



BIMCO

BULLETIN

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4

Shipping KPIs

- Under the BIMCO banner
- Today and in the future

NYPE – major revision launched

**ROPAXTIME – new niche contract
for the RoRo sector**



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HAMBURG 18 NOVEMBER 2015



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W A T C

"Piracy" – it comes in many forms

What does the word "piracy" conjure up in the minds of those whose livelihoods have nothing to do with shipping?

Children of tender years will think of the "pirate parties" they attend and the cartoon character Captain Pugwash and his antics afloat. Rather older folk may guiltily recall the "pirated" music downloads and other entertainment which they have obtained at no cost to themselves.

Few will even think of the heartache and costs associated with the curse of modern piracy afloat, with its violence and hostage taking, along with the maritime security industry which has grown to counter this menace. Seafarers, on the other hand, have very real knowledge of what piracy means to them, with its demands for increased security, ships wreathed in razor wire when crossing pirate-infested waters and the need for the specialised defences of security guards.

BIMCO has been at the forefront of regularising the maritime security sector, which involves much more than placing armed guards on ships transiting hazardous waters. Assurances, questions of liability, proper terms and conditions, and issues of rights and responsibilities are all dealt with by the GUARDCON contract, which has become an industry "gold standard" in the relationship between ship operators and private maritime security companies (PMSCs).

So it might appear something of an irony that any PMSC, whose business is keeping ships safe from pirates, would indulge in some documentary piracy of its own, by passing off its own home-made contracts under the GUARDCON brand name. Nevertheless reports have reached BIMCO that a number of PMSCs are doing just this, ignoring the fact that GUARDCON is a BIMCO copyright, of which they are, in this deception, in breach.

GUARDCON is available to the industry only through the secure BIMCO online editing system IDEA•2, and any contract obtained from this source comes with an assurance of authenticity as an established and reliable document devised by the systems of the organisation, which is renowned for its fairness and balance.

A "home-made" contract, purporting to be a genuine BIMCO document, will not be accompanied by any of the certainties enjoyed by the GUARDCON contract. It may, by contrast, expose the shipowner to all sorts of liabilities and other problems that may not be immediately obvious to the unsuspecting user.

"Check before fixing" – that crucial advice, which is as old as BIMCO itself, is just as valid today as it always was. Owners are advised to verify with the BIMCO Secretariat the derivation of any GUARDCON contract with which they may be presented, to establish that it has been sourced and printed from the online editing system and is the authentic article, which carries with it both certainty and reliability.

A "home-made" GUARDCON, it might be suggested, is a form of fraud and undermines the efforts which have gone into the production of the contract and its establishment in the shipping and maritime security sectors. A PMSC advertising that its contracts carry this imprimatur, when it is not entitled to this claim, is also committing a fraud and is clearly attempting to persuade clients of a respectability that may well be illusory.

And although it may be said that "imitation is the sincerest form of flattery", the users of these false documents are depriving BIMCO of revenue to which the organisation is entitled and are taking many practical risks and exposing themselves to liabilities. The fact that the organisation has become aware of an increasing use of unauthorised GUARDCON contracts would suggest that such dishonesty is not a matter of a few isolated incidents. It is arguably not that different from those passing off fake goods as genuine and branded items, attracting the attention of those responsible for standards, or professionals lying about their qualifications and expertise.

One might speculate that the fact that websites are full of security organisations claiming things to which they are not entitled is a function of over-capacity in the maritime security sector. Fewer pirate attacks in the Gulf of Aden and

Indian Ocean may have reduced the demand for their services, while the tendency to cost cutting is as prevalent in the security sector as in any other, encouraging the unjustified claims by companies desperate for business.

Perhaps the tendency to cheat is itself a function of the hard times in so many divisions of the shipping industry, where a desperate minority will be encouraged to take short cuts, look for

“If PMSCs are willing to use counterfeit GUARDCONs, what else are they cutting corners on? The requirements regarding the correct ownership and licensing of weapons, and properly qualified guards, must be stringently applied. Here at BIMCO we encourage all our members to conduct thorough due diligence whenever engaging with PMSCs.”

—Phil Tinsley, BIMCO Security Team

regulatory loopholes and generally “sail close to the wind”. Pilots, port state control inspectors and accident investigators have, for instance, noted the growing number of “home-made” and pirated electronic charts that they see on ships’ systems.

Sometimes they are grossly outdated, sometimes they are simply inaccurate, but their users, it is pointed out, are “playing with fire” in the risks they are taking with their ships and the liabilities they may face. Pilots have boarded ships and found them steaming towards rocks or being guided by a dubious second-hand pirated electronic chart that would have seen them completely miss the dredged channel. It has been reported that masters have been found using manufacturers’ demonstration charts on their laptops, in preference to the proper sources.

Underwriters have warned about the growing use of questionable spare parts in machinery of increasing complexity, at best voiding warranties and at worst damaging main engines, auxiliaries and other ship’s machinery. There have been numerous cases where spare parts have been of inadequate quality or “said to be refurb-

ished”, but upon investigation displaying no signs of such refurbishment. And although it might be argued that machinery manufacturers may not help themselves by over-pricing authentic spares, driving hard-pressed operators to source cheaper alternatives, there is an ethical dimension which should not be forgotten.

This situation perhaps reached its most ridiculous extreme with the delivery of some supposedly brand-new ships which, upon examination, were found to have a considerable quantity of “used” or second-hand components in them. Classification societies were unclear about the legality of this practice, which saw “new” ships operating with well-used main machinery, generators and pumps, navigation equipment and even safety gear that clearly had been “pre-owned”. There was a report of a “brand new” newbuilt product tanker which, when inspected, was revealed to have the whole accommodation block, complete with furniture, carpets and curtains, “transplanted” from some unknown, older ship! In shipping, just as in life, there is no such thing as a “free” lunch, and amazing bargains, whether these are well-used spares or “pirated” GUARDCON contracts, should be avoided. ■

Here come the drones

They are a lot cheaper than choppers, can stay in the air for hours and can be a useful “eye in the sky” for offshore surveillance or other security duties. It has been suggested that they can be fitted with instrumentation to sample the emissions from ships’ exhausts, and certain ship repairers have used them to fly around the huge expanses of a bulker’s internals to check for damage, taking a tiny camera into corners where tons of scaffolding would be the only alternative. Drones seem likely to make an impact upon all our lives in the not-too-distant future.

The military is increasingly enthused about their use, and they have been seen in action flying unmanned inspection patrols over suspected pirate craft in the Indian Ocean, checking up for that giveaway sign of a boarding ladder and any visible weapons. A small drone can be flown from a patrol craft too small for a helicopter deck and can survey suspects fast and efficiently. Some police forces are known to be experimenting with them for crime fighting, despite worries about civil liberties and the eyes becoming spies in the sky. Online retailers hope to use them to deliver parcels with great speed and regardless of traffic problems, although there are clearly worries about low-level con-

gestion and the need for traffic control.

They are becoming the “must have” present for many, being quite easy to control and increasingly affordable, causing palpitations among regulators concerned with aviation safety, with laws designed before drones had been ever conceived. Privacy may become

a real concern once the drones are buzzing around the houses, bringing back gardens into camera range. There are plenty of other people worrying about these versatile craft falling into criminal hands or being used by terrorists. But the drones are increasingly available and, like it or not, are going to be operated for good or ill. ■



“It is either the regulator sniffing the exhausts, the chief’s spare parts, or the company checking up on us.”

Shipping Key Performance Indicators (KPIs) – under the BIMCO banner

What are the “standards” of a ship, or, for that matter, of a fleet of ships, operated by a shipping company?

In the past, such matters have largely been viewed as a gauge of performance, with charterers of the ships looking at downtime, or time off hire as a measure of a ship’s potential ability to deliver. Was the ship, which was said to be capable of a 15-knot service speed, actually able to steam 360 nautical miles per day, and if this was not delivered, might a performance claim against such a warranty be justified? Arbitrators over the years have been very busy resolving such disputes.

But in more recent times, a far more all-embracing determination of performance has evolved, largely driven by the industry itself. It is probably fair to suggest that it was first driven by the oil companies, which were increasingly anxious to ensure

ships they chartered were not in some way deficient. In a number of notorious cases, charterers had found themselves both liable and in the firing line of enraged public opinion, after casualties, which cast doubt upon their judgement over their choice of ship. The increasingly thorough scrutiny of ships through vetting and physical inspection has proliferated and in more recent times moved into the dry-bulk world.

It is also obvious that the quality and performance of ships is largely determined by the capability of owners and operators, so the charterers have looked for a wider range of determinants than the physical condition of the ships themselves. Increasingly the vetting of potential operators has scrutinised the management and its abilities, its systems and even its policies and

attitudes towards matters that the charterers consider important.

Shipowners and operators themselves have been keen to demonstrate their own quality and seek its improvement, so it is wrong to suggest that this is a one-way or external process. In a competitive world, they are looking at ways of differentiating their ships and operations, to put distance between them and their competitors and to give them a better chance of business in an overcrowded market. In short, they are looking to improve but need a reliable tool with which improvement can be gauged.

The evolution of the Key Performance Indicator (KPIs) has been driven by this need to demonstrate excellence, quality and best practice, but in a way that can be



Michael Grey

better understood and offers what is effectively a standard measure of these elusive and often subjective qualities. It is very easy for a skilled exponent of public relations to produce a convincing advertisement for a product, and a ship looking for business can be viewed in such a fashion. But to measure the ship and its operator against agreed standards provides a far more reliable gauge of the way in which the ship and her owners perform.

The shipping KPI which BIMCO has recently taken over from the ship managers' organisation InterManager is a dynamic and evolving system, which can be recommended as a reputable and effective tool for a wide range of comparative purposes. It considers "performance" in its widest context and provides a valuable measure for both external and internal benchmarking, helping the shipping company evaluate its effectiveness across the board. The KPI provides a measure against which continuous improvement can be gauged and incentives can be established. Used internally, it can introduce objective reality into the company's own view of itself, which hitherto might have largely depended upon opinion and the judgement of individuals as to how well they were doing.

Dependent upon mathematics and unambiguous facts, the KPI is observable and quantifiable, providing valid and verifiable indicators of performance that are robust against any manipulation by those seeking to place more favourable interpretations on that performance. It provides recognisable and accepted standards which are interpreted by all users in the same way, and it is transparent and easy to understand. It is a respectable and well-recognised method of

benchmarking, used increasingly in other industries and lends itself admirably to the maritime world. It also is capable of measuring changes that are taking place, which is useful in recognising improvements or deterioration in performance with the minimum of delay.

Altogether, the Shipping KPI System is based on a standard of 64 different performance indicators which will permit an accurate and specific comparison of ships within each sector. "Efficiency" is a term that covers a very broad spectrum, and the KPI Standard against which a ship's performance can be compared with industry and sector averages is available for a range of crucial factors.

So the standard covers health and safety management and performance, which is central to efficiency with the human element a major determinant of risk management and the avoidance of accident. Associated with this is HR management performance, which has a big effect on the relationship between employees and employers. Clearly, environmental performance is crucial, as is navigational safety and security. Operational and technical performance might be thought of as the end product of these inter-related factors.

What do people want to know about their ship and its performance, or a ship they are hoping to employ? How does this reflect upon the company's performance, because there are obvious connections? How often was a ship unavailable and for what reasons, and how does this compare with the average? What was the number of cargo-related incidents, the number of collisions, the conditions of class or the number of

health-and-safety-related deficiencies recorded? How many detentions were there after port state control inspections, and what was the record of environmental-related deficiencies? What was the picture surrounding officer retention and the experience of these officers in their ranks? How do all these factors (there being 64 standards in all) provide a good overall comparison of the ship and its operator or manager? While the KPI Standard is largely ship-oriented, it is possible for some standards to apply to the fleet or shipping company.

All the data collected is de-identified, so that it does not compromise commercially sensitive information. The system was initiated in 2003 by a cross-industry group of experts, led by InterManager, working with the Norwegian Research Council, consultants MARINTEK and IT specialists SOFTimpact, who will remain with the project under BIMCO ownership. The tool has now built substantial credibility within the industry.

BIMCO will provide the system free of charge to its members, apart from a nominal set-up fee for new users, and will run it for the entire industry on a not-for-profit basis. The Shipping KPI System, says BIMCO Secretary-General Angus Frew, is unique and valuable to the industry. BIMCO, he emphasises, will ensure that it is run *by industry for industry*. ■■

Editor's Note: Michael Grey is BIMCO's Correspondent in London. He is a former Editor of Lloyd's List and a regular contributor to many maritime publications.



SHIPPING KEY PERFORMANCE INDICATORS KPIs

- 64 different indicators
- comparison of ships performance
- anonymised and secured data
- boost performance improvements
- ship/fleet/industry benchmarking

User Feedback

"The ultimate aim for the Shipping KPI System is to be the industry's go-to standard performance system."

"Regular updates by members on their fleet, company and ships will increase the importance of a good performance management system."



Shipping Key Performance Indicators (KPIs) – today and in the future

In the beginning of June, BIMCO took over the Shipping KPI System, which contains the performance data of more than 4,000 ships and used by shipping companies worldwide. This article will review how it started, what the system is used for by shipping companies today and, more accurately, to give an outlook on developments for this system.

Objectives

The principal objective of any KPI system is to facilitate measurement of performance based on a rational criteria.

KPIs have been widely used by shipping companies for quite some time. Although, a proprietary system facilitates self-improvement to a certain degree, it can have drawbacks:

- The company has to expend effort to invent their own system - solely relying on in-house experience.
- As part of their improvement process, the company will need to identify the areas (in effect KPIs) where they would want to expend their money and effort. In order to set realistic targets for improvements, the user of a proprietary KPI system cannot make use of industry averages and benchmarks.
- Communication with external parties about individual KPIs poses the risk of using similar titles, but actually meaning something slightly or completely different.

The best illustration for the above issues is the crew retention KPI, which is a widely accepted concept but can be expressed in many different ways in the industry.

The challenge was not to invent new KPIs, or even to identify the “best” KPIs, but to harmonise the multitude of (often similar)

KPIs used by shipping companies into a consistent and clearly defined set of KPIs to be recognised as an industry standard.

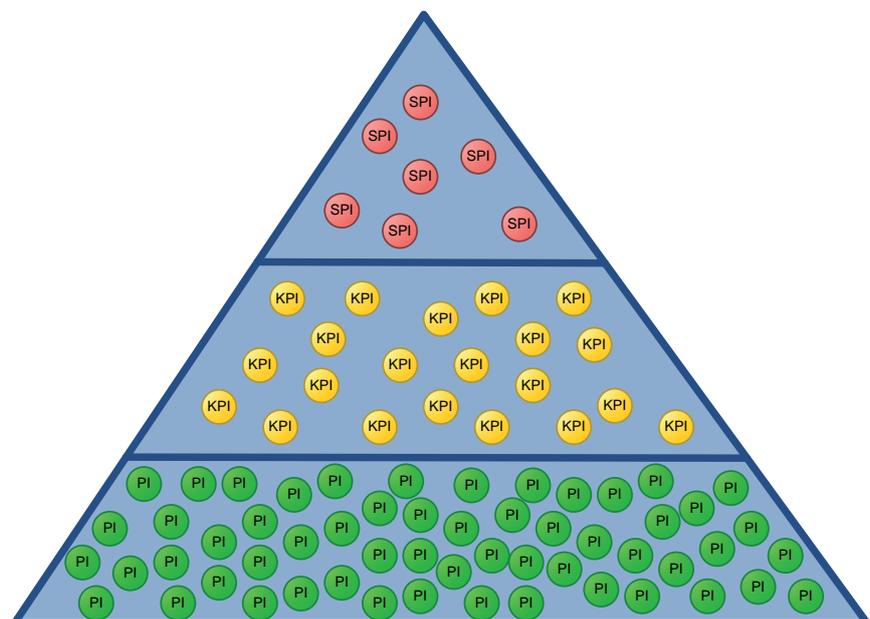
Concepts

In order to make the best use of the Shipping KPI System, it is important to understand some of its theoretical aspects, in effect understanding the Shipping KPI Standard.

But no reason to be afraid! Some years ago, during a presentation, someone in the audience commented, kind of disappointed, “But this is not rocket science! I could

have come up with that myself.” Indeed we regard this as one of the best comments we have received to date.

At the core of the Shipping KPI Standard is the idea of a pyramid. At the bottom of the pyramid we find the performance data, which is manually collected or automatically measured. This is known as **Performance Indicators (PIs)**, but a better name would be Performance Measurements as they mostly do not indicate on an individual-level performance actually. An example of such a PI would be “total number of officers on board”.



Only when several PIs are put in relation to each other do you actually get a sensible performance measurement. So another related PI would be “total number of training hours”, as **Key Performance Indicator (KPI)**. “Total number of training hours by total number of officers”, which is indeed an effective leading KPI to measure the efforts of a shipping company when investing in the training of their crew. Therefore influencing safety and other performance measures.

The Shipping KPI Standard describes 64 PIs and, based on 34 KPIs. In order to provide a high-level view of operational performance, it is helpful to aggregate these 34 KPIs further and assign them to one of the 8 top-level **Shipping Performance Indexes (SPIs)** covering:

- SPI001: Environmental Performance
- SPI002: Health and Safety Performance
- SPI003: HR Management Performance
- SPI004: Navigational Safety Performance
- SPI005: Operational Performance
- SPI006: Security Performance
- SPI007: Technical Performance
- SPI008: Other

This aggregation is made possible by applying a so-called rating for each KPI. The rating scheme normalises a KPI (of arbitrary scale and measurement unit) to a value between 0 and 100, where 0 represents the bottom of expected performance and 100 the top of expected performance. Knowing the rating of KPIs makes them easier to interpret but also allows the calculation of averages across KPIs as all KPIs suddenly use the same scale. This can be compared to the process of taking measurements of length in “inches”, “feet” and “centimetres” and converting them all to “metres” in order to be able to compare them and calculate consistently.

When measuring performance, special attention needs to be given to two aspects:

1. **Is the measurement taken per ship or per fleet of ships?** In principle, the standard attempts to measure performance per ship, but in some cases this is not possible. For example, the KPI mentioned above, related to training, can only be used by fleet as seafarers are deployed across the fleet, and any investment in training is an investment in a fleet and not a single ship.

2. **Is the measurement taken per quarter, last rolling year or previous year?** Again, in principle, the standard attempts to measure performance at each quarter, but in some cases this is not possible. For example, budgets or other fiscal targets are defined usually per year and spent per year. Breaking such budgets down by quarter would not represent reality.

The above differentiation is necessary at this stage, and it is important for anyone working with the Shipping KPI Standard and System to be aware of this and take this into account when measuring PIs or interpreting KPIs.

Usage

The initial purpose of the Shipping KPIs is for self-improvement. As the saying goes, “you cannot improve what you cannot measure”. The Shipping KPI System gives a shipping company the advantage of setting realistic targets based on comparable industry segments and spending its money on areas which would be of most benefit to it.

As the KPI Standard is widely accepted

History

The Shipping KPI System has a substantial history behind it, making it both robust and mature. The very same history might also explain some of the decisions taken and also open for future opportunities.

The system offers a platform for calculating ship-specific KPIs and benchmark operational performance of its own ships against suitable subsections of the industry. The system was made available in its first version in June 2011, but the software system itself builds on the results of the Shipping KPI Project initiated by InterManager in 2006.

The objective of Phase 1 of the original project was to establish a widely accepted set of KPIs to measure operational performance of ships.

For this purpose, around 22 ship managers and owners came together. In order to avoid reinventing the wheel, all parties shared the KPIs they were working with at the time, including established KPIs from stakeholders like Oil Companies International Marine Forum (OCIMF), for example “Lost Time Injury Frequency (LTIF)” and “Crew retention”. The result was a set of more than 200 KPI candidates. The challenge was not necessarily to invent new KPIs but to choose from this large pool of KPIs a consistent and manageable set size.

This resulted in a set of 34 chosen KPIs, and although 34 is a much more manageable number than 200, even this number is too large to provide an easy understandable overview of the operational performance. The project therefore continued to establish KPI ratings as a means to aggregate the 34 KPIs into 8 top-level Shipping Performance Indexes.

With the KPI definitions and the aggregation in place, Phase 1 was concluded. But Phase 1 was mostly based on theoretical concepts. These concepts were substantiated by the practical experience of the 22 companies, but they needed to be validated with real-life measures. For this purpose, Phase 2 of the project was initiated in 2009, where performance data of around 500 ships were collected and verified.

Phase 2 was completed in 2011 with positive validation and minor changes in the KPI definitions, and then used as the base for implementation of the KPI System as we know it today.

Timeline

- **2006 June**
Start KPI of Project (Phase 1) by InterManager
- **2008 October**
KPIs and Ratings defined
- **2009 May**
Start KPI Project (Phase 2)
- **2010 November**
KPIs validated, release of Shipping KPI Standard
- **2011 April**
Set up KPI Association, Invitation to Round Table Members
- **2011 June**
Public Availability of Shipping KPI System (presented at IMO)
- **2012 April**
Milestone 1,000 ships
- **2013 July**
Milestone 2,000 ships
- **2014 August**
Milestone 3,000 ships
- **2015 June**
BIMCO takes ownership
- **2015 July**
Milestone 4,000 ships
- **2015 September**
New Steering Committee and Expert Group established

and clearly defined, it forms the basis for effective communication with current and potential new customers. This can take many forms, starting from generating a suitable benchmark report for customers to a company deciding to grant its customers access to the system or, by using the Web-API display their KPIs, together with the industry benchmark on their own website.

Further, some users of the system, from the tanker segment of the industry, report that they use the system for Tanker Management Self-Assessment (TMSA) evidence. They use the KPIs and their benchmark in the overall industry to some extent to justify their self-assessment as part of TMSA. Finally, some companies are taking the initial steps to incorporate individual KPIs and targets to their contracts between owner and manager or between charterer and owners as part of the overall contract remuneration concept.

Outlook

In 2011, the first version of the Shipping KPI Standard was fixed. A standard by definition cannot change every other day, so apart from correcting minor mistakes and extending some samples, the standard was mostly unchanged. But at the same time the world has changed, and a standard should adapt to the world around it if it is to stay relevant.

Following this thought, BIMCO will facilitate the following changes to the Shipping KPI Standard:

- **Simplification**

The aspect of collecting data per ship and some per fleet is a source of confusion and, in consequence, unreliable. Same goes for the period of data collection (per quarter, per year, etc). Both aspects will be reviewed, and one consistent mechanism needs to be identified in order to improve ease of use and to develop data quality.

- **Clarification**

Each KPI and PI in the standard has a detailed description and also some calculation examples. But the past few years demonstrated that it can still be improved. The KPI definition needs to be clarified and the examples need to be amended to be of real value to users.

- **Extension**

In recent years, certain aspects of ship operations have become highly visible. As a consequence in today's industry, these aspects might not be sufficiently represented in the standard. One example of this would be KPIs related to Environmental Performance. The standard contains a few, but they should be reviewed and extended based on the needs of the industry.

- **Target audience**

The Shipping KPI Standard was developed for the whole industry, but it does not attempt to hide the fact that ship managers were the driving force for its inception. With BIMCO taking the lead, the standard needs to be reviewed with regard to the needs of owners and charter parties.

- **Best practices**

Using the KPI Standard in relation to TMSA appears obvious in retrospect. But the standard itself does not help with this use. An analysis needs to be derived as to how the KPI Standard relates to and can be used in a structured manner for TMSA, Ship Energy Efficiency Management Plan (SEEMP), etc.

Conclusion

BIMCO's Shipping KPI System is based on the Shipping KPI Standard, developed over several years by the Shipping KPI project started by InterManager. The system is in use today by more than 4,000 ships for a diverse set of purposes, including self-improvement, promotional activities, TMSA evidence tracking as well as performance base contracting.

Under the guidance of BIMCO and its members and learning from past experiences, we are looking forward to simplify and to extend the underlying KPI Standard as well as improve the overall user experience.

Both BIMCO and SOFTimpact are here to help you apply this well-defined set of KPIs to your company - in an effort to save costs, improve operational performance as well as enhance transparency within the industry.

Find us under www.shipping-kpi.org or talk to us at support@shipping-kpi.org! **II**



Markus Schmitz



Editor's Note: Markus Schmitz is the Founder and Managing Director of SOFTimpact Ltd in Cyprus, a software and service provider specialising in the maritime industry.

He started his career in 1998 as an enterprise resource planning (ERP) consultant with Hewlett Packard in Germany. Specialising in Baan ERP, Markus has participated in several Baan ERP implementations in central Europe, South America and China. As the founder of SOFTimpact, he has directed his company to focus on the shipping industry, particularly shipowners and managers, and became a known vendor of Crew and Payroll modules based on the ERP software from Microsoft, called MS Dynamics AX.

For several years, he was personally involved in the KPI Project of InterManager in an advisory role. SOFTimpact was later selected by InterManager to implement the backend system for gathering and benchmarking the KPI data of participating companies, the Shipping KPI System. He facilitated the transition to BIMCO and guarantees with his company the continued smooth operation and support of the system.

Over and above enhancing and operating the Shipping KPI System, SOFTimpact is the exclusive partner of BIMCO for related services, including KPI-related training, consulting and development. Additionally, SOFTimpact offers integration services for backend systems as well as KPI-related mobile applications and connectivity solutions.

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ROPAXTIME – new niche contract for the RoRo sector

In June 2015, BIMCO further expanded its portfolio of time charter parties with the publication of ROPAXTIME, a standard contract for the RoRo passenger ferry sector. It is already being used by Stena RoRo and other companies in this niche trade which is a very encouraging start for this new contract.

A ground breaker

ROPAXTIME is a welcome addition to BIMCO's range of standard contracts as it is the first ever purpose made form for the carriage of both "soft" and "hard" cargo in terms of passengers and rolling cargo, such as trucks and trailers. Previously, parties in the RoPax trade had to rely heavily on amended versions of general-purpose dry cargo standard forms such as NYPE, BALTIME and GENTIME.

Deleting and amending wording and adding new "rider" clauses brings with it the risk of introducing conflicting clauses and creating ambiguity. This can leave parties uncertain of what their responsibilities and obligations are and lead to disputes. Using ROPAXTIME will speed up negotiations and minimise the risk of disputes arising from the interpretation of the contract.

The sub-committee given the task of developing ROPAXTIME was chaired by Mr Robert Almström of Stena RoRo and included representatives from Macholl & Specht, Enrico Scolaro Shipbrokers, Ülgener Law Offices, and the Swedish Club. The result is a clearly written and balanced document that comprehensively addresses the interests of owners and charterers in the RoPax trade.

Trade specific clauses

In addition to the standard terms and conditions you would expect to find in a BIMCO contract, ROPAXTIME contains several provisions addressing issues particular to the RoPax trade. For example, the responsibility and employment

of the catering crew running the restaurants, bars and shops on board, is clearly regulated as well as the victualing, cleaning and laundry services. Likewise, it also describes what inventory should be available for hotel services and the right to install gaming machines.

A central provision of ROPAXTIME is the passenger clause which provides in detail for all passenger related issues and makes it clear that passengers are on board the ship at the charterers' risk and responsibility.

In respect of documentation relating to contracts of carriage of both passengers and cargo, ROPAXTIME specifies that it is for the charterers to issue tickets or any other contracts of carriage such as bills of lading. However, bills of lading are generally not used in this trade, where waybills and consignment notes are more common for shipping goods.

Charterers' and owners' crew

A feature typically found in RoPax operations is that charterers will directly employ crew on board the ships. ROPAXTIME, therefore, makes a clear distinction between Owners' Crew and Charterers' Crew. The two groups are included in the Definitions Section and who belongs to which group is determined on the basis of the employment contract of the crew member in question. Generally, personnel working in the restaurants and shops on board belongs to the Charterers' Crew, while the master and deck and engine crew would fall under Owners' Crew.

There may be specific trades where all crew are directly employed by the owners for reasons of receiving state subsidies and this can be achieved with ROPAXTIME by adding specific wording to this effect and tweaking the clauses which refers to Owners' and Charterers' Crew.

Lashing crew

Cargo operations and stevedoring is often a cause of discussion between the parties and have therefore been carefully addressed in ROPAXTIME. In short, charterers are responsible for loading, stowing, lashing, unlash and discharging. However, the lashing and unlash is commonly performed by the Owners' Crew and it is often the case that there is not enough crew on board to do the lashing and at the same time keep up with other duties such as watch keeping and maintenance work. To overcome this issue, the charterers have the possibility to request owners to place additional crew on board for lashing purposes. The parties should agree on a daily rate for the additional lashing crew, which is payable by the charterers. It is important to note that when Owners' Crew perform the lashing and unlash this way they do it in the capacity as servants of the charterers, who will remain responsible for these operations.

Pilot exemption

Since RoPax ships generally operate on the same line and can call the same ports several times a day, it would not make sense to take a pilot on every occasion. It is therefore common in this trade that the mas-



Anna Wollin Ellevsen

webinar broadcasted on 9 September. It was also presented at the North Sea Operators' Conference on 28 September, and at the Interferry Conference on 5 October. In addition, a number of articles have also been published in various trade magazines.

Using ROPAXTIME

Sample copies of ROPAXTIME and accompanying Explanatory Notes can be downloaded free of charge from BIMCO's website: www.bimco.org.

If you would like to use the contract in your business, BIMCO's IDEA•2 online charter party editor tool will provide you with full access to the contract. ■

Editor's Note: Anna Wollin Ellevsen, Senior Legal and Contractual Affairs Officer at BIMCO, is involved in the development, revision and promotion of BIMCO's wide range of standard contracts and clauses. She is a lawyer by training and holds a Master of Commercial Laws from University of Lund, Sweden and a Master of Maritime Laws from Southampton University, England. Anna joined BIMCO in 2007. Previous employment includes working as a junior judge at a district court in Sweden and as an associate lawyer at a Swedish law firm.

ter is incentivised for obtaining a pilot exemption. This will depend on local regulations regarding compulsory pilotage and whether the master has a valid Pilotage Exemption Certificate. If the master successfully obtains pilot exemption, the owners should be compensated by the charterers at an agreed rate for the pilotage.

Late payment of hire

The drafters have taken the opportunity to clarify a point in the provision regarding the owners' right to withdraw following charterer's failure to pay hire on time. If payment is late, owners should give written notice to charterers explaining this and include the grace period within which the charterers should pay. In addition, the notice should make clear that owners will withdraw their ship if the charterers do not pay before the end of the grace period. The important clarification to ROPAXTIME is that it has been expressly stated that the owners' right to withdraw will apply on each and every occasion hire is due. This means that even if owners on previous

occasions have accepted late payment of hire, this cannot be used to argue that owners have waived their right to withdraw in respect of future payments. This clarification should be helpful in avoiding disputes and creating certainty for the parties.

Cargo claims

A detailed clause regulating liability between owners and charterers for third party cargo claims has been included. This clause is modelled on the Inter-Club New York Produce Exchange Agreement which was drawn up to keep cargo claims down and avoid costly litigation. Broadly speaking, liability is allocated on the basis of the cause of damage. For example, owners are liable for cargo claims caused by unseaworthiness of the ship, while charterers are liable for cargo damage caused by cargo handling operations.

Promotional activities

ROPAXTIME has generated an encouraging level of interest from the industry. It was presented at a well-attended BIMCO

NYPE – time charter party revision

This major revision promises to be both balanced and comprehensive.

BIMCO jointly issued the first revision of the New York Produce Exchange Time Charter (NYPE) since 1993, following three years of intensive discussions between BIMCO, Association of Ship Brokers and Agents (ASBA) the copyright holder and the Singapore Maritime Foundation (SMF).

BIMCO, ASBA and the SMF have consulted with the industry globally during the development of the new edition of NYPE to gather a clear picture of commonly made amendments and rider clauses added by practitioners. Careful account has been taken of the interests of owners and charterers together to create a more balanced agreement than in previous versions of the charter. **||**



Søren Larsen, BIMCO's Deputy Secretary General, said:

“We are delighted that our close cooperation with ASBA and SMF has resulted in the completion of this major project to produce a much improved NYPE that will be of great benefit to the industry.”

Inga Froyso, Chairperson of the BIMCO NYPE revision sub-committee, added:

“Users of the current NYPE form will certainly still recognise and be familiar with the core elements of the time charter party, but they can also expect to see some significant changes and improvements.

“Notably, the contract incorporates many of the rider clauses that are routinely added to the existing NYPE – but we have made sure that any new clauses incorporated into the new NYPE are relevant, balanced and consistent with the other provisions.

“Overall, our aim was to create a modern NYPE with global appeal – and I believe that this has been achieved.”

Nigel Hawkins, Chairman of the ASBA drafting committee, said:

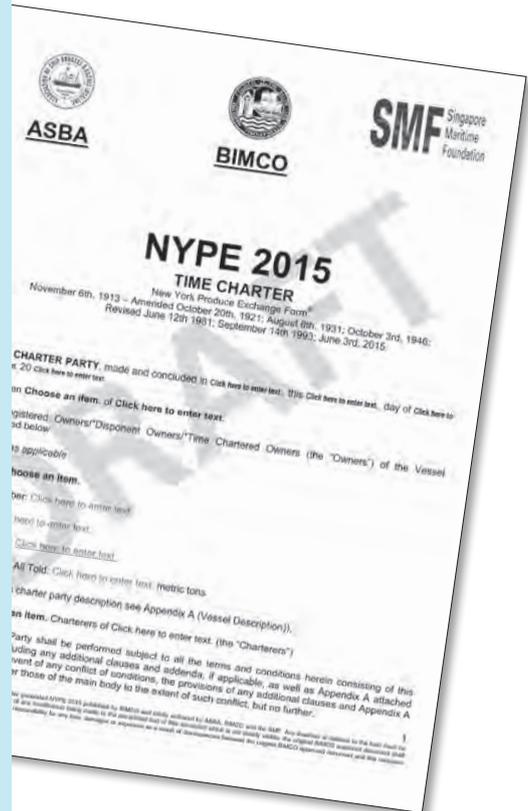
“The 1993 NYPE Charter Party was ripe for updating. ASBA is therefore pleased that with our friends at BIMCO and the Singapore Maritime Foundation we have agreed the wording of a NYPE fit for the present day. ASBA hope that the industry will find this new NYPE a clear and logical document, and, that the industry will note some familiar language contained in past NYPEs.”

Michael Chia, Chairman of the Singapore Maritime Foundation, said:

“The revised NYPE is the first international shipping form that is a collective effort spanning the globe involving ASBA, BIMCO and the SMF. With the extensive global industry stakeholder consultation we believe that the end product is a contract that better meets user needs and will see quick acceptance and adoption.”

Key features of NYPE 2015 include:

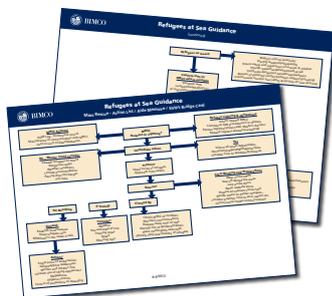
- A choice of trip or period charter
- Optional Not Always Afloat But Safely Aground (NAABSA) provision
- Choice of cargo readiness at delivery port or first load port
- Obligation on owners/charterers to restrict further employment immediately prior to delivery/re-delivery that might delay the ship
- Owners to provide and maintain Certificates of Financial Responsibility for oil pollution as required at the start of the charter period
- Detailed bunker provisions for period and trip charter options covering quantities and prices; bunkering operations and sampling; quality and liability; fuel testing; and low sulphur fuels
- Updated and clarified hire payment provisions relating to grace period, suspension and withdrawal consistent with recent legal decisions
- Detailed and clarified speed and performance clause
- A broad choice of law and arbitration options – New York/US law; London/English law; Singapore/Singapore or English law; or a free choice agreed by the parties
- additional clauses dealing with a range of current issues:
 - hold cleaning/residue disposal in accordance with MARPOL
 - International Maritime Solid Bulk Cargoes (IMSBC) Code
 - hull fouling
 - electronic bills of lading
 - slow steaming
 - piracy
 - ISM/ISPS Codes
 - ballast water exchange regulations



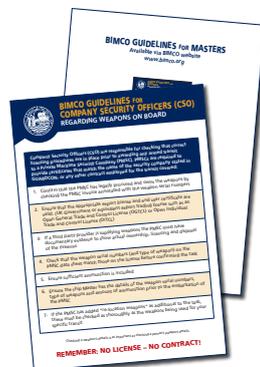
BIMCO - Company Security Officers:

All BIMCO member CSOs should have now received 3 publications from the BIMCO Security department:

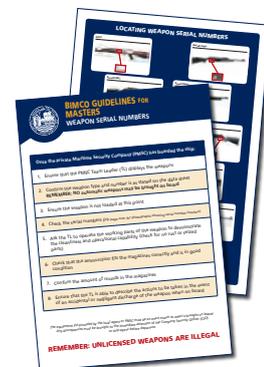
REFUGEES AT SEA GUIDANCE



CSO GUIDANCE FOR WEAPONS ON BOARD



WEAPON SERIAL NUMBER GUIDELINES FOR MASTERS



Many thanks to all members that forwarded the requested details of their CSOs. The BIMCO support for the CSO Alliance continues and will benefit from your support and free enrollment.

CSO Alliance membership@csoalliance.com

Any BIMCO member still to forward details of their CSOs and receive the free bridge cards should contact security@bimco.org

BIMCO members' comments and feedback

BIMCO sometimes receives information from members about situations or issues which they have encountered and would like to share with other BIMCO members.

Owners' experience at Dakar

We would like to warn other members about the experience one of our ships have had when calling at Dakar recently.

On arrival at Dakar the chief engineer advised the contents of the vessel's fuel tanks to customs officers. Unfortunately, in the process a small typo mistake was made where the contents of three fuel tanks were stated incorrectly. However, the total capacity of fuel on board the vessel were correctly declared. Instead of focusing on the total fuel content, the customs officers opted to focus on the errors and, despite the correct total quantities, they decided that the fuel quantities on board the vessel were incorrectly indicated and that a fine would be imposed.

We were adamant that the whole issue amounted to no more than small typo mistake, which did not in any way affect or distort the total quantity of fuel on board the vessel on arrival. As such there should not be a basis for a fine in the first place. Unfortunately, the customs officers were indifferent to our reasoning and an initial fine was set at an excessive amount of €100,000.

The port agent requested that the fine be annulled on the basis of the type, which was not possible. But the customs officers were prepared to reduce the total amount. With intense negotiations the port agent managed to reduce the fine to about €50,000.

Customs demanded that a letter backed by our P+I club be issued promising payment of the amount within 15 days otherwise the vessel would be detained until the issuance of said letter.

Unfortunately, the action of the custom officers and their judgement constitute a clear case of misappropriation of rights. Such behaviour from a governmental authority is arbitrary and reveals how a vessel is unprotected and exposed to an alleged violation of said rules enforced by local customs officers and other authorities.

*Yours faithfully,
[Member in Greece]*

If you have an experience you would like to share, or have any comments about the Bulletin, please email bulletin@bimco.org.

Welcome to BIMCO!

BIMCO would like to extend a warm welcome to the following new members, admitted during the period from 1 June to 30 September 2015.

OWNER MEMBERS

Blue Planet Shipping Ltd.	Piraeus, Greece
Diavaz Oceanteam Servicios Navieros	Ciudad del Carmen, Mexico
Falcon Maritime A/S	Copenhagen, Denmark
Hyproc Shipping Co.	Oran, Algeria
I. Barbon Srl.	Mestre-Venice, Italy
Liberty One Ship Management	Bremen, Germany
Lighthouse Navigation Pte Ltd	Bangkok, Thailand
Narval Chartering & Trading S.A	Piraeus, Greece
Neptune ehf	Akureyri, Iceland
Niriis Shipping S.A.	Athens, Greece
Phaethon International Ltd	Odessa, Ukraine
Prima Shipping Oy AB	Tolkkinen, Finland
PT Karana Line	Jakarta, Indonesia
Samherji hf	Akureyri, Iceland
Sea-good Pte. Ltd.	Singapore, Singapore
Soloi Inc.	Maroussi, Greece
South32 Marketing Pte Ltd	Singapore, Singapore
Spring Marine Bulk S.A.	Piraeus, Greece
Unico Marine DWC LLC	Dubai, UAE
Vantage Shipping Lines S.A	Athens, Greece
Vessel Management Services Ltd.	San Gwann, Malta

BROKER MEMBERS

Amos Shipbroking Sdn. Bhd.	Johor Bahru, Malaysia
Bravo Tanker Services Ltd.	Shanghai, China
Deudan Agencies	Skagen, Denmark
Fearnley Offshore AS	Oslo, Norway
Global Services OTM S.A.S.	Bogota, Columbia
J. Shipbrokers GmbH	Birsfelden, Switzerland
Johnsen & Bergman Eftf. AS	Rud, Norway
Marship - Corretagem Maritima SA	Alges, Portugal
Martrade BV	Sliedrecht, Netherlands
PJ Marine Shanghai Co. Ltd.	Shanghai, China
PJ Marine Singapore Pte. Ltd.	Singapore, Singapore
Port Hill Marine Ltd	Blyth, UK
Shipbroker International Limited	Aboyne, UK
Stalco Shipping & Brokerage, C.A	Caracas, Venezuela
Vertical Horizon Shipping Pte Limited	Shanghai, China

AGENCY MEMBERS

A. Corbetta & Partners S.R.L	Porto Marghera - Venice, Italy
Agencia Maritima	San Jose, Costa Rica
AHM Marine LLC	Abu Dhabi, UAE
Alliance Logistics	Casablanca, Morocco
Champion Logistics Nigeria Limited	Lagos, Nigeria
Consorcio Maritimo Centroamericano, S.A De C.V	Santa Tecla, El Salvador
Consorcio Maritimo Centroamericano, S.A.	Puntarenas, Costa Rica
Consorcio Maritimo Centroamericano, S.A.	Escuintla, Guatemala
Consorcio Maritimo Centroamericano, S.A.	Corinto, Chinandega, Nicaragua
Consult Navigation Agency	Port Said, Egypt
Frank Armit & Son Ltd	Runcorn, Cheshire, UK
IMGC Group	Puerto Ordaz, Venezuela
KBS GUINEE	Conakry, Guinea
Laucam Maritima SAS	Cartagena, Colombia
Oudkerk bvba	Stabroek, Belgium
Pharaoh Marine	Shanghai, China
Point Shipping Services Ltd.	Warrenpoint, N. Ireland, UK
Port Agency Services (South Africa)	Durban, South Africa
Riada Shipping & Logistics	Tripoli, Libya
Sarl Sermarine	Algiers, Algeria
Seamar Shipping Services & Logistics	Fiumicino, Italy
Seashore Solutions Comercio	Rio de Janeiro, Brazil
Sermarine Shipping Ltd.	London, UK
Stark Shipping LLC	Ilyichevsk, Ukraine
Transmar Ship & Forwarding Agency SL	Tarragona, Spain
United Heavy Lift GmbH & Co KG	Hamburg, Germany

ASSOCIATE MEMBERS

AVS Kuresel Gemi Tedarigi ve Yonetimi A.S	Istanbul, Turkey
CV. Esterlita Marine Supply	Surabaya, Jawa, Indonesia
DGS Maritime Crewing Agency	Rijeka, Croatia
Falck Global Assistance	Smørum, Denmark
GMP Marine	Sedgefield, County Durham, UK
Meridian Global Consulting	Mobile, AI, USA
Palau International Ship Registry	Houston, TX, USA
Patriot Risk Management Ltd	Nicosia, Cyprus
Sea Guardian S.G. Ltd.	Nicosia, Cyprus
Sol Marine Off Shore S.A	Barranquilla, Colombia
United Kingdom Hydrographic Office	Taunton, Somerset, UK
United States Maritime Resource Center, Inc	Middletown, RI, USA
WIZA Shipping & General Trading Ltd.	Istanbul, Turkey

Meet BIMCO

DATE	VENUE	EVENT	CONTACT
4 Nov. 2015	Brussels	ECSA Piracy Working Group	Giles Noakes: gno@bimco.org
10-12 Nov. 2015	Hamburg	6th Gasfuelled ships Conference 2015 <i>50% discount for BIMCO's ship owner members</i>	Lars Robert Pedersen: lrp@bimco.org
11 Nov. 2015	Hamburg	Young Shipping Professionals networking event	Debra Devied-Clayton: ddc@bimco.org Lars Robert Pedersen: lrp@bimco.org
12-13 Nov. 2015	Manila	CrewConnect Global 2015: The Asia-Pacific Manning & Training Conference <i>20% discount for BIMCO members</i>	Aron Frank Sørensen: afs@bimco.org
17-18 Nov. 2015	Washington D.C.	Green Ship Technology North America <i>15% discount for BIMCO members</i>	Peter Lundahl Rasmussen: plr@bimco.org
17-19 Nov. 2015	Hamburg	BIMCO Annual Conference and Awards Dinner 2015	Michael Lund: mlu@bimco.org
25-26 Nov. 2015	Barcelona	Platts 4th Mediterranean Bunker Fuels Conference	Lars Robert Pedersen: lrp@bimco.org
10 Dec. 2015	Hamburg	German Shipowners Associations Dinner	Lars Robert Pedersen: lrp@bimco.org
2 Feb. 2016	Oslo	e-Navigation Underway International 2016	Lars Robert Pedersen: lrp@bimco.org
8 Mar. 2016	London	BIMCO Security Committee	Lars Robert Pedersen: lrp@bimco.org
15 Mar. 2016	Copenhagen	BIMCO KPI Expert Group	Lars Robert Pedersen: lrp@bimco.org
15-18 Mar. 2016	Copenhagen	Green Ship Technology Conference	Lars Robert Pedersen: lrp@bimco.org
12 Apr. 2016	Hamburg	BIMCO Marine Committee Meeting	Lars Robert Pedersen: lrp@bimco.org
12 May 2016	Hamburg	Motorship Propulsion and Emissions Conference 2016	Lars Robert Pedersen: lrp@bimco.org

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The changing face of loss prevention

"We are moving away from telling people what to do," says Karl Lumbers, who retired this summer after nearly 30 years at the forefront of loss prevention with the UK P&I Club. As he spoke to the BIMCO Bulletin on the eve of his retirement, we asked Karl Lumbers to reflect on the changes that had taken place in this increasingly important element of P&I insurance during his career with the club.

Karl Lumbers joined the staff of Thomas Miller, managers of the UK P&I Club, in 1986, following a career as a deck officer in the Australasian liner trades, coming ashore with a foreign-going Master's Certificate. In these trades, which had largely converted to containerisation from break-bulk during his time at sea, cargo care was ingrained into the deck officer's professional knowledge. The UK Club, along with others, recognised the need for this special expertise in the handling of claims.

The UK Club's loss prevention programmes, said Lumbers, had their roots in cargo claims and the belief that something could be done to help members reduce cargo losses through practical risk reduction. As a non-profit making mutual insurance association, a club is well placed to share experience gained from claims-producing incidents, to help members as a whole. There was a history of loss prevention stretching back more than half a century, with circulars being published regularly to inform members about current concerns, while the "Carefully to Carry" committee, which was put together to advise on matters of cargo carriage, has a similarly long pedigree. The club had also initiated a condition survey programme to ensure only shipowners of an adequate standard were allowed to enter the mutual.

Shortly after Lumbers arrived at the UK Club, computer systems were programmed to provide a detailed analysis of large claims. The ability to scrutinise large



Karl Lumbers

amounts of claims data, which would have been extraordinarily difficult in pre-computer days, has been a major advance made possible by technology.

Asking questions about claims and where the money was going was seen as a crucial

element in mitigating risk and preventing future losses. It was also recognised that communication with members was necessary for improvement, with information gleaned from claims analysis and the identification of meaningful trends being circulated to inform them.

What was behind a claim? Was it structural or mechanical failure, inadequate maintenance or poor design? Was human element a factor? Were there trends which could be detected that identified root causes?

Furthermore, it was also recognised that the message needed to be transmitted to those aboard ship, as it was these officers who were key players in any improvement. In 1988, the first of what would become a series of claims-related videos was made, specifically for those aboard ship to help them understand exactly how, why and where liability claims occurred. Down through the years, says Lumbers, the club has had a crucial role in raising awareness of claims and how they can be prevented. A huge amount of information on specific problems as they are identified has been promulgated in many different ways, through video and DVD, through special risk booklets and increasingly through electronic alerts of various kinds.

In 1990, the club employed seven ship inspectors, all very experienced master mariners or chief engineers, who would visit ships and provide members with an independent professional assessment of their quality. This proactive system of helping members reduce their claims has been effective and has been further developed over the years. The inspectors, who have evolved into “risk assessors”, are not aboard ship to judge or threaten the ship’s personnel but are able to judge where improvements might be necessary, can give helpful advice from their long experience and attendance aboard different ships and are able to provide a level of comparison of standards which can be very helpful to members in benchmarking their performance.

It is very revealing to see the attitude of crew members to the risk assessors boarding their ships when they discover that these are helpful professionals who are on their side, offering practical advice on how to keep people safer, and on cargo care or navigational standards, and that they are not being judgemental or causing them trouble. Indeed, the assessor’s helpful

advice may enable matters to be put right which might subsequently cause problems with port state control inspectors or vetting teams.

A major development took place in 2011, when a new claims-based system using the methodology of “threats and consequences” was established to assist members in reducing claims. Using the “bow-tie” approach, this has involved everyone in the chain, from the ships’ crews who are “at the sharp end” to claims handlers, underwriters, those involved in loss prevention and risk assessors who are the link between ship and shore.

For the member, the reports from the assessors, along with claims records, will give some indication as to whether the risk profile is in the region of what may be expected for ships of this type and what improvements can be made. It is a proactive, practical system that is being further developed with a self-assessment scheme, designed to help members identify threats which might cause a claim aboard their ships, along with controls in place to mitigate these. The value of being able to identify an “accident waiting to happen” and to head this off, with mitigating controls, is easy to see.

The messages being transmitted from the club, whether through the ship visits, club circulars or large number of technical bulletins which are regularly published, emphasise that the knowledge available from claims and their analysis is a useful tool for everyone operating ships, whether afloat or ashore. “These are the matters from which claims are being derived, and here is the data to demonstrate it” might be considered the main thrust of the message, encouraging members to look towards their own risks in these categories, aboard their own ships. Data is invaluable, says Lumbers, noting that it is difficult to manage what cannot be measured.

What are the main changes that Karl Lumbers has seen in his career during the past 29 years? Many of these reflect the



Michael Grey

changing technology of commercial shipping. There is less structural, mechanical or equipment failure. Although there are fewer people aboard most ships, the costs of claims for personal injury are soaring. “Slips, trips and falls” remain a significant source of pain and injury, and heavy claims. There are still a considerable number of claims for deck officer and crew error, despite all the efforts that have gone into training and technical advances such as Electronic Chart Display and Information Systems (ECDIS) and other navigational improvements. There is concern about blackouts, which have a habit of occurring at the most hazardous times.

He remains very positive about the way in which recent developments have seen ships’ crews more linked in to the proactive process of claims reduction. There has been great interest in the “bow-tie” system in which crews can be encouraged to identify threats and hazards, and how these can be controlled and their effects mitigated. He believes that such a system, with the involvement of a crew, really can promote a degree of “ownership” aboard ship, encouraging professionalism and pride in one’s own ship. As a former seafarer, Karl Lumbers, encouraged to take pride in the ships he served in, believes that this greater involvement will be wholly positive. ■■

Editor’s Note: Michael Grey is BIMCO’s Correspondent in London. He is a former Editor of Lloyd’s List and a regular contributor to many maritime publications.

LONDON BIMCO at London International Shipping Week 2015

A view from the ground

BIMCO joins young shipping professionals in London to hear their views on market confidence and on London’s position as a global hub for maritime.



BIMCO joined thousands of professionals from across the international shipping industry during the second London International Shipping Week (LISW) in September. Across 80 industry events, all sectors of the international shipping industry came together – regulators, charterers, ship owners, ship managers, bunker suppliers, lawyers, ship brokers, bankers, insurers, insurance brokers, commodity traders and brokers, ship suppliers, port operators, shipping service providers and more.

The UK shipping industry uses the event to raise its public and political profile in

the UK – and of course to bolster its status as one of the primary global maritime centres. But the goal of LISW since its inception has also been to create a global atmosphere and attract professionals from around the globe to visit the events taking place in London during the week. This networking opportunity provided a strong platform for BIMCO to connect with members attending – and to support the events for professionals at earlier stages of their careers during the Shipping Professional Network London event.

Who are the next generation in shipping?

BIMCO chose to support the Shipping Pro-

fessional Network London (SPNL) event – which is usually attended by a mix of people at the early-mid stages of their career – alongside industry leaders such as Jeremy Penn from The Baltic Exchange. The focus of the event was a panel of three people who lead the shipping professional networks in Hamburg, Hong Kong and Copenhagen – discussing and answering questions about the challenges that face people building their career in shipping today.

Keep it in the family

The panel covered the question of how one gets into shipping – how they do business and develop their career. As part of this, the panel discussed how family-run businesses are still a key pathway into the shipping industry and also the relative difficulty of “breaking in” to a family-run company if you are unconnected. The panel agreed that networking and building contacts still gives people the best chance of entering some of the long-established, family-run companies – and aids career progression.

Shipping professionals more cautious in 2015 based on the shipping market outlook

The SPNL also announced the results of a joint survey conducted with Moore Stephens on the opinions of young professionals working primarily in the shipowning, shipbroking, ship management, chartering, advisory and associated industries in London. Respondents were asked for their views of the current state of the market,

	2013	2015
Overall market confidence (out of 10)	6.4	6.2
• The likelihood of their business making a major investment or significant development over the next 12 months (out of 10)	• 6.4	• 5.8
% of respondents who believed tanker rates would increase in the coming year	50	35
% of respondents who believed dry bulk rates would increase in the coming year	45	35
% of respondents who believed container rates would increase in the coming year	31	29
% of respondents who believed finance costs would increase in the coming year	44	40

7-11 SEPTEMBER 2015

LONDON

INTERNATIONAL SHIPPING WEEK



Gemma Wilkie

and how they believed it would perform over the next 12 months – and the results were compared with a previous run of the survey in 2013 to see how opinions had changed. Overall, the survey showed that people’s outlook had become more cautious and slightly more pessimistic – summarised in the table to the left.

Some things remained unchanged from the 2013 survey:

- Demand trends, competition, and the cost and availability of finance remained the three leading factors respondents felt were most likely to affect their business performance over the next 12 months
- Competitiveness, taxation and the ability to adapt to a fast-changing environment remained the three leading challenges for London to remain a relevant global maritime centre.

No fewer than 80% of respondents felt that it was in the best interests of London’s standing as a global centre for maritime commerce for the UK to remain a member of the European Union.

Claudio Chisté, chairman of SPNL, said at the event:

“The past two years have been extremely difficult for the international shipping industry, with world economies generally struggling to climb out of recession. But shipping is a resilient and robust industry which has a history of finding solutions to problems.”

“Shipping faces serious challenges on a wide variety of fronts – from overcapacity, competitive pressure and environmental concerns, to political unrest and strict regulatory oversight. The industry has



responded well, with its traditional blend of practicality and entrepreneurialism, and will doubtless continue to do so. This is one of the things which continues to attract talented young professionals into the industry.

“Costs, on a number of different levels, must be addressed, and a global view taken at all times. In identifying these issues, SPNL hopes to help the UK address them. London’s maritime community needs a group of young professionals, and those professionals testify by their very presence in London that they want to be here. But they need to be in London which is properly connected to the rest of the world, able to compete on a global stage and, moreover, in a London which is part of the EU.” ||

Editor’s Note: Gemma Wilkie has been BIMCO’s Communications Director since 2014.

BIMCO at London International Shipping Week 2015

BIMCO, EU NAVFOR and the CSO Alliance share their latest insights over an English breakfast

The room hired for BIMCO's breakfast briefing on security issues during London International Shipping Week was full with industry leaders keen to hear the latest from BIMCO, EU NAVFOR and CSO Alliance – and to enjoy a traditional English breakfast.

EU NAVFOR: a collective effort by maritime industry and naval forces keeps pirate attacks suppressed

EU Naval Force's main tasks are to escort merchant vessels carrying humanitarian aid for the World Food Programme (WFP) and vessels of AMISOM as they transit along the Somali coast, and to deter and disrupt piracy in the Gulf of Aden and Indian Ocean. EU Naval Force warships

also monitor fishing activity off the coast of Somalia.

The first speaker at BIMCO's event was EU Naval Force Operation Commander, Major General Martin Smith MBE. General Smith stated that whilst Somali-based piracy in the Indian Ocean and Gulf of Aden is suppressed, there is no room for complacency regarding the ongoing threat.

Major General Smith welcomed the significant reduction in pirate attacks since 2012, stating that this had been achieved by the 'collective effort' of shipping companies and dedicated naval forces, including the European Union Naval Force. The General warned however that whilst opportunity for pirates to get out to sea and attack ships had reduced, the pirates' intent and capability remains. He continued:

The Future of Maritime Security being discussed at LISW15, with BIMCO, Head of EUNAVFOR, Major General Martin Smith MBE and Mark Sutcliffe, CSO's Alliance. Photo credit: Port to Port Maritime



7-11 SEPTEMBER 2015

LONDON

INTERNATIONAL SHIPPING WEEK

"It is clear that we have (together) come a long way since early 2011, when 736 hostages and 32 ships were being held for ransom in anchorages off Somali beaches.

"However, the recent incidents of Iranian dhows being captured by groups of armed men demonstrate that there are still some who are prepared to go out to sea and take vessels for ransom."

Major General Smith went on to say that because of the naval patrols and merchant vessels' self-protection measures, including the use of private armed security teams (PAST), in the Indian Ocean, counter-piracy forces assess that the threat from long-range pirate attacks in the near future is reduced. He added:

"Collectively we have been able to curtail their use of mother ships to attack far from the coast, but I remain convinced that if pirates perceive that we are lowering our guard, they will seize the opportunity and plan an attack on a vulnerable ship. And if they take one ship, this could re-energise their business model which, you know all too well, could cost the international community and shipping industry dearly."

The current EU Naval Force mandate runs until December 2016. In the coming months, EU Member States will carry out a strategic review of the piracy threat to enable them to make a collective decision on how best to proceed post-2016.

BIMCO: the need for clarity on piracy reporting categories

Giles Noakes, BIMCO's own Chief Maritime Security Manager, took the stage to inform everyone about the concerns held over reporting categories throughout the known piracy risk areas of the world and that work was ongoing to ensure all reporting authorities used the same categories in the future. This would allow everyone to know the full extent of piracy with more



BIMCO's Chief Maritime Security Manager, Giles Noakes, takes the stage. Photo credit: Port to Port Maritime

clarity. He confirmed his concerns over illegal, unregulated and unreported fishing off the coast of Somalia and informed the gathered crowds that this could be a catalyst for a return of Somali-based piracy.

Giles spoke about the need to ensure vessel owners, charterers and port authorities take precautions regarding cyber security and understand the threat which could lead to dramatic consequences.

CSO Alliance – sharing best practice and information

Mark Sutcliffe, the Director of CSO Alliance, finished the breakfast brief with an explanation of potential benefits to CEOs and CSOs of using the CSO Alliance website and was appreciative of the support offered by BIMCO to ensure a wider range of CSOs throughout the world could share ideas, file specific reports and gather information from each other in the future.

A new initiative for BIMCO members to gain free membership to the CSO Alliance was also announced – members can contact security@bimco.org for more information.

Crisis Management Exercise

Following the BIMCO breakfast brief, the maritime security company Port2Port sponsored a Crisis Management Exercise run by Dave Buston from Trident, which allowed participants to consider their abilities and planning considerations in a scenario-based exercise.

The exercise was named "Daesh Dawn" and used ISO standards and Business Continuity Guidelines to steer participants into following correct procedures. Participants worked in groups on their proposed response to each stage of the scenario and delivered summaries to an expert panel. The expert panel then summed up each stage, building the pace and complexity of the exercise into a thought-provoking and testing discussion.

Giles Noakes BIMCO Chief Security manager was the moderator for the event and confirmed it had been a useful tool for testing operational planning and post incident management. ■■

Vetting of dry bulk terminals

BIMCO launched its Dry Bulk Terminal Vetting Scheme in January 2015 requesting owners to report on their experiences encountered during port calls. The aim of this project is to get an overview of bulk terminal's performance and if needed to improve the safety and co-operation between ship and terminal.

This project is based on ships completing a questionnaire on the following five categories:

- Mooring and berth arrangements
- Terminal services
- Terminal equipment
- Information exchange between the ship and the terminal
- Loading and unloading handling

The ship is also asked to rate the services received:

- Excellent – Standard of services, equipment and/arrangements was excellent and entirely safe. It would serve as an example of best practice for other terminals.
- Very good – Standard of services, equipment and/arrangements was of high quality and always safe to the ship and/or her crew.
- Average – Typical terminal standard - experiencing both good and bad however in general the services, equipment and/arrangements were safe and overall met expectations.
- Fair – Standard of services, equipment and/arrangements was below average and in some areas improvements to safety had to be made.
- Poor – Standard was unacceptable or unsafe for the ship and/or her crew.

Within each of the five categories there are a series of related sub-questions included. The answers from the sub-questions will be used to guide future users and will be updated on the BIMCO webpage. If for example there is a surge at one of the terminals, this information will be shared to members. To ensure anonymity to ships BIMCO will not publicise detailed information about any terminal prior to receiving 5 reports on each port.

Since the launch, BIMCO has received close to 200 reports on about 140 different terminals around the world. This is a good result however, we still need more reports in order for this project for users to be effective.

Current participants will notice a slight change in the host survey platform. We have changed to a new platform capable of delivering the same features and offering a smooth transition. It will also not affect past or future responses from members.

In order to ensure that your form is registered in the database all ships will have to update to using the latest version of the form. The survey form is marked version 2.0 and can be found on the BIMCO website.

The information gathered will be made available to BIMCO members via the BIMCO website. It will provide timely guidance to ships, owners and charterers on the actual status and performance of terminals and berths. BIMCO cur-

rently launched preliminary results on the BIMCO website (Marine/Technical section) highlighting the country, port, month of the latest report and the number of reports received for the port in question. This is the format that will be used to inform the user about ports receiving less than five reports.

When more than 5 reports have been received on a port more detailed information will be made available to BIMCO members. The web site as it is under development will include a star rating giving an excellent overview of the performance of the terminal:

- One star (bad)
- Two stars
- Three stars (average)
- Four stars
- Five stars (good)

So far, the answers paint a positive picture of the interaction between a ship and terminal. The rating of one or more categories has only been fair or poor in about 7% of the cases. Comments and reasons have been submitted to explain the low rating score. For example, the lack of English speaking staff seems to be reasons many times. Any rating report will be closely reviewed together with the observations upon which it was given.

The collection of rating scores is not an end in itself: It does little good to have knowledge about poor conditions at certain terminals, if nothing is done to correct

LEVEL 0

BIMCO DRY BULK TERMINAL VETTING

Search for terminal

Quality of the facilities and service at dry bulk terminals worldwide ARE OF INCREASING importance for the daily operation. Since early 2015 ships officers have kindly completed a quick survey each time their ship leaves a terminal in order to obtain an overview of the performance.

The survey data covers the quality of the following facilities and services at the given terminals:

- handling of loading/unloading
- mooring and berthing arrangements
- information exchange between the terminal and the ship
- quality and availability of equipment; and
- terminal services

Terminals are given a star rating provided its performance based on the five categories.

Select country from the dropdown list

Select terminal from the dropdown list

• When the terminal is selected, the user will be referred to level 1.

• In case the terminal do not yet have 5 reports in the database, a text will appear telling the number of reports submitted to date.



Aron Sørensen

LEVEL 1

BIMCO DRY BULK TERMINAL VETTING

- List the name of the selected country
- List the name of the selected terminal / including the UN-LOCODE
- List the number of reports and the last update (only month and year)

THE OVERALL EXPERIENCE WITH THE TERMINAL WAS RATED



more information

CATEGORIES:

The handling of loading and unloading was rated	★★★★☆	link
The mooring and berth arrangements was rated	★★★★☆	link
The information exchange between ship and terminal, rated	★★★★☆	link
The terminal equipment was rated	★★★★☆	link
The terminal services was rated	★★★★☆	link

IMPORTANT NOTICES:

• The link will bring you to a new sub-site, where detailed information will be listed. The user will be referred to level 2.

• Important information collected from the reporting and related to the specific terminal, may be issued: e.g. "high safety standard" or "do not speak English"

the situation. Both BIMCO members and the Secretariat should be involved in taking action when such occasions occur.

An example of a correction could be: If a number of reports about terminal X has revealed that that the personnel at the terminal cannot speak English. The owner or manager will then be able to ensure that a native speaking person can be present before calling at terminal X.

LEVEL 2 - Category 1

BIMCO DRY BULK TERMINAL VETTING

The handling of loading and unloading was rated ★★★★★

• Whether the terminal adhered to the agreed loading/unloading plan?	Yes No N/A	■■■■■
• Whether a copy of the agreed loading/unloading plan available to the terminal control room personnel?	Yes No N/A	■■■■■
• Whether the original loading/unloading plan changed?	Yes No	■■■■■
• Whether the terminal loading/unloading operation damage any parts of the ship or her equipment?	Yes No N/A	■■■■■
• Whether it necessary to suspend the loading due to reaching the trimming stage?	Yes No N/A	■■■■■
• Whether the cargo trimmed to the Master's requirements?	Yes No N/A	■■■■■
• Whether the final cargo quantity (as stated on the bill of lading) determined by shore figures or based on a draft survey?	Shore figures Draft survey	■■■■■
• Specific comments:		

• Similar sites for all five categories.

• Specific (relevant) comments from the survey reports will be listed.

In the future it should also be made possible to upload photos and a situation report to the dry bulk vetting website making it possible for BIMCO to contact the terminal or terminal organisations with a request for clarification; publish a terminal alert on the web page; and alert Port State authorities.

We are off to a good start with this project to improve dry bulk terminals for members but we still need more BIMCO members owning or operating bulk carriers to participate in providing constant feedback and reports to make this successful. ■■

Editor's Note: Aron Frank Sørensen is BIMCO's Chief Marine Technical Officer.

Outline of relevant IMO issues

The IMO Sub-Committee - Carriage of Cargoes and Containers (CCC) deals with cargo operations, such as packaged dangerous goods, solid bulk cargoes, bulk gas cargoes, and containers. The 2nd session of CCC was held on 14-18 September in London.

The International Maritime Solid Bulk Cargoes Code (IMSBC Code) was drafted to prime hazards associated with the shipment of solid bulk cargoes - hazards such as structural damage caused by improper cargo distribution, loss or reduction of stability during a voyage and chemical reactions of cargoes. The IMSBC Code facilitates the safe stowage and shipment of solid bulk cargoes by providing information on the dangers associated with the shipment of solid bulk cargoes.

The BIMCO Solid Bulk Cargo Database (SBCD), which can be accessed on BIMCO's website, provides an easy to use reference tool. Shore-based personnel, but also shipboard staff might find the information useful. The main objective of the SBCD is to collect data and information on new or unusual cargo properties and the appropriate cargo handling procedures, including any available information related to: pre loading cleaning requirements, undue delays, inspection guidance, loading, carriage instructions, discharge and cleaning requirements, etc.

The IMSBC Code is an important source and at the CCC 2nd session two crucial issues were discussed:

- Carriage of bauxite cargoes and their potential ability to liquefy; and
- Amendments to make the marine environment (HME) requirements manda-

tory under International Convention for the Prevention of Pollution from Ships (MARPOL) Annex V.

Bauxite cargoes

BIMCO co-sponsored two submissions which proposed a draft circular to be disseminated to warn the shipping industry of the carriage of bauxite cargoes subsequent to the aftermath of the sinking of Bulk Jupiter. The submissions called for a need to further investigate the cargo's properties and characteristics, including if necessary, an appropriate testing method for the transportable moisture limit. The subcommittee was also informed that China had commenced bauxite research in April this year. It was agreed that all research would be considered for a more comprehensive outcome of the work for the correspondence group.

BIMCO also reports that a circular with the terms of reference for a correspondence group to investigate on the carriage of bauxite and its liquefaction tendencies. It is with the intention of proposing amendments to the bauxite schedule. Bauxite is currently a Group C cargo (cargoes that do not liquefy or possess a chemical hazard). The circular and the terms of reference for the correspondence group were approved at the plenary.

The essence of the circular is that the Captain should not accept a cargo of bauxite for loading unless:



1. Moisture content of the cargo indicated in the certificate is less than the indicative moisture limit of 10%. The particle size distribution is as detailed in the individual schedule for Bauxite in the IMSBC Code; or
2. Cargo is declared as Group A and the shipper declares the transportable moisture limit and moisture content in accordance with section 4.3.1 of the IMSBC Code; or
3. Competent authority (the flag state) has assessed the cargo and determines that the particular cargo does not present Group A (cargoes which may liquefy) properties. Such assessments shall be provided by the shipper to the Captain as required by section 1.2.1 of the IMSBC Code; or



IMO Headquarters, London. Photo credit: International Maritime Organisation / flickr

4. Captain has reason to doubt that the cargo being loaded is not consistent with the shipper's declaration then he/she should stop loading and have the shipper verify the properties of the cargo^[1]. If necessary, advice should be sought from the competent authority of the country of loading

BIMCO will disseminate the CCC circular to its members once it is officially issued by the IMO and update the BIMCO Cargo database accordingly.

Bulk cargoes harmful to the marine environment

BIMCO has been extensively involved in identifying cargoes harmful to the HME

in accordance with the MARPOL Annex V by devolving clauses for voyage charter parties and especially on the regulatory side. At this session two outstanding issues had to be resolved:

1. Establish the missing legal link between MARPOL Annex V and the IMSBC Code; and
2. Make the non-mandatory HME requirement criteria the shipper's obligation to classify and declare that his solid bulk cargo is HME or not.

It was agreed at the CCC 2nd session that the IMSBC Code in its entirety should not be made mandatory under MARPOL Annex V. In order to link MARPOL Annex V to the IMSBC Code, the proposed amendment to include the definition of

the IMSBC Code in MARPOL Annex V was finalised by the working group.

Proposed amendments were made for removing the non-mandatory HME requirements from the IMSBC Code guidelines to MARPOL Annex V. The proposal to make them mandatory was not agreed and the HME requirements together with the discussion from CCC 2nd session will be sent to the Marine Environment Protection Committee (MEPC) for consideration and decision. Consequent amendments to the IMSBC Code and the prepared guidelines will be sent to MEPC.

The next CCC session will take place from 12 -16 September 2016. ■■

¹ [2013] EWHC 2199 (Comm)



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New trade flows poised to buoy chemship market

Down by the bow for several years, the chemical tanker market is set to rebound on the back of new US and Middle East petrochemical plants.

Mixed messages have been received from the chemical tanker community during the course of 2015. While spot rates began to pick up during the spring, by as much as 7%, cargo volumes remained flat and contracts of affreightment (COA) were renewed at unchanged, low levels.

Looking at operating costs, shipowners have benefited from the comparative strength of the USD and the declining cost of bunkers due to the oil price slide. On the other hand, the requirement to burn premium fuel with a sulphur content of 0.1% or less in emission control areas (ECAs) as of 1 January 2015 has hit chemships hard because such ships, with their multiple cargoes and berth calls, spend more time in port than other ship types.

Long road back to profits

Chemical tanker owners have struggled to make ends meet for several years following the September 2008 banking crisis. Consumer confidence evaporated with the financial meltdown, undermining demand for both the chemical industry's output and chemship services. Pre-crisis business practices proved to be unsustainable and shipowners have had to implement some painful cost-cutting and management restructuring measures to boost efficiencies and improve sagging fleet utilisation.

Just when the chemical tanker campaign appeared to be nearing its destination on the long road back to profitability, commodity prices collapsed in the second half of 2014. Rather than spur increased spending and growing demand, rapidly declining prices created mayhem. Planned investments in new projects were put on hold, job layoffs jumped, stock markets got the jitters and previously strong Asian

economies began to falter. Furthermore, any sign of a rebound in business activity within the stuttering Eurozone was unsuccessful.

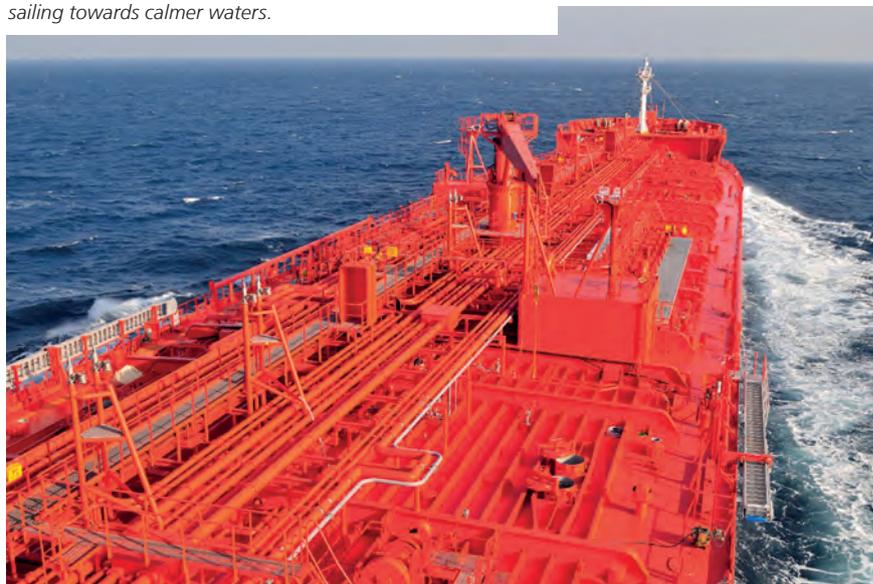
Despite this recent market turmoil and the downside effects of the rather substantial chemical tanker orderbook, the long-term prognosis for this class of ship is good. The availability of cheap feedstock in the US and the Middle East has prompted major investments in new, export-oriented chemical production capacity. China, a key intended market for this new output of bulk chemicals, continues to develop its own petrochemical industry. To the extent that the country's imports will be counterbalanced by rising exports of intermediate and finished products.

It all bodes well for increased demand in the years ahead for the two principal types of chemical tanker. Sophisticated,

IMO Type 1 and 2 chemical parcel tankers, with their stainless steel cargo tanks and the ability to fully segregate over 40 cargo grades on a single voyage, will be called upon to deliver high-quality intermediate and finished products to an ever-widening customer base. At the same time shippers of bulk chemicals from US and Middle East loading ports will be looking for additional coated, IMO 2 and 3 chemical/product tanker tonnage to carry their high-volume cargoes to distant markets.

The strengthening of chemical tanker earnings since April 2015, on the back of improved spot market freight rates, has been aided by the ability of the simpler ships to swing between the chemical and refined petroleum product markets. The demand for product tanker tonnage was strong in the second quarter of 2015, and as a result chemical shippers had less tonnage available on which to draw. Odfjell,

After several years of rough seas chemical parcel tankers are sailing towards calmer waters.





The global petrochemical centre of Houston, with its busy Ship Channel, will be handling even more traffic in the years ahead



Mike Corkhill

a leading chemship operator, reported that its results for the period represented its best quarterly performance since the third quarter of 2008.

US petrochemical rebound

Competitively priced petrochemical feedstock in the US has become available as a result of the shale revolution. The expanding output of US shale oil and gas is rich in natural gas liquids (NGLs) and, of the five NGL components, ethane is by far the cheapest and most abundant, accounting for about 50% of the total volume. An ideal petrochemical feedstock, ethane is becoming available in quantities in excess of what the vast and growing US chemical industry is able to utilise for domestic consumption.

As of March 2015 some 226 US chemical investment projects totalling US\$138 billion were underway, twice the level of two years earlier. Over 60 per cent of these investments were made by companies based outside the US and the majority of the new capacity will be located in Louisiana and Texas, close to major shale plays.

With one particular bulk chemical product, methanol, the US has brought 2.1 million tonnes per annum (mta) of new production capacity into play over the past year, while 5.9 mta is under construction and 19.6 mta is planned. As the US is unable to make use of all this new output, it is about to become a net exporter of methanol. The transition from its current net importer status is set to occur during 2016.

Maritime Strategies International (MSI) estimates that the US is likely to be export-

ing methanol to Asia at the rate of 8 mta from Gulf and West Coast ports by 2019. Although methanol is classified as an IMO Type 3 cargo, many charterers now specify its carriage in Type 2 chemical tankers. A fleet of approximately 50 IMO Type 2 chemical/product tankers of the 45,000 dwt medium range (MR) size will be required to accommodate planned US exports of this product.

Middle East adds value

Following a slight decline in recent years, Middle East chemical output has resumed its growth profile and will continue to expand strongly through the remainder of this decade. Much of the new production capacity is aimed at overseas buyers, to the extent that chemical exports from the region are set to reach the 30 million tonnes per annum (mta) level by 2019, up from 20 mta in 2014.

Middle East nations have been investing in new chemical plants to add value to their plentiful oil and gas resources. The new facilities will be producing not only bulk organic chemicals such as methanol, mono ethylene glycol (MEG), ethylene dichloride, xylene and methyl tertiary-butyl ether (MTBE) that have traditionally been exported in volume from the Gulf but also, increasingly, speciality chemicals. As regards bulk chemicals, MSI is forecasting the need for an additional 40 MR chemical/product tankers to load the new Middle East production volumes due onstream by 2019.

Like that from the US, the increasing Middle East output will also boost demand for stainless steel chemical parcel tankers

as well as chemical/product tankers. Because the primary destination for the growing exports of bulk and speciality chemicals from the two regions will be the nations of Asia, shipowners will benefit from long delivery voyages of 6-11,000 nautical miles and the resultant rise in tonne-mile figures.

New breed of chemships

Growing seaborne movements of bulk chemicals have already prompted the development of a new chemical tanker design - the large IMO Type 2/3, coated chemical/product tanker of around 75,000 dwt. The first two such vessels, Odfjell's *Bow Pioneer* and National Chemical Carriers (NCC) of Saudi Arabia's *NCC Fajr*, were delivered in 2013. Operated under NCC's commercial management and the world's biggest Type 2 chemical tankers, the pair are enabling economy of scale benefits to be derived in the delivery of Middle East chemical exports.

Although some operators active in the chemical trades have 75,000 dwt Panamax tankers in their fleets, these vessels are configured as refined product carriers with 12 epoxy-coated cargo tanks and limited cargo segregation capabilities. In contrast, *Bow Pioneer* and *NCC Fajr* are true chemical tankers. In line with IMO requirements for IMO 2 ships, the maximum capacity of the cargo tanks on the two ships is 3,000m³. Each ship has 31 zinc silicate-coated tanks offering a total of 86,000m³ of cargo space. The one pump per tank arrangement, pipework and manifold connections on the vessels make it possible to carry up to 31 different cargoes in a fully segregated manner.



The chemical logistics infrastructure is spreading - amongst Odfjell's Chinese terminals is a Yangtze River facility 230km upstream of Shanghai

Bow Pioneer and *NCC Fajr* are the extreme example of the trend towards the use of larger chemical tankers for the carriage of these new flows of bulk chemicals. Several owners have recently added to their fleets MR size, IMO Type 2/3 vessels that boast in excess of 20 coated tanks and cargo segregations. These 45-50,000 dwt chemships represent attractive options for charterers seeking to reduce transport costs. Some of the newbuildings have been provided with increased flexibility through a common cargo manifold to complement the traditional bank of chemical manifold connections. The additional feature enables streamlined handling of homogeneous cargoes, including petroleum products.

Streamlining chemship logistics

Chemship operators portray themselves not so much as shipping companies but, rather, chemical logistics specialists. The leading players have established their own storage terminal facilities as well as partnership arrangements with other logistics service providers to augment and enhance their seaborne transport capabilities. They have worked out sophisticated stowage planning regimes, port turnaround schedules and tank cleaning practices for their ships and, because safety and reliability are paramount in the delivery of these high-value cargoes, emphasis is placed on continuously adapting safety drills and training programmes on the basis of experience and lessons learned.

Reducing port turnaround times is a key

focal point for chemship owners seeking to reduce operating costs and improve efficiencies across their fleet. Reducing berth calls through increased cargo transshipments using barges at the main chemical ports is one important tool. Others include optimising onboard bunker tank capacities to accommodate the required volumes of low-sulphur fuel in ECAs and aligning bunker barge deliveries with principal berth calls.

Tank cleaning is not only a labour-intensive operation but also a costly one in terms of time and money. A year ago, when oil prices were high, the fuel needed to heat wash water so it could push the cost of cleaning a full complement of chemship tanks up to the US\$100,000 mark.

Stainless steel tanks are the easiest to clean but this tank material is not a feasible option when carrying large volumes of bulk chemicals. Traditional epoxy phenolic and zinc silicate coatings have served the industry well but neither is compatible with the full range of bulk chemicals commonly shipped by sea.

Paint manufacturers have tackled the problem by introducing 'hard', smooth tank coatings marketed as being cleaning-friendly and resistant to all but the most aggressive cargoes. The most well-established of these is a cross-linked copolymer claimed to be compatible with more cargoes than stainless steel. Another such hard coating recently introduced

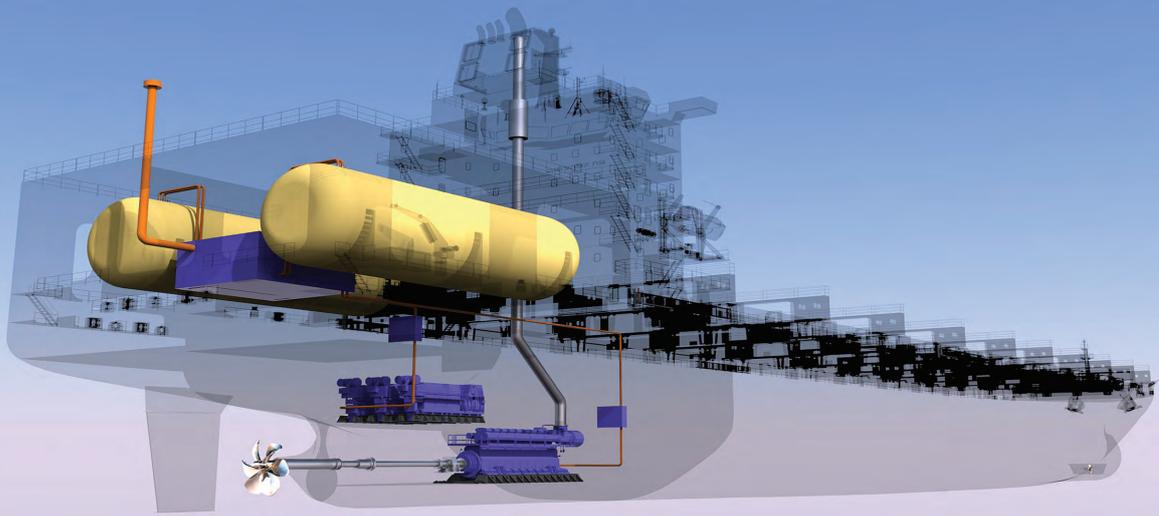
is a bimodal epoxy based on a carefully engineered blend of materials. Shipowners are likely to be specifying hard coatings increasingly in the future to minimise cleaning downtime whilst maintaining the integrity of both the ship and the cargo when changing grades.

Imminent market rebound

Approximately 125 chemical tankers totalling 2.4 million dwt are due for delivery in 2015. In terms of numbers some 60% of these newbuildings will have stainless steel tanks, 25% zinc and/or epoxy coatings and the remainder hard coatings.

Allowing for the removal of some older ships due to the termination of IMO certificates of fitness and recycling, the chemical tanker fleet is set for net growth of about 6% in 2015. While this influx of new tonnage will delay the onset of a sustained rebound in freight rates until the new year, 2016 is set to mark the long-awaited emergence from what has been a long, dark tunnel for the chemship fleet.. ■

Editor's Note: Mike Corkhill is a technical journalist and consultant specialising in oil, gas and chemical transport, including tanker shipping. A qualified Naval Architect, he has been the Editor of LNG World Shipping for the past 10 years and from its inception. Although recently retired from the post, he remains involved with the publication as Consultant Editor.



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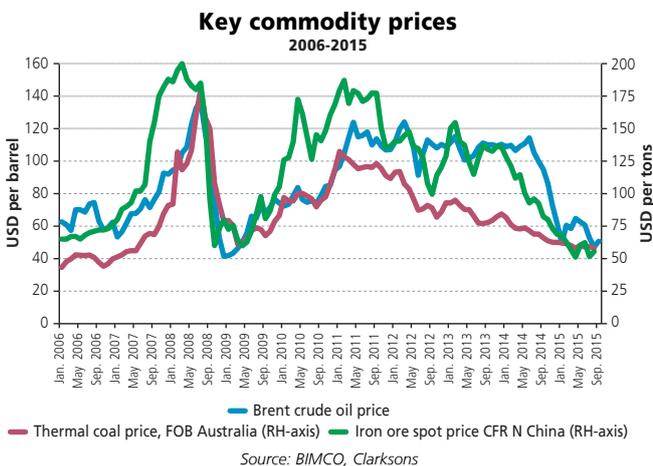
Demand supported by EU and US while China is creating uncertainty

Global economy

All eyes are on China in recent months as most other non-Chinese economic indicators have been dwarfed by the government's actions and markets' reactions. It is all of the things that we don't know about the Chinese economy that is worrying, not the fact that the economy is in a transition phase which inevitably will drive down GDP growth and change import and export patterns.

The apparent troubles in the second largest economy in the world have shaken the belief in the overall global growth story. China's growth has positively affected global growth, especially in recent years when the Western growth engine has stuttered. Thus we all become more sensitive than usual when China changes its course and we don't see the full picture and understand what's happening.

We have seen declining commodity prices in the past years, and more recently the stock market got shook up. The world's multinationals prepared for quite different demand levels of key commodities as production was scaled up. Today we have a glut of coal, iron ore and oil although we are experiencing the highest economic activity in the world ever.



US

The Federal Reserve Bank (Fed) is still scouting for the right moment to increase interest rates. If it wasn't for the most recent uncertainty about China, which is felt in the US too, it would probably have happened by now.

Considering the US is getting close to full employment and the acknowledgement by the Fed that the inflation rates cannot be controlled, the only thing which stands in the way now is the lack of rising payrolls. Being a large but closed economy (only 12% of US consumer spending is imported), the US will gain most by raising payroll to boost consumer spending, rather than being focused on the nation's competitiveness.

The GDP growth rates in the US continue to strengthen. Following the revision of the first quarter growth from -0.7% up to +0.6%, the second-quarter growth rate has also been revised upward to an annualised rate of 3.7%, owing to stronger business investments, and higher government and consumer spending.

Asia

To provide stimulus to its economy, the Chinese Central Bank (PBoC) has lowered interest rates as well as the amount of cash (reserve requirements) that banks must keep on hand to boost lending. In a statement released by the PBoC, it said that "economic growth remains under pressure" and initiatives were carried out to "support the real economy to continue to develop healthily".

While the official GDP growth for the second quarter hit bull's eye exactly at 7%, which was the government's official target, factors pointed out already in 2007 to be more accurate for China's economic development by the incumbent Premier Li Keqiang tell a different story. The three factors he mentioned were the cargo volume on the province's railways, electricity consumption and loans disbursed by banks. Using these factors, the economy seems to only be growing by up to 3% if it grows at all. The lack of trustworthy data means that the uncertainty is severe.

The Caixin China General Manufacturing Purchasing Managers' Index (PMI) saw the quickest deterioration in operating conditions for over six years in August. It now stands at 47.2, being below 50 threshold level dividing expansion from contraction since March. Accompanying that, the "official" PMI also dropped below the 50 threshold level in August. Is this what a 7% GDP growth looks like?

The labour market conditions are equally poor at a six-year low. That's likely to be troubling the government most of all. A short-term fix could be stimulus to the construction industry, which is labour intensive, but a long-term solution must also be found.

The Japanese economy grew by 1.0% in first quarter 2015 compared to the previous quarter. This strong growth rate was brought around by higher business spending. The data put economic growth in Japan at the strongest level in two years. However, sluggish consumer spending and lower industrial output in April could limit the expansion in second-quarter somewhat.

In Japan, the PMI rose to a seven-month high in August, showing an overall improvement and new orders coming in faster. New export orders still grow quietly, as trade with China is slowing down considerably. The September PMI was slightly lower. As expected, the second-quarter growth was limited; it actually became negative at 1.6% annualised growth



DID YOU KNOW...

...that BIMCO's Shipping Economist will present the latest market insights at BIMCO's Annual Conference and Awards Dinner on 18 November 2015 in Hamburg, Germany?



PETER SAND
BIMCO Chief Shipping Analyst

pace, lower exports and consumer spending being the explanation.

2015 has also been a disappointment for South Korea's manufacturing industry, impacting the overall GDP level in second quarter, which came in 0.3% up from the first quarter.

EU

As the European recovery continues at a time-consuming pace, the unemployment level responds remarkably well and has now come down to 10.9% in the Euro area. This is the lowest level seen since February 2012 and a much-needed relief since the pinnacle at 12.1% in mid-2013. It remains the southernmost parts of Europe where the unemployment is most severe.

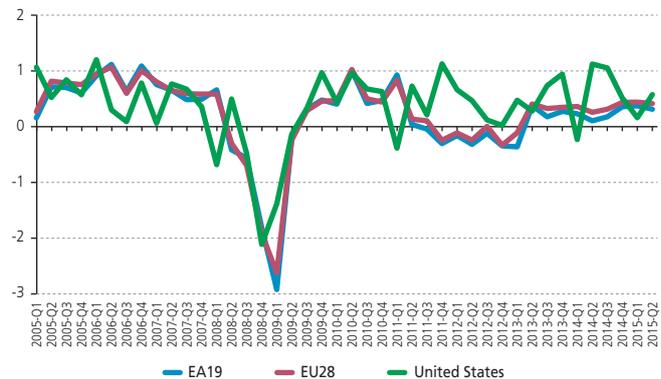
Europe is also impacted by the sanctions against Russia and to a smaller extent by the Russian sanctions against Europe. The EU is Russia's largest trade and investment partner. The Russian GDP fell by 4.6% in the second quarter year-on-year, while the EU28 GDP growth rose by 0.4% in the second quarter from the previous quarter.

Outlook

Our base case for China is that the authorities will still manage to pull off a soft landing. Regardless of where the "real" GDP growth is at, China is

EU28, euro area and United States GDP growth rates

Per cent change over the previous quarter



Source: Eurostat

in a transition phase that brings around slower yet safer and more sustainable growth. According to the International Monetary Fund (IMF) this requires that the market is given a more decisive role in the economy. At the end of the day, we all need to know more about these changes in order to understand them and so we don't become anxious about them. The call in the financial markets is for the Chinese authorities simply to communicate what they intend to do before they do it and explain what they aim at accomplishing by the moves.

At some point in time, we will stop talking about a recovery and focus more on the lack of investments that has brought down the "potential future growth level". The combination of the demographic situations in many of the developed nations mean a declining workforce and the lack of investments that lowers the productivity gains results in future GDP growth that will not reach the highs of the past. This "new normal" affects the shipping industry already, implying that the ability to think ahead as well as the willingness to adapt are prerequisites in coming years.

What should comfort us, in the midst of uncertainty and with a longer-term mindset, is the fact that the world's largest economic regions, the EU (23.7% of world GDP) and the US (22.2% of world GDP), are back on solid and positive growth tracks. While China's economic growth is under pressure, China's share of world GDP is "still only" 12.1% according to Eurostat, UN, the IMF and World Bank. Global GDP growth in 2015 is estimated at 3.3% by the IMF, slightly lower than 3.4% in 2014. ■■



Davos 2009 © Chappatte in "International Herald Tribune", 29 January 2009

Global seaborne trade is dependent on global growth, thus it is vital if general shipping demand is to go forward that a smooth transition from a sustained recovery to normalized demand become successful. The article was finalised on 10 October 2015. Read about the impact on shipping on the following pages...

Dry Bulk Shipping

Markets are slowly improving from a very low level as the demand side falters

Demand

The shipping market and underlying profitability can only improve if the fundamental conditions (supply and demand) also improve. Therefore transportation of larger volumes, longer sailing distances in general or a lower increase of dry-bulk fleet size is a prerequisite for better markets to arrive.

On the first issue about more commodities, we have seen coal as the primary culprit so far, with grains potentially also sinking into the red before the end of the year. Volumes of steam coal and coking coal are both contracting notably, and our forecast is for an annual decline in transport driven by the lack of demand from China (-51 million mt) in the East and the UK (-13mt) in the West cushioned by increased appetite for imported steam coal in India (+16mt). Prospects for the latter have declined somewhat over the summer as domestic production and power-plant stocks both have risen.

The coal-exporting nations suffering from this decline in demand are the two giants, Indonesia and Australia, while US exports are down on lower UK imports.

On the positive side, the longer-than-normal grain season in South America has benefited primarily the Supramaxes, which apparently defy gravity as being the segment with the highest freight rates, while also facing the biggest increase in fleet size in the dry-bulk sector. Additionally, strong steel exports out of China have contributed to higher Supramax fleet use.

The second issue about ton-miles has also come into play this year as a part of the decline in coal has cut off the longer trades

at the expense of the shorter hauls. The complete absence of South African thermal coal exports to China for more than a year now is a devastating example of this, especially when it is substituted by non-seaborne imports. In 2014 South Africa supplied China with 5.2mt of thermal down from 12.4mt in 2013.

The third issue on fleet size will be discussed in the supply section of this report.

The freight rates for all dry-bulk segments have been low throughout 2015, the July/August spike for Capesize ships being the short-lived exception. Averages for the first eight months of 2015 range from USD 5,605 per day for a Handysize to USD 8,163 per day for a Capesize.

The poorest freight market on record is due to a combination of demand weakness and capacity abundance. Unfortunately, there are no easy ways to escape this. As China is going through a period of transition that does not favour the dry-bulk shipping industry, the prime driver is out of the picture. Capacity has been abundant for years, so it's the change to the demand side, the variable that the industry cannot impact, which is at the epicentre in 2015.

Supply

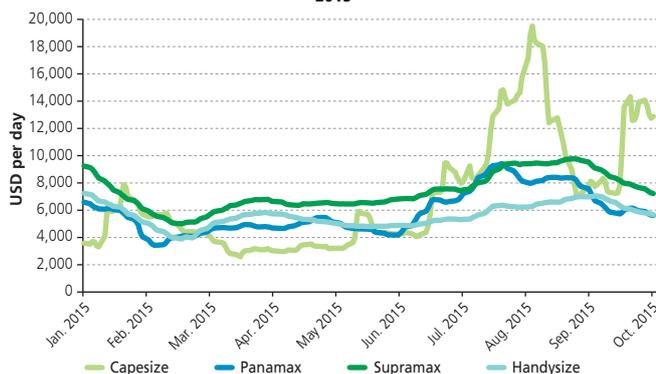
Speaking of the contributing factors to an improved shipping market, the dry-bulk fleet has grown only marginally during the first nine months. The inflow of 39.7 million DWT, which has been offset by demolition of 23.8 million DWT, means a fleet growth of just 2.1%. Continuance of a low fleet growth is vital to achieving an eventual recovery and a return of sustainable earnings for the industry.

A central element in that equation is a low level of new orders. This has been accomplished by a landslide margin. In Clarkson's order-book statistics, there were only 84 new contracts recorded at the end of August. Such a cautious attitude is quite the opposite of what happened less than two years ago, when capacity equal to the year-to-date amount in 2015 (4.7 million DWT) was contracted in just 16 days!

Demolition also holds a key position in today's and tomorrow's fleet-growth level. Although 306 ships have left the fleet so far in 2015, owners' interest in making use of the demolition "tool" to limit supply growth seems to have evaporated completely over the summer. In early July, BIMCO cautioned that a new full year record level of demolished capacity would not arrive in spite of a record

Baltic Exchange time charter averages

2015



Source: BIMCO, Baltic Exchange, Clarksons



QUICK FACTS

2 October

Total fleet size (change since 1 January)

DWT million: 772.99 (+2.1%)

Rate indices (change since 11 June)

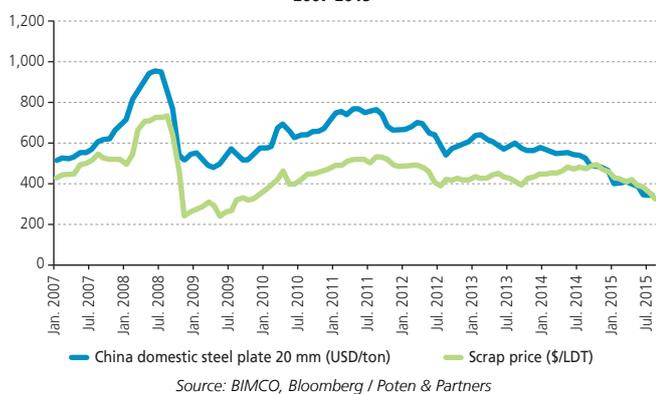
BDI: 889 (+41%)

BCI: 1931 (+138%) • BPI: 701 (+1%)

BSI: 691 (+3%) • BHSI: 392 (+17%)

Latest update on Baltic Indices available at www.bimco.org

South Asian scrap price vs Chinese steel price 2007-2015



first half of the year. Unfortunately, our expectations have proven to be all too right. Spiking Capesize rates immediately cooled owners' interest in the hope that a market rebound was around the corner.

Furthermore, the strong Chinese steel export at discount prices to the countries that used to prefer scrap steel to new steel means that

scrap prices keep heading lower and lower as volumes decrease. Only 37 ships were sent to the blow torch in July and August.

As trading conditions continue to challenge all shipowners and operators, everything that can be done to delay the delivery of the next ship has been done within the legally binding nature of a new-building contract. It is not easy to discuss terms with shipyards at a late stage in the building process, but the result is now clear. 2015 is about to receive "only" 49 million DWT, which will bring fleet growth down to a 10-year low at 2.5%.

Outlook

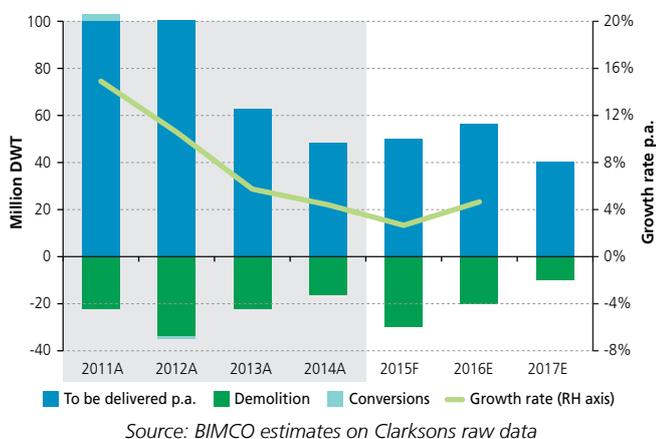
When traditional demand growth is not increasing, we need to look harder for future growth. Here the glut of high-iron-content ore in the international markets and the following low prices may finally bring around a sizeable substitution in consumption by Chinese steel mills, away from the domestically produced low-iron-content ore, in favour of imports.

Calculations done by BIMCO show that monthly imports into China could be 20mt higher per month (+26%). A total of an extra 240 million tons on an annual basis could bring deployment for around 155 Capesizes, assuming an unchanged distribution between Australian and Brazilian imports (75%/25%).

Last year, Australia grew its share significantly as 90% of Chinese incremental demand came from Australia. As Brazilian miner Vale is expecting to grow its output over the next year, this would improve the prospects. Working against would be more Brazilian ore transported on 400,000-DWT Valemax class ships operated by the miner itself or related parties.

For the coming months: September-November, BIMCO expects the supply of new ships to stay subdued and slow paced towards the end of the year. The deteriorating demand-side conditions are expected to be somewhat reversed as we move into the stronger months of the year. The vital commodities, coal and iron ore, are both expected to be in higher demand in coming months, enhancing owners' and operators' opportunities to find employment for their ships. Altogether this should support the freight rates although no large-scale improvement to the fundamental balance is likely to develop. ■

Dry bulk supply growth



A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2015-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 40% of the remaining vessels on order are delayed/postponed.

More shipping market analysis online at www.bimco.org

Tanker Shipping

More optimism in sight for tankers in the winter season

Demand

2015 has been the year of the tanker. The fundamental improvements with slow supply-side growth for some years coupled with low oil prices from mid-2014 created strength on both sides. Freight rates started to take off in October 2014 for all types and sizes. The combination of an early start to the fourth-quarter seasonal strength heading into winter and the fact that the oil prices continued to slide became a catalyst.

Throughout 2015, the global refinery throughput has been on the rise. The normal seasonal lower throughput in the first half of the year with widespread maintenance did not occur. Owing to rising and already elevated refinery margins from East to West, refineries simply wanted all the crude oil they could get. This development still provides strong demand and solid freight rates for the tanker industry. In India, we saw a record of 4.74 million barrels per day (mb/d) of crude throughput in June, marking a truly global trend, whereas Middle Eastern refineries also hit a record throughput because of increased runs in Saudi Arabia.

October is traditionally another month of lower throughput as refineries get ready for the winter season when crude runs normally peak. Moreover, the American "Labor Day" on 7 September marks the end of the US driving season which started on Memorial Day, 25 May. This means that the recent 10mb/d production of gasoline will come down.

Some of that weakness may already have caused freight rates to come down sharply, in combination with the global financial uncertainties originating from China. Very large crude Carriers (VLCCs),

Suezmax and Aframax have seen freight rates cut in two since mid-June, while Handysize has been the one to drop the most among oil product tankers.

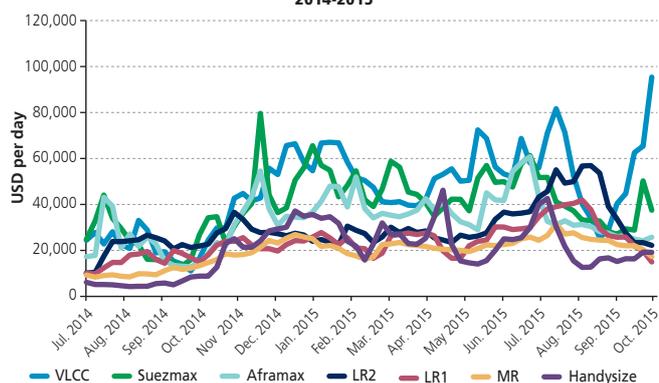
In a rush of excitement, it's easily forgotten that such high refinery crude runs can only go on for so long, if end consumption supports it. End consumption has supported it some of the way but not all the way. Swollen stocks of crude oil and oil products are now seen everywhere. Preliminary OECD total industry stock change in second-quarter was 1.1mb/d. All stocks but gasoline increased, US crude oil stocks too. In comparison global oil demand dropped by 0.1mb/d over the same period of time and is expected to see an increase of 1.6mb/d to be consumed for the full year over 2014.

Global oil demand and supply
2014-2016E



Source: BIMCO, International Energy Agency (IEA)

Oil tanker freight rates
2014-2015



Source: BIMCO, Clarksons

Supply

Contrary to what happens too often, the strong freight markets for oil product tankers have not resulted in a knee-jerk run to the shipyard to order a massive amount of new ships. This stands in opposition to the crude oil tanker orders seen in 2015, as if the lid has come off finally after several years of resisting the temptation.

By end-August 2015, 56 product tankers with a total capacity of 4.8 million DWT, predominantly LR2 (20) and LR1 (21), have been ordered and will be delivered in 2016-17. They are aiming to get a share of the market for longer-haul trades out of Middle East refineries, predominantly into the Western markets. This ordering trend has been on for two years now.

Among the crude oil tanker segments, we have already seen more orders for both Aframax and VLCCs than we did in the whole of 2014. Aframax in particular has been popular with investors this

QUICK FACTS

2 October

Fleet sizes (change since 1 January)

Crude (DWT million): 383.59 (+2.1%)

Product (DWT million): 138.39 (+4.5%)

Rate indices (change since 11 June)

BDTI: 725 (-20%) • BCTI: 506 (-30%)

Latest update on Baltic Indices available at www.bimco.org

year; after six years with one order a month on average, 2015 has seen 29 new contracts in the first eight months. For the VLCCs, the orders with delivery in particular 2017 (21) and in 2018 (14) have been favoured by investors. In 2015, 50 new VLCC contracts in total have been signed.

One of the launchers which has lifted the freight rates into orbit is two years of very slow fleet growth. Today the fleet holds 648 VLCCs, whereas 628 VLCCs were active by mid-2013. That's a growth of just 3% in 26 months. Looking forward into the future inflow of crude oil tankers, we can see the delivery pace is picking up and the demolition potential is vanishing with just 14 VLCCs being more than 20 years old and another 16 getting inside the window of the fourth special survey in 2016.

On order for a scheduled delivery during the next 16 months are 71 VLCCs. This means a double-paced inflow as it has taken 34 months for the latest 71 VLCCs to be put into active service.

The change in supply-side conditions will slowly tighten the freight market, and as we look into 2016, the tide could turn fundamentally as a fleet growth of 4.4% is likely to outstrip demand growth. As the coming two years are now "full" in terms of remaining in control of supply-side growth, any additional crude oil tanker orders should be placed for 2018 delivery.

BIMCO forecasts the present and next year supply growth for oil product tankers to be at 5.4% and 5.7% respectively, meaning two "full" years too for that segment.

Outlook

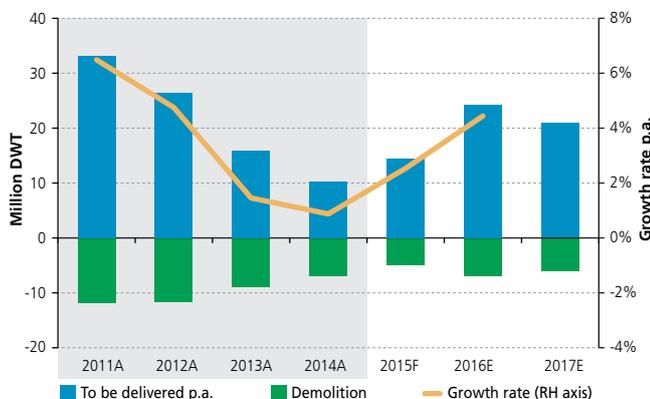
Looking forward, the winter markets are expected to soften, as the eventual lower refinery crude oil throughput when no more stocks can be filled and margins begin to crumble as demand slips. Until then BIMCO expects earnings for both crude oil and oil product tankers to remain strong. Our expectations are primarily supported by low fleet growth for crude oil tankers and long-haul trades for oil product tankers.

High volatility in freight rates can be expected in the coming half year half a year, when it may also be prudent to look at the time charter market, where one- and three-year time charter rates are both at their highest level since 2009. At USD 48,000 per day and USD 43,500 per day, time charters will make positive returns after all costs inclusive of capital cost and depreciations are deducted.

In the longer run, an eventual repeal of the US crude oil export ban will likely have some impact on the tanker trading lanes. The US congress is set to vote on the issues during this autumn. For the supporters the case is clear: US refineries are saturated with light sweet crude which is produced abundantly. For those in favour of keeping the crude oil export ban still in place there is "national interest", which currently seems to hold the upper hand. Currently, the only crude oil exports today go to Canada (0.5mb/d).

Moreover, the eventual lifting of international sanctions on Iran is likely to see a steady increase in crude oil, both sweet and sour, into the market over the coming one to three years, depending on much-needed investments to boost production and time to regain market shares. BIMCO expects the re-entry of Iranian crude oil into the market will change trade patterns as other suppliers will be squeezed on their market share. The key will be West African produced sweet crude now going to Europe and East Asia. The latter is the vital one and a stronghold behind the current upturn. The overall impact on the tanker earnings from these changes holds the potential to become both negative and positive. ■■

Crude tanker supply growth



Source: BIMCO estimates on Clarksons raw data

A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2015-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 30% of the remaining vessels on order are delayed/postponed.

More shipping market analysis online at www.bimco.org

Container Shipping

Low demand on high-volume trades weighs down as supply rises

Demand

The container shipping market may find comfort in the fact that global volumes were up by 1.1% in the first six months of 2015. Following a disastrous first quarter, all three months of the second quarter posted year-on-year increases. Behind the headline, though, the story of US East Coast imports was the only positive one on the vital East-West trading lanes. First-half growth of 17% was posted after an immensely strong first quarter.

On the US West Coast, it's been slow all year, starting with the labour disputes that weren't resolved until mid-March. Since then year-on-year growth in the second quarter was almost on par with 2014. But for the first half year alone, inbound loaded volumes dropped by 2% according to BIMCO data.

On the Asia to Europe trades, volumes were down by 4.2% in the first half of the year as 7.4 million TEU was transported. Northern European imports fell by 3.6%, while the East Med and Black Sea imports fell by 4.8%. In the first six months of the year, the euro dropped 19% compared to the yuan, and this resulted in more costly imports, which dampened importers' interest.

Intra-Asia shipments remain a stronghold with ongoing positive growth around 4-5%, but the increased uncertainty surrounding the economic development in China adds doubt as to whether such a strong growth rate can be sustained for the full year.

Beyond the Shanghai spot rates, a fuller picture of how container freight rates are faring for shipments out of China is the China Containerized Freight Index (CCFI), which covers ten major ports

in China and includes long-term contractual rates in addition to spot freight rates.

The severe lack of exports from China is seen from the composite index, which dropped below 800 in early July. This is the first time on record (index started January 2009) that the index went below 800. Since then the composite hasn't really improved despite a 25% increase in the freight rate index for European-bound cargoes as US-bound cargoes saw freight rates slip further.

As volumes drop and new ships are introduced on a weekly basis, it's even more difficult to strike the balance that will see freight rate improvements. However, the Europe index rates have gone up under huge volatility in the spot market, and the trend is rising. In June, spot freight rates rebounded at USD 205 per TEU; in July the rebound happened at USD 400 per TEU and in August at USD 469 per TEU, moving on up, but still USD 500 per TEU below the level of 2014.

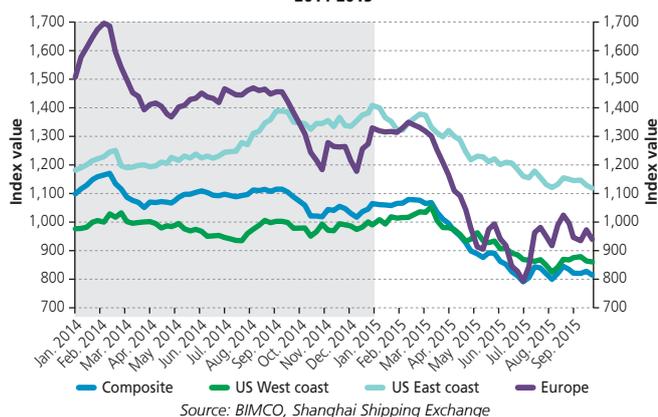
In our last report we discussed if a potential gap in the market was the reason for 6-12 months' charter rates for ships sized 1,000-4,250 TEU to significantly increase over the first five months of 2015. Today we can see half of the gain is now gone, and the rise in time-charter rates seemed to be more of a short-term imbalance rather than a long-term improved market.

Supply

2015 will see a new record inflow of newbuilt tonnage. BIMCO forecasts close to 1.6 million TEU will be delivered by the end of 2015. This marks the highest inflow of new capacity ever. As the record settles, it will be done by less than 200 ships. The trend is strong, as 436 ships were needed to reach 1.502 million TEU in 2008. The container-ship fleet is going through large charges these years, as owners strive to cut down unit costs by introducing bigger and bigger ships everywhere. The average size of a newbuilt ship in 2015 is 8,400 TEU; in 2008 it was 3,435 TEU.

In the past three years, owners have parted with 553 ships with a combined capacity of 1.162 million TEU. 2015 marks an end to this flurry that has dented fleet growth markedly. So far, only 51 ships with a combined capacity of 94,000 TEU have been sold for demolition with the average built year being 1991, similar to that of 2013-14. Container-ship demolition activity has been weak for a full year now. The demolition potential remains scarce as only 561,000 TEU is more than 20 years old. In spite of that, November and December could see an increase if demand growth stays low. This is why 250,000 TEU remains in our forecast.

China containerized freight index
2014-2015





QUICK FACTS

25 September

Total fleet size (change since 1 January)

TEU million: 19,427.48 (+6.5%)

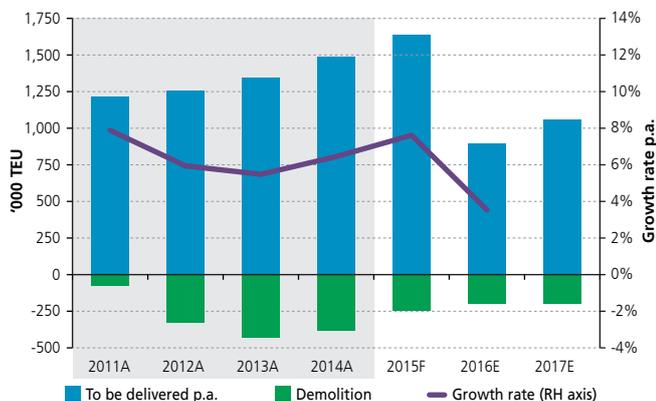
Rate Index (change since 5 June)

CCFI: 814.09 (-6%) • SCFI: 571.95 (-8%)

The fleet has grown by 5.8% until now and is expected to reach 7.3%, which is the highest in four years and largely surpassing demand growth.

ships with a capacity of 4,000 TEU or less, while May to August saw 28 new orders for ships in the same size range.

Container supply growth



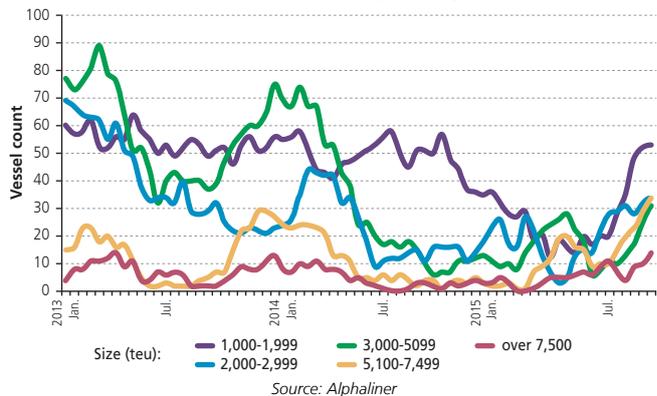
Source: BIMCO estimates on Clarksons raw data

A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2015-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 30% of the remaining vessels on order are delayed/postponed.

Outlook

The lack of European demand is of concern. In the short term, this is because container shipping is a low-margin business and industry profitability requires sustainable freight rates on high-volume trades. In the long term, half of all new ships are bound for a future on the Asia to Europe trading lane, cascading the present work horses onto other trading lanes.

Idle containership (units idle breakdown by size range)



Source: Alphaliner

At the halfway point through the year, container-ship capacity equal to that of the full 2014 has been ordered. At the end of August 1.4 million TEU of new contracts had entered into the orderbook. Orders hold no surprises at all, neither in size nor in numbers, as no ships with a capacity in the range of 5,300 TEU to 8,800 TEU have been ordered since 2011. Moreover, half of the new orders were in the shape of 37 ships with +18,000 TEU capacity, with another 39 ships with 10,000-14,000 TEU capacity. This leaves 175,000 TEU for the remaining 49 ships ordered between 1,400 TEU and 9,700 TEU.

A successful cascading of ships left over on higher-volume trades should not increase supply of capacity beyond requirement on the secondary trades where it is about to be deployed.

In our last report we signalled that the rise in charter rates for small to medium-sized container ships could see new orders surface if rates remained high. In spite of rates coming off somewhat, we have seen a flood of orders since May. January to April saw only 13 orders for

The deteriorating freight market has significantly reversed the trend seen in the first half, which saw the idle fleet go as low as back in 2011. Back in June, BIMCO mentioned that idling of larger ships because of overcapacity would be prudent. It now seems as if idling across the board has been exercised. Nine ships of 8,500-13,900 TEU were idle at the end of August according to Alphaliner. Cancelled sailings and service suspensions have been the options preferred by the operators until now. ■

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Bunker price mechanism – better correlation between physical market and oil futures

Physical bunker prices are sometimes difficult to work out and every so often impossible to understand, especially during periods of high volatility.

There is no independent price verification method – in some instances trading can even become a “guess my price” game. Often, sellers do not even want to give an indication unless the buyer has a firm order. The bunker market suffers from a lack of transparency, which is not acceptable from the buyer’s perspective.

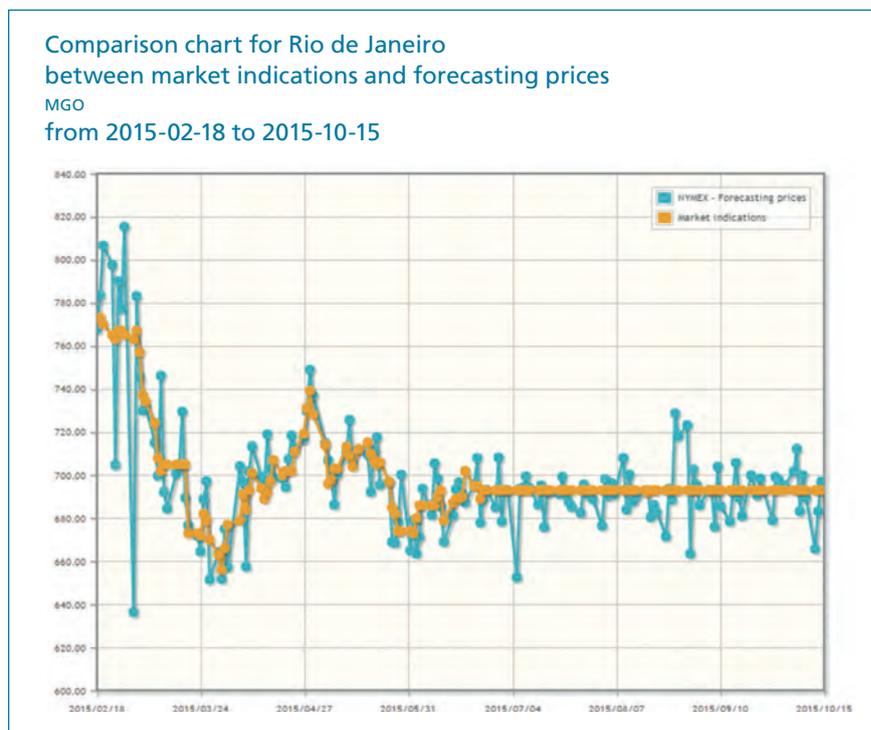
Oil Futures – New Benchmark

Oil futures were introduced to the market, by New York Mercantile Exchange, NYMEX in 1983 and in London by the International Petroleum Exchange, IPE in 1989. Before this, the Platts market publication was the sole benchmark publication for marine bunkers. Platts journalists simply made calls to various suppliers and traders around the globe to ask them what prices they were recording during the trading day. Prior to oil futures it was necessary to have some kind of benchmark reference numbers.

Now it is time to start using oil futures as the new reference point. We already do this to a certain extent, but the figures are used solely as a long-term price guidance. However this does not mirror the daily trading and therefore makes price reaction far too slow.

Oil futures close of the day seems to be accurate enough for the following day’s price adjustment for the physical spot bunker market.

Crude oil is the base for all bunker fuel available from 380 cst fuel oil to marine



gasoil (MGO). There is a correlation between crude oil and various bunker fuels. Crude oil, priced in USD per barrel, needs to be converted into readable numbers for the bunker market. Crude priced in USD per barrel, by using a formula converts the barrel into fuel oil 380 HS priced in USD / mton. For GasOil no formula is needed since both are in USD / mton.

Method to be adopted

Everything starts with the physical bunker

price in each port. After that the oil future changes “in converted form”, it will adjust to the starting price. The physical price should follow the oil future curve as close as possible - almost by 100%. If not, buyers should be entitled to receive an explanation on why the physical price curve differs from the oil future curve.

The idea is that - the physical prices should follow the oil future variations as closely as possible. If everyone sets their own price

instead of following the oil futures then the variations become unpredictable. Today, the physical market ignores the oil futures and creates its own bunker prices outside market value.

Another advantage when relying on the variations in oil futures is that bunker prices can be updated often: for example, every minute instead of once a day as it is today in most ports.

The idea is to have a real-time price quote reflecting the commodity price change as per changes in supply and demand as far as possible. Oil future contracts are like shares, which are being sold and bought and priced by the oil exchanges, NYMEX and ICE. The result of these contractual closing prices forms the basis for the physical price settings and adjustments.

Change of Benchmark

In practice each individual port will have its own benchmark. The starting value of the benchmark is manually created from what the market considers to be a fair price at the

time for price valuation in each port. The creation of starting prices should be estimated in as many suitable ports as possible.

Once all starting prices are established on day one, the daily price adjustments will be based on oil futures, and replaced by new oil future values every day starting from day two (2) onwards. Two prices will be available in parallel, 1) one based on oil future values and 2) another price based on the physical values for each port. The closing prices of the day will be presented in the same diagram and form two curves for comparison and control of the physical market as seen in the graph.

From time to time some ports especially the smaller ones need to be reset, because of the unwillingness to follow the oil futures market variations. This is not a problem, and we need to let those people who are less enthusiastic about using oil futures influence the daily physical prices, with more time to adopt to the new way of quoting and calculating prices.



Carl-Johan Garsten

New Benchmark test

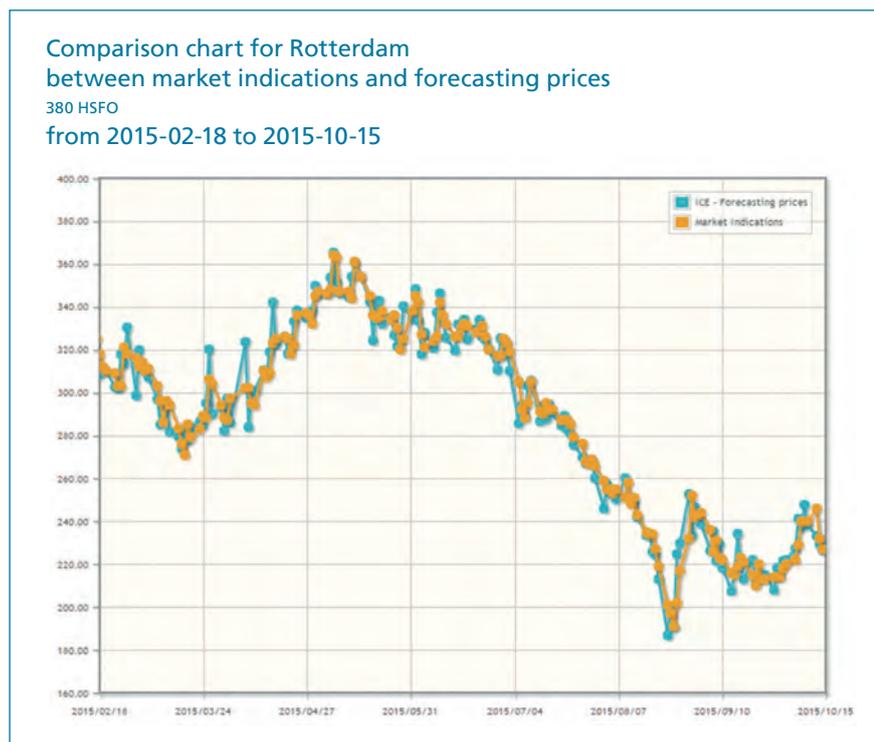
Has oil future as the new benchmark been tested by companies?

Yes, MABUX (Marine Bunker Exchange) has tested this benchmark for the last 6 years – and has seen that it works well. The foundation has been laid but more work is needed to make it more user-friendly and commercial. The importance is that the theory should work in practice. ■

Editor's Note: Carl graduated from the "Navigation College" as Master Mariner in Malmo, Sweden 1964. After his studies he joined the "Military Academy", in Sweden and became 1965 Navy Officer in the Reserve.

After a number of years at sea he returned to University for further studies and graduated from the University of Lund in Sweden with a Bachelor of Economics in 1974.

Carl worked as Deck officer and as Captain in the Swedish merchant navy. In 1975 he came to work ashore as Shipping Manager for the trading company Joint Trawlers. He then started his own trading activities in 1979 but after 10 years relocated to West Africa. From 1988 until 1993 Carl was hired by Sentram Ferry Service in Dakar, Senegal as President Director General. Sentram provided ferry service along the West African coast. In 1994 he returned to Europe and was appointed Managing Director for an independent oil company, High Services, specialising in high sea bunkering. The company was sold in 2002 and the same year Carl founded the company Marine Bunker Exchange (MABUX) AB, a service company for the marine bunker industry, where he presently is active.



New deliveries blunt freight rate rises

The products tanker sector, having suffered sharp declines in rates following the immediate aftermath of the 2008 recession, has performed consistently since 2011 – thanks to the changing landscape in the oil products trade market.

Over the last six years, the volume of refined products traded by sea has grown by 140 million tonnes, equivalent to a CAGR of 2.9% over 2008-14. Nonetheless, trade in tonne-mile terms has grown at a faster 3.8% per annum over the same period reflecting an increase in the average voyage distance (up from 2,966 miles in 2008 to 3,126 miles in 2014). The imbalance in supply and demand of certain products has been the driving factor behind this growth in tonne-mile trade.

The shale revolution in the US oil and gas

sector, and the shifting of the refining industry’s focus eastward have sharply reduced the cargo demand from major importing countries (in Asia, in the Middle East and the US). With the US now producing excess quantities of gasoline, European refiners have been diverting supplies to Africa and the Middle East. Growing gasoil surplus in the US has pushed shipments to Europe and Latin America, with trade volume on the US-Latin America routes rising two-folds over 2008-13.

Another trend gaining strength is the rise in jet fuel-kerosene exports from Asia and

Middle East to Europe and the US backed by rapid refining capacity expansions. In the case of naphtha, the Middle East remains the single largest supplier to Europe and Asia, with the US also catching up slowly. It became a net exporter of naphtha in 2014 as petrochemical plants switched to cheaper shale gas for feedstock.

We expect these trends to further, albeit the growth in seaborne trade and tonne-miles is likely to be slower this time as the non-OECD oil demand is expected to grow moderately from now on. Reflecting the end of an era of rapid demand growth (2003-08) as

Figure 1

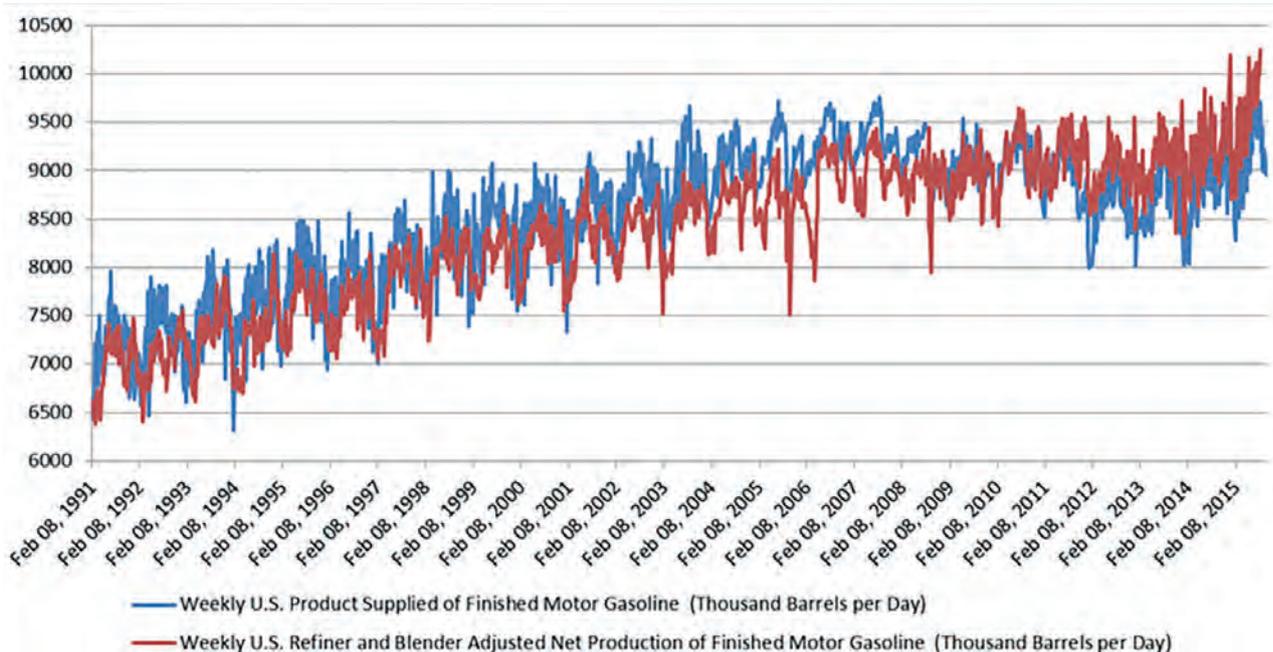
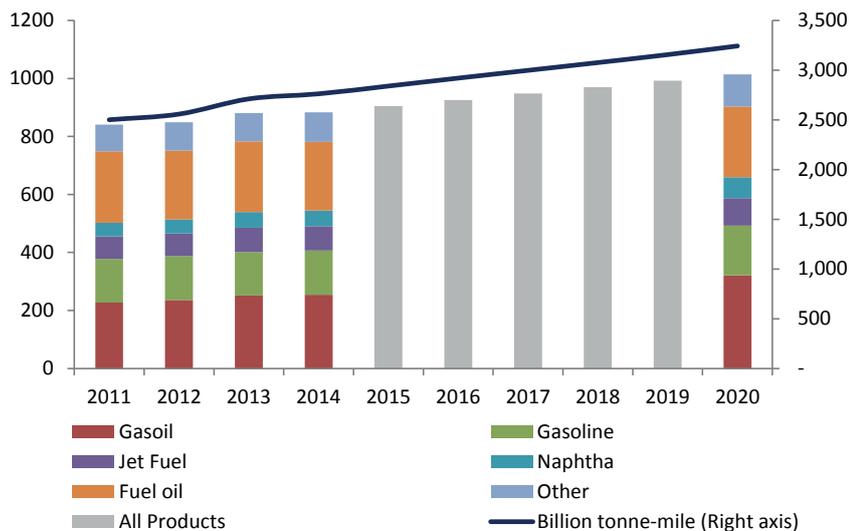


Figure 2: Total product tonne-mile demand and seaborne trade by commodity (million tonnes)



Source: Drewry's Product Tanker Market Annual 2015/16

Editor's Note: Nikhil Jain, Drewry Maritime Research, jain@drewry.co.uk

the emerging economies approach the end of the first phase of industrialisation and electrification.

Taking into consideration the recent and long-term trends for each trade route and the major changes taking place in supply and demand of individual products in each trade zone, we expect the seaborne trade in refined products to grow at a CAGR of 2.3% over 2014-20. With the average voyage distance rising steadily, we expect tonne-miles for products to increase at 2.8% per annum over the forecast period.

The changes taking place in trading patterns have affected not just the demand side in the product tanker market but the supply side as well. With healthy growth in tonne-miles, there has been a high level of switching of product/chemical tankers (also called swing tankers) from chemicals trade to refined petroleum products. To put things in perspective, since the start of 2013, around 10 million dwt of swing tonnage (mainly MR2-sized) has moved into the product-trading fleet, accounting for almost 70% of the increase that has taken place in product-trading fleet since the start of 2013.

With the chemical tanker market reeling under the pressures from lacklustre growth in demand, it seems likely that this shifting of swing tonnage to products trade will become a lasting feature. Furthermore, a bulky orderbook and low demolitions are likely to further growth in the product-trading fleet, which is forecast to expand at a CAGR of 3.2% over 2014-20, with notable gains taking place in the MR2 and LR2 segments.

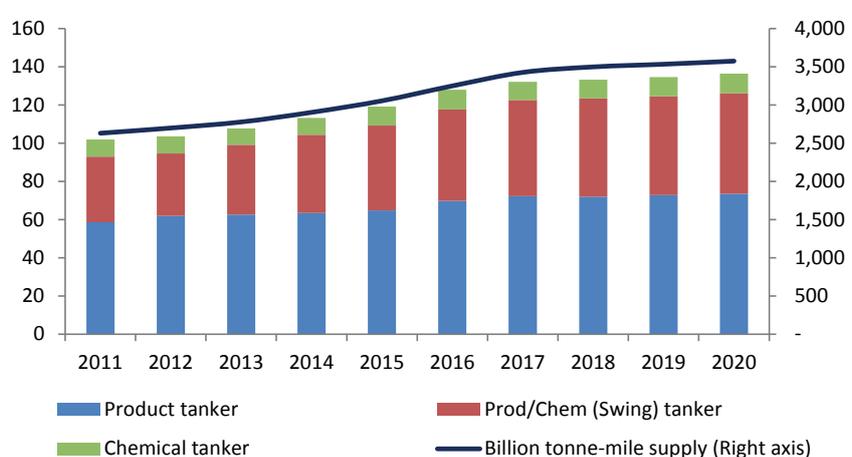
Freight rates in the products tanker market have improved in general over the past three years, helped by rising tonnage demand. While tonnage supply has also risen in tandem with demand, overall fleet utilisation has still wavered within a narrow range of 80-85% for most segments.

Rising tonnage deliveries and influx of swing tonnage have started impacting the utilisation rates, which averaged 81% in 2014 compared with 85% in 2013. Notwithstanding, charter rates, particularly for bigger product tankers, improved helped by the recent plunge in bunker prices and rising enquiries for crude tankers in the latter half of the year. Freight markets are expected to defy the trends in utilisation rates this year too, with charter rates, particular for bigger

product tankers, projected to rise regardless of the expected lowering in utilisation rates to 75-80% in 2015.

However, when the dust settles, we expect there will be a downward correction in rates in line with falling utilisation levels, which are an outcome of a much faster growth in tonnage supply than demand. We forecast a decline of around 10% in the time charter rates across all product tanker segments in 2016, followed by a further downward correction of 4% in 2017. Thereafter, as the supply-demand gap begins to correct, we expect utilisation levels and freight rates to stabilise and gradually move upward over the remainder of the forecast period. ■

Figure 3: Tonne-mile supply and product-trading fleet by vessel specification (million dwt)



Source: Drewry's Product Tanker Market Annual 2015/16

What is the progress of the scrubber market?

The scrubber market is still far from 'booming' as the maritime industry's interest in scrubber technology has hit a snag with the global crude oil price collapse and added financial uncertainty. In order to comply with the 0.1% sulphur in fuel content from 1 January 2015, in the Sulphur Emission Control Areas (SECAs), many shipowners are in wait-and-see mode. What are the upcoming trends and developments?

Technology

Scrubbing is a mature technology because it represents the most effective SO_x removal system for land based application. Scrubbers have been added in many ships from the 60's (when the first ones were installed) in tankers as part of Inert Gas systems. But there is no doubt that the designs out in the market can be improved in terms of weight, size, effectiveness and their effect on the sea environment.

We see that the single stream, open loop design is quite beneficial when it comes to space and consequently lowers costs as it fits quite easily in funnel and casings with a relatively simple installation. But we see this variant is not flexible enough when it comes to a broader use in different seas and waters. Besides it is not the most sustainable option when it comes to the effect on the marine environment. We need the industry to focus more on hybrid systems and the use of active caustic soda to better neutralise the discharge.

A recently launched technology based on Membrane's looks promising. The basic units can be made much smaller (by up to 50%) with no wash water discharge at all. This makes the installation easier and simpler. This technology is similar to others but the key difference is that it does not spray the liquid absorbent (caustic soda) into the exhaust stream. Instead it suspends the liquid in membranes that comes in contact with the exhaust gasses but it does not mix with the exhaust. Only the sulphur dioxide is absorbed. Whether this technology will

be future proof, only time will tell.

Updates on legislation

Ships are a prime source of sulphur dioxide (SO₂), which is produced by burning fossil fuels containing sulphur. SO₂ is a major air pollutant that is toxic to humans, plants and animals as well as being the main cause of acid rain. The regulations to protect the marine environment have gradually tightened in the last several years. What can we expect in the future?

A global 0.5% sulphur cap may be around the corner

The European Union (EU) has already agreed that the 0.5% sulphur cap will apply to all EU Member States within 200 miles of the coast from 2020, regardless of IMO decision to postpone the global cap until 2025. In the event that IMO decides to postpone this, it would create a narrow corridor along the coast of North Africa in which the use of less expensive residual fuel will continue. The United States also strongly opposes to any postponement.

BIMCO is however concerned that a global 0.5% sulphur limit, will significantly increase the cost of fuel as a level playing field is commercially critical for owners. Failing to ensure uniform compliance with the sulphur emission limits within any segment of shipping will significantly distort the competition between ship owners globally. It will not be sustainable for a compliant ship to compete with another ship operating in non-compliance. In BIMCO's view, robust enforcement of the applicable

sulphur limits, and not only in so-called emission control areas (ECA), is essential.

Following this discussion, BIMCO's Past President John Denholm is calling on governments and the maritime administrations to exercise robust enforcement of applicable sulphur limits to ensure a continued level playing field. Failure to do so would seriously expose compliant shipowners and operators who are bearing the high cost of ultra-low sulphur diesel oil.

Fuel availability study results are likely to be ready in October 2016

The IMO members at the meeting number 68 in IMO's Marine Environment Protection Committee (MEPC) in May made progress in defining how the global fuel availability study should be carried out, with the study results needing to be available by MEPC 70, which will likely be around October 2016. This will allow for the final report of the committee to be available and any decision made by 2018.

New ECA's and incentives for scrubbers

Hong Kong has implemented a new low-sulphur regulation for vessels moored or anchored at berths in Hong Kong waters from 1 July, 2015. Ships must use fuel with a sulphur content below 0.5%; LNG or any other fuel approved by Hong Kong. If a vessel uses scrubber technology than it may be exempt from fuel switching. Masters and owners of any vessels using non-compliant fuel while at berth in Hong Kong may be liable to a maximum fine of \$200,000 and imprisonment of six months. Masters



Jeroen Berger



and owners who fail to keep the required records may also be liable to a maximum fine of \$50,000 and imprisonment of three months.

The Port of Rotterdam Authority rewards vessels that have a Green Award certificate with discounts on port duties. The Green Award is a certificate that is issued by the independent Green Award Foundation to vessels and shipping companies that have made additional investments like scrubbers in the vessel in order to improve the environmental performance, safety and quality.

The Green Award incentives for sea-going vessels are 6% discount for oil and oil product tankers with a Green Award certificate with a deadweight of 20,000 tonnes and more and 6% discount for LNG tankers with a Green Award certificate with a deadweight of 20,000 tonnes and more.

Antwerp grants LNG bunker and scrubber users discount for lowering particulate emissions. Ships that are powered by LNG for at least a 24-hour period prior to calling the Port of Antwerp will be able to receive a 20% discount. Ships that can demonstrate effective use of scrubbers in closed-loop mode only will be eligible for a 15% discount.

Adoption of calculation-based method to prove compliance with pH criteria set for scrubber washwater

At MEPC 68, calculation-based methodology was adopted as an alternative to physical measurements in order to prove

compliance with the pH criteria set by IMO for scrubber washwater.

The pH discharge limit is the value that will achieve as a minimum pH 6.5 at 4 meters from the overboard discharge point with the ship stationary – while most of the systems run at full load. This is a contradiction in itself, but it is the way the regulation has been written.

Direct measurement (e.g. with a diver) has been done, but this is both very risky and the results are arbitrary. *“The opportunity to use a calculation-based methodology (computational fluid dynamics or other equally scientifically established empirical formulae) is therefore good news”*, said Kees Berger from Berger Maritiem.

Most ship operators comply with the 0,1% sulphur limit

Fuel checks show 6% ECA non-compliance. The European Maritime Safety Agency (EMSA) has spot tested the fuel content of 1,458 vessels operating in European waters during the first four months of 2015 – and says that 90 samples failed to line up with ECA requirements. The EU has stipulated that member states should conduct spot checks on a minimum of 10% of ships in its waters in 2015.

Only a few countries - Sweden and Lithuania - carry out inspections at sea, while Denmark, Norway and Poland are considering to do so. The remaining countries carry out inspections when the ships are docked or at ports, and it is much easier to

display inaccurate measures while at ports.

The “sniffer” in Gothenburg showed that 20% of the smoke plumes that were measured indicated levels of sulphur above the regulated level, but the bunker fuel samples made by the responsible authority (The Swedish Transport Agency) have not shown any non-compliance at all. There have been no fines imposed in Gothenburg so far.

Level of acceptance

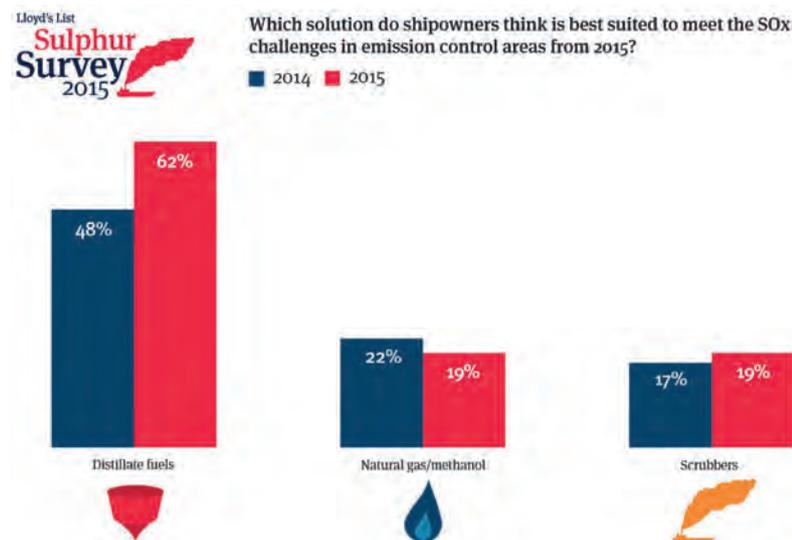
How is the level of acceptance of the scrubber technology developing? Loyd’s List scrubbers survey (April 2015) shares the interviews of several in the shipping industry on this topic (see Figure 1).

Although the majority, 62% finds the switch over to low sulphur distillate fuel the best solution, we can see from this report that 19% of the respondents finds scrubbers the best suited solution to meet the regulations of 2015. Compared to figures from 2014 we see an increase in the confidence by more than 10% in selecting the scrubber technology. We believe this gain in confidence is propelled by the sharp increase in successful installed scrubbers worldwide last year.

The switch over to low sulphur fuels

We see that a majority of ships meet the new sulphur emission limits by changing to a compliant low sulphur fuel prior to entering an ECA. The Marine gas oil (MGO) and marine diesel oil (MDO) at or below 0.10% sulphur is the most commonly available low sulphur fuel. Other new grades of marine fuel like hybrid fuels or Ultra Low Sulphur

Figure 1: Solutions to meet the SOx challenges in SECAs from 2015



Source: Lloyd's List scrubbers survey, April 2015

Fuel Oil with a maximum 0.10% sulphur content may be a viable and economical option in some ports.

It is well known that heavy fuel oil (HFO) compared with low sulphur distillate fuels have very different properties and can create operational challenges. For instance, a change-over between two different fuel types can put machinery equipment at risk, and in a worst case scenario involving loss of power. It could jeopardise the safety of the vessel and its crew.

The new grades of marine fuel or hybrid fuels or hybrid ultra-low sulphur fuel oils (ULSFO) should be beneficial according to

the advertisements of suppliers. With additional processing to reduce the sulphur to required low levels, these fuels could have challenging cold flow characteristics. With higher pour point, cloud point and cold filter plugging point (CFPP), some hybrid fuels may also require heating. A critical factor when selecting these fuels is that no published ISO 8217 specifications exist for these new products and although preparations for approved specifications are in progress, these are not expected to be ready in the near future.

And when referring to the impact on lubrication, there is very little experience or data gathered where this type of fuel has been

in use for extended periods. The fuel will contain some asphaltenes and lube formulations and must be able to deal with this contaminant with respect to engine component cleanliness. Unstable fuel may lead to combustion difficulties, and the residues will need to be handled and tolerated by the lube oil.

Concerns for the marine environment

Based on literature review and experience scrubbers (wet) for ships appear to reduce the emissions of sulphur to the atmosphere by 90-98%. The emissions of particles and soot by 60-90% and the emissions of NOx by 10% or less. However the SOx is converted to sulfuric acid. Also a number of other pollutants (e.g. metal and PAH) occurring in the exhaust gas are trapped in the wash water, in varying degrees.

It is a fact that the concentrations of hazardous substances in the discharge of closed loop systems are higher than in open loop systems, but the mass flow rate of these substances determines the environmental burden. This is larger in case the vessel is equipped with an open loop scrubber (no hybrid), as they are not equipped with costly discharge water cleaning systems.

Although the IMO criteria is met, different studies show that the large scale use of scrubbers have a negligible impact on the Marine environment and the raised concern by different organisations needs to be taken seriously and be counteracted by detailed study and open communication.

But it is the responsibility of the scrubber manufacturers to advise its customers on the best options for the environment - long run hybrid systems, open loop mode with discharge cleaning system, the active use of caustic soda and more despite the negative impact on the CAPEX and thus ROI.

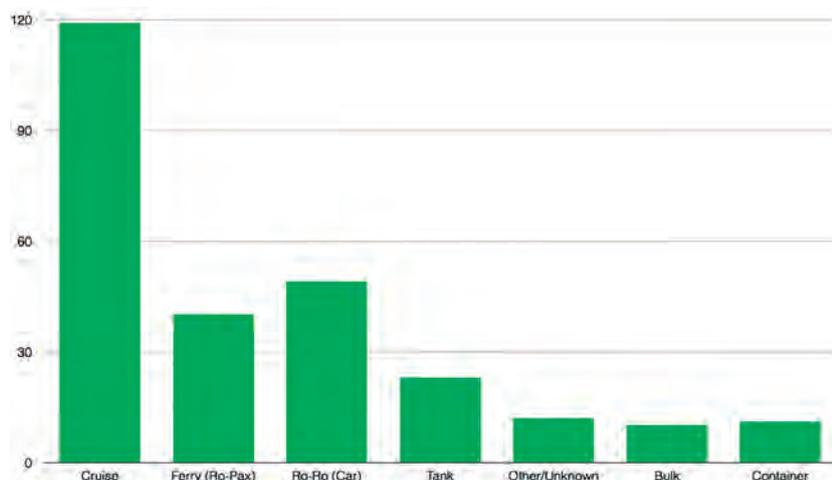
Market overview

A market study "Business case for scrubbers" in 2015 shows that scrubbers are popular in passenger and Ro-Ro segments, but still there is limited adoption for cargo vessels (see Figure 2).

Figure 3 shows that hybrid and closed loop scrubbers are increasingly gaining terrain over open loop scrubbers, but as all Carnival's scrubbers are open loop (until further) this is still the largest group in total.

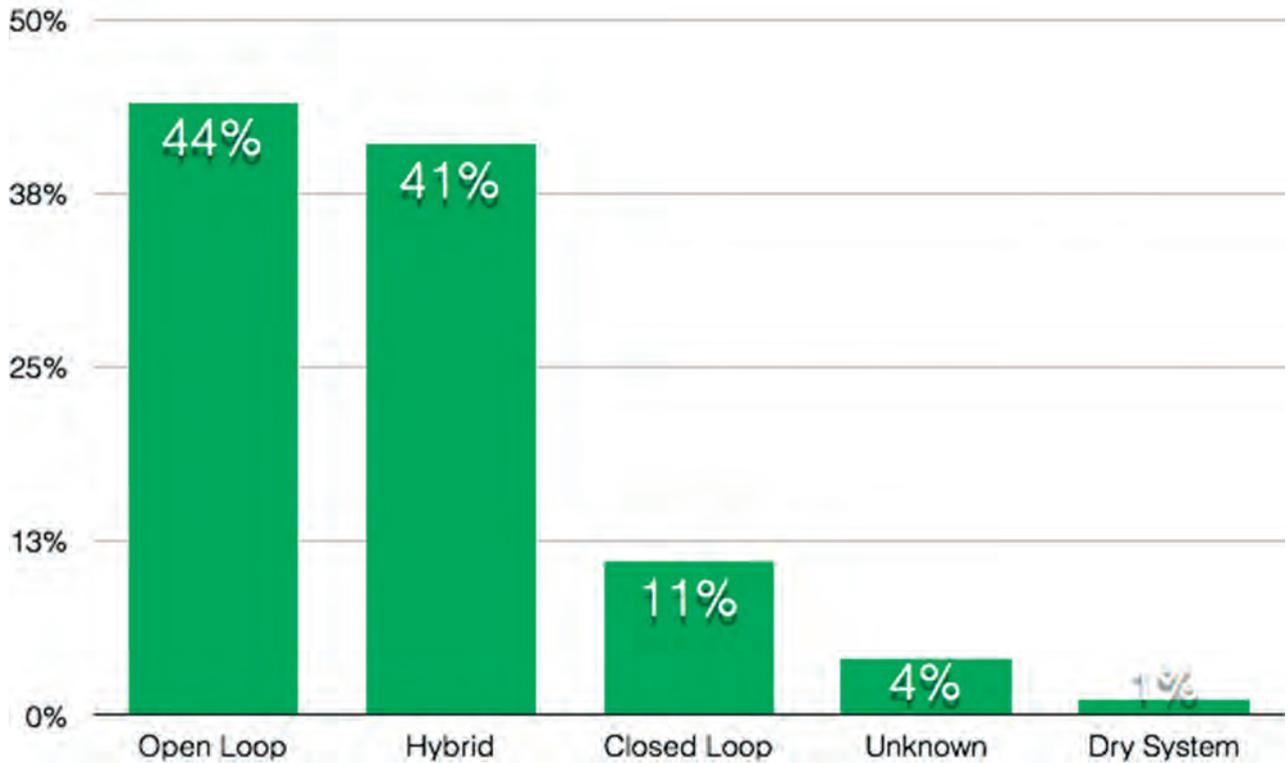
If we are looking at only cargo vessels, then we see in Figure 4 that hybrid and closed loop dominate.

Figure 2: Segments with scrubbers installed or contracted in 2015



Source: Berger, J. (2015). Business case for scrubbers

Figure 3: Scrubber type installed or sold in 2015



Source: Berger, J. (2015). Business case for scrubbers

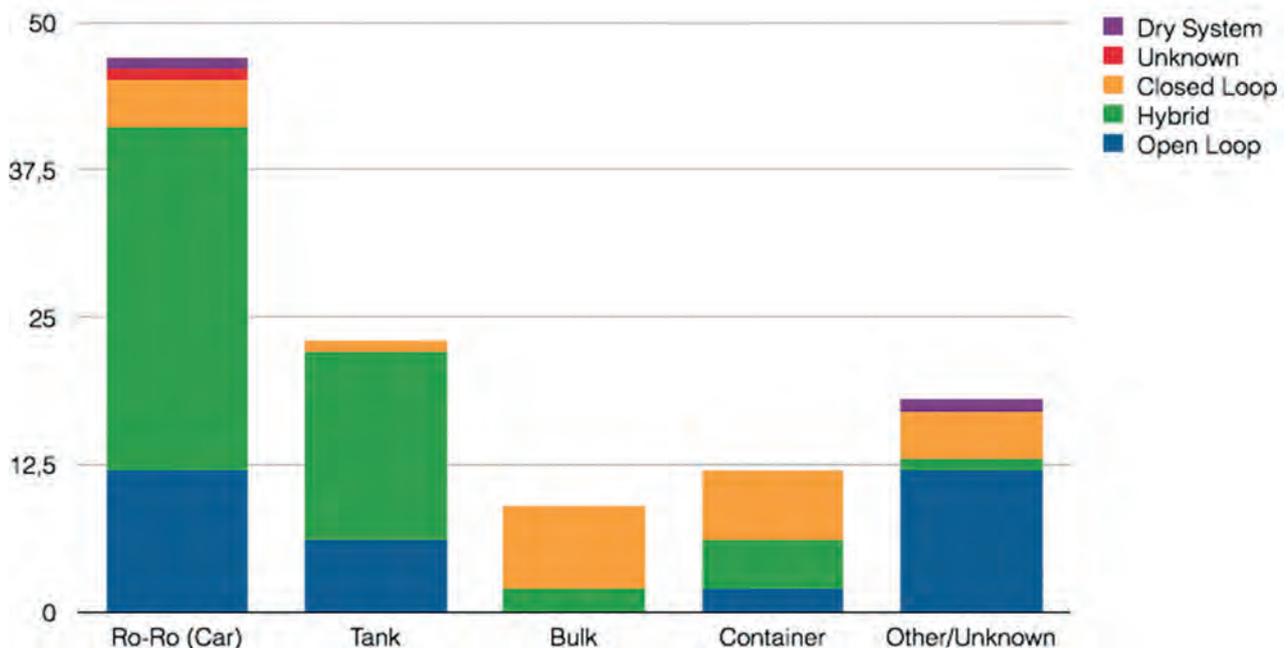
Innovative financial instrument

Up to 13.000 different vessels visiting or sailing in the North Sea and the Baltic Sea annually are affected by the sulphur rule, which is now in force. But for the majority of the shipowners who predominately

have their ships in charter it is not easy to find resources to invest in equipment like scrubbers due to prevailing difficult shipping market. It is also because they personally take no advantage of the investment as the charterer does as they practically pay his

fuel bill (good example of a typical chicken and egg story). Berger Maritiem has identified this challenge and have a solution that could overcome this hurdle; we call it Bunker Funding.

Figure 4: Technology per target segment (cargo vessels only) in 2015



Source: Berger, J. (2015). Business case for scrubbers

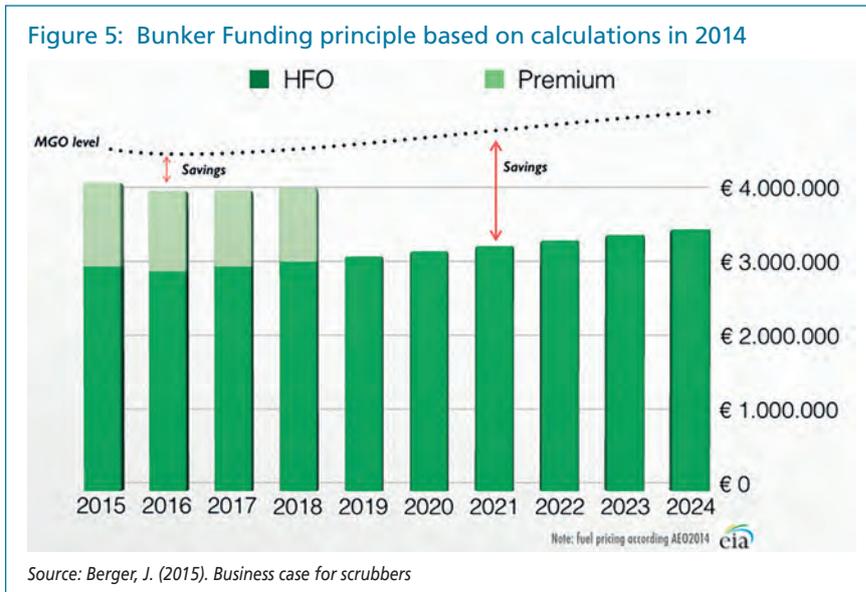
What is Bunker Funding? Through an individual supplement (by customer or charterer) on a verifiable market price of HFO bunkers. This is usually paid by the customer or in many cases by the charterer, where a premium is raised which should cover for repayment, interest and credit insurance of the investment. For each individual customer a different term and conditions will apply considering the specific customer business model. This is to be included in a long-term bunker- or HFO supply agreement. Figure 5 shows how Bunker Funding works as an example for a specific customer.

Kees Berger, owner of Berger Maritiem, said: “We have done extensive research towards this financial tool and we have found serious interest among owners, investors, EU commission and parties in the bunker scene. There is more financing available than well-prepared, viable projects.”

The big question

The year 2015 with the enforcement of the limitation of the sulphur content of ship fuel has changed the sulphur trend for this abatement technology into a downwards turn trend but is this going to continue or will the market recover?

One of the biggest question is: “Is the business case for scrubber still valid?” The crude oil’s price collapse certainly had quite an impact and raised deep concerns towards the feasibility of the business case. But as seen in Figure 6 the price gap between low sulphur MDO and HFO (from April 2014 –



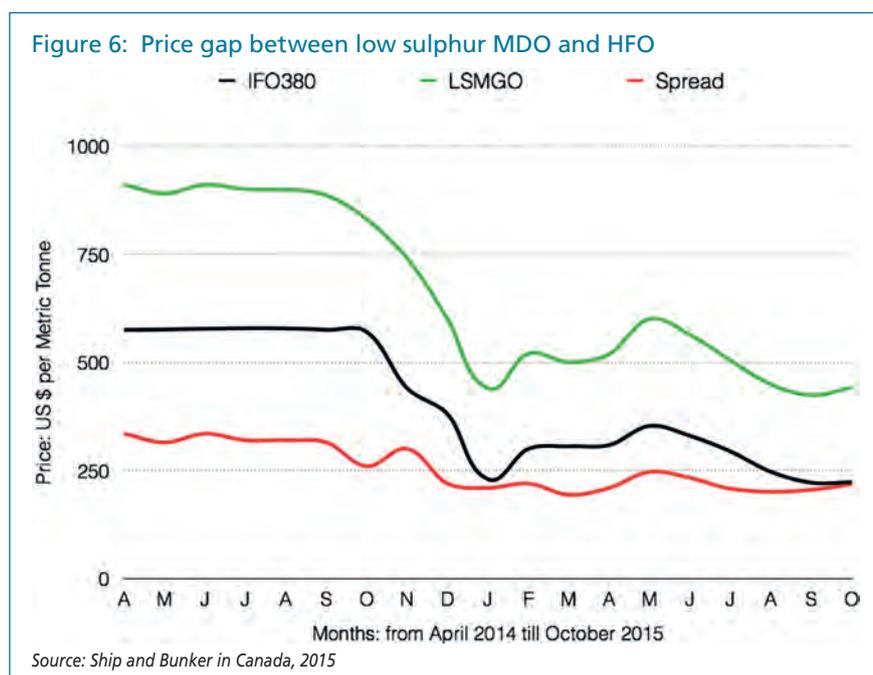
October 2015) is however slightly reduced and is still intact as this is the basis for the savings when installing a scrubber.

In general you can say that due to this decrease of 20-30% in price spread which can be compiled from Figure 6 the payback time has been increased by more or less 25-40% compared to the time before the price of crude oil plunge. So, where cases previously had a payback time of 2-3 years, you now have to account in theory for an ROI of 2.5-4.5 years, which is still an acceptable figure. But the scrubber manufacturers who saw this trend and also noticed a slowdown in the order intake adjusted their pricing strategy in order to compensate as

much as possible the planned huge sales and investments made.

The scrubber in general is widely accepted today and has demonstrated that more vessels are sailing successfully with this abatement technology. And it is true that there isn't a long track record available that can prove the long term reliability of this technology, but we also see that the use of the alternative low sulphur fuels in the traditional diesel engines is not without serious concerns - not a mature solution either.

So, to see how the market will respond to the developments will just be a matter of time, but from our point of view this technology has a future. The biggest advantage of installing this technology is that operators can stay flexible in the use of fuel; it is just not possible to predict the price of oil, or gas (LNG) in the future. ■



Editor's Note: Berger Maritiem is a business consultation company for the maritime industry. With a passion for sustainability, specialised in ship performance optimization and emission-reducing technologies.
www.bergermaritiem.nl

Jeroen Berger - Marketing & Sales Manager at Berger Maritiem, and author of the scrubber market study "Business case for scrubbers" published in 2015.

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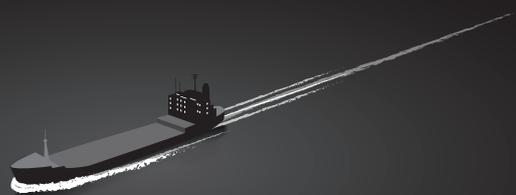
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Shipping must not underestimate the threat to its cyber security

This commentary on current shipping matters is supplied by Moore Stephens, the leading accountant and shipping industry adviser. Moore Stephens LLP is a member firm of Moore Stephens International Limited, with 667 offices of independent member firms in 103 countries.

According to a US internet scholar, *“It used to be expensive to make things public and cheap to make them private; now it’s expensive to make things private and cheap to make them public.”* The comment is particularly appropriate at a time when both personal and commercial security is under growing threat from cyber attacks.

No industry can afford to underestimate the level of potential threat to security posed by cyber attacks. Respondents to a Moore Stephens survey on risk management cited cyber security as a clear emerging threat to the shipping industry. Furthermore, a recent study by PwC indicated that 75% of companies worldwide had detected an information security breach of some kind. Governments globally (most noticeably the US and China) are investing heavily in cyber defence, and most risk commentators have highlighted cyber security vulnerabilities as a key risk. Investors, regulators, insurers and other stakeholders are also beginning to take notice. But where does the shipping industry stand in terms of its awareness of – and preparedness for – cyber security attacks?

Shipping has publicly acknowledged the cyber security threat which it faces. A 2011 report by the European and Network Industry Association highlighted the fact that cyber security awareness in the shipping industry was “low to non-existent”. However, the shipping industry is responding. For example, International Marine

Organization (IMO’s) Maritime Safety Committee and its Facilitation Committee have both agreed to include cyber security on their agendas and to co-ordinate their work in developing voluntary guidelines on cyber security practices to protect and enhance the resilience of cyber systems supporting the operations of ports, ships, marine facilities and other elements of the maritime transportation system. IMO has also said that it will consult with other UN bodies and relevant international organisations such as the International Telecommunication Union. Other organisations, including BIMCO, have continued to promote awareness of the threat posed to shipping’s cyber security. And the US Coast Guard issued its cyber security strategy this year.

Because shipping operates on such a global scale, it is arguably more susceptible than most industries to the threat of cyber attack. Yet, despite public assurances from the shipping industry, research would suggest that the industry is not as well prepared as it should be – or believes itself to be – in terms of countering the threat of cyber attacks. There appears to be a genuine belief on the part of some commentators that the maritime industry is unaffected by such issues, but nothing could be further from the truth. Moreover, there is no shortage of reported incidents to underline the point.

Last year, a major fuel supplier, World Fuel Services (WFS), was taken to court by its insurers over a claim involving a cyber attack which facilitated a bunkering scam

costing an estimated USD 18m.

In both 2011 and 2013, there was a cyber-attack on the IT systems at the port of Antwerp which resulted in the modification of cargo data to enable the smuggling of heroin and cocaine, an operation carried out by organised criminals. Hackers infiltrated computers connected to the port, located specific containers, modified the cargo manifest and made off with smuggled drugs after deleting the records.

Other examples of cyber attacks affecting the shipping industry include the compromising attack in 2012 of “multiple systems” on a commercial ship operating under contract to Transcom, with over 50 successful hacks into Transcom systems revealing information to the attackers.

Modern-day pirates are also proving to be quite adept at cyber attacks. Increasingly, they are hiring experts to break into the IT systems of shipping companies to obtain information such as blueprints to ships and the insurance they carry. In 2011, while en route from the Arabian Gulf to the Mediterranean with a cargo of caustic soda, the Italian tanker Enrico Levoli was reported to have been targeted in this way. The ship’s itinerary, cargo, crew and location, as well as the absence of armed guards, could have been known in advance by its Somali attackers.

The marine insurance industry could be one of the principal victims of cyber attacks. with one reinsurer recently

announcing its intention to exclude cyber risks from its coverage. In July, meanwhile, the London P&I Club confirmed that it had seen an increasing number of instances of cyber fraud involving the interception of emails from ship agents and/or the hacking of ship agents' email accounts resulting in requests to send the likes of anticipated disbursement accounts or masters' cash to a new bank account. On most occasions, the fraudulent emails originated from the agent's own email address, or from an email address similar to the agent's genuine email address, and provided bank account details with only subtle differences from the agent's genuine bank account.

The London Club warning mirrored an earlier alert by the International Transport Intermediaries Club (ITIC), which highlighted continued attempts by fraudsters to target payments between shipping companies. ITIC warned its members about a scam resulting in pre-funded port costs being diverted to a fake bank account. In each case the owners received an email advising them that the port agent's bank account was inoperable because of an annual audit. If the owners complied with the instructions, which came from an email address very similar to the agent's, the funds were stolen.

In another incident, a ship manager received a message asking if money could be sent directly to the agent's foreign exchange broker who "could secure banknotes which were in short supply in that part of the world". Unfortunately, the ship manager queried the instruction by simply hitting the "reply" button. If he had checked the company's records first and seen that the email address did not correspond to the details held for its principal, the attempted fraud would have been uncovered.

Securing digital channels is a complex exercise and one that draws on a range of governance and risk and assurance capabilities as well as in-depth technical and cyber security skills. In the shipping industry, fragmented systems and limited connectivity may have served to keep down the incidence of onboard cyber attacks, but most organisations have shore operations which are as susceptible to such issues as are any other networked organisations. As the shipping industry becomes increasingly dependent on technology, and as ship's connectivity improves, these risks come to the forefront. As well as offering opportunity, technology is changing the threat profile, so it is important to consider both.



Companies in the shipping industry should be under no illusion that the threat posed to them is very real. Their systems can be accessed electronically by people who do not have the authority to do so. There is no easy solution. This is a pervasive threat requiring a risk-and-reward judgement.

The organisations that best control this threat are those which correctly balance opportunity and risk. They make sure that everyone understands the opportunity offered and the threat posed by digital and information technology. This understanding starts with the board of directors and covers all employees, contractors and third parties. Such organisations integrate risk management, actively managing cyber security risks as part of their enterprise risk management framework.

Companies that successfully control the threat of cyber attack start out by assuming that they have been hacked. They build technology that can not only defend

against potential threats in depth, but which is also resilient to breaches and can detect when an incident is taking place. They control risk intelligently and recognise that everyone's risk is different, blending strong architecture, technical controls, insurance, outsourcing and expert advice to effectively manage such risk. They also understand what information is needed at each level to monitor the success of their security programme and to identify areas for improvement.

It would be naïve to believe that these developments will not impact the shipping industry, which will need to be on its resolve to guard against what is a growing threat to its security and profitability. There are standards that can be complied with – ISO, government advice and others – and steps that can be taken to mitigate risk. Those companies that fail to take the threat seriously run the risk of paying a heavy price. ■■

SE Asia Piracy: criminal networks, corporate collusion and corruption

According to the latest International Maritime Bureau (IMB) incident report, now more than half of the world's piracy attacks are occurring in South East Asia. Piracy in the Gulf of Aden, which was the scourge of global shipping from 2011-14 has all but disappeared. But the problem is far from solved, whilst global piracy has dropped overall - the past few years especially the start of 2015 has seen a consistent rise in attacks.

Responsible for this increase are both the Gulf of Guinea, which remains a hotspot for armed robbery at sea and kidnap for ransom, and south east Asia. Piracy in the waters off Indonesia, the Malacca and Singapore straights has risen almost exponentially, representing almost 40% of 2015 attacks globally.

The majority of these incidents is related to illegal oil bunkering. Singapore is the bunkering capital of the world, with incidents occurring within the city-state's famous ports. Vessels arrange illicit ship-to-ship (STS) transfers without paying the proper fees and avoid designated areas. Weak legis-

lation and lax fines are abused as primarily Singapore-flagged and owned vessel bunkers with their automatic identification systems (AIS) shut off to avoid suspicion. This lucrative industry is able to earn between €30,000 up to €500,000 for each successful hit.

What is curious, is the lack of response from the regional or international community to address the threat. Unlike Somali piracy, SE Asia has failed to capture the headlines; it has not triggered multi-lateral naval patrols or the proliferation of high-level strategies that we have seen in the Horn, or even in West Africa. Why?

- SE Asian piracy has been downplayed in past years, and has been described as unorganized and low-level – more appropriately described as theft at sea, rather than genuine piracy.
- The successful heists themselves have been small amounts, which has led to chronic under-reporting, as the value of the cargo is less than the cost of insurance premiums if the region were to be considered in a higher risk category – a jeopardy faced by

shipping companies already in the Gulfs of Aden and Guinea. The Director of the IMB has estimated that 70% of attacks on ships in SE Asia go unreported.

- There is significant demand in the region for the illicit product. Despite globally falling oil prices, stolen oil is still cheaper than market prices, and the evidence shows that the primary market for the stolen oil is China. Though Chinese growth has slowed to single digits, the demand for discounted oil is always far greater than supply.

There are a number of challenges presented to the countries in the region to respond: first, the body of water is vast, and filled with thousands of islands – there are 14,000 small islands in the Indonesian archipelago alone – making it almost impossible to conduct effective surveillance. Secondly, the complex division of national authorities makes cooperation a challenge. Past efforts have focus on sea-based activities, but even where interdiction has been possible, the lack of tools for legal cooperation and mutual legal assistance have proved a hindrance for subsequent prosecution.

Political will appears to be low for getting serious about SE Asia piracy, but this apathy has allowed serious and organised criminal syndicates to proliferate and professionalise into 'logistical masterpieces' that are developing corruption networks to protect their activities. Karsten von Hoesslin of Risk Intelligence, who has spent many years investigating and tracking these networks explains: "Today, everything is pre-planned and is part of a larger criminal activity. It is very easy to counterfeit legal papers for the products such as palm oil, gas or petrol and to transport them."

SE Asian piracy follows a scheme of stealing product and value whilst avoiding exces-

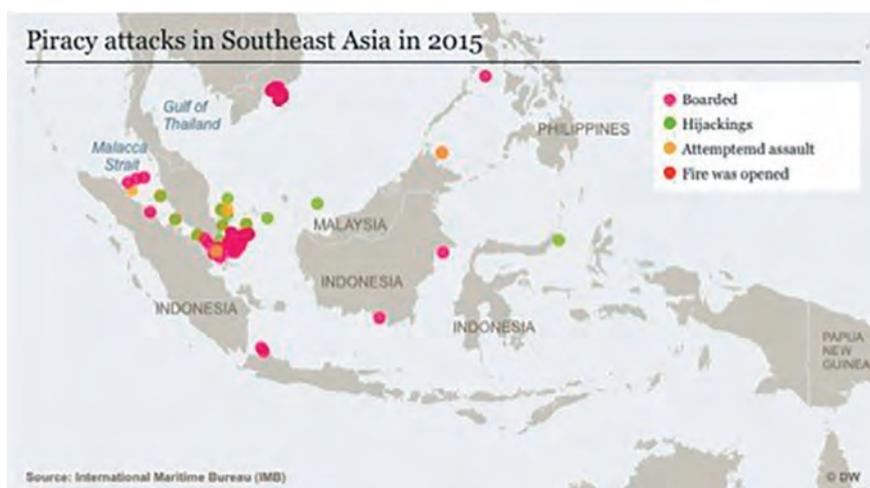
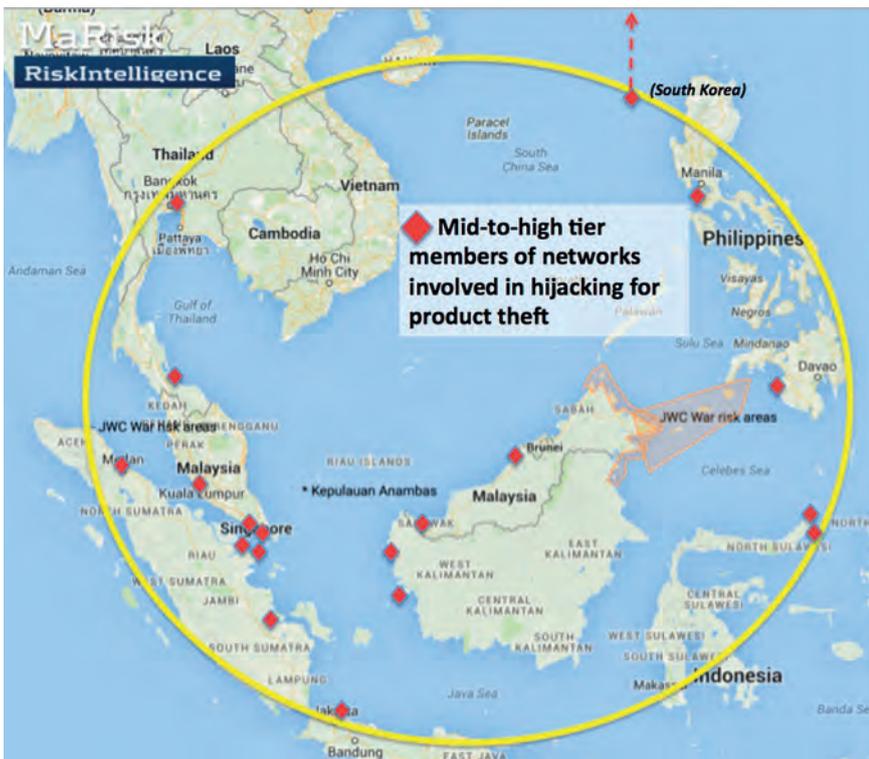




Image by Craig Mayhew and Robert Simmon, NASA GSFC



sive violence, hostage taking and hijacking of African piracy – arguably another reason why it has failed to gain headline.

On average a team of 7-12 pirates will usually board the attacked vessel for a period of time (an estimated six to ten hours) in order to proceed with the siphoning of product whilst the original crew is gagged and bound. Since no individuals are kidnapped for ransom, a reasonable degree of violence can be expected, although usually only light weapons are used. These incidents all occur usually under the cover of night. Stolen goods are then carried on a phantom ship, with another 15 pirates manning the vessel, which will take the stolen crude to be blended, refined and sold under the cover of counterfeit documents. These attacks occur at sea and require a high level of logistic know-how as well as coordination

between the actors on and off-shore.

According to von Hoesslin, there are between 6-8 key criminal networks at play in SE Asia, but like any criminal enterprise these are supported by vast networks of corrupt officials, facilitators, money launderers and low level operatives that are spread across all of the countries in the region.

His analysis shows an organisational structure with a handful of group leaders who move about with impunity, connected to a dozen fixers or middle men from all over the region; they connect to half a dozen known buyers of illicit crude who eagerly bargain down the price of the illicit product. There are at least four skilled forgers in play to supply false purchase and registration documentation, nearly ten phantom ships to hire out,

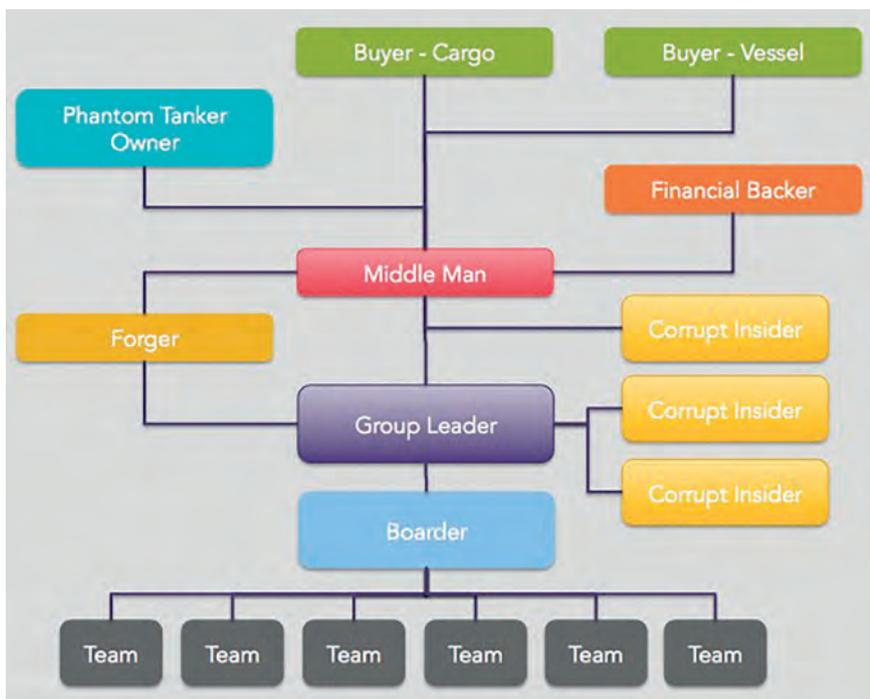
and of course countless numbers of individuals willing to be insiders or part of the networks. The modus operandi of hijacking for product theft is deeply embedded in South East Asian shipping affairs in what many have described as a deeply corrupt industry. Insiders within the industry and of the targeted vessel carrying fuel are crucial for the group to gain valuable information where and how fuel and oil can be siphoned.

With ICC and IMB reports suggesting that there is a crude oil hijacking in SE Asian waters every two weeks, the region arguably needs renewed focus on maritime crime, and the growing consolidation and professionalism of criminal networks should be of concern for the integrity of the states in the region. It is time for us to get serious about SE Asia piracy.

Indian government to allow foreign players in special categories of local shipping
The government has relaxed a law allowing only Indian ships to be hired for carrying cargo within the country's ports - in special categories where the local players do not have a presence.

The so-called Cabotage law protects Indian shipping companies from the big international players. But the Indian fleet owners do not operate in the categories that have been opened up, such as roll-on, roll-off in movement of passengers, cars and trucks; and LNG vessels.

The shipping ministry is keen to encourage coastal shipping to reduce the logistics cost and also reduce the country's carbon footprint. This new ruling from 2 September, says that the provisions of Section 407 (1) of the Merchant Shipping Act, 1958, will not apply to the above 'special' vessels for a period of five years.



This is a welcome move that will encourage transport of automobiles, large project cargo and boost tourism. However, many issues need to be sorted out. There should be dedicated facilities at major ports and non-major ports with different rates for coastal ships.

Advantages

The shipping ministry in a report published last January said that fuel consumption by coastal shipping at 4.83gm/km is just 15% of the consumption by road and 54% by rail. Rail and road transport because of their limited capacity and infrastructure cannot handle large quantities of coal, iron ore. The cost of carriage of goods, from coast to coast, by coastal shipping (about 21% by road and 42% by rail) works out to be much lower than that by road and rail.

Poor patronage

Despite a vast coastline of nearly 7,500 km, 12

major ports and nearly 200 non-major ports from Kolkata to Kandla, domestic shipping traffic is miniscule. The shipping ministry's 'Vision for Coastal Shipping, Tourism and Regional Development' prepared in June has a vision to increase the share of coastal and inland water transport to 10% in the next five years.

China adjusts its port charges and port facility security charges

China recently issued a notice with a view to adjust its vessel port charges and port facility security charges, which will come into force as of 20 September, 2015. According to this notice, any provision contradicting to its content thereafter will be invalid.

- Regulate vessels' port charges
Port operators and pilotage institutions who provide vessel inbound and outbound services are entitled to collect pilotage

(shifting berth) fees, towage fees, berthage, oil fence fees, lighterage, special trimming fees, garbage disposal fees and service fees for water supply, bunker supply and power supply. Apart from the above, no extra service fees should be charged. Meanwhile, it has been decided to cancel the current liner cushion fees, pilot demurrage and pilotage plan change fees during all pilotage service. The mooring & unmooring charges and hatches open & closing charges will be incorporated into berthage.

- Improve calculation unit and method for vessels' port charges
Pilotage charge unit for international services will be increased from 500 net tonnage to 2,000 net tonnage, whilst pilotage fees (within 10 n miles) for vessels ranging from 40,001-80,000 net tonnage and vessels over 80,000 net tonnage will be reduced to CNY0.45(USD0.07)/net tonnage and CNY0.425/net tonnage respectively.

Extra charges levied for night work and national holiday pilotage and towage services will be further reduced to 45% discount. The port operators are encouraged to charge towage fees on an aggregated basis by taking the service vessel tonnage, LOA and entry numbers into account which is subject to the tug's horsepower and working time. This new notice also specifies that the berth fees at CNY0.08 for domestic shipping and CNY0.25 for international shipping.

- Optimise the measures management for vessels' port charges
The port charges will be managed by combining the guiding price and the cap designed by the regulator, and pilotage (shifting berth) fees, towage fees and berthage shall be limited to the said cap. Meanwhile, oil boom fees, lighterage and special trim-



Image by Craig Mayhew and Robert Simmon, NASA GSFC

ming charge shall not be more than the existing rates. All port operators and pilotage institutions may have their discretion to decide their own charges standard as per the supply and demand of market as well as the competition situation, provided the standard is consistent with the fixed charges cap.

- Lower the charges standard for port facility security
The port facility security charges for 20 ft and 40 ft has been reduced to CNY10 and CNY15 per container respectively. Similarly, the security charges for other cargo will be reduced to CNY0.25 per ton. Collecting and utilizing issues will be implemented in accordance with existing regulation.

Singapore launches fund for companies to build LNG-fuelled vessels

Singapore has launched a SGD 12 million fund for companies to build vessels fuelled by liquefied natural gas, as the city-state tries to encourage use of LNG while also trying to maintain its role as the world's top bunker-hub.

Companies would be able to tap the fund for up to SGD 2 million per vessel. Companies have to be incorporated in Singapore and the vessels must be flagged under the Singapore Registry or licensed for activity in Port of Singapore for at least five years. The port sought proposals on LNG bunker supplies in late July to complement the country's profile of itself as an LNG hub, and as a step towards meeting its own deadline of supplying the super-chilled fuel to ships by 2020.

In 2014, Singapore's bunker industry recorded more than 42 million tonnes in bunker sales volumes. The bunker sales comprise different grades of fuel oil, which are considered more highly polluting than natural gas.

S. Korea outpaced by China, Japan in Q3 shipbuilding orders

South Korean shipbuilders were outpaced by Chinese and Japanese rivals in terms of new orders in the third quarter of the year amid deepening woes over their growing losses.

According to the data compiled by global researcher Clarkson Research Services, South Korean shipyards bagged new orders totaling 2.11 million compensated gross tons (CGTs) this September, trailing Chinese shipbuilders at 3.48 million CGTs and Japanese companies with 2.36 million CGTs. South Korea retained its status as the world's leading shipbuilding country in terms of new orders between February and June. It was relegated to second place in July and to third in August.

In the first nine months of the year, South Korean shipbuilders secured new shipbuilding orders totaling 8.77 million CGTs, followed by China with 6.33 million CGTs and Japan with 5.99 million CGTs. As of end-September, China had the largest order backlog, totaling 40.42 million CGTs, trailed by South Korea with 32.08 million CGTs and Japan with 21.2 million CGTs, according to the data.

South Korean shipbuilders are struggling with huge losses stemming from the delivery of low-priced ships and a delay in the construction of offshore facilities such as drill ships. The country's big three shipbuilders — Hyundai Heavy, Daewoo Shipbuilding & Marine Engineering, and Samsung Heavy Industries — racked up a combined loss of 4.7 trillion won (US\$4 billion) in the first half of 2015.

Consolidation plans for Chinese shipping conglomerates

COSCO and China Shipping Group, two of China's largest shipping conglomerates are in talks over a possible merger. Trading

of the eight listed units belong to those two groups has been suspended in preparation of a jointly announcement. A dedicated five-member working group has been established to hammer out a feasible merger plan which is under the auspices of the State-owned Assets Supervision and Administration Commission (SASAC). This group headed by China Shipping's chairman, Xu Lirong has three members from China Shipping and two from COSCO.

Likewise, China Merchants Group and Sino-trans & CSC Holdings Co is alleged to carry out a similar consolidation as per SASAC's instruction. The two companies had already cooperated by setting up a tanker fleet named China VLCC and another dry bulk carrier.

It is believed that the Chinese government is committed to deepening its state-owned enterprises SOEs reform in order to streamline bloated industries and boost their international competitiveness. Besides, Chinese regulatory encourages more private capital to involve in the SOEs reform. Some media even reports that the State Council of China has approved a blueprint for SOE reform like a Temasek investment holding model, namely, state-owned capital operating companies would channel funds to the SOEs, pressuring them to make profits but would not likely be involved in business operations.

It remains to be seen how this consolidation would move as currently little information as the Chinese regulatory keeps it at a fairly low-profile. (ZW) ■

Editor's Note: This report has been produced in co-operation with The Global Initiative Against Transnational Organized Crime, Hellenic and Seatrade Maritime.

Latest EU policy and regulation news

Review of EU White Paper for Transport

The European Commission is currently conducting the mid-term review of its 2011 White Paper through a public consultation. The results of the consultation will be presented at a conference in Brussels, scheduled to be held on 12 November.

On 9 September, the European Parliament adopted an initiative report on the mid-term review of the White Paper. The Parliament calls for measures to reduce administrative formalities from ships in EU ports, better coordination between national customs authorities, measures to develop safe and sustainable shipping and open maritime markets, an assurance that core EU ports will be connected to the TEN-T network by 2030 and making progress on the Commission proposal to liberalise market access to port services.

The report also focuses on the environmental aspects of shipping by calling for a global binding target in the International Maritime Organization (IMO). An aim to reach at least 40% reduction in CO₂ emissions from maritime bunker fuels by 2050 - to be supported by an EU intermediate target for 2030. It also calls for the enhancement of the negotiations within the IMO on the development of a global market-based mechanism addressing international maritime emissions. Adding that in the event of an international agreement on a global monitoring, reporting and verification (MRV) system for greenhouse gas emissions or on global measures to reduce greenhouse gas emissions from maritime transport is reached, the Commission should review the MRV Regulation. If appropriate, propose amendments to this regulation in order to ensure alignment with the international agreement.

MRV

The formal implementation of EU Regulation 2015/757 on the monitoring, reporting and verification (MRV) of carbon dioxide emissions from maritime transport is now being considered through the establishment of two EU MRV subgroups within the European Sustain-

able Shipping Forum (ESSF): one dealing with verification and accreditation and a second one dealing with monitoring of cargo and fuel consumption. European Member States and European/international experts from the shipping industry will be involved in this process towards spring 2016.

BIMCO is participating in the ESSF subgroup on monitoring of cargo and fuel established to advise the Executive Committee (EC) on relevant aspects still needed to be developed as part of the delegated acts / implementing acts in the EU Regulation on MRV.

The purpose of the delegated acts is to allow the EC to develop the remaining missing details on what the metrics shall be for various non-specified ship types. Only for a few mainstream ship types are these details laid out in the Regulation text as adopted.

The implementing acts will also specify the precision that measurements shall comply with and how much calibration of tanks and measuring devices are needed. This latter point is very important for shipowners and one that can potentially impose high cost for compliance.

The work is progressing slowly, and several meetings in the large ESSF Subgroup is foreseen before the work is finalised sometime next year.

Ship recycling

The European Commission (DG ENV) has commissioned a study "on the feasibility of a financial instrument to facilitate safe and sound ship recycling" as required by the EU Regulation on Ship Recycling in order to assess the feasibility of establishing a mechanism (e.g. financial or alternate incentives for compliance and avoid re-flagging of ships) to incentivise shipowners to recycle their ships in facilities on the EU list. The shipping industry is concerned about the complex and legally challenging process of establishing such a financial mechanism.

EU Port Reception Facilities Directive – revision process

The development of adequate port reception facilities (PRF) for ship-generated waste and cargo residues, together with the establishment of systems which provide incentives for ships to use these facilities, are major elements in the process to avoid ships' discharges into the sea. The MARPOL Convention not only contains regulations and requirements defining which wastes can be discharged into the marine environment but also imposes an obligation on the State Parties to provide facilities for the reception of ship-generated residues and garbage (that cannot be discharged into the sea). These reception facilities must be adequate to meet the needs of ships using the port, without causing undue delay for ships.

With well over 600 individual EU ports handling around 90% of EU external trade, with around 40% of trade between EU countries, waste management is a serious matter in the EU. With this in mind, Directive 2000/59/EC on port reception facilities was adopted, with the aim of substantially reducing discharges of ship-generated waste and cargo residues into the sea. However, European shipowners report that there is a lack of adequate PRFs and the capacity to meet current requirements targeted at ships.

Therefore, a revision process of the EU PRF Directive has started which is to align the Directive with the revised MARPOL Annex V "Prevention of Pollution by Garbage from Ships" which introduces a stricter garbage management plan and generally prohibits the discharge of garbage into the sea. A separate subgroup under the umbrella of the European Sustainable Shipping Forum (ESSF) has been established to provide input and facilitate the revision process. With proper enforcement and appropriate improvements of the EU PRF Directive allowing the fulfilment of the MARPOL requirements, all necessary measures will be in place to better manage ship generated waste and cargo residues in the EU.



Places of Refuge

The European Maritime Safety Agency (EMSA) arranged a table top exercise on Places of Refuge (PoR) on 1-2 September, which BIMCO attended. The purpose of the exercise was to test the draft EU operational guidelines - PoR on a hypothetical tanker collision. The operational guidelines have been developed by the European Commission, and the industry has provided comments to them at stakeholder meetings and in a public consultation. During the course of the exercise, the necessity of coastal states providing a reason when redirecting a ship was stressed. This was one of the points BIMCO has raised on several occasions. The plan is to hold a similar exercise in two years' time to measure the effectiveness.

EU Energy Union

One of the key political priorities of the Juncker Commission is the recently adopted "Energy Union package". The Package consists of a framework strategy on a climate change policy that sets the goals of the Energy Union and the detailed steps the Juncker Commission will take to achieve it. As well as a communication relating to the EU contribution to the UN Framework Convention on Climate Change (UNFCCC) conference in Paris in December 2015 (COP 21). It is with the aim of limiting the global average temperature (2°C objective) by 2020.

The Energy Union aims at improving the energy security and supply, and promoting the development of innovative technologies with the help of European research and innovation measures. In addition, a 40% reduction in CO2 emissions by 2030 is envisaged, with the development of renewable energy in the EU's energy mix and actions to increase energy efficiency, especially in the building and transport sectors, to be taken.

The European Parliament is currently in the process of producing reports on both constituting elements of the Energy Union Package: the Energy Union strategy and the communication towards a new climate agreement in Paris. So far

both reports seem to take into account the need to allow the IMO to continue its work on ship GHG emissions. The process will be finalised before the end of 2015.

International Ocean Governance

The European Commission has launched a public consultation in order to gather feedback on how the EU could contribute to achieving better international governance of oceans and seas. On the basis of the results, the Commission will consider how best to develop an EU policy on improving the international ocean governance framework.

The shipping industry has been engaged with the global discussions on Ocean Governance since their early stages and has provided comments to the consultation. In its response, BIMCO focused on key issues for the industry by highlighting the importance of upholding the rights of innocent passage, transit passage and freedom of navigation enshrined in UNCLOS, maintaining an international approach through the IMO, ensuring swift and uniform implementation, and carrying out proper impact assessment.

Status of seafarers under EU social Directives
In July 2015, the European Parliament's plenary session endorsed the compromise agreement reached with the Council of Ministers on the Commission's Directive on social exclusions. The Council of Ministers is expected to do likewise soonest. The compromise text is fully in line with the expectations and joint agreement of the European Community Shipowners' Associations and the European Transport Workers' Federation.

Following the endorsement of the compromise agreement between the Council of Ministers and the European Parliament, and the publication of the text in the Official Journal of the EU, Member States will have two years to transpose the directive into their national law.

Cyber security

The discussion at the EU level regarding the Network and Information Security Directive (NIS Directive), which addresses cybersecurity and which includes maritime carriers in its scope, are still ongoing. For reasons unrelated to maritime considerations the process has been delayed considerably. The shipping industry continues to underline that the rules in the NIS Directive are not fit for the maritime sector (hence potentially will have a serious negative impact on shipowners in terms of administrative burden, costs, liability, and implementation) and hence this industry should be excluded from the Directive. This does not mean that the shipping industry would not see the risk of cybercrime, to the contrary, individual companies are taking measures to prevent cyber attacks and the industry is jointly developing guidelines on cyber security, which will be submitted to the IMO for consideration.

Iran

On 14 July 2015 international partners came to an agreement on the Iranian nuclear issue. As follow up to the agreement of the Council of the EU ministers of foreign affairs, the suspension is prolonged until 14 January 2016. This is in relation to the EU restrictive measures agreed in the Joint Plan of Action with Iran dated 24 November 2013.

If the agreed steps are respected, the large majority of EU (and other international) sanctions applying to Iran will cease as of mid-January 2016. ■■

Editor's Note: This report has been produced in co-operation with the European Community Shipowners' Associations (ECSA).



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The interplay between mediation and arbitration

– I am indebted to Keith Heard and Mike Walsh of Burke & Parsons, New York whose diligent research on US law has been incorporated into this article. (Jonathan.lux@stonechambers.com)

Introduction

London stands at the pinnacle for the resolution of international commercial disputes. English law, thanks to the calibre of English commercial judges, achieves more certainty than any other system of which I am aware. This is indeed a key factor for many business people and disputants – to have a contract which achieves certainty and a legal regime with as much certainty of outcome as can be achieved.

English jurisdiction, whether high court or arbitration, is also the most popular internationally – thanks to the highly sophisticated infrastructure including judges, arbitrators, mediators, barristers, solicitors, insurers, bankers, industry and traders – in short, all of those who may be party to or assisting parties in resolving disputes.

Whether London's dominance in international commercial dispute resolution will continue turns at least partly on its attitude to some of the factors discussed in this article.

There are also valuable lessons to be learned from dispute resolution practice and procedure in New York and Singapore.

Arbitration

Arbitration has a long history as the preferred means of dispute resolution in some industries (for example, shipping).

The same winds of change which were blowing through English Court procedure also affected arbitration. The Government's Departmental Advisory Committee (DAC) under the chairmanship of Saville J published its report in February 1996 and this resulted in the Arbitration Act 1996 which applies to all arbitrations commenced after

31 January 1997. This served to replace in a single statute the plethora of provisions which had been littered around a number of statutes referred to collectively as "The Arbitration Acts 1950 - 1979". The thinking appears to be very similar to that behind the Civil Procedure Rules (CPR). Thus, Sec 1 (a) of the 1996 Act provides:

"the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense".

Subject only to the overriding duty of the tribunal as set out in S. 33 of the Act to act fairly and impartially and to adopt procedures suitable to the circumstances of the case and avoiding unnecessary delay or expense, so as to provide a fair means for resolution of the matters in dispute, the Act is silent regarding the precise procedure for an arbitration and party autonomy applies.

So, the 'overriding objective' of the CPR is to deal with cases 'justly' and the 'overriding duty' of the Arbitration Tribunal is to act 'fairly and impartially'. It may be thought that court and arbitration tribunal are starting from the same or a similar place.

Mediation in Arbitration

Does an arbitration tribunal have the same power as the Court – namely, to stay proceedings so as to enable mediation to take place where one party so applies or where the tribunal considers it just and reasonable to do so – for example, where the costs of the arbitration are likely to become disproportionate to the amount in issue?

Further, if the arbitrators can direct a stay, can they also impose costs sanctions on a party who fails to engage or refuses to mediate? Finally, if there is such a power, might

the tribunal have a duty to order a stay where the interests of justice clearly point in that direction?^a

The starting point is the Arbitration Act 1996, S. 33:

"(1) The tribunal shall –

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and*
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.*

(2) The tribunal shall comply with that general duty in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it."

There are of course powerful arguments which have been raised against there being such a power (let alone duty). It is pointed out that the arbitration tribunal's jurisdiction derives from the arbitration agreement between the parties and the arbitrators' duty is to proceed to an award. "Delegatus non potest delegare". If the arbitrator is mandated to proceed to an arbitration award then he has no right to shirk that responsibility and in effect sub-delegate to someone new, the mediator, the task of resolving the dispute.

A case cited for the proposition that the arbitrators' duty is to proceed to an award



Jonathan Lux

and that he has no power to stay the arbitration to enable mediation to take place is *Hussman (Europe) Ltd v Pharaon* (formerly trading as Al Ameen Development & Trade Establishment) (2003) EWCA Civ 266. However, is this case really authority for this proposition? I suggest not.

The judge's duty is to proceed to judgement and the arbitrator's duty is to proceed to an award. The judge's powers, so it is said, are statutory and so the judge in discharging the 'overriding objective' of dealing with a particular case 'justly' may order a stay to give Mediation a chance. The arbitrator, on the other hand, derives his powers from the contract and his duty is to proceed straight to and only to an award. But, is this right? The arbitration reference may owe its life to the arbitration agreement but the arbitrators' powers, duties and obligations derive largely from the arbitration act.

The 'overriding objective' of the CPR is the 'overriding duty' of the arbitration act – a duty which is to include that to: *“adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.”*

This talks in terms of a fair means for the resolution of the matters falling to be determined and resolution can of course encompass settlement between the parties, a mediated settlement as well as an arbitration award.

The courts have regularly upheld Alternative Dispute Resolution (ADR) mediation clauses and, very recently, have upheld the section of a multi-tier dispute resolution clause calling for 'friendly discussions' - in

other words, the court held that 'friendly discussions' were a precondition to either party's right to refer the dispute to arbitration. In so doing the courts have stressed the public good in encouraging parties to talk and/or mediate.

In many fields of international commercial law (and shipping is a key example) disputes are often referred to arbitration rather than court. It would be perverse if the acknowledged public good ceases to apply when arbitration rather than court is the chosen forum.

The Future

I submit that arbitrators in England have the power and duty to stay arbitration to enable mediation (suspending an arbitration process while a mediation is conducted) to take place either when both parties agree or where one party applies or it appears to the arbitrators to be in the interests of justice to do so. Further, if one party fails to engage with a mediation proposal or unreasonably refuses to mediate then the Arbitration Tribunal should have the same power as the court to make an adverse costs order.

It may be said that even without such a power it is open to the parties to agree a hybrid or multi-tier dispute resolution clause providing for:

- Friendly discussions between the parties
- Mediation
- Arbitration or court proceedings.

It is perfectly correct that, on the latest authorities, the provisions calling for friendly discussions and/or mediation are enforceable. The problem is that such clauses deal with matters in a sequential manner – i.e.:

- Firstly, friendly discussions within a specified timescale
- Secondly, mediation within a specified timescale
- Thirdly, arbitration or court

However, as I indicated earlier, there may well be advantages in holding mediation sometime after court or arbitration proceedings have been commenced and this is simply not catered for by such a hybrid or multi-tier dispute resolution clause.

So, what is really called for is a court / mediation / court or arbitration / mediation / arbitration procedure. We know that the courts offer this and I have suggested that arbitrators also have the power to do so. If I am wrong in this then what about the arbitration rules of the major arbitration bodies. I have reviewed the rules of the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Singapore International Arbitration Centre (SIAC), HongKong International Arbitration Centre (HKIAC) and London Maritime Arbitration Association (LMAA). So far as I can see, only the ICC and SIAC have anything express to say on this subject.

The new ICC mediation rules (2014) are designed to work in conjunction with the ICC arbitration rules. The mediation guidance notes issued in conjunction with the new rules actively encourage arbitrators to consider the use of 'mediation windows' – staying the arbitration to allow mediation to take place.

Secondly, there is Singapore which has been very innovative in the area of dispute resolution. There is a brand-new Singapore International Mediation Centre launched

in November 2014. The SIAC, working in conjunction with the SIMC, proposes the 'Singapore Arb-Med-Arb Clause' whereby SIAC arbitration is started and the parties then commit to Singapore International Mediation Centre (SIMC) mediation and the resulting mediation settlement agreement then goes back to SIAC and forms the subject of a consent award (which can then be enforced if necessary in upwards of 150 states parties to the New York Convention).

Turning to the USA, let me quote from two cases decided by the Second Circuit Court of Appeals, sitting in New York, which appear to support the view that arbitrators may have the power to order parties before them to take time out from the arbitral process and to mediate their dispute. Firstly, in *Banco de Seguros-v-Mutual Marine Office, Inc.*, 344 F.3d 255, 262 (2d Cir. 2003):

"Where an arbitration clause is broad, as here, arbitrators have the discretion to order remedies they determine appropriate, so long as they do not exceed the power granted to them by the contract itself."

Secondly, in *Benihana Inc-v-Benihana of Tokyo, LLC* 784 F.3d 887, 902 (2d Cir. 2015):

"The benefit of having the arbitrators decision is particularly important given that arbitrators are generally afforded greater flexibility in fashioning remedies than are courts."

Whilst these two cases do not specifically state that arbitrators have the power to order a party before them to mediate the dispute as part of the arbitration, the cases do show that US Federal Courts view arbitrators as having wide and extensive powers, provided the arbitrators do not exceed the power granted by the arbitration clause. At state level there is judicial authority that arbitrators have the power to order parties to mediation but, thus far, support for that proposition appears in the common law of only one state, Texas. It is of course open to argument in other states or a Federal court that the Texas courts are right and that arbitrators do indeed have

the power to order parties before them to mediate their disputes.

I raised the question at the beginning of this article: will London stay at the pinnacle of international dispute resolution? The answer when it comes to arbitration is largely in the hands of the LMAA. Certainly it would be open to the LMAA to amend its rules so as to provide expressly for the power which I have suggested arbitrators anyway have under the 1996 Act. The new rule need only stipulate that at any time after commencement of the arbitration either party could apply or the tribunal itself could direct that proceedings be stayed to enable mediation to take place and that the tribunal should be entitled to take into account a party's refusal to mediate when dealing with the costs of the arbitration.

If the LMAA ignores this then it may henceforth be operating at a disadvantage to Singapore which is now offering a joined up dispute resolution system embracing both arbitration and mediation. It would appear that the USA may also offer such flexibility, although this is less clear-cut.

I said at the outset that I would be making further reference to Lord Woolf. In 2009 Lord Woolf gave a talk to the Chartered Institute of Arbitrators entitled: "Mediation in arbitration in the pursuit of justice". He said this:

"My thesis tonight is that litigation in the courts is very similar to litigation through the process of arbitration. They both have the same objective of obtaining a decision which resolves a dispute and brings it to an end. It is an imposed decision but, whereas now judges will regularly consider whether they can assist parties by suggesting some form of ADR, that just does not happen in arbitration. My argument is that it should, and it is indeed my belief that it will, and that arbitrators will have to recognise the importance of their matching the courts by offering the same sort of services."

Conclusion

On the view I take, arbitrators have the power (and indeed the duty in appropriate cases) to stay the arbitration so as to offer a 'mediation window'. It follows that, in exercising their discretion on costs, the arbitrators should be entitled to 'sanction' the successful party & deprive him of some or all of his costs by reason of his failure to engage with a mediation proposal and/ or refusal to mediate.

Of course, to put the matter beyond doubt, it would be preferable for the LMAA to amend its rules so as to provide expressly for such powers.

If I am correct in the proposition I have advanced and/or the LMAA makes the rule change suggested then London may continue as a leading international dispute resolution centre for many years to come. In the meantime, there is nothing to prevent parties from putting the matter to the test by applying to their arbitration tribunal for an appropriate order. When sitting as arbitrator I will give most careful consideration to such an application! ■■

Editor's Note: Jonathan practised for over 37 years as Solicitor, more than 30 of which as Partner at International City Lawfirm Ince & Co. In 2013 he was called to the English Bar and now practices from Stone Chambers as Mediator, Arbitrator and Barrister (legal advisory work).

He was awarded Global Shipping and Maritime Lawyer of the Year for both 2010 and 2011 by Who's Who Legal. In December 2011 he featured in Lloyds List Top 10 Legal Personalities and was a finalist for the Lloyds List Global Shipping and Maritime Lawyer of the Year award 2012. In 2015 he was elected a titular member of the CMI. He is also a member of the International Mediation Institute (<http://imimmediation.org/jonathan-lux>).

Jonathan has received regular appointments as Arbitrator and Mediator both in relation to Maritime disputes and international commercial disputes more widely.

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Bankruptcy of bunker supplier

PST Energy 7 Shipping LLC and Another v O W Bunker Malta Ltd and Another (The “*Res Cogitans*”) - QBD (Comm Ct) (Males J) [2015] EWHC 2022 (Comm) - 14 July 2015

Contract – Supply of bunkers – Retention of title clause – Whether bunker supply contract was a contract of sale within meaning of Sale of Goods Act 1979

On 31 October 2014 the owners of the vessel *Res Cogitans* placed an order for the supply of bunkers with OW Bunker Malta Ltd (OWBM) at a price of US\$443,800. The order was confirmed by OWBM’s Sales Order Confirmation of the same date, which named OWBM as “Seller” and gave a delivery date of 3 or 4 November 2014.

It provided that the physical supplier of the bunkers would be “Rosneft” and that payment would be made within 60 days from the date of delivery upon presentation of OWBM’s invoice. OWBM assigned its right to payment to its bank, ING Bank NV (ING). Notice of the assignment was duly given.

On the same day OWBM contracted with its Danish parent company, OW Bunker & Trading AS (OWBAS) to supply the bunkers. OWBAS in turn contracted with Rosneft Marine (UK) Ltd (Rosneft), a UK company. The OWBAS/Rosneft contract required OWBAS to make payment in the sum of US\$416,000 within 30 days of delivery. Rosneft in turn contracted with its Russian subsidiary, RN-Bunker Ltd, and it was the latter company which supplied the bunkers to the vessel at Tuapse in the Black Sea on 4 November 2014. As was usual in the bunker supply trade, all the transactions included retention of title clauses, and gave permission for the shipowner to consume the bunkers in the meanwhile.

In the circumstances, payment from OWBAS to Rosneft in the sum of US\$416,000 was due by 4 December 2014 (30 days after delivery) while payment from the owners to ING was due by 3 January 2015 (60 days after delivery). Neither payment was made, although Rosneft paid RN-Bunker on 18 November 2014.

On 6 November 2014 OWBAS announced that it was commencing insolvency proceedings. OWBM was not currently in insolvency proceedings.

ING brought arbitration proceedings against the owners claiming payment of the US\$443,800 due under the contract between OWBM and the owners in its capacity as assignee of OWBM’s rights under that contract. ING’s case was that the sum fell due for payment on 3 January 2015 and was recoverable as a debt. Rosneft had also demanded payment for the bunkers from the owners and had asserted that it retained property in them. However, it was not a party to the arbitration. The owners denied liability to OWBM or ING. They did not object to paying for the bunkers, but do not want to have to pay both ING and Rosneft.

The owners disputed liability to pay ING on the ground that because OWBAS did not pay Rosneft for the bunkers, Rosneft retained the property in them pursuant to the retention of title clause in the Rosneft/

OWBAS contract, with the consequence that OWBM never had such property and was not in a position to transfer property to the owners. They submitted that the contract was a contract of sale of goods to which the Sale of Goods Act 1979 applied, and that ING could not maintain a claim for the price because the conditions in section 49 of the Act were not satisfied. The property in the goods had not passed to the buyer, and the price was not payable “on a day certain irrespective of delivery”. OWBAS’s failure to pay Rosneft meant that OWBM was in breach of the implied term in section 12 of the Sale of Goods Act that the seller had a right to sell the goods or would have such a right at the date when property was to pass.

The arbitrators held that the bunker supply contract was not a contract of sale to which the Sale of Goods Act applied. ING’s claim to payment was a straightforward claim in debt which was not subject to any requirement as to the passing of property in the bunkers to the owners at the time of payment. If, contrary to their conclusion, the contract had been a contract of sale to which the Sale of Goods Act applied, the conditions in section 49 of the Act were not satisfied because the provision for payment to be made within a fixed period after delivery did not satisfy the requirement that “the price is payable on a day certain”.

The owners appealed to the High Court.

Held, that the consumption of the bunkers extinguished any property in them (*Borden (UK) Ltd v Scottish Timber Products Ltd* [1980] 1 Lloyd's Rep 160; [1981] 1 Ch 25). If the bunkers were consumed before the date for payment fell due in accordance with the relevant credit terms, title to the bunkers would by then have ceased to exist.

The question whether the contract was a sale of goods depended not on the labels which the parties had used in the contract, but on an analysis of the obligations which they had undertaken.

Had there been no retention of title clause there was no doubt that the contract in the present case would have been a contract of sale to which the Sale of Goods Act 1979 applied (*Glencore International AG v Metro Trading International Inc* [2001] 1 Lloyd's Rep 284).

It was common ground that the contract when concluded was not a "sale"; the question was whether it was an "agreement to sell" within the meaning of the Act, and the issue was whether the contract between OWBM and the owners was "a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price".

In order to qualify as a contract of sale within the scope of the Act, four conditions had to be satisfied. First, the contract had to be for "goods". Secondly, the seller had to undertake an obligation to transfer the property in the goods (ie good title to them) to the buyer. Thirdly, there had to be a money consideration payable by the buyer to the seller. Fourthly, there had to be a link between the transfer of title and the money consideration, such that the consideration for the payment was the transfer of title to the buyer as distinct from some other benefit: in other words, what the buyer was paying for was title to the goods.

The issue in the present case was as to the second and fourth conditions. In the court's view, the combined effect of: (1) the retention of title clause; (2) the period of credit before payment fell due; (3) the permission given to the owners to consume the bunkers; and (4) the fact that some or all of the bunkers supplied were likely to be consumed before the expiry of the credit period with the consequence that property therein

would cease to exist, meant that the parties must be taken to have understood that it was likely that title would never be transferred to the owners. It was possible that it would be, but not likely. It was not an essential part of the transaction that it should be (*Rowland v Divall* [1923] 2 KB 500 considered). The combination of those features meant that it could not have been the object of the contract to transfer property from OWBM to the owners. Both parties knew that that was unlikely ever to happen. Even if it did, because some bunkers remained unconsumed after 60 days, that was not fundamental to the transaction.

In those circumstances it was difficult to conclude that OWBM undertook an obligation to transfer the property in the bunkers to the owners. There was no good reason why it should undertake an obligation which both parties knew that it was unlikely to be able to perform. It was equally difficult to conclude that what the owners were paying for was the transfer of title to them, when both parties knew that that was unlikely ever to happen. What the owners were paying for was not a title which they were never going to get but something else.

The true nature of the bargain was that OWBM would deliver or arrange for delivery of the bunkers, which the owners would be immediately entitled to use for the propulsion of the vessel. The permission to use the bunkers necessarily meant not only that OWBM itself gave such permission, but that OWBM was or would be in a position to give such permission to the owners on behalf of whichever entity in the supply chain was or would become the owner of the bunkers. What the owners were paying for was the right to consume the bunkers and not an unlawful possession which exposed them to the risk of an action at the suit of the true owner. At the date when the bunkers were delivered the true owner was RN-Bunker, but when Rosneft paid RN-Bunker on 18 November it became the owner of whatever bunkers then remained unconsumed. Such permission given by the owner of the bunkers would be an effective defence to any claim against the owners for conversion.

On the facts, OWBM did obtain the necessary permission from the owner of the bunkers so as to afford the owners a defence as a matter of English law to any claim against them. By delivering the bunkers to the vessel (or causing them to be delivered) knowing that they would or

might be consumed straight away, Rosneft gave permission to the owners for that to happen and was content to look exclusively to OWBAS as its contractual counterparty for payment. There was no breach by OWBM of its contract with the owners.

Accordingly, the contract in the present case was not one to which the Sale of Goods Act applied. If a label to the contract was sought, "bunker supply contract" would be perfectly adequate. In any event, it was not a contract of sale within the definition in section 2 of the Sale of Goods Act 1979 (*The Saetta* [1993] 2 Lloyd's Rep 268 and *The Fesco Angara* [2011] 1 Lloyd's Rep 61 considered).

The appeal would be dismissed. ING did not need to bring its claim within the requirements of section 49 of the Act. Its claim to payment was a straightforward claim in debt not subject to any requirement as to the passing of property in the bunkers to the owners at the time of payment.

If, contrary to its conclusion, the contract had been a contract of sale to which the Act applied, the court would have accepted ING's alternative submission (disagreeing with the arbitrators on that point) that a provision for payment to be made within a fixed period after delivery was sufficient to satisfy the requirement in section 49(2) that "the price is payable on a day certain irrespective of delivery" (*Stein Forbes & Co v County Tailoring Co* (1916) 86 LJKB 448, *Colley v Overseas Exporters* [1921] 3 KB 302, *Shell-Mex Ltd v Elton Cop Dyeing Co Ltd* (1928) 34 Com Cas 39, *Henderson & Keay Ltd v A M Carmichael Ltd* 1956 SLT 58, *Workman, Clark & Co Ltd v Lloyd Brazileño* [1908] 1 KB 968, *Hyundai Heavy Industries Co v Papadopoulos* [1980] 2 Lloyd's Rep 1 and *Caterpillar (NI) Ltd v John Holt & Co (Liverpool) Ltd* [2014] 1 Lloyd's Rep 180 considered).

Stephen Cogley QC and Jeremy Richmond (Ince & Co LLP) for the owners; Robert Bright QC and Marcus Mander (Allen & Overy) for ING. ■■

Editor's Note: The above is a summary of a London judgement which appeared in Lloyd's Maritime Law Newsletter No. 931 of 7 August 2015, and which is reproduced by kind permission of the publishers, Informa Law.

Pumping warranty

Charterparty – Discharge pumping warranty – Whether warranty of performance or capability – Effect of breach on demurrage liability – Shellvoy 5 form

The subject vessel was chartered for the carriage of a cargo of crude oil from the Middle Eastern Gulf to an Indian port. The charterparty was concluded by a fixture recap and incorporated the Shellvoy 5 form with Shell 1999 Amendments/Additions /Deletions plus Shell February 1999 Additional Clauses 1–43 and Reliance Clauses 1–18.

Disputes arose as to the time used at the discharge port and in particular the time said to have been lost for an alleged breach of the charter pumping warranty.

The charterers paid US\$319,223.09 by way of demurrage. The owners now claimed a further US\$29,213.55 by way of further demurrage, alternatively as damages, together with interest and costs. The charterers denied that any further sum was due to the owners and sought a refund of US\$617.19 because of an alleged overpayment, together with interest and costs.

The clauses relevant to the pumping warranty dispute, as amended by Shell February 1999 amendments, and the fixture recap, were as follows:

Shellvoy 5 Part I

“Owners guarantee that at the date hereof and from the time when the obligation to proceed to the loadport(s) attaches, the vessel discharges a full cargo (whether homogeneous or multi grade) within 24 hours or can maintain a back pressure of an average of 100 PSI at the vessel’s

manifold and Owners guarantee such minimum performance provided shore facilities permit.”

Part II Clause 20

“If the vessel is equipped for crude oil washing Charterers shall have the right to require the vessel to crude oil wash, concurrently with discharge, those tanks in which Charterers’ cargo is carried. If crude oil washing is required by Charterers or any competent authority, any additional discharge time thereby incurred, always subject to the next succeeding sentences, shall count against laytime or, if the vessel is on demurrage, for demurrage. The number of hours specified in Part I (a) I (vii) as amended shall be increased by 0.6 hours per cargo tank washed, always subject to a maximum increase of 8 hours. If the vessel fails to maintain 100 PSI throughout the discharge then any time over 24 hours, plus the additional discharge performance allowance under this clause, shall not count as laytime or demurrage, if on demurrage. This does not reduce Owners’ liability for vessel to perform her service with utmost despatch.”

Shell February 1999 Additional Clauses Clause 38

“India Clause. (A) In assessing the pumping efficiency under this Charter at ports in India, Owners agree to accept the record of pressure maintained as stated in receiver’s statement of facts signed by

the ship’s representative.”

The owners submitted that the pumping warranty related to the vessel’s capability, not its actual performance, and that the vessel had maintained 100 psi back pressure at times during discharge. The charterers said that the warranty was not one of capability but actual performance. They accepted that there were times when the vessel met the 100 psi back pressure, but said that the average back pressure was less. They relied on the wording of Part I and clause 20 of Part II of the Shellvoy 5 form.

In response, the owners said that the provision in the penultimate sentence of clause 20 was a penalty clause and thus unenforceable.

Held, that the pumping warranty was clearly one of performance, not capability. The penultimate sentence of clause 20 was not a penalty clause. A number of arbitration decisions were referred to in Schofield, *Laytime and Demurrage*, 6th Edition, starting at para 6.137 but in none of those was it apparently argued that the common form of pumping warranty was a penalty provision. Given the many thousands of cases there had been involving pumping warranties, it would be extremely startling were it now to be decided that such warranties were unenforceable as penalties.

The problem, however, was the relationship between the penultimate sentence of clause 20 and the provision at Part I of the Shellvoy 5 form of charter. The warranty

was in two parts. In the first part, either the vessel could and did discharge within 24 hours (to which must be added time allowed for crude oil washing, for stoppages or reduced pumping) or, in the second part, it had to maintain an average back pressure of 100 psi at the manifold. If the vessel could meet either branch of the warranty there was no breach. The difficult question, and the real crux of the case, was just what was the excess time.

In relation to the first part of the warranty the start point was that the time allowed was 24 hours plus whatever additional time was allowed. The tribunal had been given two documents, one from each side, showing how discharge had progressed. From the vessel's side, there was a document called Cargo Pumping Performance Data and from the charterers' side there was the Terminal Pumping Performance Report. Both documents had been signed by both the Terminal and the master.

The former document showed that there were five periods when discharge was stopped at the Terminal's request and four further periods when the vessel was ordered to reduce discharge pressure. In the following table, "Stop" were the periods when the vessel stopped discharge and "Reduce" were the periods when the vessel was ordered to reduce or on one occasion, further reduce, discharge pressure.

The tribunal accepted, on the basis of Part I of the Shellvoy 5 form, that both obligations on the owners, ie to discharge within 24 hours or to maintain 100 psi, were only for such periods as "shore facilities permit" and that periods when the Terminal ordered discharge to stop or discharge pressure to be reduced were not such periods.

The tribunal further accepted that before and after such periods time would be lost either reducing from or achieving the desired pressure. For such consequential loss of time the tribunal would be prepared to allow a total of one hour, bringing the total additional time allowed to four hours 47 minutes. In addition, the tribunal had to take account of the crude oil washing allowance of 1.2 hours (one hour 12 minutes), based on 0.6 x the 2 tanks washed at the behest of the vessel. That brought the total of additional time to five hours 59 minutes.

It followed that the total time allowed under the first part of the warranty was not 24 hours but 29 hours 59 minutes, and therefore since the actual discharge time was 42 hours the excess discharge time was 12 hours one minute.

As discharge actually took some 42 hours it was clear that the vessel failed to meet the 24 hours part of the warranty, even extended to 29 hours 59 minutes.

To determine whether there was a breach of the second part of the warranty it was necessary to compare the average back pressure achieved with that required. On the evidence 5.22 kg/cm was the achieved figure. That was clearly less than the required pressure of 7.03 kg/cm (100 psi) and there was therefore also a breach of the second part of the warranty.

In the tribunal's view the measure set out in the penultimate sentence of clause 20 of reducing the total laytime used/time on demurrage applied as the measure of damages to the first part of the warranty. Such a failure simply resulted in excess time over that allowed not counting against laytime or demurrage if the vessel was on demurrage. Thus, the second half of the pumping warranty provided a defence for a failure to meet the first part if the vessel maintained an average back pressure of 100 psi. That was the only significance of the second part. What it did not do in the Shellvoy 5 wording was, as the owners had asserted, to create a separate cause of action or measure of damages for a failure to meet the required back pressure. Therefore there was no point in ascertaining the additional time actually taken compared with the time that would have been taken had the vessel achieved the required back pressure. There was a breach of the second part of the warranty because the vessel failed to maintain an average discharge pressure of 7.03 kg/cm (100 psi).

Accordingly, the owners had failed to meet the requirement of either part of the warranty. Had they met the second part, they would have had a defence for their failure to meet the first. It did not matter how far off they were from meeting the requirement of the second part of the warranty, or what loss flowed from it; the consequence was that they did not have a defence for

their failure to meet the first part in respect of which they guaranteed they could and would discharge in 24 hours. Having failed to do that, it followed that the owners could not claim demurrage beyond the 24-hour period, extended by crude oil washing, stoppages and reduced pressure. That was also why the provision was not a penalty. The compensation the charterers received by not having to pay demurrage was not related to the average back pressure achieved, but to the time the 24-hour period, as extended, was exceeded, which was certainly not penal.

The tribunal would accept the charterers' broad approach of taking the actual period of discharge of 42 hours and subtracting from that the allowed period of 24 hours plus the further time allowed for crude oil washing and stoppages. On the tribunal's figures the excess time was 12 hours one minute. At the demurrage rate of US\$50,000 per day, that represented a reduction of US\$25,034.72 from the demurrage otherwise due.

If the time lost due to the alleged breach of the pumping warranty was excluded, the vessel was on demurrage for seven days one hour 29 minutes. At the demurrage rate of US\$50,000 per day, that represented demurrage of US\$353,090.27 gross of address commission. If the reduction of US\$25,034.72 referred to in the previous paragraph was taken off, the total gross demurrage was US\$328,055.55, or US\$319,854.16 net. If the sum already paid by the charterers of US\$319,223.09 was deducted, the further balance due to the owners became US\$631.07.

The owners would accordingly be awarded US\$631.07 together with interest. ■■

Editor's Note: The above is a summary of a London Arbitration Award (No. 13/15) which appeared in Lloyd's Maritime Law Newsletter No. 932 of 21 August 2015 and which is reproduced by the kind permission of the publishers, Informa Law.



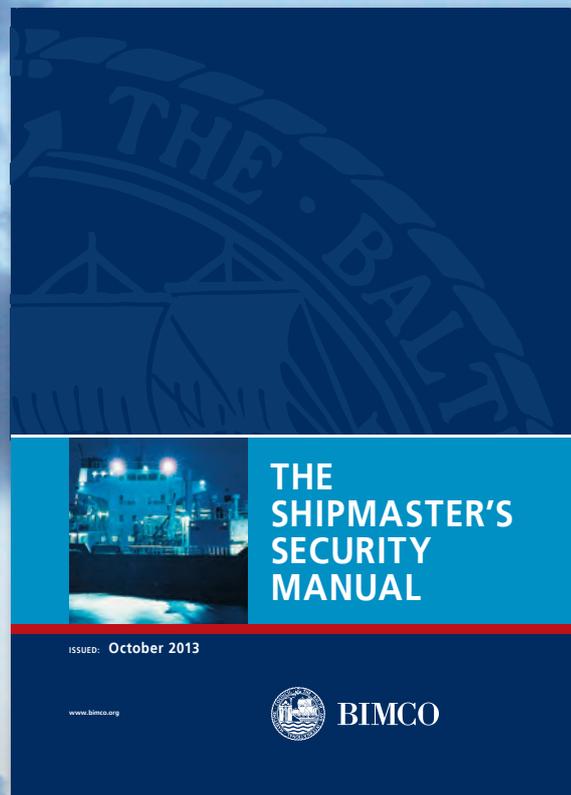
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New books

On the importance of medical examinations

“Fit for Life” is the latest loss-prevention DVD from Steamship Mutual, which addresses the problem of a persistently high level of claims for crew illnesses, which have cost the P&I Club some USD 94m over a five-year timespan. Many of these illnesses, which sometimes involved medical evacuation and included tragedies for the individuals and their families, should have been picked up by a proper medical examination before the seafarer joined a ship.

This DVD, which is a highly professional production by Callisto Productions, the same team which produced earlier films on piracy and grounding, is presented by the broadcaster Edward Stourton, who emphasises the importance of pre-employment medical examinations (PEMEs).

This is made for both ship operators and seafarers. The script acknowledges the fears and negativity that may be behind the reluctance

in the mind of a seafarer to be properly screened. But it addresses the value of a really thorough medical examination to the individual and his or her family. Largely filmed in the Philippines using experts from local PEME clinics, the production provides a convincing case for the process, but stresses the need of using high-quality medical examinations, which have themselves been approved by the P&I Club. Issuing certificates really do provide evidence of a thorough examination.

Some sad examples are given of people who took short cuts with less thorough examinations, which were a precursor to tragedies, with illnesses striking where it was difficult to deal with efficiently. “What if the checks aren’t reliable?” is a vital question that is properly addressed. The production points out that the quality of medical examinations varies tremendously around the world. The message “if you are unfit, you

are a risk to yourself and others” is emphasised throughout the film.

It is also pointed out that illness can be very unpredictable and strike where few medical resources are available, such as far from land aboard a ship with no doctor anywhere near. To screen and possibly detect such an illness could be literally lifesaving. Especially after proper treatment, an individual is restored to health, because of the “early warning” of a proper PEME.

The DVD touches on other crucial concerns, not the least that of an ageing workforce and the precautionary principle of making healthy lifestyle choices. With less physical activity in a modern merchant ship, a more sedentary life and the temptations of unhealthy eating, there are many snares and pitfalls for the modern seafarer. The film points to the consequences of obesity and the need for good, balanced diets

and properly prepared food, along with the connections obesity can have with diabetes, heart problems and other serious illnesses.

The film acknowledges that the health of ships’ crews has become much more centre stage than previously and welcomes the work of others in this respect. Links are provided to other sources of information in the DVD’s supporting literature.

The 30-minute DVD is provided at no charge, both to the club’s members and others who feel that it will be beneficial for them. See www.steamshipmutual.com for further information. ■■



Milestones in marine engineering

One of the exciting features of marine technology is the willingness of ship operators to embrace it with enthusiasm. True, it leads people down some blind alleys, should the claims of the technologists prove unjustified in the marine environment. But technical progress in engineering tends to disprove the suggestion that the shipping industry is “conservative”. A good idea, even one that is radical and revolutionary, will usually find commercial interest available, which must be an encouragement to all working at the frontiers of progress.

“Oceans of Power – 125 years of Marine Engineering Milestones” goes rather further back than its title suggests, to the very beginnings of marine mechanical propulsion more than 200 years ago. Written by maritime journalist and professional naval architect John Barnes, it is published by the Institute of Marine Engineering, Science and Technology (IMarEST) to commemorate 125 years since the establishment of the institute.

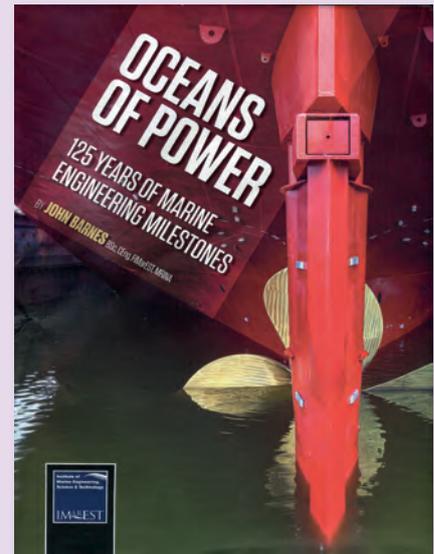
It is a delightful and very readable account of marine engineering and the often quite curious developments that emerged as engineers and designers struggled to produce more powerful, more efficient and more commercially viable ways of propelling ships. Here are to be found their triumphs and disappointments.

Part One of the book takes the reader past the various marine engineering milestones, from the earliest steam engines to the more speculative ventures that promises today’s shipping industry machinery will minimise environmental footprints. Triple and quadruple expansion machinery gives way to the steam turbine, with range, speed and economy driven by developments down the years in boilers, with higher steam pressures and coal firing giving way to oil.

The arrival of the marine diesel is recognised as a significant milestone, as is the development of the turbocharger and diesel-electric propulsion. Transmitting all this power into propulsion takes the author into the consideration of paddles, propellers, water jets and ultimately pods. There are chapters on fuels and the arrival of automation, while due recognition is given to the role of navies in driving along machinery development, with their particular requirements for speed and operational range, submersible developments and nuclear power.

The book diverts the reader into some of the peripheral problems with which marine engineers found themselves engaged, such as ship stability, the development of hybrid propulsion and the way in which tragedies would play a part in design changes. The more alert reader can trace the role of geopolitics in this story, as apparently wonderful developments in very fast ships or revolutionary projects involving gas turbines are confounded by huge fuel price rises, with ships having to be re-engined or prematurely scrapped.

The “internationalism” of engineering developments are properly recognised with engineering innovation being spread perhaps not evenly, but certainly widely, around the world. This is an enormous subject to compress into a single volume, and the author does this well, although obviously developments which some might think of importance might be minimised or fail to make their appearance. Some, for instance, might query the failure to give Alfred Holt due recognition for his revolutionary steamships which made their appearance in 1866, heralding the arrival of long-range and economic steam propulsion. But the book does not pretend to be all-encompassing, and the author clearly has had to be selective. It is an interesting facet of this tour through marine engineer-



ing to reflect that some ideas never entirely go away, and although they might fail in one generation, they will make a comeback, perhaps even decades later as the technology evolves. A final section is devoted to the publisher – the IMarEST: its developments over the past 125 years and where this dynamic professional organisation might be headed in the future.

It is very well illustrated, not least with some of the lovely engineering drawings which emerge from the IMarEST archives. One does not have to be a marine engineer to appreciate this book. A final chapter considers the future, leaving the reader to make up their mind about the prospects for hybrid propulsion, a nuclear revival, the possibilities of fuel cells, alternative fuels – LNG, CNG, bio, glycerine – battery developments and other areas, which may provide adventurous ship-operating readers with considerable food for thought.

100 years of shipping on the River Clyde, by George C.O’Hara is published by the Scottish Shipowners Benevolent Association, ISBN 978-0-9930793-0-6. ■■

The first BIMCO eLearning diplomas awarded to two participants



BIMCO eLearning Diploma Programme awarded its first eLearning diplomas to two participants who successfully completed three or more eLearning courses. Clara Liu of Canpotex Shipping Services Limited, Canada completed five eLearning courses and Roberto Jorge Venuti of Fluvial Dry Cargo Operations Manager for Compañía Naviera Horamar, Argentina completed three courses.

“The knowledge I gained from the courses have benefited my daily work and sharpened my skills in dealing with various situations that I encounter in bulk shipping,” said Clara, who works as Vessel Operator for Canpotex. “The most impressive thing is I can access the eLearning course whenever and wherever I want. The information and case studies are very practical and the tutors are very experienced and professional in the different shipping fields. I would say BIMCO eLearning is a one-of-a-kind learning experience - absolutely worth the time and money,” said Clara.

According to Roberto Jorge Venuti, one of the most attractive aspects of eLearning is that participants can study wherever they may be located in the world, and are exposed to global perspectives on maritime subjects.

“Living in South America, it’s very difficult to participate in seminars or training on specific topics such as maritime contractual issues, as these types of courses are almost non-existent in the southern hemisphere,” said Roberto, who is Fluvial Dry Cargo Operations Manager for Compañía Naviera Horamar.



Roberto Jorge Venuti



Clara Liu

“BIMCO has come to fill this void and gave me the opportunity to attend online courses covering all the main legal issues that might arise between parties in a shipping contract. Even though I have experience in these topics, the courses gave me a more global insight on the problems and solutions when things go wrong in the real world,” said Roberto.

BIMCO eLearning courses combine self-learning and virtual classroom teaching with both theory and real case studies at a reasonable fee. A number of courses eLearning and live courses are conducted throughout the year – for the full list of courses. ■

Editor’s Note: For more information, please contact: education@bimco.org or call (+45) 44 36 68 00.



BIMCO EDUCATION

UPCOMING COURSES

BIMCO COURSES, SEMINARS & WORKSHOPS

9-11 November 2015	ROTTERDAM	Masterclass Workshop - Laytime & Demurrage
23-25 November 2015	ANTWERP	Masterclass Workshop - Time Chartering
4-5 December 2015	BEIJING	Masterclass Workshop - Project & HeavyLift
14-15 December 2015	BEIJING	Seminar - Voyage Chartering
14-16 December 2015	ISTANBUL	Charter Party Workshop
17-18 December 2015	SHANGHAI	Seminar - Voyage Chartering
8-10 December 2015	DUBAI	Masterclass Workshop - Bills of Lading
19-20 January 2016	DUBAI	Seminar - Using SUPPLYTIME

BIMCO eLEARNING DIPLOMA PROGRAMME

11 Nov. 2015 - 25 Feb. 2016	MODULE 5	Tanker Laytime and Demurrage
14 Jan. - 7 Apr. 2016	MODULE 2	Bills of Lading
28 Jan. - 31 Mar. 2016	MODULE 1	Introduction to Shipping
11 Feb. - 3 May 2016	MODULE 6	Voyage Chartering
25 Feb. - 19 May 2016	MODULE 4	Dry Cargo Laytime and Demurrage
11 Mar. - 2 Jun. 2016	MODULE 3	Time Chartering
14 Apr. - 25 Aug. 2016	MODULE 5	Tanker Laytime and Demurrage
13 May - 26 Aug. 2016	MODULE 6	Voyage Chartering
9 Jun. - 1 Sep. 2016	MODULE 3	Time Chartering
18 Aug. - 11 Nov. 2016	MODULE 2	Bills of Lading
2 Sep. - 4 Nov. 2016	MODULE 1	Introduction to Shipping
15 Sep. - 8 Dec. 2016	MODULE 4	Dry Cargo Laytime and Demurrage
29 Sep. 2016 - 12 Jan. 2017	MODULE 3	Time Chartering
7 Oct. 2016 - 19 Jan. 2017	MODULE 6	Voyage Chartering
27 Oct. 2016 - 2 Feb. 2017	MODULE 5	Tanker Laytime and Demurrage
10 Nov. 2016 - 16 Feb. 2017	MODULE 4	Dry Cargo Laytime and Demurrage

BIMCO Education schedule available at:

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BIMCO is the world's largest international shipping association, with 2,300 members in around 130 countries. We provide a wide range of services to our global membership – which includes shipowners, operators, managers, brokers and agents.



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