names of chartered ships
6	29 (93.55)	2 ( 6.45)	P & I Cover Details
7	31 (100.0)	- ( - )	Charterer's Agent

TABLE 7.6d - ANALYSIS OF STATEMENT NO. 39d

STATE- MENT 39d	AGREE No. %	DISAGREE No. %	OPINIONS EXPRESSED No. 33 = 84.62%
1	33 (100.0)	- ( - )	Name, Address, Tel. & Telex Nos. of the Shipper
2	29 (87.88)	4 (12.12)	Creditworthiness
3	29 (87.88)	4 (12.12)	Reputation
4	29 (87.88)	4 (12.12)	Track Record
5	29 (87.88)	4 (12.12)	P & I Cover Details
6	31 (93.94)	2 ( 6.06)	Shipper's Agent

TABLE 7.6e - ANALYSIS OF STATEMENT NO. 39e

STATE- MENT 39e	AGREE No. %	DISAGREE No. %	OPINIONS EXPRESSED No. 31 = 79.49%
1	31 (100.0)	- ( - )	Name, Address, Tel. & Telex Nos. of the Broker/Agent
2	25 (80.65)	6 (19.35)	Creditworthiness
3	27 (87.10)	4 (12.90)	Reputation
4	26 (83.87)	5 (16.13)	Track Record
5	29 (93.55)	2 ( 6.45)	P & I Cover Details
6	31 (100.0)	- ( - )	Membership of National or International Association

TABLE 7.6f - ANALYSIS OF STATEMENT NO. 39f

STATE- MENT 39f	AGREE No. %	DISAGREE No. %	OPINIONS EXPRESSED No. 27 = 69.23%
1	26 (96.30)	1 ( 3.70)	Name, Address, Tel & Telex Nos. of the Registered Office
2	26 (96.30)	3 ( 3.70)	Name, Address, Tel. & Telex Nos. of the Head Office if different
3	26 (96.30)	5 ( 3.70)	Date & Place of Incorporation
4	26 (96.30)	5 ( 3.70)	Share Capital
5	24 (88.89)	3 (11.11)	Names & Addresses of major share holders

TABLE 7.6g - ANALYSIS OF STATEMENT NO. 39g

STATE- MENT 39g	AGREE		DISAGREE		OPINIONS EXPRESSED No. 29 = 74.36%
	No.	%	No.	%	
1	26	(89.66)	3	(10.34)	Name & Type of Charter Party
2	26	(89.66)	3	(10.34)	Period of Charter
3	27	(93.10)	2	(6.90)	Details of Charter, Owner, and Broker or Agent arranging the Charter (as above)
4	27	(93.10)	2	(6.90)	Who issues Bills of Lading ?

TABLE 7.7 - ANALYSIS OF STATEMENT NO. 40

STATE- MENT 40	AGREE		DISAGREE		OPINIONS EXPRESSED	
	No.	%	No.	%	No.	%
a	35	(97.22)	1	(2.78)	36	(92.31)
b	33	(91.67)	3	(8.33)	36	(92.31)
c	32	(88.89)	4	(11.11)	36	(92.31)
d	35	(97.22)	1	(2.78)	36	(92.31)
e	33	(91.67)	3	(8.33)	36	(92.31)
f	34	(94.45)	2	(5.55)	36	(92.31)
g	29	(80.56)	7	(19.44)	36	(92.31)

TABLE 7.8 - ANALYSIS OF STATEMENT NO. 41

STATE- MENT 41	CATEGORY OF MARITIME FRAUD	OPINIONS EXPRESSED No. = 27 (69.23%)
1	ARSON	NIL
2	CHARTER PARTY FRAUD	2 ( 7.41%)
3	CUBE-CUTTING/TARIFF MANIPULATION	2 ( 7.41%)
4	DELIBERATE LIQUIDATION	1 ( 3.70%)
5	DEVIATION/ILLEGAL SALE OF CARGO	3 (11.11%)
6	DOCUMENTARY FRAUD	13 (48.15%)
7	INSURANCE FRAUD	3 (11.11%)
8	SHIP SCUTTLING	3 (11.11%)
9	OTHER (PLEASE SPECIFY)	NIL

TABLE 7.9 - ANALYSIS OF STATEMENT NO. 42

STATE- MENT 42	AGREE No. %	DISAGREE No. %	OPINIONS EXPRESSED No. 31 = 79.49%
a	29 (93.55)	2 ( 6.45)	Adverse publicity
b	27 (87.10)	4 (12.90)	Lack of response by the authorities
c	22 (71.00)	9 (29.00)	Desire to protect and ensure future business with same person/company who/ which committed fraud
d	28 (90.32)	3 ( 9.68)	Naivety of the victims
e	24 (77.42)	7 (22.58)	Losses are set off against profits
f	27 (87.10)	4 (12.90)	Perpetrators are not likely to be apprehended

TABLE 7.10 - ANALYSIS STATEMENT NO. 43

STATE- MENT 43	INFORMATION AVAILABILITY	OPINIONS EXPRESSED No.= 34 (87.18)
1	Information not readily available	26.47%
2	Information is not reliable	8.82%
3	Information is too expensive to obtain	20.59%
4	Information is not available to all interested parties	29.41%
5	Information is not adequate for preventing fraud	55.88%
6	Others, please specify	See below

	Page
<b>CHAPTER 8 : ANALYSIS OF THE SECOND QUESTIONNAIRE</b>	<b>295</b>
8.1 : Introduction	295
8.2 : Design of Second Questionnaire	295
8.3 : Analysis of Second Questionnaire	298
8.4 : Screening Criteria	303
8.5 : Analysis of Statements	308



## CHAPTER 8 - ANALYSIS OF THE SECOND QUESTIONNAIRE

### 8.1 Introduction

From the analysis of the first questionnaire the statements supporting the hypothesis were obtained. On the statements where there was less than 80% consensus among the experts, it was decided to test the importance of the objections raised by individual experts. For this purpose the second questionnaire was designed to ask the Panel to consider each objection and, if they agreed with the objection raised, to rate it on an importance scale of 1 to 3. The information seeking sections were excluded from the second round.

### 8.2 Design of Second Questionnaire

Where the consensus among the members of the Panel was less than 80%, comments received from the respondents disagreeing with the original statement were used to formulate the second questionnaire. The object of this was to determine the importance of these disagreements.

However, it was not sufficient to classify the disagreements solely according to the level of importance allocated by the respondents. In order to make recommendations, a Delphi Index for the classification of responses was devised. This would take

into account the following factors :

- a) Importance of the disagreements,
- b) Unanimity among the respondents,
- c) Agreements among the respondents, and
- d) Certainty of the responses.

The reason for excluding the "Unable to Comment" (UTC) on the first round, as explained in the last chapter, was the diversity of experience and expertise of the respondents. On the second round, however, as the members of the Panel were commenting on the disagreements raised by the experts in their fields, and the outcome of these comments would affect the system, certainty of the responses on the second round became an important consideration. Therefore, it was decided to use the "Unable to Comment" as a criterion for this, because if the Panel are unable to comment on the reasons given for the disagreements on the first round, the reason given has less certainty as an objection.

On the first round the experts were asked to give reasons for disagreeing with the statements. On the second round the Panel were asked to consider the reasons given by the experts disagreeing with the statements on the first round and indicate whether they agreed or disagreed with the reasons put forward, or felt that they were unable to comment on the views expressed. The respondents were also asked to indicate the importance of a

comment only if they agreed with it.

The members of the Panel were advised that :

- a) only those statements were being considered where the consensus among the experts was less than 80%, and
- b) they were not bound by their previous answers and were free to change their opinion, in the light of subsequent events.

Once the second questionnaire was designed a pilot test was conducted using postgraduate students on shipping-related courses at the Plymouth Polytechnic. After slight modifications the final draft was prepared and posted to the experts in July 1986, again allowing six weeks for the responses. See Appendix 4 for the second questionnaire and the accompanying letter.

One of the respondents declined to answer the questionnaire because of the formal structure. On receipt of the responses to the second round the size of the sample had reduced from 39 to 38, i.e. a response rate of 97.44%. Table 8.1 shows the Panel size at the end of this round.

### 8.3 Analysis of Second Questionnaire

When the responses to the second round were received one questionnaire had to be sent back to the respondent as he had misunderstood the instructions. Another respondent was interviewed personally to clarify his responses.

Table 8.1 - Categories and Number of Participants at the end of the second round.

No.	CATEGORY	NO. OF PARTICIPANTS
1	Academics	2
2	Ancillary Services	4
3	Banking Specialists	2
4	Documentation	2
5	Freight Forwarders	2
6	Insurance Interests	5
7	International Organisations	2
8	Judiciary	1
9	Lawyers	2
10	Protection & Indemnity (-1)	1
11	Security Forces	2
12	Shipbrokers	4
13	Shipowners	4
14	Shippers	3
15	Ship's Agents	2
<b>TOTAL</b>		<b>38</b>

Table 8.2, which shows the responses received to the statements on the second round, is placed at the end of the chapter. The comments of the experts were analysed individually for each statement as follows :

The total number who agreed with the statement = n

The mean of importance scale =  $\bar{x}$

The standard deviation (S.D.) of agreements

on the importance scale

$$= \sigma_{n-1}$$

The number of disagreements

The number of unable to comments replies

The importance of the objection raised by the members of the Panel to the original statement was worked out. The statement which had the highest mean value ( $\bar{X}$ ) was ranked 1 and the others were ranked in descending order according to the value  $\bar{X}$ , e.g. table 8.3a shows the ranking of the importance in table 8.4.

Table 8.3a - Explanation of Importance Scale

Statement No.	Mean value ( $\bar{X}$ )	Ranking
1.2	2.615	1
1.1	2.518	2
1.3	2.280	3
1.4	2.167	4
1.5	2.161	5

The unanimity among the respondents was worked out by the lowest value of the standard deviation (S.D.) of the sample ( $\sigma_{n-1}$ ), e.g. table 8.3b shows the ranking of unanimity in table 8.4.

As mentioned above, the respondents were asked to indicate the importance of an objection only if they agreed with it; a

three level importance scale was used :

1 = Not Important

2 = Important

3 = Very Important

Table 8.3b - Explanation of Unanimity Scale

Statement No.	S. D. ( $\sigma_{n-1}$ )	Ranking
1.1	0.509	1
1.2	0.571	2
1.4	0.583	3
1.3	0.614	4
1.5	0.718	5

The total number of respondents who agree with a sub-statement is added to give the value n, see table 8.3c. The agreement (n) among the respondents was determined by the value of n. The highest value being ranked 1, e.g. table 8.3d shows the ranking of the agreements in table 8.4.

Table 8.3c - Calculation of Agreement (n) for each sub-statement

STATE- MENT NO.	AGREE			n
	1	2	3	
1-1	-	13	14	27
1-2	1	8	17	26

The certainty of a sub-statement was worked out by determining

the number of "unable to comment" replies. The lowest number of "unable to comment" being ranked 1, e.g. table 8.3e shows the ranking of certainty in table 8.4.

**Table 8.3d - Explanation of Agreement Scale**

Statement No.	Agreement (n)	Ranking
1.4	31	1
1.1	27	2
1.2	26	3
1.3	25	4
1.5	12	5

The certainty of a sub-statement was worked out by determining the number of "unable to comment" replies. The lowest number of "unable to comment" being ranked 1, e.g. table 8.3e shows the ranking of certainty in table 8.4.

**Table 8.3e - Explanation of Certainty Scale**

Statement No.	Unable to Comment	Ranking
1.4	2	1
1.1	4	2
1.3	6	3
1.2	7	4
1.5	7	4

If the values of two sub-statements were the same then both

statements will be ranked the same, see table 8.3e. The Delphi Index (D.I.) was then calculated as follows :

$$D.I = \frac{\text{Sum of Rankings of Importance, Unanimity, Agreement and Certainty Scales}}{4}$$

For example, the D.I. of statement 1.1 in tables 8.3a - 8.3e will be :

$$D.I. = (2 + 1 + 2 + 2) / 4$$

$$= 1.75$$

Table 8.3f shows the D.I.'s for the statements 1.1 to 1.5. The statement which has a D.I. closest to 1 would be a statement :

- a) which is important,
- b) on which majority of the experts agree,
- c) on which majority of the experts are unanimous in their choice of its importance, and
- d) on which there is certainty.

Table 8.3f - Calculation of Delphi Index

Statement No.	I	U	A	C	D.I.
1.1	2	1	2	2	1.75
1.2	1	2	3	4	2.50
1.4	5	3	1	1	2.50
1.3	3	4	4	3	3.50
1.5	4	5	5	4	4.50

Mean of D.I. = 2.95



## 8.4 Screening Criteria

It was mentioned in chapter 6 that more stringent screening criteria were used in the analysis of the second questionnaire. The reason for this approach was to ensure that only those statements would be selected :

- a) which the majority of experts thought were important,
- b) on which there was certainty in the opinions expressed, and
- c) which did not have a high Delphi Index.

Several sub-statements were dropped from consideration on the second round using the screening criteria based on importance and certainty scales, and on the mean value of the Delphi Index for each statement. A similar approach was used by Ludlow (1971) in his Delphi study, where he had used screening criteria based on importance, panel competence and consensus.

Any sub-statement which had a mean value ( $\bar{X}$ ) of less than 2 (important) was dropped from consideration on this round because, the consensus of opinion was that the objection raised was not important [1 = not important; 2 = important; 3 = very important]. For example, in table 8.3g sub-statement 13.2 is dropped because its  $\bar{X}$  is less than 2.

If 50% or more (i.e. > 19) experts were "Unable to Comment"

(UTC) on a particular sub-statement it was dropped from consideration as its certainty was in doubt. For example, in table 8.3g sub-statement 13.4 is dropped because its UTC is greater than 19; if sub-statement 13.2 had not been dropped due to the importance criterion it would have been dropped because its UTC is greater than 19.

If any sub-statement was dropped from consideration due to either of the above criteria, its Delphi Index was not calculated, see table 8.3g.

**Table 8.3g - Example of Screening Criteria**

Statement Number	13.1	13.2	13.3	13.4
Agree (n)	21	16	14	9
Mean ( $\bar{X}$ )	2.429	1.875	2.357	2.000
S.D. ( $\sigma_{n-1}$ )	0.598	0.500	0.633	0.707
Disagree	4	2	13	9
Unable to Comment	13	20	11	20
*****	*****	*****	*****	*****
Importance	1	$\bar{X}$ < 2	2	UTC
Unanimity	2	&	3	>
Agreement	1	UTC	3	19
Certainty	2	>19	1	
Delphi Index	1.5		2.25	

Mean of Delphi Index = 1.875

The mean value of the Delphi Index was calculated for each statement. If the D.I. for any sub-statement was less than the mean of the D.I., it was dropped from consideration. For example, sub-statement 13.3 is dropped because its D.I. (2.25) is greater than the mean of the D.I's (1.875) for statement 13.

Thus after screening only sub-statement 13.1 is considered to be an objection which meets the all criteria specified above.

Figure 8.1 is a flow diagram showing the design and analysis of the second questionnaire. Figure 8.2, which is a combination of figures 7.1 and 8.1, presents an overview of the analysis on the two rounds.

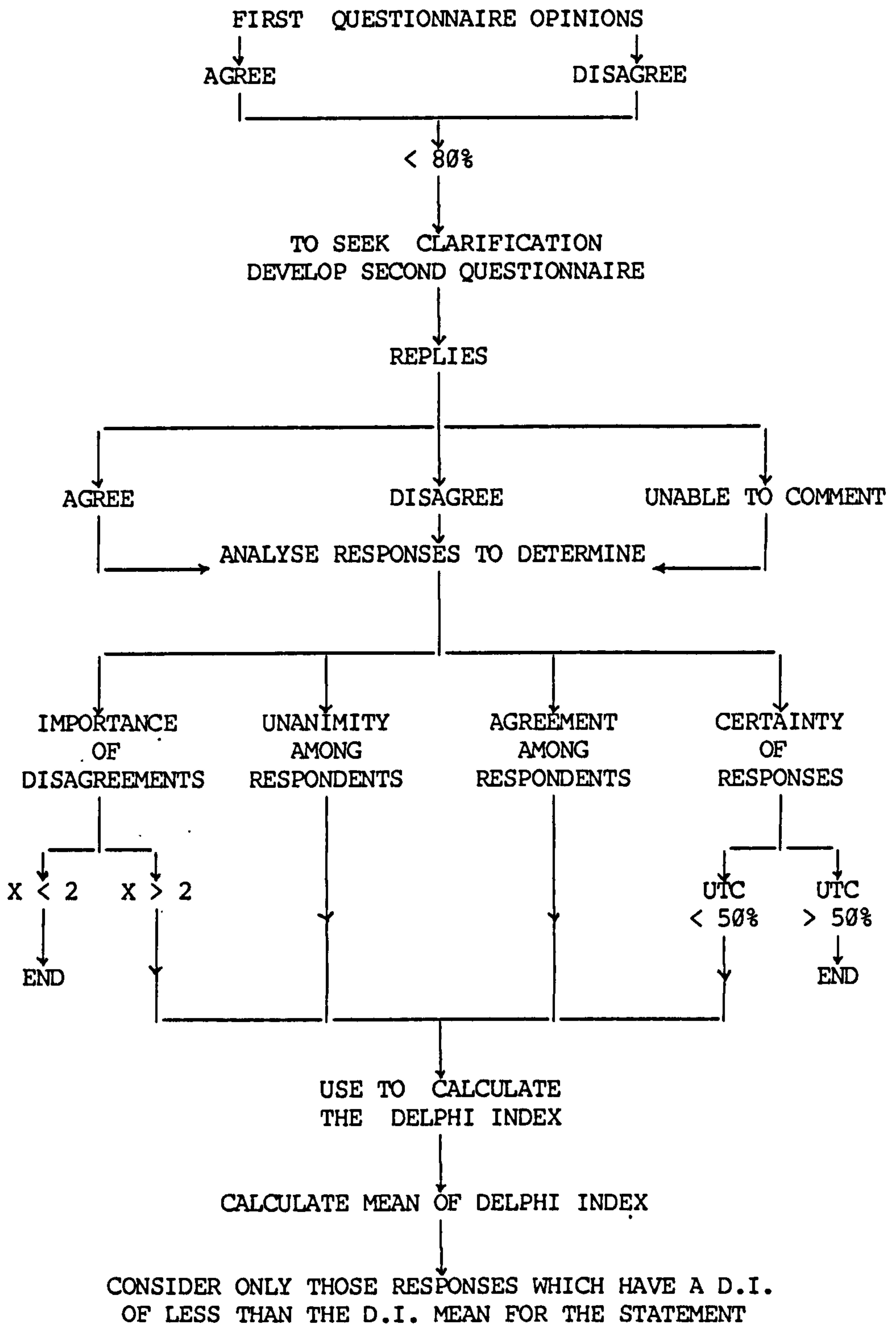


Figure 8.1 - Flow Diagram Explaining the Analysis of the Second Questionnaire

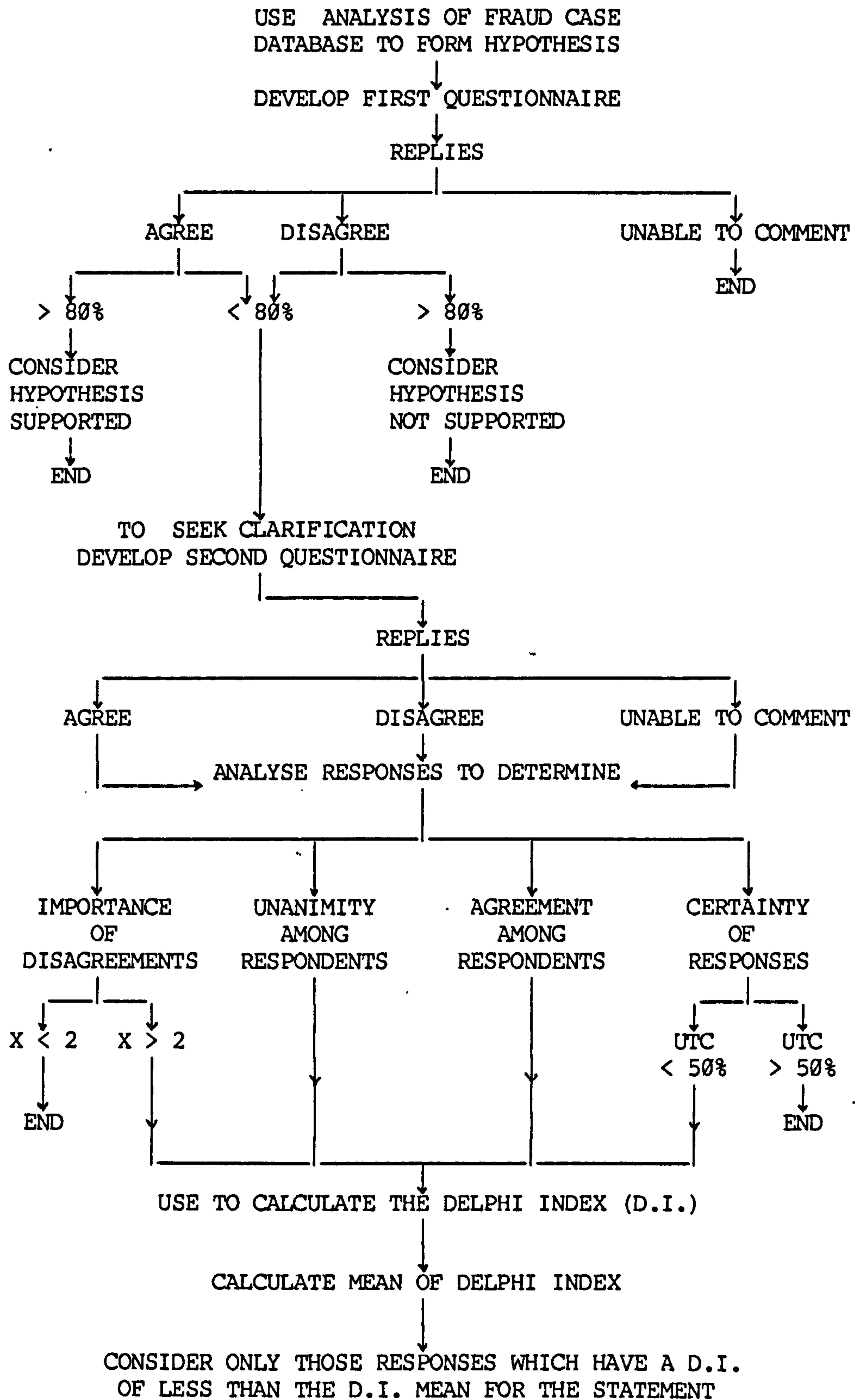


Figure 8.2 - Overview of the Analysis of the First & Second Questionnaires

## 8.5 Analysis of Statements

### Original Statement

The Bill of Lading has outlived its usefulness as a document of title as there is very little or no security in it.

The following comments were received from experts disagreeing with the above statement :

- 1.1 The Bill of Lading is still secure if properly used.
- 1.2 The Bill of Lading is not at fault but the people handling the document are at fault.
- 1.3 People handling the Bill of Lading are not aware of its importance.
- 1.4 The Bill of Lading is still very useful and flexible.
- 1.5 There is no viable alternative for the traditional Bill of Lading.

Table 8.4 - Analysis of Statement No. 1

Statement Number	1.1	1.2	1.3	1.4	1.5
Agree (n)	27	26	25	31	12
Mean ( $\bar{X}$ )	2.518	2.615	2.280	2.161	2.167
S.D. ( $\sigma_{n-1}$ )	0.509	0.571	0.614	0.583	0.718
Disagree	7	5	7	5	19
Unable to Comment	4	7	6	2	7
*****	*****	*****	*****	*****	*****
Importance	2	1	3	5	4
Unanimity	1	2	4	3	5
Agreement	2	3	4	1	5
Certainty	2	4	3	1	4
Delphi Index	1.75	2.50	3.50	2.50	4.50

Mean of Delphi Index = 2.95

Statements 1.3 and 1.5 were dropped because their D.I. was greater than the mean D.I. (2.95). Therefore, from the analysis it appears that :

- a) the B/L is still secure if properly used,
- b) the people handling the document are at fault, and
- c) the B/L is still very useful and flexible.

#### Comments received from the Panel

The B/L is likely to be phased out in some areas by reason of speedier transport, leading to the use of the non-negotiable sea waybill, or by Electronic Data Processing (EDP).

Security is only part of the reason why the B/L should be replaced, the associated procedures are the other.

There are several undesirable practices in use at the moment from what appear to be respectable shipping lines. These include pre- and post-dated B/L and the acceptance of bulk cargoes subject only to a quantity specified by the loading terminal.

Because of the lack of control on B/L stationery and the impossibility of checking the validity of signatures a B/L can never be entirely secure.

## Original Statement

By 1995 the conventional Bill of Lading will be replaced by the "Electronic Bill of Lading" by the use of data interchange via computers.

The following comments were received from experts disagreeing with the above statement.

- 2.1 The shipping industry is too diverse and fragmented for universal application.
- 2.2 Computer compatibility will be a problem.
- 2.3 There will be legal problems regarding the place of issuance of the Bill of Lading.
- 2.4 The "Electronic Bill of Lading" will only be used in some sophisticated trades but not world-wide.
- 2.5 The TEN year time span is too short for total replacement.
- 2.6 Computer fraud will make the "Electronic Bill of Lading" as insecure as the traditional one.

Table 8.5 - Analysis of Statement No. 2

Statement Number	2.1	2.2	2.3	2.4	2.5	2.6
Agree (n)	29	17	21	26	20	18
Mean ( $\bar{X}$ )	2.103	2.353	2.190	1.885	2.150	2.611
S.D. ( $\sigma_{n-1}$ )	0.772	0.606	0.750	0.766	0.745	0.502
Disagree	5	13	6	4	8	12
Unable to Comment	4	8	11	8	10	8
*****	*****	*****	*****	*****	*****	*****
Importance	5	2	3		4	1
Unanimity	5	2	4	$\bar{X}$ < 2	3	1
Agreement	1	5	2		3	4
Certainty	1	2	5		4	2
Delphi Index	3.00	2.75	3.50		3.50	2.00

Mean of Delphi Index = 2.95

Statement 2.4 was dropped because its  $\bar{X}$  was less than 2, i.e. it



was not considered to be important. Statements 2.1, 2.3 and 2.5 were dropped because their D.I. was greater than the mean D.I. (2.95). In the opinion of the Panel, it appears that :

- a) computer fraud is a factor which causes the greatest concern to the use of an Electronic Bill of Lading, and
- b) Computer compatibility will be a problem to data interchange via computers.

#### Comments received from the Panel

Problems with implementation will be due to the logistics rather than security of the computer systems.

The greater the scope of computer use, the larger the possibility of fraud becomes. As few bank managers outside the main financial centres of the world are familiar with the workings of computers, the ability as exists now of top management controlling and checking the operations of junior "hands-on" staff ceases, leaving the system at risk of infidelity of the staff as well as external "hacking".

The problems regarding computer compatibility and the place of issuance of the B/L can be easily overcome by prior organisation respectively of the hardware and software or of the terms shown on the B/L.

## Original Statement

The Uniform Customs & Practice for Documentary Credits 1983 Revision (UCP) does not provide adequate protection for the applicant (the buyer) against the unscrupulous beneficiary (the seller).

The following comments were received from experts disagreeing with the above statement.

- 3.1 The buyer gets what he pays for. Any additional checks would result in an additional charge to him.
- 3.2 The UCP give less responsibility to the banks, thereby giving opportunity for relaxation from the banker's side.
- 3.3 There is certainly room for improvement of the UCP.
- 3.4 Provided documentary credit properly drafted with proper precautions, UCP provides adequate security.

Table 8.6 - Analysis of Statement No.3

Statement Number	3.1	3.2	3.3	3.4
Agree (n)	24	15	24	15
Mean ( $\bar{X}$ )	2.042	2.400	2.167	2.400
S.D. ( $\sigma_{n-1}$ )	0.690	0.632	0.761	0.737
Disagree	7	4	4	8
Unable to Comment	6	17	13	14
*****	*****	*****	*****	*****
Importance	4	1	3	1
Unanimity	2	1	4	3
Agreement	1	3	1	3
Certainty	1	4	2	3
Delphi Index	2.0	2.25	2.5	2.5

Mean of Delphi Index = 2.3

Statements 3.3 and 3.4 were dropped because their D.I. was

greater than the mean D.I. (2.3). Therefore, from the analysis it appears that :

- a) the buyer gets what he pays for, and that any additional checks he may want would result in an additional charge to him, and
- b) the UCP gives less responsibility to banks, thereby giving opportunity for relaxation from the banker's side.

#### Comments received from the Panel

- a) greater advice to the applicants in filling the form, and
- b) a checking service when documents are received, and charge for this service.

Whilst I agree that the UCP gives a measure of security if strictly complied with, the potential for fraud still exists and is perpetrated because of the inadequacies of the checks required by the banks.

However, one member of the Panel said that whilst he agrees with statement 3.2, he felt that it does not seem to be a qualification of the original statement but one of the reasons for it, i.e. that the UCP does not provide adequate protection.

## Original Statement

In documentary credit operations, the relationship which exists between the Issuing Bank and the Advising/Confirming Bank is that of a Principal (Issuing Bank) and an Agent (Confirming/Advising Bank).

The following comments were received from experts disagreeing with the above statement :

- 4.1 In law, they contract as principals with each other, and with the buyer and seller.
- 4.2 Under the Uniform Customs & Practice the characteristics of agency between the banks are in a large measure obliterated.
- 4.3 As the advising/confirming bank only makes a superficial documentary check without factual check, therefore it does not qualify as an agent for the issuing bank.

Table 8.7 - Analysis of Statement No. 4

Statement Number	4.1	4.2	4.3
Agree (n)	9	7	7
Mean ( $\bar{X}$ )	2.556	1.857	2.571
S.D. ( $\sigma_{n-1}$ )	0.527	0.690	0.535
Disagree	8	5	9
Unable to Comment	21	26	22
*****	*****	*****	*****
Importance		$\bar{X}$	
Unanimity		< 2	
Agreement		&	
Certainty		In all UTC	
Delphi Index		> 19	

All three statements were dropped after the application of the screening criteria. In view of the fact that the responses to all the sub-statements to statement 4 failed the certainty

criterion,. i.e. the UTC is more than 19, this area requires further analysis. Re-examination of the statements 3 and 4 of this round showed that for :

Statement 3 - on the first round 41% of the members of the Panel were unable to comment on this statement and on average 38 % were unable to comment on the second round.

Statement 4 - on both the first and second round over 50% of the members were unable to comment on this statement.

**Original Statement**

**The ship owner/operator details are not checked properly by the Charterer before entering into a charter.**

The following comments were received from experts disagreeing with the above statement :

- 5.1 Checking is not always easy.
- 5.2 Depends very much on the quality of broker used.
- 5.3 Reputable charterers are very particular and make full enquiries.

**Table 8.8 - Analysis of Statement No. 5**

Statement Number	5.1	5.2	5.3
Agree (n)	22	26	24
Mean ( $\bar{X}$ )	2.091	2.577	2.520
S.D. ( $\sigma_{n-1}$ )	0.750	0.504	0.510
Disagree	9	4	4
Unable to Comment	7	8	9
*****	*****	*****	*****
Importance	3	1	2
Unanimity	3	1	2
Agreement	3	1	2
Certainty	1	2	3
Delphi Index	2.5	1.25	2.25

**Mean of Delphi Index = 2.0**

Statements 5.1 and 5.3 were dropped because their D.I. was greater than the mean D.I. (2.0). Therefore, from the analysis it appears that it depends very much on the quality of the

broker whether proper checks are carried out before entering into a contract of carriage under a charter party.

#### Comments received from the Panel

It is up to the charterer to ensure that his broker does make the necessary checks.

When a vessel is being chartered for a single voyage at short notice, it is very difficult to carry out the checks. There is no problem with time charters and/or with single voyage ships offered by large companies well known to the charterers.

## Original Statement

The ship owner/operator details are not checked properly by the Insurance brokers/underwriters before entering into a contract of insurance.

The following comments were received from experts disagreeing with the above statement.

- 6.1 The modern market certainly checks owner/operator details.
- 6.2 So far as the contract of insurance is concerned I do not consider this necessary.
- 6.3 It is the broker who should check details and decide whether to represent the owner/operator who approaches him.

Table 8.9 - Analysis of Statement No. 6

Statement Number	6.1	6.2	6.3
Agree (n)	15	5	20
Mean ( $\bar{X}$ )	2.200	1.800	2.800
S.D. ( $\sigma_{n-1}$ )	0.676	0.837	0.410
Disagree	8	21	7
Unable to Comment	15	12	11
*****	*****	*****	*****
Importance	2	$\bar{X}$	1
Unanimity	2	< 2	1
Agreement	2		1
Certainty	2		1
Delphi Index	2.00		1

Mean of Delphi Index = 1.5

Statement 6.2 was dropped because its  $\bar{X}$  was less than 2, and statement 6.1 was dropped because its D.I was greater than the



mean D.I. (1.5). Therefore, from the analysis it appears that in a contract of insurance it is the broker who should check details and decide whether to represent the owner/operator who approaches him.

#### Comments received from the Panel

The broker has a legal duty to check details as far as is possible. If he does not he could be a party to fraud.

We must be circumspect regarding some brokers' attitudes, especially where there is high brokerage in prospect.

Any change of management, ownership, flag or class is a material fact and failure to disclose renders void any English market policy. There are means of checking the record, and underwriters anyway would ask about this as a matter of course. As with many business transactions the man on the spot can assess the character and reputation of the potential clients. This vital filtering operation tended to be overlooked in the immediate past couple of years.

The broker is not working for the underwriter and thus will give him only the information he asks to receive or which the broker is at liberty or forced to give him. Further, the checks which each broker may carry out on each potential Principal would be merely aimed at ascertaining his premium payment capacity, not his business acumen.

## Original Statement

The ship owner/operator details are not checked properly by the Agents/Freight Forwarders before entering into a contract of agency.

The following comments were received from experts disagreeing with the above statement :

- 7.1 Most agents are careful about owner/operator status.
- 7.2 Responsible Agents/Freight Forwarders make full enquiries.

Table 8.10 - Analysis of Statement No. 7

Statement Number	7.1	7.2
Agree (n)	10	17
Mean ( $\bar{X}$ )	2.400	2.706
S.D. ( $\sigma_{n-1}$ )	0.699	0.406
Disagree	15	6
Unable to Comment	13	15
Importance	2	1
Unanimity	2	1
Agreement	2	1
Certainty	1	2
Delphi Index	1.75	1.25

Mean of Delphi Index = 1.5

Statement 7.1 was dropped because its D.I. was greater than the mean D.I. (1.5). Therefore, from the analysis it would appear that responsible Agents/Freight Forwarders make full inquiries.

## Comments received from the Panel

The Agent's status is as important as the owner/operator status, e.g. check whether they are members of their national or international association.

It is correct to say that responsible Agents/Forwarders make full enquiries, however experience has shown that the number of responsible Agents/Forwarders is declining mainly because both operators and shippers, mainly in the Mediterranean/ Mid East area, tend to go for the cheapest service and forget about the quality/ responsibility.

Original Statement

A few frauds are caused by the secrecy of operations, i.e. all ships fixed for hire are not reported in the press.

The following comments were received from experts disagreeing with the above statement.

8.1 Secrecy of operations and unreported fixtures are unrelated vis-a-vis fraud.

8.1 Secrecy is necessary for other reasons, e.g. to protect commercial advantage, to breach sanctions.

8.3 Secrecy is voluntarily undertaken by both parties.

8.4 Secrecy is used to protect/assist development of market rates.

Table 7.11 - Analysis of Statement No. 8

Statement Number	8.1	8.2	8.3	8.4
Agree (n)	17	23	18	13
Mean ( $\bar{X}$ )	2.059	2.043	2.222	1.769
S.D. ( $\sigma_{n-1}$ )	0.827	0.706	0.732	0.725
Disagree	8	2	6	7
Unable to Comment	13	13	14	18
*****	*****	*****	*****	*****
Importance	2	3	1	
Unanimity	3	1	2	$\bar{X} < 2$
Agreement	3	1	2	
Certainty	1	1	3	
Delphi Index	2.25	1.5	2.00	

Mean of Delphi Index = 1.9

Statement 8.4 was dropped because its  $\bar{X}$  was less than 2, i.e. the statement was not important. Statements 8.1 and 8.3 were dropped because their D.I. was greater than the mean D.I. (1.9). Therefore, from the analysis it appears that secrecy is necessary for other reasons, for example to protect commercial advantage and to breach sanctions.

#### Comments received from the Panel

Once proper checking is done internally prior to fixture and operation is continuously kept under control it is irrelevant whether fixture is kept secret or not.

"To breach sanctions" implies illegal trading and as such should neither be condoned nor helped.

Secrecy also assists the demolition of market rates.

## Original Statement

The use of TWO or THREE original Bills of Lading in a set and the delivery of cargo on production of ONLY ONE has facilitated documentary frauds.

The following comments were received from experts disagreeing with the above statement.

- 9.1 Possibly in a few cases, but payment/negotiation is normally conducted only against presentation of the full set.
- 9.2 True, but should a system be changed because a very few dishonest people abuse it ?
- 9.3 Have no personal knowledge that this has facilitated fraud.
- 9.4 Disagree. However, the practice is outdated and needs revision.
- 9.5 Use of copies is one of the big problems.

Table 8.12 - Analysis of Statement No. 9

Statement Number	9.1	9.2	9.3	9.4	9.5
Agree (n)	20	14		14	
Mean ( $\bar{X}$ )	2.200	1.643	S	2.143	S
S.D. ( $\sigma_{n-1}$ )	0.768	0.633	T	0.535	T
Disagree	11	15	A	11	A
Unable to Comment	7	9	T	13	T
*****	*****	*****	E	*****	E
Importance	1		M	2	M
Unanimity	2	$\bar{X} < 2$	E	1	E
Agreement	1		N	2	N
Certainty	1		T	2	T
Delphi Index	1.25		D	1.75	D

Mean of Delphi Index = 1.5

Statements 9.3 and 9.5 have been deleted. This is due to the

fact that the author made a mistake in including them. On statement 9.3 no one else could comment as it refers to the Panelist's personal knowledge; and as the use of copies of B/L has nothing to do with the original statement, the inclusion of statement 9.5 was inappropriate.

Statement 9.2 was dropped because its  $\bar{X}$  was less than 2, i.e. it was not important, and statement 9.4 was dropped because its D.I. was greater than the mean of the D.I. (1.5). Therefore, from the analysis it appears that the practice of issuing TWO or THREE original B/L in a set and the delivery of cargo on production of ONLY ONE, has possibly facilitated documentary fraud in a few cases, however payment/negotiation is normally conducted only against presentation of the full set.

#### Comments received from the Panel

The system should not be changed just because a very few frauds have been facilitated by the improper use of the system.

The practice should be discontinued unless advantages can be indicated which outweigh the undoubted risks.

So long as the negotiability of the B/L is retained in trades where negotiability is no longer necessary, B/L fraud is inevitable.

Issue of two or three original is outdated. Only one original should be issued. If the practice has facilitated the increase of fraud, even more reason to scrap the practice.

## Original Statement

Payment under documentary credits by the banks without proper checks before payment has led the fraudsters to exploit the system.

The following comments were received from experts disagreeing with the above statement :

- 10.1 Banks make all the checks required of them under the UCP.
- 10.2 Lack of checks carried out by the importer is exploited by the fraudster.
- 10.3 Documentary credit is drafted with insufficient care.
- 10.4 Additional checks by banks would greatly increase the cost of the service to the customer.

Table 8.13 - Analysis of Statement No. 10

Statement Number	10.1	10.2	10.3	10.4
Agree (n)	16		21	15
Mean ( $\bar{X}$ )	2.250	S T A T E M E N T  D E L E T E D	2.524	2.267
S.D. ( $\sigma_{n-1}$ )	0.775		0.612	0.799
Disagree	10		1	11
Unable to Comment	12		16	12
*****	*****		*****	*****
Importance	3		1	2
Unanimity	2		1	3
Agreement	2		1	3
Certainty	1		3	1
Delphi Index	2.0			1.5

Mean of Delphi Index = 1.9

Statement 10.2 was deleted because the comment is not a qualification of the original statement, and was included on



this round by mistake.

Statements 10.1 and 10.4 were dropped because their D.I. was greater than the mean D.I. (1.9). Therefore, from the analysis it appears that the reason that the fraudsters exploit the system is not because the banks pay without proper checks but because the applicant does not draft the credit with sufficient care.

#### Comments received from the Panel

The banking system seems obsessed with correct paperwork without any comprehension of its implications. There have been instances when banks have been told of potential frauds but have processed the transaction as the documentation was correct.

Banks should be required to check the beneficiary when the credit is valuable, say over \$ 0.5 million.

From the comments in statement 10.1 and 10.4 it appears that the panelists have taken a short sighted view of the problem.

**Original Statement**

**The simplification of documentation has contributed to the increase in documentary fraud.**

The following comments were received from experts disagreeing with the above statement :

- 11.1 Simplification is an aid to prevention of fraud.
- 11.2 Criminals are becoming more professional and the international trading community are becoming more careless.
- 11.3 Simplification should not mean reduction in protective clauses.
- 11.4 Requirement for more documentation will not reduce documentary fraud.

**Table 8.14 - Analysis of Statement No. 11**

Statement Number	11.1	11.2	11.3	11.4
Agree (n)	18	21	32	27
Mean ( $\bar{X}$ )	2.111	2.423	2.406	2.222
S.D. ( $\sigma_{n-1}$ )	0.583	0.598	0.560	0.641
Disagree	11	7	1	4
Unable to Comment	9	10	5	7
*****	*****	*****	*****	*****
Importance	4	1	2	3
Unanimity	2	3	1	4
Agreement	4	3	1	2
Certainty	3	4	1	2
Delphi Index	3.25	2.75	1.25	2.75

**Mean of Delphi Index = 2.5**

Statements 11.1, 11.2 and 11.4 were dropped because their D.I. was greater than the mean D.I. (2.5). Therefore, from the

analysis it appears that simplification should not mean reduction in protective clauses.

#### Comments received from the Panel

The simpler the documentation the less time spent on bureaucracy and the more time should be available to check the integrity of the deal.

Criminals are becoming more professional but in my view the international trading community is becoming more careful.

Simplification does not preclude the need for appropriate precautions.

## Original Statement

Some documentary frauds would be prevented if the cargo carrying capacity of the vessel was inserted on the Bill of Lading.

The following comments were received from experts disagreeing with the above statement.

- 12.1 This is believed to have only a marginal effect.
- 12.2 The vessel's carrying capacity can be checked in the Lloyd's Register.
- 12.3 In liner trades knowledge of capacity without full details of entire cargo to be carried would be worthless.
- 12.4 Fraudsters will then select vessels with the correct capacity to justify the tonnage entered in the Bill of Lading.

Table 8.15 - Analysis of Statement No. 12

Statement Number	12.1	12.2	12.3	12.4
Agree (n)	27	30	33	25
Mean ( $\bar{X}$ )	1.630	1.930	2.333	2.320
S.D. ( $\sigma_{n-1}$ )	0.742	0.828	0.816	0.690
Disagree	5	4	1	5
Unable to Comment	6	4	4	8
*****	*****	*****	*****	*****
Importance			1	2
	$\bar{X}$	$\bar{X}$		
Unanimity	< 2	< 2	2	1
Agreement			1	2
Certainty			1	2
Delphi Index			1.25	1.75

Mean of Delphi Index = 1.5

Statements 12.1 and 12.2 were dropped because their  $\bar{X}$  was less

than 2, i.e. they were not considered to be important. Statement 12.4 was dropped because its D.I. was greater than the mean D.I. (1.5). Therefore, from the analysis it appears that inserting the ship's carrying capacity in the B/L will be of no use in the liner trades unless full details of the entire cargo to be carried were known.

#### Comments received from the Panel

Even this simple check makes the task of the fraudster more difficult.

Carrying capacity alone is no use without details of fuel, water, etc..

## Original Statement

Underwriters should demand surveyors' reports together with certified valuers' reports prior to accepting Hull and Machinery risks.

The following comments were received from experts disagreeing with the above statement :

- 13.1 It would be better for underwriters to appoint their own surveyors and valuers as do certain Scandinavian insurers.
- 13.2 Premium calculations contain an element of value assessment.
- 13.3 Surveys should only be demanded on ships of unknown management regardless of age, and on ships classed with other than acceptable registers.
- 13.4 The insurance contract has sufficient safeguards to deal with any problems that would become evident from these reports.

Table 8.16 - Analysis of Statement No. 13

Statement Number	13.1	13.2	13.3	13.4
Agree (n)	21	16	14	9
Mean ( $\bar{X}$ )	2.429	1.875	2.357	2.000
S.D. ( $\sigma_{n-1}$ )	0.598	0.500	0.633	0.707
Disagree	4	2	13	9
Unable to Comment	13	20	11	20
*****	*****	*****	*****	*****
Importance	1	$\bar{X}$	2	UTC
Unanimity	1	< 2	2	> 19
Agreement	1	&	2	
Certainty	2	UTC	1	
Delphi Index	1.25	> 19	1.75	

Mean of Delphi Index = 1.5

Statement 13.2 was dropped because it failed the screening criteria on two grounds, i.e. its  $\bar{X}$  was less than 2 and its UTC was greater than 19. Statement 13.4 was dropped because its UTC was greater than 19. Statement 13.3 was dropped because its D.I. was greater than the mean D.I. (1.5). Therefore from the analysis it appears that it would be better for underwriters to appoint their own surveyors and valuers, as do certain Scandinavian insurers.

#### Comments received from the Panel

From experience surveyor's reports are often couched in terms to please the party who gave the survey instructions.

Owners survey reports should be acceptable if from an approved source.

Surveys should be demanded on all ships irrespective of owner, age or class.

Underwriters in the London market deal with many thousands of vessels each year, even before counting those which are sold to new owners or are brand new. They rely on Classification Societies to inspect and maintain the vessels to an approved standard and have recently instigated some steps to prevent the switching of ships between classifications without enforcement of repairs/maintenance deemed required under the previous rules. Surveyors are likely to be used for ocean tows, reactivation and laying up procedures. Experienced underwriters are quite capable of assessing ship values and have made efforts to eliminate a principal cause of erratic sums insured by ascertaining what bank mortgages are outstanding.

## Original Statement

If some sort of delay is built into the documentary credit system (perhaps a maximum of 7 days), to allow for checks to be carried out by the bank before payment is made, it will reduce the incidence of fraud.

The following comments were received from experts disagreeing with the above statement :

- 14.1 It would increase the pressure for fraudulent dating or issue of documents before goods are loaded.
- 14.2 Commerce would come to a standstill and thefts after discharge would increase.
- 14.3 The cost to international trade would be enormous.
- 14.4 Not practical and banks have refused to do this.
- 14.5 Checks should be made earlier than lodging of documentary credit or quicker, e.g. by using computerised data bases.

Table 8.17 - Analysis of Statement No. 14

Statement Number	14.1	14.2	14.3	14.4	14.5
Agree (n)	22	10	16	10	21
Mean ( $\bar{X}$ )	1.909	2.700	2.500	2.500	2.571
S.D. ( $\sigma_{n-1}$ )	0.750	0.675	0.632	0.707	0.676
Disagree	7	22	14	10	3
Unable to Comment	9	6	8	18	14
*****	*****	*****	*****	*****	*****
Importance		1	3	3	2
	$\bar{X}$				
Unanimity	< 2	2	1	4	3
Agreement		3	2	3	1
Certainty		1	2	4	3
Delphi Index		1.75	2.00	3.50	2.25

Mean of Delphi Index = 2.38

Statement 14.1 has been dropped because its  $\bar{X}$  was less than 2,



i.e. it was not considered to be important. Statement 14.3 has been dropped because its D.I. was greater than the mean D.I. (2.38). Therefore from the analysis it appears that the following objections are justified :

- a) commerce would come to a standstill and thefts after discharge would increase,
- b) the cost to international trade would be enormous, and
- c) checks should be made earlier than lodging of documentary credit or quicker, e.g. by using computerised data bases.

#### Comments received from the Panel

In view of the time allowed in contracts anyway, such as sight plus 60 days, a few days of checks should be little problem.

Each trader would lose value  $\times (7 / 365) \times 11\%$  interest on each transaction plus increased demurrage.

Commenting on statements 14.1 - 14.3 one member of the Panel said "This should be applied only to large credits; then the disruption (and cost) would not be excessive". Whilst one member of the Panel said that statement 14.5 was "not practical in the 'real' world" another said that it "seems to be worthy of support".

## Original Statement

The carrying out of the following check, before payment is made under documentary credits, would provide adequate protection against fraud (the cost of these services would be borne by the applicant requesting them at the time of opening the credit; the bank will carry out the checks without incurring any additional liability) :

Check with the Port Authority or Customs that they have a cargo manifest lodged for the said vessel and that the Bills of Lading issued are mentioned in the manifest.

The following comments were received from the experts disagreeing with the above statement :

- 15.1 Port Authority requirements are variable. In the U.K. Customs check of Bill of Lading is post shipment.
- 15.2 Nice idea but I fear impractical.
- 15.3 Manifest is a ship's paper and hence easy to manipulate.
- 15.4 Port Authority/Customs may well not have the manifest at the time payment needs to be made.
- 15.5 Who will pay Customs and Port Authority for extra staff necessary to answer enquiries ?

Table 8.18 - Analysis of Statement No. 15

Statement Number	15.1	15.2	15.3	15.4	15.5
Agree (n)	22	22	18	23	S T A T E M E N T  D E L E T E D
Mean ( $\bar{X}$ )	2.000	2.045	2.056	1.957	
S.D. ( $\sigma_{n-1}$ )	0.617	0.844	0.725	0.562	
Disagree	-	7	9	4	
Unable to Comment	16	9	11	11	
*****	*****	*****	*****	*****	
Importance	3	2	1		
Unanimity	1	3	2	$\bar{X}$ < 2	
Agreement	1	1	3		
Certainty	3	1	2		
Delphi Index	2.00	1.72	2.00		

Mean of Delphi Index = 1.92

Statement 15.5 was deleted because it was a rhetorical question which could not effectively be answered by the Panel. Statement 15.4 was dropped because its  $\bar{X}$  was less than 2, i.e. it was not considered to be important. Statements 15.1 and 15.3 were dropped because their D.I. was greater than the mean D.I. (1.92). Therefore, in the opinion of the Panel, checking with the Port Authority/Customs about Bills of Lading from the manifest is a nice idea but impractical.

One of the experts said that this would be possible "only for bulk trades".

## Original Statement

If you feel there are other checks which should also be included (to prevent fraud under documentary credits), please specify below and give the reason for introducing them.

The following additional points were mentioned by the experts :

- 16.1 Check beneficiary if the credit exceeds £ 0.5 million.
- 16.2 Banks should check with a "specially set up organisation" whether Bill of Lading is correct and gives a true picture.
- 16.3 Check type of vessel, if you cannot check with Port Authority or Customs.
- 16.4 Initiate loading surveys on quality and quantity of goods by reputable cargo surveyors.
- 16.5 Check that the cargo quantity is as per the Bill of Lading.
- 16.6 Check the vessel's route and ports of call by master's declaration.
- 16.7 Lodge route or voyage plan with appropriate authority.

Table 8.19 - Analysis of Statement No. 16

Statement Number	16.1	16.2	16.3	16.4	16.5	16.6	16.7
Agree (n)	22	19	24	32	30	25	16
Mean ( $\bar{X}$ )	2.136	2.368	1.667	2.334	2.467	2.080	1.750
S.D. ( $\sigma_{n-1}$ )	0.640	0.597	0.761	0.787	0.730	0.812	0.775
Disagree	8	13	8	4	4	9	17
Unable to Comment	8	6	6	2	4	4	5
*****	*****	*****	*****	*****	*****	*****	*****
Importance	4	2		3	1	5	
Unanimity	2	1	< 2	4	3	5	< 2
Agreement	4	5		1	2	3	
Certainty	5	4		1	2	2	
Delphi Index	3.75	3.00		2.25	2.0	3.75	

Mean of Delphi Index = 2.95

Statements 16.3 and 16.7 were dropped because their  $\bar{X}$  was less than 2, i.e. they were not considered to be important. Statements 16.1, 16.2 and 16.6 were dropped because their D.I. was greater than the mean D.I. (2.95). Therefore from the analysis it appears that the additional checks would be :

- a) check that the cargo quantity is as per the Bill of Lading,  
and
- b) initiate loading surveys on quality and quantity of goods by reputable cargo surveyors.

#### Comments received from the Panel

Organisations such as the IMB can track a vessel to ensure that no unusual courses are taken. Items 4 and 6 appear the best options at a cheap practical level.

We have seen fraudulent documents purporting to have been issued by a named cargo surveyor.

Which bank in the chain arranges check ? How is fact of "check evidenced" ? It must be by a "document" - and the "document" must be specified in the credit. Reliance will have to be placed on a "document" - and forging a document does not worry a fraudster.

Three members of the panel said that the creditworthiness of the beneficiary should always be checked irrespective of the amount of the credit. One expert said that loading surveys could be carried out in certain circumstances, but generally not in

liner trades. Referring to Bill of Lading checks (statement 16.5) one of the experts said that he saw no reliable checks possible in practice.

**Original Statement**

**Commercial criminals should not be granted bail.**

The following comments were received from the experts disagreeing with the above statement :

- 17.1 Bail could be set very high.
- 17.2 Seize all assets and give a court allowance until trial, and withdraw the passport.
- 17.3 Bail should generally not be granted.
- 17.4 Each case must be judged on its merits.
- 17.5 Length of time taken for cases to come to trial will impose severe hardships.

**Table 8.20 - Analysis of Statement No. 17**

Statement Number	17.1	17.2	17.3	17.4	17.5
Agree (n)	22	21	7	25	20
Mean ( $\bar{X}$ )	2.364	2.667	2.000	2.800	2.200
S.D. ( $\sigma_{n-1}$ )	0.790	0.658	0.816	0.408	0.768
Disagree	5	9	22	5	6
Unable to Comment	11	8	9	8	12
Importance	3	2	5	1	4
Unanimity	4	2	5	1	3
Agreement	2	3	5	1	4
Certainty	4	1	3	1	5
Delphi Index	3.25	2.0	4.5	1.0	4.0

**Mean of Delphi Index = 2.95**

Statements 17.1, 17.3 and 17.5 were dropped because their D.I. was greater than the mean D.I. (2.95). Therefore from the

analysis the Panel raised the following objections to the original statement :

- a) each case must be judged on its merits, and
- b) Seize all assets and give a court allowance until trial, and withdraw the passport.

#### Comments received from the Panel

Most investigations into commercial crime are of necessity lengthy. If early arrest is required and no bail, impossible pressures would be put on investigators. Overseas police enquiries can take up to 18 months due to the slow reaction by some governments and police forces. In most cases there is little real alternative for realistic bail being set in order to allow for full investigation and preparation. If this is not done more acquittals would result.

Certainly passports should be impounded but I doubt if the courts would be permitted to seize all assets until a case had been proved.

The major problem as I see it is that there is a tendency for "criminals" to settle out of court. The dilemma for the plaintiff is should he settle out of court and get some money back quickly but thereby let the 'criminal' buy his way out of trouble or should he let the case come to trial with all the delay, legal costs (and risk of losing) inherent in this. The tendency is for most cases to be settled out of court. If a case is not reported and the details of the crime not promulgated, then it makes easier for the 'criminal' to repeat the crime on the next unsuspecting party.



## Original Statement

When a commercial criminal is convicted on more than one count, the sentences should not run concurrently.

The following comments were received from the experts disagreeing with the above statement :

- 18.1 This would be contrary to the basic principles of justice and an interference with judicial independence.
- 18.2 Why should this crime be different from others ?
- 18.3 It depends on whether there was more than one episode of criminal behaviour.
- 18.4 The maximum sentence available is high enough for a sufficient penalty to be imposed by concurrent sentences.

Table 8.21 - Analysis of Statement No. 18

Statement Number	18.1	18.2	18.3	18.4
Agree (n)	18	25	14	10
Mean ( $\bar{X}$ )	2.778	2.640	2.357	2.900
S.D. ( $\sigma_{n-1}$ )	0.548	0.700	0.842	0.316
Disagree	6	2	13	5
Unable to Comment	14	11	11	23
*****	*****	*****	*****	*****
Importance	1	2	3	
Unanimity	1	2	3	UTC > 19
Agreement	2	1	3	
Certainty	3	1	1	
Delphi Index	1.75	1.50	2.50	

Mean of Delphi Index = 1.92

Statement 18.4 was dropped because its UTC was greater than 19, i.e. there was doubt on its certainty, as this is a comment

which requires very specialised knowledge of the subject. Statement 18.3 was dropped because its D.I. was greater than the mean D.I. (1.92). Therefore from the analysis it appears that the main objections to the original statement are :

- a) why should this crime be different from others ?, and
- b) this would be contrary to the basic principles of justice and an interference with judicial independence.

#### Comments received from the Panel

In view of the "international" nature of these crimes the level of sentences available in say Pakistan may be somewhat different from Brazil and thus item 4 is impossible to answer. Additionally four years in a Mexican prison may "equal" ten in a British one.

If there is more than one episode of criminal behaviour, the other case or cases must be of a similar nature if they are to be considered.

Whatever penalty is decided upon will depend on the details of the cases involved.

Original Statement

The centralised registry for Bills of Lading would be an effective instrument against documentary fraud in the oil and dry bulk trade but not in the dry cargo trade.

The following comments were received from the experts disagreeing with the above statement.

- 19.1 It may be a partial deterrent only, even in oil and dry bulk trades.
- 19.2 It is more a trade facilitation measure.

Table 8.22 - Analysis of Statement No. 19

Statement Number	19.1	19.2
Agree (n)	23	18
Mean ( $\bar{X}$ )	1.913	1.833
S.D. ( $\sigma_{n-1}$ )	0.668	0.857
Disagree	4	9
Unable to Comment	11	11
*****	*****	*****
Importance	$\bar{X}$	$\bar{X}$
Unanimity	< 2	< 2
Agreement		
Certainty		
Delphi Index		

As statements 19.1 and 19.2 were dropped because their  $\bar{X}$  was less than 2, i.e. they were not considered important.

## Comments received from the Panel

How would such a registry have stopped the "Salem" fraud ?

Ineffective in either trade. Centralised registry may speed sale/transfer of title but cannot personally identify consignee. Indeed speed of sale/transfer exacerbates consignee identification. When does barrier on trading fall ? On arrival, on confirmation of arrival ? Who pays demurrage in the meanwhile ?

Even in the oil and dry bulk trades it is not, in my view, going to provide an effective instrument against fraud. It may be a partial deterrent, however.

False information fed in at the start could create the fraud ? Basically it is a trade facilitation concept, not an anti-fraud one.

## Original Statement

All types of shipping intermediaries (i.e. ship's agent, freight forwarder, broker) whether acting for the ship or cargo interests should be registered and licenced and should undergo a solvency test every year.

The following comments were received from the experts disagreeing with the above statement :

- 20.1 Only if supervised by a recognised international self-regulatory body, e.g. FIATA, FONASBA.
- 20.2 All intermediaries should belong to a recognised trade body or association.
- 20.3 Cumbersome and expensive.
- 20.4 Difficult to justify greater control of this type of intermediary than any other trader.
- 20.5 Solvency is difficult to test.
- 20.6 This will not prevent fraudsters from finding gullible shippers.

Table 8.23 - Analysis of Statement No.20

Statement Number	20.1	20.2	20.3	20.4	20.5	20.6
Agree (n)	20	22	19	19	24	30
Mean ( $\bar{X}$ )	2.200	2.318	2.105	2.211	2.333	2.367
S.D. ( $\sigma_{n-1}$ )	0.768	0.716	0.875	0.631	0.702	0.669
Disagree	12	12	16	13	10	2
Unable to Comment	6	4	3	6	4	6
*****	*****	*****	*****	*****	*****	*****
Importance	5	3	6	4	2	1
Unanimity	5	4	6	1	3	2
Agreement	4	3	5	5	2	1
Certainty	4	2	1	4	2	4
Delphi Index	4.5	3.0	4.5	3.5	2.25	2.0

Mean of Delphi Index = 3.29

Statements 20.1, 20.3 and 20.4 were dropped because their D.I. was greater than the mean D.I. (3.29). Therefore from the analysis it appears that the objections raised to the original statement are :

- a) this will not prevent fraudsters from finding gullible shippers,
- b) solvency is difficult to test, and
- c) all intermediaries should belong to a recognised trade body or association.

#### Comments received from the Panel

Whilst I do not believe this would totally prevent fraud it would help.

Still, those who are careful would have greater protection. Those who are gullible enough, should pay the price and learn from experience the hard way.

Referring to statement 20.1 one expert said that on the Baltic Exchange shipping intermediaries are required to be registered now. Another expert said that statements 20.1 and 20.2 should be mandatory. One member said that statement 20.2 was a nice idea but would not be practical.

## Original Statement

All ship's agents and all other agencies concerned with booking space on a vessel should provide indemnity bonds for the due performance of the voyage by the ship or shipping company whose agents they are.

The following comments were received from the experts disagreeing with the above statement :

- 21.1 Possible when using chartered ships but not in liner trades.
- 21.2 Committing agent to be responsible for master's actions destroys whole principle of agency.
- 21.3 Cost would be prohibitive for large firms who represent several shipowners.
- 21.4 Impossible, except for liner trades.
- 21.5 Exporters who book direct will have to be included.

Table 8.24 - Analysis of Statement No. 21

Statement Number	21.1	21.2	21.3	21.4	21.5
Agree (n)	11	20	21	12	18
Mean ( $\bar{X}$ )	2.273	2.600	2.524	2.333	2.167
S.D. ( $\sigma_{n-1}$ )	0.647	0.503	0.512	0.778	0.707
Disagree	18	9	8	14	6
Unable to Comment	9	9	9	12	14
*****	*****	*****	*****	*****	*****
Importance	4	1	2	3	5
Unanimity	3	1	2	5	4
Agreement	5	2	1	4	3
Certainty	1	1	1	4	5
Delphi Index	3.25	1.25	1.5	4.0	4.25

Mean of Delphi Index = 2.85

Statements 21.1, 21.4 and 21.5 were dropped because their D.I.

was greater than the mean D.I. (2.85). Therefore, in the opinion of the Panel :

- a) Committing agents to be responsible for the master's (i.e. principal's) actions destroys the whole principle of agency, and
- b) Cost would be prohibitive for large firms who represent several shipowners.

#### Comments Received from the Panel

Agents should accept certain responsibility, and if they know who they are representing they should not disagree to such a proposal (i.e. as stated in the original statement).

Agents should clearly state that they act in this capacity and should be careful whom they represent. It is not sufficient say "I am only an agent" when the agent continues to represent unreliable principals.

They can always make arrangements with their principal to share costs, and if the principals are serious and willing to co-operate in reducing fraud, see no difficulty in getting them to accept.

Two experts pointed out that the costs would also be prohibitive for the smaller firms who represent one or two owners. One of the experts disagreed with this point and said that the cost would not be excessive if agents represent good owners.



### Original Statement

The non-negotiable sea waybill will prevent documentary maritime fraud.

In view of the comments received from experts disagreeing with the above statement it has been changed to:

The non-negotiable sea waybill will materially assist in the prevention of documentary maritime fraud.

Table 8.25 - Analysis of Statement No. 22

Respondents Replies	No.	Percentage of Replies	Percentage Expressing Opinions
AGREE	19	50.0%	61.3%
DISAGREE	12	31.6%	38.7%
UNABLE TO COMMENT	7	18.4%	-
DID NOT REPLY	1	-	-

On the first round the majority of opinion was against the statement that "the non-negotiable sea waybill will prevent documentary fraud". As a result of the responses on the first round the statement was amended to read "the non-negotiable sea waybill will materially assist in the prevention of documentary fraud".

Therefore, with this statement the 80% agreement criterion was maintained to determine acceptance by the Panel. On the second round, whilst the majority agreed with the statement, the required 80% consensus was not reached.

It is, therefore, proposed to draw conclusions based on the comments received from the experts on the two rounds. The Panel's comments are :

It is not a panacea for all ills but it will substantially reduce the scope for fraud.

It will prevent certain kinds of documentary maritime frauds such as those perpetrated by the presentation of a forged Bill of Lading at the port of discharge. It will not, of itself, prevent documentary maritime fraud.

It will mean a great hinderance to the smooth flow of international trade.

I regard faith, unjustified, in the "security" of a non-negotiable sea waybill as dangerous and a possible encouragement to fraud.

Without proper and foolproof evidence to identify consignee the non-negotiable waybill is likely to increase documentary maritime fraud.

Nothing in documentary terms will prevent fraud.

The next chapter reviews the analysis on the two round and draws conclusions and makes recommendations based on the research findings.

TABLE 8.2 - ANALYSIS OF QUESTIONNAIRE NO. 2

STATE- MENT No.	AGREE			DISAGREE	UNABLE TO COMMENT
	1	2	3		
1-1	-	13	14	7	4
1-2	1	8	17	5	7
1-3	2	14	9	7	6
1-4	3	20	8	5	2
1-5	2	6	4	19	7
2-1	7	12	10	5	4
2-2	1	9	7	13	8
2-3	4	9	8	6	11
2-4	9	11	6	4	8
2-5	4	9	7	8	10
2-6	-	7	11	12	8
3-1	5	13	6	7	6
3-2	1	7	7	4	17
3-3	5	10	9	4	13
3-4	2	5	8	8	14
4-1	-	4	5	8	21
4-2	2	4	1	5	26
4-3	-	3	4	9	22
5-1	5	10	7	9	7
5-2	-	11	15	4	8
5-3	-	12	13	4	9
6-1	2	8	5	8	15
6-2	2	2	1	21	12
6-3	-	4	16	7	11
7-1	1	4	5	15	13
7-2	-	5	12	6	15

TABLE 8.2 CONTINUED

STATE- MENT No.	AGREE			DISAGREE	UNABLE TO COMMENT
	1	2	3		
8-1	5	6	6	8	13
8-2	5	12	6	2	13
8-3	3	8	7	6	14
8-4	5	6	2	7	18
9-1	4	8	8	11	7
9-2	6	7	1	15	9
9-3	6	1	4	9	18
9-4	1	10	3	11	13
9-5	1	9	5	14	9
10-1	3	6	7	10	12
10-2	1	10	16	1	10
10-3	1	8	12	1	16
10-4	3	5	7	11	12
11-1	2	12	4	11	9
11-2	1	10	10	7	10
11-3	1	17	14	1	5
11-4	3	15	9	4	7
12-1	14	9	4	5	6
12-2	11	10	9	4	4
12-3	7	8	18	1	4
12-4	3	11	11	5	8
13-1	1	10	10	4	13
13-2	3	12	1	2	20
13-3	1	7	6	13	11
13-4	2	5	2	9	20

TABLE 8.2 CONTINUED

STATE- MENT No.	AGREE			DISAGREE	UNABLE TO COMMENT
	1	2	3		
14-1	7	10	5	7	9
14-2	1	1	8	22	6
14-3	1	6	9	14	8
14-4	1	3	6	10	18
14-5	2	5	14	3	14
15-1	4	14	4	-	16
15-2	7	7	8	7	9
15-3	4	9	5	9	11
15-4	4	16	3	4	11
15-5	4	7	7	2	18
16-1	3	13	6	8	8
16-2	1	10	8	13	6
16-3	12	8	4	8	6
16-4	6	9	17	4	2
16-5	4	8	18	4	4
16-6	7	9	9	9	4
16-7	7	6	3	17	5
17-1	4	6	12	5	11
17-2	2	3	16	9	8
17-3	2	3	2	22	9
17-4	-	5	20	5	8
17-5	4	8	8	6	12
18-1	1	2	15	6	14
18-2	3	3	19	2	11
18-3	3	3	8	13	11
18-4	-	1	9	5	23

TABLE 8.2 CONTINUED

STATE- MENT No.	AGREE			DISAGREE	UNABLE TO COMMENT
	1	2	3		
19-1	6	13	4	4	11
19-2	8	5	5	9	11
20-1	4	8	8	12	6
20-2	3	9	10	12	4
20-3	6	5	8	16	3
20-4	2	11	6	13	6
20-5	3	10	11	10	4
20-6	3	13	14	2	6
21-1	1	6	4	18	9
21-2	-	8	12	9	9
21-3	-	10	11	8	9
21-4	2	4	6	14	12
21-5	3	9	6	6	14
22		19		12	7

While wrong may be done, then, in either of two ways, that is, by force or by fraud, both are bestial : fraud seems to belong to the cunning fox, force to lion; both are wholly unworthy of man, but fraud is the more contemptible.

[Cicero (104-43 B.C.)]

	Page
<b>CHAPTER 9 : CONCLUSIONS &amp; RECOMMENDATIONS</b>	<b>357</b>
9.1 : Introduction	357
9.2 : Conclusions	357
9.2.1 : Analysis of Database	357
9.2.2 : Synopsis of Main Findings	358
9.2.2.1 : General	358
9.2.2.2 : Identification of Weak Links	361
9.2.2.3 : Recommendation to Combat Fraud/Commercial Crime	366
9.3 : Recommendations	367
9.3.1 : Recommendations for Future Research	370



## CHAPTER 9 - CONCLUSIONS AND RECOMMENDATIONS

### 9.1 Introduction

This research was an in-depth investigation of the system of international trade, using the systems approach, in order to identify the weak links which lead to the failure of the system - failure being defined as the occurrence of actual or potential documentary fraud. The Delphi technique, appropriately modified, was used to evaluate the hypothesis, determine the feasibility of recommendations, and to seek information which would assist in the development of long-term solutions to combat fraud.

Using a database of 101 fraud cases the weak links were identified and verified using a multi-disciplinary international panel of forty experts. This chapter draws conclusions and makes recommendations based on the analysis and also makes recommendations for further research.

### 9.2 Conclusions

#### 9.2.1 Analysis of Database

The analysis of the database (see chapter 5) draws attention to the seriousness of the problem of maritime fraud. From the analysis carried out the following major points emerge:

- Greek and Panamanian ships have been involved in the majority of frauds.
- Majority of the vessels involved in frauds have been over 15 years old.
- Evidence of involvement of the same people in several cases has been found.
- An estimated 70% of the cases of fraud are not reported by the victims.
- An estimated 3,500 cases of maritime fraud occur each year.
- Average loss per case is \$ 9 million. In 1979 this figure was estimated to be \$ 5 million and thought to be increasing [ICC Publication No. 370 (1980)].
- The minimum estimated loss due to maritime fraud is \$ 31.5 billion per annum.
- Minimum estimated loss due to minor shipboard frauds is nearly \$ 7 million per annum.
- Over 62% of the cases analysed were of documentary fraud, but it is difficult to classify frauds due to the overlap between the different classes of fraud.

## 9.2.2 Synopsis of Main Findings

### 9.2.2.1 General

Whilst a few members of the Panel disagreed on certain points the general consensus of opinion of the international Panel of Experts was that :

During the period 1975 - 1985 there had been a considerable increase in the number of cases of maritime fraud with an increase in the sums involved per case. Over the same period documentary fraud had caused the greatest financial loss.

The factors which can be identified as having created an environment for fraud or which have contributed to its increase are :

- Greed of the victims.
- Naivety of the victims.
- World recession - which has forced people to cut costs.
- Surplus tonnage - which has reduced freight rates.
- Severe port congestion - which has further reduced ship owner's and charterer's profit margins.
- Absolute reliance on paper documents.
- Insurers paying out on suspect claims.
- Resistance to changes in archaic practices.
- Inadequacies in or the absence of extradition treaties.
- General lowering of ethical standards in business.
- Improved communications, especially air travel.
- Some countries not prepared to bear the very expensive cost of investigation and prosecution.
- Increase in violent crime has put non-violent crimes, such as fraud, low in priority.

Only a few fraud cases are reported because :

- of adverse publicity
- of lack of response by the authorities.
- of naivety of the victims.
- perpetrators are not likely to be apprehended.
- of loss of face/pride.
- of cost of pursuing a claim.
- of fear of being sued for defamation unless facts are clear cut.

On the question of adequacy of the existing system of collection and dissemination of ship-related information the findings are as follows :

- Over 55% of the Experts said that the information is not adequate for preventing fraud.
- Nearly 30% of the Experts were of the opinion that the information was not available to all the interested parties.
- Over 25% of the Experts pointed out that the information was not readily available.
- 20% of the Experts said that the information was too expensive to obtain.
- However, 18% of the Experts claimed that all the necessary information is available but is not taken up or investigated because of naivety, ignorance and laziness.

Whilst there was some disagreement on a few items there was

general agreement on the information required to combat fraud. The information required, given under various headings, is placed at the end of the chapter. The conclusion that can be drawn from the information required is that the participants must have as much knowledge of their contractual partners as possible.

#### **9.2.2.2 Identification of Weak Links**

From the analysis of the empirical data the conclusions drawn are presented under several headings :

##### **Bill of Lading**

Perhaps one of the most interesting, if unexpected, findings of this enquiry is that it is not in fact the B/L itself that forms the weak link : rather it is the people handling the document who contribute largely to failures in its effective utilisation. This would explain why all initiatives to find a replacement for the traditional B/L have not met with success. It also indicates that there is a general lack of awareness of the importance of this very important document.

The research also shows that replacement of the conventional B/L by an Electronic Bill of Lading (EBL) would encounter resistance from all parties because the Panel consider that computer fraud

will make the EBL as insecure as the traditional one.

The practice of issuing more than one original B/L in a set has facilitated documentary fraud in a few cases, however payment/negotiation is normally conducted only against presentation of the full set.

A centralised registry for B/L would not be a deterrent against fraud.

A difficult-to-forgo B/L might lead buyers to neglect essential precautions including pre-contract stage checks.

Whilst the use of a non-negotiable sea waybill in lieu of the traditional B/L will substantially reduce the scope for fraud, it must be recognised as a trade facilitation measure and should be treated as such.

### **Documentary Credits**

A number of Experts were "unable to comment" on statements related to documentary credits. This highlights a disturbing aspect, i.e. that there is a general lack of awareness of this very important sub-system of the system of international trade. This would explain the reason for over 50% of documents tendered for payment under documentary credits being rejected on first

presentation (see chapter 4).The following are the major findings :

The UCP gives less responsibility to the banks, thereby giving opportunity for relaxation on the banker's side. Therefore, by implication, the UCP does not provide adequate protection against fraud.

However, the applicant for the credit is also to blame for not drafting the credit with sufficient care, and he should be prepared to pay more for any additional checks he may wish the banks to undertake.

Buyers and shippers should also initiate loading surveys on quality and quantity of goods by reputable cargo surveyors for additional protection.

The banks should carry out factual checks about the vessel's particulars and its geographical position at the time of loading.

Delaying payment under documentary credits to allow banks to carry out checks would bring trade to a standstill and increase thefts after discharge. The use of computerised databases to carry out such checks would be welcome.

## **Shipping Intermediaries**

The registration, licensing and solvency testing of shipping intermediaries will not prevent fraud. However, all intermediaries should belong to a recognised trade body or organisation.

The quality of the broker chosen determines whether proper checks are carried out before entering into charter agreements.

Responsible agents/freight forwarders usually make full enquiries about their principals before entering into contracts of agency.

It is the duty of the insurance broker to check the bonafides of the owner/operator before deciding to represent him. However, the underwriters should ask the broker about this as a matter of course.

## **Miscellaneous**

The majority of frauds are caused by the lack of proper checks before entering into contracts.

The need to cut costs and the lack of commercial expertise has made the State Trading Organisations of developing countries the target of fraudsters.



The acceptance of commercial malpractices as customary has contributed to the growth of documentary fraud.

Simplification of documentation has not contributed to the increase in documentary fraud because simplification does not mean a reduction in protective clauses in the documents.

The question of secrecy raises an interesting point, i.e., to what extent are some illegal practices considered commercially acceptable ? For example, 60% of the Experts agreed that secrecy is important to protect commercial advantage and to breach sanctions, etc. However, it must be pointed out that 34% were unable to comment.

The registration of ships is not adequately supervised in a number of countries. This not only allows sub-standard ships to be registered with ease but also permits the unscrupulous operators to change the name, ownership and flag of the vessel, thereby assisting them in the perpetration of fraud.

The ease with which a company can be registered with complete anonymity for the directors has permitted the criminals to hide behind foreign nominees.

The following factors have contributed to the increase in maritime fraud :

- the international nature of shipping,
- lack of jurisdiction outside national boundaries,

- lack of harmonisation of international laws and
- the unfamiliarity of the judiciary with the concepts of maritime laws

The majority of frauds are caused by the lack of proper checks before entering into contracts.

The need to cut costs and the lack of commercial expertise has made the State Trading Organisations of developing countries the target of fraudsters.

The acceptance of commercial malpractices as customary has contributed to the growth in documentary fraud.

#### **Recommendations to Combat Fraud/Commercial Crime**

Commercial crime, including conspiracy to commit fraud, should be created as a universal crime by an international convention and should be made an extraditable offence.

In the event of a conviction in commercial crime, a policy of much heavier sentencing should be adopted.

The penalty for commercial criminals should be seizure of all assets from the proceeds of the crime. The burden of proving that some of his assets are not from the crime should rest with the criminal. In addition, they should be given a court

allowance until trial and have their passports withdrawn.

Procedures for changing a ship's name should be more heavily supervised.

Every ship should be issued with a unique international ship identification number which will remain the same throughout the life of the vessel regardless of changes of name, ownership or nationality.

The introduction of a system of port classification in accordance with levels of cargo losses will increase port security, and will also highlight high security risk ports.

### **9.3 Recommendations**

Some of the information required to combat fraud will be based on fact and some on subjective judgements. Therefore, it must be recognised that some of the data would be difficult to obtain, particularly for parties from developing countries who may not know where to obtain such information. This problem could be overcome by the formation of an Information Centre which would answer queries by collating the information currently provided by the different organisations to their members.

Due to the difficulty experienced in obtaining factual data the establishment of a **Commercial Crime Research Unit** is recommended. This Unit would collate statistics on fraud losses on a worldwide basis to assist investigators in the identification of emerging patterns and trends and conduct research on specific areas related to commercial crime with emphasis on international trade. In addition this Research Unit could also act as the Information Centre referred to above.

There is an **urgent need** to develop an educational programme not only on the importance, limitations and future prospects of the traditional B/L but also on what constitutes good and bad commercial practice. In addition, the programme should emphasize the procedures for carrying out the necessary pre-contractual checks and identify the sources of information. Two such programmes have been developed within the last twelve months.

They are :

- a) The ICC-IMB Course entitled "International Trading - Keeping afloat in a difficult market", and
- b) The Societe Generale de Surveillance SA Course entitled "International Trade, Contracts & Malpractices".

However, both courses have a very limited audience.

The ICC Commission on Banking Technique and Practice should consider a change in their attitude and re-examine the role of banks in assisting international trade participants by :

- a) a programme of education about the shortcomings of payment under documentary credits, and
- b) offering to provide factual checks on the vessel's particulars and geographical position at the time of loading

For payment under documentary credits the Courts should be more liberal in their interpretation of the fraud exception rule to grant interlocutory relief against the beneficiary. However, to prevent unjustified allegations of fraud, the applicant should be required to pay into Court, not only the value of the credit but also any damages suffered by the seller while further investigation is carried out to verify the allegations.

Another solution to avoid the risk of fraud is to purchase goods on a delivered price basis, i.e. payment for the goods on delivery, thereby transferring all the risks on the seller. If this is not possible the buyer should not enter into a contract without carrying out detailed investigation into the bonafides of the seller.

All Professional Associations of shipping intermediaries should introduce a system of annual or biennial checking of the financial accounts of their members.

It should be made a condition of all insurance policies to report losses due to fraud to the police before a claim can be filed.

In order to combat maritime fraud it is absolutely essential for the governments to co-operate to eliminate the major weaknesses in international criminal law.

The Delphi technique has proved to be an extremely useful research methodology for research into sensitive subject areas. Ludlow (1971) points out its tremendous potential for bridging the information gap between researchers and decision makers should be given high priority. This technique should be used more extensively for generating information, testing hypotheses and the feasibility of recommendations to be implemented. As the technique is still in its infancy, problems can be encountered in quantification of the responses. For this study, however, these problems were overcome by adopting a methodological approach to develop screening criteria.

### **9.3.1 Recommendations for Future Research**

International trade documentation will be replaced by "paperless trade" in the near future. Therefore, the concern expressed by the Panel over computer fraud is justified as the increasing use

of computers for storage and transmission of data implies a greater risk of exposure of sensitive information to unauthorised disclosure, addition, deletion and modification.

Technology exists today to overcome the problem of security. Kapoor (1985a) points out that at present, cryptography is the only known method which can be used to protect information transmitted between computers through communications networks. There is, therefore, requirement for further research into the development and transmission of Encrypted Trade Documents, and in particular, the Encrypted Bill of Lading (see Appendix 7) which makes use of the strengths of both the traditional B/L and Electronic Data Interchange.

If, despite the recommendations of this research and other initiatives, the Banks decide not to offer an additional checking service, it is recommended that further research should be conducted into the possibility of another participant in the trade, say the Shipping Company, taking on the role of providing finance along similar lines to that offered by a bank and offer the additional service of conducting detailed checks before payment.

The development of a suitable system of port classification would require further research to determine the factors to be

taken into account in the allocation of an equitable classification.

Finally, for effective measures to be introduced to curb the increase in fraudulent activity, the most important factors are awareness, co-ordination, co-operation and the need for openness for the good of the international trading community, i.e. the whole system. This research has attempted to adopt such an approach.



## INFORMATION REQUIRED TO COMBAT FRAUD

### SHIP DETAILS

Ship's Name, including former name(s)  
Official Number, Call sign and Port of registry  
Type of Ship and Age  
G.R.T., Deadweight and Bale capacity  
Classification Detail  
Details of Insurance including underwriter's name  
Details of P & I Cover  
Position of Ship at the time of loading including berth  
Details of Agent  
Last Fixture and name of charterer  
Main bunker supplier  
Last dry-dock - when and where

### OWNERSHIP DETAILS

Name, Address, Tel. & Telex Nos. of : Registered Owner  
Beneficial Owner  
Operator/Manager

Names of vessels owned  
Creditworthiness  
Reputation  
Track/Claims Record  
P & I Cover Details

### CHARTERER'S DETAILS & SUB-CHARTERER

Name, Address, Tel. & Telex Nos. of the Charterer  
Creditworthiness - to include credit analysis  
Reputation  
Track Record - to include length of time in present business  
Names of chartered ships  
P & I Cover Details  
Charterer's Agent  
Bunker suppliers

### SHIPPER'S DETAILS

Name, Address, Tel. & Telex Nos. of the Shipper  
Creditworthiness  
Reputation  
Track Record - to include length of time in present business  
Shipper's Agent

## **BROKER/AGENT DETAILS**

Name, Address, Tel. & Telex Nos. of the Broker/Agent

Creditworthiness

Reputation

Track Record - to include length of time in present business

P & I Cover Details - otherwise scope of liability cover

Membership of National or International Association

Reference from principals

Check that annual returns lodged in accordance with Companies Act - (referring to the UK)

## **COMPANY DETAILS**

If any of the above are a company the following additional information is required :

Name, Address, Tel. & Telex Nos. of the Registered Office

Name, Address, Tel. & Telex Nos. of the Head Office if different

Date & Place of Incorporation

Share Capital - authorised and paid up

Last Balance Sheet

Names & Addresses of major share holders

Details of Directors

Name and Address of Legal Advisors

## **COMMERCIAL DETAILS**

Name & Type of Charter Party

Period of Charter

Details of Charterer,

Owner, and Broker or Agent arranging the Charter (as above)

Who issues Bills of Lading ?

Who endorses Bills of Lading ?

Governing Law

Name & Address of Bankers

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**A P P E N D I C E S**

## LIST OF APPENDICES

	Page
Appendix 1 : Fraud Case Database	A 1
Appendix 2 : Letter of Invitation to the Experts	A 33
Appendix 3 : First Questionnaire and the letter accompanying it	A 34
Appendix 4 : Second Questionnaire and the letter accompanying it	A 57
Appendix 5 : The Author's Publications	A 82
Appendix 6 : Sample Fraudulent Documents	A106
Appendix 7 : Copy of an Electronic Bill of Lading in Plain Language and in Encrypted Form	A116

APPENDIX - 1



**\$ 40 MILLION SHIPPING FRAUD : TWO HELD**

Two men believed to be part of a syndicate were arrested in a Singapore shipping office. The syndicate is believed to have claimed compensation from the insurance companies for two incidents where two foreign vessels, on a voyage from Singapore to India, purportedly sank in late 1979. The syndicate claimed that the vessels were fully loaded, and the claim came to \$ 40 million.

However, two reports were received subsequently alleging that the vessels were sunk deliberately by the syndicate and that the syndicate was also alleged to have recovered the losses from the shippers. After three years of investigation it was found that the vessels were not loaded with any goods.

SOURCE : New Straits Times, 15th. April 1982, Singapore.

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**FOUR CHARGED WITH BID TO CHEAT BANKS OF S\$ 17 MILLION**

Four men were charged for conspiring to cheat three banks of a total of S\$ 17 million by presenting false shipping documents.

The banks were : European Asia Bank,

Hong Kong & Shanghai Bank, and

Banque Nationale de Paris.

SOURCE : Straits Times, 17th. April 1982, Singapore.

## SHARJAH CARGO PREY TO PIRACY

8,900 barrels of lube oil, worth \$ 2.5 million, was shipped on the Singaporean vessel "Speed Success". The vessel sailed from Mina Khalid on 18th. August 1981 for Bandar Abbas.

A month elapsed before the agents discovered that the cargo had not reached the destination. On inquiry the owners, Voyage Maritime Company, said that they were not aware of the vessel's whereabouts but appeared unconcerned about the vessel's fate.

Subsequent investigations revealed that the cargo had been sold at a price much lower than its value and the vessel had been hidden at an obscure point off Singapore. A case was established against the owners and a court order was secured on 15th October to arrest the vessel. A sum of \$ 240,000 received by the owners as advance payment was frozen in a Singapore bank.

The owners, who are absconding, have indicated that they are prepared for a negotiated settlement of the case and would return the cargo to the consignees on another vessel at their expense.

### SOURCE :

Nayar, K.P., Khaleej Times, 21st. October 1981.

## THE CUBAN COFFEE CAPER

Knowing that the Cubans were in need of coffee, Karl Fessler, approached the Government's trade representative with an offer to sell them 3,000 tonne of "Barahona", an Arabic blend grown in the Dominican Republic, at \$ 1.39 per pound, 15 cents less than the world market price. When the Cubans asked to inspect the coffee, Fessler assured them that there was no need for it. The total price for the coffee was \$ 8.7 million.

Companies were set up and a "rust bucket" of Panamanian registry was purchased for \$ 700,000. Fessler and his associates bribed anybody who might hinder the progress of the operation. Apparently, one of the port officials had not been bribed and he therefore, refused to let the "scuttling crew" board the vessel. As a result the vessel had to sail with the original crew, who were not aware of the plot.

The vessel sailed from Santo Domingo in November 1978, with no cargo on board. Fessler presented the appropriate shipping documents - invoices, B/L, inspection certificates, telex from the ship's master - to the Bank of Nova Scotia in Toronto. The bank disbursed the \$ 8.7 million as per Fessler's instructions.

En route, the crew suspected that something was amiss, so they

diverted the vessel and sailed into Puerto Limon, Costa Rica, and left the ship.

When the ship failed to arrive, the Cuban representative's fears were allayed by a telex explaining that due to mechanical problems the vessel was delayed. Eventually the brokers flew to Costa Rica to check the cause and found the vessel empty, and that the perpetrators of the fraud had vanished. However, Fessler turned up in Miami, and went on a spending spree, where he was arrested in December 1978. On him they found \$ 40,000 in cash, travellers checks and around-the-world air tickets. Fessler lived so openly because he thought that he not committed a crime liable to prosecution in the United States, and he had not figured on the Canadian authorities pressing so vigorously for his extradition.

SOURCE :

Time, 12th. February 1979, p.36

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#### SHIPPING FRAUD FLOATED ON PHANTOM FIRMS

Millions of dollars were paid for the phantom services rendered by the fictitious companies, individuals and ships by Kaare Gilboe, a ship broker.

"Mr. Gilboe has been investigated by police in Hong Kong, Tokyo and London, but in each instance inquiries were dropped, possibly due to the complexity of his schemes and the difficulty of assembling witnesses."

### **Gilboe's Philippine Fraud**

In 1977 a government vessel-chartering unit, Philippine National Lines, asked Gilboe to fix three vessels to ship 100,000 tons of grain from the United States to the Philippines. Gilboe chartered three ships through a company called Maritime Shipping & Investment.

Gilboe was paid by the Philippine National Lines, but never paid the charter hire to the shipowners. As a result the Philippines lost \$ 989,000 as they had to pay the real shipowners for the vessels.

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### **Gilboe's Chinese Frauds**

In 1979 Gilboe chartered three vessels for the Peoples Republic of China to carry 100,000 tons of grain from Argentina to China. He was paid \$ 1.3 million by the Chinese for the deal. He did not pay the real shipowners as a result the Chinese had to pay

an additional \$ 1 million to the shipowners.

In the second Chinese fraud Gilboe set up a company in Tokyo, called Gulf Pacific Chartering, with an Australian Richard Cunningham. Through a friend he obtained permission to use Tokyo Freighting's, a respected concern, telex for incoming messages. He then made it known that he represented Eddie Hsu, chairman of a reputable Taiwanese company Eddie Steamship.

Gilboe then told a Tokyo Chartering broker that he represented Robina Shipping, a well known unit of the Ednasa Group of Hong Kong, and was looking for three ships to carry grain from New Orleans to China. Tokyo Chartering, working through legitimate brokers in London & Copenhagen chartered the three ships.

Two weeks before the ships loaded, Gilboe - posing as Tokyo Freighting - telexed Howard Houlder in London, the broker representing the Chinese, to send the service fee to Royal Bank & Trust Company of New York on behalf of Maritime Brokers and not to their Japanese bank.

After the ships had loaded in August 1980 the Chinese, following Gilboe's instructions, paid \$ 2.9 million from the Bank of China in Peking through the Bank of Tokyo in New York to

the Royal Bank & Trust Company in New York for the account of Maritime Brokers. The shipowners were not paid by Gilboe.

When the real shipowners did not get paid they began to complain, and threatened to enforce their lien on the cargo for non-payment of hire. China had to pay \$ 2.3 million to the legitimate shipowners to get their cargo of grain.

SOURCE :

Williams, J.D., International Herald Tribune, 28th./29th. November 1981, New York.

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#### DOCUMENTARY FRAUD/SUSPICIOUS SINKING

A cargo ship of 8000 G.R.T. and 500 N.R.T. was sold to Hong Kong interests in March 1978 for \$ 296,280. The ship was accepted on 30th. March without inspection for delivery to a breaking up berth at Junk Bay, Hong Kong. As the sales agreement called for demolition only an option to trade and sell the vessel for trading was obtained on payment of an additional \$ 40,000. The next day the vessel was resold for \$ 379,280 to a Panamanian company controlled by a resident in Hong Kong. No repairs had been carried out.

On 31st. March Nigeria imposed a ban on the import of all luxury goods, and many other items considered non-essential, unless they were shipped prior to 1st. April, and arrived in Nigerian territorial waters on or before 30th. June 1978.

The vessel sailed from Hong Kong on 3rd. April and arrived at Walvis Bay on 27th. June. On route she called at the following ports : Bangkok, Yokohama, Kobe and Hong Kong (again) and loaded general cargo including rice, clothing, canned fish and electrical goods. The cargo was insured for over \$ 6 million. In all instances the Bills of Lading were back-dated to 28th. March, and the insurance policies were also back-dated, but the certificate of insurance was claused "Warranted no loss prior to 13th. May 1978".

Prior to the vessel's arrival at Walvis Bay a dispute arose between the owners of the canned fish and the consignees in Lagos. At the request of the cargo owners the shipowner instructed the vessel to put into Walvis Bay and discharge the fish. A cargo surveyor noted that the cargo of fish in No.4 tween deck was wet and reported the presence of half an inch of water in the after tween deck.

The vessel eventually sailed from Walvis Bay on 1st. July, i.e. when she should have been in Nigerian waters to comply with the



governmental order. The vessel sailed north for 24 hours, maintaining radio silence. Then water was reported leaking into holds 1 and 4. Pumping of water began but the vessel continued on her course at 10 knots, but the pumping could not keep up with the entry of water and the vessel developed a list.

At 0600 on 3rd. July the master decided to divert the ship and return to Walvis Bay. At 0800 he gave the order to abandon the ship. At 0930 he instructed the Radio Officer to send out an S.O.S. and at 1000 the crew abandoned the ship.

The crew were picked up by a Russian Fishing Factory ship. Two days later the vessel was taken in tow by a Russian Salvage Tug, with a South African Tug in attendance. The towline broke and the South African Tug placed a line on board.

The next day, with four crewmen from the South African Tug on board, the vessel took a sudden list and sank within minutes. The four crewmen were rescued.

The circumstances were such as to make the sinking very suspicious. The vessel could not arrive in Lagos prior to the prohibition date. Much of the cargo on board was prohibited, and even the rice would have been subject to a higher import tariff.

The shippers and consignees were members of two or three families with branches in the Far East and Nigeria.

Whilst the vessel was still in Walvis Bay a meeting of the shippers was held in Hong Kong, which was attended by a shipowner's representative. One of the two main Hong Kong brokers telexed their London office on 4th. July, informing them that the vessel had sunk, i.e. 24 hours after the vessel had been abandoned but two days before the ship actually sank.

**SOURCE :**

Donovan, J.J. (1980)

Legal Safeguards for the Cargo Owner, pp.33-43,

In seminar on "Prevention of Shipping Fraud", held in New York on 26/27th. June 1980.

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**ARSON/SHIP SCUTTLING**

Mr. X, the head of a notorious Hong Kong family contrived to meet an executive, Mr. Y, of a reputable plywood supply in Singapore. Y was invited to Hong Kong and after being given a taste of high living was persuaded to enter into a conspiracy to defraud which would make him an instant millionaire.

The scheme was that X would furnish Y with a ship and that Y would approach one of his customers in the U.K. and advise him that he had a vessel available to carry a large consignment of plywood. X proposed that they would not load any plywood on board the ship which will be scuttled in deep water after sailing from Singapore.

X appointed an agent in Singapore who prepared Bills of Lading and other shipping documents, which purportedly covered the shipment to the U.K. Payment was to be by irrevocable documentary credit. On presentation of documents Y obtained \$ 2.5 million under the credit. The money was split equally between X and Y.

The vessel sailed from Singapore with no cargo on board but returned several days later. The buyer became suspicious and advised Y that one of their directors was flying to Singapore to look into the situation. Y became anxious and implored X to get the ship out and sink her. X kept stalling and offered excuses - engine trouble, crew requiring more bribe money, etc.- and eventually persuaded Y to part with more than half of his share with the understanding that matters would be adjusted later on.

The vessel finally sailed from Singapore bound for Penang but en

route she broke down and was towed to Bangkok, where she underwent repairs to her main engine and steering gear. After repairs the vessel's name was changed and she loaded a cargo of rice for Lagos, Nigeria. The cargo being loaded both at berth and at anchor mid-stream. The newly named vessel was insured to the maximum value.

After loading was completed the vessel was delayed another week due to further engine repairs. On completion of the repairs she sailed out of port. The next day fire broke out and the crew abandoned the ship and were shortly picked up without fatality or injury.

Informed sources and investigations have revealed :

- The vessel was of 4000 G.R.T. which traded in the Far East and over the course of 14 years underwent 9 changes of name and ownership. The ship was owned by a notorious Hong Kong family and investigations revealed that various members of the family would appear as owners and agents of these companies and ships.
- Whilst the loading of rice was checked by a firm of cargo superintendents, there is a strong suspicion that a large quantity was short-shipped, because in some ports the tally clerks do not work hard at night, if at all.
- The repairer's records show that the vessel took delivery of

200 gallons of gasoline, together with a pump and suction hose, although there was no equipment on board where gasoline could be used.

It is possible the original plan was to discharge the cargo at Penang and then scuttle the ship, but because of the engine breakdown the crew decided to scuttle the ship as quickly as possible.

**SOURCE**

Donovan, J.J. (1980)

Legal Safeguards for the Cargo Owner, pp.33-43,

In seminar on "Prevention of Shipping Fraud", held in New York on 26/27th. June 1980.

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**M.V. "Betty"**

In 1979 a Greek company (Pero Shipping Company) purchased a 24 year old ship known as the M.V. "Black Eagle". It was renamed the "Betty" and registered in Limassol.

The Betty was chartered by an Italian company (Andreaspray) and loaded a cargo of reinforcing steel (3,500 tons) and timber (5,000 cubic meters) at Rijeka (Yugoslavia) in August 1979 and

sailed for Jeddah (Saudi Arabia).

On the 18th. of August the vessel made an unscheduled stop at Pylos (Greece), the master giving the cause as "taking on supplies". The master and crew were also replaced. The vessel also acquired a new name and new ownership.

On the 1st. of September the Betty sailed from Pylos as the "Five Star" under the Spanish flag and owned by Tanala Shipping Company of Limassol. However, investigations revealed that Tanala was a non-existent company.

A few days after sailing the master informed the charterers that the vessel was delayed due to engine trouble. On 12th. September 1979 the "Five Star" started discharging her cargo at Jounieh (Lebanon), a port under the control of the Christian Phalangists, who paid \$ 1.7 million for the cargo.

The Five Star sailed from Jounieh as the "Aris" under the Spanish flag and arrived in Piraeus (Greece) on 10th. October 1979, where she was placed under arrest.

While the ship was still discharging cargo at Jounieh, the

Saudis started negotiation for its recovery and managed to get most, but not all, of their cargo.

As a result of this incident the Saudis took the unprecedented action of putting a unilateral order to ban entry to any vessel to a Saudi port which had first called at Lebanon. This was further extended to cover all ships under the same ownership.

**SOURCE :**

Conway, B. (1981)

The Piracy Business, Hamlyn Paparbacks, (London), 1981.

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### **The Angolan Frauds**

In late 1976 the Angolan Government was in the market for 1,000 tons of palm oil. A Portugese, Perez, and his partner Rigowski (operating from Spain) guaranteed delivery of the oil for \$ 560,000, payment to be by documentary credit. The credit was opened with the Union Bank of Switzerland in Zurich.

The bank paid out on presentation of documents, the B/L showing that the palm oil had been loaded aboard the "Cool Girl" for delivery to Angola. Investigations revealed that at the time of

loading the vessel was in drydock in Rotterdam. Until about two months later the oil had not arrived.

In spite of this the Angolan Government used the services of Perez and Rigowski again. This time it was for 1,500 tons of beef for \$ 1.6 million, payment to be by documentary credit at the Union Bank of Switzerland.

Documents showing that the cargo had been loaded aboard the "Maco Viking" (Owned by a Dane - Maagefeldt) were presented to the bank. On finding the documents in order the bank paid out.

The documents presented were :

- Bill of lading
- Certificate of Origin and Packing
- Attested certificate of the veterinary condition of the meat.

Investigations revealed that at the time of loading the vessel was in a shipyard in Norway undergoing repairs.

The Danish Shipowner eventually bought the palm oil and delivered it to the Angolans.

In 1977 the Angolans were still waiting for the beef but having



received their oil, seemed satisfied with Perez's service and contracted with him for the supply of 13,420 tons of "dehulled groundnuts suitable for the extraction of oil", c.i.f. Luanda and Lobito for \$ 6,844,200. As before, payment to be by documentary credit at the Union Bank of Switzerland.

As the Danish Shipowner was put into bankruptcy, Perez had to look for another ship to obtain credible documents. He sub-chartered two Greek vessels, "Pistis" and "Saronicus Gulf" from a Bermudan based company (Lima Navigation) which was controlled by a Brazilian.

The bank was presented the documents showing that :

- the Pistis had 57,401 bags of groundnuts weighing 4,420 tons loaded at Beira, Mozambique, on 17th. April for discharge at Luanda and Lobito in Angola.
- the Saronicus Gulf had 116,885 bags of groundnuts weighing 9,000 tons, also loaded at Beira, bound for Luanda and Lobito.

Investigations revealed that :

- Pistis loaded a cargo of groundnut cake on 17th. June at Banjul,
- Saronicus Gulf loaded 3,000 tons of groundnut cake in August at Banjul and a further 2,885 tons at Dakar, and
- the Saronicus Gulf could not carry 9,000 tons of cargo, as mentioned in the documents, but only 6,000 tons.

The Pistis reached Luanda on 30th. August and the Saronicus reached Lobito on 20th. September. The Angolan authorities arrested both vessels and in addition two more, namely "Elpis" and "Kalmar" which were also under charter to Lima Navigation.

**SOURCE :**

Ellen, E. & Campbell, D. (1981)

International Maritime Fraud, Sweet & Maxwell, (London), 1981.

Conway, B. (1981)

The Piracy Business, Hamlyn Paperbacks, (London), 1981.

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**THE ALEXANDROS K**

Alba Trading Company of Barcelona, Spain, purchased 3200 tonne of steel from Irsheid Brothers (Overseas) of Cyprus for \$ 1,007,860 and then sold it to Messrs. El Hawary Mohammed Abdel Kader Al Hawary of Cario, Egypt for \$ 2 million. Payment on both deals was to be by irrevocable documentary credits.

The steel was to have been shipped direct to Alexandria, Egypt from Ravenna, Italy on board the Alexandros K. Irsheid Brothers were paid more than \$ 1 million by the bank on presentation of documents. The B/L showed that the steel had been loaded at Ravenna on 23rd. March 1979. Similarly, Alba Trading were paid

\$ 2 million by the bank on presentation of the documents.

Six weeks later both Egyptian purchaser and the Spanish intermediary started to get worried when the steel did not arrive, and the vessel could not be found. On contacting the Cypriot sellers they were told that the vessel had had to call into Piraeus, Greece for repairs and that due to the Easter holidays the repairs had been delayed.

The Egyptian, still worried, went to Piraeus to check that all was in order, and was reassured when he was shown the ship Alexandros K with the cargo of steel on 19th. or 20th. May. On 21st. May the ship sailed from Piraeus, apparently bound for Alexandria, without notifying the port authorities of its departure and failed to arrive at its destination, and apparently disappeared.

Investigations revealed that no steel had been loaded on board the Alexandros K in Ravana on 23rd. March as the vessel was in Piraeus on that date. The Steel El Hawary saw had been loaded in Bourgas, Roumania in December 1978.

The vessel was eventually traced by Lloyd's Shipping and Information Services to Zouk in Lebanon. It had changed its name

to Leila and discharged the cargo in late June. The ship disappeared again, this time without a trace.

In addition to the loss of \$ 2 million the Egyptian also incurred the cost of investigation, flight to Greece, telex messages, and possibly also suffered the loss of a customer or even the market.

**SOURCE :**

Lost at Sea : The Billion dollar drain, 8 Days, 11th. August, 1979, pp.6-9 & 22.

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**DOCUMENTARY FRAUD**

A Brazilian seller, having exhausted his export quota for coffee, decided to disguise his coffee as Bolivian coffee. A European buyer was found who agreed to open a credit where payment would be made against documents which would relate to unmarked bags.

The Brazillian coffee was taken to Bolivia, loaded on to a barge at Lake Mandiore and then to Asuncion in Paraguay. There a through B/L was to be issued by the shipping company's agent - showing the coffee was on a barge, which was being taken down

river, and would be transhipped at Buenos Aires for the Ocean passage.

On completion of loading at Lake Mandiore the barge had to wait for a few days until the water in the connecting channel rose sufficiently to allow her to get into the river.

In the meanwhile the sellers flew to Asuncion in a private plane, owned and piloted by one of the conspirators. The showed the ship's agent another barge at Asuncion, one which was loaded with iron ore, and obtained the B/L. They then flew to Buenos Aires and presented the necessary documents to the bank and obtained payment under the credit. They then went back to Lake Mandiore and at gunpoint seized the 5,000 bags of coffee from the master of the barge.

**SOURCE :**

The Hon. M. Summerskill (1980)

"Falsification of Documents to obtain Money under Letters of Credit", pp.61-69,

In Seminar on "Prevention of Shipping Fraud", New York, 26th./27th. June, 1980.

## SAVUNDRA'S CHINESE FRAUD

In October 1949 Savundra formed a company in Ceylon (now Sri Lanka) with a paid up capital of £ 7. It was known as Trans-World Enterprises Ltd. Among the directors were respected personalities in Ceylon, including the son of the then Prime Minister of Ceylon. During his tour to Burma promoting his company Savundra met Renfro, an American. Renfro told Savundra that he had strong business connections in China and, if Savundra could arrange for the supply and shipment discreetly, he would try to secure a firm order for oil from the Chinese.

In May 1950 Savundra formed another company known as Eastern Traders. In August Savundra received the order for the supply of 45,000 drums of lubricant of various specifications for direct shipment to Tsingtao. China, on c.i.f. terms at \$ 1.23 million. On 23rd. October he accepted the order as director of Trans-World Enterprises Ltd. but asked for the payment to be made by documentary credit in favour of Eastern Enterprises Company, which he referred to as a subsidiary of Trans-World.

The firm Eastern Enterprises Company was formed on 8th. November. In fact, the credit had been opened at the Eastern Bank in favour of Eastern Enterprises two days before the firm officially existed.

The oil was allegedly shipped in January 1951 aboard a Swedish vessel. The shippers were a French firm based in Marseilles. Savundra obtained payment from the Union Bank of Switzerland on presentation of the following documents :

- a) Affidavit signed by the Agents
- b) Certificate of Lloyd's Survey
- c) Shipped Bill of Lading
- d) Export Licence
- e) Certificate of sailing
- f) Analysis report on the cargo, and
- g) Presumably a Certificate of Insurance.

When the shipment had not arrived by March, Renfro, the buyer's agent, was getting impatient. His inquiries revealed that the shipowner and his agent in China had no knowledge of the ship. The whole deal had been a fraud :

- There was no oil
- No ship of the name given in the documents existed
- The French company which allegedly shipped oil did not exist, and
- All the documents presented to the Union Bank were forged.

Savundra had realised from the very outset that as the shipment of oil to China was banned by Western countries, the Chinese would have no redress due to the illegality of the transaction. The internationality of the transaction can be seen by the

involvement of SEVEN countries :

- a) Chinese buyer
- b) American buyer's agent
- c) Ceylonese commodity broker
- d) French supplier/shipper
- e) Swedish shipowner
- f) Swiss bank, and
- g) British insurers (presumably)

**SOURCE :**

Connell, J. & Sutherland, D. (1978)

Fraud : The Amazing Career of Dr. Savundra, Hodder & Stoughton,  
(London) 1978.

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#### **NON-EXISTENT COMPANY**

A number of British and Indian companies arranged to buy seed oil, chemicals and copper wire from a Hong Kong merchant. Goods were to be shipped to Singapore for onward shipment from there by a conference line and payment was to be by documentary credit.

B/L sinifying that cargo had been shipped were duly presented to the paying bank and the credit cashed. However, the ship named in the B/L never arrived in Singapore.



Subsequent police investigations revealed that the vessel never existed. Ironically it was later found that the name of the ship on the B/L was a result of a typographical error by one of the fraudsters and that the other documents had been amended to reflect the mistake. It was also discovered that the shipowning company had only been registered as a company the day before the ship supposedly sailed. Furthermore, their address had been given as the fifth floor of a building which turned out to have only four floors. The principal identified as being the perpetrator was already well known in Hong Kong for his prior involvement in other incident of the same type. The consignees lost \$ 1.2 million on the deal.

SOURCE :

ICC- International Maritime Bureau.

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#### M.V. "Dandy"

K entered into a contract with the M Co. of Nigeria for the delivery of 100,000 tons of cement to the port of Lagos. 70,000 tons were delivered as per contract. For the remainder K presented fraudulent documents to show that 25,400 tons had been loaded on board three vessels :

- M.V. "Slow Coach" at Yarimca (Turkey)
- M.V. "Sea Prey" at Yarimca (Turkey)
- M.V. "Bogus" at Barcelona (Spain)

In fact these vessels were laid-up in Greece. Freight pre-paid B/L were presented to the London branch of an African bank and the sum of \$ 1.7 million collected.

When the cement did not arrive M Co. contacted K and were told that it had become necessary to load the cargo from the three vesels to one vessel, namely M.V."Dandy" which was en-route for Lagos.

K then contacted another Nigerian company, E Ltd., and offered the same non-existent cargo and produced documents to show that cargo had been loaded on board the M.V."Dandy" at Rostock (East Germany). In fact, at the time of the supposed loading M.V. "Dandy" was in Poland.

With the money K bought the cement and loaded it on board the M.V. "Dandy" and despatched it to Nigeria. On arrival the master was confronted with two sets of B/L for the same cargo.

**SOURCE :**

ICC - International Maritime Bureau.

NON-EXISTENT CIGARETTES TO SAUDI ARABIA

P in U.S.A. approached Q in Saudi Arabia to sell cigarettes. Q agreed to buy them and opened a documentary credit in favour of P with the Arab National Bank in Saudi Arabia. P presented documents to the paying bank and collected \$ 367,680 (the c & f value). The cargo did not arrive.

Investigations revealed that the documents were forged/falsified. The details are :

- There was no number on the bill of lading. It showed that 1920 cases were shipped in two 40 foot containers
- The Clean Report of Findings was not genuine as the form used is not for shipments to Saudi Arabia but for shipments to Nigeria only
- The cargo was not even booked on board the vessel
- The Invoice showed the following details :

1920 cases at \$ 181.92 per case (F.O.B.)	=	\$ 349,286.40
Freight 2% F.O.B. value	=	\$ 7,363.20
Commission 3% F.O.B. value	=	\$ 11,030.20

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Total = \$ 367,680.00

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SOURCE :

ICC - International Maritime Bureau.

## PRE-DATING BILL OF LADING TO MEET SHIPMENT DATE

A Ltd. (Shipper) booked a consignment aboard the M.V. "Non Such". At the request of the shipper and on receipt of a Letter of Indemnity from A the Shipowner (S/O), B Ltd. of Korea, issued a pre-dated Bill of Lading (B/L). The B/L was dated 2nd. November 1981, B/L Nos. BUTI - B - 36 & 37. The vessel arrived at Busan on 5th. November 1981 and loaded the cargo.

C Ltd. (Consignee), in London, learnt that the B/L was dated 2nd. November, although the vessel was then at Inchon and did not arrive at Busan until 5th. November. C made enquiries at the Seoul office of the S/O to ascertain whether the cargo was indeed on board the vessel. C was not informed until 2nd. December by the United Kingdom agents of the S/O that the cargo was on board.

In view of the circumstances C was concerned that the shipper might negotiate the documentary credit, opened in favour of the shipper, on the basis of what was a fraudulent B/L. In order to protect his interests C attempted to stop payment on the documentary credit through a high court injunction against the issuing bank. In addition to considerable legal expenses in so doing, C also incurred investigative and telex/telephone costs.

The practice of pre-dating B/L, though illegal, may sometimes be a commercially expedient practice. However, no S/O can absolve himself of the responsibility for the consequences of such an act, if problems do arise. In this case C was totally ignorant of the existence of the letter of indemnity.

**SOURCE :**

ICC - International Maritime Bureau.

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**FALSE DOCUMENTATION TO BREACH FOREIGN EXCHANGE REGULATIONS**

In this case false documentation was prepared by the shipper on the instructions of the consignee, to enable him to obtain a large amount of foreign currency abroad because of the local foreign exchange regulations in Nigeria. The shipper was to be paid by a representative of the consignee on his next visit to Taiwan. On the Invoice, No. ODE 8229 dated 18-3-82, the goods were described as :

Wrist watch spare parts - Citizen Brand

F.O.B. Value = U.S.\$ 145,000

Freight = U.S.\$ 5,000

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C & F Value = U.S.\$ 150,000

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The goods shipped were Pedals (Model ODE-73-7) with a F.O.B. value of about U.S.\$ 400.

SOURCE :

ICC - International Maritime Bureau.

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### SUGAR SHIPMENTS TO NIGERIA

Commodity broker (E Ltd), during January - April 1983 had been diverting cargoes of sugar, destined for Nigeria, to more profitable markets in the Middle East.

Consignments of sugar were ordered by E's own offices in Lagos, and payment was arranged by way of Documentary Credits opened through the First Bank of Nigeria. Sugar was purchased on the European market and transported on ships owned by F Ltd. (an associate company of E) or on chartered vessels. Bills of Lading would be issued enabling E to negotiate the documentary credits and collect payment. After this, however, the ships would be diverted to the Middle East, where the sugar would be sold to local buyers at favourable market rates. E was thus paid twice for the same consignments and was able to make use of the illegally obtained money for some considerable period.

At some later date, usually three to six months after the date of the original sailing, a second identical consignment would be purchased and shipped direct to Nigeria, but under the guise of the original shipment. As part of the credit transaction the Nigerian bank demanded surveyor's Clean Record of Findings (CRF) as the cargo was loaded. These surveys were undertaken by G Ltd.

With E's liquidity problems in 1981, the sale of cargo in the Middle East together with payment on the Nigerian documentary credit would have provided E with the much needed cash. The liquidity problems were, therefore, the root cause of E taking such illicit action. Another factor is that on 30th. April 1982 licences became necessary for the import of sugar into Nigeria. No licences were, however, issued until September. Over this period the market was flooded with sugar causing a price drop. It was, therefore, advantageous for E to deliver cargoes with CRF's dated prior to 30th. April 1982 as late as possible.

15 ships were involved on 26 voyages - in some cases the names of the vessels were changed to suit the documents and in other cases documents were altered. The following example illustrates the modus operandi :

M.V. "Cheat"

Voy. 1	Dunkirk to Port Sudan	Deviation
Voy. 2	Antwerp to Port Said	Deviation
Voy. 3	Dunkirk to Lagos	Under documentation for voyage 1
Voy. 4	Antwerp to Lagos	Under documentation for voyage 2
Voy. 5	Antwerp to Lagos	Believed to have discharged under the guise of M.V. "Repair" which was undergoing repairs in Piraeus.

The IMB could not prove this.

SOURCE :

ICC - International Maritime Bureau.



APPENDIX - 2

**Faculty of Maritime Studies**Dean: Professor D.H. Moreby, Ex C., Ph D., FNI  
Phone: (0752) 264664**Faculty Officer:** Mrs Suzanne Tolan  
Phone: (0752) 264673Reply to: P.Kapoor-Plymouth 264757  
Our ref  
Your ref: PK/DEL/1  
Date: July to October 1985

Dear

I have been conducting postgraduate research into Documentary Maritime Fraud at the Department of Shipping & Transport, Faculty of Maritime Studies, Plymouth Polytechnic, since 1981 in collaboration with the ICC-International Maritime Bureau. For the final phase my of research programme I have decided to use a panel of experts to assist me in an in-depth study of the problem of Documentary Maritime Fraud. I am enclosing my Curriculum Vitae for your perusal.

I intend to send a series of questionnaires to the panel of experts, seeking their opinions in determining causes, possible solutions and ways of implementing their recommendations. It is envisaged that about three questionnaires will be sent to the respondents over a period of about six to eight months. The first questionnaire will be sent around November 1985. Each subsequent questionnaire is built upon the responses to the preceding questionnaire. One of the requirements of my method of research is that anonymity of the panelists be maintained, i.e. none of the panelists know who the other members of the panel are.

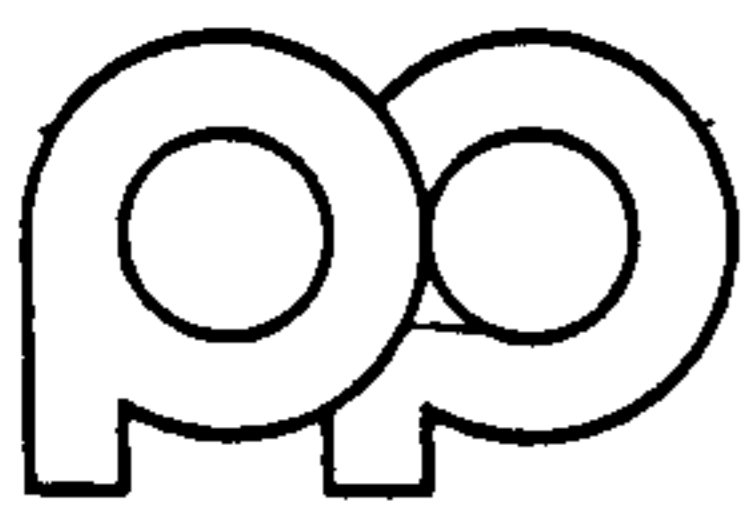
I would like to invite you to participate as a member of the expert panel (representing the .....) to consider the problem of Documentary Maritime Fraud. Specifically, I need your help to identify and explore the issues from your industry's point of view. Whilst the results of the survey will be publicised, and it is hoped would be used by the international maritime community, it is stressed that the responses of the panelists would remain strictly confidential. In addition, you will receive a copy of the final report.

I would be obliged if you would agree to participate as a member of the panel of experts, and would sincerely request you to comply with the requirement for anonymity. I look forward to hearing from you and working with you in the near future.

Yours sincerely

(Peter Kapoor)

APPENDIX - 3



**Faculty of Maritime Studies**

Dean: Professor D.H. Moreby, Ex.C., Ph.D., FNI  
Phone: (0752) 264664

Faculty Officer: Mrs Suzanne Tolan  
Phone: (0752) 264673

Reply to: P.Kapoor-Plymouth 264757  
Our ref:  
Your ref: PK/DEL/QN1  
Date: 9th. December 1985

Dear

Thank you for agreeing to participate on the expert panel to consider the problems of Documentary Maritime Fraud. Please accept my apologies for the delay in the despatch of the questionnaire.

The panel is made up of 40 experts, from various parts of the world, who represent all sectors interested in international trade. The reputation and experience of the experts indicate that you will be making a valuable contribution towards tackling the problem of maritime fraud. As the panel is drawn from different areas of expertise it is expected that some members will be experts in specialised areas while the competence of others will span a wide range of topics. The particular combination of experts selected should provide one of the most comprehensive analyses of maritime fraud to date. For this reason it is most important that all of the experts participate in the study.

If I have omitted any factors relating to your area of expertise, which have an impact on maritime fraud in general and documentary fraud in particular, I should be grateful if you would draw these to my attention.

To ensure anonymity each expert will be identified by a code number which will be linked to his name only for the purposes of mailing the questionnaire and checking the responses. It is stressed again that your responses will remain strictly confidential.

The first questionnaire is enclosed with this letter. After completion please return it to me for analysis by 15th January 1986 in the enclosed addressed envelope. It is important that you reply within the specified time as the responses must be co-ordinated and analysed before the second questionnaire can be developed.

Again, thank you for your help.

Yours sincerely

Peter Kapoor

Encl: 1. Questionnaire No. 1  
2. Addressed Freepost Envelope

**Faculty of Maritime Studies**Dean: Professor D.H Moreby, Ex C., Ph D FNI  
Phone: (0752) 264664Faculty Officer: Mrs. Suzanne Tolan  
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Reply to P.Kapoor-Plymouth 264757  
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Again, thank you for your help.

Yours sincerely

Peter Kapoor

Encl: 1. Questionnaire No. 1  
2. Addressed Envelope  
3. International Reply Coupons

**DEPARTMENT OF SHIPPING & TRANSPORT**  
**PLYMOUTH POLYTECHNIC, DRAKE CIRCUS,**  
**PLYMOUTH, PL4 8AA, ENGLAND**

**RESEARCH PROJECT : DOCUMENTARY MARITIME FRAUD**

Questionnaire No.1

Code No.

The questionnaire consists of THREE sections. Each section contains a number of statements relating to various aspects of maritime fraud.

To ensure anonymity each expert on the panel will be identified by a code number which will be linked to his name only for the purposes of mailing the questionnaires and checking the responses.

\*\*\*\*\*

**SECTION A**

Please consider each of the following statements and tick the appropriate box opposite the statement. If you agree with the statement or are unable to comment, please leave it alone. If you disagree, make any alterations to the statements or add comments you need to indicate your view. If you are unable to comment please tick the appropriate box.

- 
- |  |   |
|--|---|
| 1. Considering the known and/or suspected cases of maritime fraud over the last decade (1975 - 1985) the pattern which has emerged indicates a considerable increase in the number of cases with an increase in the sums of money involved per case. | <input type="checkbox"/> AGREE<br><input type="checkbox"/> DISAGREE<br><input type="checkbox"/> UNABLE TO COMMENT |
|--|---|

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. COMMENTS (if you disagree) .

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2. The Bill of Lading has outlived its usefulness as a document of title as there is very little or no security in it.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .

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3. By 1995 the conventional Bill of Lading will be replaced by the "Electronic Bill of Lading" by the use of data interchange via computers.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .

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4. The Uniform Customs & Practice for Documentary Credits 1983 Revision (UCP) does not provide adequate protection for the applicant (the buyer) against the unscrupulous beneficiary (the seller).

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .

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5. In documentary credit operations, the relationship which exists between the Issuing Bank and the Advising/Confirming Bank is that of a Principal (Issuing Bank) and an Agent (Confirming/Advising Bank).

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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 . COMMENTS (if you disagree) .  
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6. It is too easy to change the name, ownership and port of registry of a vessel without proof of cancellation of the previous registry.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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 . COMMENTS (if you disagree) .  
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7. It is too easy to register sub-standard vessels, the so-called "rust buckets", in some countries without surveys for seaworthiness.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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 . COMMENTS (if you disagree) .  
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8. In some countries it is too easy to register a company with complete anonymity for the directors, either by the use of foreign nominees or otherwise.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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9. The lack of harmonisation in international laws and procedures is exploited by commercial criminals.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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10. In some trading countries the judiciary is not sufficiently familiar with the concepts of maritime laws.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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11. The present system of a lay jury is inadequate in commercial fraud cases.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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12. The international nature of shipping and the lack of jurisdiction outside national boundaries assist the perpetrators of fraud.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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13. The majority of frauds are caused by the lack of proper checks carried out by the parties involved in international trade transactions.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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14. The ship owner/operator details are not checked properly by the following parties :

- a) Charterer before entering into a charter.  AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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- b) Shipper/Freight Forwarder before entering into a contract of carriage.  AGREE
  - DISAGREE
  - UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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- c) Insurance brokers/underwriters before entering into a contract of insurance.  AGREE
  - DISAGREE
  - UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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d) Agents/Freight Forwarders  AGREE  
before entering into a  DISAGREE  
contract of agency.  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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15. A few frauds are caused by the  AGREE  
secrecy of operations, i.e.  DISAGREE  
all ships fixed for hire are  UNABLE TO COMMENT  
not reported in the press.

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. COMMENTS (if you disagree) .  
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16. The use of TWO or THREE original  AGREE  
Bills of Lading in a set and the  DISAGREE  
delivery of cargo on production  UNABLE TO COMMENT  
of ONLY ONE has facilitated  
documentary frauds.

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. COMMENTS (if you disagree) .  
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17. The lack of commercial expertise on the part of the State Trading Organisations of developing countries has made them targets of the fraudsters.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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18. The need to cut costs has made buyers & shippers targets of the unscrupulous brokers, sellers, shipowners & forwarding agents.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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19. Payment under documentary credits by the banks without proper checks before payment has led the fraudsters to exploit the system.  AGREE  DISAGREE  UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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20. The acceptance of commercial malpractices and, at times, fraudulent practices as custom of the trade, in some countries, has contributed to the growth in documentary fraud.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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21. The simplification of documentation has contributed to the increase in documentary fraud.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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22. The non-negotiable sea waybill will prevent documentary maritime fraud.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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23. Some documentary frauds would be prevented if the cargo carrying capacity of the vessel was inserted on the Bill of Lading.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .

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24. Underwriters should demand surveyors' reports together with certified valuers' reports prior to accepting Hull and Machinery risks.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .

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25. If some sort of delay is built into the documentary credit system (perhaps a maximum of 7 days), to allow for checks to be carried out by the bank before payment is made, it will reduce the incidence of fraud.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .

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26. The carrying out of the following checks, before payment is made under documentary credits, would provide adequate protection against fraud (the cost of these services would be borne by the applicant requesting them at the time of opening the credit; the bank will carry out the checks without incurring any additional liability) :

a) Check the vessel's particulars, i.e. name, port of registry, ownership, and compare the deadweight with the quantity of cargo stated in the Bill of Lading.

AGREE  
 DISAGREE  
 UNABLE TO COMMENT

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b) Check the vessel's geographical position at the time of loading.

AGREE  
 DISAGREE  
 UNABLE TO COMMENT

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c) Check with the Port Authority or Customs that they have a cargo manifest lodged for the said vessel and that the Bills of Lading issued are mentioned in the manifest.

AGREE  
 DISAGREE  
 UNABLE TO COMMENT

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· **COMMENTS (if you disagree)** ·  
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· b) ·  
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· c) ·  
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If you feel there are other checks which should also be included, please specify below and give the reason for introducing them.



27. Commercial crime, including conspiracy to commit fraud, should be created as a universal crime by an international convention and should be made an extraditable offence.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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28. In the event of a conviction in commercial crime, a policy of much heavier sentencing should be adopted.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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29. Commercial criminals should not be granted bail.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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30. The penalty for commercial criminals should be seizure of all assets from the proceeds of the crime. The burden of proving that some of his assets are not from the crime should rest with the criminal.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree)

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31. When a commercial criminal is convicted on more than one count, the sentences should not run concurrently.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree)

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32. The introduction of a difficult-to-forge Bill of Lading, with unique serial numbers, will provide a secure means of preventing fraud.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree)

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33. The centralised registry for Bills of Lading would be an effective instrument against documentary fraud in the oil and dry bulk trade but not in the dry cargo trade.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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34. Procedures for changing a ship's name should be more heavily supervised as a quick change of name suggests fraudulent intent.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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35. Every ship should be issued with a unique international ship identification number which will remain the same throughout the life of a vessel regardless of changes of name, ownership or nationality.

- AGREE
- DISAGREE
- UNABLE TO COMMENT

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. COMMENTS (if you disagree) .  
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**SECTION B**

39. The information provided under the various headings below is required to combat fraud. If you disagree with any item, please put a cross in the column alongside, and if you wish give your reason(s) for disagreeing in the comments column. If you feel that there are other items of information which would assist in combating fraud, please specify. If you agree with all the items under the various headings, please put a tick in the appropriate box.

39 (a) Ship Details	Disagree	<b>Comments</b> If unable to comment on ship details tick this box and go to 39 (b). <input type="checkbox"/>
Ship's Name		
Former Name(s)		
Official Number		
Call Sign		
Port of Registry		
Type of Ship		
Age		
G.R.T.		
Deadweight		
Classification Details		
Details of Insurance		
Details of P&I Cover		
Position of Ship at the time of loading		
Details of Agent		
Others, please specify		

AGREE WITH ALL ITEMS

39 (b) Ownership Details	Disagree	<b>Comments</b> If unable to comment on ownership details tick this box and go to <input type="checkbox"/> 39 (c).
Name, Address, Tel. & Telex Nos. of : - Registered Owner - Beneficial Owner - Operator/Manager		
Names of vessels owned		
Creditworthiness		
Reputation		
Track/Claims Record		
P & I Cover Details		
Others, please specify		

AGREE WITH ALL ITEMS

39 (c) Charterer's Details & Sub-Charterer	Disagree	<b>Comments</b> If unable to comment on charterer's details tick this box and go to <input type="checkbox"/> 39 (d).
Name, Address, Tel. & Telex Nos. of the Charterer		
Creditworthiness		
Reputation		
Track Record		
Names of chartered ships		
P & I Cover Details		
Charterer's Agent		
Others, please specify		

AGREE WITH ALL ITEMS

39 (d) Shipper's Details	Disagree	<b>Comments</b> If unable to comment on shipper's details tick this box and go to <input type="checkbox"/> 39 (e).
Name, Address, Tel. & Telex Nos. of the Shipper		
Creditworthiness		
Reputation		
Track Record		
P & I Cover Details		
Shipper's Agent		
Others, please specify		

AGREE WITH ALL ITEMS

39 (e) Broker/Agent Details	Disagree	<b>Comments</b> If unable to comment on broker/agent details tick this box and go to <input type="checkbox"/> 39 (f).
Name, Address, Tel. & Telex Nos. of the Broker/Agent		
Creditworthiness		
Reputation		
Track Record		
P & I Cover Details		
Membership of National or International Association		
Others, please specify		

AGREE WITH ALL ITEMS

39 (f) <b>Company Details</b> If any of the above are a company the following additional information required	<b>Disagree</b>	<b>Comments</b> If unable to comment on company details tick this box and go to <input type="checkbox"/> 39 (g).
Name, Address, Tel. & Telex Nos. of the Registered Office		
Name, Address, Tel. & Telex Nos. of the Head Office if different		
Date & Place of Incorporation		
Share Capital		
Names & Addresses of major share holders		
Others, please specify		

AGREE WITH ALL ITEMS

39 (g) <b>Commercial Details</b>	<b>Disagree</b>	<b>Comments</b> If unable to comment on commercial details tick this box. <input type="checkbox"/>
Name & Type of Charter Party		
Period of Charter		
Details of Charterer, Owner, and Broker or Agent arranging the Charter (as above)		
Who issues Bills of Lading ?		
Others, please specify		

AGREE WITH ALL ITEMS



SECTION C

40. The increase in maritime fraud during the last decade (1975-85) can be attributed to a combination of the following causes :

- a) Greed
- b) World recession
- c) Port congestion
- d) Naivety of the victims
- e) Surplus tonnage
- f) Absolute reliance on paper documents
- g) Insurers paying out on suspect claims to maintain business

If you disagree with any of the above causes, please write below which one(s) [letter a - g], and if you wish give your reason(s) for disagreeing next to the letter.

If you feel that there are other reasons for the increase in fraud cases, please specify below.

41. Over the last decade (1975-1985) which single type of marine related crime has, in your opinion, caused the greatest financial loss taking all cases of that crime together:  
[Please put a tick (✓) in one box only]

- Arson
- Charter Party Fraud
- Cube-cutting/Tariff Manipulation
- Deliberate Liquidation
- Deviation/Illegal Sale of Cargo
- Documentary Fraud
- Insurance Fraud
- Ship Scuttling
- Other (please specify)

42. Few fraud cases are reported by the victims because :

- a) of adverse publicity
- b) of lack of response by the authorities
- c) of the desire to protect and ensure future business with the same person/company who/which committed the fraud
- d) of naivety of the victims
- e) losses are set off against profits
- f) perpetrators are not likely to be apprehended

If you disagree with any of the above statements, please write below which one(s) [letter a - f], and if you wish give your reason(s) for disagreeing next to the letter.

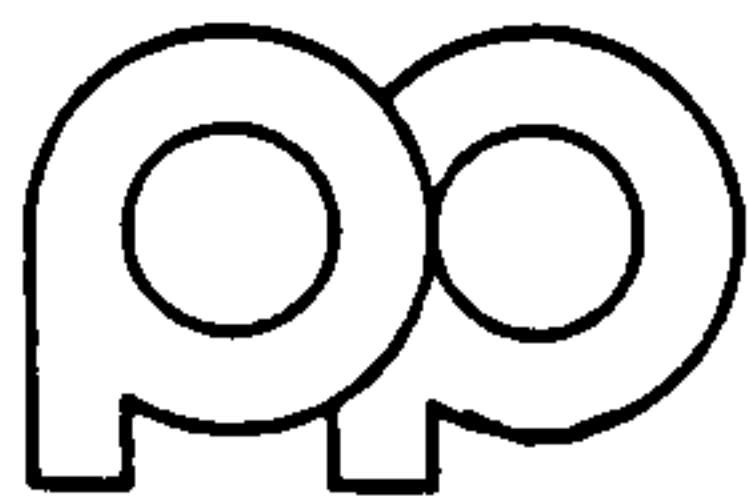
If you feel that there are other reasons for not reporting fraud cases, please specify below.

43. Which of the following statements best describe the adequacy of the existing system of collection and dissemination of ship-related information at the international level:

[Please put a tick (✓) in one or more boxes]

- Information is not readily available
- Information is not reliable
- Information is too expensive to obtain
- Information is not available to all the interested parties
- Information is not adequate for preventing fraud
- Others, please specify.

APPENDIX - 4



**Faculty of Maritime Studies**

Dean, Professor D.H. Moreby, Ex.C, Ph.D, FNI.  
Phone: (0752) 264664

**Faculty Officer** Mrs. Suzanne Tolan  
Phone (0752) 264673

Reply to                    P.Kapoor-Plymouth 264757  
Our ref  
Your ref:                 PK/DEL/QN2  
Date:                     10th. July, 1986

Dear

Thank you for your response to the first questionnaire. I am very grateful to you for finding time, in your busy schedule, to reply.

The responses to the first questionnaire were analysed to determine areas of agreement and disagreement between the experts. The views expressed by the experts who disagreed with the original statements form the basis of the second questionnaire. This seeks to clarify the disagreements between the respondents to statements on the previous round.

It is stressed again that your responses will remain strictly confidential.

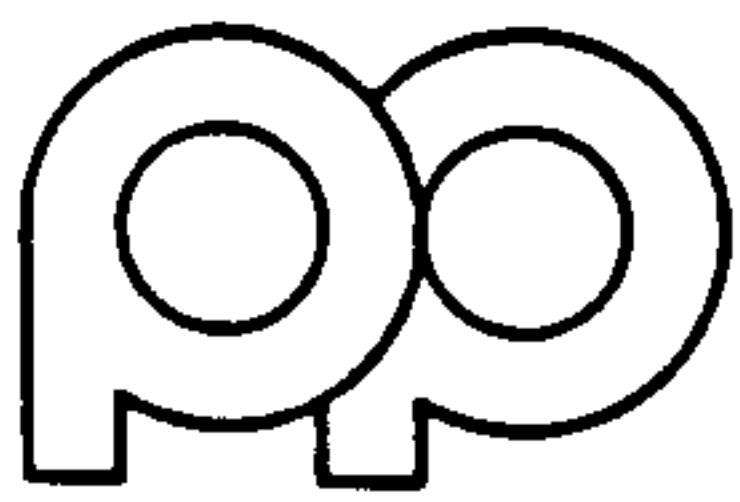
The second questionnaire is enclosed with this letter. After completion please return it to me by 1st. September 1986 in the enclosed addressed freepost envelope. It is important that you reply within the specified time as the responses must be co-ordinated and analysed before the final report can be prepared. A copy of the final report will be sent to you.

Again, thank you for your help.

Yours sincerely

Peter Kapoor

Encl: 1. Questionnaire No. 2  
2. Addressed Freepost Envelope



**Faculty of Maritime Studies**

Dean: Professor D.H. Moreby, Ex.C, Ph.D., FNI  
Phone (0752) 264664

**Faculty Officer** Mrs. Suzanne Tolan  
Phone (0752) 264673

Reply to P.Kapoor-Plymouth 264757  
Our ref  
Your ref PK/DEL/QN2  
Date 10th. July, 1986

Dear

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The responses to the first questionnaire were analysed to determine areas of agreement and disagreement between the experts. The views expressed by the experts who disagreed with the original statements form the basis of the second questionnaire. This seeks to clarify the disagreements between the respondents to statements on the previous round.

It is stressed again that your responses will remain strictly confidential.

The second questionnaire is enclosed with this letter. After completion please return it to me by 1st. September 1986 in the enclosed addressed envelope and International Reply Coupons. It is important that you reply within the specified time as the responses must be co-ordinated and analysed before the final report can be prepared. A copy of the final report will be sent to you.

Again, thank you for your help.

Yours sincerely

Peter Kapoor

- Encl: 1. Questionnaire No. 2  
2. Addressed Envelope  
3. International Reply Coupons

## INSTRUCTIONS TO THE PANEL

Please review the comments received from the panel where the experts disagreed with the statements in Questionnaire No. 1. The number of statements to be considered on this round have been considerably reduced, from 43 to 22, on the basis of the panel's response on the previous round. Only those statements are being considered where consensus among the experts was less than 80%.

Subsequent events or further reading of the responses from other experts may have caused you to change your previously stated opinion. This does not matter, please state your views as they stand at the moment. As previously stated anonymity will not be breached in any case.

After you have reviewed the comments please indicate (✓) whether you Agree, Disagree or are Unable to comment. If you Agree with any comments please indicate how important a qualification it is to the original statement. This can be indicated by circling the numbers in column 3. The scale is as follows :

Not Important (N.IMP) = 1

Important (IMP) = 2

Very Important (V.IMP) = 3

### Example

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1	✓	1	2	③		
2		1	2	3		✓
3	✓	1	②	3		
4	✓	①	2	3		
5		1	2	3	✓	

COMMENTS (IF ANY)

DEPARTMENT OF SHIPPING & TRANSPORT, PLYMOUTH POLYTECHNIC

RESEARCH PROJECT : DOCUMENTARY MARITIME FRAUD

Questionnaire No.2

Code No.

\*\*\*\*\*

Original Statement

The Bill of Lading has outlived its usefulness as a document of title as there is very little or no security in it.

The following comments were received from experts disagreeing with the above statement :

1. The Bill of Lading is still secure if properly used.
2. The Bill of Lading is not at fault but the people handling the document are at fault.
3. People handling the Bill of Lading are not aware of its importance.
4. The Bill of Lading is still very useful and flexible.
5. There is no viable alternative for the traditional Bill of Lading.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		

COMMENTS (IF ANY)

**Original Statement**

By 1995 the conventional Bill of Lading will be replaced by the "Electronic Bill of Lading" by the use of data interchange via computers.

The following comments were received from experts disagreeing with the above statement.

1. The shipping industry is too diverse and fragmented for universal application.
2. Computer compatibility will be a problem.
3. There will be legal problems regarding the place of issuance of the Bill of Lading.
4. The "Electronic Bill of Lading" will only be used in some sophisticated trades but not world-wide.
5. The TEN year time span is too short for total replacement.
6. Computer fraud will make the "Electronic Bill of Lading" as insecure as the traditional one.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		
6		1	2	3		

COMMENTS (IF ANY)



**Original Statement**

The Uniform Customs & Practice for Documentary Credits 1983 Revision (UCP) does not provide adequate protection for the applicant (the buyer) against the unscrupulous beneficiary (the seller).

The following comments were received from experts disagreeing with the above statement.

1. The buyer gets what he pays for. Any additional checks would result in an additional charge to him.
2. The UCP give less responsibility to the banks, thereby giving opportunity for relaxation from the banker's side.
3. There is certainly room for improvement of the UCP.
4. Provided documentary credit properly drafted with proper precautions, UCP provides adequate security.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

In documentary credit operations, the relationship which exists between the Issuing Bank and the Advising/Confirming Bank is that of a Principal (Issuing Bank) and an Agent (Confirming/Advising Bank).

The following comments were received from experts disagreeing with the above statement :

1. In law, they contract as principals with each other, and with the buyer and seller.
2. Under the Uniform Customs & Practice the characteristics of agency between the banks are in a large measure obliterated.
3. As the advising/confirming bank only makes a superficial documentary check without factual check, therefore it does not qualify as an agent for the issuing bank.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		

COMMENTS (IF ANY)

**Original Statement**

The ship owner/operator details are not checked properly by the Charterer before entering into a charter.

The following comments were received from experts disagreeing with the above statement.

1. Checking is not always easy.
2. Depends very much on the quality of broker used.
3. Reputable charterers are very particular and make full enquiries.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

The ship owner/operator details are not checked properly by the Insurance brokers/underwriters before entering into a contract of insurance.

The following comments were received from experts disagreeing with the above statement.

1. The modern market certainly checks owner/operator details.
2. So far as the contract of insurance is concerned I do not consider this necessary.
3. It is the broker who should check details and decide whether to represent the owner/operator who approaches him.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		

COMMENTS (IF ANY)

**Original Statement**

The ship owner/operator details are not checked properly by the Agents/Freight Forwarders before entering into a contract of agency.

The following comments were received from experts disagreeing with the above statement.

1. Most agents are careful about owner/operator status.
2. Responsible Agents/Freight Forwarders make full enquiries.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		

COMMENTS (IF ANY)

**Original Statement**

A few frauds are caused by the secrecy of operations, i.e. all ships fixed for hire are not reported in the press.

The following comments were received from experts disagreeing with the above statement.

1. Secrecy of operations and unreported fixtures are unrelated vis-a-vis fraud.
2. Secrecy is necessary for other reasons, e.g. to protect commercial advantage, to breach sanctions.
3. Secrecy is voluntarily undertaken by both parties.
4. Secrecy is used to protect/assist development of market rates.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

The use of TWO or THREE original Bills of Lading in a set and the delivery of cargo on production of ONLY ONE has facilitated documentary frauds.

The following comments were received from experts disagreeing with the above statement.

1. Possibly in a few cases, but payment/negotiation is normally conducted only against presentation of the full set.
2. True, but should a system be changed because a very few dishonest people abuse it ?
3. Have no personal knowledge that this has facilitated fraud.
4. Disagree. However, the practice is outdated and needs revision.
5. Use of copies is one of the big problems.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

**Payment under documentary credits by the banks without proper checks before payment has led the fraudsters to exploit the system.**

The following comments were received from experts disagreeing with the above statement.

1. Banks make all the checks required of them under the UCP.
2. Lack of checks carried out by the importer is exploited by the fraudster.
3. Documentary credit is drafted with insufficient care.
4. Additional checks by banks would greatly increase the cost of the service to the customer.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		

**COMMENTS (IF ANY)**



**Original Statement**

The simplification of documentation has contributed to the increase in documentary fraud.

The following comments were received from experts disagreeing with the above statement.

1. Simplification is an aid to prevention of fraud.
2. Criminals are becoming more professional and the international trading community are becoming more careless.
3. Simplification should not mean reduction in protective clauses.
4. Requirement for more documentation will not reduce documentary fraud.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

Some documentary frauds would be prevented if the cargo carrying capacity of the vessel was inserted on the Bill of Lading.

The following comments were received from experts disagreeing with the above statement.

1. This is believed to have only a marginal effect.
2. The vessel's carrying capacity can be checked in the Lloyd's Register.
3. In liner trades knowledge of capacity without full details of entire cargo to be carried would be worthless.
4. Fraudsters will then select vessels with the correct capacity to justify the tonnage entered in the Bill of Lading.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		

COMMENTS (IF ANY)

**Original Statement**

**Underwriters should demand surveyors' reports together with certified valuers' reports prior to accepting Hull and Machinery risks.**

The following comments were received from experts disagreeing with the above statement.

1. It would be better for underwriters to appoint their own surveyors and valuers as do certain Scandinavian insurers.
2. Premium calculations contain an element of value assessment.
3. Surveys should only be demanded on ships of unknown management regardless of age, and on ships classed with other than acceptable registers.
4. The insurance contract has sufficient safeguards to deal with any problems that would become evident from these reports.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

If some sort of delay is built into the documentary credit system (perhaps a maximum of 7 days), to allow for checks to be carried out by the bank before payment is made, it will reduce the incidence of fraud.

The following comments were received from experts disagreeing with the above statement.

1. It would increase the pressure for fraudulent dating or issue of documents before goods are loaded.
2. Commerce would come to a standstill and thefts after discharge would increase.
3. The cost to international trade would be enormous.
4. Not practical and banks have refused to do this.
5. Checks should be made earlier than lodging of documentary credit or quicker, e.g. by using computerised data bases.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		

COMMENTS (IF ANY)

**Original Statement**

The carrying out of the following check, before payment is made under documentary credits, would provide adequate protection against fraud (the cost of these services would be borne by the applicant requesting them at the time of opening the credit; the bank will carry out the checks without incurring any additional liability) :

Check with the Port Authority or Customs that they have a cargo manifest lodged for the said vessel and that the Bills of Lading issued are mentioned in the manifest.

The following comments were received from the experts disagreeing with the above statement.

1. Port Authority requirements are variable. In the U.K. Customs check of Bill of Lading is post shipment.
2. Nice idea but I fear impractical.
3. Manifest is a ship's paper and hence easy to manipulate.
4. Port Authority/Customs may well not have the manifest at the time payment needs to be made.
5. Who will pay Customs and Port Authority for extra staff necessary to answer enquiries ?

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		

COMMENTS (IF ANY)

**Original Statement**

If you feel there are other checks which should also be included (to prevent fraud under documentary credits), please specify below and give the reason for introducing them.

The following additional points were mentioned by the experts :

1. Check beneficiary if the credit exceeds 0.5 million.
2. Banks should check with a "specially set up organisation" whether Bill of Lading is correct and gives a true picture.
3. Check type of vessel, if you cannot check with Port Authority or Customs.
4. Initiate loading surveys on quality and quantity of goods by reputable cargo surveyors.
5. Check that the cargo quantity is as per the Bill of Lading.
6. Check the vessel's route and ports of call by master's declaration.
7. Lodge route or voyage plan with appropriate authority.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		
6		1	2	3		
7		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

**Commercial criminals should not be granted bail.**

The following comments were received from the experts disagreeing with the above statement.

1. Bail could be set very high.
2. Seize all assets and give a court allowance until trial, and withdraw the passport.
3. Bail should generally not be granted.
4. Each case must be judged on its merits.
5. Length of time taken for cases to come to trial will impose severe hardships.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

**When a commercial criminal is convicted on more than one count, the sentences should not run concurrently.**

The following comments were received from the experts disagreeing with the above statement.

1. This would be contrary to the basic principles of justice and an interference with judicial independence.
2. Why should this crime be different from others ?
3. It depends on whether there was more than one episode of criminal behaviour.
4. The maximum sentence available is high enough for a sufficient penalty to be imposed by concurrent sentences.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		

**COMMENTS (IF ANY)**



**Original Statement**

The centralised registry for Bills of Lading would be an effective instrument against documentary fraud in the oil and dry bulk trade but not in the dry cargo trade.

The following comments were received from the experts disagreeing with the above statement.

1. It may be a partial deterrent only, even in oil and dry bulk trades.
2. It is more a trade facilitation measure.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

All types of shipping intermediaries (i.e. ship's agent, freight forwarder, broker) whether acting for the ship or cargo interests should be registered and licenced and should undergo a solvency test every year.

The following comments were received from the experts disagreeing with the above statement.

1. Only if supervised by a recognised international self-regulatory body, e.g. FIATA, FONASBA.
2. All intermediaries should belong to a recognised trade body or association.
3. Cumbersome and expensive.
4. Difficult to justify greater control of this type of intermediary than any other trader.
5. Solvency is difficult to test.
6. This will not prevent fraudsters from finding gullible shippers.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		
6		1	2	3		

**COMMENTS (IF ANY)**

**Original Statement**

All ship's agents and all other agencies concerned with booking space on a vessel should provide indemnity bonds for the due performance of the voyage by the ship or shipping company whose agents they are.

The following comments were received from the experts disagreeing with the above statement.

1. Possible when using chartered ships but not in liner trades.
2. Committing agent to be responsible for master's actions destroys whole principle of agency.
3. Cost would be prohibitive for large firms who represent several shipowners.
4. Impossible, except for liner trades.
5. Exporters who book direct will have to be included.

STATEMENT	AGREE	IF YOU AGREE			DISAGREE	UNABLE TO COMMENT
		CIRCLE DEGREE OF IMPORTANCE				
		N.IMP	IMP	V.IMP		
1		1	2	3		
2		1	2	3		
3		1	2	3		
4		1	2	3		
5		1	2	3		

COMMENTS (IF ANY)

**Original Statement**

**The non-negotiable sea waybill will prevent documentary maritime fraud.**

In view of the comments received from experts disagreeing with the above statement it has been changed to:

The non-negotiable sea waybill will materially assist in the prevention of documentary maritime fraud.

AGREE

DISAGREE

UNABLE TO COMMENT

**COMMENTS (IF ANY)**

**A P P E N D I X - 7**

11  
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P07411 KAPOOR P DATE 20:08:84 TIME 13:57:23

Copy of an Electronic Bill of Lading in Plain Language

