



BIMCO

BULLETIN

VOLUME 111
MAY 2016

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Watchkeeper - spreading the word
GCHQ Cyber Awareness course

Preventing deaths in enclosed spaces

Does your ship have
all the relevant
certificates?

BIMCO Board benefits from Templar Executive's GCHQ Cyber Awareness course
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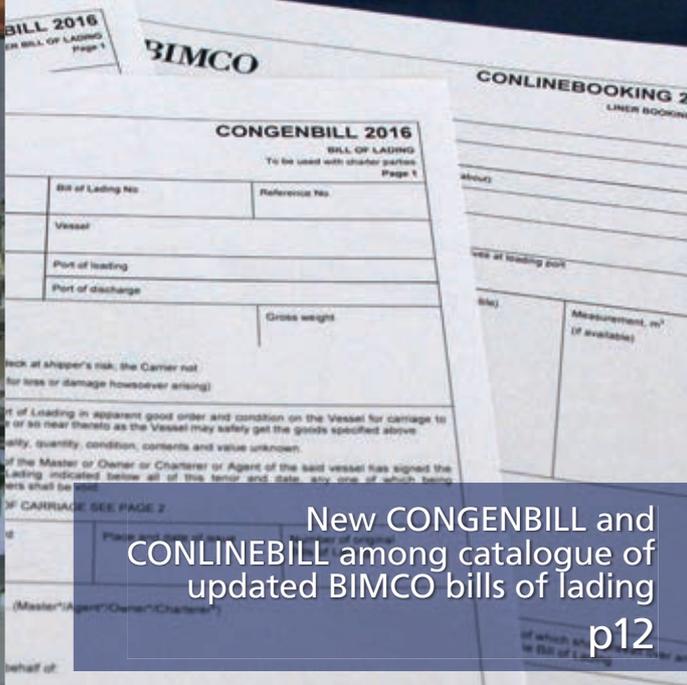
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Denmark

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ISSN 0901-814X.



WATC

Spreading the word on cyber security

What essential systems do we rely on? It seems quite obvious – defence, public utilities such as the providers of electricity, water and suchlike are surely priorities. Public health and the provision of medicine would generally feature as areas that need to be kept secure against system attacks.

But these days so much of our systems are totally dependent upon cyber-based timing and positioning. Banking and credit transfer transactions, even the cash registers in a coffee bar have a vulnerability that comes with its speed and convenience. And what about the whole logistics chain – both domestic and international trade are as “critical” as one could possibly imagine.

Ports and ships perhaps do not immediately come to mind as the potential victims of cyber security attacks, possibly because they are rather less understood by the general public and possibly even by those who might do them electronic harm. Ships are only now approaching the sort of connectivity that might make them into a more tempting target. In a world increasingly dependent upon trade, the uninterrupted passage of ships and their efficient interface with ports would appear to justify their identification as exceedingly critical infrastructure. Just consider the almost immediate effect of interruptions to the maritime supply chain – such as has occurred as a result of labour disputes in port – and we start to gain some insight into how critical it is.

“Cyber security is an issue in every industry”, says Steve Williams, partner at Moore Stephens, as he spoke at a recent seminar for the marine industry on this important matter. And while there may be a perception that shipping might be “well behind the game”, he suggests that in recent months there has been improvement in the industry’s awareness. Organisations like BIMCO are clearly spreading the word – last year’s BIMCO Annual Conference featured the issue very prominently and there has been an enthusiastic take-up of the recently published Guidelines on Cyber Security Onboard Ships*.

It would seem that many more people throughout the industry are recognising the reality of this growing risk and the need to have in place measures to deal with it. “All are learning how to manage the risk” emphasises Steve Williams, who points to the extraordinary growth and importance of the “internet economy” and the irreversible march of technology, in which he says nothing can be considered completely secure.

“Every system can be hacked”

Almost nobody, he points out, will willingly admit to being hacked and this lack of transparency itself constitutes something of a problem. Actually recognising that systems have been compromised may well be far from obvious. An average of 280 days will elapse before a breach is recognised, Steve Williams reveals, which disturbing statistic itself gives considerable pause for thought!

He suggests that “every system can be hacked” and these vulnerabilities need to be better understood. It is important to recognise who the potential “enemy” might be, from the unhappy employee or former employee with a grudge and inside knowledge, to the activist who might well be deemed a terrorist, who has some objection to an enterprise and the means of disrupting its operations in an effort to get a message across and to change behaviour. At the “top end” will be found governments and state agencies which are well resourced potential disruptors. We might consider the case of the South Korean GPS, which was taken down by that country’s neighbours north of their border, but the truth is that such capabilities are becoming more widely spread, as governments recognise the potential for cyber warfare and the need for defences against it.

The truth is that we do not learn very much about any attacks in the maritime world, as for obvious reasons, publicity is regarded as counter-productive. Mr Williams recalled the cyber attack on the ballasting system of an oil rig, which was attributed to an IT contractor. Suggestions that pirates have been hacking into systems to identify high value cargo that can then be more easily targeted or the breach in a major port where drug



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WATCHKEEPER

gangs were attempting to identify and home in on containers where narcotics had been concealed.

Hackers and malicious insiders, he points out, are constantly, trying to “find a way onto your system” and it is as well to recognise this. It is wrong to identify this as “an IT problem” and he suggests that how people “behave” around their technology is more important. The solutions, he emphasises, “starts with the management” who need to make themselves aware about the realities of risk as it applies to their company. They need to identify the “crown jewels” in their own systems and data, consider the whole supply chain and recognise that the worst thing that could probably happen will include a loss of reputation. Managers need to ask the experts the “dumb questions” to find the answers.

He emphasises the importance of contingency planning, for regular tests and drills in which they attempt to break the system and

to get better at detecting a breach. It is significant, he points out, that governments are now focusing on cyber security, with more regulation due.

Is the shipping industry vulnerable?

In the industry itself, there is growing concern at its vulnerability, with the largely unregulated spread of personal devices and data aboard ship, with the likelihood that viruses and malware can be imported in such a fashion. The fact that with few exceptions, ships will not carry any electronic specialists and will often have very real practical difficulties in policing what crew members may bring aboard and “plug in” to the ship’s systems. Pirated navigational software has also been identified aboard ships belonging to highly reputable operators and there

is limited control over what might be downloaded by irresponsible or just ignorant people. At a seminar last year it was revealed by a specialist working in the offshore market that such was the level of contamination by viruses aboard the units he boarded that on return to shore he would routinely destroy his laptop and purchase a new one!

Knowing the enemy, recognising the vulnerabilities and putting in place sensible precautions (all of which are stressed in the Guidelines) might be considered “first steps” in the very important progress to a better understanding of this particular technological risk. “Nothing is secure” says Steve Williams – “but the world keeps turning”. ■

The Guidelines on Cyber Security Onboard Ships is free to download from the BIMCO website: www.bimco.org

Curiosities in modern navigation

There is a tendency to believe the worst of modern navigators, with the strange things that seem to happen at sea. But this might be unfair, as the errors and “near misses” of the past were probably unseen by anyone other than the participants, while today, surveillance techniques, assisted by AIS, put the spotlight upon everyone.

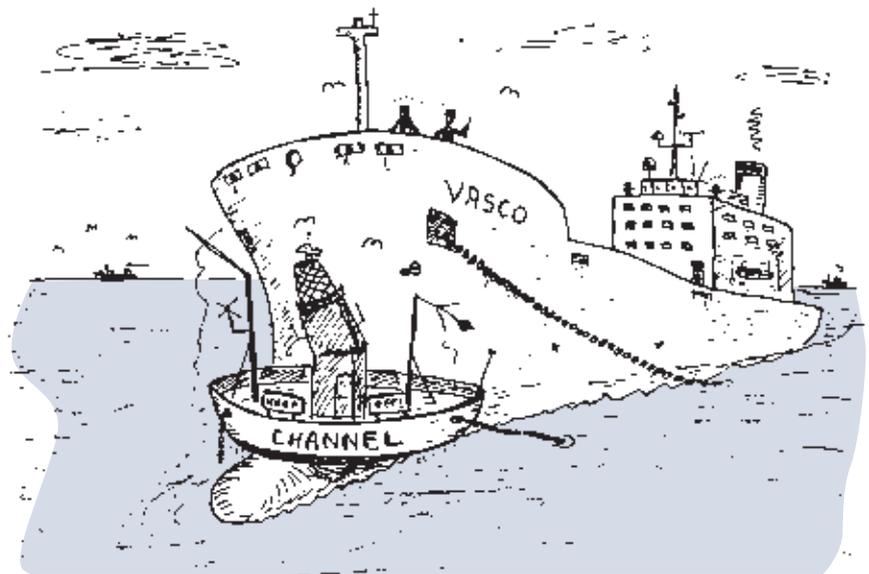
Nevertheless, the wrongful use of modern technology and the apparent precision it gives to people who in another age would be dependent upon dead reckoning, are certainly worth highlighting for the lessons they convey. What are we to make of a large container ship steaming resolutely into a windfarm array, fortunately without hitting any of the flailing turbines? It turns out that the bridge team were using a redundant passage plan left over from the previous voyage.

There has been strange navigational behaviour which, when investigated, was apparently caused not merely by using a previous passage plan, but one which the navigator had downloaded from a previous ship – one, moreover, of half the size.

Speaking about the “reliability of technologies” the Trinity House Director of Navigation Captain Roger Barker suggests that the facility of AIS provides an “amazing pic-

ture” of the reality of modern navigation, with the ability to track ships over time. He points to the way that people are actually using the aids to navigation as waypoints on their electronic charts, resulting in damage to buoys and lightships, when people forget to look out of their windows. Because people using their wonderful electronics have a greater faith in their position than that of a previous generation, too many, he suggests, are “cutting corners”.

Perhaps more worrying is the way that electronic navigators, confused by the layers of information they are wishing to present on their relatively small screens, often “edit out” vital navigational data. A pilot boarding a ship to take her to sea found that the bridge team had “clarified” their screen by editing out all the bathymetric information. Important lightships, indicating the presence of shallow water, have reportedly suffered the same electronic fate. ■



“You can tell the Captain we are reasonably sure of our position!”

The changing face of navigation

The sea, observed Captain Ian McNaught, Deputy Master of Trinity House “is a uniquely difficult environment”. Mariners would have no trouble in identifying with this remark, made during the introduction of a recent seminar on “Innovation in Maritime Navigation”. Sponsored by the Royal Institute of Navigation, the General Lighthouse Authorities and the Knowledge Transfer Network, the event was designed to focus upon the ways in which navigators were getting to grips with an era in which dramatic change was taking place. With new techniques and technology, the need to safely get ships across the surface of the globe remained a constant – inherited from a less complex age of celestial and “visual” navigation.

The simple tools of earlier navigators were evolved very much with the demanding environment of a ship at sea in mind. But was modern electronic equipment, designed to be “affordable” for installation aboard merchant ships, sufficiently strong and reliable in the salty, vibrating and sometimes

violent conditions of the sea? And was the modern seaman too reliant upon equipment effectively doing all his navigational calculations for him?

President of the Nautical Institute Captain Robert McCabe, emphasised the need for navigational reliability and also pointed out the need for the seaman to avoid becoming “enchanted” with the electronic equipment available, to the extent of shutting down his or her human sensors. “Machine centred automation dulls situational awareness” he suggested, in a remark which perhaps ought to be replicated in every chart-room! There was a need to stay closely engaged with the outside environment, even though GMSS has been recognised as the primary means of positioning for at least the last five years. And while equipment reliability might be getting better, he pointed out that in a modern wheelhouse awash with alarms from all over the ship, “it was sometimes a challenge to realise you had lost the satellite signal”.

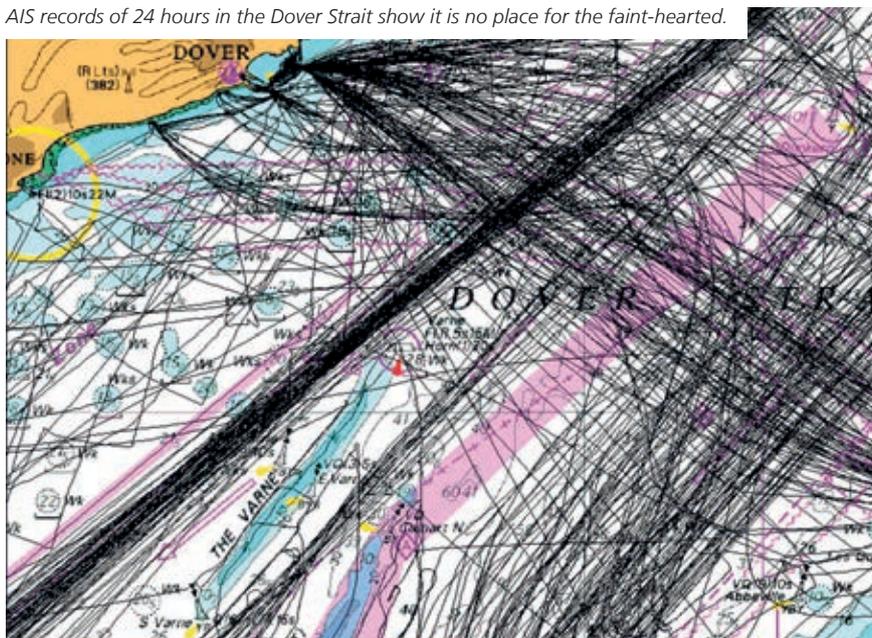
Establish good procedures onboard

Captain McCabe recommended regular drills to establish good procedures in the

event of satellite signals going wrong, but equipment manufacturers also had a role in addressing the vulnerabilities of what they were supplying. Nautical Institute members had made their views very clear about their needs. Advances need to be “user-led”, they had emphasised, while they were impatient for more standardisation and equipment that could revert to a basic S-Mode if they did not feel confident with its performance. There was also a need for a secondary source of navigational data and there was some disappointment that e-Loran, which could have delivered this, had been switched off in European waters.

Pilots provide a useful insight into what is going on aboard ship, at least in coastal and port waters and the Secretary-General of the International Maritime Pilots’ Association Nick Cutmore drew heavily on his members concerns in his address. They worked each day with a “mix of technologies”, but also noted an observed “over-reliance” on GMSS, which often left people a “hostage to poor position data”, something which pilots, who knew their waters and increasingly carried their own devices, were all too aware.

AIS records of 24 hours in the Dover Strait show it is no place for the faint-hearted.



The rapid increase in the size of ship, with the current feature of “cascading”, was tending to move ship handling from a process in which there would normally be generous theoretical norms, to a situation where there may be zero under-keel clearance and ships so large that they have to be “dragged around” tight bend with tugs, and turning circles barely larger than the ship herself. The emphasis for designers, said Mr Cutmore, was upon performance at sea with manoeuvring in port not evidently seen as a priority, with pilots noting that rudders were getting relatively smaller, windage was increasing and some large ships would be logging 11 knots over the ground with their engine at “Dead Slow”, which could lead to a frightening port approach!

With smaller crews than ever, helmsmen who might be inexperienced and some-

times questionable onboard abilities (he suggested that Standards of Training, Certification and Watchkeeping for Seafarers (STCW) had “damaged competence”), pilots were pointing out that bridge technology needed a “reality check”. There was a belief that the equipment fitted was always the cheapest, rather than the most suitable and that many of the ideas being announced at IMO on e-Navigation were too far ahead to be practical. 10 years, he suggested, had been wasted on “abstract concepts” like shore control, when what was needed was better integration of data and equipment.

The importance of passage plans being up to date was emphasised by the Trinity House Director of Navigation Captain Roger Barker. Deep sea pilots often reported serious deficiencies they encountered in the ever more crowded waters around Europe, where other sea users were multiplying fast. There were instances of old passage plans being electronically resurrected with the potential for disaster and evidence that navigational warnings were being routinely ignored. NavText printouts needed regular attention, as did the updating, by whatever means, of the charts being used.

People were cutting corners, hitting aids to navigation quite regularly and there appeared to be often a failure to look at source data on charts and the validity of surveys. It took eleven months, he pointed out, before a wreck in the middle of a busy anchorage actually appeared on electronic charts. He also suggested that wind farms are poorly presented on navigational charts, while all too often (see Watchkeeper on pages 3-4), important navigational data is being edited out of electronic charts for the sake of clarity. There was still a gap between the reality of what was happening on the bridge of a ship and what technology appeared to promise.

After the concerns of mariners and practical navigators, it was the turn of science and technology to review some of the work being undertaken across the field. More choice was becoming available, pointed out Professor Terry Moore of the University of Nottingham, with great accuracy now available from differential GPS and various means of increasing signals. Regional systems were developing fast and people who already have the option of the Russian Glonass system will soon see the Chinese system offering global availability by 2020, along with the European positioning system, Galileo.

He suggested that equipment capable of “multi-constellation” operation will be seen in the future. And while there was interest in inertial navigation systems, used exclusively on submarines, cost was a major issue, with cheaper and smaller sensors being poorly regarded.

What might be available as an alternative to satellite - derived navigation and timing, which is seen to be so vulnerable to hacking or interference? Navies, less constrained by the cost of equipment which is prohibitive to commercial users, are looking at equipment that will be less vulnerable to GPS denial. Dr Paul Groves of UCL calls for better equipment standards, suggesting that jamming or interference cannot be solved. The more systems that can be integrated, he suggests, the better. The General Lighthouse Authorities Dr Paul Williams suggests a practical terrestrial alternative might be “radar absolute positioning” where equipment can match radar images to mapped data. This is a derivation of older technology using radar reflectors to identify aids to navigation.

The important issue of “sensor denial” however this might be caused was pointed out by Mark Broster of ECDIS Ltd, who stated that in a maritime world still getting used to connectivity, there are real problems ahead which need processes and procedures to keep ships safe. A virus attack is a very real possibility and electronic interconnections between the equipment multiplying the problem. The modern big ship’s bridge, he points out, has some 40 sensors which would be vulnerable to cyber attack and external software will produce even



Michael Grey

more potential difficulties. People need to think more about these vulnerabilities and practical protection. There was a clear need to practise “sensor denial”.

The seminar ranged widely, from the views of mariners through to the armed services, trainers and scientist. While there may be few answers, and the future not altogether clear at a time of such speedy change, there is clearly greater awareness of both the problems and the potential for progress. It is an area, which demands a great deal, but appears to be, at least when compared to shore-side technology developments, restricted by its modest scale. ■

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.

In a modern bridge, up to 40 navigational devices may be interconnected and subject to external interference.



Preventing deaths in enclosed spaces

The cargo hold did not immediately identify itself as a hazardous space. Just a few hours previously the dockers had been walking around as the cargo of timber was completed. Then one of the ship's crew discovered that a couple of deck brooms had been left at the bottom of the access trunk into the hold and decided on his own initiative to "nip down" the ladder and retrieve them. He had barely reached the bottom of the ladder when he was overcome and slumped to the deck. His watchmate looked down the hatch a few minutes later, saw his body and without thinking twice, rushed down to give assistance. Neither would come up to the deck alive.

Such tragedies have been happening on a regular basis, and without any material reduction in the number of victims, for decade after decade. Deaths in enclosed spaces, whether due to oxygen depletion or harmful gases such as carbon monoxide, hydrogen sulphide, ammonia, refrigerants or hydrocarbons remain a major cause of death and injury onboard ship. It is difficult to obtain a firm figure for the numbers of casualties attributed to this cause, as they are found in ships flying all flags, of all types and all around the world. In 2009, research by the Marine Accident Investigators International Forum (MAIIF) identified 120 deaths and 123 injuries in enclosed spaces in the 16 years up to 2007. But, because only members of the MAIIF were canvassed, this is certainly just a portion of the total number.

Nobody can be unaware of these casualties, aboard ship or ashore, such is the publicity given through notices to mariners, information published by P&I clubs and flag states, shipping companies and safety agencies of all kinds. Guidance is provided through training courses, films and DVDs, posters and laid-down procedures as an integral part of safety management. But the deaths and injuries are still recorded, more often in multiples than with single deaths,

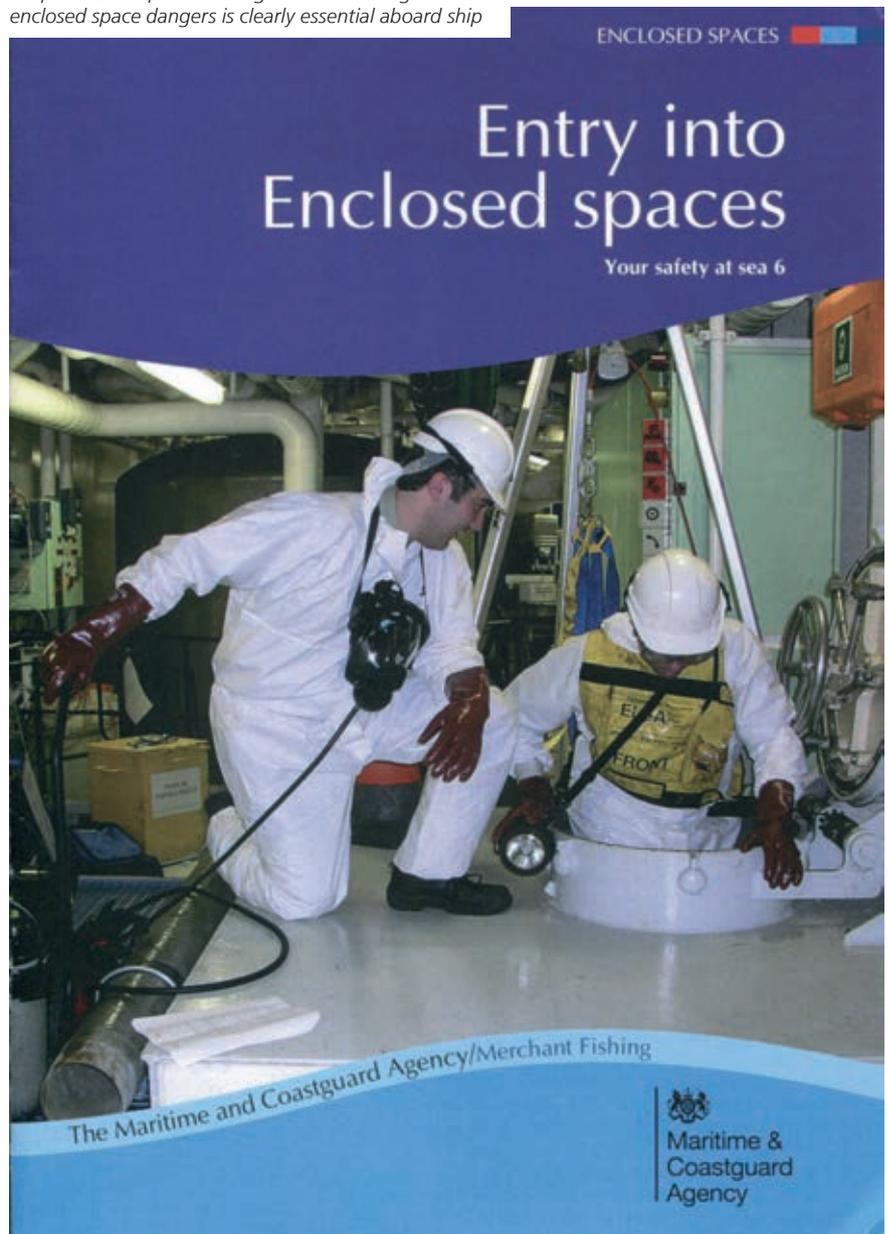
as unthinking but selfless people rush to the assistance of their shipmates, rather than following the proper drills for rescue.

"Entry into Enclosed Spaces Workshop" highlights dangers

Can anything further be done to emphasise the dangers of enclosed spaces? Earlier

this year around 100 industry people gathered in London for an "Entry into Enclosed Spaces Workshop" organised by the UK Maritime & Coastguard Agency. There was no type of ship or trade which seemed to be immune from these accidents. People had suffocated in fish holds on fishing boats, been killed by unventilated carbon mon-

Simple and comprehensible guidance warning of enclosed space dangers is clearly essential aboard ship



oxide from a portable generator. Three had died of oxygen depletion in a cable locker after a seafarer had entered the space to lash up anchor cables that were banging about and keeping them awake on their anchor handler. Others died in duct keels or double bottoms, just a few feet from safety, in peak tanks, paint lockers or stores, in which the oxygen had been leached out by an adjacent hold.

It was oxygen depletion which was the biggest killer, and the workshop was shown graphic evidence in a simple experiment which showed how a handful of rusty nails could “eat” virtually all the oxygen in an enclosed pipe, within the space of an hour. Translated to the environment of a ship’s hold laden with scrap, coal, iron concentrates, steel, timber, woodchips, grains and many other apparently harmless cargo and just a few hours after the hatches had been closed, the atmosphere would be incapable of supporting life.

Tanker operators, perhaps because of the better understanding of the regular hazards they confront, aligned with their rigorous procedures and familiarity with atmosphere testing equipment, seem to be better able to deal with these risks. They are routinely familiar with their Permit to Work systems, the use of breathing apparatus and are less inclined, it seems, to take “short cuts” or are found to be complacent about the risks. Aboard other ships, it was suggested there was a less robust approach to the various codes of safe working prac-

tice, which seemed to have been identified by the recent concentrated inspection campaign which had been run by a number of authorities, including the Paris and Tokyo MOUs, around the world. The jury was still out on whether the new SOLAS requirements for mandatory enclosed space drills every two months would prove effective at reducing the number of casualties.

The workshop heard criticisms about the way in which design features made it harder to access enclosed spaces and, more importantly, to rescue someone from these places if this was required. Access hatches were often too small to admit the passage of a person wearing breathing apparatus, as were lightening holes that people would need to pass through in spaces such as double bottoms or deep floors in a tank. It was suggested that there had been insufficient thought given to access and rescue when ships were designed, while breathing apparatus was too bulky to allow people to move easily around. Even specialist rescue teams found great difficulties in extracting victims during their drills aboard ship. It was also suggested that people went into these enclosed spaces too readily and access should be restricted to times when the operational safety of the ship demanded people to enter. Routine entry should be restricted to properly equipped specialist teams.

The workshop considered a whole range of suggestions for improving the situation. Should regulation be strengthened, or guidance improved? It was significant that speakers from specialist fire and rescue agencies thought that training could be more realistic, while it was suggested that such training should not be restricted to cadets or young people but should be refreshed regularly through all ranks and ages. Even shore side management would benefit from experiencing the reality of such training. It was also noted that far more accidents involved older and more experienced seafarers than young and inexperienced and that more could be learned from the training and drills used ashore

in places such as oil refineries where, some said, the safety regime was more rigorous.

Other areas that were considered were the need to provide guidance or procedures that can be better understood by people whose first language was not the language of the ship, and that cultural differences needed to be taken into account. The use of social media as an effective agent for the transmission of safety messages was suggested, while concern was expressed about the sheer volume of written information, making it unlikely that it was ever going to be read by ships’ crews.

Better identification of potentially hazardous spaces was a recommendation, notably those which may be temporarily hazardous as was a more disciplined approach to permit to work systems. A “confined space” may not be immediately obvious and the workshop was warned that a leakage between a hazardous space and one adjacent can be fatal. With oxygen being depleted in a hold, a pressure difference can draw the oxygen out of adjacent spaces, even passing around the thread of a bolt passing through the bulkhead between the spaces.

Better guidance, more drills and more realistic training, strict adherence to safety procedures and greater consciousness of enclosed space hazards could make a difference. Acceptance of such a casualty rate and numbers of preventable deaths and injuries is surely intolerable. ■■

« Better guidance, more drills and more realistic training, strict adherence to safety procedures and greater consciousness of enclosed space hazards could make a difference. »

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.

BIMCO Board benefits from Templar Executive's GCHQ Cyber Awareness course

Cyber security is a key threat to the maritime industry. BIMCO has identified this well ahead of the rest of the industry, and in addition to publishing the 2016 Guidelines on Cyber Security Onboard Ships, senior staff from BIMCO recently completed the leading edge, Government Communications Headquarters (GCHQ) certified Cyber Security Awareness course delivered by Templar Executives, an award winning global cyber security organisation.

Current estimates predict the global cost of cyber crime in 2019 to rise to £2 trillion and the maritime industry will not be immune to this. The maritime industry is an integral part of the world economy, as 90% of the world's trade is estimated to be carried by ship. The delivery of many of our essential services would not be possible without the international shipping industry. As a result, it has a responsibility to secure itself against potential attacks, including cyber.

Over the last couple of years, there has been a drastic rise in the number of cyber incidents targeting the marine and mar-

itime sectors; from the Port of Antwerp falling victim to a hacking attack in 2013, to oil rigs being tipped, and bunkering scams becoming all too common. It is critical that all those involved in the maritime industry are aware of how their companies could be vulnerable and know how to protect themselves from such attacks. The first step for any organisation to take is to gain an understanding of the areas where cyber security is most threatened.

Templar Executives has been working with BIMCO since 2014 to help build cyber security awareness in the maritime industry and assisting BIMCO in the development of the cyber security guidelines.

In order to continue to develop knowledge and understanding in this dynamic and complex environment, in March 2016 trainers from Templar Executives delivered the cyber security awareness course to BIMCO senior staff at BIMCO offices in Denmark.

What delegates learned from the course:

- to de-mystify cyber security and under-

stand associated terms and jargon

- to know why knowledge of cyber security is critical; how this impacts the maritime industry and best practice
- to understand the holistic cyber security and threat landscape:
 - with real-world examples of hacking and breaches
 - cyber attack actors and vectors
 - exploitation techniques including malware, social engineering, phishing, vishing, insider threat
- to develop an understanding of how cyber security impacts their role and business
- to gain an overview of the relevant law (in this case the course was tailored to local Danish protection laws), legal rights, organisational and personal liabilities and responsibilities
- to know the importance of information assurance including:



Andrew Fitzmaurice, CEO Templar Executives

- strategy and governance
- information risk management
- identifying and managing business information assets and how to safeguard reputation and save money through risk mitigation
- to know where to find further information and support.

BIMCO management, senior members of the team and wider community attended the one-day course. The GCHQ certified course was tailored to make it relevant to the maritime sector, with real world industry scenarios and case studies, and therefore highly applicable to the world in which BIMCO operates.

The feedback from delegates was very positive. The representatives from

BIMCO quickly grasped the core concepts of cyber security and this knowledge and understanding will support them to more confidently pass on valued advice and guidance on this area to their members.

Templar Executives are a leading UK cyber security company who have recently been awarded the Best Cyber Security Firm 2015 award by European CEO. Templar have been working with governments and industry since 2007 helping to deliver leading edge cyber security consultancy services, audits and health checks and training. Templar currently offer a range of GCHQ (the UK signals intelligence agency) certified training courses, which can all be tailored to the maritime industry. ■

« It was a well-balanced programme, concentrating on issues within the maritime sector but also covering wider topical issues. Emphasis was placed on identifying and recognising threats, ensuring contingency plans were effective to cope with any incident, and any response plans were well developed.

The training was a clear statement that BIMCO strives to deliver a first rate service in the area of cyber security, by ensuring BIMCO staff understand and relate to current issues within the maritime industry. »

– Phil Tinsley Security Manager BIMCO

Does your ship have all the relevant certificates?

“The owners are to ensure that the vessel is equipped at all times with all relevant certificates at all ports of call during the currency of this charter party at their expense.”

Many readers will have come across the above provision in one form or another. It is by no means new and there may possibly have been a relatively laid back approach to this when the need for certificates may not have been a major issue. This has, however, changed.

It goes without saying that the certificates the ship needs to trade internationally, such as certificates issued by the flag state, P&I club certificates, etc remain the owners' responsibility.

But it is not unusual nowadays for many certificates to be required at ports around the world. These may be local sanitary certificates, assorted “compliance” certificates, certificates evidencing environmentally acceptable disposal of slops, mandatory sign-up to various local anti-oil pollution schemes, AGM-free certificates, and so on. The list of national as well as international “certificates” seems to be growing.

This has been highlighted with the current Zika virus problems and the outbreak of Ebola in West Africa in 2014 - which meant some countries imposed national regulations. Ships arriving from a potentially infected area were required to pres-

ent a certificate or to be inspected and then issued a certificate as a result.

This meant an increasing financial burden on the owners. So long as the ship is not employed in time charter the owners will be able to calculate how much impact the certificate requirements may have on the particular voyage calculation and freight demand. However, when the ship is employed in time charter this is not always possible. The time charterers will be able to shift some of the port charges upon the owners if the governing time charter party contains a provision similar to the one quoted above.

The most widely used dry cargo time charter party, the New York Produce Exchange, 1946, (NYPE46) contains no help, which is perhaps not so surprising. In the 1993 edition of the NYPE, the subcommittee tried to deal with this type of situation in clause 40, headed “Documentation”, which reads as follows:

“The Owners shall provide any documentation relating to the Vessel that may be required to permit the Vessel to trade within the agreed trade limits, including, but not limited to certificates of financial responsibility for oil pollution, provided such oil pollution certificates are obtain-

able from the Owners' P & I club, valid international tonnage certificate, Suez and Panama tonnage certificates, valid certificate of registry and certificates relating to the strength and/or serviceability of the Vessel's gear”.

This provision has been maintained in the latest edition, NYPE 2015, and highlights which certificates ought to be paid and arranged by the owners.

Other certificates, which may be needed locally because of the way the time charterers opt to employ the ship should be paid by the charterers. However, with the provision quoted at the beginning of this article or worded to the same effect in the contract, even required levied charges – which in some way produces a certificate – may have to be at the expense of the owners.

Readers should consider finding out about the provisions in either NYPE 2015 (more details available on the BIMCO website) or NYPE 1993 and follow what it says for guidance. ■■

Queries on this issue can be sent to: frontoffice@bimco.org

How to spot and avoid the latest cargo frauds

BIMCO receives regular reports from members around the world about cargo fraud. We thought it would be beneficial to share some of the scams with you as the “fraudsters” tend to repeat their scams. We have put together some key warning signs to help members spot the latest frauds – and what to do if you are suspicious.

Warning signs

In many cases of fraud reported to BIMCO, the cargoes and the professional negotiations appeared perfectly genuine at first. Often the names of established and well-reputable charterers are used for cons – and fraudulent “brokers” even provide fake references for the “charterers”. These are email addresses and phone numbers that direct you back to the fraudsters themselves, who will then provide a fake reference.

HERE ARE SOME COMMON WARNING SIGNS:

- the initial cargo is followed by a request to add a further part-cargo which is often on liner terms
- the broker is not known to the owners or their direct brokers
- the alleged load ports are often (but not always) in Turkey or North African countries
- the “agent” is pushing hard to get the owners to remit funds very soon after the fixture. But on closer inspection, the agent’s bank account turns out to be in a different country to the port of loading
- there is a request to remit funds to a third country with no apparent connection with any of the parties to the fixture or the loading or discharge ports
- in many cases the request for payment requires the owners to remit to a Turkish account – irrespective of whether or not the cargo will be loaded in Turkey
- there is a sudden request to change the account into which funds are to be paid
- communication is done by email – and if you call the phone numbers provided, the person answering the broker or the charterer’s phone sounds like the same person
- the phone numbers provided may be for a random hotel – with a similarly random address
- the broker may have several cargoes in the market at the same time – the similarities, eg of the contact numbers of references and agents might raise suspicion if checked in detail.

WHAT TO DO IF YOU ARE SUSPICIOUS:

- call the involved parties and liaise with a trusted agent in the loading port to investigate if the cargo is actually available. If you do not know one in the particular port, ask a trusted agent, eg a BIMCO member, in the country who may also be able to help or check the agent is a member of the local association of agents. If this is also impossible, ask the local association of agents directly.
- if you know anyone within the chartering company mentioned, contact them to check if they actually have a cargo of the description offered to you
- regardless of the previous point, when the suspected fraudsters do name a reputed company as the charterers, check with them before committing yourself
- make a habit of checking the “Company Information” section on BIMCO’s website and consider signing up for a “My BIMCO” account on the website to ensure you receive the latest news.

Call BIMCO to check the details of your suspected fraudster because:

- we can check and compare the phone numbers and email addresses because the fraudsters often use these on rotation from scam to scam
- we have seen many reports of fraud and can often spot the common characteristics.

BIMCO will continue to issue the latest information and guidance to help members avoid becoming the victim of fraud. Contact us at frontoffice@bimco.org.

Editor’s Note: The crucial point is to check the identity of the involved parties in the event of doubt. Many of the cases reported to BIMCO could have been avoided as the “agents” and “brokers” did not exist and a local agent could have confirmed this before the – often quite large – sums were remitted. It is also important that all parts of the company check who receives the money. Though the chartering and operations department have a direct role to play, the accounting department is the last part of the chain. The finance team and accounting functions have an important role in making that final check before they “press the button” and remit funds for disbursements and loading costs.

New CONGENBILL and CONLINEBILL among catalogue of updated BIMCO bills of lading

BIMCO's bills of lading, waybills and booking notes are widely used and relied upon throughout the industry. Ensuring that these documents continue to meet the needs of users and fulfil the requirements of the UCP¹ 600 Rules is an important task for BIMCO.

Revised and updated

During the past year we have reviewed and updated 19 of our most widely used bills of lading, way bills and booking notes. We have changed the layout of the front page of some of our older bills to bring them up to date with more modern BIMCO bills.

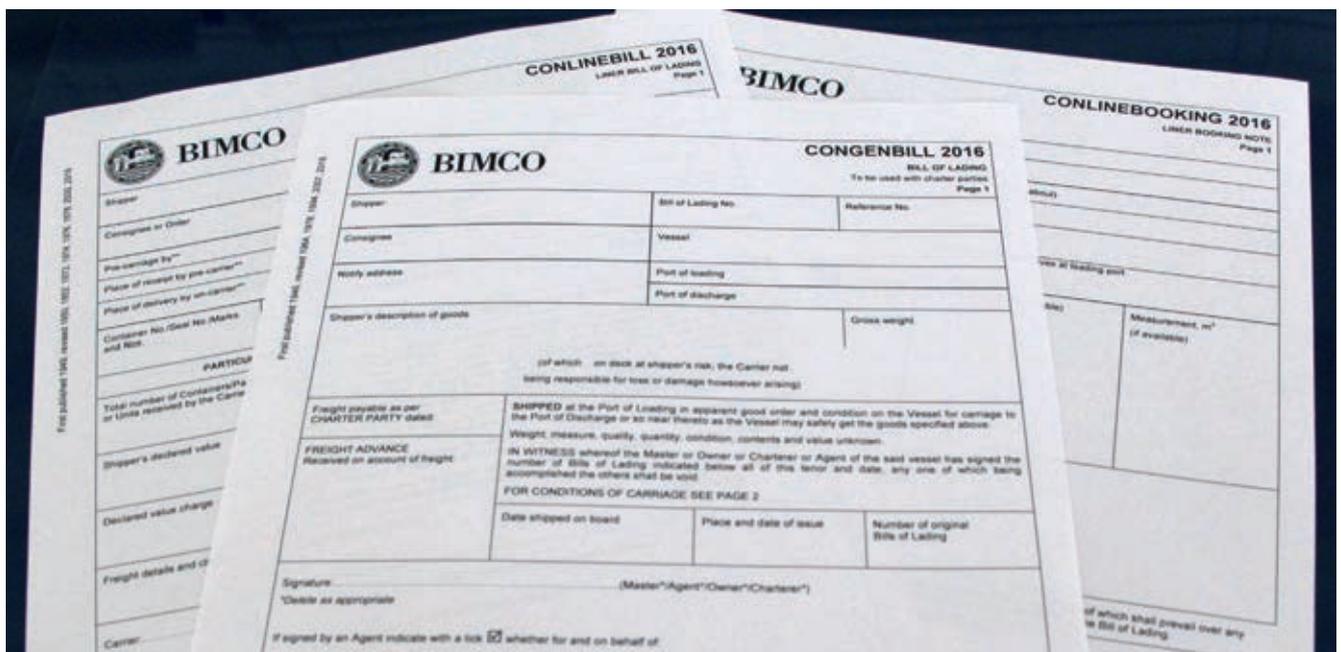
To all of them we have added a new UCP 600-style signature box. The terms and conditions on the back of the bills now

incorporate a Himalaya Clause (the International Group of P&I Clubs/BIMCO Himalaya Clause for Bills of Lading and other contracts 2014). The clause extends to the contracting parties' agents, servants and sub-contractors (including ship managers) all the same rights, limits, defences and exemptions from liability enjoyed by the contractual carrier under the contract of carriage.

BIMCO strongly recommends users to adopt the latest versions of BIMCO documents for their transactions.

Sample copies of all the newly issued bills of lading, way bills and booking notes can be found on BIMCO's website www.bimco.org and are also all available to use in **IDEA•2**. ■

¹ The Uniform Customs and Practice for Documentary Credits



Welcome to BIMCO!

BIMCO would like to extend a warm welcome to the following new members, admitted during the period from 1 January to 30 April 2016 .

OWNER MEMBERS

24Vision Ship Performance Solutions BV	Rotterdam, Netherlands
Almi Tankers S.A.	Egaleo, Greece
Asgaard Navegacao S.A	Rio de Janeiro, Brazil
Austral Asia Line	Singapore, Singapore
CNAN Nord Spa	Kouba, Algiers, Algeria
DHT Holdings, Inc.	Oslo, Norway
Enesel Limited	Limassol, Cyprus
Eurotankers Inc.	Piraeus, Greece
Mondo Minerals B.V.	Amsterdam, Netherlands
National Energy Corporation of Trinidad and Tobago Ltd	Couva, Trinidad & Tobago
OÜ Lumar S.A	Tallinn, Estonia
Panam Tankers Pte Ltd	Singapore, Singapore
Petrolog Limited	Lagos, Nigeria
Remy CGIPS LDA	Luanda, Angola
SCF Management Services (Dubai) Ltd.	Dubai, UAE
Transgas Shipping Lines SAC	Lima, Peru
United Shipping & Trading Company A/S	Middelfart, Denmark
Vedelmar Shipping S.A	Piraeus, Greece
VolkerStevin Limited	Preston, UK
World Marine Offshore A/S	Esbjerg, Denmark
Zeaborn GmbH & Co.KG	Bremen, Germany

AGENCY MEMBERS

Africamarine Ships Agency (Pty) Ltd	Cape Town, South Africa
Antares Servicios Maritimos S.A.	Buenos Aires, Argentina
Bitá Blue Line Shipping Co.	Tehran, Iran
BMS United Bunkers (Cyprus) Ltd.	Piraeus, Greece
iMatrix101 Shipping Limited.	Freetown, Sierra Leone
Inland Containers Nigeria Limited	Lagos, Nigeria
Victore Ships Pvt Ltd.	Navi Mumbai, India

ASSOCIATE MEMBERS

Association of Average Adjusters	London, UK
Chinsay AB	Stockholm, Sweden
London Shipping Law Centre	London, UK
New Alliance Marine Training Center	WUHAN, China
Port of Albany	Albany, NY, USA
Scandinavian Institute of Maritime Law	Oslo, Norway
Sinocrew Maritime Services Co., Ltd	Beijing, China
TransCoal Pty Ltd	Brisbane, Qld, Australia
Traxys Europe S.A.	Strassen, Luxembourg
Vanos S.A. Ship Supplies and Provisions	Piraeus, Greece

BROKER MEMBERS

Agora Shipbroking Corporation	Piraeus, Greece
Comship Brokers SAS	Barranquilla, Colombia
Crane Worldwide Logistics	Houston, TX, USA
EMR Maritime GmbH	Hamburg, Germany
Eregli Demir Ve Celik Fabrikalari T.A.S.	Istanbul, Turkey
Fratelli Cosulich Tasimacilik Hizmetleri Ltd Sti.	Istanbul, Turkey
Kuehne+Nagel (Asia Pacific) Management Pte Ltd	Singapore, Singapore
Nordsund Aps	Copenhagen, Denmark
Nueva Seas AS	Oslo, Norway
Saga Oceanic S.A	Athens, Greece
Seafort Navigation Pte Ltd	Singapore, Singapore
Seashell Logistics Pvt Ltd.	Maharashtra, India
Seawind Far East Ltd	Hong Kong SAR, China
Starco Marine Services	Karachi, Pakistan
Tune Product Tankers	Wembley, London, UK
Vortex Offshore	Dubai, UAE

CLUB P&I MEMBERS

The Standard Club Europe (Piraeus Office)	Piraeus, Greece
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Meet BIMCO

DATE	VENUE	EVENT	CONTACT
31 May 2016	Oslo	Managing Legal Risks in Bunkering – free seminar	Doris Larsen: dla@bimco.org
8-10 Jun. 2016	London	IMO Legal Committee (LEG)	Christian Hoppe: cho@bimco.org
14 Jun. 2016	Paris	Joint BIMCO / Armateurs de France event, Presentation of BIMCO and our documentary projects	Christian Hoppe: cho@bimco.org
14-16 Jun. 2016	Hamburg	TOC Europe 2016	Peter Sand: ps@bimco.org
4-8 Jul. 2016	London	IMO Council	Aron Frank Sørensen: afs@bimco.org
18-22 Jul. 2016	London	IMO Sub-committee on Implementation of IMO Instruments (III)	Aron Frank Sørensen: afs@bimco.org
5-9 Sep. 2016	London	IMO Sub-committee on Carriage of Cargoes and Containers (CCC)	Aron Frank Sørensen: afs@bimco.org
12-16 Sep. 2016	London	IMO Editorial and Technical (E&T) Group (IMSB Code)	Aron Frank Sørensen: afs@bimco.org
21 Sep. 2016	London	NYPE 2015 Roadshow – Free seminar	Grant Hunter: gh@bimco.org
12-14 Oct. 2016	Tokyo	Tripartite 2016	Lars Robert Pedersen: lrp@bimco.org
20 Oct. 2016	Genoa	NYPE 2015 Roadshow – Free seminar	Grant Hunter: gh@bimco.org
24-28 Oct. 2016	London	IMO Marine Environment Protection Committee (MEPC)	Aron Frank Sørensen: afs@bimco.org
8 Nov. 2016	Shanghai	7th Annual Marine Money China Ship Finance Forum	Peter Sand: ps@bimco.org
8-10 Nov. 2016	Shanghai	BIMCO Roadshow, Executive Committee, Board of Directors	shanghai@bimco.org
17 Nov. 2016	Copenhagen	BIMCO Documentary Committee	Søren Larsen : sl@bimco.org
21-25 Nov. 2016	London	IMO Maritime Safety Committee (MSC)	Aron Frank Sørensen: afs@bimco.org
5-9 Dec. 2016	London	IMO Council	Aron Frank Sørensen: afs@bimco.org
25-29 Sep. 2017	Copenhagen	International Congress of Maritime Arbitrators (ICMA) 2017	Søren Larsen : sl@bimco.org



BIMCO EDUCATION

UPCOMING COURSES

BIMCO COURSES, SEMINARS & WORKSHOPS

31 May - 1 Jun. 2016	HAMBURG	Offshore, Project and Heavylift Chartering
1-3 Jun. 2016	HONG KONG	Masterclass Workshop: Laytime & Demurrage
13-15 Jun. 2016	TAIPEI	Bills of Lading and Voyage Chartering Workshop
27 Jun. - 1 Jul. 2016	COPENHAGEN	Summer Shipping School 2016
5-7 Sep. 2016	OSLO	Masterclass Workshop: Time Charter
13-15 Sep. 2016	SHANGHAI	Offshore, Project and Heavylift Chartering
3-5 Oct. 2016	COPENHAGEN	Masterclass Workshop: Cargo Claims
12-14 Oct. 2016	ROME	Masterclass Workshop: Laytime & Demurrage
23-25 Nov. 2016	BREMEN	Masterclass Workshop: Bills of Lading
6-8 Dec. 2016	DUBAI	Masterclass Workshop: Time Charter

BIMCO eLEARNING DIPLOMA PROGRAMME

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
10 Jan. - 21 Mar. 2017	MODULE 2	Bills of Lading
24 Jan. - 4 Apr. 2017	MODULE 1	Introduction to Shipping
7 Feb. - 19 Apr. 2017	MODULE 3	Time Chartering
21 Feb. - 2 May 2017	MODULE 6	Voyage Chartering
7 Mar. - 16 May 2017	MODULE 5	Tanker Laytime and Demurrage
21 Mar. - 30 May 2017	MODULE 4	Dry Cargo Laytime and Demurrage
6 Apr. - 15 Jun. 2017	MODULE 2	Bills of Lading

BIMCO Education schedule available at:

Web: www.bimco.org

Tel: +45 4436 6800

Fax: +45 4436 6868

E-mail: education@bimco.org

Safe mooring, stability and survivability outcomes at SDC

BIMCO took part at the 3rd Session of the Subcommittee of the Ship Design and Construction (SDC 3) in London during January 2016. SDC considers technical and operational matters related to design, construction, fire protection and equipment of ships, and mobile units covered by the International Maritime Organization (IMO) instruments.

The IMO has started to develop new guidelines for safe mooring operations for all ships. The mooring and unmooring of ships are each potentially hazardous to seafarers – too many are still injured or even killed during these operations. Safe mooring requires strong teamwork, good design and

high maintenance standards for the equipment on board.

BIMCO sees better regulations on mooring equipment and mooring lines, and better guidelines on the mooring operations as an important safety issue and are active in this work.

The IMO agreed to revise the SOLAS regulations and guidelines for safe mooring operations as follows:

- for all new ships of 3,000 gross tonnage and upwards, noting that new ships of less than 3,000 gross tonnage should comply as far as practicable
- the amendments to be developed should enter into force on 1 January 2020, pro-

vided that the amendments are adopted before 1 July 2018.

BIMCO, together with the Oil Companies International Marine Forum (OCIMF) submitted a paper advocating the new regulations to reduce manual handling of mooring lines to an absolute minimum. Handling during load, heaving, or ease situations should not take place as the risk of accident is high. Furthermore, we proposed that all mooring lines onboard should be easy to identify by, for example, colour and/or by a dedicated tag making it easy for the crew to record maintenance and use of the individual mooring line.

Going forward, BIMCO will take part in an SDC 3 correspondence group to prepare

*3rd Session of the Subcommittee of the Ship Design and Construction (SDC 3) in London during January 2016
(Photo: International Maritime Organization)*





3rd Session of the Subcommittee of the Ship Design and Construction (SDC 3) in London during January 2016
(Photo: International Maritime Organization)

draft SOLAS amendments as well as draft guidelines on the design of safe mooring arrangements. This work will also consider information concerning selection, identification and use of mooring lines. The draft SOLAS amendments will subsequently be forwarded to the IMO Maritime Safety Committee for approval.

Intact Stability

SDC 3 also reviewed a set of new intact stability criteria, revising the fundamental principles for precautions against ships capsizing and righting, also taking into consideration weather-free surfaces and ice.

The development covered requirements and criteria for the five different stability failure modes (pure loss of stability, parametric roll, surf-riding/broaching, dead ship condition, and excessive accelerations).

The general work was based on a three-level approach covering different stages of vulnerability:

- “level 1” criteria checks the vulnerability of a ship to a specific dynamic failure mode
- “level 2” criteria indicates the degree of vulnerability to the particular failure mode

- “level 3” contains numerical tools for direct calculations including minimum qualitative and quantitative requirements.

The intention is to provide a set of simple and easy applicable criteria at the first two levels to identify conventional ships, for which the existing intact stability criteria work well.

SDC 3 also draft amendments to part B of the 2008 IS Code on ships engaged in towing and lifting operations. Part B is voluntary. It was decided to include provisions related to escorting tugs. Several classification societies have such provisions already - covering both stability and structural strength aspects. Therefore, the text was revised only to include the parts relevant for stability.

The package of draft amendments was forwarded with a view for adoption to the MSC 96 meeting in May 2016. MSC will also decide when the possible amendments will be included in the 2008 IS Code.

Damage stability

SDC 3 finalised draft guidelines on operational information for masters of passenger ships for safe return to port.

The guidelines relate to onboard stability computers, which are capable of receiving and processing manual and electronic data, and provide the master with regularly updated operational information on the leftover damage stability of the ship after a flooding casualty.

The guidelines also describe the two-way communication links to shore-based support. This provides the master with post-damage residual structural strength information. IMO will prepare the draft associated MSC circular, with a view of approval by MSC 96 as an MSC Circular updating MSC.1/Circ.1400.

Over recent years, the IMO has considered a possible increase in the required “survivability” (the so-called required subdivision index (Index R)) related to the damage stability on passenger ships. After extensive consideration, the SDC 3 working group agreed on an increased R index, for the survivability of passenger ships (SOLAS regulation II-1/6). This will now be forwarded to MSC 96 for further consideration.



3rd session of the Subcommittee on Human Element, Training and Watchkeeping (HTW 3) in February 2016
(Photo: International Maritime Organization)

BIMCO took part in the 3rd session of the Subcommittee on Human Element, Training and Watchkeeping (HTW 3) in February 2016. HTW addresses issues relating to the human element, which through certification, training and watchkeeping, sets the minimum standards of competence for seafarers focusing on maritime safety, security and environmental protection.

Implementation of the Manila Amendments to the STCW Convention and Code
The 2010 Manila amendments to the STCW Convention and Code will enter into force 1 January 2017.

It was proposed that people holding a Certificate of Proficiency should revalidate the certificate of proficiency every five years by providing evidence of having maintained the required standard of competence.

With issues like:

- revalidation of certificates
- clarification sought on instruction versus training
- phrases like “before being assigned any

duties” for personnel working on passenger ships and

- acceptance of onboard training to validate required level of competence were intensely discussed.

To cope with this, there will be a new module which can be used by administrators to report information required under articles IV, VIII and IX of the STCW Convention and section A-1/7 of the STCW Code.

3rd session of the Subcommittee on Pollution Prevention and Response (PPR 3)

The subcommittee (PPR 3) met for the third session 15-19 February 2016 in London.

PPR is considering technical and operational matters related to:

- prevention and control of pollution of the marine environment from ships and other related maritime operations
- safe and environmentally sound recycling of ships
- evaluation of safety and pollution hazards of liquid substances in bulk transported by ships
- control and management of harmful aquatic organisms in ships’ ballast water and sediments, and biofouling

- pollution preparedness, response and cooperation for oil and hazardous and noxious substances.

Revised guidance on ballast water sampling and analysis

Upon entry into force of the BWM Convention, port states will need to undertake compliance checks with the ballast water performance standard (regulation D-2) of the BWM Convention (D-2 standard), and this will be undertaken by sampling ballast water on ships.

To prove compliance with the D-2 standard, samples should be taken at appropriate location(s) on discharge pipelines where the water flow is fully developed. Recently, a new method for in-line sampling of ballast water has been developed by an installation of a grid structure in the pipeline. PPR 3 noted the information with thanks and encouraged others to submit any information available on BWM sampling methods.

Manual entitled “Ballast Water Management – How to do it”

The Institute of Marine Engineering, Science and Technology (IMarEST) has supported IMO in the production of a draft manual entitled “Ballast Water Management – How to do it”. A Drafting Group

established during PPR 3 have scrutinised the draft manual and substantial progress has been made during the past week. Though, due to unfinished issues in other IMO committees and subcommittees, it was not possible to finalise the draft and the work will therefore carry on in another session and a new draft manual will be prepared for PPR 4, which will take place in the spring of 2017.

The IMarEST Ballast Water Expert Group (BWEG) have contributed text to the manual dependent on their specific areas of expertise and have additionally acted as reviewers. The BWEG was established in 2010 and is comprised of senior IMarEST members with expertise in all areas of ballast water management, including testing, treatment, sampling, monitoring and compliance.

3rd session of Navigation, Communications and Search and Rescue (NCSR 3)

The 3rd session of NCSR 3 was held 29 February - 4 March 2016 at the IMO headquarters in London.

The NCSR considers technical and operational matters related to the obligations of governments for:

- operational measures related to safety of navigation on board ships and operational measures related to the Global Maritime Distress and Safety System (GMDSS)
- and operational requirements and guidelines relating to radio communications and search and rescue.

Additional modules to the Revised Performance Standards

NCSR 3 finalised the harmonisation process of bridge design and display of information to ensure that Integrated Navigations Systems (INS) can display information received via communications equipment. The revisions will enter into force after 1 January 2020.

Satellite systems

The European states (EU) have applied for *Galileo Global Navigation Satellite System (GNS)* to be recognised as a component of the Worldwide Radio navigation System (WWRNS). The EU is launching satellites to enable the provision of initial services.

More satellite systems will make it possible to use receivers that can use data from more than one satellite system. IMO has

therefore developed performance standards for multi-system shipborne navigation systems. The performance standard will apply to equipment installed on or after 31 December 2017.

Furthermore, guidelines for the harmonised provision of Position, Navigation and Time (PNT) data and information were discussed. These include the definition of the minimum requirements for the application of different methods and techniques for the provision of PNT data and related integrity information.

Update on review of the Global Maritime Distress and Safety System (GMDSS)

NCSR 3 discussed the development of the GMDSS modernisation plan. The review is currently not proposing any new carriage or retrofit requirements.

All finalised agenda items will be forwarded to the Maritime Safety Committee (MSC) 96, which will be held in May 2016 for final adoption.

3rd session of the IMO's Subcommittee on Ship Systems and Equipment (SSE 3)

The SSE 3 was held 14-18 March 2016 in London. The governing body of the SEE is the Maritime Safety Committee (MSC). SEE considers technical and operational matters about:

- systems and equipment
- including machinery and electrical installations
- life-saving equipment
- appliances and arrangements
- fire protection systems.

Life-saving appliances and arrangements

SSE 3 prepared requirements for maintenance of life-saving appliances (LSA) which will be done thorough examination, operational testing, overhaul and repair. The requirements will amend SOLAS regulations III/3 and III/20. The requirements will be applicable for overhaul and repair of lifeboats and rescue boats, launching appliances and release gears. The proposed SOLAS amendments will be forwarded to MSC 96 for adoption.

Lifeboat and rescue boat release gear, including fast rescue boat release gear and free-fall lifeboat release systems, will be examined and tested operationally during annual surveys as required by SOLAS regulations I/7 and I/8. Further, at five-year intervals, release gear for lifeboats (includ-

ing free-fall lifeboats), rescue boats, fast rescue boats and life rafts will be thoroughly examined and tested. This includes: dismantling of hook release units; examinations with regard to tolerances and design requirements; adjustment of release gear systems after assembly; and operational tests.

Examinations, operational testing and overhaul will be carried out in accordance with a number of requirements for maintenance, examination, operational testing, overhaul and repair. The personnel who carry out these tasks will be certified by an authorised service provider.

Guidelines for simulated launching of free-fall lifeboats

These guidelines were not finalised at this SSE. It aims to train seafarers in the release procedure of free-fall lifeboats and in the function of the free-fall release system without the lifeboat falling into the sea. The purpose of these guidelines is to provide a basic outline of essential steps to safely carry out this form of launching.

BIMCO will work closely together with other organisations to give guidance to the IMO on this important safety matter.

Measures for onboard lifting appliances and winches

SSE 3 started to work on new measures for onboard lifting appliances and winches to ensure the lifting appliances and winches will be fit for purpose. The aim is to establish a set of goal and functional requirements to reduce accidents.

Associated guidelines will also be developed in order to support the goals and functional requirements to address routine inspection, maintenance, and training, as well as design, fabrication and construction criteria.

The measurements may be applicable to new and existing equipment on new and existing ships, whereas provisions addressing design, fabrication and construction would only apply to newly installed equipment on new and existing ships.

Despite good progress during the meeting, SSE 3 decided to establish a correspondence group to progress the work further. The work will be reported at the SSE 4 meeting in early 2017. ■■

LNG advances after five-year hiatus

The global trade in LNG is growing once again after a period in the doldrums. The rebound, which began in the Australian port of Gladstone, is set to gain in strength

Having stagnated for five years, the international trade in LNG has at last broken out of its straitjacket. The latest report from The International Group of Liquefied Natural Gas Importers (GIIGNL) shows that annual seaborne movements of LNG increased by 2.5% in 2015, reaching 245.19 million tonnes (mt).

Although modest, the rise in traffic is notable for being the first since 2010. It is also the forerunner of more notable increases in 2016 and beyond. The expected commissioning of 25 mt of additional LNG production capacity this year, primarily in Australia, is set to raise worldwide LNG shipments by upwards of 10%.

Further liquefaction plants now under construction in Australia, the United States (US) and Russia will boost global LNG output by another 90 million tonnes per annum (mta) by 2020. After a lean patch the industry has rediscovered its growth curve.

The five years of moribund LNG trade levels are a legacy of the global financial crisis of September 2008. Despite the growing popularity of natural gas as the fossil fuel of choice at the time, final investment decisions on new LNG projects were put on hold following the collapse of the banks. The new LNG production facilities currently coming onstream are the result of project approvals given over the 2011-13 period when market confidence had been restored.

GIIGNL logbook

Through its log of all LNG carrier voyages and cargo discharges, GIIGNL is well placed to report in detail on the state of play in the LNG market. The organisation's recently published *The LNG Industry in 2015* provides an in-depth insight into last year's developments on both the LNG trade and gas carrier fleet fronts.

A 2.5% in global LNG movements in 2015 translates into an extra 6 mt of product, or approximately 100 cargoes in conventional size LNG carriers, entering into the world market. These additional shipments effectively all came out of the port of Gladstone on Australia's east coast, thanks to the start-up of the Queensland Curtis LNG

The first LNG cargo departs Gladstone; the expansion of the global LNG trade in 2015 effectively came from the 100 loadings at the Australian port



(QCLNG) and Gladstone LNG (GLNG) projects.

Papua New Guinea, the world's newest LNG producer, also made good progress in 2015. The country completed its smooth build up to full production by doubling LNG exports to the 7.18 mt level. However, Papua New Guinea's success was offset by the cessation of exports from Yemen

last year. Political unrest in the Middle East nation forced a halt to Yemen LNG loadings in April 2015. Only 1.52 mt of LNG was shipped in 2015, a 75% drop on the previous year's total, and there is currently no sign of renewed LNG production in Yemen.

The extra 6 mt of LNG output from Gladstone pushed Australia's 2015 LNG exports up to the 29.45 mt mark, or 25% ahead of



Mike Corkhill

LNG IMPORTERS IN 2015

Country	Volume (million tonnes)	Change 2014-15 (%)
UK	10.08	20.0
Spain	8.82	11.6
Turkey	5.35	-1.8
France	4.35	-4.5
Italy	4.32	32.1
Belgium	1.87	92.8
Portugal	1.09	12.4
Netherlands	0.63	50.0
Greece	0.45	18.4
Lithuania	0.32	190.9
Sweden	0.29	N/A
Europe (total)	37.57	15.8

Mexico	4.94	-24.9
Brazil	4.78	-10.7
Argentina	4.08	-7.7
Chile	2.74	6.6
USA	1.70	46.6
Puerto Rico	1.15	-8.0
Dominican Rep	0.87	4.8
Canada	0.40	22.5
Americas (total)	20.73	-8.0

Japan	85.05	-4.7
Korea	33.42	-11.2
China	20.02	5.5
India	14.60	0.4
Taiwan	14.45	7.4
Thailand	2.70	136.8
Indonesia	2.18	39.7
Singapore	2.08	23.8
Malaysia	1.53	-7.3
Pakistan	1.50	N/A
Asia (total)	177.07	-1.7

Kuwait	2.68	13.4
Egypt	2.60	N/A
Dubai	1.34	64.9
Jordan	1.85	N/A
Israel	0.12	50.0
Middle East (total)	9.82	139.5

World (total)	245.19	2.5
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the previous year's level. The Gladstone loadings also moved Australia into second place in the LNG exporters' league table, ahead of Malaysia's 24.99 mt, but still well behind the 78.40 mt achieved by industry leader, Qatar, last year. Australia is not sitting still, however. By 2020, when all the trains of the country's seven new LNG projects are working to capacity, Australia's output is expected to be marginally above that of Qatar.

Buyers' market

Unfortunately for the gas sellers, these new LNG volumes are coming onstream at a time when the worldwide demand for energy,

LNG EXPORTERS IN 2015

Country	Volume (million tonnes)	Change 2014-15 (%)
Nigeria	19.50	1.9
Algeria	12.13	-4.6
Trinidad	11.81	-9.8
Norway	4.33	22.0
Equatorial Guinea	3.65	8.0
Atlantic Basin (total)	51.42	-2.1

Qatar	78.40	2.7
Oman	7.56	-2.2
Abu Dhabi	5.7	-6.3
Yemen	1.52	-75.8
Middle East (total)	93.18	-3.4

Australia	29.45	24.8
Malaysia	24.99	0.6
Indonesia	18.03	3.7
Russia	10.57	-0.1
Papua New Guinea	7.18	112.4
Brunei	6.48	5.9
Peru	3.57	-11.4
USA	0.32	28.0
Pacific Basin (total)	100.59	11.5

World (total)	245.19	2.5
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Source: GIIGNL

including gas, has gone flat. Because of indexation links, the collapse in the price of oil over the past year has brought down that of gas to record lows. Developers of the LNG schemes now coming onstream face the prospect of long periods before their investments begin to pay off while promoters of new projects are electing to defer or cancel final investment decisions (FIDs).

The price of LNG in Asia is now down to a level similar to that in Europe, and European LNG prices are not totally dissimilar to those of pipeline deliveries. North American gas prices are the lowest of all and supplies are plentiful.

LNG buyers hold all the cards today. Although Asia remains the principal destination for LNG cargoes and prices remain low, slackening demand has curtailed shipments to East Asia destinations over the past year. In the current scenario Europe is set to play a growing role as the swing mar-

ket of choice for not only spot and short-term LNG deliveries but also, possibly, new long-term contract purchases. The European Union (EU) looks favourably on LNG imports, not least because they add to supply diversity and lessen dependence on Russian pipeline deliveries.

GIIGNL reports that European net imports of LNG in 2015 climbed by 15.8% over the previous year, to reach 37.57 mt. Net imports in the UK and Spain, the region's two biggest buyers, reached 10.08 and 8.82 mt, respectively, representing annual increases of 20 and 11.6%. Of Europe's 11 LNG buyers, only France and Turkey recorded drops in LNG imports in 2015, and for both countries the declines were marginal.

Another feature of the European market is the extent to which import terminals are enhancing their basic regasification services with additional features to provide more flexibility. These include the ability

to tranship cargoes, fill road tankers and reload both conventional-size and small-scale LNG carriers.

The small-scale LNG carrier category is set to include, for the first time, dedicated LNG bunker vessels. The Fluxys import terminal in Zeebrugge will be the home base for a 5,100 cubic metre bunker tanker set for delivery later this year while in 2017 the Gate terminal in Rotterdam will welcome a 6,500 cubic metre newbuild of this type. A third European LNG bunker ship, of 5,800 cubic metres, will go into service in 2017 fuelling gas-powered ships in the Baltic.

Sweden, a relatively recent addition to the list of LNG import nations, gives an indication of the spread of small-scale LNG in Europe. Between them, the Scandinavian country's two coastal distribution terminals, at Nynäshamn and Lysekil, received 290,000 tonnes of LNG in 2015. Waiting in the wings is Finland, where three simi-



The ability of Zeebrugge to reload small LNG carriers is being enhanced with the addition of a second jetty

lar terminals are set for commissioning in 2016, 2017 and 2018, respectively.

Fleet alignment

Aligning the delivery of new LNG carriers with the commissioning of new liquefaction plants is always a fraught process. Whereas the construction of a new export terminal is a mammoth undertaking and has a tendency to overrun the planned timetable, the handful of shipyards specialising in LNG carriers almost invariably complete their newbuilding contracts on time.

A total of 66 new LNG carriers have been delivered over the past two years, increasing the in-service fleet to 449 ships at the start of 2016. Not surprisingly, this fleet build up has not been matched by the pace of recent LNG project start-ups, with the result that there is currently an oversupply of ships and short-term freight rates are at low levels. As mentioned, the balance is

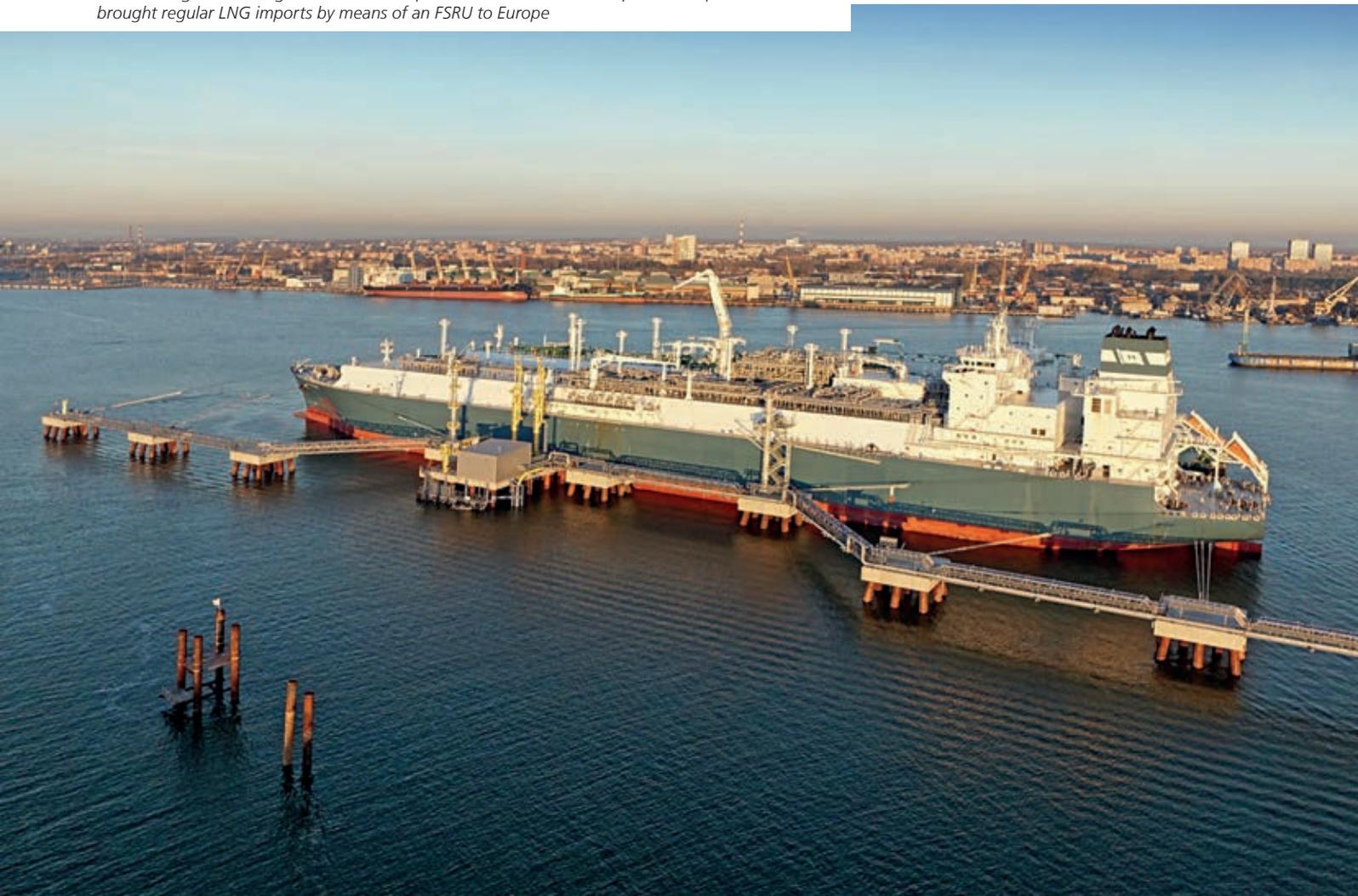
set to be restored, at least to a considerable extent, by the entry into service of new liquefaction plants this year and beyond.

The in-service LNGC fleet includes 23 floating storage and regasification units (FSRUs) and 28 ships of less than 50,000 cubic metres. FSRUs provide LNG importers with an option that enables the reception of cargoes more quickly and at lower cost than is possible through the construction of a shore terminal. FSRUs are gaining in popularity, as highlighted by the fact that all five Middle East LNG importers utilise regas ships.

According to GIIGNL, the LNGC order book of 158 ships as of January 2016 included eight FSRUs, while another has been ordered since. Three of these regas ships are scheduled for 2016 delivery, while five are set for completion in 2017 and one in 2018. ■■

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.

The mooring of the Höegh LNG vessel Independence in the Lithuanian port of Klaipėda in 2014 has brought regular LNG imports by means of an FSRU to Europe



Macroeconomics

Continuing low GDP growth reduces output, demand and investments

Global economics

On 12 April 2016, the International Monetary Fund (IMF) released its updated World Economic Outlook stating that future economic prospects are now so poor that an immediate, proactive response is called for. There is a need for a more potent policy mix to turn the tide based on well-known elements: fiscal and monetary policies, as well as structural measures. IMF suggests joint action by nations across the world. Growth-friendly revenue generation and spending should be the central focus of fiscal supportive initiatives.

To what extent the downward adjustment in emerging economies relates to the United States (US) central banks' initial rise in interest rates (Dec 2015) is difficult to assess. The US slow-down on quantitative easing had a big negative effect on capital flows into investments in emerging economies.

Sluggish growth returns

The IMF cuts its estimate for 2016 world expansion to 3.2 per cent from 3.4 per cent



Source: Bloomberg, IMF April 2016 WEO

As we scout the globe for growth stories, the emerging markets and developing economies stand out in spite of the headwind in 2015. Expected growth is 4.1% in 2016 and 4.7% in 2017.

IMF now estimate global GDP will grow at 3.2% in 2016, increasing to 3.5% in 2017. This is down 0.2 percentage points for both advanced and developing economies.

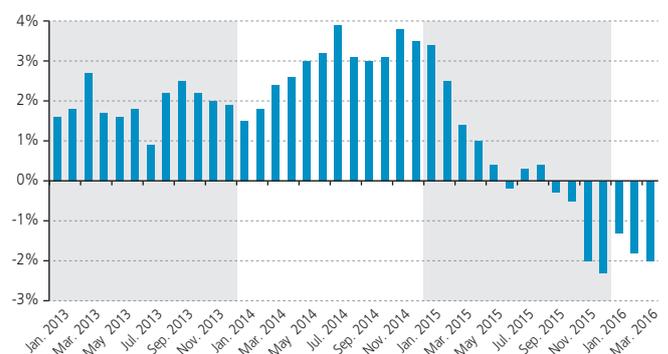
US

While the US remains the global economic stronghold and the country that has advanced the most in its recovery – not everything is perfect. The dark spot being US industrial production, down

seven months in a row on a year on year comparison. The change being partly due to the slowdown in the energy sector.

The subsectors of “utilities” and “mining” slipped by -9.3% and -9.9% on a year on year basis in February whereas manufacturing went up by 1.8% over the same period. The struggling mining sector affects the dry bulk industry badly. Total seaborne US exports of coal dropped by 20.6 million tonnes (-25%) in 2015 and could slip by another 14 million tonnes (-23%) in 2016 according to Simpson Spence Young (SSY).

Change in US industrial production growth year on year, 2013-2016



Source: BIMCO, Commodore Research, US Federal Reserve

While job creation in the US has been consistently strong over the past year, we have not seen wage pressures contributing to higher inflation rates until recently. US inflation averaged at 0.7% in 2015, but has picked up in the first quarter of 2016. The unemployment rate stands at 4.9%, half that of the European region.

Asia

Overall GDP growth for emerging markets and developing economies continues its bumpy recovery according to the IMF. China has moved up by 0.2 percentage points, India together with ASEAN-5 are unchanged, but Japan has seen its 2016 GDP growth estimate halved, now at 0.5% from the year before. Growth and inflation are weaker than expected in Japan, clearly seen from data on poor private consumption. BIMCO stated earlier this year that Japan could surprise everyone and show growth on the back of a poor 2015. We now know it could actually be the opposite, as illustrated by the March levels of the Tankan-index for large manufacturing companies, which fell to its lowest level since mid-2013.



DID YOU KNOW...

...that Peter Sand is speaking at TOC Europe in Hamburg, Germany 14-16 June 2016?



PETER SAND
BIMCO Chief Shipping Analyst



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In China, we see early indications of what could be a stabilisation in some of the relevant sectors of the economy. The official manufacturing PMI rose to 50.2 in March from 49.0 in the month before, impacted by government stimulus. More importantly, perhaps, the Caixin manufacturing PMI, which focuses on private small and medium-sized enterprises, improved from 48.0 in February to 49.7 in March. This is the best reading for more than a year and was driven forward by domestic and foreign demand.

Europe

While Europe's recovery continues at dead-slow speed, there are improvements seen in other indicators besides overall GDP growth figures. Unemployment in the Euro zone has fallen three years in a row now, but is still too high at 10.3% in February. This means that the European Central Bank (ECB) is not getting any help from the labour market when it comes to lifting inflation. The inflation rate stood at 0.0% in March up from -0.2% in February. As the ECB over several years now have told the market that it will do "whatever it takes" to stabilise prices, it impresses no one to see how slowly economic activity picks up. The Euro region has now seen negative interest for close to two years. However, it is not deterring banks from placing deposits at the ECB, instead of increasing lending. Deposits made by commercial banks with the ECB have jumped six-fold since February 2015, equal to about 85% of the monetary expansion during that period. Meaning that the real economic effect from ECB actions is limited.

BIMCO still expects the economic situation in Europe to improve gradually, in spite of the IMF downward revision, as that was in line with the overall development across all advanced economies.

Outlook

As the oil price now seems to have bottomed out, the world now has to prepare for a different future. A future where oil price volatility may not be a one-sided slide as it has been since mid-2014 until January/February 2016. WTI and Brent currently quote USD 40-45 per barrel, up from USD 30 per barrel.

This means that bunker prices will start to go up too. From 2014 to 2015, average bunker prices dropped by 50%. The prudent owner with a long cargo book and significant future contract of affreightment commitments may choose to manage risks by hedging the expected bunker consumption at the current fuel price level. If he has not done so already.

'Brexit' represents a good deal of uncertainty, where no one benefits. Much needed policy actions are being put on hold due to this, in order for central banks and governments to save "ammunition" to fight even bigger troubles a few months down the road. If the UK exits the EU following its referendum in June 2016 – and that coincides with a steeper slowdown in China and more severe economic chaos in Brazil – institutions may blame themselves if they run out of "ammunition" in the middle of the battle. The fact is, the global economy needs action to be taken now. Lack of action now, may simply contribute to more or bigger troubles later.

Many of the commodity exporting countries still face hardship going forward, as the dwindling oil and gas prices and lower prices for other key commodities has resulted in financial distress for public finances. This hits hard, when your economy is overly reliant on the revenue made from commodity exports, as it is the case in Russia, Nigeria and Saudi Arabia. This not only leads to less exports from these countries but also lower growth and thereby fewer imports, all of it impacting world growth and shipping negatively. ■■

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 22 April 2016. Read about the impact on shipping on the following pages...

Dry Bulk Shipping

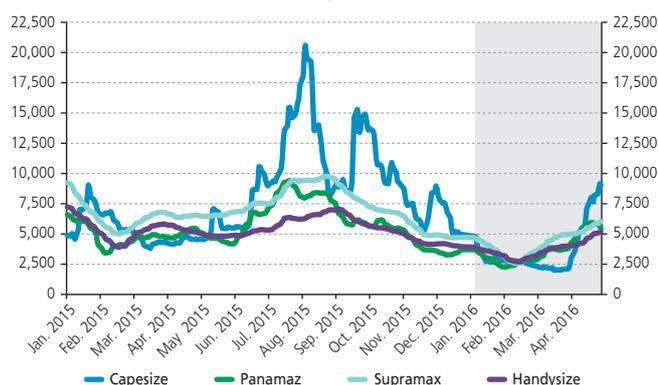
Improved freight rates despite continued fleet growth

Demand

On 10 February 2016, the Baltic Dry Index (BDI) hit 290. At that point, a bulk carrier regardless of its size, age and fuel-efficient qualities earned a time charter average of USD 2,417-2,776 per day.

Whereas the three smaller segments have seen higher earnings since then, capesize earnings lost ground up until the end of March. By mid-April, the gap closed and capesizes are back on par with the pack. Despite the fact that earnings have doubled in those two months, they remain below OPEX levels for the largest part of the fleet.

Baltic Exchange time charter averages
USD per day, 2015-2016



Source: BIMCO, Baltic Exchange, Clarksons

Despite the many attempts by steel mills around the world to fend off Chinese steel from their home market, China's steel export volumes did not fall significantly in January and February. Export dropped by just 1.6% to 17.85 million tonnes. New data for March showed exports of 10 million tonnes. In 2015, China flooded the world market as 112 million tons were exported, bringing down scrap steel prices in the wake of it.

Global crude steel production for January and February combined was 5.6% lower than in the same period of 2015, according to Worldsteel. Crude steel production in China was down 6.5% at the same time.

The three key items to watch out for in 2016 are Chinese imports of coal and iron ore, as well as how much dry bulk tonnage is going to be demolished. Nothing else really matters to an extent that can either improve or damage the fundamentals of the dry bulk shipping market.

In the midst of doom, gloom and uncertainty for shipbuilding, China's combined imports of the two key commodities in the first two months fared better than we thought. The trouble is, however,

that it did not bring decisive support to the freight market.

Chinese iron ore imports grew by 6.4% to 155.8 million tonnes over the first two months versus this time a year ago. While coal imports to China fell by 10% to 28.8 million tonnes over the same period.

New data for March ... all positive. Chinese iron ore imports were 85.8 million tonnes, while coal imports rose to 19.7 million tonnes. The strong coal imports over March all but levelled out the drop in January and February. Q1 coal import growth was down by 1.2% year on year.

Supply

Despite a record high volume of demolished dry bulk shipping capacity in the first three months of 2016, the total dry bulk fleet still grew. 16.7 million DWT of new capacity entered the fleet while 14 million DWT was sold for scrap. All in line with BIMCO's forecast.

Not all of the dry bulk sub-segments saw an increase in fleet size. The capesize fleet, for instance, which has doubled over the past 6½ years, reduced in number (7 ships less) as well as capacity (-0.2%) in Q1-2016.

For the full year, BIMCO holds unchanged expectations for deliveries and demolitions, which means we expect the fleet to grow by 1.1% or 10 million DWT in 2016. What has changed though from our January report is the slippage rate of deliveries, now at 50% up from 40%. Owners and investors are working hard to delay the delivery of new ships into a miserable freight market.

As deliveries offer traces of past optimism, most interestingly the appetite for signing new contracts for dry bulk ships at the world's shipyards has ceased. Until the middle of March, only four new contracts had been signed, three at Japanese shipyards and one in China. During March and April, the long anticipated orders for 30 VLOCs with a capacity of 400,000 DWT each are now confirmed. Lifelong time charter contracts (27-years) appears to have been awarded to all of them already.

This is the latest development that ties China and Vale closer to each other again, after their fallout following the disputes over the original batch of valemax VLOCs which were not allowed to call at Chinese ports for several years.

Without doubt this is bad news for international owners and operators. Each VLOC can carry an estimated 1.6m tons of iron ore from Tubarao, Brazil to Baoshan, China per annum. This new batch



QUICK FACTS

22 April 2016

Total fleet size (change since 1 January 2016)

DWT million: 778.64 (+0.4%)

Rate indices (change since 18 January 2016)

BDI: 688 (+86%)

BCI: 1085 (+451%) • BPI: 736 (+96%)

BSI: 558 (+44%) • BHSI: 354 (+46%)

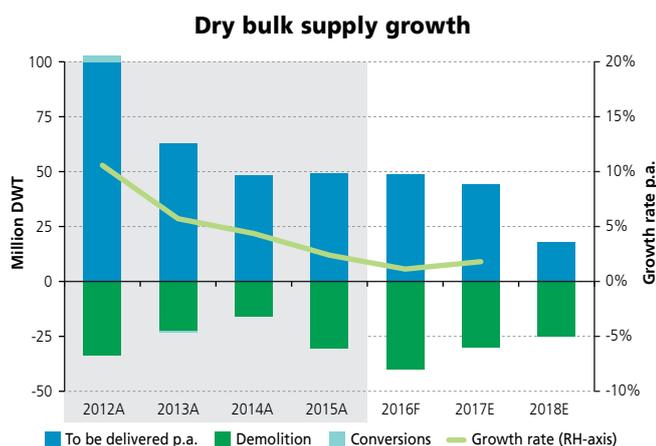
Latest update on Baltic Indices available at www.bimco.org

of VLOCs, will remove 48 million tons of iron ore from the “open market”. As the current fleet of 34 VLOCs (2011-2015) already carries a total of 54.4m tons of cargo, the best front-haul leg in dry bulk shipping is crippled even further by this industrialisation of trade. In 2015, Brazil exported 191.6 million tons of iron ore to China; the existing and new valemax between them will be able to carry over half Brazil’s current annual iron ore exports. The 30 new VLOCs are due for delivery in 2018-2019.

mid-April. Very different from the peaks of the past, but a positive indicator in the midst of all this surrounding uncertainty.

We are still worried about the sustainability of freight rates in the years to come. Our main worry is that demolition activity will slow down as the BDI improves.

Demolition activity 2014-2016



Source: BIMCO estimates on Clarksons raw data

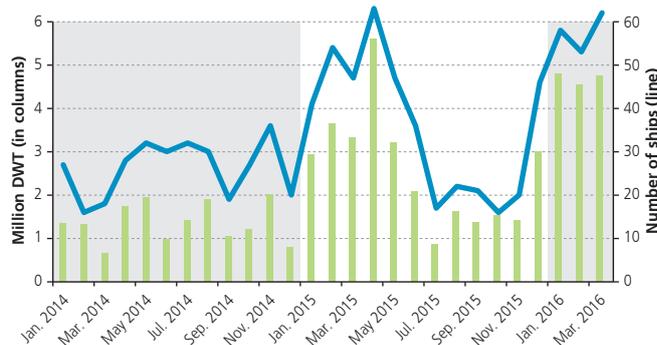
A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2016-2018 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 50% of the remaining vessels on order are delayed/postponed.

Outlook

For the coming months: April-July, BIMCO expects transported volumes to grow slowly - as they seasonally do - from the first quarter into the second. This ought to underpin the freight market.

Notably, we expect a new record volume of combined grain and soybean exports this year from Argentina and Brazil. We do not anticipate a massive rise in freight rates for handysize, supramax and panamax on the back of this, as ships are already waiting around the main loading areas. Nevertheless, it should give a boost in confidence, a confidence that Moore Stephens in March assessed to be at a record low.

Another positive indication of China not being as vulnerable as some may believe, which is supporting the soft landing trajectory, is the improving domestic steel prices, seen since mid-February. In the international markets, spot iron ore prices have also rebounded from USD 41 per MT at the beginning of 2016 to see USD 56 per MT in



Source: BIMCO, Clarksons

If shipowners slow demolition of ships considerably, the fleet will keep growing. This will widen the fundamental imbalance further because we forecast the demand side to grow slowly in the coming years. In order to reverse several years of adding capacity in excess of demand growth, we need to develop a multi-year trend of negative fleet growth. BIMCO assess the current utilisation rate of the dry bulk fleet at the low end of the 70s.

Looking further ahead, coal imports into India may change. If the retained political vision of making India self-sufficient in thermal coal becomes reality. Surely the jury is still out on that.

In November 2013 the then Indian Power Minister Goyal was “very confident”, when saying India may stop thermal coal imports in two to three years, as domestic production would increase. Mr. Goyal, now being India’s Energy Minister repeated the exactly the same words in April 2016. “We want to completely stop its import over the next two to three years”.

India imported 171 million tonnes of thermal coal in 2015, slightly down from 176 million tonnes in 2014. SSY expects India to import 170 million tonnes of thermal coal in 2016. ■■

More shipping market analysis online at www.bimco.org

Tanker Shipping

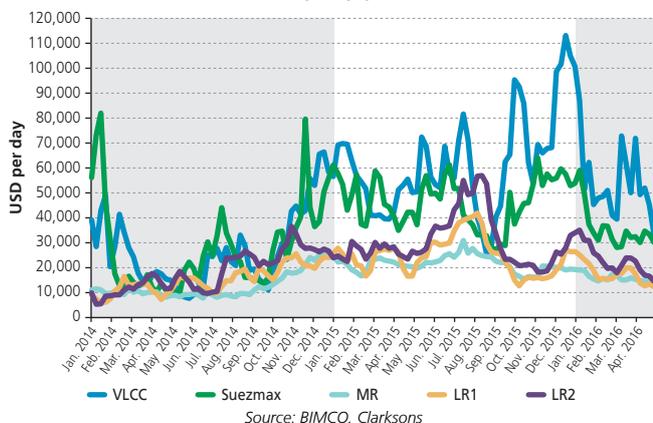
Signs of weakness are appearing, but still money to be made

Demand

Supported by slow fleet growth and ongoing positive refinery margins, VLCC earnings in Q1-2016 were up from a year ago, but down from Q4-2015 as we expected at USD 58,367 per day for VLCC (+5.7% year on year). For the minor crude oil carriers, rates were down from Q1-2015 and Q4-2015. Rates in Q1-2016 were USD 37,914 per day for suezmax (-25% year on year), USD 30,197 per day for aframax (-24% year on year).

For the oil product tankers, Q3-2015 stands out as the peak quarter of the current cycle. Earnings in Q1-2016 were the lowest since Q3-2014 when the markets started to rise.

Crude oil and oil product tanker earnings
2014-2016



The same patterns of slightly falling freight rates reappears in the time charter market. BIMCO recommended back in January putting some capacity away on time charter. Time charter rates have dropped somewhat since then. Our recommendation remains to balance your exposure to market by seeking a fixture in the time charter market.

BIMCO believes that having a volatile oil price gives a stronger oil tanker market than one where oil prices are stable – high or low. Volatility in oil pricing and growing arbitrage opportunities due to price differences between the same oil products in different places around the world provides a lot of business. Trading in crude oil and oil products is an important demand component, one that often provides a boost to tanker demand in the market. This supplements the demand coming from the end consumers of oil.

Supply

As the crude oil tanker fleet is about to see a four-year high of new capacity, all eyes are on the pace of these deliveries, as they will inevitably put some downward pressure on freight rates. We have not seen the crude oil tanker fleet grow in excess of 4% since 2011-2012.

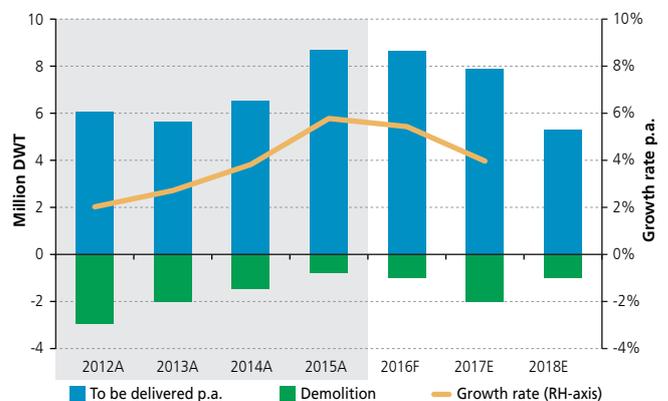
Only 4.35 million DWT of crude oil tankers, out of BIMCO's expected 21.4 million DWT for the full year, have been launched. This has buoyed the freight market in Q1. Still, it is the highest quarterly volume of newbuild deliveries for almost three years.

For the product tankers the opposite has been the case in Q1, when 2.8 million DWT was launched. That is 1/3 of BIMCO's full year estimate. LR2 and MR tankers represent the lion's share of new tankers in 2016.

The total number of newbuilding orders for tankers in first quarter of 2016 was eight, out of which five were for oil product tankers. Only one VLCC has been ordered by mid-April. A sharp contrast to the scary 66 new VLCC orders placed in 2015.

The tanker market may be the only shipping market that is profitable for the time being. This makes it even more positive to note that the money made is not immediately being "put to work" in a traditional sense, by placing more orders for new ships.

Product tanker supply growth



A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2016-2018 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 35% of the remaining vessels on order are delayed/postponed.

QUICK FACTS

22 April 2016

Fleet sizes (change since 1 January 2016)

Crude (DWT million): 388.09 (+1.2%)

Product (DWT million): 142.84 (+1.6%)

Rate indices (change since 18 January 2016)

BDTI: 775 (+10%) • BCTI: 556 (-38%)

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

Demolition activity has naturally been low, as only nine tankers-built between 1977 and 1995 with a total capacity of 412,000 DWT - have been taken out the fleet. For the full year 2016, BIMCO expect 6 million DWT of tanker tonnage to be demolished, mostly crude oil tankers.

For the mid-term outlook, the supply side for tankers looks to be on the heavy side.

For oil product tankers, BIMCO expect the fleet growth to come down in 2016 and 2017, based on current orders and anticipate a continued slow uptake of new orders.

For crude oil tankers the opposite situation is in the making. BIMCO expects 2017 to surpass 2016 on all parameters: new deliveries, demolition and net fleet growth.

Outlook

While all eyes are on how quickly Iran can ramp up production and increase its exports, neighbouring Iraq is not letting go of its market share without a fight. Iraq exported an average of 3.26 million barrels of oil per day (bpd) through its southern terminals in March, up from 3.22 million bpd in January 2016 and 2.5 million bpd in the full year of 2010.

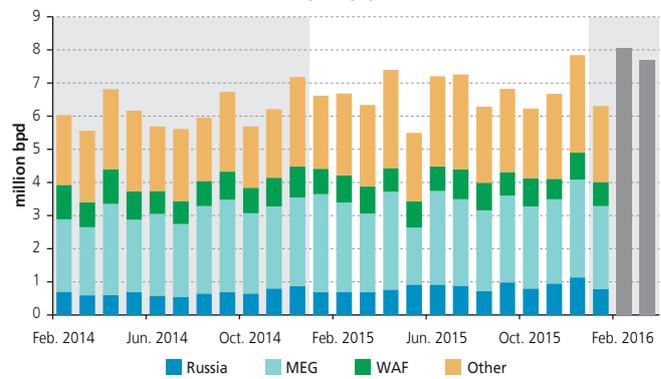
Iraq's oil production hit an all-time-high in January 2016, with crude oil output from across the whole country, including Kurdistan (0.6 million bpd), averaging 4.775 million bpd.

Reports of 2.2 million bpd being exported in February tell us that Iran is ramping up export capacity steadily. This will bring more oil to the market and hopefully positive economic growth in Iran that will have a general positive impact on shipping.

The International Energy Agency (IEA) forecast global oil demand to grow by 1.2 million bpd in 2016, while estimating that demand grew by 1.8 million bpd in 2015. Both numbers provide solid demand growth for oil tankers. Currently oil supply is also coming down, limiting stock building, which we have seen on a large scale since mid-2014, when oil prices started to come down. BIMCO has argued that bloated oil stocks represent a risk to tanker demand going forward, but we also note that the new stock levels may become permanent, and if that is the case, we will not see tanker demand come under pressure due to that. Time will tell.

China crude oil imports

2014-2016



Source: BIMCO, International Energy Agency, China Customs
Note: February, March breakdown not available

Independent Chinese “teapot” refiners continue to support crude oil imports into China as they take advantage of the extended allowance to export more refined oil products in 2016. In particular, the VLCCs may continuously benefit from this in the coming months. This is a growth in demand that has caused congestion around main discharge areas.

In February, China imported a record of 8 million bpd. While March saw 7.68 million bpd landed. This compares to the 2015 average of 6.7 million bpd. The dominant part of the increase is due to the “teapots”. Q1 imports hiked by 13.4% year on year.

As strong as the demand side is, the market acknowledges that changes during 2016 to the freight market fundamentals may result in lower earnings going forward. Asset prices for crude oil tankers, as well as oil product tankers started to decline in August 2015, not dramatically but in response to the outlook. Only 37,000 DWT handysize product tankers seem to defy forecasts. The key development will therefore be the large inflow of new tonnage, especially crude carriers, and how big an impact that is going to have on freight rates. ■■

More shipping market analysis online at www.bimco.org

Container Shipping

Weak demand growth in Q1 increases pressure on the industry

Demand

The demand for container shipping is really not going anywhere at the moment. Indicators for growth in the first months of 2016 point to limited overall demand and huge variations from trade to trade. In addition, all numbers are impacted by Chinese New Year, which disrupts most trade figures for the first months of any year.

BIMCO's own data for the United States (US) imports on the east coast shows an increase of 6.5%, a significant rise even above the strong level seen in 2015. The west coast imports of loaded containers are only impressive in comparison with the very poor volumes seen in 2015. These were impacted heavily by the conflict between the International Longshore and Warehouse Union (ILWU) and the Pacific Maritime Association (PMA) which clogged up the main ports.

Volumes going into Europe from Asia dropped 6.8% in Jan-Feb 2016 from the year before, according to Container Trade Statistics (CTS). It's not just the volumes via transshipment that used to go into Russia which caused the volumes to drop. Mainland Europe demand continues to be weak in itself. In 2015, volumes transported from Asia to Europe dropped by 3.6%. Out of which, volumes going specifically to Russia dropped by 24.2%.

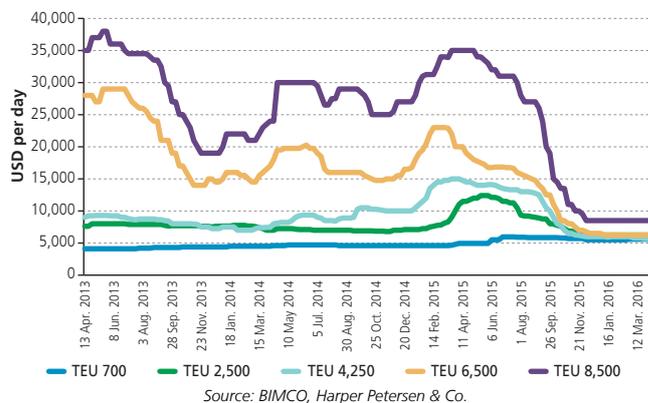
Head haul TEU-miles globally were down 1.2% in Jan-Feb 2016 (as measured by SeaIntel) compared to the year before. A similar negative development was seen in 2013, whereas 2014 and 2015 saw sailing distances grow faster than underlying TEU demand.

This drop in demand for container shipping was also reflected in freight rates on all the container routes out of Shanghai covered by the Shanghai Shipping Exchange. Nearly all of the head haul freight rates sit at their lowest levels on record by mid-April. Both trades going to US east coast and west coast are 50% below a six year average for April. For Shanghai to Europe it is slightly worse. The exceptions are to destinations in East Japan and Santos, where rates are above the 2015-level but still below the six year average.

Time charter rates seems to have reached their lowest possible level. Only very few charters exceed six months in duration. A clear sign of how bad the market is. No one commits to a longer term under current market conditions. "Bid and ask spreads" for longer term time charters are simply too wide, a huge change in that market over the past year.

The selected charter rates shown in the chart indicate a flat line for most segments, but 4,250 TEU ships have seen rates slide from USD 5,700 to USD 5,250 per day in April alone.

Charter rates, 6-12 months
2013-2016



Supply

The delivery of new containership capacity, as well as the recycling of superfluous ships has exceeded our expectations slightly in 2016. 240,730 TEU was delivered into the fleet in Q1, whereas 105,509 TEU left it. The net growth of the fleet in Q1 was 0.7%. For the full year BIMCO expects 3.4%, slightly up from our January estimate.

March saw the record broken for the largest containership ever to be demolished. The 15 year-old, 6,479 TEU post-panamax "CSAV Papudo" was sold to breakers in India at a strong USD 295 per Ild and became only the second ship with a capacity of more the 6,000 TEU to be demolished.

Demolition of excess shipping capacity lies at the centre of the road to recovery, also for container shipping. Multiple years of negative fleet growth is needed to bring back sustainable freight rates to the industry. BIMCO's forecast of 250,000 TEU to be broken up in 2016 only cuts into the fleet by a fraction representing 1.26% of the current fleet size. By mid-April owners have sent 115,570 TEU to the breakers primarily in India.

With regards to new contracting activity, no orders have been agreed in 2016. This is the first time since Q2-2009 that three months have passed without any new orders signed. The lack of orders reflects the very poor market conditions and the fact that 2015 saw 2.2 million TEU being ordered. This was the second ever largest volume of containership capacity ordered annually— second only to 2007 when 3.25 million TEU was contracted. The one-sided focus on cutting costs per transported TEU by ordering ever larger ships continues along the lines of "bigger is better". In 2015, 119 ships with a 10,000+ TEU capacity accounted for 87% of the total new capacity being ordered. The other 118 ships



QUICK FACTS

22 April 2016

Total fleet size (change since 1 January 2016)

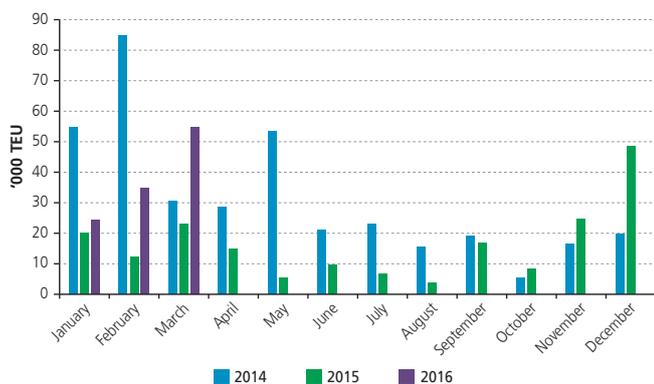
TEU million: 19,866.19 (+0.7%)

Rate Index (change since 15 January 2016)

CCFI: 652.69 (-10%) • SCFI: 457.70 (-45%)

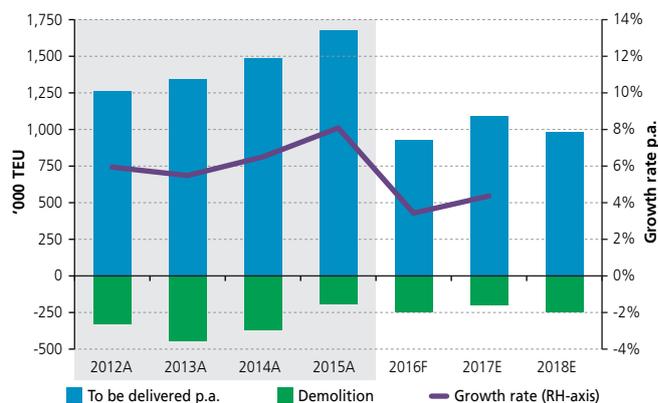
Containership demolition

2014-2016



Source: BIMCO, Clarksons

Container supply growth



Source: BIMCO estimates on Clarksons raw data

ordered, ranging in size from 1,000 TEU to 5,300 TEU accounted for only 13%.

This year, the average containership size for delivered ships is going down from the all-time-high 7,952 TEU in 2015 to around 7,000 TEU per ship.

Outlook

Bunker fuel prices have followed the crude oil prices down from USD 560 per mt of 380 cSt bunker fuel oil in Singapore in 2014, to USD 292 per mt in 2015 and currently costs USD 177 per mt. This has encouraged some liner companies to exploit the lower fuel costs to sail the longer route and avoid the costly canal tariffs in the Suez Canal.

As BIMCO has previously highlighted (in relation to avoiding piracy by re-routing round the Cape of Good Hope) low enough bunker prices open up for the possibility of longer sailings to cut out the expensive Panama Canal and Suez Canal transits. Today, the re-routing option from Europe or the US is a lot cheaper than going via the Suez Canal.

This has prompted the Suez Canal to make an unprecedented move - offering 30% discounts to containerships sailing from the US East Coast back to Asia. Surely, this initiative is also a "welcome present" to the Panama Canal, which will be opening up its new locks for business shortly.

A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2016-2018 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.

For the shipping industry, this is a very positive move, as canal transit is normally very costly. The opening of the new set of locks in Panama mean more competition for Asia-US East Coast trades – something that we could hope would drive down canal transit fees.

Liner operators currently engaged in negotiations for price and volume contracts, find themselves exposed. They are no longer shielded from the poorly performing spot market, as more and more contracts become index-linked.

Managing capacity by the individual companies in the industry is at the centre of the recovery. As demand is not expected to grow at a pace needed to match the capacity of new ships entering the fleet, extensive idling of the modern and efficient ships in the fleet and continued demolition of the inefficient ships will improve the market both in the short and mid-term. For the longer term management of capacity, a low level of contracting for newbuildings must be maintained. 2016 is off to a good start on all these parameters. ■■

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Shipping must get to grips with new lease accounting standards

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 657 offices of independent member firms in 106 countries.

They have been a long time coming, but new accounting standards for leases have recently been issued both internationally and in the United States (US). Both standards are still some way off coming into force, but shipping and offshore maritime companies will need to start checking the potential effect on their financial statements in order to be well-prepared for implementation.

When these new standards enter into force, some companies in the shipping and offshore maritime sector will see major changes to their balance sheets, and some will see a change to their reported profits. Where they have financing with covenants, companies will need to consider the effect that the changes will have on compliance with those covenants.

Although there are some differences between the two, the standards issued by the International Accounting Standards Board (IASB) are similar in many respects to those issued by the Financial Accounting Standards Board (FASB) in the US. Neither the IASB nor the FASB has felt the need to significantly change its lessor accounting model, and each has largely carried forward the requirements into the new standards. However, just as there were some differences between the two models before, certain differences will remain.

The new international standard, IFRS 16 (Leases), is effective for periods beginning

on or after 1 January 2019, with early adoption allowed. It covers all leases, whether the company acts as a lessor or a lessee. In general, the changes for lessors and for lessees with existing finance leases are fairly minor. But those who have operating leases as a lessee - for example, many of those with shorter-term time charters - will be those most affected.

IFRS 16 removes the distinction which previously existed between finance and operating leases for lessees. As a consequence, companies which previously leased-in ship under arrangements identified as operating leases will now find that they are required under the new standard to recognise their interest in the ship as an asset on the balance sheet or, in other words, as a 'right to use' asset. At the same time, they will also be required to record a liability for their future payments under the charter, to the extent that they relate to the ship.

Where a lease is recorded for the first time under the new international rules, this will not always have a major effect on reported net assets. It may, however, result in a substantial difference in terms of gross assets and gross liabilities, changing ratios that are based on these figures. Where companies have covenants based on total debt levels, this may lead to breaches simply due to the accounting change.

There will also be some effect on reported profit, although this will vary between companies. Total lease costs will be more

front-loaded, with higher charges in the earlier years and lower charges in the later years. The effect of this will be felt most by those companies with just a few - or even only one - substantial charter, while those with a number of charters at various stages may find that, even though the charges on each one might change, the overall charges remain broadly the same.

Time charters cover the provision of both a ship and related services to the charterer, but it is only the asset element of the contract that falls within the scope of the lease standard. The service element will continue to be dealt with separately and, as was the case previously, no liability will be recorded until the services have been received. Under the new international standard, an allocation of total amounts payable will need to be made between the amounts attributable to the lease and those attributable to the service. Charterers will need to apply judgement in making this allocation.

The new IFRS model for all leases is broadly similar to the old model for finance leases. For existing finance leases, a lessee needs to determine the interest rate that should be applied to the lease to determine the amount at which both the asset and the initial liability is recorded. The same basic idea will apply to all leases in the future. Ideally, the interest rate inherent in the lease should be used, as it is currently with a finance lease. In practice, this amount will often not be known to the lessee. Where this is the case, the amount will have to be estimated

by reference to the lessee's incremental borrowing rate, which is likely to involve some judgement.

There are exemptions under the new international standard. In particular, an asset and liability need not be recorded in respect of short leases, those of less than a year. To avoid this facility being over-used, there are provisions covering leases with variable terms which may last for more than a year. Although very short-term charters will be excluded, those with extension clauses will have to be considered in greater detail.

Meanwhile, the FASB update, ASU 2016-02, Leases (Topic 842), applies to all companies which follow US accounting standards and is effective for periods beginning on or after 15 December 2018 for public business entities, and on or after 15 December 2019 for all other entities. Early adoption is allowed for all entities. There will be a similar effect on the balance sheet as there is with IFRS 16, with both assets and liabilities appearing for the first time in respect of arrangements previously classified as operating leases. It is likely that the impact on profit will not be as great, as the US standard will continue to allow total charges to be spread on a more even basis. There are also detailed differences on matters such as sales-leaseback transactions and the treatment of subleases.

Again, as is the case with IFRS 16, many leases currently treated as off-balance-sheet operating leases will now be appearing on

lessee companies' balance sheets, unless the lease is short-term. By definition, short-term leases must have an initial term of one year or less which lacks an option to purchase the asset that the lessee is "reasonably certain to exercise." While net assets may not be greatly affected, gross assets and gross liabilities will increase significantly for companies which currently have major leasing arrangements treated as operating leases that are not classified as short-term.

Unlike the IASB, the FASB has retained a dual accounting model. Where a lessee is party to a capital or finance lease, the accounting treatment will remain largely unchanged, similar to IFRS 16. But, where a lease was previously an operating lease, and the lease is not short-term, then, under the new US standard, the lessee will:

- record a right-of-use asset representing its right to use the underlying asset for the lease term and a liability to make lease payments (lease liability), on a similar basis to under IFRS 16
- measure the right-of-use asset and lease liabilities at the present value of lease payments in the same way as under IFRS 16, except that variable lease payments will not be reassessed on every reporting date
- recognise a single lease expense, usually on a straight-line basis over the lease term (unlike IFRS 16, which will lead to the recording of higher expenses in the earlier years) and

- classify cash receipts and payments in the statement of cashflows within operating activities (unlike under IFRS 16, where cash payments would typically be classified as financing activities).

On inception of a lease, the balance sheet entries prepared under the two new standards will usually be similar, but would then diverge as the basis of charging expense differs. Expenses under the US standard will remain flatter than under IFRS and may be unchanged from current standards.

It is important to note that it is not only the impending change on new transactions being arranged that companies will have to take into consideration. They will also need to consider the effect that these changes will have on compliance with the terms of pre-existing financing arrangements which include covenants. Where breaches of covenants are likely, or reasonably possible, talking to lenders before the change hits the financial statements will be critical.

Although it will be a few years before the first financial statements are published which have to comply with the new standards, many companies in the shipping and offshore maritime sectors will need to consider the potential effect on their business, and plan accordingly. ■■

Buying and selling bulkers

The large-scale sustained low earnings in the dry bulk market, comparable with the scenario eight years ago, have forced many owners into painful structuring. Earnings have dwindled, leading some of the big names in the industry to crumble, while some have had to give up their dry bulk assets. Drewry digs into what is happening in the dry bulk market at the moment and where the money is going – whether any money is actually going into the market or not.

Dry bulk ships have been among the cheapest to acquire, with few technical complications. The extraordinarily high earnings in the sector in 2007-2008 brought in many new players ranging from financial insti-

tutions, private equity firms, family businesses and asset players. However, the market seems to have reached the bottom – for how long it remains to be seen – but it has already forced many players out.

Who is selling?

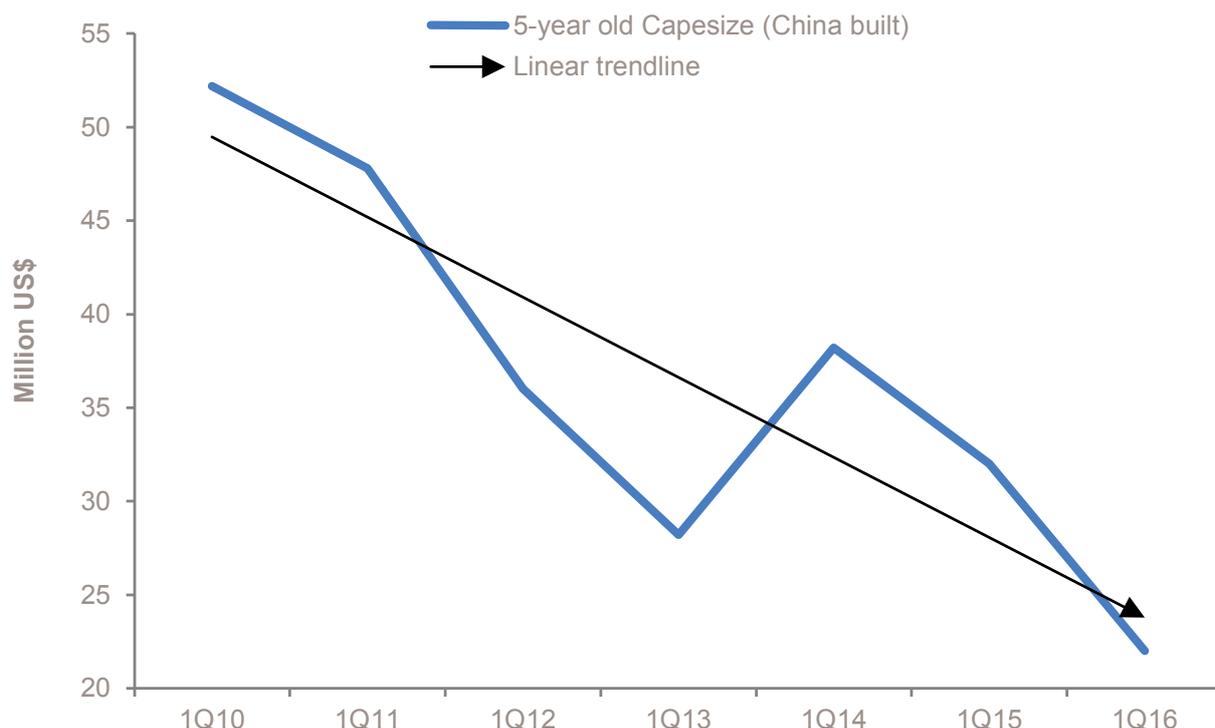
Slowing growth in the Chinese economy has forced K-Line to restructure its dry bulk business by getting rid of a large number of ships. The company has already sold three dry bulk ships this year – a capesize, a panamax and a supramax – the third going to Goldenport, which already owns 11 dry bulk ships. K-Line is also contemplating terminating several charter-party agreements early, and is reportedly willing to pay the fees for returning the ships early.

K-Line’s compatriot, Mitsui OSK Lines, has also decided to cut its losses in the dry bulk sector. It is shutting down its Singapore unit, which had catered to the spot market, and was left in the lurch by the falling demand for major dry cargoes. MOL also plans to scale down its ownership of charter-free ships. The unease is easily visible in the company’s strategy; it has already started terminating time-charter contracts early and has swallowed severe fines, which will result in heavy losses in 2016.

Who is buying?

Buyers are mostly companies with diversified portfolios and deep pockets after earning good profits in the good years. They see the low asset prices as an opportunity

Figure 1: Value of a five-year old capesize (China-built)



to position themselves for the long-term recovery as it must come round eventually. For example, Zodiac Offshore has bought a capesize this year because it has a wide-ranging portfolio which includes dry bulk, containers, car carriers, chemical tankers, crude tankers, products tankers and LPG ships.

Meanwhile, Indian owner Apeejay, which is involved in the coastal trade, has bought a panamax ship from Japanese owner Sato for \$5.75 million (Namura-built, 2005) at a comparatively low price as part of its fleet-renewal programme. Apeejay has two ships built pre-2000, including one dating back to 1989. Given the stringent cabotage laws in India, Apeejay's ships are relatively securely employed. If the company can

afford it, it should acquire ships at the prevailing attractive prices.

Indonesia's Tanto Intim Line, a family-owned business that has a diversified portfolio including containers, has bought a Mitsui-built supramax ship from Taiwan's Hsin Chien.

Some owners are also buying assets to replace their older tonnage; for example, the Greek company Tide Line bought a 2006-built handysize ship. Tide has three dry bulk carriers, all of which were built before 2000, and is trying to acquire ships at a time when asset prices are at their lowest. On the other hand, Titan Maritime bought a 10-year old handysize, which is the youngest ship in its fleet.

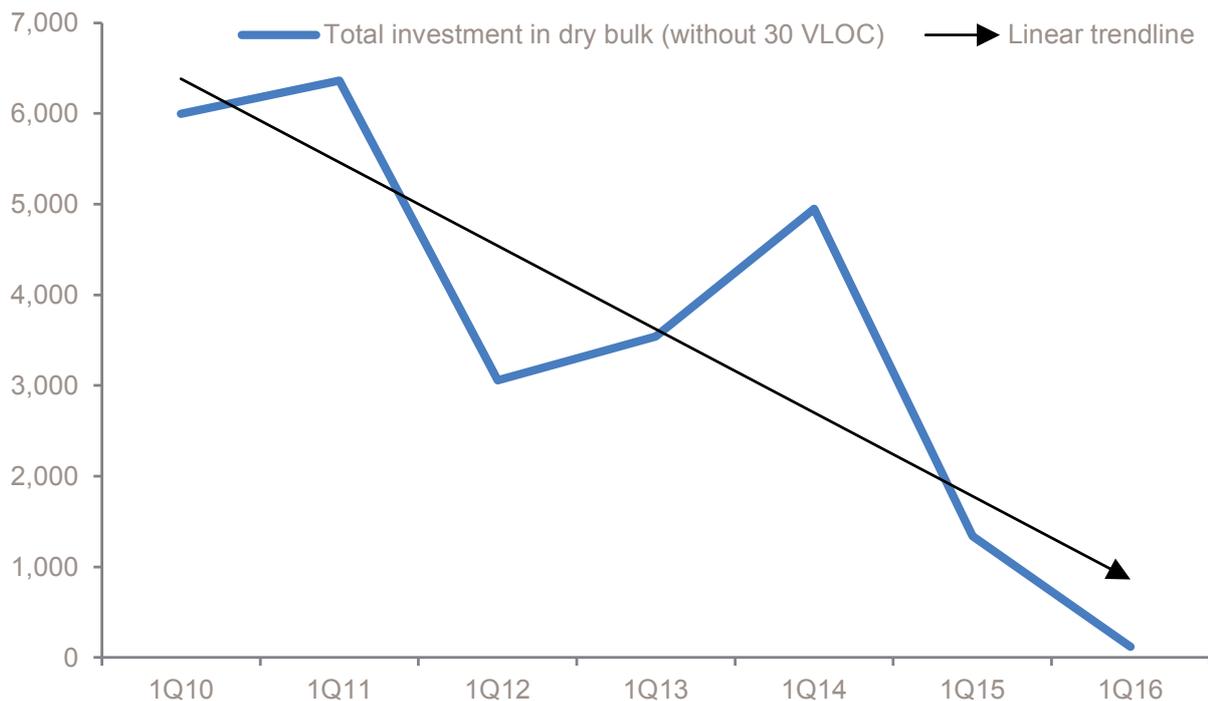
Investment in the dry bulk market

Except for the 30 VLOCs ordered by Chinese companies, there has been negligible fresh investment in the dry bulk market this year. The only orders that were placed in the first quarter were from Fednav and U-Ming.

Fednav is Canada's largest shipping company and caters to a diversified cargo mix including Canadian grain exports. Of the 54 ships that it owns, 13 were built in 2000 or before, so its order for four bigger handysize ships at Oshima is a renewal order.

On the other hand, U-Ming also ordered two panamax ships at the same yard.

Figure 2: Total investment in dry bulk (without 30 VLOC)



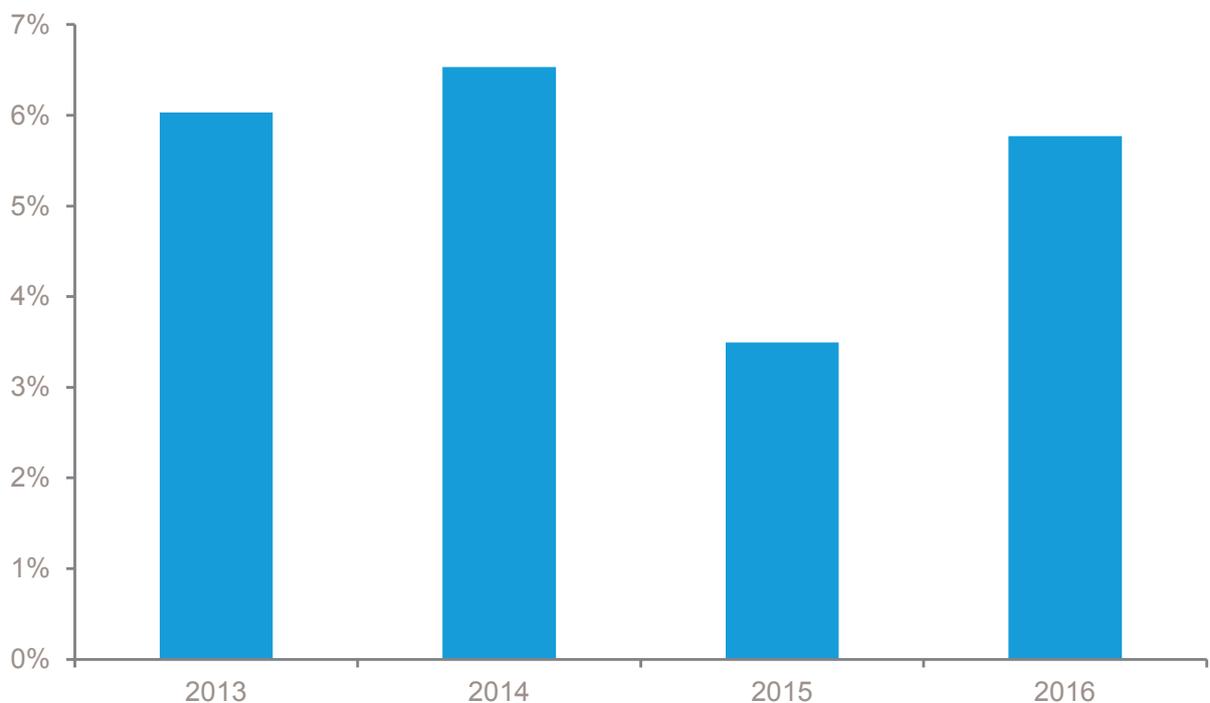
U-Ming, a big Taiwan-based company has a diverse fleet comprising capesize, panamax, supramax and handysize cement carriers, as well as tankers. U-Ming owns 10 ships built in 2000 or before, including four panamaxes of more than 80,000 dwt. To renew its panamax fleet, U-Ming has ordered two large panamaxes (81,500 dwt each) at Oshima – the only yard to have received fresh orders for dry bulk ships this year.

Long-term charter contracts are getting signed again

Netherlands-based Dreyfus took Arendals Dampskib's panamax ships for two-year charters at less than \$5,000pd. However, Arendals has three panamax ships that are managed by fellow Norwegian company OSM-Maritime, which has secured a two-year time-charter contract for one of its panamaxes. Dreyfus deals mostly in agricultural commodities and has well-secured, long-term commodity trade contracts in place.

Swiss-based commodity behemoth Glencore took Diana's Shipping's 2014-built panamax ship on a two-year charter at an attractive rate of \$5,300pd. The deal is very handy for Diana, which owns four ships. Glencore deals in many commodities, including iron ore, nickel, copper, zinc and other metals as well as minerals and grains. With a good market outlook for most of its commodities, Glencore secured a good deal in acquiring the panamax for a two-year long-term charter. ■

Figure 3: More than one-year time-charter contracts



Editor's Note: Source: Drewry Maritime Research (www.drewry.co.uk), Sea & Air Shipper Insight report.



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Found 20 companies operating in Rotterdam

Primary list

Marine Bunkering Rotterdam B.V.		
Allocation: Capelle aan den IJssel, Netherlands	1	2
Bunker operation profile: trader, broker.	ports associated	personal contacts
VIEW COMPANY INFORMATION		

Ordinary list

AEGEAN NORTH WEST EUROPE		
Allocation: St. Job in 't Goor, Belgium	1	2
Bunker operation profile: supplier.	ports associated	personal contacts
VIEW COMPANY INFORMATION		



Latest news from Asia with focus on China and India

100 million gross tonnage milestone for the Hong Kong Shipping Register

Introduced by the Hong Kong Government, Hong Kong's maritime tradition is almost two centuries old. Hong Kong served as a port of registry under the UK Ship Register from the 1840s until the establishment of the autonomous Hong Kong Shipping Register in 1990, under the administration of the Marine Department.

Upon its inception in 1990, the Hong Kong Shipping Register had a mere 765 ships with a total gross tonnage of six million. According to a United Nations (UN) report in October 2015, Hong Kong accounted for 8.6% of the world's total tonnage. Registries with a good track record usually host younger fleets and keep a tight rein to ensure compliance with international regulations. The Hong Kong Shipping Register currently ranks first in Asia and fourth in the world. It has the youngest fleet among the top 35 flags. The detention rate of ships flying the Hong Kong flag is only slightly above 1%, compared with the world average of 3.5%.

There are over 700 shipping-related companies operating in Hong Kong, providing a great variety of quality maritime services ranging from ship management, ship broking and chartering to maritime law and arbitration. Hong Kong is also the leading international ship finance centre in Asia, with eight out of the world's top 10 bookrunners setting up offices there. The Hong Kong Port is one of the busiest container ports in the world. It provides frequent and comprehensive liner shipping services with about 340 container liner services per week connecting to around 470 destinations worldwide.

In this year's policy address by the Hong Kong Government, the existing Maritime Industry Council and the Port Development Council will merge to form a new Hong Kong Maritime and Port Board, in April 2016. This high-level steering body is designed to assist the government in formulating strategies and policies to drive the growth of high value-added and professional maritime services in Hong Kong, foster talent development, and promote Hong Kong as an international maritime hub.

China's new five-year plan ambitious but positive to shipping

China's new five-year plan for development has been unveiled at a crucial stage of national economic progress, which was launched on 5 March 2016 during the annual session of the National People's Congress, China's top legislature in Beijing. The plan's time period of 2016-2020 is in line with the government's timeline to transform the country into a "moderately prosperous society" by 2020 with a target of over 6.5% annual growth.

However, the decision to launch the new five-year plan comes when the Chinese economy is facing considerable pressure. Beijing is committed to bolstering growth and deal with some of the underlying issues that have fostered the recent slowdown in economic growth and caused investors to speculate.

The market failed to live up to expectations with many projects ending up as unfinished goals. Take for example the large number of scattered semi-finished real estate projects undertaken throughout the majority of China's mainland. The

unfinished projects never generated the required return for their investors and, more importantly, generate the increased productivity and growth in employment that they were supposed to. Equally, this has been in part the decision of the Chinese Government to cut back on overcapacity in steel production (something that would essentially translate into further curbing of the demand for iron ore).

Some experts believe that what needs to be taken from all of this is hidden in the details. Well placed efforts within China's next growth plan could be used to bring about a quicker market rebalance and in turn make a quick shift of the market trajectory back into high growth levels.

After all, some of the latest consumer data coming out of China paints a much better picture of how there are still well-performing drivers in the market that could be utilised to generate growth.

The main point though here is that this new round of stimulus has mounting pressure to be well targeted and seen through until the end – so as to properly achieve the goals of the programme. This will be a tough job, as the government has lost some of its credibility in managing to guide the market properly, while at the same time taking up the challenge during a period where most of its manufacturing indices are pointing to a continual loss of steam.

Indian Government relaxes cabotage rules for transshipment ports

The Indian Government has relaxed cabotage restrictions for those ports which transship at least 50% of the containers they handle. This relaxation will allow



Image by Craig Mayhew and Robert Simmon, NASA GSFC

foreign ships to more easily transport containers between Indian ports – meaning they have more flexibility to consolidate full and empty containers for onward transportation to other destination ports in India.

The relaxation of cabotage restrictions will therefore also help foreign flagged ships to better utilise their spare capacity. It will help them to offer more competitive container slot rates to exporters and importers, leading to competition-led efficiency in container transportation and lower logistic costs for the shippers. Any existing container port seeking cabotage relaxation will have to achieve transshipment traffic of 50% of the cargo it handles – on an ongoing basis.

New transshipment ports will have a trial period of one year and will have to achieve the stipulated traffic of 50% of the traffic handled in that year to enable them to handle cargo in the second year. If the port cannot meet this target, they will again be subject to restrictions on cabotage – and cannot be considered for relaxation on the restrictions again for three years.

Ports will need to provide monthly container traffic data for monitoring to the Directorate General of Shipping and Ministry of Shipping.

Dream with China and Valemax

This March, China COSCO Shipping Corporation and Vale, signed a 27-year agreement that will see the Chinese shipping giant carry 16 million tonnes of iron ore per year for the Brazilian miner. Likewise, another conglomerate, China Merchants Energy Shipping's subsidiary, Hong Kong

Ming Wah Shipping, has signed a similar deal with Vale for another period of up to 27 years.

In order to secure the iron ore transportation, China COSCO Shipping Corporation ordered 10 Valemax ore carriers from Shanghai Waigaoqiao Shipbuilding (SWS), while ICBC Leasing acquired six contracts at Yangzijiang Shipbuilding and four at Behai Shipbuilding. In addition, China Merchants also purchased 10 contracts – four at Shanghai Waigaoqiao Shipbuilding, four at Behai Shipbuilding and two at CIC Jiangsu.

Shanghai unveil its implementation for ECA in waters of Shanghai Port

In order to improve the air quality of Shanghai port and to facilitate the harmonious development of Shanghai International Shipping Center, the General Office of Shanghai Municipal People's Government has issued a "Work plan on implementing the Domestic Emission Control Areas in waters of Shanghai port".

This is in line with the Implementation Plan on Domestic Emission Control Areas in Waters of the Pearl River Delta, the Yangtze River Delta and Bohai Rim (Beijing, Tianjin, Hebei) ("implementation plan") and the "Ministry of Transport's reply on earlier implementation of the Yangtze River Delta Domestic Emission Control Area by core ports". The requirements of the work plan are as follows:

- higher emission control requirements will be imposed in Shanghai port (including sea areas and inland waters) within the Yangtze River Delta Domestic Emission Control Area (Yangtze

River Delta DECA) on and after 1 April 2016

- ships navigating, anchoring or operating in waters of Shanghai port within the Yangtze River Delta DECA, excluding military or leisure ships and fishing boats, will have to meet the requirements of the implementation plan and the work plan
- any fuel oil used on ships engaged in international voyages and domestic sea-going ships will have to be in compliance with applicable international conventions and the work plan
- the sulphur content of any fuel oil used on board ships berthing at Shanghai port (excluding the first hour after arrival and the last hour before departure) cannot exceed 0.5% m/m on and after 1 April 2016
- inland waterway ships and river-sea intermodel ships should use diesel oil in compliance with the GB252 criteria. Residual fuel oil cannot be used on these ships. The sulphur content of diesel oil used on:
 - government ships
 - tourist ships
 - passenger ferries
 - garbage and sewage collection ships
 - ships navigating, berthing or operating in the core area of Huangpu river and in the Suzhou river (inside the middle ring of Shanghai) and
 - it will not exceed the limits required by the national IV standards for diesel fuels used on motor vehicles.



BIMCO

Based on the monitoring and assessment of the implementation of the above control measures, and with consent of the Shanghai Municipal People's Government, Shanghai Municipal Transport Commission and Shanghai Maritime Safety Administration will – at an appropriate time - declare the dates for implementing the following control measures:

- the sulphur content of any fuel oil used on board ships entering waters of the

Shanghai port within the Yangtze River Delta DECA is not to exceed 0.5% m/m

- the sulphur content of any fuel oil used on board ships berthing at Shanghai ports (excluding the first hour after arrival and the last hour before departure) is not to exceed 0.1% m/m
- the sulphur content of any fuel oil used on board ships entering waters of the Shanghai port within the Yangtze River

Delta DECA is not to exceed 0.1% m/m.

1. Ships can take alternative measures (if approved by the maritime administration) equivalent to the above control measures, such as using shore power and clean energy.
2. According to the requirements from the Ministry of Transportation and the work plan, the maritime administration and the port authorities should





Image by Craig Mayhew and Robert Simmon, NASA GSFC

strengthen the management and supervision in waters of the Shanghai port. The related regulations for management and supervision (including exemptions or exceptions) will be published separately.

3. This announcement is valid until 31 December 2020.

China – Mosquito eradication certificates required from Zika affected areas

On 2 March 2016, Chinese Entry-Exit Inspection and Quarantine Bureau (“CIQ”) issued a “Notice on Prevention and Control of Zika Virus into China”, as part of the Chinese Government’s increased efforts to prevent the Zika virus entering China.

Requirements for crew members and ships

According to the notice, people from countries or areas where infection cases have been reported should declare to the CIQ before entering or leaving the country. Especially if they are suffering from fever, headache, muscle and joint pain or rash. They should fully cooperate with the local CIQ for a temperature detection, medical check and epidemiological investigation. Furthermore, transportation vehicles and containers coming from the affected countries and areas should take effective measures to eradicate mosquitos. Ships should hold a mosquito eradication certificate, issued by the authorities of the affected countries, otherwise, immediate eradication should be taken under the supervision of CIQ. Strict quarantine inspections should be taken on transportation vehicles, cargo, containers, luggage and postal parcels from those countries and areas.

Validity period

The notice is supposed to take effect from 2 March 2016 and be valid for 12 months.

Affected areas

The countries and areas where Zika virus infection cases have been found are listed as follows:

- Americas:
Aruba, Bonaire, Barbados, Bolivia, Brazil, Columbia, Costa Rica, Curacao, Dominica, Ecuador, Salvador, French Guiana, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Nicaragua, Panama, Paraguay, Puerto Rico, Saint Martin, Sint-Maarten, Saint Vincent and the Grenadines, Surinam, United States Virgin Islands, Venezuela, Trinidad and Tobago.
- Oceania:
American Samoa, Samoa, Solomon Islands, Marshall Islands, Tonga, Vanuatu, Fiji.
- Asia:
Maldives, Thailand, Indonesia, Cambodia, Malaysia, the Philippines, Laos.
- Africa:
Cape Verde, Gabon.

The above list is subject to renewal as epidemic situations develop. If any other countries report Zika virus cases after this notice has been issued, the same requirements should apply.

Implementation by local CIQ offices

It was understood that the inspection procedures at different ports may vary. At some ports such as Dalian, Xiamen, Guangzhou and Fuzhou etc, mosquito eradication certificates should be presented during port entry formalities. Otherwise, local CIQ will require mosquito eradication measures be conducted on board under their supervision. At some other ports such as Tianjin, the certificate is not a necessity for port entry formalities, but ships are still subject to inspection and investigation by local CIQ officers to check if there are mosquitos or mosquito eggs on board.

Recommendations

In view of the enhanced inspection and requirements by Chinese quarantine authorities against the Zika virus, ships that sail from ports in the affected countries to China are recommended to obtain a mosquito eradication certificate. This should be issued by authorities of the affected country if possible, so as to avoid any possible delay or trouble when visiting China. In the case when no such certificate has been obtained, ships are encouraged to cooperate with the local CIQ on their inspection or disinfection actions. ■■

Editor’s Note: This report has been produced in co-operation with Hellenic Shipping News, IG Group and Sinoship.

Latest EU regulatory news

EU Sulphur Directive – assessment of the first year of the 0.1% sulphur limit in the European SECAs

The first implementation year of the European Union (EU) low sulphur limits in the European SO_x Emission Control Areas has ended. Since the beginning of 2015, ships trading in the designated European SECAs, comprising the Baltic and North Seas, as well as the English Channel, have had to comply with a maximum sulphur level of 0.1% in ships' fuel as laid down in the EU Sulphur Directive (2012/33/EU). This sulphur limit came into effect in Europe to mirror the International Maritime Organization's (IMO) requirements under the International Convention for the Prevention of Pollution from Ships (MARPOL), and its Annex VI (Regulations for the Prevention of Air Pollution from Ships).

After one year of implementing low sulphur limits in Europe's SECAs, it seems that there has been a strict and pragmatic enforcement, without a major economic impact, nor a modal shift to land-based transport modes, or loss of volume, mainly due to the drop in fuel prices. However, there is fear that the EU Sulphur Directive may not have shown its full impact yet. Lastly, lack of clarity still surrounds the use of certain compliance methods, while financing alternative compliant technologies represents a major challenge.

The work in the European Sustainable Shipping Forum (ESSF), which was established in 2013 to facilitate the implementation of the directive, is still ongoing. The mandate of ESSF was renewed for 2.5 years as from 1 January 2016.

Migrants at sea

The European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee published its own initiative report on the EU Agenda on Migration on 23 March. It is a

detailed report outlining how the EU should respond to the current migration challenge. Covering topics from human trafficking to asylum and EU external borders management, it also discusses the "search and rescue" operations at sea.

The report calls for permanent, effective EU response in search and rescue operations. Some MEPs had called for more responsibility for shipowners in relation to these operations, such as additional safety equipment and medical personnel on board. The report, however, turned out to reflect the reality and allocates rightly the responsibility at member state and EU level.

The report states that "saving lives must be a first priority and that proper funding, at union and member state level, for search and rescue operations is essential" and that "private shipmasters or NGOs who genuinely assist persons in distress at sea should not risk punishment for providing such assistance". The report was adopted in the European Parliament's plenary meeting on 12 April.

Maritime Transport mid-term review – outcome expected soon

During the first trimester of 2016 the European Commission will publish its "Implementation report" on the review exercise of the EC Maritime Transport Strategy 2009–2018. This report will take on board the input received through the commission's public consultation, a study it had conducted on short sea shipping and another one on EU shipping and the international context.

The report is expected to consist largely of stocktaking on what happened since the Strategy was published in 2009 and no major policy changes are expected. This report and review is one step in the EU decision making process, which should lead to concrete proposals on shipping in 2017.

Revision of the Emissions Trading System Directive

In July 2015, the commission presented a legislative proposal to revise the EU Emissions Trading System (ETS) in line with the 2030 climate and energy policy framework agreed by EU leaders in October 2014. The proposal is an integral part of the work on achieving a resilient Energy Union with a forward-looking climate policy – a top political priority of the Juncker Commission, launched in February 2015.

The 2003 ETS Directive established a system for greenhouse gas emission allowance trading within the Union in order to promote reductions of greenhouse gas (GHG) emissions in a cost-effective and economically efficient manner. To tackle climate change effectively and achieve the EU's long-term decarbonisation objectives to cut emissions by at least 80% by 2050, the European Council agreed in October 2014 on the 2030 policy framework for climate and energy, which aims at reducing overall EU GHG emissions by at least 40% domestically below 1990 levels by 2030. To achieve this, the sectors covered by the EU ETS will have to reduce their emissions by 43% compared to 2005 while non-ETS sectors will have to reduce their emissions by 30% compared to 2005.

The European Council confirmed that a well-functioning, reformed EU ETS would be the main European instrument to achieve this target.

The file is now being discussed in the European Parliament's Environment (ENVI) and Industry (ITRE) Committees. Environmental NGOs have put a lot of pressure on MEPs to include shipping in the Directive. This would however be incompatible with the already adopted EU MRV Regulation, which aims at ascertaining the real contribution of shipping to global CO₂ emissions and feeding



into the work of the IMO on this particular matter. The leading Committee draft ENVI report is scheduled to be presented in June 2016 while the final vote in plenary will take place in December of the same year.

Ship recycling

The European Commission has adopted the template for applications to the European List of ship recycling facilities authorised to recycle ships flying the flag of an EU member state. The document was published in the Official Journal of the EU in December 2015. With this, ship recyclers located outside the EU may now officially submit their applications for inclusion in the European List.

As per article 16(2) of the Ship Recycling Regulation, a first version of the European List must be published before 31 December 2016. As several procedural steps are required to approve the European List, ship recyclers outside the EU wishing to be considered for inclusion in the first batch of the List should submit their applications by Friday 1 July 2016.

Whilst recycling facilities from developing world countries have been invited to submit their applications, this process is somehow hampered by the fact that the EU Commission interpretative guidelines are not yet available. The reason for this is that linguistic discrepancies between the translated versions of the adopted EU Ship Recycling Regulation is still subject to legal analysis at council level.

EU Port Reception Facilities Directive – Revision process started

The European Union adopted Directive 2000/59/EC on port reception facilities (PRFs) with the aim of substantially reducing discharges of ship-generated waste and cargo residues into the sea. The requirement for adequate port reception facilities, without causing undue delay, comes from the

International Convention for the Prevention of Pollution from Ships (MARPOL). However, the European shipowners report that there is a lack of adequate PRFs in Europe and capacity to meet current ship requirements.

Therefore, a revision process of the Directive has started and a separate subgroup has been established under the umbrella of the European Sustainable Shipping Forum (ESSF) to provide input and facilitate the revision process. An impact assessment is expected to start soon, and a revised Directive is expected by end of 2016 to be submitted to the European Parliament and Council. In this context, the European shipping industry has identified problem areas that need to be addressed in view of this revision and is calling for adequacy and transparency to ensure that port reception facilities fulfil the needs of the ships calling EU ports. The content of the current EU PRFs Directive remains appropriate, however there is a lack of implementation of its provisions. With a proper enforcement and appropriate improvements 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.

Ports policy – European Parliament adopts final report

On 8 March 2016 the European Parliament (EP) adopted its report on the proposal for a regulation on ports. 451 MEPs voted in favour, 234 MEPs voted against, while 18 MEPs abstained. The rapporteur was also given the mandate to start negotiations with the Council in view of reaching a first reading agreement.

Now that the EP position is known EU legislators want to make quick progress on the file. A first meeting among the member states has already taken place and several trilogue meetings are scheduled between April

and July. The amendments the EP has voted upon fundamentally change the original EC proposal. One of the main differences is the change from a regulation that addresses, next to financial transparency, 'market access' to a regulation on the 'organisation of ports'. In the EP's version this chapter also excludes pilotage services.

eManifest pilot project – to be launched mid 2016?

The European Commission is preparing the launch of a pilot project on an eManifest. The intention is to develop a harmonised e-manifest functionality which will encompass a number of cargo related formalities that are required by various authorities, including customs. The project will also assess whether the exchange of information between member states via SafeSeaNet can minimise reporting obligations for ships trading between EU ports. For the implementation of this pilot project the Commission will utilise the National Single Window prototype which was developed by the European Maritime Safety Agency.

Discussions with member states and stakeholders are ongoing in order to clarify the concept, level of involvement, planned follow up, etc. The European Commission aims to launch the project mid-2016 and to run it for 2 years. ■■

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



Latest US regulatory news

with focus on ballast water, withdrawal of biofouling regulation and oil sampling programme

US meeting to resolve confusion over ballast water treatment

This tricky situation in the US was well illustrated recently when the US Transportation and Infrastructure Subcommittee met with the US Coast Guard in the House of Representatives to discuss the confusion surrounding the US requirements for treating ballast water.

Chairman Duncan Hunter Republican from California, opened the discussion at the meeting by saying that the US Coast Guard and the US Environmental Protection Agency (EPA) have developed separate regulations under two different federal laws regarding ballast water management. Although the agencies have worked together to try to reach uniformity, the programmes differ in implementation dates, ships covered, enforcement and penalties for non-compliance. He stated, "The situation is ridiculous. It is completely unreasonable to ask vessel operators to comply with two federal standards and as many as 25 different, contradictory and unachievable state and tribal standards. I hope my colleagues will join me in looking at ways to rectifying this issue". There was no concrete result from the debate but it would be great if this statement could be part of the background for harmonising and clarifying the US regulation in this area.

Despite this, the only new development on ballast water management in the US is the use of a new ballast water reporting form. The US Coast Guard has issued a notice reminding stakeholders that the transition period within which use of the old ballast water reporting form remains acceptable expires on 30 April. From 1 May 2016, ballast water management reports for ships

equipped with ballast water tanks and bound for ports or places in the US must be made using the new form. The new form is located at:

<http://mariners.coastguard.dodlive.mil/2016/04/15/4152016-reminder-use-of-old-form-for-ballast-water-reporting-discontinued/>

CSLC July 2016 biofouling regulations: withdrawn for now

The BIMCO Bulletin has previously reported about the California State Lands Commission (CSLC) biofouling development, including a summary of requirements for the final CSLC biofouling regulations, which were due to enter into force on 1 July 2016.

Please note that CSLC has now withdrawn these final biofouling regulations and they will *not* enter into force on 1 July 2016.

To the best of our knowledge, the withdrawal was a result of a violation of their own administrative procedural requirements about new regulations. In their withdrawal notice, they indicated that they will reopen the comment period for these regulations in May 2016. While not confirmed, we expect the reasons for the withdrawal involved the fact that the compliance assessment protocols had not yet been finalised at the time the regulation was ready and thus this element is likely to be addressed in a new proposed regulation.

Benefits of US voluntary fuel oil sampling programme questioned

On 17 February 2016, the US Coast Guard published a voluntary vessel fuel oil sampling programme. This sampling pro-

gramme started on 29 February 2016. The US Coast Guard notes that implementation of this programme will assist them in determining the level of compliance with the current 0.1% cap on sulphur levels in marine fuels.

Three important provisions are included in this Marine Safety Information Bulletin announcing the programme, including the following notes:

- sampling is voluntary – decided by the master of the ship
- ships providing samples will not receive sanctions if the voluntary samples are later found to be non-compliant
- samples will be taken by the ship's crew with US Coast Guard observing the sampling procedure.

While the Marine Safety Information Bulletin could look like a "benefit" for the shipowner, a number of questions have arisen which are still unanswered. Some of these questions/comments are as follows:

If a ship has complied with MARPOL VI and US requirements, has a valid bunker delivery note (BDN) on board and possibly a post load testing analysis indicating compliance, why would it want to volunteer a sample which could result in a finding of non-compliance given the fuel oil testing protocol variances?

While the Marine Safety Information Bulletin notes that no sanctions will be imposed by the US Coast Guard where a ship has provided a voluntary sample, discussions with the US Coast Guard has sug-



gested the ship may be detained and forced to purchase compliant fuel prior to departure from US waters, regardless of the facts surrounding the non-compliance.

The US Coast Guard has further indicated that where a sample analysis indicates non-compliance, this event will be recorded in the USCG Marine Information for Safety and Law Enforcement (MISLE) database as a non-compliance, which is likely to result in increased port state control attention on the next visit.

Until such a time when these questions/issues can be resolved including what, if any, benefits would accrue to the shipowner, the owner may consider whether or not to participate in the programme. Note that the US Chamber of Shipping does not recommend participating in this voluntary sampling programme without a thorough review by counsel.

A copy of the MSIB is available for download at:

<http://mariners.coastguard.dodlive.mil/2016/02/17/2172016-voluntary-vessel-fuel-oil-sampling-program/>

New planning guidelines following ACPARS Final Report

In many places in the world, developments at sea such as wind farms and offshore are affecting shipping. The US is also looking into this and the purpose of the US Coast Guard Atlantic Coast Port Access Route Study (ACPARS) study and report was to address potential navigational safety risks associated with the development of wind farms and other offshore energy installations to support future marine spatial plan-

ning efforts. This includes ensuring sea space necessary for ships to manoeuvre safely, and discuss other factors to be considered when determining appropriate separation distances for the siting of offshore structures near shipping routes and other multiple use areas. The scope was from Maine to Florida, focusing seaward for the sea buoys or port approaches.

The report recommends the US Coast Guard incorporate the Planning Guidelines (PG) (which include the navigation safety corridor and traffic separation schemes) as policy into appropriate documents such as: commandant instructions, manuals, and policy letters.

The PG also recommend a navigation safety corridor with a coast-wise sea lane along the Atlantic Coast, 5 NM wide and the total navigation safety corridor width, accounting for separation distances from hazards or obstructions, 9 NM wide. The corridor must be located an adequate distance from shore so that water depth is appropriate for the range of towing vessel operations expected. The report recommends that USCG commence work through IMO for regulatory routing to this effect.

It is going to be interesting to see what impact this will have on shipping routes on the US East Coast and very positive to see the approach of the International Maritime Organization (IMO) to carry it through.

Impact of US Coast Guard regulations on US flag ships

The US fleet has been under pressure for many years and is gradually vanishing. The US Congress directed the US Coast Guard to engage the National Academy of Sci-

ence to assess the impact of the US Coast Guard regulations on US flagged ships and how these regulations affected their ability to compete in international transportation markets. This included a review of differences in law and regulations that US flagged ships must comply with versus standards set by IMO for the international community.

The assessment mentions that costs related to US Coast Guard regulatory compliance are relatively small compared to the increased operational costs associated with crewing, insurance, and shipyards for the US flagged fleet. They concluded that US Coast Guard regulatory compliance is not a major impediment to the competitiveness of the US flag registry.

The recommendations put forward focused on lowering costs by transferring further responsibility to approved classification societies. An example mentioned in the report is that the US Coast Guard could accept more type approval through approved classification societies instead of US Coast Guard-specific approval, like for rescue boats. ■■

Editor's Note: This report has been produced in co-operation with the Chamber of Shipping of America (CSA).

Time charter – charterers fail whether guarantee enforceable

Guarantee – shipowners claiming against guarantor under letter of undertaking following charterers’ breach of charterparty – whether guarantor’s seal was applied with proper authority – applicable law as to actual authority – whether guarantee enforceable in China – whether guarantee valid and enforceable

Editor’s Note: The following is a summary of a London Arbitration Award (No. 3/16) which appeared in Lloyd’s Maritime Law Newsletter No. 945 of 11 February 2016 and which is reproduced by the kind permission of the publishers, Informa Law.

By a NYPE form time charter governed by English law the claimant owners, a Hong Kong company, chartered their vessel to the charterers, another Hong Kong company, for a period of “about 58 months to about 60 months”. The charterers had no substantial assets of their own.

The owners said that it was a condition of the charter that the charterers’ obligations be guaranteed by the respondents, Y Ltd, a mainland China company. A letter of undertaking (LOU) of the same date, sealed with Y Ltd’s company seal (chop) and apparently signed by Mr A, Y Ltd’s chairman and legal representative, was in due course handed to the owners. The LOU was expressly governed by English law.

The charterers defaulted on the payment of various instalments of hire. In an arbitration brought by the owners against the charterers, the arbitration tribunal determined that the charterers were in repudiatory/renunciatory breach and that the owners were entitled to the balance of hire and damages. The charterers failed to pay,

and the owners brought the present arbitration proceedings against Y Ltd under the LOU claiming US\$4,604,751.62 balance of hire and damages for the charterers’ repudiation/renunciation of the charter.

Y Ltd’s defence was that the LOU did not bind them because their chop was not applied to it with any proper authority. Y Ltd said that they had no knowledge of the LOU until after the dispute had arisen, Mr A’s signature had been forged, and Y Ltd’s office manager (Mr B) who applied the Y Ltd chop to the LOU did so in ignorance as to the significance of or meaning of the document. Mr B had neither actual nor apparent or ostensible authority to affix the chop. Moreover, because the LOU was never registered with and approved by the Chinese State Administration of Foreign Exchange (SAFE) it was null and void, and performance of it would be unlawful under Chinese law. Furthermore, under article 3(3) and/or article 9(3) of the Rome I Regulation, provisions of Chinese law applied, which meant that the LOU was in any event null and void and/or invalid, notwithstanding the choice of English law, because “all other elements relevant to the situation at the time of the choice” of the applicable law were located in China, and the relevant Chinese law provisions could not be derogated from by agreement.

The owners said that the LOU was valid and binding. It was governed by English law, as a matter of which a company would be bound

by a contract concluded with its actual, alternatively its apparent authority. The chop of Y Ltd having been applied to the LOU, it was apparently authorised as a matter of English law, and the fact that it was so sealed evidenced that it was concluded with the implied actual authority of Y Ltd. It was to be reasonably inferred that the LOU was issued with the knowledge of and under the authority of the relevant persons at Y Ltd. There was no other reason why the tribunal should not enforce the LOU. Since English law governed questions as to its validity, if it should be held to be invalid as a matter of Chinese law that would only be significant to the extent that it might be contrary to English public policy to enforce the LOU, but there were no grounds justifying the tribunal declining to make an award enforcing the LOU. Even if the LOU needed to be registered with and authorised by SAFE, the LOU would not be in breach of Chinese law. If it was “invalid” under certain Chinese regulations that would not prevent the enforcement of the liability arising in relation to it, and so it could not be contrary to English public policy to enforce the LOU.

Held, that as to actual authority, there was a dispute as to whether that question should be determined under English law (as contended by the owners) or Chinese law (as contended by Y Ltd). The tribunal found it convenient to consider, first, what the position was under Chinese law.

Y Ltd contended that, under Chinese law, there had been no express authorisation. Article 16 of the Company Law of the People's Republic of China provided:

“Where a company intends to ... provide guarantee for another entity, the matter [shall], in accordance with the provisions of the company's articles of association, be subject to a resolution adopted by the board of directors or shareholders' assembly or the shareholders' general assembly ...”

Y Ltd's articles of association did not expressly require that, where the company intended to provide a guarantee, the question be subject to the resolution of the board or of the shareholders' assembly or their general assembly. However, Y Ltd had argued that that did not mean that it was not necessary for the LOU to be subject to some such resolution. The reference in article 16 to articles of association simply meant that the resolutions of any of the bodies mentioned therein had to be obtained in accordance with any internal procedure specified by such articles of association. Y Ltd pointed to the second subparagraph in article 16 which was in similar terms, but which excluded the possibility of a resolution by the directors because it referred to a guarantee being given to a shareholder or the actual controller of the company. There could be no logical reason for the law to require that a guarantee to be provided to a shareholder or controller of a company be subject to a resolution but not to require one if the guarantee was provided to another entity.

The tribunal accepted Y Ltd's argument, and rejected the owners' Chinese law expert's suggestion that the first subparagraph of article 16 was merely a guiding clause, to encourage companies to include some relevant provision in their articles of association.

In addition, Y Ltd's own Management and Utilisation Rules of Official Seal provided that:

“... utilisation of official seal for significant matters which should be discussed and determined by the board of directors or shareholders, such as ... guarantees to other parties ... shall be available only if referring the application to the board of directors or shareholders for resolution.”

Y Ltd went on to say that the chop was not affixed to the LOU with the authority of Mr

A, their legal representative, nor was there any resolution of their board or a shareholders' meeting, and the fact that Mr A's signature had been forged was compelling evidence which should lead to that conclusion.

However, it was apparent from such internal documentation as had been produced by Y Ltd that the tribunal had not been given all the relevant documentation. The tribunal could therefore not be satisfied that there had been no resolution by the directors or shareholders to enter into the LOU, or to authorise the use of the chop on it.

Y Ltd was (as the tribunal had found) the principal asset-holding company in the group of companies to which the charterers belonged. The owners had required a guarantee from Y Ltd if they were to charter to the charterers, and it was wholly consistent with Y Ltd's practice of guaranteeing obligations of its affiliated companies that it should have done so in the present case. Y Ltd's argument amounted to a contention that the charterers obtained the chop on the LOU and the brochure fraudulently, a proposition that the tribunal would reject.

The tribunal was driven to conclude that the directors of Y Ltd knew and approved of the charter and the LOU, and that Mr B was properly authorised to chop the LOU and the accompanying document. In the circumstances, the tribunal concluded that the LOU was sealed with actual authority from Y Ltd.

That was sufficient to bind Y Ltd, and the question of the purported signature of Mr A became irrelevant. By the end of the hearing it was common ground that in fact Mr A had not signed the LOU; his apparent signature had been put on by someone else. The tribunal's finding was that someone within Y Ltd was authorised to sign on behalf of Mr A, and had done so using the latter's name.

The tribunal next proceeded to determine whether Chinese or English law applied to the issue of actual authority. Section 46 of the Arbitration Act 1996 provided:

“46. Rules applicable to substance of dispute.

(1) The arbitral tribunal shall decide the dispute:

(a) in accordance with the law chosen by the parties as applicable to the substance

of the dispute, or

(b) if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.

(2) For this purpose the choice of the laws of a country shall be understood to refer to the substantive laws of that country and not its conflict of laws rules.

(3) If or to the extent that there is no such choice or agreement, the tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.”

The owners had submitted that since the parties had chosen English law as the governing law of the LOU, English law applied to determine the question of actual authority by virtue of subsection 46(1).

Y Ltd had contended that it was subsection 46(3) that applied, and that the issue of actual authority was governed by Chinese law. In Dicey, Morris and Collins on the Conflict of Laws, 15th Edition, at para 16-059, the authors said that not all aspects of applicable law were necessarily questions of contract law, amenable to selection by the parties, even in international arbitration. Examples were given of an arbitrator having to determine the law applicable to the constitution and management of a corporation, the appropriate period of limitation, the right to or rate of interest and the effect of assignment. In each case, the authors considered that section 46(3) required the arbitrator to consider which choice of law rules were applicable to the issue presented. Y Ltd had also argued that, were the situation otherwise, there would be no need for the words in subsection 46(3) “if or to the extent that”. A question such as actual authority could not be a matter of contract and thus could not be amenable to any choice by the parties.

The tribunal accepted Y Ltd's arguments, although not without some hesitation. In the tribunal's view the question of actual authority fell to be determined in accordance with Chinese law.

In case the tribunal's conclusion on actual authority was wrong, it went on to consider the issue of ostensible authority. It was common ground that questions of ostensible authority were subject to English law, and that there must have been a representation made by someone with actual authority in relation to the transaction that an agent had

authority to enter into the relevant alleged contract, and that the owners were induced by such representation to enter into the contract.

Y Ltd contended that the owners did not come close to satisfying those requirements because there had been no direct contact between them and Y Ltd. No representation had been made. Moreover, there was no holding out by Y Ltd. Alternatively, if there had been a holding out of Mr B as office manager of the Administration Office, Y Ltd did not make any representation to the owners that Mr B had any authority to affix the chop to any document, let alone the LOU.

The experts were agreed that a chop, as a matter of Chinese law, was important; it was the seal of the company and, therefore, normally represented its approval. By Chinese law and practice, a document bearing the company's chop was held out to the world, including any third party to whom it might pass, as having been ostensibly issued with the company's approval. Y Ltd had only one chop and it was kept in the Administration Office. Access to the chop was only with the permission of the official chop custodian, Mr B. He was the special person required by section 2.2 of Y Ltd's Management and Utilisation Rules for the Official Seal. Y Ltd from time to time gave guarantees for the liabilities of third parties, principally for those of companies within the Group. Further, Y Ltd had conceded that the world at large knew who held the chop, ie it was in effect a matter of public record so that third parties knew whom to approach to get a document chopped. The tribunal was accordingly satisfied that Y Ltd had made a relevant representation. It had told the world that it had to approach Mr B as the official custodian, and thereby represented that he had authority.

In the tribunal's view Mr B had the general authority on behalf of Y Ltd of the type discussed in *The Starsin* [2000] 1 Lloyd's Rep 85. If Y Ltd had been concerned about authority and had wished the world to know that there was a limit to the authority of Mr B in the use of the chop, then appropriate warnings could and should have been posted in the Administration Office or otherwise made public. There were no such warnings. Mr B had said that third parties were permitted to present documents to him and he would affix the chop, sometimes without production of either a resolution or an approval note for what he

considered to be less important documents. He admitted that he exercised an element of discretion not covered by the formal rules relating to the use of the chop, and that that had been the accepted practice within the company. The tribunal could not believe that the senior management of the company were not aware of that practice. They simply accepted it.

A party acting in good faith was entitled to assume that all relevant procedures of Y Ltd were complied with before the chop was affixed (see *Royal British Bank v Turquand* (1856) 6 E & B 327). This was not a situation where it was "possible" that authority had been conferred (cf para 8-035 of *Bowstead and Reynolds on Agency*). It was highly probable. At least two directors, if not three, knew of the charterparty and its requirement for a LOU. The situation was on all fours with *Northside Developments Pty Ltd v Registrar General* (1990) 170 CLR 146 where Dawson J said, at page 198, that the indoor management rule, ie the internal rules of a company:

"... cannot be used to create authority where none otherwise exists; it merely entitles an outsider, in the absence of anything putting him on enquiry, to presume regularity in the internal affairs of the company when confronted by a person apparently acting within the authority of the company ..."

and later at page 202:

"... if a person has apparent authority to enter into a transaction and pursuant to that authority affixes the company's seal to a document, the indoor management rule may allow an outsider dealing with that person to presume that the seal is affixed in accordance with the requirements of the articles, that being a matter of internal regulation."

Mr B had apparent authority from Y Ltd as the official custodian. The alleged limit of his authority was not known to third parties or brought to their attention at the material time. Accordingly, as between the company and an innocent third party, it was the company which bore the risk of an alleged misapplication of the chop.

On the facts, the owners had been induced by Y Ltd's representation to enter into the contract (*Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB

480 considered).

Accordingly, the fact that the LOU was marked with the chop was sufficient as a matter of English law for it to have been ostensibly authorised by Y Ltd.

Even if that was wrong, the LOU was marked with the chop by the officer of Y Ltd who was authorised to use it, Mr B, and Y Ltd had held him out to the world as having that authority. That was sufficient as a matter of English law for it to have been ostensibly authorised by Y Ltd.

Moreover, Y Ltd had put its agent Mr B in the position of seal custodian, a position which normally carried with it a certain authority. B thereby had authority until it was withdrawn (see *Bowstead and Reynolds on Agency* at paras 3.005 and 3.024 to 3.026). The LOU was, therefore, issued with the implied actual authority of Y Ltd.

The LOU was an "external guarantee" under Chinese law within the meaning of the definitions in article 2 of the Administrative Measures for the Provision of Guarantee to Foreign Parties and article 4 of the Rules for Implementing the Measures on the Administration of External Guarantees. Accordingly, SAFE approval/registration was required.

The Chinese Contract Law provided that a contract was invalid if "mandatory provisions of laws and administrative regulations are violated". The provisions requiring an external guarantee to be registered with SAFE were administrative rules only. Whilst they provided that a guarantee that had not been approved by SAFE should be "null and void" or "invalid", those provisions did not mean that such a guarantee was unlawful or that performance of it was unlawful. In fact, Chinese law provided for liability in respect of a guarantee which had been issued in breach of the rules. And, as the owners had pointed out, if a non-approved or non-registered guarantee was to be considered as unlawful, any company giving such a guarantee could simply avoid its obligations by failing to seek approval, or if it had approval simply by failing to register the guarantee in question. That could not be right.

In the tribunal's view, Y Ltd had a liability based on the LOU and that liability was enforceable in China. Article 7 of the Interpretation of Guarantee Law of PRC by the Supreme People's Court expressly provided:

“The guarantor and debtor shall assume joint compensation liability for the creditor’s loss on the condition that the principal contract is valid while the security contract is invalid, and the creditor is not at fault. If the creditor and the guarantor are both at fault, the guarantor’s portion of civil liability shall not exceed half of the debtor’s unpayable portion of debt.”

That view was reinforced by the Notice of State Administration of Foreign Exchange on Transmission and Execution of Judicial Interpretation of the Supreme People’s Court on Some Issues Regarding the Application of Guarantee Law of the PRC, which provided for the ways in which a guarantor of an invalid overseas guarantee contract should perform it following a judgment or arbitration award, or agreement. The tribunal could not accept that the Chinese Supreme Court would expressly authorise ways for guarantors to perform guarantees that had not been registered if such performance would be unlawful.

The same point had arisen before Teare J in *The Vine* [2011] 1 Lloyd’s Rep 301. Although Teare J was making findings of fact (in relation to Chinese law) which were not binding, the tribunal respectfully agreed with him when he said, at para 179:

“In China, the fact that an overseas guarantee is issued without the authorisation of SAFE does not result in the unenforceability of the civil liability otherwise arising from the guarantee ... The liability may not in a strict sense be ‘classified as guaranteed liability in nature’ ... but it appears to be a liability which is, in a real sense, ‘based on the guarantee contract’ ...”

Y Ltd had contended that performance of the LOU would violate Chinese law, in particular if it was necessary to purchase foreign exchange in order to satisfy any liability. However, it did not follow that if the Chinese courts enforced the present award, Y Ltd would necessarily be obliged to purchase foreign exchange in order to satisfy their liability. The tribunal noted that the owners were willing to and did accept payments for hire in Chinese currency, notwithstanding Y Ltd’s obligation under the LOU to make payment in US dollars.

The tribunal also concluded that a London arbitration award enforcing the LOU, even though the latter was not registered with SAFE, would be enforceable in China.

There were two Supreme Court responses (to other courts) on that matter. The first was the Reply of Supreme People’s Court Concerning Applications Filed by ED&F Man (Hong Kong) Co Ltd for Recognition and Enforcement of the Arbitration Award Made by London Sugar Association. That concerned a futures contract which would be invalid under Chinese law, but the court nonetheless said that enforcement should be allowed notwithstanding the New York Convention public policy exception, on the basis that “violation of mandatory provisions of Chinese laws does not surely constitute violation of public policy”.

The same phrase, “does not surely constitute violation of Chinese public policy” appeared in the Reply of the Supreme Court to Haikou Intermediate People’s Court Concerning Refusal to Recognise and Enforce the Arbitration Award Made by the Arbitration Institute of the Stockholm Chamber of Commerce. There, a state-owned corporation had assumed liability for the debt of another company without SAFE approval. The Supreme Court held that whilst such behaviour violated Chinese laws and regulations and its foreign exchange administration policy, that did not constitute a violation of Chinese public policy, and that recognition and enforcement of the award should not be refused on such a basis.

The tribunal was therefore satisfied that Chinese courts would not decline to enforce its award.

The next issue related to the consequences of the Chinese law position in English law. Y Ltd had referred to the Rome I Regulation, in particular to articles 3(3) and/or 9(3). Article 3(3) provided:

“Where all other elements relevant to the situation at the time of the choice [of applicable law] are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.”

Y Ltd had argued that “all other elements relevant to the situation” were located in China, and Chinese law was therefore applicable notwithstanding the choice of English law in the LOU. That argument would be rejected because “all the other elements relevant” were not connected with China alone. For one thing, the obligations under

the charter were governed by English law and, like Teare J in *The Vine*, the tribunal regarded that as highly significant and enough to remove the case from the scope of article 3(3) of the Rome I Regulation.

Moreover, the fact that the owning company was registered in Hong Kong also took the matter outside the scope of article 3(3). Having regard to the wording of article 3(3) of the Rome I Regulation, as well as recital (6) to the Regulation, the tribunal considered that Hong Kong was not, for those purposes, to be regarded as being the same “country” as mainland PRC. As the owners submitted, it was not possible to speak of the “rules of law” of the PRC as encompassing the rules of law of Hong Kong.

A third factor taking the case outside article 3(3) was the fact that the parties chose English arbitration rather than Chinese Court proceedings.

As regards article 9(3), which provided:

“Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.”

the owners said that there was a very short answer, namely that “the obligations arising out of the contract” had to be performed in Hong Kong, not China, and accordingly that article was irrelevant. The LOU guaranteed performance of the charter, and that provided that payment of hire was to be made to the owners’ bank account in Hong Kong (which had its own legal system and laws). The place of performance was, therefore, strictly speaking, not China, and Chinese law was accordingly irrelevant under article 9(3). The fact that, in practice, the owners permitted hire payments to be made in China was neither here nor there. There was no variation to the charter obligations, so the place of performance in relation to the payment of hire remained Hong Kong.

Accordingly, the owners’ claim succeeded in full in the agreed amount of US\$4,604,751.62. ■■

Whether Hague Rules or Hague-Visby Rules should apply

Yemgas FZCO and Others v Superior Pescadores SA (The “Superior Pescadores”) – Court of Appeal (Longmore, Tomlinson and McCombe LJJ) [2016] EWCA Civ 101 – 24 February 2016

Carriage of goods by sea – Package limitation – Hague-Visby Rules compulsorily applicable on basis that country of shipment was a Hague-Visby state – Clause paramount in bills of lading referring to “Hague Rules 1924 as enacted in the country of shipment” – Whether reference to Hague Rules or Hague-Visby Rules

The claimant cargo owners made claims against the defendant shipowners in respect of damage to the cargo while the vessel *Superior Pescadores* was crossing the Bay of Biscay. The cargo had been loaded at Antwerp, Belgium for carriage to Yemen.

The relevant bills of lading contained a clause paramount as follows:

“The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924 as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.”

The parties agreed that the claim would be subject to English law and jurisdiction. The English Carriage of Goods by Sea Act 1971 (the 1971 Act) rendered the Hague-Visby Rules applicable as a matter of statute law when the carriage was from a port in a contracting state, which Belgium was.

The shipowners paid the cargo owners the amount of the Hague-Visby package limit,

equivalent to just over US\$400,000. However, the cargo owners said that the clause paramount constituted a contractual incorporation of the (old) Hague Rules, and argued that, to the extent that the (old) Hague Rules provided for higher limits than the Hague-Visby Rules, the cargo owners were entitled to those higher sums.

Males J held that authority compelled the conclusion that the phrase in the clause paramount “*the Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924 as enacted in the country of shipment ...*” referred to the (old) Hague Rules, and not the Hague-Visby Rules. However, it did not operate as an agreement for a higher limit pursuant to article IV rule 5(g) of the Hague-Visby Rules, and the cargo owners were therefore confined to recover damages limited by reference to article IV rule 5(a) of the Hague-Visby Rules – see (2014) 897 LMLN 1.

The cargo owners appealed to the Court of Appeal.

Held, that on any ordinary and sensible view of English law, the Hague Rules “as enacted” in England were the Hague Rules as enacted by the schedule to the 1971 Act, a schedule which in its title referred to the

Hague Rules “as amended”. The position in Belgium had to be taken to be the same. The authorities did not compel a different conclusion (*The Agios Lazaros* [1976] 2 Lloyd’s Rep 47, *The Marinor* [1996] 1 Lloyd’s Rep 301, *The Bukhta Russkaya* [1997] 2 Lloyd’s Rep 744 and *The Seijin* 124 F.3d 132 (1997) considered; approach of Tomlinson J in *The Happy Ranger* [2001] 2 Lloyd’s Rep 530 disapproved).

Accordingly, any case, in which a bill of lading was issued in 2008 incorporating the Hague Rules as enacted in the country of shipment and in which the country of shipment had (as in the present case) enacted the Hague-Visby Rules, should be regarded as a case which was subject to the Hague-Visby Rules rather than the (old) Hague Rules.

The appeal would be dismissed.

Robert Thomas QC (Clyde & Co LLP) for the cargo owners; David Goldstone QC and Ben Gardner (Davies Johnson) for the shipowners. ■■

Editor’s Note: The above is a summary of a London judgement which appeared in Lloyd’s Maritime Law Newsletter No. 946 of 3 March 2016, and which is reproduced by kind permission of the publishers, Informa Law.

Book Review

Scrutton's legacy lives on

Sir Thomas Edward Scrutton (1856-1935) was described as “the greatest English speaking commercial judge of a century”. He was to become celebrated as the ultimate arbiter in shipping disputes, a global expert in copy-right law and as the author of numerous books of legal and commercial scholarship. But his famous career was still well before him, when, in 1886 and at the age of only 30, he published *Scrutton on Charterparties and Bills of Lading*. His book has just appeared in its 23rd edition, 130 years after it first was published.

Clearly Sir Thomas Scutton (TES) had made a substantial mark on the maritime commercial world with this volume, which has so effectively stood the test of time. Under his authorship, and that of FD MacKinnon, it ran to eleven editions and during his lifetime he would have seen this significant publication reach its 14th edition.

The 23rd edition of *Scrutton on Charterparties and Bills of Lading*, has recently been published, edited by Bernard Eder, Howard Bennett, Stephen Berry, David Foxton and Christopher Smith, the same team which produced the 22nd edition in 2011.

It is fascinating to reflect upon the changes that have taken place in commercial shipping in the intervening years between the first volume and that of the present. Then, more than half the world fleet still depended upon the power of the wind. Communications between the master, owner and cargo owner were basic – the telegraph or mail – if the ship was in a well-provisioned port. And then nothing at all when the ship was far from land and at the mercy of the elements – in the days before weather forecasting, radio or modern navigation techniques.

Navigational precision depended upon dead reckoning, celestial skills and seamanship, with “lead, log and look-out” – the recommended tools.

Despite developments the advice is still valid

There remains a certain timelessness about the causes of shipping disputes – even in the 21st century, with instant communication, the “science” of logistics and sophisticated technology in the operation and management of ships.

There are still arguments about:

- demurrage and the arrival of a ship
- disputes about the legitimacy of a deviation
- differences of opinion surrounding bills of lading clauses and
- endless questions about liability.

Indeed, in our precise and carefully documented world it is arguable that there are many more causes available upon which the law must be invoked. TES, looking down at the shipping world he so carefully documented would surely be pleased that the scope of his writing shows no sign of ending.

The book begins with comprehensive tables of cases and statutes, and the senior editor notes that the early chapters have been substantially “reworked and updated”. But readers can be comforted that the style of the original author, which by now amounts to a tradition, has been continued.

“... this 23rd edition will remain an important sourcebook and will provide valuable assistance to practitioners, arbitrators and even judges in the resolution of shipping disputes.”

In his introduction, the senior editor also notes that the chapter concerned with the Carriage of Goods by Sea Act 1971, has been moved from the back of the book to become chapter 14. This might be thought cosmetic, but the change has enabled the editors to avoid much of the duplication needed in earlier editions on the loading of the cargo, the carrying voyage and its discharge. There remains a pleasing logic to the layout of the book, alongside this change.

While the number of cases reaching the courts on appeal from arbitrations might have decreased as a result of the Arbitration Act 1996, “there continues to be a steady stream of case law which has necessitated some important changes to the text”. It might be expected that this 23rd edition will remain an important sourcebook and will provide valuable assistance to practitioners, arbitrators and even judges in the resolution of shipping disputes.

Scrutton on Charterparties and Bills of Lading by Bernard Eder, Howard Bennett, Stephen Berry, David Foxton and Christopher Smith ISBN 978 0 414 05118 8 is published by Sweet & Maxwell, London www.sweetandmaxwell.co.uk. ■■

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