THE FOUR PILLARS OF INTERNATIONAL MARITIME LAW AND BILLS OF LADING

*A.K. Bansal**

CARDINAL PRINCIPLE of international law, including international maritime law, is the principle of sovereignty of nations. This principle has been rarely violated unless one country subjugates another, with or without justification. Domination by the British Crown on an Empire on which the 'Sun never set' is one example. Hitler's invasions in Europe were another. Invasion of Iraq by USA is the most recent example.

Articles 2 and 3 of United Nations Convention on Law of the Sea 1982, (UNCLOS), have added sea areas up to 12 nautical miles from coastal base lines, called territorial waters, into the sovereignty of coastal states. It also stipulates that ships in territorial waters of a coastal state are also subject to its laws. Sea areas outside the territorial waters are international waters.

Articles 17, 18 and 19 of the convention limit this sovereignty in territorial waters of a coastal state and provide that ships of all states enjoy the right of innocent passage through this strip of coastal waters, and define the meaning of innocent passage. In essence, it means that such ships should not prejudice peace, good order or security of the coastal state during this passage, regardless of flag of the ship and nationality of her crew. UNCLOS makes it optional on coastal states, to exercise their criminal jurisdiction within their territorial waters.

This mainly depends upon whether a crime committed within their territorial waters, disturbs the peace and good order of the coastal state or its territorial sea. Most countries have such jurisdiction if a victim or the suspected offender is a citizen of that state. Japan has now amended their penal code in light of the Tajima incident to extend its criminal jurisdiction in cases where the victim is a Japanese national, even if non-Japanese suspects, on the high seas on a foreign-flag vessel, commit the crime.

---

* LL.B. (Hons), University College, University of London. Of Lincoln's Inn London, Barrister at Law. Former Senior Executive and Deptt. Head in South India Shipping Corporation; member of the Indian Delegation to IMCO Conference on International Regulations for Prevention of Collision at Sea. Currently he teaches International Maritime Law in Chennai to master mariners under STCW Convention.

How strictly law of jurisdiction within territorial waters of a country, can be applied if they choose to do so, can be demonstrated by the following case.

As Seafarers do, in their spare time all over the world, especially since it does no harm, a seaman threw a fishing line over side, from the stern rail of his foreign flagship. The ship was anchored, waiting to enter a US harbor. But to fish in US waters requires a license. So, the US coast guard promptly boarded the ship and arrested not only the seaman because he was fishing contrary to US law, but also the master because he personified the ship that contravened US law.

In another incident, 2nd officer of a foreign flag vessel got down from his ship onto the quay, just after she berthed in Kuwait, to read the ship's draft. He was shot dead by the policeman on duty, because the ship had not yet been cleared by immigration. The policeman claimed it a right to shoot any foreigner dead who stepped on Kuwaiti soil without permission.

These cases are the ugly side of sovereignty of nations. It was worse in Roman times when no one in Rome except a Roman citizen had any legal right at all. Hence the proverb while in Rome do as Romans do. Otherwise this is a cogent concept for man and society. It stipulates that rules and laws accepted by any society are sacrosanct even to strangers to that society.

Under article 33 of UNCLOS, coastal state has limited rights in sea areas up to 24 miles from coastal base lines, known as contiguous zone. Under article 57 and other provisions in part V of UNCLOS, coastal state has exclusive rights to riches of the seas up to 200 miles from coastal base lines, which include riches of the seabed. This is known as exclusive economic zone. Yet sea areas outside the 12-mile limit of territorial waters are international waters for most other purposes. It should be noted that UNCLOS is a convention passed directly by 149 member nations of UNO. Yet after it was passed, both UK and USA did not ratify it, even though they participated in the discussion. This is mainly because it gives right to each nation to exclusively exploit their coastal sea beds up to 200 miles. This inhibits free enterprise from UK and USA in coastal waters of other countries, which they were doing with impunity. Yet they abide by most UNCLOS provisions, which suit them. UK has since, ratified it, but USA has still not done so.

From time immemorial, it has been accepted that high seas belong to no one but to the entire human race. Thus all six thousand million humans on this earth, have freedom of the high seas, subject only to laws of their own nationality.

This is the second pillar of international maritime law and is usually exerted by most nations and individuals as an inherent right. It is under this principle that ships of all nationalities are able to carry goods from

country to country, without let or hindrance. But this right of freedom of the high seas is subject to law of nationality. For example, in about 1500 A.D the Chinese Emperor Hong Zhi made it a capital offence for any of his subjects to sail the high seas. Subsequently, he even ordered all seagoing ships to be destroyed. It was due to this reason that the immense Chinese sea power of earlier years, under Admiral Cheng Ho, was wiped out. It has taken China, five centuries to regain it

This principle is now incorporated in various articles in part VII of UNCLOS. But under the old adage, "Might is always right," a nation may block the high seas to fellow man or to another nation, at will by might of arms. President Kennedy laid a blockade against the approach of Russian ships to Cuba in October 1962, against all cannons of international law, as it affected right of freedom of the high seas to Russian ships not to talk of Cuba's sovereign rights. But neither the Russians nor the Cubans could afford to fight the Americans and rest of the world remained silent. Great Britain did much worse during the days when Britain ruled the waves. But they got away with it till Hitler came on the scene.

Freedom of the high seas was also interpreted by the human race to mean that they had freedom to throw human waste into the seas as their birthright.

Thus sewerage and other rubbish has been thrown into the seas from coastal habitations and ships for centuries. In fifty years from 1948, world shipping increased from 98 million tons to 550 million tons by 1998. Therefore pollutants from ships, such as sewerage, garbage, oil tank washings, bilges etc., have multiplied, not forgetting human waste from coastal habitations, which has also multiplied due to increase in population all round. This is affecting earth's environment and ecology.

Apart from such pollutants created by humans, merchant ships are carrying estimated 10 billion tons of salt water every year from one environment to another, thousands of miles apart. It transports live microorganisms with it, which easily pass through the water pipes of ships. When pumped out, live alien species are injected into a different environment miles away from their natural habitat. This causes a lot of harm to local fisheries etc., and also affects local environment and ecology. Therefore, it has become necessary to curb this freedom of the high seas and to regulate transport of large quantities of salt-water ballast, across oceans.

Under article 92 of UNCLOS, all ships on the high seas, *i.e*. outside territorial waters of another country, are subject to exclusive jurisdiction of the flag state. Therefore, ballast water control and conventions such as Marpol, to curb intentional pollution of the high seas, can only be enforced through flag states. But flag states, especially flags of convenience states, neither the infrastructure nor the will to do anything

to control their flag vessels, from polluting the high seas.

To lay the onus directly on ships and ship owners, Bimco, Intercargo, International Chamber of Shipping, International Shipping Federation, Intertanko and the Oil Companies International Marine Forum, have jointly issued basic guidance concerning the use of oily water separators. These guidelines emphasize the vital importance of strict adherence to International Maritime Organization (IMO) requirements. They are committed to a zero-tolerance approach to any non-compliance with the IMO MARPOL Convention and add that no one should engage in any illegal conduct in the mistaken belief that it will benefit their employer.

Severe legal consequences have been outlined, both for the company and the seafarers themselves, of even minor non-compliance with environmental rules. Ship operators have ultimate responsibility to establish a compliance culture within their companies. Even the most minor violations of MARPOL will be detected by the authorities. Large fines, equivalent to literally millions of dollars, can be imposed, both on company management and seafarers. They can also be liable to criminal prosecution and imprisonment for any deliberate violation of MARPOL or falsification of records.

In 2004, the 'Loi Perben' came into force in France. It extends the concept of individual criminal liability for causing pollution beyond the master to owners, managers and others. Ships are being intercepted under this Act on suspicion of pollution and brought into French ports to face fines and jail sentences even on questionable evidence.

Since March 2004, under ship source pollution laws in France, foreign masters convicted of even unintentional pollution face up to 7 years in jail. They are also open to fine up to Euro 700,000 ($880,000) or four times the value of the cargo on board.

This apart, such laws of the US as OPA 90, Clean Waters Act (CWA) APPS etc., are being strictly enforced by the US authorities on world shipping in more ways than one. US authorities have also found ways and means to enforce antipollution rules in recent years on ships of all flags bound for the US. This includes polluting the high seas, miles away from their own coasts, over which they would normally have no jurisdiction under international law.

Under their APPS, the US coast guard, assume power to inspect log books and other records of ships. Even though it is doubtful if they have such powers under the Act. To initially detect if a ship has thrown pollutants into the ocean, they use informers from amongst the ship's crew.

If they find that the ship has thrown pollutants into the sea and log books have been falsified to comply with MARPOL, they charge the ship and seafarers who made such entries, under Federal False Statements

Act. (FSA), alleging that intentional entries of false data in oil record books to conceal illegal discharges, prohibited under MARPOL and APPS constitute false statements to the US Govt. Informers are rewarded with half the fine imposed on those convicted. Maximum reward of $ 2.1 million out of a total fine of $ 4.2 million was paid to a third engineer, who acted as whistle blower against his ship.

Thus, the attendant's false statement in oil record books gives the US coast guard, jurisdiction indirectly. In recent years over $ 50 million have been imposed as fines this way.

The third pillar on which international maritime law stands is the law of freedom of contract. Whether it is under a charter party (C/P) or a bill of lading (B/L), international maritime trade is carried out on the basis of freedom of contract. For example if a charterer in one country, charters a foreign flag ship, to carry cargo from a third country to a fourth country, all these parties are able to do so only and so far as they have freedom to enter into such contracts under laws of their own nationalities. Another example is that a foreign national may contract to serve, say on a Panama flag ship owned by Greek owners time chartered to British charterers, to ply between Australia and Japan, all because of freedom of contract. But they are able to do so, subject to the laws which restrict or prohibit their own actions as nationals of their respective countries and subject to the law of the flag of the ship.

Traders are able to enter into contracts with other nationals subject to their national laws and laws of countries of origin and destination of cargoes. For example, during the Arab boycott of South Africa under their apartheid regime, no Arab country could contract with South Africa to supply oil to that country. Again for many years, India had no relationship with Portugal and no Indian could enter into a contract to trade with any Portuguese.

Fourth pillar of international maritime law is that a ship has a legal personality of her own in addition to being property of the owner. Article 91 of UNCLOS authorizes every state to fix conditions for registration and grant of nationality to every marine craft they recognize as a ship and to give to such ships, the right to nationality and to fly its flag. This gives to that ship, a legal personality. Under this principle, if a ship receives an essential service, the service provider gets a right to exact payment from the ship herself, if owner fails to pay. She can do wrong. Damage caused by her to third parties through collision is a typical example of her own wrongdoing for which she is liable. Seafarers serving on board a ship also earn a maritime lien against the ship for services rendered. She can be arrested and even sold, to pay her debts. Under this principle, a ship's liability to third parties could not exceed the value of the ship herself.

This concept of legal personality of a ship derives its strength from the other three pillars of international maritime law described earlier. It is this fourth pillar that is the mainstay of international trade and commerce, to cater to which, goods are carried from country to country. Under this same principle, a ship also has rights. She carries cargoes from A to B in her own right and has the right to receive freight. When she receives cargo on board, she acknowledges receipt, with essential details of what and how much was loaded, in what condition, at which port for which destination. This receipt known as B/L also contains terms and conditions under which cargo is carried by her and is to be delivered. If freight is not paid the B/L is marked 'Freight to Pay,' receiver has to pay freight before he can take delivery, otherwise she has the right to hold the cargo, till freight is paid. Shipper used to mail this receipt to buyer abroad to enable him to take delivery of the goods at destination. Due to postal uncertainties, practice developed to issue three originals which shipper sent to consignee by three different mails. Any one having been honored, the other two automatically became null and void. In time this document has not only become a contract of carriage with essential terms and conditions of carriage of goods endorsed on it but has also become a negotiable instrument and a document of title. Holder has a right to the goods and is also the owner. But since a ship has no eyes, ears, hands or brain, master personifies her. His order may make her liable for damage caused by a collision. His signature on a B/L acknowledges receipt of cargo on board by her. His receipt for supply of bunker oil or essential stores or essential repairs to the ship, makes the ship liable to pay, if owner fails to pay.

As maritime traffic became more sophisticated and steam ship sailings more regular, ship owners employed clever lawyers who drafted clauses absolving owners from all and every liability for carriage of goods by sea. These clauses were printed on the back of their B/L as part of the contract of carriage. This left shippers little remedy even if their cargo was never delivered. Hence Hague Rules 1924 applicable to most B/Ls giving considerable relief to shippers came into existence.

A protocol was adopted in 1968 at Visby, to make certain amendments. The new rules are called Hague Visby Rules. Many maritime nations including UK and India have enacted laws, which incorporate Hague Rules 1924 and Hague Visby Rules 1968. Freedom to stipulate terms and conditions of carriage is subject to these rules which are widely known and used by merchants and mariners alike. Under theses rules, ship owner must exercise due diligence to make his ship seaworthy before and at beginning of the voyage. The carrier must 'properly and carefully load, handle, carry, keep, care for and discharge' the goods throughout the voyage, to be entitled to take protection under

the seventeen exceptions to liability under Hague Visby rules, which protect ship owners for damage caused to goods through 'Perils of the seas".

In essence it means that if unavoidable damage is caused to the goods, through marine perils, ship and/or owners are not liable. Today, most Carriage of Goods by Sea Acts of various countries require master to issue a B/L "On Demand" and require names of shipper and consignee, date on which goods were shipped, names of load and discharge ports and contracted terms and conditions of carriage, to be endorsed on the B/L, together with reference number, vessel's name, description, number and leading marks of packages for identification.

In liner trades, matter of issuing B/L's is invariably left to trusted well established agency houses with a letter from master authorizing agents to sign B/L's on behalf of the ship. But legal character of a B/L remains an evidence of contract between the ship and shipper and a receipt by the ship signed by the master or agent, on her behalf.

B/L signed by or under authority of master means more today for bankers in international trade and commerce, who issue letter of credit (L/C), for which a B/L is usually essential. Under this documentary credit system bankers, shippers & purchasers, make commercial payments to unknown exporters in foreign countries. Depending upon terms of the L/C, this makes a B/L, not only a receipt for goods described on it, but also a negotiable instrument. Goods can be bought or sold by buying a negotiable B/L. Holder endorses it to a buyer for value received. Billions of dollars worth of letter of credits are issued and honored by bankers world wide, based on count and description of goods as per B/L evidencing quantity of goods shipped in apparent good order and condition. This way, goods can be traded while still on the high seas unless B/L is non negotiable, *i.e* not "To Order."

B/L is usually transacted first through the exporter's bank in his country and finally, through the importers bank in the country of destination. When original B/L reaches the importer's bank, which usually establishes the L/C, it pays to exporter's bank, debits the importer and delivers the B/L to him.

Under this system, if importer receives the goods without producing B/L to the shipping company, he gets the goods for free. But in practice if there is delay to receive B/Ls through banks, importer normally furnishes a bank guarantee to obtain delivery of the goods without the B/L

In an important decision on this point, Supreme Court of Finland held that where an agent delivered the goods without taking possession of the original B/L, he is liable for damages suffered by the exporter who did not get paid by the buyer's bank for the goods he shipped, because B/L never came into the hands of the buyer's bank which

established the L/C, they could not bill the importer and therefore could not pay to exporter's bank.

Again, in a *Maersk line* case,[1] a container was delivered at destination against production of a fraudulent B/L. A British court held against ship owners and ruled that B/L is the key to the goods as it represents and secures legal title to goods and to their physical possession. Only very clear words would exempt a ship owner from his liability to deliver goods except against a genuine original B/L, which owner should be able to recognize.

Lord Denning's observations[2] in this respect are most appropriate when he said "It is a perfectly clear law that a ship owner who delivers without production of the B/L does so at his peril. The contract is to deliver, on production of a B/L, to the person entitled under the B/L." He further added "The shipping company…delivered the goods, without production of the B/L, to a person who was not entitled to receive them."… "No court can allow so fundamental a breach to pass unnoticed under the cloak of a general exemption clause"

B/L performs functions, which a C/P cannot. For example, a C/P cannot certify quantity and condition of goods shipped. A B/L does. It also binds the carrier to deliver the goods to its holder, who may not be the charterer, "in same good order and condition". Therefore where C/P exists, a B/L may be an essential document. But a B/L can exist without a C/P.

The concept of B/L being a negotiable instrument and document of title has also given rise to frauds from time to time catching masters unaware.M.V. Lord Byron, a Greek vessel about 8200 DWT, sub chartered to carry a load of sugar, was kept idle in Bangkok for 13 days on the pretext of waiting for cargo, to make out a case that she took 13 days to load 10000 tons sugar. During this time charterer's agent invited master ashore many times, and entertained him lavishly with every facility, courtesy and hospitality. Suddenly, on a Saturday afternoon, 6874 bags of sugar were loaded from few barges against 6874 tons nominated by master. At 0400 Sunday, the same charterer's agent who had entertained the master lavishly, told him to sail as charterers had already lost a lot of money by detaining the ship waiting for cargo.

He assured the master that demurrage and dead freight will be paid, but that since neither B/L could be signed, nor manifest prepared that early on a Sunday, all these would be forwarded to master at port of discharge. Master fell for it and gave written authority to charterer's agents to sign B/L. L/C for $ 5.9 million was negotiated in the bank early Monday morning, by submitting B/Ls under master's written

1. [2004] EWHC 2929 (Comm) 15 December 2004.
2. *Sze Hai Tong Bank* v. *Rambler Cycles Co* (1959) 3 All ER 182.

authority.

Since shipment was meant for the Somali Government, local authorities detained ship because she should have brought 10000 tons (not just 6874 bags) of sugar, for which Somali Government had paid US$ 5.9 million under their L/C. Master explained that a vessel of 8200 DWT, cannot carry 10000 tons of sugar. He further explained that he had nominated 6874 tons but loaded only 6874 bags, but failed to convince Somali authorities that he had not participated in a fraud against Somali people.

In this day and age of containerization when cargo moves from door to door, *i.e* from a factory in one country, to importer's door in a different country, involving different modes of transportation in which, sea transit may be one.

There have been many modifications to the law pertaining to carriage of goods by sea. But basic concept of the ship's personality and carrying of cargo in her own right as a legal person remains.

More recently, a set of new rules, the Hamburg Rules was framed by a Convention on Carriage of Goods by Sea. These rules made some fundamental changes to the form of B/L, and to some details, as also to laws applicable to B/Ls. This convention has also defined a B/L in so many words, for the first time ever:

> A document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document.

Hague-Visby Rules do not apply to inward shipments. Hamburg Rules apply to all contracts of carriage by sea, whether in writing or not, without regard to ship's flag, provided port of loading or discharge is located in a contracting state or if contract of carriage is issued in a contracting state or the contract provides that this convention is to govern. This includes the carrier, actual carrier, shipper and consignee. 'Carrier' includes any person by whom or in whose name a contract of carriage of goods by sea has been concluded. Actual carrier has been defined in article 1(2), which includes truckers, stevedores and terminal agents. Article 10 holds the ocean carrier responsible for acts of the actual carrier. Liability of carrier and actual carrier has been made joint and several. But a single limit of liability applies. Shipper holds that party responsible in whose name B/L was issued. A merchant can include a clause in his contract that Hamburg rules will apply, regardless of whether his country has ratified this convention or not.

Under Hague Visby rules, carrier is responsible from 'Tackle to Tackle'. Article 4 of Hamburg rules extend responsibility from the time carrier 'takes over' the goods even on a truck at factory door, to point

of delivery. Now carrier is liable for delay in delivery. Consignee can treat the goods as lost if they are not delivered within 60 days after expected time of delivery.

Exceptions covering negligence in navigation and in management of the ship, have been abolished. Deck cargo shipped in agreement with shipper is covered. To issue three original B/Ls has been made optional. Thus these rules have negated many traditional protections to ship owners against genuine claims of shippers and consignees. But Hamburg rules have neither received ratifications necessary for their entry into force, nor adopted by any state with a major share of sea borne world trade. Therefore the 1968 Hague-Visby rules are still widely used.

When C/P requires that master is to sign B/Ls as presented, it does not mean that master cannot endorse actual condition and/or quantity of cargo loaded on board. Bonafide buyer of a B/L is entitled to rely on accurate count and description of the goods as endorsed on it. Sometimes shippers try to persuade the master not to make such endorsements.

They either confront him with the above-cited clause or alternatively offer him a letter of indemnity in exchange of a clean B/L. If master falls prey to such persuasions, he participates in a fraud against ultimate buyers of the B/L by not correctly describing condition and/or quantity of the goods loaded on board. Also an indemnity letter of a foreign shipper is not enforceable against a consignee/receiver in another country.

In 2002, the English Commercial Court[3] defined the nature of master's duty to issue and clause B/L and circumstances under which he is entitled to decline to sign clean B/L. Specifications of goods to be loaded on "David Agmashenebeli" were urea in bulk, white color, free flowing, free from contamination etc.

C/P terms were, "Master to sign B/L as presented, in conformity with Mate's or Tally Clerk's receipts". Documents to be presented under letter of credit were a full set of clean on board B/Ls and a certificate of quality to be issued by independent inspector. It was also provided that, "no damaged cargo to be loaded into the holds." Master had the right to stop loading.

Within three hours after loading commenced, master informed all parties, that cargo contained rust, plastics and other contaminants, and was of a dirty color, and sent a letter of protest. Mates receipt issued was endorsed, "Cargo discolored also foreign materials e.g. plastic, rust, rubber, stone, black particles found in cargo." B/L was endorsed accordingly.

Banks refused to honor L/C under the claused B/L. An inspection report on completion of discharge concluded that cargo was in normal

3. David Agmashenebeli [2003] 1 Lloyd's Rep. 92[2003] 1 Lloyd's Rep. 92 per Colman J.

condition, free flowing and white in color and found "no evidence of foreign materials such as plastic, rubber and stone as mentioned in Master's remarks on the B/L".

Ship owners contended in courts that what mattered was not actual apparent order and condition but what an ordinary, reasonably skilled master, honestly believed to be 'apparent order and condition'. Claimants argued that as a responsible and reasonable ship's officer, he has to decide whether or not to clause the B/L. Master could only sign B/L that accurately stated the apparent order and condition of the goods. It was held that master should make up his mind whether in so far as he could see, the cargo appeared to satisfy description of its apparent order and condition in B/L.

If he honestly believed that cargo was not in apparent good order and condition and that was a view which could properly be held by a reasonably observant master, he was entitled to qualify the B/L. But if he honestly took an eccentric view of the apparent condition of the cargo, which would not be shared by any other reasonably observant master, he would not be justified in qualifying the B/L. On evidence, the level of contamination in the cargo prior to loading was slight.

Master was entitled to clause the mate's receipt to refer to the fact that a small proportion of the cargo was discolored. But he was not entitled to use words which conveyed the meaning that the whole or a substantial part of the cargo was thus affected. Since the urea was not entirely white in color, master should have referred to partial discoloration.

In *Sea Success Maritime Inc* v *African Maritime Carriers Ltd*.,[4] master was authorized to reject any cargo that is "subject to clausing of B/L's." Cargo of hot rolled steel coils was tendered for shipment in a damaged condition. Master refused to permit it to be loaded. Survey report stated that the hot rolled steel coils had been kept in an open store, subject to adverse weather conditions. Cargo was rusty, with a percentage of it suffering from dents and buckles. Arbitrators held that on true construction of clause 52, master was entitled and obliged to reject cargo presented for shipment. It was held on appeal in the QBD by Aikens J on 15.7.2005, that under specific provisions of T/C, Master was obliged to sign B/L "as presented". But if he inaccurately described the cargo as being in "good" or "apparent good" condition, it would make a misrepresentation of fact. If on examining the cargo, master took the view that he would have to qualify the B/L, either charterers/ shippers had to agree to change the description of cargo in the draft B/

4. *Sea Success Maritime Inc* v *African Maritime Carriers Ltd*. 2005 EWHC 1542 (Comm); [2005] 2 Lloyd's Rep. 692.

L, or Master had to qualify, or "clause" B/L, as to its apparent good order and condition, assessed by him.

If shippers insisted on their description and master reasonably concluded that it was not correct, he had the right and duty to reject the cargo leaving shippers with a choice to take back their cargo.

Conclusion

Master is rarely called upon to sign B/Ls these days. But they are usually signed under his authority. Also, B/Ls are signed miles away from the ship. When C/P stipulates that Master is to sign B/L as presented, it does not mean that he is required to sign them clean even when cargo is damaged or if quantity of cargo is not what is stated on the face of the B/L.

L/C may require cargo to be shipped before a certain date and may not remain valid if cargo is not loaded before that date. Master never sees the L/C and would not know this. But B/L must be dated in accordance with the date cargo was shipped, otherwise it is a fraud against ultimate holder of B/L and a letter of indemnity does not alter the nature of such a fraud. If master signs an authority letter in favor of agents, he must stipulate date of the B/L both in figures and words so that it cannot be altered. B/L being a document of title, unless master has clear instructions from owners, he must not lose possession of cargo unless B/L is produced. Even though a straight B/L cannot be endorsed to transfer constructive possession of goods to someone else, a carrier is still obliged to deliver, only against an original B/L, but to the named consignee. When B/L is produced and cargo delivered, it must be endorsed 'accomplished' to avoid subsequent frauds.

Under UNCLOS 1982, ships come under laws of the country where they are. Freight prepaid B/L's do not usually pose problems in foreign countries.

But 'Freight collect' or 'freight to pay' B/L's are usually a problem if receiver does not pay before discharge of cargo. Even though master has lien on cargo for unpaid freight, local laws may intervene in exercising such lien in a foreign country. Also it may be impractical or very expensive to exercise lien and the ship may be delayed. There can be other issues pertaining to cargo and B/L's in a foreign country especially under local laws.

Finally for over 200 years since the modern University system began, there has been an ongoing debate amongst academics whether there is anything such as international law or for that matter international maritime law, at all? Those who say yes, claim that most prevailing rules and traditions are normally followed by most countries world wide, and that therefore the core of international law in general and

international maritime law in particular, cannot be ignored or disputed.

Those against, say that if any country in the world can violate the rules and traditions of international law or international maritime law with impunity, through might and at will, they have no force and no sanctity. Therefore international law or international maritime law, is the law of the jungle. Thus the debate continues. Fact is that from century to century and from year to year, to protect and advance their own interests, in accordance with requirements of trade and commerce, the international commercial and trading communities, have generally and continually engineered to amend rules of private international law to suit exigencies of their times.

And most countries of the world usually enforce such rules, within their sovereign territories, in the interest of their own international interactions and for the sake of prosperity which comes in the wake of international trade, and commerce.

There is an old proverb

Good commercial practices promote bad laws.
Good laws promote bad commercial practices.