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## Maritime Law Review 2017

Understand the most important maritime law developments of 2017

Written by Dr Johanna Hjalmarsson, this article summarises and explains the essential developments in maritime law, including the law of contracts of carriage, marine insurance, ship sale and the sale of goods, in 2017.

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## IN BRIEF

### Piracy check

Signatory states to an agreement aimed at repressing piracy, armed robbery and illicit maritime activity in the western Indian Ocean and the Gulf of Aden have agreed that building response capability and information sharing are vital steps towards achieving a more safe and secure maritime environment. Information sharing could include data related to maritime crimes, best practices, legal frameworks, training programmes and national initiatives that will lead to enhanced maritime domain awareness – the effective understanding of what happens at sea and effective maritime security. The participant states, at a high-level workshop convened by the IMO in May 2018, agreed that piracy off the coast of Somalia is contained, but continues to be a threat.

### Seafarers' rights

The International Transport Workers' Federation has welcomed the positive outcome of the third meeting of the Special Tripartite Committee of the International Labour Organization in Geneva, which agreed on a new amendment to the Maritime Labour Convention (MLC) 2006 and which will now be submitted to the next session of the International Labour Conference for adoption. The amendment, when it enters into force, will address a potential contractual gap for those seafarers who unfortunately fall victim and are held captive on or off a ship as a result of an act of piracy or armed robbery against ships. The seafarers' wages and other contractual entitlements will continue to be paid during the entire period of captivity.

### Tema opening

Hapag-Lloyd has celebrated the official opening of its new office in Tema, a port city in Ghana. Beginning immediately, Hapag-Lloyd will manage most of its operational activities in West Africa from this location. Hapag-Lloyd has massively expanded its presence in Africa during the last two years and established a fast connection from West Africa to Europe via two services: the West Africa Express and the Mediterranean West Africa Express.

## US withdraws from JCPOA agreement with Iran, reimposing sanctions

The decision by US President Trump to withdraw the US from participation in the JCPOA (Joint Comprehensive Plan of Action) agreed between Iran, the EU, and the P5+1 (the five permanent members of the United Nations Security Council – China, France, Russia, UK, US – plus Germany), and to re-impose US nuclear-related sanctions, is expected to have major implications for the maritime sector.

Nigel Carden, deputy chairman for the UK Club Managers Thomas Miller P&I, said: "The decision is expected to have significant implications for maritime trade with Iran and the insurance of such trade. However, a full assessment of the likely impact of the decision will only be possible following receipt of clarification of the position of the remaining JCPOA partners, who have recently reaffirmed their support for the JCPOA, together with further clarification from the US Treasury's Office of Foreign Assets Control in relation to the management of the 'wind-down' periods envisaged under the decision."

An FAQ document, published by OFAC, indicates that following a 180-day "wind-down" period running up to 4 November 2018, sanctions will be restored (including secondary sanctions directed against non-US persons) in relation to specified activities and entities in relation to which relief was granted under the JCPOA. It should be noted that this includes in para 1.3:

- "(i) Sanctions on Iran's ports operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines [and] South Shipping Line Iran ...
- (ii) Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Co, Naftiran Intertrade Co, and National Iranian Tanker Co, including the purchase of petroleum, petroleum products, or petrochemical products from Iran; ...
- (v) Sanctions on the provision of underwriting services, insurance, or reinsurance."

Paragraph 4.4 provides that that General Licence H, which authorises US-owned or controlled foreign entities to engage in certain activities involving Iran, will be revoked as soon as is feasible, and that activities already authorised by Licence H, including provision of insurance and re-insurance, must be wound down by 4 November 2018.

"The International Group Clubs will continue to monitor developments and further guidance will be provided when there is greater clarity. In the meantime, however, members should take care before entering into any new Iran related fixture to ensure that they only do so with up to date legal advice on sanctions compliance." **MRI**

## Architect's exposure limited after survey vessel capsizes claim

In a recent dispute, the International Transport Intermediaries Club helped a naval architect to successfully reduce the level of a claim by a shipbuilder for damages and loss of profits following the sinking of a hydrographic survey vessel which was deemed to be unstable. The naval architect was appointed by the builder to approve the vessel's design and stability in accordance with prescribed standards. The naval architect surveyed the vessel, conducted a stability test, and issued the necessary certificates of compliance, confirming that the vessel conformed to the relevant standards.

The vessel was then put through sea trials during which it capsized, resulting in significant damage. The buyer rejected the vessel and ended discussions about the possible purchase of a number of other vessels from the same builder. Following the capsizing, the buyer and the relevant maritime safety authority commissioned separate reports from two other naval architects, who both deemed that the vessel did not meet the required standards. The builder brought a claim against the naval architect for approximately US\$2 million, representing direct losses allegedly suffered as a result of the incident and a large loss of profits claim in respect of the buyer's decision not to have further vessels built.

After proceedings were issued, the parties agreed to conduct a repeat of the stability test, which showed the vessel to be unstable and confirmed that compliance certificates should not have been issued. After negotiation, the claim was ultimately settled for \$250,000. This reduced settlement was achieved because the builder was unable to provide evidence that further build contracts would have been placed. **MRI**

## Pollution rules one step closer

**T**wo ratifications to a key compensation treaty covering the transport of hazardous and noxious substances (HNS) by ship mean that the treaty is now a step closer to entering into force.

Canada and Turkey have deposited their instruments of ratification to the 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (2010 HNS Convention).

When in force, the treaty will provide a regime of liability and compensation for damage caused by HNS cargoes transported by sea, including oil and chemicals, and covers not only pollution damage, but also the risks of fire and explosion, including loss of life or personal injury as well as loss of or damage to property. The HNS Convention establishes the principle that the “polluter pays”, by ensuring that the shipping and HNS industries provide compensation to those who have suffered loss or damage resulting from an HNS incident. An HNS Fund will be established, to pay compensation once a shipowner’s liability is exhausted. This Fund will be financed through contributions paid post incident by receivers of HNS cargoes.

Both Canada and Turkey provided, as required by the treaty, data on the total quantities of liable contributing cargo. Turkey reported more than 25.4 million tonnes of cargo received.

Entry into force of the treaty requires accession by at least 12 states, meeting certain criteria in relation to tonnage, and reporting annually the quantity of HNS cargo received in a state. The treaty requires a total quantity of at least 40 million tonnes of cargo contributing to the general account to have been received during the preceding calendar year.

The treaty has now been ratified by three states: Canada, Norway and Turkey. The total quantity of contributing cargo has reached 28.7 million tonnes, or nearly 72 per cent of that required for entry into force. **MRI**

## New bunker terms from BIMCO

**B**IMCO’s Documentary Committee has approved a new set of standard bunker terms, developed by a cross-industry group. The BIMCO Bunker Terms 2018 improve on the previous edition with a maximum limit of the parties’ liabilities – a key change that will lead to wider adoption of the contract.

Francis Sarre, chair of the BIMCO Documentary Committee, said: “I think it is a positive step for the industry that representatives for the bunker traders and shipowners have agreed on a standard set of terms, which both parties consider fair and balanced.”

The trader representatives who helped draft the contract together account for 25 per cent of the total bunker volume sold globally, which BIMCO sees as a very strong sign of support for the final result. The BIMCO Bunker Terms 2018 also have the support of the International Bunker Industry Association. Sarre hoped that the changes to the terms and the broad support will lead to a wide adoption of the standard terms across the industry, which will improve and speed up bunker transactions and reduce disputes.

He added: “We all need to improve efficiency and cut costs. With a widely used standard contract all parties involved should save time on drafting contracts and get greater clarity on the contractual obligations and liabilities in the contract. This will hopefully bring more transparency to the bunker industry.”

The BIMCO Bunker Terms 2018 include a default limit of the invoice value or US\$500,000, whichever is higher. The \$500,000 is a default minimum figure that the parties can increase if appropriate.

The BIMCO Documentary Committee consists of more than 60 people from across the shipping industry, including: shipowners, ship operators, representatives from P&I Clubs and national shipowner and shipbroker associations. The committee also has several observers, including the International Group of P&I Clubs, the International Chamber of Shipping, INTERTANKO, FONASBA and the Maritime Law Association of the United States. **MRI**

## IN BRIEF

### Escrow service launch

The Baltic Exchange will be launching an Escrow Service for its members to hold deposits for ship-sale transactions. The paid-for service will allow Baltic Exchange members to take advantage of the Exchange’s trusted position in the marketplace when undertaking the sale or purchase of a vessel. The service is likely to be extended to payment-related disputes. The Escrow Service will be run by the Baltic Exchange’s Asia office in Singapore and will be subject to the Singapore Exchange’s detailed compliance and money laundering procedures. OCBC Bank will be providing the joint deposit account.

### Geospatial data

The loss prevention team at UK P&I Club has been working with Geollect, the UK and US-based geospatial intelligence company, to provide its members with cutting edge data feeds with geospatial analysis, providing essential information on ports and locations across the globe. Geollect creates proprietary, dynamic algorithms within user-friendly software to deliver a new form of timely and actionable intelligence. The data is collated from satellite imagery, social media updates, intelligence data, geospatial data and the Club’s own information to build up a complete picture of worldwide maritime incidents and alerts. An interactive map is created for UK P&I members and allows users to zoom into ports and locations, providing both map and satellite views.

### TMG flies flag

Palau International Ship Registry (PISR) has expanded its global reach by linking up with a maritime consultancy. PISR has appointed The Maritime Group (International) (TMG) as its deputy registrar for the Palau Flag (London) to meet growing demand from shipowners, operators and managers. Fast-growing PISR will provide registration and maritime services through TMG for the multi-billion pound shipping industry operating out of London. TMG is a maritime services company and consultancy with its head office in Seattle and regional offices in London, Singapore and Honolulu.



## IN BRIEF

### New Code

The Baltic Exchange will be introducing a modernised code of conduct for shipowners, charterers and shipbrokers using the physical shipping and freight derivatives markets. Following a detailed review led by law firm Norton Rose Fulbright with oversight by the Baltic Exchange Council and the Baltic Membership Council, the New Baltic Code has been drafted to bring together a set of principles and business practices which will be applicable to not only Baltic Exchange members, but also the wider market. There is a greater focus on fairness and competition, anti-bribery and corruption and benchmarking-related issues than before. It will be binding on members of the Baltic Exchange and members will be expected to promote compliance among market participants.

### Smart shipping

INTENS, a VTT-coordinated Finnish research-industry collaborative consortium, has jointly committed more than €13 million in the next three years, with the ardent funding support of €5.6 million from Business Finland, to proactively advancing, promoting and digitalising Finnish marine interests, with a particular focus on energy efficiency improvement and emissions reduction of ship energy systems. Finland has been one of the leading countries in the digitalisation and automation of the marine industry.

### Health and safety warning

The International Transport Workers' Federation (ITF) has urged Hutchison Ports to address a pattern of serious health and safety incidents across their global operations, as a dockworker remains in a critical condition following a workplace collision at the company's Port Botany terminal. Paddy Crumlin, ITF president and MUA national secretary, said: "This is the latest case in a pattern of serious health and safety incidents that have occurred recently in Hutchison terminals." In the past 18 months in the Asia Pacific region alone, there have been four fatal incidents at Hutchison's JICT terminal in Jakarta.

## Hurricane patterns better understood

A recent study by researchers at the US National Oceanic and Atmospheric Administration (NOAA) and the Cooperative Institute for Marine and Atmospheric Studies (CIMAS) based at the University of Miami (UM) Rosenstiel School of Marine and Atmospheric Science modelled a 2014 hurricane to find out why some storms rapidly intensify while others do not.

To understand what fuels the rapid intensification of hurricanes, the research team used the Hurricane Weather Research and Forecast (HWRF) model, a predictive hurricane model that lets them use different measurements to run diverse storm scenarios, known as an ensemble, to get an idea of the different forecasts that are possible from a particular storm. In this study, forecasts from an HWRF ensemble of Hurricane Edouard in 2014 were analysed to understand the differences between hurricanes that intensify rapidly and those that do not, to better predict the storm's ultimate intensity when it reaches landfall.

Rapid intensification is defined as an increase in the maximum sustained winds of at least 35 miles per hour (55 km/h) in a 24-hour period.

The study describes a power struggle between thunderstorm activity and environmental flow in the upper levels of the atmosphere. The study showed when persistent thunderstorms in a specific region of the storm overcome the winds in the upper levels and wrap around the storm centre, the storm rapidly intensifies. In storms that don't intensify, the thunderstorms continued to develop but never overcame the prevailing flow. The winner of this battle between the thunderstorms and the upper-level environmental flow can help predict whether a storm will rapidly intensify or not.

"This study could help hurricane forecasting by looking at the hurricane environment in a different way to improve forecasts," said Hua Leighton, a researcher at NOAA's Atlantic Oceanographic and Meteorological Laboratory and lead author of the study. **MRI**

## Industry must limit plastic pollution

The industry must limit plastic pollution from grey water waste streams with the same regulatory control it has in place for sewage, said ACO Marine. It explained that grey water, that is to say domestic waste other than sewage, is largely unregulated. Yet it can form the larger percentage of water discharged overboard by ships. On the other hand, sewage, which is arguably less environmentally harmful, is subject to very stringent regulatory control.

Grey water is defined as waste water from domestic or commercial sources that has not come into contact with toilet waste – typical sources of grey water are bathrooms, kitchens and laundry operations. Black water – sewage – is tightly regulated, by the International Maritime Organization and other bodies. But there are no international regulations for grey water discharge, and this is seen by many as a significant omission from the MARPOL Convention.

There is a point of view that grey water is potentially more environmentally harmful than sewage. Black water, after all, is basically organic. But grey water can contain oils, fats, detergents, chemicals and greases, not to mention plastics.

Mark Beavis, managing director of ACO Marine, said: "Scientific research has shown that even supposedly clean water contains significant amounts of microplastics and nanoplastics. Much of this results from the breakdown of larger plastic items. A lot has its origin in cleaning liquids and pastes, facial scrubs, toothpaste, shampoos and similar products. This is a relatively new phenomenon, but there is a move to ban the use of plastics in such products. Several countries, including the UK, have already prohibited the manufacture of toiletries and cleaning products containing plastic particles."

Beavis explained that the existing regulation, MEPC 227(64), although entering into force as recently as January 2016, effectively deals only with sewage effluent standards and treatment, and is itself based on outdated 1970s legislation. "Even the revisions over the years have failed to address the issue of grey water," he says. "We need to get up to date. The only way we can limit these harmful discharges from ships is by legislation, and this can only be introduced by the IMO with the support of manufacturers." **MRI**

## BIMCO

### HEAD OF MARITIME SECURITY



BIMCO has appointed Jakob Larsen as head of maritime security. He has broad maritime experience from both the private and public sector – and always with a large security component. He will replace Phil Tinsley, who will be leaving BIMCO shortly.

Jakob's career began in the Royal Danish Navy, where he became captain of an arctic patrol vessel and later Staff Operations Officer in NATO's Standing Naval Force Atlantic. His final position was as Commander in the Danish Defence Staff and at the Danish Ministry of Defence, where he was involved in the political side of global security.

His first civilian job was at BIMCO as maritime adviser and after three successful years at BIMCO, he joined Nordic Tankers, where he rose quickly to become director SQE, safety culture and security.

The position at Nordic Tankers led to Maersk Line, where he has held positions within global security (including as company security officer), marine quality, standardisation and crisis management.

## The Standard Club

### HEAD OF CLAIMS

The Standard Syndicate (Syndicate 1884), which focuses on providing a broad range of marine and non-marine insurance covers to the marine and marine energy industry sectors, has appointed Paul Crockford to the role of head of claims.

Paul brings more than 25 years' London market claims experience. He has handled a diverse range of claims across multiple classes including marine, energy, property D&F, political risk, terrorism, fine art and specie, aviation and space.

Paul is currently chair of the LMA marine claims group and he also sits on the joint marine claims committee, the LMA head of sector group and the LMA strategic claims group.

He joins from Atrium Underwriters where he was employed as claims manager and had responsibility for handling a wide range of complex and high-value claims. Prior to this he worked at Aegis London, Maritime/CNA Insurance and Commercial Union Assurance Company in senior claims adjuster roles.

## IMarEST

### GOVERNMENT ROLE



David Loosley, chief executive of the Institute of Marine Engineering, Science and Technology, has been appointed to a maritime panel by UK Transport Secretary, Chris Grayling.

Working in partnership with industry, the government aims to challenge the sector to think about what it will look like in 2050. This vision will reinforce the development of Maritime 2050, a long-term strategy by the end of 2018 that emphasises the opportunities for the UK maritime sector. The expert panel will offer advice and look strategically at the issues that will be of critical importance to the maritime industry, and all the industries it sustains, up to 2050.

David has also been shortlisted for this year's memcom Louis Armstrong CEO Leadership Award.

## KVH

### NEW VICE PRESIDENT



KVH Industries has announced that Mark Guthrie has been named KVH's vice president for the Asia-Pacific region. Mark will oversee all KVH activities in this area.

Mark joined KVH in 2013, and has held a variety of roles, most recently serving as vice president for global channel management. Mark's wide experience in the satellite communications and telecom industries includes roles held prior to joining KVH – at SES, BT, Europe Star, and Verestar. He will work out of KVH's Asia-Pacific headquarters, located in Singapore. KVH also has a presence in Tokyo and in Hong Kong.

## Mission to Seafarers

### AWARD WINNERS

Seafarer welfare charity, The Mission to Seafarers, has named the winners of its inaugural Seafarers Awards at a dinner in Singapore. The winners, chosen by judges Captain Kuba Szymanski – secretary general of InterManager, Marlon Roño – president and CEO of Magsaysay People Resources Corporation, Esben Poulsson – chairman of The International Chamber of Shipping, and The Revd Andrew Wright – secretary general

of The Mission to Seafarers, represent seafarers and operational staff in the maritime industry who made a significant contribution to the welfare of others.

Servet Akturk, a pumpman with Zenith Maritime hailing from Turkey, received an award for his significant contribution to the welfare of his fellow crew aboard the tanker *Good Lady*. A talented woodworker, Akturk has contributed greatly to the social life onboard his vessel by making a pinball table for the crew and new equipment for the onboard gym.

The next award went to Captain Jonathan Adriatico whose approachable and considerate leadership has supported his crew directly and positioned him as a true role model to his officers and others within his company, Via Marine Philippines.

Captain Rajesh Unni was presented with the award for the shore-based individual who had significantly contributed to seafarers' welfare. Captain Unni who is the founder and CEO of Synergy Group, has had a tremendous welfare impact both on specific individuals and on the wider seafaring community.

The company award was given to an organisation that, in its own words "understands that taking care of seafarers means development of the company and assurance of its future". MTM Ship Management was recognised for the big and small contributions it makes to its seafarers' wellbeing.

Finally, the secretary general's special award for outstanding service to seafarers went to Peter Cottrell. Serving seafarers in Africa for more than 20 years, Cottrell has worked to create the best possible environment for seafarers, often at significant personal expense.

## The Nautical Institute

### EXPORT WINNER

The Nautical Institute has been named the winner of the Excellence in Export award in the 2018 annual e-Assessment Awards. The awards honour organisations that seek to innovate in the way examinations are conducted. Research shows that despite developments in the world of e-learning, the majority of exams still require exam papers to be printed, with all the logistical headaches of moving papers securely. The Nautical Institute uses technological advances in online examinations to deliver exams on computers throughout a global network of around 100 training centres.

# A landmark judgment provides clarity on the Hague-Visby Rules

**Simon Culhane** and **Sophie Grant**, of Clyde & Co LLP, review a recent case in which the UK Court of Appeal upheld an earlier judgment on the Hague-Visby Rules



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**T**he UK Court of Appeal has issued a key judgment in *AP Møller-Maersk A/S (t/a “Maersk Line”) v Kyokuyo Co Ltd (The Maersk Tangier)* [2018] EWCA Civ 778 (upholding the decision of the Commercial Court) determining for the first time under English law what constitutes a “unit” for the purposes of limitation under article IV rule 5 of the Hague Rules and the Hague-Visby Rules. The Court of Appeal also gave judgment on the important question of whether the Hague-Visby Rules can be compulsorily applicable, even when a carrier issues a sea waybill rather than a bill of lading.

## **The Maersk Tangier: the facts**

The appellant agreed to carry the respondent’s cargo of pieces of deep frozen tuna, in the appellant’s “super freezer” containers. The tuna pieces were not wrapped or individually packed before being loaded into the containers. It was common ground that the contract of carriage contained an implied term that the shippers were entitled to demand a bill of lading and although it was initially envisaged that a bill of lading would be issued, the parties subsequently agreed to the issue of sea waybills instead. The Court of Appeal was asked to consider three preliminary issues.

## **Can the Hague-Visby Rules apply when a sea waybill, rather than a bill of lading, is issued by the carrier?**

The Hague-Visby Rules only apply by force of law to contracts of carriage which are “covered by a bill of lading” (article I(b)).

The famous House of Lords decision in *J I MacWilliam Co Inc v Mediterranean Shipping Co SA (The Rafaela S)* [2005] 1 Lloyd’s Rep 347 held that a straight consigned bill of lading is a bill of lading for the purposes of the Hague-Visby Rules and the Carriage of Goods by Sea Act (COGSA) 1971, but that a sea waybill is not. There are a number of cases involving cargo which became damaged during loading and so was never shipped, in which the Hague Rules or Hague-Visby Rules were held to apply even though a bill of lading was never issued (eg *Pyrene Co Ltd v Scindia Steam Navigation Co Ltd* [1954] 1 Lloyd’s Rep 321; as approved by the Court of Appeal in *Parsons Corporation v C V Scheepvaartonderneming “Happy Ranger” (The Happy Ranger)* [2002] 2 Lloyd’s Rep 357). However, for the first time in *The Maersk Tangier*, the court was asked to decide whether the Hague-Visby Rules could apply when a sea waybill was issued instead of a bill of lading.

## **“For the first time the court was asked to decide whether the Hague-Visby Rules could apply when a sea waybill was issued instead of a bill of lading”**

The Court of Appeal, upholding the decision of Andrew Baker J ([2017] 1 Lloyd’s Rep 580), held that what is crucial is whether a bill of lading is contemplated, such that the Hague-Visby Rules apply from the inception of the contract of carriage. If so, then the Hague-Visby Rules will continue to apply even if a sea waybill



is later issued instead, unless there is a contractual variation, or some form of waiver or estoppel, by which the shipper's right to demand a bill of lading is lost.

The Court of Appeal also remarked that references to "bills of lading" in the Hague-Visby Rules should be given a purposive construction, so as to give effect to the clear intention that the Hague-Visby Rules should have force of law when the contract of carriage "expressly or by implication provides for the issue of a bill of lading or any similar document of title" (section 1(4) of COGSA 1971).

### What are the relevant units for the purposes of article IV, rule 5 of the Hague Rules and the Hague-Visby Rules?

The Court of Appeal upheld the first instance decision, confirming that there is nothing in the wording of article IV, rule 5 of the Hague Rules or the Hague-Visby Rules, which requires a cargo claimant to show that the cargo, if not containerised, could have been shipped "as is" break bulk without additional packaging.

The appellant carrier's argument on this point was an attempt to revive the now discredited "functional economics" test, once used by the US courts to place the burden on the cargo claimant to show why the container should not be treated as the "package" in cases in which the individual items inside were not "functional" or capable of shipment as they were. The US courts abandoned this test, and their approach was endorsed by Phillips LJ in the English Court of Appeal in *The River Gurara* [1998] 1 Lloyd's Rep 225.

The Court of Appeal, in *The Maersk Tangier*, followed the recent decision of the Court of Appeal in *Vinnlustodin HF v Sea Tank Shipping AS (The Aqasia)* [2018] 1 Lloyd's Rep 530 which found for the purposes of article IV, rule 5 that "a 'unit' can be regarded as synonymous with a 'piece', they are both descriptive of a physical item of cargo which is not a 'package', because, for example, it is incapable of being packaged or is not in fact packaged".

One need only consider whether individual physical items have been packaged together such that they constitute a "package" as opposed to a "unit" (*Bekol BV v Terracina Shipping Corporation (The Jamie)* 13 July 1988, unreported).

The decision confirms that the definition of "unit" in the Hague Rules and Hague-Visby Rules is the same, and the individual pieces of tuna in this case (not the containers) were "units" for the purpose of both.

### What are the relevant units as enumerated under article IV, rule 5(c) of the Hague-Visby Rules?

Until the decision of the Commercial Court, there had been no English case law on the meaning of article IV, rule 5(c) of the Hague-Visby Rules and the only guidance has been from the Full Federal Court of Australia's majority judgment in *El Greco (Australia) Pty Ltd v Mediterranean Shipping Co SA* [2004] 2 Lloyd's Rep 537. In that (much criticised) case the Australian court held that the expression "as packed" used in article IV, rule 5(c) of the Hague-Visby Rules meant that individual items "enumerated in the bill of lading" will only constitute the relevant "units" under rule 5(a) (rather than the container itself as a single unit) if it is clear from the bill of lading description how those items are actually packed in the container.

At first instance in *The Maersk Tangier* the judge disagreed with the finding in *The El Greco* and decided that article IV, rule 5(c) merely requires that the number of units in a container is correctly stated on the bill of lading. As the sea waybills correctly stated that the containers were loaded with a specific number of pieces of tuna, the waybills therefore "enumerated" the number of units for the purposes of article IV, rule 5(c).

The Court of Appeal approved this approach which is strongly supported by the French text of article IV, rule 5(c), which refers to enumeration of the number of packages or units being "included" in the container, instead of the English wording "as packed". It agreed that to impose any additional, technical, linguistic requirement to describe how the items of cargo are packed inside the container would not only give rise to uncertainty and anomalous results, but would also be unrealistic and uncommercial.

**"The decision confirms that the definition of 'unit' in the Hague Rules and Hague-Visby Rules is the same, and the individual pieces of tuna in this case (not the containers) were 'units' for the purpose of both"**

### Summary

The judgment of the Court of Appeal in *The Maersk Tangier* is a landmark decision that upholds the judgment of the Commercial Court and confirms for the first time in English law, clear authority for the following:

- The Hague-Visby Rules will apply compulsorily when the contract of carriage requires the issue of a bill of lading and/or entitles the shipper to demand the issue of a bill of lading, even if (in the absence of any variation, waiver or estoppel) a sea waybill is in fact issued.
- The definition of "unit" in the Hague Rules and Hague-Visby Rules is the same, and the large pieces of tuna in this case (not the containers) were "units" for the purpose of both.
- To qualify as a "package or unit enumerated in the bill of lading/sea waybill as packed in [a container]" (article IV, rule 5(c) of the Hague-Visby Rules), it is sufficient that the physical items of cargo are accurately stated in the bill of lading/sea waybill and there is no additional requirement that the way in which the physical items are packed (if at all) must be described in the bill of lading/sea waybill.

*Clyde & Co represented the respondents in this case. MRI*



Simon Culhane



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# Finding the key to misdeclared cargoes

**Yves Vandenberg**, of The Standard Club, argues better box booking is the key to avoiding misdeclared container cargoes

**O**ne of the biggest risks facing shipping today is dangerous cargo hiding undeclared in containers – either accidentally or otherwise. Just one rogue box can destroy thousands of others if it burns or explodes at sea. A more rigorous approach to container booking is needed if shipowners are to protect their ships, crews and reputations.

Failure to declare dangerous cargo in containers is not new. Container fires on *Recife* in 1991, *Anconagua* in 1998 and *CMA Djakarta* in 1999 were all attributed to undeclared cargoes of calcium hypochlorite, a widely used water treatment chemical. At anything above 30°C in a confined space, calcium hypochlorite can undergo an exothermic chain reaction leading to fire, explosion and toxic emissions. More recent cases include *Maersk Seoul*, *Maersk Londrina*, *Barzan*, *Al Ula*, *Hanjin Green Earth* and *Cape Moreton* in 2015 and *APL Austria* in 2017. Undeclared calcium hypochlorite is suspected in all these cases, though charcoal and expandable polystyrene beads are also common causes.

The industry has responded in various ways. These range from biennial updates of the International Maritime Organization's increasingly complex International Maritime Dangerous Goods (IMDG) Code, to an ever-wider range of cargoes being banned by liner operators. But the consequence of greater restriction is greater incentive for some manufacturers and their shippers to commit fraud to export their products. A dangerous cargo rejected for shipment will usually find its way onto a ship one way or another.

Recognising the issue, the International Group of P&I Clubs and the Cargo Incident Notification System (an initiative of 16 shipping lines) published "Guidelines for the Carriage of Calcium Hypochlorite in Containers" in 2016 (revised in 2017 and 2018). They show that when properly declared, packed and stowed, calcium hypochlorite is safe to carry in containers and need not be banned. However, while operators' booking offices continue to reject it or charge excessively for carrying it, the temptation to commit fraud remains.

## Scale of the problem

According to Victor Enzler, underwriting marine manager at XL Catlin: "While the exact percentage of containers that are misdeclared is subject to considerable debate, many experts maintain that about one-third of all containers are wrongly declared. Also, about 10 per cent of the containers in a typical voyage will hold hazardous or dangerous materials. That means one of these modern giants (of 18,000 TEU) could be carrying around 600 containers filled with hazardous or dangerous materials, and their certificates are wrong or incomplete."

More than 120 million TEU of containers are carried on ships each year and the number is growing. Even allowing for half being empty, the above percentages point to at least 2 million TEU being likely to contain undeclared dangerous cargo. Ship operators carrying containers misdeclared as harmless will not have taken any special precautions. As such, a container of calcium hypochlorite could be stowed deep in the hold where it will most likely get too hot and catch fire or explode. The results can be catastrophic, including injury or death of seafarers, extensive damage or total loss of the cargo and ship, and pollution of the environment. Ship operators therefore need to do everything possible to avoid booking containers with dangerous cargoes which have been wrongly declared as harmless – whether fraudulently or by mistake.

## Why it happens

Unfortunately, correctly declaring a container cargo for shipping is not always straightforward. For example, calcium hypochlorite cargoes come under three different IMDG classes, eight different UN numbers with different descriptions and a wide variety of nationally extended harmonised system (HS) codes.

But accidentally misdeclared dangerous cargoes are usually relatively easy to spot. It could be anything from a typing error in the UN number, HS code or proper shipping name, or simply a genuine misunderstanding on the part of the shipper. In such cases, booking staff can simply go back to the shipper, ask them to correct the declaration and resubmit or withdraw the booking.

Fraudulent misdeclarations can be much harder to identify. One of the most common frauds is to avoid using the proper shipping name for a dangerous cargo. For example, calcium hypochlorite is commonly misdeclared as "calcium chloride", "whitening powder" or "water treatment compound". Examples of other trade names encountered include "BK Powder", "bleaching powder", "bleaching agent", "optical brightener", "CCH", "disinfectant", "Hy-chlor" and "chloride of lime" or "chlorinated lime". These descriptions are false, fraudulent and provide the ship operator and crew with incorrect information. Additionally, fraudsters often name non-existent companies as the manufacturer or shipper. They have also been known to make last-minute changes on the bill of lading to legitimise the cargo documentation in the hope the subtle differences will go unnoticed.

## How to solve it

There are two obvious solutions to the problem of misdeclared cargoes – though neither is particularly practical. One is to inspect every container before loading to ensure the content matches the declared cargo. However, the complex logistics and huge costs of inspecting over 60 million TEU a year all but rule this out. The other solution is for all ship operators to agree to carry properly declared and packed dangerous cargoes in containers, for the same cost as non-regulated cargoes. Dramatically increasing capacity and switching to a flat rate would significantly reduce the incentive for manufacturers and shippers to make a fraudulent misdeclaration – though they would still have to pay for special packaging and packing.

In reality, busy ship operators who are confident of their booking procedures are unlikely to see any commercial benefit in lifting cargo bans. Furthermore, dangerous cargoes do cost more to carry – and freight rates are already at historically low levels.



Frank Goertner/Shutterstock.com

The additional IMDG documentation and checks before loading, the special handling, care and stowage on board, the increased terminal charges and the increased risk to operations are all real costs that ship operators are unlikely to absorb.

There is, however, a third way. An investigation by The Standard Club has identified that the booking process accounts for a large percentage of misdeclared dangerous cargo incidents. Improvements to the booking process can therefore significantly help identify and prevent misdeclared dangerous cargoes from being accepted for carriage.

### Guidelines for booking offices

The Standard Club has recently published guidelines for booking offices on how to spot a misdeclared dangerous cargo before it is too late. As a starting point, all booking office staff and agents need to know and trust their customers. This means doing due-diligence checks on new customers and their supply chains – particularly if the cargo is from China, where most cases of misdeclared dangerous cargoes originate.

In the case of slot charterers and freight forwarders, booking staff need to know and trust the checks these organisations use on their own customers. The commercially sensitive nature of the consortium and slot charter business usually means cargo or shipper/consignee details are confidential – which is like being asked to carry someone's locked suitcase onto an aeroplane. As such the due diligence processes of slot charterers must be regularly audited and approved.

It is also vital for ship operators to have a robust and reliable container booking process throughout their organisations to keep misdeclared containers off their ships. This includes booking deadlines, cargo documentation checks, final bill of lading cross-checks, and referral processes for suspicious bookings.

They should also consider the use of checking software such as Hapag-Lloyd's Cargo Patrol.

Finally, all booking staff and agents should be comprehensively trained in dangerous cargoes, know-your-customer procedures and the booking process to ensure that everyone is aware of what to look out for. They should also be kept up to date on the latest trends and regulations and incentivised to spot misdeclared cargoes.

The guidelines recognise that every company has a different approach to booking as well as different commercial priorities and constraints. The key is to identify and close as many loopholes as possible which could be exploited by fraudulent shippers. By ensuring all booking office staff and agents know about dangerous cargoes, know their customers and rigorously check all booking documentation, the chances of loading one of the two million misdeclared containers shipped every year will be significantly reduced.

*"Standard Safety – Better Box Booking", March 2018 is available from The Standard Club at [www.standard-club.com/media/2679007/standard-safety-better-box-booking-march-2018.pdf](http://www.standard-club.com/media/2679007/standard-safety-better-box-booking-march-2018.pdf) [MRI](#)*



Yves Vandeborn

Yves Vandeborn, director of loss prevention at The Standard Club



# Considering cyber threats in the maritime supply chain

George Devereese, of the UK P&I Club, considers the cyber threat to the maritime sector



**L**ast year a well-known name in the shipping industry fell victim to a global malware attack resulting in online cargo booking being impacted, forcing staff to use personal email accounts to respond to critical emails. As key processes relied predominantly on IT systems, personnel were forced to resort to manual processes and it took almost one week for all services to resume and for the shipping firm to regain total control of its systems.

The company has since revealed the attack caused congestion in as many as 80 ports operated by APM Terminals and suggested a cost to the company of as much as US\$300 million. Estimates suggest the global ransomware attack resulted in losses of at least \$850 million, with predictions of future attacks to be in the billions as economies increasingly rely on IT infrastructure.

This untargeted incident highlights the shipping and logistics industry's vulnerability and, perhaps more importantly, the need to adopt appropriate response protocols. This is particularly pertinent given that approximately 90 per cent of world trade is transported by sea, making the maritime sector an attractive and lucrative target to perpetrators of cyber crime.

## The threat in context

A cyber attack is the illegitimate breach by hackers to access IT systems and/or data. This can be achieved both locally via physical access and remotely by connecting to related IT networks. It is the deliberate exploitation of computer systems and networks that threaten data confidentiality, integrity and availability – three core elements of information security. In the maritime domain, a cyber attack can be the modification or destruction of any data including radio frequency (RF) domains, therefore meaning both GNSS (global navigation satellite system) and AIS (automatic identification system) jamming and spoofing are viable attack methods. Consequently, there are significant implications of a cyber attack that can feasibly impact navigational systems.

Ultimately, despite ever-evolving cyber threats, the main vulnerability of attack lies in human error. Within the shipping

and logistics sector, personnel have been notably targeted in social engineering attacks. Such incidents involve the manipulation of people into sharing confidential information or performing specific actions, including transferring payments into different accounts.

## Impact on maritime supply chain

Cyber attacks reported in the maritime and logistics sector have impacted or targeted the following:

- Company online services, including cargo or consignment tracking systems
- Email correspondence, by distributing links to malicious websites or files
- Removable media, by spreading malicious malware
- Websites, by redirecting users to fraudulent sites to encourage personnel to disclose user information
- Navigation systems (to a lesser extent).

The extent to which an attacker can breach a company operating system depends on the size of the vulnerability being exploited and the method of attack. A perpetrator may be able to affect the system's operation, gain access to commercially sensitive data and/or gain full control of systems. The motives, objectives and capabilities of the attacker will determine the effect they have on company systems and data.

## The move towards automation

The shipping and logistics industry has increasingly moved towards better integrated and automated systems. The International Maritime Organization's (IMO) e-navigation concept, first introduced in 2006 to enhance navigation safety, is one example of the demand for more integrated systems to improve efficiency and reduce risk. E-navigation essentially collects, integrates and analyses data from ships at sea and on shore using electronic systems. The main motivation behind this move has been to mitigate the rising number of marine accidents, the majority of which are caused as a direct result of human error.

With the expansion of digitalised systems, training and staff/crew awareness are crucial. In a 2016 BIMCO survey, 21 per cent of respondents from the maritime sector admitted to being victims of a cyber attack. However, the actual number of victims is likely to be higher as not all victims are likely to admit to the security breach, particularly to avoid reputational damage.

### New industry standards and guidance

On 1 June 2016 the IMO released new guidelines on cyber risk management, in response to the increased threat of cyber-related incidents reported in the maritime sector, seeking to address cyber risks under the International Safety Management (ISM) Code.

The latest cyber security guideline distributed by BIMCO also advises of cyber risk management controls to be in place alongside the existing ISM and International Ship and Port Facility Security (ISPS) Codes. Further still, the maritime and logistics sector needs to be alert to the requirements set out in the EU General Data Protection Regulation (GDPR) in force from 25 May 2018. While fundamentally concerning rights in relation to data, the same vulnerabilities in relation to cyber activity apply.

Also of relevance is the EU Directive on Security of Network and Information Systems (NIS Directive), which is aimed at enhancing and strengthening cyber security in order to minimise the impact on the provision of critical services. The NIS Directive applies to sectors and businesses that operate in critical industries.

### Call to action

The three key areas of consideration in a comprehensive security risk management plan include considerations to people, procedures and technology.

Cyber security criminals often exploit the people factor through the use of common hacking tool kits readily available in the public domain. Consequently, a mandatory awareness programme should be taken by all employees to explain the risk. It is important to establish an appropriate cyber security incident response team – either consisting of internal employees, outsourced to a third party or both. Many elements of operations are likely to be outsourced to third-party vendors but it remains the responsibility of the company to ensure sufficient due diligence has been taken to avoid a cyber incident resulting from the action or inaction of third parties. It is essential to develop an appropriate strategic approach and a formal cyber security incident response process which should include: identifying cyber security incidents; investigating the situation; taking appropriate action; and recovering systems, data and connectivity.

### Detection and identification

The first stage of the cyber incident management process following an attack should consist of the gathering of evidence. Analysis of log files and error messages should be carried out, as well as an examination of other resources such as intrusion detection systems and firewalls. The early part of an investigation consists of classifying cyber security incidents by the potential impact they may have, prioritising these incidents and assigning response to incidents to the appropriate personnel.

### Containment

The containment phase encompasses three essential steps to effectively mitigate the damage and prevent the destruction of

any evidence. Short-term containment aims to limit the incident's impact before it escalates: this can be as simple as isolating a network segment of infected workstations or switching all traffic to failover servers. System back-up involves taking a forensic image of the affected systems as they were during the incident. This image can be used as evidence if the incident is a result of a criminal act. The last step focuses on long-term containment in which the affected systems are temporarily mended, by removing accounts and/or backdoors left by attackers on affected systems and installing security patches on affected and neighbouring systems.

### Eradication and recovery

The eradication phase consists of the removal of malicious content and the full restoration of affected systems. To prevent reinfection, the phase usually involves the complete reimaging of the infected system's hard drives. This phase also involves steps taken to ensure the systems will not be compromised again by identifying where the defences failed.

The purpose of the recovery phase is to test, monitor and validate the systems that are being put back into production to ensure that they will not be reinfected by malware or compromised by other means.

**“With every process in the shipping industry that is automated and digitised, risk assessments need to be carried out to mitigate against potential threats and vulnerabilities”**

### Conclusion

As the industry embraces technology, the exposure and threat of cyber crime continues to grow. Therefore, with every process in the shipping industry that is automated and digitised, risk assessments need to be carried out to mitigate against potential new threats and vulnerabilities posed by these evolving cyber threats.

With the impending regulation around maritime cyber security, adopting maritime cyber risk management into the ISM Code, while not currently clear, is likely to rest on “reasonableness” and the notion of “duty of care”. National and regional initiatives, such as by the NIS Directive, EU GDPR and the US Coast Guard circular, in relation to ports and terminals, together with the broader supply chain, are likely to align closely with the principles adopted in the maritime environment.

As the feasibility of a more damaging attack increases, all stakeholders – in particular ports and terminals, and shipowners and operators alike – must prepare for the inevitable. **MRI**



George Devereese

George Devereese, senior loss prevention executive, UK P&I Club

# Gulf of Guinea back in the piracy headlights

**Wayne Harrison**, of Easi-Chock, outlines the latest concerns around piracy threats in the Gulf of Guinea

**T**he Gulf of Guinea continues to be an area of great concern, with a surge in armed attacks off the coast of West Africa. In a report commissioned by the International Chamber of Commerce's International Maritime Bureau (IMB), there were 66 incidents in the first quarter of this year, up from 43 for the same period in 2017, and 37 in the first quarter of 2016.

Worldwide, 100 crew members were taken hostage and 14 kidnapped from their vessels in the first quarter. A total of 39 vessels were boarded, 11 fired upon and four vessels hijacked. IMB received a further 12 reports of attempted attacks. The most telling statistic is that in the first quarter of 2018, attacks in the Gulf of Guinea accounted for more than 40 per cent of the global total. Of the 114 seafarers captured worldwide, all but one were reported in this region.

An even more alarming trend is the specific targeting of masters and chief engineers to obtain a higher value ransom through kidnap. All of the attacks reported in West-African open-ocean were reported inside the Nigerian EEZ, demonstrating how endemic the problem is in the area.

**“In the first quarter of 2018, attacks in the Gulf of Guinea accounted for more than 40 per cent of the global total. Of the 114 seafarers captured worldwide, all but one were reported in this region”**

The movement towards kidnapping over general theft comes as pirate action groups (PAGs) begin to realise the new method is less labour intensive and will invariably reap higher rewards. Locating, stealing and transporting cargo from a vessel is riskier, more expensive and more difficult than simply kidnapping a crew member for ransom. That is not to say that pirates have moved away from theft, however; they have begun to see the benefit of kidnapping.

In early 2018 two product tankers were hijacked from the port of Cotonou and two fishing vessels were hijacked off Nigeria and Ghana. This spike in incidents caused the IMB to issue a warning to vessels in the area. A spokesperson from IMB said the trend was a “cause for concern” stating the intent of the PAGs involved is to steal oil and kidnap the crew. However, the range of vessels targeted shows how indiscriminately they are focusing their attacks, whether anchored or in transit, and that crews must

remain vigilant. In almost all of the incidents, attackers have been armed and have engaged in violence against crews and armed security teams.

## The cause of the problem

The inability of the Nigerian Navy to deal with attacks quickly and effectively remains a concern, with a report from one incident claiming PAGs occupied a vessel for several hours. Time is of the essence during an attack, and the response time of naval forces is one of the strongest possible deterrents of pirates.

If pirates are left for hours before being challenged by naval forces, they have ample time to loot a vessel and take hostages, all while escaping undetected. The Shipowners Association of Nigeria has criticised the Nigerian Maritime Administration and Safety Agency for being too slow to respond to incidents on several occasions. However, still nothing is being done to counteract the problem. Unlike other areas such as the Gulf of Aden, the Arabian Sea and the Indian Ocean, the West African coast has no presence from the EU naval force EUNAVFOR.

Vessels are left to fend for themselves in the area, becoming completely reliant on their own anti-piracy security measures, which for a large number of vessels is minimal. The state takes a hands-off approach to counteracting piracy, with insufficient coastal patrols from civilian or military services. Unfortunately, the root of the problem goes back to institutional corruption, poor law enforcement and a struggling economy. Young men are all too often drawn to the lucrative lifestyle of becoming a pirate, which can offer a greater financial reward than the prospects available in their local economy.

Government officials and political leaders are a part of the problem, with many embroiled in the oil industry, having vested interests in oil siphoning and high-value looting. This is particularly apparent in Nigeria, where authorities are all adding to the issue. Piracy in the west of Africa differs on some levels to the east coast, with more sophisticated tactics used by PAGs. Attacks are less random, with pirates specifically targeting fully loaded tankers or ships with high-value cargo. This suggests that pirates may have been tipped-off about potential targets. Identifying who or where they received the tip-off from, however, is a difficult task because of how entrenched the corruption appears to be within society.

## How to counteract the problem

Until international authorities intervene, the solution is extreme vigilance from crew managers. Many shipowners have chosen to avoid the area completely. This may be the most effective way to avoid piracy; however, the costs associated with redirecting a vessel are astronomical. Complete avoidance should be the final step. The IMB called for a rise in vigilance whilst in port stating: “the prompt detection and response to any unauthorised movements of an anchored vessel could help in the effective response to such attacks”. Attacks generally involve small boats coming alongside whilst pirates attempt to board.

With the rise in kidnappings and armed attacks, crews must fight for their own safety as a priority. In a large number of last year's attacks, crews escaped abduction by locking themselves into their vessel's citadel, as pirates boarded and ransacked their ships.

Unlike their counterparts along the east coast of Africa, pirates in the west are organised and often well trained in using weapons such as rocket-propelled grenades.





Consequently, crews need to react accordingly and organise themselves for the eventuality of an attack taking place. Establishing proper safety protocol is vital and ensuring all the crew are safely locked in the citadel once attackers board the ship is the best response. On numerous occasions it has proven to be the best method of avoiding abduction. PAGs have shown they will quickly lose interest if the target is unattainable. The numerous attacks in the west of Africa have shown that boarding the vessel is no problem for attackers; however, robust “ship hardening” measures have prevented attacks from escalating.

In the latest incident, armed pirates boarded a bulk carrier off the coast of Nigeria. They plundered the ship of money and the crew’s personal belongings. Although the crew escaped unharmed by occupying the citadel, they still left the rest of the vessel vulnerable to theft by misunderstanding the modus operandi of the pirates. Attackers will first and foremost target the cargo or anything worth stealing, and kidnapping is seen as an added value to attacks.

**“The attacks in the west of Africa have shown that boarding the vessel is no problem; however, robust ‘ship hardening’ measures have prevented attacks from escalating”**

The knock-on effect of this attack would have probably resulted in members of the crew being repatriated with replacements being sent out. The consequent loss of trade plus replacement of money and equipment would surmount to a loss of around £100,000 in total. With this in mind, the industry

needs to ensure all crews are properly briefed and trained before entering the area – not only in securing the crew in the citadel but securing the superstructure to prevent attackers from stealing cargo.

Ship hardening is the most effective final line of defence and acts as a simple and effective barrier to prevent crew members being kidnapped. Continually, the industry comments on the need for “hardening measures”, but fails to specify what measures should be taken. Protective equipment (such as Easi-Chock) is a way of preventing attackers from boarding a vessel. Such a system turns the whole of the superstructure into a safe haven by implementing several layers of defence, ensuring all the crew are safely located in the engine room. It is designed to delay, deny and demoralise pirates, who realise that they are unable to gain control of the vessel and thus abandon their attempts, knowing that continuing will mean they are likely to be caught and brought to justice.

Within the industry, there is a clear awareness of the solution to the threat. However, until tangible action is taken in the form of stringent regulations and crew training, incidents in under-developed areas will continue to occur. **MRI**



Wayne Harrison

Wayne Harrison, founder of Easi-Chock

# Safety and the marine salvage industry

**Charo Coll**, of the International Salvage Union, looks at ways to make the process of salvage safer for all concerned

**I**t is too easy to lose sight of the fact that nearly all salvage operations contain a degree of danger and physical risk to those involved. Much discussion about marine salvage tends to be about the commercial side: the contracts, the relationships between owners, managers, underwriters, contractors and authorities. The cost of salvage, both “wet” and “dry”, is usually uppermost in some people’s minds.

It is a long-held principle that the saving of life should be the priority in all marine salvage ahead of protecting the environment and salvaging property. Marine salvors – such as members of the International Salvage Union (ISU) – go to the aid of casualties and their crews voluntarily and in the face of the dangers present. They do it commercially in the expectation of a fair reward if they are successful. But there are many safer ways to make a return on your capital and, in most cases, it is only the commercial salvors who are available and have the experience and equipment to intervene and save life.

The ISU and its members recognise that they need to position themselves as “loss mitigation partners”. And a key part in that is to be proactive with their clients – the owners and managers and their property and liability insurers – working with them not only during real casualty situations but also to help them prepare for the possibility of casualty so that they, and the salvor, are better prepared if the worst does happen. In short, being proactive partners, not just emergency responders.

**“Even with autonomous vessels, the human element will not be completely eliminated and the possibility of a marine casualty will remain for as long as there is shipping”**

The past decades have seen huge improvements in maritime safety. SOLAS and COLREGS have been in force for a long time but there have also been great strides taken in the standard of watchkeeping and training; developments like AIS, vessel traffic systems and ECDIS and other electronic navigation aids. Nevertheless, according to research for the US Coast Guard, more than 75 per cent of marine accidents are due to human factors. Even with autonomous or remotely operated vessels, the human element will not be completely eliminated and the possibility of a marine casualty will remain for as long as there is shipping.

Improvements in safety have undoubtedly reduced the number of major casualties; however there are still many hundreds of salvage operations conducted each year by members of the ISU. Also, some of those operations are more expensive and technically complex compared to those in the past. This is, in large measure, due to the increased size of vessels, increased value of their cargo and external influences such as more demanding requirements

from coastal state authorities. Governments are, rightly, most concerned to protect their waters and the local regulatory and government officials are nearly always closely involved in aspects of the salvage service. But all operations are potentially dangerous, as with any dynamic environment involving large objects and heavy machinery.

So how can all of those with a stake in marine salvage improve further the safety of salvage operations?

Cooperation between the shipowner, their underwriters and salvors and shore-based authorities is vital for a successful salvage operation and should begin at first notification of a casualty. Joint working, rather than conflict, will go a long way towards mitigating the potential for environmental damage and pollution, damage to the vessel or its cargo and, most importantly, may prevent loss of life or injury to the crew.

Lloyd’s Open Form (LOF) is still the most widely used salvage contract after more than a century of constant use. At its heart is the requirement for salvors to use their “best endeavours” to save the property and to prevent or minimise pollution damage while engaged in salvage operations. The Salvage Convention of 1989 imposes a similar requirement as well as introducing the obligation to use best endeavours to prevent or minimise damage to the environment. Best endeavours require salvors to work with others: they cannot operate in isolation. But, of course, that needs to be reciprocated by the others who are also involved. Importantly it also requires shipowners and insurers to be familiar with LOF and to understand its benefits – critically that it facilitates the quickest response.





LOF is sometimes misunderstood. It is certainly does not favour the salvor – it is a “Lloyd’s form, not an “ISU” form – and the salvor bears a high risk: it is a “no cure – no pay” contract.

Today, no master or salvage master can operate in isolation because modern communications ensure that there is regular contact between vessel and offices ashore. The result is that when a casualty does occur, the master can very often obtain guidance and advice from his owners and their advisers. This may or may not be helpful. It may solve the problem; it may provide a false sense of security and introduce delay increasing danger to the crew and subsequently to the salvors. Either way, a decision has to be made as to whether assistance is needed.

In making this decision, account must be taken of: the safety of personnel; proximity to the coast or shallow water; weather and sea conditions; the nature of the sea bed and coastline and the possibility of safe anchoring; the availability of additional assistance and the time it will take to reach the vessel; the nature and extent of damage suffered by vessel and the risk of further damage.

A plan of action must be developed and this will need to take into account: the nature, circumstances and urgency of the situation; the extent to which the vessel’s systems remain operative; the threat of pollution and the manpower and material requirements and finally what measures will be possible to avoid injury or loss of life if the vessel is in imminent peril.

A competent master will, in most cases, be best placed to assess these considerations and will be able to do so quickly. Considering these questions “second hand” from a warm office many hundreds or thousands of miles away is often not helpful and can lead to delay and increased danger. Then there is the question of who provides the services. The trend to seek low-cost solutions means that insurers can fail to recognise the value added by a full-service salvor, a member of the ISU, using their own equipment and experienced personnel. With lives at stake there should be a moral obligation to act quickly and to secure the best possible resources to tackle the job and its perils.

Response effectiveness – and therefore safety – is greatly increased by detailed contingency planning and joint training as well as proactive preparation. Some of the larger members of the ISU already work directly with owners and underwriters to advise on the installation of onboard equipment such as reinforced hard points, and specialist towing brackets. Training can also include, for example, teaching crews to be better able to help salvors to make towing connections in difficult conditions. Training is also offered in the management of marine emergencies – helping individuals from a range of backgrounds to understand the realities of salvage operations. Marine firefighting training is offered by some ISU members, including using substantial onshore “dummy” vessels.

Fire is one of the biggest dangers and, in the case of fires on container ships, a topic of real concern at present. There have been many examples of major container ship fires in recent years. *Maersk Honam* in the Arabian sea is the most current but others include *MSC Daniella*, *MSC Flaminia* and *CCNI Arauco*. Some of these incidents have caused a number of deaths and the issue is a matter of great concern to owners, insurers and salvors alike. Lesser fires are not uncommon.

There is pressure for improvements to be made to onboard fire detection and suppressant systems, but a long-standing problem is the mis-declaration of container contents. This can either be deliberate or inadvertent but poses great danger both to the crews of containerships and also to the salvage crews who attend to such a fire. It is obvious that the whereabouts of explosive or flammable materials in a cargo needs to be known and that the loading plan should ensure suitable separations. It is nothing short of a disgrace that every day, potentially, lives are put at risk at sea because of the systems and behaviours of some of those involved in the shipment of dangerous goods.

The need to provide a place of refuge for a casualty vessel is an important safety consideration and a topic on which ISU has campaigned for many years. There has been promising progress in the EU with guidelines introduced two years ago but in many places around the world the authorities can be deficient through their unwillingness to offer a place of refuge. The open sea is rarely the best place for a casualty and there are many examples of cases where safety has been compromised by the authorities failing to grant a place of refuge.

Salvors are experts in handling difficult and dangerous situations – it is how they make their living – but they are trying to evolve from an era of simply standing, by waiting for emergencies, to being the partners of shipowners. They have much to offer not only in the casualty situation but beforehand: advising, training and working with their clients to prevent incidents or at least to try to mitigate the impact when there is a problem. [MRI](#)



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Charo Coll

Charo Coll, president,  
International Salvage Union



# Ship security plans: pay attention to the details or risk detention

**Lutz Wesemann**, of Prevention at Sea, warns of the risks of not fully complying with marine regulations and discusses the consequences for shipping interests

**F**amiliarity may breed contempt – but staff both ashore and on board should never make assumptions when it comes to a vessel's ship security certificate. Any non-conformity with the requirements of the International Ship and Port Facility Security (ISPS) Code could have grave consequences – in short, this could lead to the withdrawal of the ship security certificate and a consequent detention of the ship by port state control (PSC).

As we all know, time is money, delays can be catastrophic, a poor record in this area invites future attention from PSC inspectors, and none of this sits well with customers or charterers.

The implementation of the ISPS Code is addressed in SOLAS XI-2/4, which sets out in detail the statutory measures to enhance maritime security. Among other requirements, ships are required to be provided with specific security plans which are subject to verification and approval by or on behalf of the flag state administration.

Compared with the ISM Code addressing safe ship management requirements, the ISPS Code is very detailed and complex and provides much more specific information for the minimum contents of the ship security plan (SSP) than the ISM Code does for policies, procedures, plans and instructions describing the safety management system (SMS).

Masters and appointed ship security officers are responsible for implementing the SSP on board and ensuring that the appropriate security measures described in the plan are complied with at all times.

Compliance with SOLAS XI-2 and the ISPS Code, as described in the SSP, is subject to onboard verification by or on behalf of the flag state administration, as a precondition for issuing the mandatory ship security certificate.

The ISPS Code Part A 19.1.1 sets out the requirements for an initial verification and then five-yearly renewal verifications: "This verification shall ensure that the security system and any associated security equipment of the ship fully complies with the applicable requirements of Chapter XI-2 and this part of the Code, is in satisfactory condition and fit for the service for which the ship is intended."

Unlike the ISM Code requirements for safety management verifications (ISM/13.7: "The safety management certificate should be issued after verifying that the company and its shipboard management operate in accordance with the approved safety management system."), the ISPS Code requires verification of *full* compliance.

What does that mean in practice? It means, first, that all relevant provisions of the ISPS Code and the SSP must be 100 per cent verified, rather than on a sampling basis; and secondly that any non-conformity will lead to the withdrawal of the ship security certificate and consequent detention of the ship.

The gravity of the potential consequences of any such non-conformity should underpin heightened staff awareness both ashore and on board, and all measures should be taken to support masters and ship security officers in achieving and checking the sustained, full compliance with the security requirements.

To make this happen, an obvious but perhaps unappreciated "must" is that SSPs should be clearly worded, well arranged and easy to navigate, and all contents should be clearly organised so that the ship's crew can fully understand what is expected and to make it easy for them to verify that no aspect is missed.

**"Security plans are often extremely complex. Masters and ship security officers are often left to scroll through the entire plan to pick out individual requirements for each security aspect and level separately"**

However, this is often not the case. Security plans – in the light of the relative complexity of the ISPS Code – are often extremely complex themselves. For example, a simple, comprehensive and clear checklist which details the activities that should be undertaken under certain circumstances is often not provided. Masters and ship security officers are often left to scroll through the entire plan to pick out individual requirements for each security aspect and level separately.

For instance, the range of a person's duties in charge of ship access control for different levels of security threats, such as the requirements for ID checks, baggage searches, reporting and record keeping, are contained in many SSPs – but are listed in different chapters and sub-chapters and embedded within information that is irrelevant for the requirements which are being looked up. For the crew, such inconvenience and lack of transparency opens the door to oversights, omissions and misunderstandings.

Another pitfall can be in the definition of security equipment. The ISPS Code parts A 9.4.15 and 16 detail requirements to address "procedures to ensure the inspection, testing, calibration and maintenance of any security equipment provided on board" and "frequency for testing or calibration of any security equipment provided on board".

The term "any security equipment" has often been misinterpreted to include any piece of equipment that may be used in execution of security duties – as a result, items such as handheld radio sets and torches are included, although they are also used for other purposes, either ship-safety related or other operational, non-security related matters. In addition, other items defined as security equipment cannot reasonably be



subject to inspection, testing, calibration and maintenance – for example, visitor badges and stocks of security seals.

However, any item mentioned as security equipment in the SSP must be inspected, maintained, tested and calibrated, as appropriate, and records kept – this would therefore mean every torch, visitor badge and spare seal.

When it comes to verification, all equipment listed as security equipment in the SSP will be checked as being provided on board and in operational condition. Something as minor as a missing badge or a recently broken torch would lead to a non-conformity and in turn to the ship's detention!

**“Any item mentioned as security equipment in the plan must be inspected, maintained, tested and calibrated, as appropriate, and records kept – this would mean every torch, visitor badge and spare seal”**

Therefore, it's vital that ship security equipment, in terms of the ISPS Code and referred to in the SSP, should be limited to items exclusively designated for ship security purposes and which might reasonably be subject to inspections, testing, calibration and maintenance, as appropriate. That would include the mandatory ship security alert system and any security devices such as metal detectors, CCTV, intrusion alarm systems and X-ray machines as provided.

Attention to detail is everything. Bearing that in mind, it is also important to avoid having to go through the onerous process all over again. If a ship's name is mentioned in the SSP, then any time the ship is renamed, the name must be changed in the plan – and the entire plan must be reapproved. To avoid this, owners and operators would do well to use only the ship's individual IMO number in the SSP, as this number remains constant throughout the ship's lifetime.

Prevention at Sea has developed a well-arranged, clear, logically structured and easy-to-use ship security plan template that helps the user to avoid the many potential pitfalls. The template can be adjusted to meet individual ship specifications and company requirements, and as such has been approved by various flag state administrations and recognised security organisations. Drawing together a detailed ship security plan is a challenging and significant task, but one that you cannot afford to cut corners on. *MRI*



Lutz Wesemann

Lutz Wesemann, project manager  
at Prevention at Sea



# Be prepared

Preparedness and stricter design rules for yachts could have reduced last year's hurricane losses, warns **Val Martin**, of Navalmartin

**A**n old adage of sailors goes like this: "It is the *third* wave that kills: the first one undermines the ship, the second one shatters the resolve of the crew ..." When contemplating the likelihood of a hurricane affecting their precious assets, yacht owners must have robust emergency preparedness plans in place.

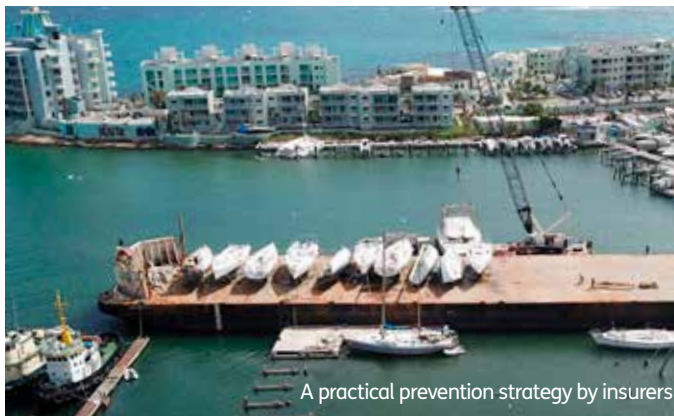
## The first wave: high-wind waves and collisions

In September last year, the yachting market woke up having to contemplate the damage left after hurricane Irma (and later Maria). The first wave of devastation was omnipresent, with houses and yachts strewn by the wind, infrastructures disabled, and the very fabric of society being tested to the limit during the first painful days. There were yachts that sank, yachts that got flipped over, yachts on buildings, yachts laid on their flanks, yachts sheared in two, yachts that disappeared and yachts that got crushed.

## The second wave: abandonment and salvage

In the weeks that followed, owners were confronted with a shortage of skilled or diligent resources available to extricate the yachts strewn by the winds and tidal surge. Resources on the ground were overwhelmed with their own personal losses. Boatyards and repair facilities were dealing with loss of equipment, loss of stock, loss of personnel and a major disruption in activity and cashflow. Compounded with this was the reluctance of the local operators to see outside contractors being awarded salvage and wreck removal contracts to the detriment of the local communities.

Another key issue was that many of the vessels and yachts spent a considerable amount of time submerged, exposed,



A practical prevention strategy by insurers

pillaged or merely invaded by the fauna. The lack of a prompt response contributed to their deterioration. A number of vessels could have been repaired rather than ending up condemned.

A significant deterioration was inflicted on the yachts that are neither in commission, nor in imminent peril. The infiltration and water ingress slowly left its marks on the veneers, the balsa inner core, corroded engine blocks, infiltrated copper wires, putrefying the fabrics and textiles, and even embrittled the stainless steel, chrome and brass. Seven months on and still these vessels are decaying. Boatyards and repairers are working valiantly to repair the pleasure vessels but not enough can be achieved to return to a "light ongoing maintenance" regime for each yacht.

## The third wave: navigating risk and hidden perils

Traditionally, a hurricane is perceived in the insurance market as an "Act of God", unlike war risk or gross negligence, and regarded as an insured peril in many policies. However, a caveat is emerging with the availability of reliable weather forecasts and storm warnings, which puts the onus on the assured. Owners and insurance parties are compelled to have robust hurricane preparedness plans in place to make sure the least possible damage is caused.

We are seeing a stream of claims being rejected for the very valid reason of the boat having been abandoned to its own devices. While the covered peril is there, underwriters do assert whether there is indeed coverage on the strength of the preparedness.



Flipped, sunk and crushed in Cole Bay, St Martin



These losses can be avoided. Owners and insurers must have contingency plans, demonstrate that a hurricane preparedness strategy is in place and make every effort to protect or to evacuate the area when a hurricane hits. Yachts kept afloat are portable and should remain ready to run from the trajectory of a named storm. Alternatively, a yacht kept on the hard should be robustly prepared.

Pleasure yachts and small crafts are optimised for day-to-day operations and, sadly, abnormal scenarios rarely fit into the design remit. There lies the development of the last decades: yachts have gradually become transient commodities, like cars, white goods or wearables.

The intention of the international requirements is for the vessels to be intrinsically safe. Yet, safety is conceived by design and by operation. As a naval architect, one should never dissociate design from operations.

Worryingly there is also very little regulation in place to ensure that yachts under 24 m and constructed for private use are built to international standards. Production yachts are typically certified on the basis of the first in series and standards can slip along the production run.

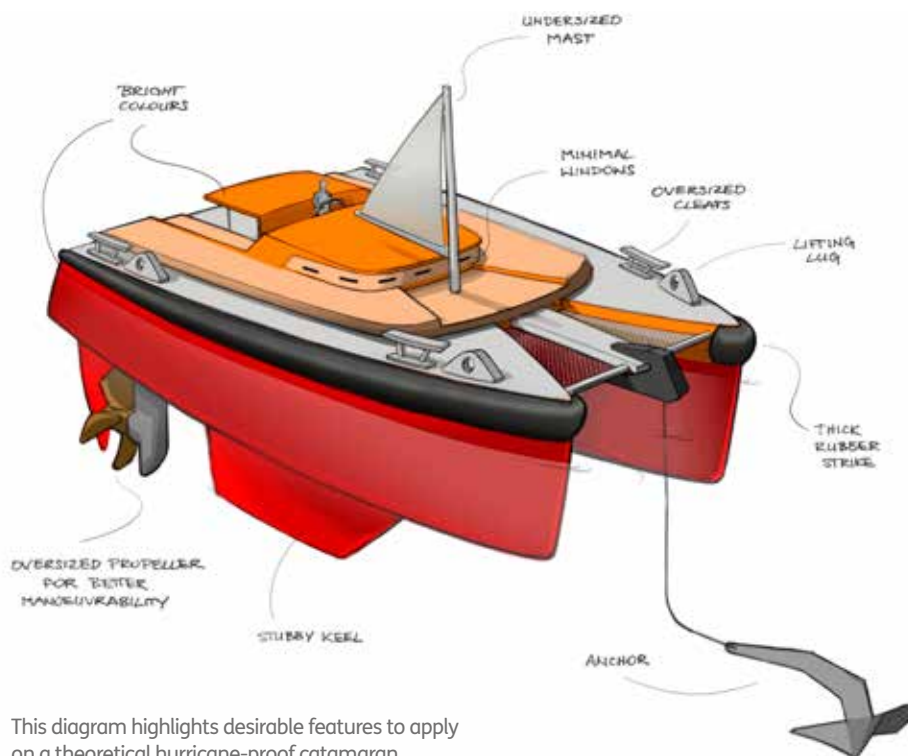
A vessel that is designed to survive extreme weather would look very different compared to a yacht that is constructed for comfort and standard safety. For example, she would be heavier, have oversized cleats, a lot of mass to steady her against wind loads, and the size of the mast would be a big factor.

**“The industry must sit up and look at the lessons they can learn from last year and avoid incurring huge losses when this situation arises again”**

To demonstrate the point, Patrycja Kruk, designer at Navalmartin has developed a “hurricane-proof” vessel, a design driven purely by survivability and seakeeping properties. Although purely theoretical – as the yacht, as a product, would lose much of its identity if the aesthetics and comfort were taken out of the equation – it was an interesting exercise.

With boats that are not intended to overcome abnormal loads, the operations must meticulously implement the necessary steps to avoid these loads. A good hurricane preparedness plan is, of course, crucial and I believe there is currently not enough focus on this. Operators are cutting corners by not implementing robust plans, and owners are bearing the risk.

The industry must sit up and look at the lessons they can learn from last year and avoid incurring huge losses when this situation arises again. In the interim, premiums are likely to go up and a detailed and rationally formulated hurricane preparedness plan will be the only device to avert a large hike in insurance costs.



#### Lessons learned:

- Owners did not realise that insurance does not guarantee expediency of response.
- Surviving a hurricane is an active process.
- Solid and heavy yachts have fared better than the rest.
- The confirmation of cover is not guaranteed because there was a named storm.
- Cleats go pop.
- A mooring spread should be very meticulously tuned.
- Balsa core is more permeable and delicate to repair than PU core.
- Dead yachts are a nuisance and must be removed and processed sustainably and as a matter of public responsibility.
- Most owners did realise that it is often their remit to frame their claim with respect to the loss.

Val Martin has spent the last six months in the Caribbean working with vessels that were significantly damaged in hurricanes Maria and Irma. **MRI**



Val Martin

Val Martin, director of Navalmartin

# Testing major incident responses

Stena Line and The Swedish Club recently tested their emergency response plans, using a collision between a ferry and a container ship as an example

**A** terrifying collision between a busy passenger/vehicle ferry and a container ship just outside port, in the middle of a freezing February night, is, of course, the stuff of nightmares. But it is also the kind of worst-case scenario that vessel operators, emergency responders and many other organisations must always be prepared for.

Stena Line recently completed a major emergency response training exercise which was designed to test how its own comprehensive emergency procedures would integrate with those of the various authorities and support services, if there were a major incident. Jointly planned and organised by The Swedish Club and the Joint Rescue Coordination Centre (JRCC) of the Swedish Maritime Administration, the round-table exercise tested the levels of cooperation required between the resources and authorities that would be involved in a mass evacuation from a passenger ferry in the Gothenburg area.

In the scenario, the 152-m *Stena Danica*, with 852 passengers, 75 seafarers and staff, 15 coaches, 15 trucks and 200 cars on board, is nearing its journey from Fredrikshamn to Gothenburg. A container ship has just left the container terminal at Gothenburg and the two vessels should pass each other safely in the channel. However, at the last minute, the container ship suddenly swings to port; the ferry takes immediate action

to try to avoid a collision, but the emergency manoeuvre is too late. The bow of the container ship crashes into the ferry's hull, opening up a hole, and the ferry begins to list.

The ferry's stability is critical, and decisions must be made in the face of worsening weather conditions, working with a number of third-party support organisations to ensure the safety of frightened passengers and crew, and to protect the integrity of the vessel. The emergency response training exercise asked the questions: What would happen next, and how well would procedures work? What decisions must be made by the crew, by Stena's shore staff and by the authorities? When should they take those decisions, who must be told and who takes responsibility? And where might the pressure points emerge?

In line with The Swedish Club's well-established emergency response training programme, the exercise was planned for maximum reality, with participants from all the authorities and organisations that would be involved in a serious accident in the Gothenburg archipelago.

Stena Line and The Swedish Club were joined by representatives of the classification society DNV GL, JRCC Gothenburg, the Swedish Coastguard, the Swedish Flag State Authority, the Swedish Maritime Administration, the Port of Gothenburg, the Gothenburg Fire Brigade, the Swedish Defence Forces, the City of Gothenburg, Gothenburg Medical Services, the Swedish Lifeboat



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Association, Svitzer, SOS Alarm (the 112 call centre) and a local ferry operator, Styrsöbolaget, all important players in a rescue operation of this size in this area.

Even before the exercise got under way it was obvious that communication was a key priority. With 17 different organisations, including the shipowner, the insurer, a salvage company and the emergency responders (both from the maritime authority and shore-based organisations such as police, harbour authority, state transport department), it soon became clear that an established communication structure during an emergency is one of the most important factors for success. It was also pointed out that more than 500 people in total, from both these organisations and additional support personnel, would be needed – all with proper briefing and coordination.

The Stena Line team was headed by Bjarne Koitrund, technical operations director, Jörgen Lorén, director and senior master, and Jesper Waltersson, press and media relations manager.

“To set up such a realistic scenario with so many participants was an immense job for The Swedish Club and we were delighted to take up the opportunity to test our emergency plans,” said Jörgen Lorén. “Stena has developed its own comprehensive procedures, and this exercise has been invaluable in reinforcing who is responsible for which action during an emergency and ensuring that our emergency response plan is sufficiently robust should a real-life crisis occur.”

The Swedish Club has run more than 40 such scenarios since its emergency response training scheme was established in 2017. The Club’s loss prevention team is offering a series of alternative scenarios such as grounding and wreck removal, cargo damage, salvage and pollution, collision, tendering and repair, forum shopping and legal and medical scenarios. As part of its commitment to loss prevention, the training is offered to members of The Swedish Club free of charge and response to the initiative has been extremely positive.

Lars Malm, director, strategic business development and client relations at The Swedish Club, said: “This round table, collaborative approach has been developed to test how operations are affected when dealing with an incident. The scenarios have been designed to show participants just how easily a situation can escalate; the various parties and processes involved in dealing with an emergency; and the complicated interplay between the various bodies involved in bringing an incident to a resolution.”

The exercise was jointly run by Maria Boman, emergency response manager of the JRCC at the Swedish Maritime Administration. It is her team that would respond to a mayday call, or the signal from an automated emergency beacon or a DSC transmission. The sooner the emergency response teams are aware that something is wrong, the better, she said when asked about how soon word should spread across the different organisations.

“Limited information is better than no information, and we know that a master may not have all the facts when he initiates the alarm,” she said. “But, we don’t want to be getting the call when people are already in the water.”

Incorporated into the emergency response is the role of the classification society. Representing DNV GL was Pierre Nordin, a principle surveyor based in Gothenburg. After such an accident, he explained, the vessel would be out of its statutory and class

conditions, but once the temporary repairs are made, the vessel may be issued with restricted class conditions to allow it to make the single voyage to have permanent repairs made.

“We had a real-life situation where a vessel was involved in a collision in Sweden,” he said. “The surveyor took the decision, as a Recognised Organisation, representing the vessel’s flag, to allow the vessel to sail one trip, under restricted class, to a Danish repair yard.

“We don’t tell owners what to do,” explained Nordin. “We support owners and give them suggestions.”

DNV GL has two emergency response centres, one in Oslo, and one in Hamburg. Each has a team of experts that are permanently on call, and it is their job then to reach out to other experts within DNV GL as a situation develops. “We have to be able to man those emergency response centres very quickly,” said Nordin. “We practise up to 70 times a year with different clients, but we can have up to 55 incidents a year for real. DNV GL has the plans for more than 4,000 vessels in its emergency response database.”

The Swedish Club team for the exercise was led by Magnus Gustafsson, claims manager, marine, based in Gothenburg. “A key element of dealing with any emergency is to make sure that you are never taken totally unaware,” he said. “A crisis is not the time to be wondering what to do next and who to call for help. There are enough things that may be out of your control without adding to the challenge because you don’t have prepared, clear thinking and a coordinated response. The Swedish Club is all about risk mitigation. This includes reducing the risk of an incident happening, as well as reducing the risk of an accident getting worse if it does.”

The Stena exercise was an ideal example of how the Club’s emergency response training can lead to increased awareness of who needs to be making decisions, when decisions need to be made and, importantly, when those decisions, actions and updates need to be communicated between the vast number of stakeholders involved in an emergency response, said Gustafsson, who led the exercise jointly with Maria Boman of JRCC.

A round-table exercise is not as realistic as a full-scale exercise out in the fairway, but it is also not as risky, said Boman. As a search and rescue mission coordinator at the JRCC of the Swedish Maritime Administration, her role is to coordinate search and rescue missions. She has been involved in some serious incidents around the Swedish coastline in the past 20 years.

“There are so many different government agencies such as police, ambulance service, rescue services and other organisations that will be involved – it is good to have one dedicated body to coordinate this,” she said. “These table top exercises are very useful as you get to see the different perspectives of the organisations involved, as well as gaining experience of what they may need to know and when.”

Also on The Swedish Club Team was Marina Samsjö, manager, marketing communications. “One of the salient facts many participants took away from the exercise was the importance of a communication strategy,” she said. “Participants were surprised at the estimate of more than 500 land-based people from various organisations involved in responding to an emergency. These include the shipowner, response centre staff, police, hospitals, coastguard, voluntary responders, ambulance and coach drivers and passenger landing co-ordinators. They all need coordination and communication.” *MRI*



# China sets the pace for flag state accident reporting

China has produced a report with three other flag states just four months after the *Sanchi* incident, while in Europe the average investigation and reporting time is 12 months, writes *Lloyd's List's* **Nidaa Bakhsh**

**C**hina should be commended for producing a public report into the *Sanchi* tanker collision in just four months. That is comparatively quick for shipping standards, where submission of reports by flag states can take from three months for straightforward investigations, to never. The average investigation and reporting time in Europe is 12 months.

The incident, a collision with the Hong Kong-flagged bulk carrier *CF Crystal*, took place on 6 January, resulting in a fire and explosion aboard the Panama-flagged Iranian tanker and the loss of its 32 crew, two of whom were Bangladeshi. The tanker was carrying light oil and condensates.

The 21 Chinese crew members of the bulk carrier managed to jump into lifeboats and were rescued by fishing vessels that had been called on as part of the search and rescue operation.

The 191-page report is detailed, with graphics and photographs included. China was the lead investigating state and produced the final report in cooperation with Iran, Panama and Hong Kong.

While there were differing views as to the cause of the collision, there was agreement that both vessels failed to comply with requirements for a proper look-out by sight and hearing. Based on its findings, the report highlighted nine points that needed to be addressed by the International Maritime

Organization (IMO) and member states.

The IMO's Casualty Investigation Code stipulates that "member states shall submit the final version" of a marine safety report to the UN body following accidents of a "very serious" nature, which involves loss of life, total loss of vessel, or serious pollution. The process is intended to improve safety by highlighting shortcomings where lessons could be learned.

While the reports are mandatory, there is no enforcement and no timeframe for which a report should be submitted.

A report on the loss of the converted iron ore carrier *Stellar Daisy*, which split and sank in high seas off Uruguay at the end of March last year, has yet to be made public. The reporting authority in this case, the Marshall Islands, said it was close to submitting its report after "meticulous" evidence gathering. In this incident, 22 seafarers, mostly from the Philippines, are presumed to have died.

More starkly, there is still no report from the *Sewol* ferry sinking in South Korea in which 330 students on a school trip died. The incident was a national embarrassment that forced the then prime minister to resign. That incident took place four years and one month ago.

How did it happen? How can future sinkings of this nature be prevented? Without a full accident investigation report, we may never know. **MRI**



ASSOCIATED PRESS

Sanchi

# Shipowners push for take up of **Hong Kong Convention**

ASA, BIMCO, ECSA, ICS and Intertanko have encouraged more states to ratify the international convention for green-ship demolition, while asking the EU to include more overseas facilities into its recycling list, writes *Lloyd's List's Cichen Shen*

**A** group of shipowners' associations have reaffirmed their commitment to the Hong Kong International Convention for the Safe and Environmentally-Sound Recycling of Ships 2009 (HKC).

In a joint statement, the Asian Shipowners' Association (ASA), BIMCO, European Community Shipowners' Associations, the International Chamber of Shipping and Intertanko reiterated the importance of a global solution to realise environmentally sustainable ship recycling.

The entry into force of the HKC was critical, with the expected increase in demand for ship recycling – in particular in the tanker sector – this year, and the need to expand the number of compliant ship-recycling facilities around the world, the statement said. “To be able to bring the [HKC] into force however, it is essential that the ship-recycling states commit to improving the standards of ship recycling and ratify the HKC.”

As a result, the five organisations have encouraged member associations to approach their respective governments to speed up the ratification by including it as an agenda item. They've also encouraged all ship-recycling states to approve the convention.

**“To be able to bring the Hong Kong Convention into force, it is essential that the ship-recycling states commit to improving the standards of ship recycling and ratify the HKC”**

Meanwhile, they have called for the International Maritime Organization to establish a team for early enactment of the new regulations, which will serve as a focal point for concerned stakeholders including governments, recycling yards, workers, shipowners and observer organisations.

The HKC, adopted in May 2009, will be enforced 24 months after ratification by 15 states, which represent 40 per cent of the world's merchant ships by gross tonnage and combined maximum annual ship recycling volume not less than 3 per cent of their combined tonnage.

At last count, it was ratified by only six states representing 20.5 per cent of the world's fleet.

In addition, ASA and the other four associations have reviewed the European Union Ship Recycling Regulation and the EU List of



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Recycling Facilities. “It was noted that there is expected to be a lack of facilities on the EU List when the Regulation enters into force on 31 December 2018 as well as the fact that until now no non-EU ship recycling yard is included in the EU list.” they said. “In this respect, the shipowners associations urge the European Commission to increase the recycling capacity on the EU List with the inclusion of facilities outside of Europe.” *MRI*



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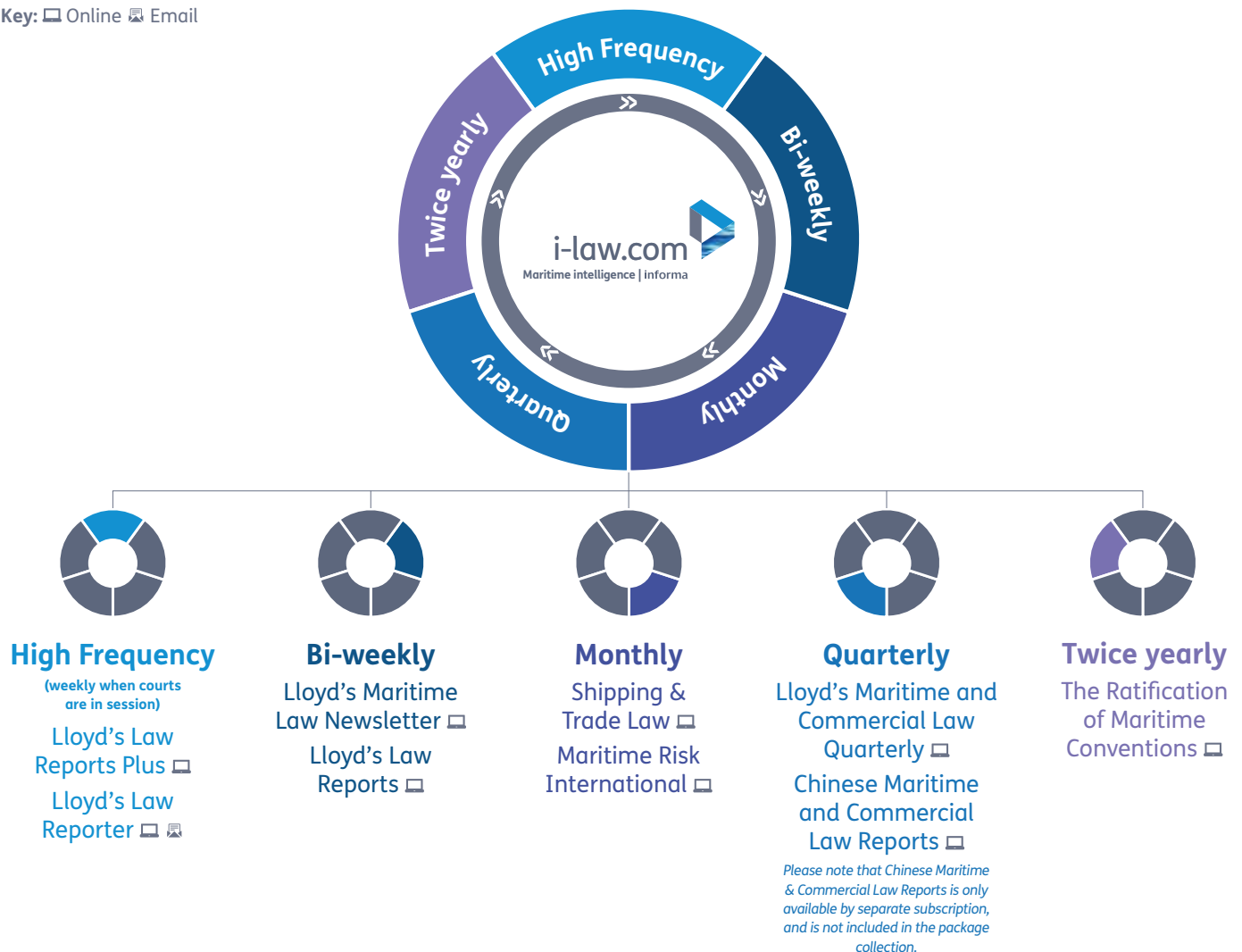
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