

# Maritime Fraud and International Maritime Law

Dusan Vrus

MASTER MARINER

INSTITUTE OF TRANSPORTATION AND COMMUNICATION, UNIVERSITY OF ZAGREB

## Introduction

Maritime fraud appears to be a constant companion of seaborne trade since the dawn of civilization. This ever present phenomenon has not been spoken much or written about until recent times. For many years, maritime fraud was considered to be an aberration of the system rather than a real threat to trade and its participants.

Due to bad publicity which fraud, especially the maritime one, often brings to the injured party, it appearance tends to remain hidden behind proud shipowners, merchants and insurers.

During the last 20 years however, the frequency of maritime fraud cases has increased dramatically, and so has, within the industry, the general awareness of the problem. However, only a few monographs have been written about this subject. Most of the authors touched the problem in an accessory way, by writing about related subjects, such as the carriage of goods, marine insurance, bills of lading, collecting evidence, delivery of cargoes, P & I Clubs, etc.

A lot of statistics is available, but the main source of information, the marine insurers, remain silent. Such reluctance is easy to understand, because maritime fraud is an integral part of risk and risk is the insurers' business.

At international conferences, seminars, workshops and within government and non government organizations, within the U.N. and others, many discussions were held, as how to deal with this problem. A great many studies about the modalities of international seaborne trade, including all its aspects, have been carried out, in order to get a basis for the deliberations of a number of expert working groups, within IMB, ICC, etc., as well as political meetings, within the framework of UNCTAD, IMO and others.

Several years of deliberations brought to the following consensus : - the present systems of international seaborne trade and of the international carriage of goods, are well established and well accepted throughout the world,

- although the system is not perfect, it has been working for many years successfully,
- developing countries, their citizens and enterprises, are very often victims of maritime fraud; consequently, they want a new world trade system with safeguards against frauds,
- developing countries should learn to adapt themselves to the system, instead of trying to change it,

*La frode in campo marittimo, nonostante esista dalla nascita del commercio marittimo, è stata sempre occultata. Solo negli ultimi anni, in seguito alla drammatica crescita di tale fenomeno si è diffusa una coscienza generale nei confronti di tale problema. L'articolo esamina alcuni recenti Atti Internazionali (Minimum Standards for Shipping Agents, United Nations Convention on Conditions for Registration of Ships, International Convention on Maritime Liens and Mortgages) che hanno avuto un impatto positivo sul fenomeno delle frodi marittime, evidenziando come la sua prevenzione richieda, essenzialmente, la libera circolazione delle informazioni ed una cooperazione internazionale dei corpi di polizia e dei sistemi giudiziari.*

- it would be difficult, i not outright impossible, to change the system or some parts of it, without worldwide negative repercussions.

Thus became clear that due diligence is an indispensable element required in the process of discharging professional and commercial duties and that it cannot be replaced by promoting new international acts.

The prevention of maritime fraud essentially requires a free flow of information available to everybody concerned and an international cooperation of the police forces and of the judiciary, ones which are also very much needed. Such develop-

ments would be helpful to the injured parties and to the newcomers in the business preventing them to become fraud victims.

Some of the recent international acts are expected to have, although indirectly, a positive impact on the overall frequency of maritime fraud. And this is what the paper is aiming at.

## Maritime fraud - insufficient international regulations

### 1. The most common types of maritime fraud

Maritime fraud, present since ancient times, is recorded for the first time in cuneiform texts of Mesopotamia. In Roman times, Livy, the historian, (while writing one of his 35 books out of 142 of which 107 are lost), recorded facts which took place in the year 215 B.C., during the Punic wars. He mentions : false reports about ship's grounding which never happened; old and rotten ships carrying small quantities of worthless cargoes, being sunk, while the crew, saved by boats prepared in advance, was telling lies about a great quantity of cargo lost. It sounds very modern and supports the thesis that little, almost nothing, has changed since then.

In our present times, we can define maritime fraud as follows: "Maritime fraud occurs when one of the parties of an international trade transaction - buyer, seller, shipowner, charterers, ship's master or crew, insurer, broker, banker or agent, succeed, unjustly and illegally, in obtaining money or goods from another to party to whom, on the face of it, he has undertaken specific trade, transport and financial obligations. In some cases, several of the parties act in collusion to defraud another." (ICC Publ.370, p.3)

Maritime fraud can be divided into the following categories: