



Salvage

Industry still needs global network

- Cargo safety critical
- Risks rise for cruise ships
- Regulators shaping up for change

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IN BRIEF

Confidence falls

Confidence in the shipping industry has fallen marginally in the past three months, largely due to concerns over trade wars and increased regulation, according to the latest shipping confidence survey by BDO. However, confidence was up in Asia and the US, but in Europe confidence fell 0.2 points. The chartering sector is the most volatile, while the survey revealed the likelihood of respondents making a major investment has increased, with owners leading the way, particularly those in Asia.

White listing

The Liberian Registry has again been included on the White List of low-risk flags in the 2018 annual report of the Paris memorandum of understanding (MoU) on port state control, covering Europe. The Registry said it has been white-listed for almost 20 years and is also white-listed on the Tokyo MoU, which covers Asia-Pacific, as well as on the US Coast Guard's Qualship 21 roster.

Telematics

The Container Owners Association has announced its telematics/track trace work group is to provide an open standard to permit interoperability of telematics device data from various solution providers in the maritime industry. The open standard, which will start with refrigerated containers, will pave the way for owners to have a multiple choice of vendors and platforms for their fleets. This will reduce risk, it says.

Software security

Classification society ClassNK has released its Guidelines for Software Security which target software developers, system integrators and others. Released as the third and latest part of the series, the Guidelines aim to assist with risk management focused on software used onboard vessels. They outline the recommended security measures throughout the development, integration, and operation stages of the software and show a formulation of guidelines and standards that address each layer of the ClassNK Cyber Security Approach announced five months ago.

Cost of Hormuz attacks revealed

Cargo insurers can expect to face an exposure value of US\$40 million for goods on the Japanese product tanker *Kokuka Courageous* and \$25 million for the Norwegian tanker *Front Altair*, after the recent attacks in the Strait of Hormuz, according to the Russell Group.

Russell Group analysis shows that there are more than 67,533 movements by goods-carrying vessels (bulkers, tankers and container ships) through the Strait of Hormuz per annum. Meanwhile, The Strike Club has said it will continue to provide marine delay insurance to its members operating in the Straits of Hormuz between the Gulf of Oman and the Persian Gulf.

Chairman Alan Le Guillard said: "None of our 2,000 entered ships has experienced problems in the Gulf region despite the ongoing disruption from recent events. The cover we provide to members will continue unchanged. Many of our members have already opted to include war risks in their delay insurance policies, so if the situation in the Gulf deteriorates further, they will continue to be covered."

Vice president and vice chairman Hugh Williams, who is about to take over from Le Guillard, said: "In today's increasingly volatile trading environment, it is vital for shipowners and charterers to protect their revenues should their vessels get held up by strikes, port closures, collisions, alleged pollution, cyber attack, war and other unexpected delays – and in the most cost-effective way possible."

Jonathan Moss, partner at law firm DWF added: "Global insurance markets are accustomed to factoring geopolitical uncertainty into pricing models; nevertheless this geopolitical fallout has not been seen since 2003. In 2003, rates for hull and machinery, war risk cover for tankers in the Persian Gulf increased significantly owing to the political instability in the region.

"This coming year will see a drive by insurers to raise premiums in the face of a cocktail of instability in the region. Following the incidents involving the Saudi oil tankers on 12 May, London market marine insurers met to consider whether to increase rates for tankers in the Arabian Gulf. As a result, insurers have extended the list of waters deemed high risk under their hull war, piracy, terrorism and related peril policies to include Oman, the United Arab Emirates and the Gulf after recent ship attacks off Fujairah. Given the risk of hostility in the Persian Gulf, underwriters will be closely scrutinising voyages on a case-by-case basis with premium increases covering vessels in the region a near certainty." **MRI**

Call for industry unity on Hormuz Straits

Industry leaders have called for everyone to work together to find a solution to provide security for shipping. IMO secretary-general Kitack Lim said: "The IMO has developed a comprehensive regime of regulation through the ISPS (International Ship and Port Facility Security) Code and the SUA Conventions and Protocols to prevent and respond to unprovoked, unlawful attacks on merchant shipping.

"The threat to ships and their crews, peaceably going about their business, is intolerable. I urge all member states to redouble their efforts to work together to find a lasting solution to ensure the safety and security of international shipping around the globe and protection of the marine environment."

Meanwhile, BIMCO is urging nations to defuse tension and work together through diplomatic efforts. "We strongly call for nations to do what they can to de-escalate tensions and ensure the safe passage of merchant shipping in the Strait of Hormuz," said Angus Frew, BIMCO secretary general and CEO. "It is unacceptable that the lives of innocent seafarers are put at risk in these unprovoked attacks."

BIMCO represents around 60 per cent of the world's merchant fleet by tonnage.

"The increase in attacks and the escalated threat to seafarers is an urgent concern to the industry. Following the two most recent attacks, and while we await the results of the investigations of the attacks, the tension in the Strait of Hormuz and the Persian Gulf is now as high as it gets without being an actual armed conflict," said Jakob Larsen, the BIMCO head of maritime security. "The Strait of Hormuz provides the only sea passage from the Persian Gulf to the open ocean. Disruption of shipping through the strait will have a major impact on the oil trade and the shipping industry," said BIMCO. **MRI**

IN BRIEF

Gas tankers

ASBATANKVOY, one of the most widely used tanker charterparties in the world, will form the basis when BIMCO and the Association of Ship Brokers and Agents (US) (ASBA) begin to jointly develop a charterparty specifically for use in the gas tanker trade. BIMCO's documentary committee endorsed that work should be undertaken jointly with ASBA to develop the standard gas voyage charterparty. It will be codenamed ASBAGASVOY. The new form is intended for use of chartering tankers for LPG, anhydrous ammonia and chemical gases. LNGVOY, a voyage charterparty for the carriage of liquefied natural gas, was published jointly by BIMCO and the International Group of Liquefied Natural Gas Importers in 2016.

Flashpoint fuels

Classification society ClassNK has released guidelines for ships using low-flashpoint fuels. The guidelines outline safety requirements for other viable alternative fuels besides LNG, based on the latest technology and regulation trends to promote the design of alternatively fuelled ships. They divide targeted vessels into three categories and take into consideration the properties of each fuel type and ship regulations.

Freight solution

Indian exporters and importers can book ocean carriage and rail freight in one place after a new agreement between booking platform Cogoport and haulage service Concor. It claims to give 10 per cent savings by using one platform for all bookings and has already signed up more than 26,000 users.

Anti-virus

The Shipowners' Club has produced its final article in its cyber risk series. Secure State Cyber focuses on the benefits of anti-virus software, the importance of contingency planning in the event of a cyber attack and what actions members can take to ensure good security practices on board their vessels.

UK Supreme Court right on Rule F

A senior figure in the judiciary has defended a controversial UK Supreme Court ruling, to which he was party, which upheld a shipowner's contention that wages and fuel costs incurred during ransom negotiation were allowable under Rule F of the York-Antwerp Rules 1974. The internationally agreed set of rules is designed to achieve uniformity over what falls within the principle of general average and how losses should be shared.

The chemical tanker *Longchamp* was hijacked in January 2009 and ordered to sail to Somalia. The Supreme Court accepted that the daily expenses should be allowed in general average and therefore shared proportionately between ship and cargo interests, rather than being borne solely by the shipowners – as it took seven weeks of negotiation with the pirates to get the initial ransom demand of \$6 million reduced substantially to \$1.85 million.

Delivering the address at the annual general meeting of the Association of Average Adjusters, Lord Clarke of Stone-cum-Ebony was adamant that the highest civil court in the land had taken the correct course and that the existing understanding of adjusters and industry bodies was incorrect. Although losses by delay are normally excluded by the York-Antwerp Rules and this detention by pirates fell outside the limited circumstances in which wages and fuel costs are normally allowable, the Supreme Court held that the shipowners were entitled to rely on Rule F relating to substituted expenses. By incurring such costs during a delay for negotiation a significant reduction in the ransom payable by ship and cargo was achieved. The normal exclusions in the York-Antwerp Rules relating to delay and financial losses had no relevance when Rule F was used as a basis for the allowance.

Questions from the floor indicated concerns that removing any restriction regarding expenses arising from delay in the context of Rule F had created a potential uncertainty as to what other types of expense might now be considered – for example, could allowances extend to ship management and insurance costs or increased warehousing costs for cargo? Robin Aggersbury, the author of the original *Longchamp* general average adjustment, welcomed the decision, saying that he had always felt it was clearly equitable that the shipowner should be compensated for the direct costs of fuel and wages during a negotiation period. **MRI**

Warning on terms and conditions

International Transport Intermediaries Club (ITIC) has warned of the need to incorporate terms and conditions into business dealings to limit the potential exposure to liability. ITIC cited the case of the agent at a discharge port who advised a shipper with cargo on board an inbound vessel that the maximum draft was 40 ft. Since the vessel's draft was just under 41 ft, it made an interim call to unload some cargo.

The agent subsequently received a claim from the shipper alleging that the information it had provided was incorrect and that vessels with drafts in excess of 40 ft could still call at the port, but with two pilots on board, rather than one. The shipper argued that the agent should have been aware of this and claimed US\$250,000 in respect of the costs of the wasted call and transporting the excess cargo.

The agent could not find the relevant provision relating to vessel draft on the website of the local pilots' association, but was subsequently advised by the shipper that there was a link on the agent's own website explaining that vessels over 40 ft could call at the port, providing there were two pilots on board. The agent contacted the local pilots' association who confirmed that it was possible to call with a draft of 41 ft and that the information was on its website, albeit not easy to find.

The agent had incorporated standard trading conditions which limited its liability to 10 times its agency fee. This amounted to \$36,500, which sum was accepted by the shipper and reimbursed to the agent by ITIC. ITIC said the claim demonstrates the importance of businesses incorporating their terms and conditions into all their business dealings. **MRI**

IN BRIEF

GloFouling

The IMO reports that the initial phase of the GloFouling Partnerships project is now well and truly underway with a series of technical workshops in the Pacific. The key message is that, once introduced, marine invasive species can be hard to eradicate and these species are a major threat to the ocean's biodiversity and ecological integrity.

Suicide risk

Mental health awareness should be a core component of seafarer first aid training, according to Captain Rajesh Unni, CEO and founder of leading ship manager Synergy Group. He said 5.9 per cent of all deaths at sea were proven suicides and the number rose to 18.3 per cent if suspicious cases were included.

Sulphur cap

The IMO has been updating the industry on its initiatives to help the shipping sector prepare for the new sulphur cap coming into force in January 2020. The latest event was a round table in London, where participants were updated on the latest guidance, treaty amendments and other instruments.

Russia seizures

Two cruise ships leased by Canada-based cruise company One Ocean Expeditions (OOE) from the Russian state have been seized by Russia, apparently without warning. Passenger/cruise vessel MV *Akademik Ioffe* and research vessel MV *Akademik Sergey Vavilov* had been leased from Russia since 2011 and 2012. The vessels each carried fewer than 100 passengers and were used for Arctic and Antarctic cruises. OOE said that they were seized last month without warning. "The owners' refusal to provide the vessels is a breach of their contract with OOE," the company said. The company added that OOE had "done everything in its power to compel the owners to abide by their contractual obligations. The vessel owners unexpectedly decided to return the vessels to Kaliningrad, Russia, for purported repairs". OOE has taken legal action, filing an urgent application for arbitration proceedings.

Losses lower but incident numbers high

Large shipping losses are now at their lowest level this century having declined by over 50 per cent year on year, according to Allianz Global Corporate & Specialty SE's (AGCS) "Safety and Shipping Review 2019". In 2018, 46 total losses of vessels were reported around the shipping world, down from 98 a year earlier, driven by a significant decline in activity in the global loss hotspot, south-east Asia, and weather-related losses (10) halving after quieter hurricane and typhoon seasons.

While this plummet in total losses is encouraging, the number of reported shipping incidents overall (2,698 in 2018) shows little decline – less than 1 per cent year-on-year. Machinery damage is the major cause, accounting for more than a third of the 26,000+ incidents in the past decade – twice as many as the next highest cause, collision. Machinery damage is one of the most expensive causes of marine insurance claims, accounting for US\$1 billion+ in five years.

The South China, Indochina, Indonesia and Philippines maritime region remains the top loss location. One in four occurred here in 2018 (12), although this is significantly down from 29 a year earlier. The East Mediterranean and Black Sea (6) and the British Isles (4) rank second and third. Despite signs of improvement, Asia will remain a hotspot for marine claims due to its high level of trade, busy shipping routes and older fleets. However, newer infrastructure, better port operations and more up-to-date navigation tools will help to address challenges.

Cargo ships accounted for a third of vessels lost around the world in the past year. The most common cause of ship losses remains foundering (sinking), which has accounted for over half (551) of the 1,036 lost in the past decade. In 2018, 30 cases were reported. Fires continued to generate large losses on board with the number of reported incidents (174) trending upwards. This has continued through 2019 with a number of recent problems on container ships and three significant events on car carriers. Misdeclared cargo, including incorrect labelling/packaging of dangerous goods is believed to be behind a number of fires at sea. Meanwhile, the loss of hundreds of containers over board from a large vessel in early 2019 provides a reminder that damaged goods is the most frequent generator of marine insurance claims, accounting for one in five over five years. **MRI**

Gulf of Guinea piracy continues to threaten international seafarers

Members of the shipping community, flag states and agencies from Gulf of Guinea recently gathered at the IMO for a day-long symposium to highlight the continuing danger to seafarers operating in the Gulf of Guinea. Dr Grahaeme Henderson, chair of the UK Shipping Defence Advisory Committee and vice president of Shell Shipping and Maritime, said: "Simply put, the high level of piracy and armed robbery attacks in the Gulf of Guinea is not acceptable. Yet it is happening every day and this is not business as usual. We need to take urgent action now."

Concerns raised were supported by figures from the International Maritime Bureau showing that the number of attacks in the Gulf of Guinea region had doubled in 2018. There has also been a marked increase towards kidnapping for ransom and armed robbery incidents. Piracy expert Professor Bertand Monnet, who has interviewed pirate gangs in the Niger Delta, estimated that there were approximately 10 groups of pirates that were responsible for the majority of attacks.

Dr Dakuku Peterside, the director general and CEO of the Nigerian Maritime Authority and Safety Agency, acknowledged the maritime security risks present, but stated that new initiatives underway to improve the joint capacity of Nigerian law enforcement and Navy capabilities could make seafarer kidnappings "history" within a matter of months. He went on to state that he is keen to improve international cooperation, particularly with the shipping industry.

Speakers agreed the region was starting to build capacity and joint cooperation to fight maritime crime through the Yaoundé Process, which focuses on joint cooperation across the region for reporting and response. The international community is also sponsoring long-term capacity building and partnerships. Attendees were encouraged by recent Spanish Navy action to assist Equatorial Guinea to rescue seafarers from a piracy attack, as well as the new US programme to embark law enforcement officers on regional vessels. **MRI**

**AAA
NEW CHAIR**



The Association of Average Adjusters has chosen a new chairman.

Willum Richards has announced that on the expiry of his two years in office he will hand over the chairmanship

to Richard Cornah. Liverpool-based Richard is chairman of the Richards Hogg Lindley division of London-listed insurance specialist Charles Taylor plc. Richard is noted for his academic work as an editor of the last three editions of the major textbook *Lowndes and Rudolf on General Average and the York-Antwerp Rules*.

Richard has served on market committees including those revising the Lloyd's Open Form. He chaired the association in 2008 and 2009, with his AGM addresses dealing with pollution issues and division of marine losses over policies.

**IUMI
NEW ASIA AMBASSADOR**

Agnes Choi has been appointed the first ambassador for Asia in Shanghai by the International Union of Marine Insurers (IUMI). She will be supported by Mike Davies, IUMI ambassador for Singapore. Agnes has more than 30 years' experience in marine insurance.

**Kennedys
12 JOIN MARINE TEAM**

Law firm Kennedys has strengthened its marine and energy capabilities with the hire of a 12-strong insurance coverage and disputes team to its London office.

The team, joining from Norton Rose Fulbright, comprises three partners, Patrick Foss, Chris Zavos and Jo Ward, along with seven other lawyers and two support staff.

Patrick brings more than 30 years' experience in insurance law. His practice is focused on coverage, defence and disputes in marine, offshore and onshore energy, terrorism, trade credit and political risk.

Chris has extensive experience in advising on complex coverage as well as liability defence, subrogation and sanctions issues. He has been ad hoc legal adviser to the London Market's Joint Hull Committee since 2002.

Jo's practice is focused on marine insurance coverage work including hull and

machinery, cargo, liability, mortgagee's interest, ports and terminals and specie.

Other lawyers joining are: senior associates, Amy Byrne, Anna Haigh and Debbie Larkin; and associates, Jake Hooper, Imogen Lowe, Suzy Oakley and Rachel Pearce.

**IMRF
NEW BOARD**

International Maritime Rescue Federation (IMRF) members have elected their new board of trustees. The new trustees, who will serve a four-year term, then held an initial meeting to elect a new board chair. The newly elected trustees are: Dean Lawrence (chair) (Coastguard New Zealand); Jorge Diena (ADES Uruguay); Mohammed Drissi (Ocean Fisheries Department, Morocco); Cia Sjostedt (Swedish Sea Rescue Society); Nicolaus Stadeler (German Maritime Search and Rescue Service); James Vaughan (RNLi); and Zhang Rongjun (China Rescue and Salvage).

**Liberty Mutual
NEW UNDERWRITER**

Liberty Mutual Re (LM Re), part of Liberty Mutual Insurance Group, has appointed Jens Voges as senior underwriter and product leader marine and energy within its London market risks (LMR) team.

He will be based at LM Re's Cologne office and takes up the role with immediate effect. Prior to joining LM Re, Jens worked for AXA ART Insurance as senior reinsurance specialist for nearly two years. Before that he was at Liberty Specialty Markets as a reinsurance underwriter for more than nine years.

Jens will report to Bernd Burelbach, underwriting manager, Liberty Mutual Re, Cologne. He will be responsible for the underwriting and strategy of the LMR Marine and Energy Reinsurance book.

**LOC
NEW OFFICE**

LOC has opened a new office in Hamburg to develop the renewables and shipping offering of the group within the region. This will be the group's sixth office in Europe and its 26th office globally.

The office will be led by Christoph Ruck and Emek Ersin Takmaz. Christoph is a naval architect and international welding engineer, with a strong network in the German maritime industry through nine years' experience working with German

shipowning companies operating in heavy lift and project business, and five years' experience working with DNV GL, the classification society.

Emek is a naval architect and project manager with strong global experience in marine industry. Previously he worked with a German shipowner for five years and was responsible for heavy lift and project cargo operations across the renewables, infrastructure and oil and gas sectors.

**Liberia
NEW VP**



F Humera Ahmed has been appointed vice-president of legal and business development of the Liberian International Ship and Corporate Registry (LISCR), the US-based

manager of the Liberian Registry.

Humera brings to her new role at LISCR nine years' experience as an attorney at Blank Rome LLP where she focused on maritime transactions, finance issues and business development. She will be based in LISCR's New York office, from where she can expand the LISCR global team and bring the Liberian Registry closer to the international legal community in general, and to the New York legal market in particular.

**Hill Dickinson
NEW JOINERS**

Energy sector lawyers Mark Aspinall and Paul Sinnott have joined Hill Dickinson from Eversheds and will operate from the firm's London office.

Mark acts for trade finance banks, independents and producers, as well as ship owners and P&I Clubs.

Paul acts largely for energy and metals industry clients which trade, finance, hedge or transport commodities – including leading banks, dealers, traders, producers, shipowners and P&I Clubs.

Newly promoted Claire Messer joins the pair in bringing the total number of partners up to nine. This follows the recent arrivals of litigation partner Beth Bradley from Clyde & Co, master mariner Kevin Austin, transactional lawyer SD Choi from Norton Rose, corporate partner (marine) Jasel Chauhan from HFW and senior associate John McNeilly from Stephenson Harwood.

The salvage industry, pollution prevention and facilitation of world trade

Charo Coll, of the International Salvage Union, makes the argument for a global profession of marine salvors ready to step up at a moment's notice

Shipping is the lifeblood of world trade and the infrastructure supporting shipping on the high seas, but also on approach to and in port, is well established and well understood: the network of increasingly sophisticated and ever larger ports, the dominance of containerisation, pilotage, modern navigation systems, dredging and so on. But one vital sector is perhaps less well-known. It is marine salvage. Commercial salvors are critical in mitigating risk and preventing loss but also in preventing and dealing with marine pollution and facilitating world trade by keeping goods moving and keeping shipping going.

It is an industry which operates within a formal legal framework governed by the 1989 IMO Salvage Convention and a sophisticated and long-established legal context using proven and trusted forms of contract. Salvors' work benefits seafarers, coastal states, shipowners and their insurers, both property and liability and the environment.

Some coastal states employ emergency towing vessels which are on standby to intervene in threatening situations, but their coverage is far from universal and in most cases it is only the commercial salvors who stand between a casualty and a catastrophe mainly in remote locations and ports.

The contribution of salvors to environmental protection is not well-known but is very important. In 2018 for example, members of the International Salvage Union (ISU) provided more than 220 services to vessels carrying 3,213,228 tonnes of potentially polluting cargo and fuel. In the period 1994 to end-2018, ISU members have provided services to casualty vessels carrying 31,419,604 tonnes of potential pollutants.

There was a significant increase in 2018 of vessels carrying crude oil and refined oil products 1,302,988 tonnes – up from 933,198 tonnes in 2017. In 2018 there was also a large increase in the number of containers involved in salvage cases, rising from 45,655 TEU in 2017 to 59,874 TEU in 2018. Container trade has expanded dramatically and, with the possibility of hazardous or polluting cargoes within the boxes combined with the fact that loose containers are a hazard to navigation, it means that containership casualties must be considered to be a grave threat to the environment. Further, the largest containerships

carry many thousands of tonnes of bunker fuel – more than the carrying capacity of a coastal tanker.

In 2018 ISU members' operations involved 111,796 tonnes of bunker fuel. Regardless of the nature or location of the incident it is often a requirement of the coastal state authorities that bunker fuel be removed from a casualty. Depending on the circumstances, this can be a complicated and specialist operation.

In the case of sunken vessels, it is also often a requirement that the pollutants should be removed, even if the wreck is to be left. There are many examples of the ISU's members' technical expertise at dealing with bunker fuel, and cargo, bringing it safely to the surface for disposal. A chemical cargo was recovered from the sunken tanker *Ievail Sun* off the Channel Islands; in Asia pollutants were brought up from *Kyung Shin* using remote equipment including heating systems to thin the viscous oil. More recently, following the loss of *Grande America* off France, oil leaking into the sea from great depth was successfully stopped by patching.

Dealing with the firefighting water in the case of major containership fires – such as that of the *Maersk Honam* in 2018 – is another challenge met by the commercial salvor. Many thousands of tonnes of contaminated water need to be removed and appropriately treated and disposed of.

It all stems – rightly – from the zero tolerance shown by the authorities to pollution – a matter of a hundred litres of pollutant in the sea is unacceptable. And there has been a great societal shift in the past decades such that care for the environment and protection of scarce natural resources is now considered to be the most important factor in all industrial activities.

In response, ISU must be sure that it promotes the full benefits that the salvage industry provides. Of course, we aim to save life, to save property and mitigate loss but our members' operations also protect the environment from great harm.

Not all of these potential pollutants were at risk of going into the sea: some cases will have been simple with limited peril, but many others will have carried a real danger of substantial environmental damage. Just one major incident can cause an environmental disaster with huge financial and reputational consequences.

Beyond environmental protection and the intervention to save life and property, keeping goods moving and ports open is a key benefit of the work of the salvor. It may not receive much attention but, in the "just in time" delivery model where containerships are, in effect, giant warehouses, the salvor's work prevents interruptions to trade and the resultant consequential losses. There are numerous examples of cases where the work of marine salvors has helped to keep a port operational or quickly to bring it back into full service after an incident.

The car carrier, *Repubblica di Genova*, slowly capsized at her berth at Antwerp. An ISU member parbuckled the vessel and refloated her. Of course, the affected berths were out of action for the entire period and the work of the salvor in removing the vessel was vital to the port's interests.

Another similar episode was that of the cellular container feeder vessel, *Deneb*, which sank while moored alongside the APM Terminal at Algeciras, Spain. The casualty eventually settled on the seabed on her starboard side, partially blocking the quayside. An ISU member was again mobilised and combined parbuckling with measures to regain buoyancy. Loose containers were cleared and the deck containers removed, followed by the



CSCL *Jupiter* grounded in the river Scheldt

hold containers – a challenge due to the attitude of the vessel. Pumping out the engine room and holds provided enough buoyancy and, with the assistance of the cranes, the vessel was re-floated and removed to bring the port back into full operation.

We have also witnessed cases where giant containerships have grounded in the approaches to busy European ports. ISU members rapidly refloated the stranded 14,000 teu CSCL *Jupiter* on the River Scheldt which was obstructing traffic going into and out of Antwerp. And, in a previous incident, the huge containership CSCL *Indian Ocean* grounded in the River Elbe upstream from Hamburg and was refloated. Both cases saw ISU members using multiple assets to save the vessel and these incidents highlight the potential for large casualties to cause prolonged blockages of major ports leading to severe economic consequences, to say nothing of the potential for pollution and economic loss to cargo and hull interests. A major marine property insurer has already identified the possibility of the US\$2 billion loss. In these cases, the quick and effective response of professional salvors averted the risk and made critical work look deceptively easy.

Natural disasters are a regular cause of interruption to trade. Major earthquakes in Chile and Haiti resulted in vessels sinking in port and causing significant disruption with clean-up and vessel removal undertaken by ISU members. One case was the bulker *Laurel* which had been lifted up and out of its dry dock, thrusting it forward onto the pier bulkhead. Using jacks and airbags, the vessel was carefully refloated with no damage to the dock, caisson or vessel. And following the Japanese tsunami in 2011 Japanese ISU members undertook numerous port clearance operations ranging from numerous small fishing vessels to a large bulkers.

Similarly, in response to hurricanes Harvey and Irma in the southern US in 2017 ISU members were deeply involved supporting the authorities, clearing waterways, salvaging vessels, removing wreck as well as providing relief services to island communities.

Despite the challenges, salvors are therefore ready to intervene at short notice regardless of the conditions to save life and property to prevent pollution and to play their part in keeping cargo moving and ports open, to keep commerce flowing, supporting economic growth and prosperity.

It is essential that there continues to be global provision of professional salvage services to respond professionally to maritime emergencies and that needs appropriate compensation. ISU wants salvors to be seen as partners with property owners who mitigate risk and minimise loss. And also to be recognised as creative, innovative, safe contractors who have great experience of excellent project management, successfully delivering complex projects particularly with the removal of wrecks and with experience of preventing pollution and dealing with it should the worst happen. **MRI**



Charo Coll

Charo Coll, president,
International Salvage Union

Wreck removal and the challenges of CTLs

Rebecca Hamra, of The Standard Club UK and The Standard Club Ireland, reports on the troubles encountered with recycling a ship that is a constructive total loss

The wreck of a ship poses several serious difficulties for a shipowner aside from the loss of the ship itself. This is especially true when a shipowner is faced with removing the ship for ultimate disposal and recycling. Modern wreck removal methods are often elaborate and costly endeavours. Much attention has been paid to the elaborate removal operation of the cruise ship *Costa Concordia* from its wreck site. However, an often-overlooked issue of the wreck removal process is that of obtaining an export licence to dispose of the ship for recycling and finding an acceptable recycling yard.

In common terms, a “wreck” is a ship that has been destroyed at sea. However, for purposes of insurance, a ship can be an “actual total loss” or a “constructive total loss”. Under the Marine Insurance Act, a constructive total loss (CTL) occurs when it is unlikely that the ship can be recovered or when the costs of recovery and repairs will exceed the ship’s value. Under a Norwegian marine insurance policy, a ship is considered a CTL when the cost of repair exceeds 80 per cent of the insurable value, or 80 per cent of the value of the ship after repairs if the latter is higher than the insurable value.

Once considered a CTL, the shipowner must deal with removing the wreck. The Nairobi Convention on Wreck Removal 2007 (WRC) provides the legal basis for member states to have dangerous wrecks removed from their exclusive economic zone (EEZ), the body of water extending 200 nm from their shoreline. The Convention entered into force on 14 April 2015. There were 15 states party to the Convention when it entered into force and other states are continuing to ratify. Under the WRC, shipowners are financially and practically responsible for locating, marking and removing wrecks in an affected state’s EEZ, with only a few exceptions.

If the shipowner does not carry out these actions by a certain deadline, or if a wreck proves an imminent threat, the affected state can intervene directly at the shipowner’s expense. The country in which the wreck occurs also has the power to lay down the conditions for its removal. If that removal involves sending the ship to another country for recycling, the shipowner must obtain an export license before doing so as, once declared a CTL, the ship is no longer considered a vessel but waste.

The export of waste is regulated under The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. This global convention was adopted

in 1989 and came into force in 1992. The original purpose of the Convention was to protect human health and the environment against harm caused by the disposal of waste. It was hoped that it would undermine the practice of illegally sending hazardous waste to developing countries like India, Pakistan and Bangladesh. The Convention also requires the prior informed consent of the authorities in the country receiving the ship to agree to the shipment of the waste in question on the basis that the waste (here the ship) will be treated in an environmentally sound manner.

To strengthen protection to developing countries, the Basel Convention adopted the “Ban Amendment” in 1995. This Ban Amendment bans the export of all hazardous waste from an OECD country to a non-OECD country (OECD is the Organisation for Economic Cooperation and Development and includes 36 countries with a high-income economy). At the end of the 1990s the United Nations decided that the Basel Convention should also regulate the recycling of ships, notwithstanding that the Convention does not make any provision for ships or recycling yards. The Ban Amendment has not yet entered into force internationally. However, the European Waste Shipment Regulation (EWSR) 2006 implements the Basel Ban Amendment’s requirements at the EU level. This regulation means that no ship leaving an EU port destined for recycling (regardless of the ship’s flag state) may be exported to a non-OECD country for that purpose.

It has been difficult for shipowners to find a certified recycling yard that complies with the EU Ship Recycling Regulation of



Costa Concordia

2013. This regulation (which came into effect in 2019) requires all sea-going ships sailing under an EU member state flag to use an approved ship recycling facility included in the European List. The Ship Recycling Regulation implements the requirements of the 2009 Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships. It represents the EU's attempt to implement even higher standards than the IMO's Hong Kong Convention, which requires ships to maintain an inventory of hazardous materials and requires ship recycling yards to implement a ship recycling plan. The Hong Kong Convention has not yet entered into force.

The EU regulations are powerful considering Europe is the world's second largest ship-owning region after China. Currently there are 34 yards in the world which are considered acceptable for ship recycling by the EU. However, shipowners have pointed out that the European yards are geared towards small ships trading domestically. Pricing is also a factor, with many of the EU-approved yards offering less money for the recycled

The European List of ship recycling facilities

NV Galloo Recycling Ghent, Belgium	FAYARD, Denmark
Fornæs, Denmark	Modern American Recycling Services Europe, Denmark
Smedegaarden, Denmark	Stena Recycling, Denmark
BLRT Refonda Baltic, Estonia	Turun Korjaustelakka Oy (Turku Repair Yard Ltd), Finland
Démonaval Recycling, France	Gardet & De Bezenac Recycling/Groupe Baudelet Environnement, France
Grand Port Maritime de Bordeaux, France	Les Recycleurs bretons, France
San Giorgio del Porto, Italy	A/S "Tosmares kuğubūvētava", Latvia
UAB APK, Lithuania	UAB Armar, Lithuania
UAB Vakaru refonda, Lithuania	Keppel-Verolme, The Netherlands
Scheepssloperij Nederland, The Netherlands	AF Offshore Decom, Norway
Green Yard, Norway	Kvaerner AS (Stord), Norway
Lutelandet Industrihamn, Norway	Norscrap West, Norway
Navalria — Docas, Construções e Reparações Navais, Portugal	DDR Vessels XXI, Spain
Able UK, UK	Dales Marine Services, UK
Harland and Wolff Heavy Industries, UK	Swansea Drydock, UK
Isiksan Gemi Sokum Pazarlama ve Ticaret, Turkey	Leyal Gemi Söküm Sanayi ve Ticaret, Turkey
International Shipbreaking, US	

materials than those not on the list. The one US yard that is approved is typically not favoured due to the even more stringent environmental regulations in effect. This leaves three Turkish yards as the remaining options which can price accordingly.

China had previously been a top choice for "green" ship recycling, as the ships were dismantled in dock rather than beached. According to data by the NGO Shipbreaking Platform, China was fourth in the world in 2017 in terms of shipbreaking volumes, following Bangladesh, India and Pakistan. However, the country is no longer an option for non-Chinese ships needing to be recycled. The country issued an edict in early 2018 that banned the import of ships and offshore units for recycling as part of a wider ban on importing a total of 16 different types of waste material. The regulation was effective from 31 December 2018.

The cumulative effect of these regulations has caused difficulty for shipowners when trying to obtain an export licence for their ship which has been declared a CTL. Governmental authorities are often unversed in the world of shipping and unsure how to classify the ship and all its appurtenances under the export license requirements. Also, it can be a time-consuming process getting the receiving country's authorities to confirm to the exporting country's authorities that the ship will be disposed of in an environmentally sound matter. The longer the delay in getting the licence, the greater the costs for the shipowner and ultimately the insurer. *MRI*



Rebecca Hamra

Rebecca Hamra, claims director, international division of Charles Taylor P&I Management (Americas), Inc, on behalf of the managers of The Standard Club UK Ltd and The Standard Club Ireland DAC

The fundamentals of FONAR

Lyall Hickson, of the UK P&I Club, explains what a FONAR is and how it operates

As the deadline for IMO's 2020 global sulphur cap approaches, a key area of interest for shipowners is fuel oil non-availability reporting, which may be necessary if a ship is unable to obtain compliant fuel.

What is a FONAR?

Individual member states will implement their own regulations and penalties to enforce the global sulphur cap. Regulation 18 of Annex VI of the MARPOL Convention sets out factors to be taken into consideration by a member state party in situations where a ship is found not to be compliant with the sulphur limits. Specifically, a ship may provide records of its attempts to achieve compliance with the limits, and evidence of its best efforts to obtain compliant fuel.

If, despite best efforts, a ship is unable to obtain compliant fuel, the ship's flag state as well as the competent authority of the port of destination should be notified. This notification is commonly referred to as a fuel oil non-availability report (FONAR).

The submission of a FONAR is not expected to result in waiver or an exemption from compliance with the global sulphur cap. However, it will be a key document or piece of evidence in assessing whether, in the eyes of the authorities, the unavailability of compliant fuel is reason for a ship not having compliant fuel. It will also be a key document for the IMO (as member states are required to upload a FONAR to an online system) to monitor the availability of compliant fuel.

Many shipowners will already be familiar with FONAR as a similar system has been in use in the North American emission control area since 1 August 2012 and the Environmental Protection Agency (US EPA) has issued useful guidance to assist shipowners and operators.

What should a FONAR contain?

The FONAR should present a record of actions taken by the ship in her attempts to bunker compliant fuel oil and provide evidence of attempts to purchase compliant fuel oil in accordance with her voyage plan. Further, if compliant fuel was not made available at the point or location stipulated in the voyage plan, the FONAR should record evidence of attempts to locate alternative sources of such fuel oil.

Adapting the useful guidance provided by the US EPA to a global sulphur cap, it could reasonably be expected that a FONAR should contain:

- The ship's name, flag, and IMO number;
- A copy of the ship's voyage plan in place at the time of the relevant voyage in question;
- The date/time and location of the ship when it first received notice of the proposed voyage;
- A description of the actions taken to attempt to achieve compliance with sulphur regulations;
- A description of why compliant fuel oil was not available; and



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- In cases of fuel oil supply disruption, the name of the port at which the ship was scheduled to receive compliant fuel oil and the name of the fuel oil supplier that is now reporting the non-availability of compliant fuel oil.

“The US guidance provides that ships are not required to deviate from their intended voyage to obtain compliant fuel, although a ship operator is expected to make ‘any adjustments that can be made’ to allow the purchases of compliant fuel”

If applicable, identification and a description of any operational constraints that prevented the ship from using available compliant fuel oil should be provided, as well as:

- Availability of compliant fuel oil at first port of call and plans to obtain that fuel oil;
- If compliant oil is not available at the relevant port of call, then the sulphur content of any alternative fuel oil available;
- Details of calls to the subject member state ports in the prior 12 months, including whether the ship used compliant fuel oil;

- Details of any previous FONARs submitted in the last 12 months; and
- Key contact information for the master, ship operator, ship agent and ship owner.

The US EPA regime guidance provides that ships are not required to deviate from their intended voyage to obtain compliant fuel, although a ship operator is expected to make “any adjustments that can be made” to allow the purchases of compliant fuel. It is not expected that a ship is to subject itself to undue delays to achieve compliance. Member states are obliged to take reasonable steps to promote the availability of compliant fuel oils. It is not unforeseeable that disputes could arise as to whether a delay to a ship is to be considered undue or unreasonable in the context of achieving compliance.

However, it must be stressed that individual member states may develop more detailed guidance for the consistent use and acceptance of these reports, including what evidence is needed to accompany a report. While the current guidance from the US EPA is useful in planning for the global sulphur cap, this should be further reviewed on a country-by-country basis as member states issue their own regulations and guidance.

When should a FONAR be submitted?

A FONAR should be submitted as soon as it is determined, or when the ship becomes aware, that compliant fuel oil will not be available. A copy of the FONAR should be kept on board for inspection for at least 36 months.

There have been discussions regarding the types of situations in which a FONAR should be submitted. The paradigm example of where there is a genuine lack of supply of compliant fuel is a clear scenario where a FONAR would be required. It is less clear whether a FONAR should be submitted in other situations such as, where, following delivery, bunkers represented in the bunker delivery note to be compliant have, according to the owner’s analysis, a non-compliant level of sulphur. Another example could be a breakdown of a scrubber system on a ship with limited reserves of low-sulphur marine gasoil. According to the PSC Guidelines approved at MEPC74, such situations should be notified in writing to the ship’s flag state, the relevant port of destination and the authorities where the bunkering took place.

It seems that the FONAR format may not be used in such situations. It should be borne in mind that FONAR is a reporting format; the main concern following any non-compliance is to get the information out to the flag state/port state. On a practical level, subject to further developments and guidance, if the circumstances are not clear, the safest approach would be to issue a FONAR and also to inform the flag state, port of destination and place of bunkering of the situation by email. In real terms, ship managers should also call the flag state over the phone or meet the local representatives to make necessary representations.

Charterparty implications

Under a voyage charterparty, owners are responsible for fuel. It follows that compliance with the sulphur regulations and the FONAR procedure lie within the owners’ sphere of responsibility. In the case of a time charterparty, it is the charterers who supply fuel to the ship, while the owners remain responsible for compliance with the sulphur regulations. The regulations include requirements to use “best efforts” to supply compliant fuel

and the FONAR requirements. A tension exists as the evidence required for the FONAR will be in the control of the charterers as it is the charterers who are in communication with bunker suppliers and brokers. That means owners will be entirely dependent on charterers to provide the paper trail to demonstrate that “best efforts” have been made to find compliant fuel.

“It is not yet known how authorities will interpret the requirement to use ‘best efforts’ to find compliant fuel. Can this be delegated to charterers? To what extent are shipowners required to make enquiries to find compliant fuel?”

BIMCO and INTERTANKO have both released clauses dealing with the respective obligations between owners and charterers in relation to compliance with the global sulphur cap. However, these were drafted prior to the IMO guidelines with respect to FONAR and shipowners should consider whether the existing clauses are sufficient to deal with issues which might arise in this area.

For example, it is not yet known how authorities will interpret the requirement to use “best efforts” to find compliant fuel. Is this a requirement that can be delegated to charterers? To what extent are the shipowners required to make their own enquiries to find compliant fuel?

There is a strong argument that the parties’ respective obligations with regard to “best efforts” to supply compliant fuel and FONAR are within the scope of the BIMCO clause. So, a shipowner should be able to establish liability and enforce the indemnity requiring charterers to supply evidence of “best efforts” to supply compliant fuel for the purpose of submitting a FONAR. That said, in the absence of express wording dealing with “best efforts” and FONAR, there is scope for argument that the BIMCO clause would not apply to that situation. Similar issues arise under the INTERTANKO clause. Additional wording to the charterparty and bills of lading might also be required to allow for a deviation to bunker with compliant fuel.

So that parties better know where they stand, it would be preferable to include express wording to the BIMCO/INTERTANKO clauses specifically addressing these issues.

With the 1 January 2020 deadline on the horizon, industry-wide preparations for IMO 2020 are intensifying. It is advisable that shipowners everywhere become fully briefed on issues such as FONAR and their potential impact on their day-to-day operations as soon as possible. [MRI](#)



Lyall Hickson

Lyall Hickson, senior claims executive, UK P&I Club

Could the contract be fulfilled **but for**?

A force majeure defence requires a party to prove it could otherwise perform, as **Elizabeth Turnbull** and **Maribel Sabatino**, of Clyde & Co LLP report

A party seeking to rely on a force majeure or exceptions clause needs to show that “but for” the force majeure or excepted event, it would have performed the contract. However, where that party is unable to perform the contract, the innocent party is still entitled to substantial damages in circumstances where the contractual performance would nevertheless have become impossible by reason of extraneous events.

The UK’s Court of Appeal considered these two issues in *Classic Maritime Inc v Limbungan Makmur Sdn Bhd* [2019] EWCA Civ 1102, on appeal from Teare J’s first instance decision ([2019] 1 Lloyd’s Rep 349).

Facts

On 5 November 2015 a dam operated by Brazilian mining company Samarco Mineração SA (Samarco), collapsed in what remains to this day the worst environmental disaster in Brazilian history. As a result, production at Samarco’s iron ore mine came to a halt, affecting customers of the mine and impacting on their sale purchase contracts as well as their transportation agreements.

Previously, on 29 June 2009, the parties to this dispute, Classic (shipowner) and Limbungan (charterer), had entered into a long-term contract of affreightment (COA) providing for shipments of iron ore pellets from Ponta Ubu or Tubarao in Brazil to Port Kelang or Labuan in Malaysia, on tonnage to be provided by the shipowner.

The charterer claimed that the bursting of the dam prevented it from supplying five of the cargoes for shipment under the COA, and that clause 32 of the COA protected it from liability for breach of what was otherwise an absolute duty to supply cargoes.

The clause provided: “Neither the vessel, her master or owners, nor the charterers, shippers or receivers shall be responsible for... failure to supply, load ... cargo resulting from: act of god ... floods ... landslips ... accidents at the mine or production facility ... or any other causes beyond the owners’, charterers’, shippers’ or receivers’ control; always provided that such events directly affect the performance of either party under this charter party.”

While the parties agreed that the dam burst did constitute an “accident at the mine”, the shipowner argued that the collapse of the dam had no causative effect for the charterer because the five shipments would not have been performed even if there had been no dam collapse. An unfavourable steel market, and reduced demand from its own customers, had already caused the charterer to miss two shipments between July and October 2015 and to seek reductions in the contractual freight rate and the amount of cargoes to be loaded.

First instance

At first instance, Teare J held that even in circumstances where the dam burst rendered performance impossible, clause 32 of the COA imported a causation requirement and, therefore, the charterer had to show that it would have performed its obligations but for the collapse of the dam. Since the charterer

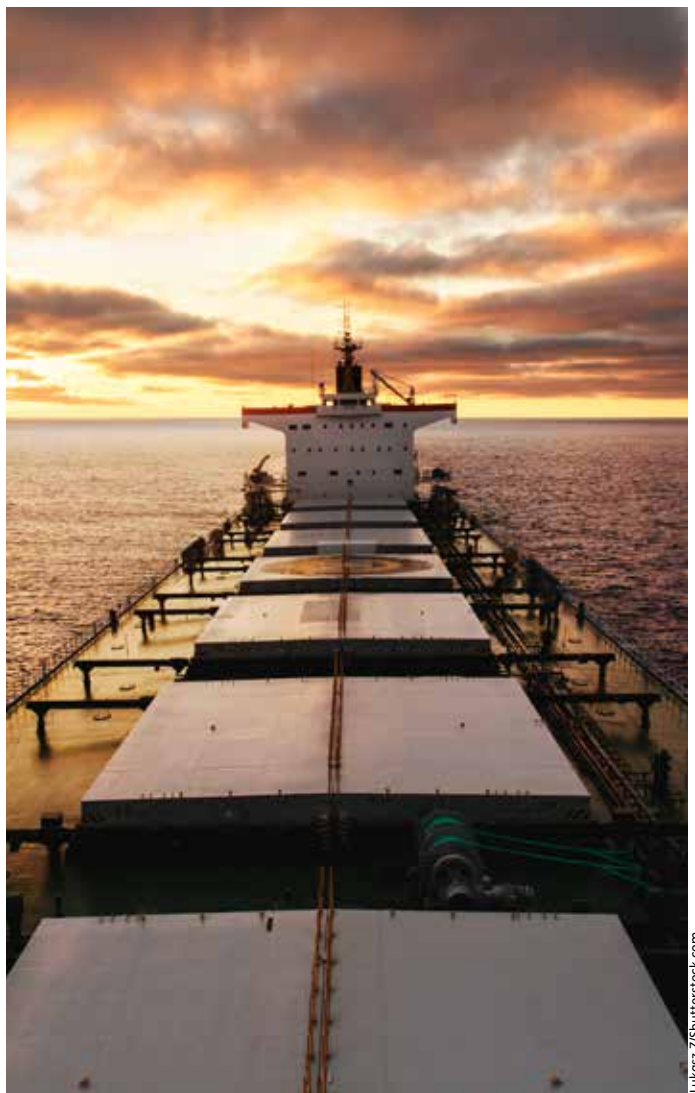
would have defaulted anyway, it was not able to rely on the exceptions clause.

However, the judge continued, since, even if the charterer had been willing and able to load the shipments, performance would have inevitably become impossible because of the dam collapse, the shipowner was awarded nominal damages of US\$1 for each shipment instead of the \$20 million claimed. Teare J considered that awarding the shipowner substantial damages would be a breach of the compensatory principle.

The shipowner appealed on the issue of damages and the charterer cross-appealed on the issue of liability.

Court of Appeal

The Court of Appeal upheld Teare J’s decision that clause 32 required the charterer to show that “but for” the dam burst it would have performed the contract and reversed his decision on the issue of damages, awarding the shipowner substantial damages.



“But for” causation

The charterer submitted that the general principle laid down by the House of Lords decision in *Bremer Handelsgesellschaft mbH v Vanden Avenne-Izegem PVBA* [1978] 2 Lloyd’s Rep 109 was that a party relying on force majeure need not show that it would have performed, “but for” the event. The shipowner submitted that the issue was one of construction of clause 32, and not one of general legal principle, and that *Bremer* was a case concerned with a different kind of clause, a “contractual frustration clause”, and was irrelevant.

The Court of Appeal considered that *Bremer* was a case concerning “contractual frustration” (clause 21 of GAFTA 100) and accepted that there is a distinction between a “contractual frustration” clause (a clause which brings the contract to an end automatically on occurrence of the event, thereby releasing both parties from any further obligations) and an exceptions clause, which relieves a party from responsibility for breach of contract, once that breach has occurred. The automatic termination of the contract by reason of contractual frustration rendered a test of “but for” causation irrelevant.

The Court of Appeal, agreeing with the shipowner and Teare J, considered that the question was undoubtedly one of construction of clause 32, and that the language used in the clause imported a causation requirement: it had to be shown that the failure to supply the cargo resulted from the accident of the mine, and “always provided that such events directly affect[ed] the performance of either party under this Charter Party”.

As a result, the Court of Appeal upheld Teare J’s finding that the charterer could not rely on the defence afforded under clause 32 and was liable for the failure to provide the five shipments.

Damages

Turning to the issue of damages, the Court of Appeal viewed Teare J’s application of the compensatory principle as a “sleight of hand” and reversed his decision.

The compensatory principle applicable to the assessment of damages for breach of contract involves putting the innocent party in the position it would have been in if the contract had been performed. This principle has been applied many times and in the judgment delivered by Males LJ, the judge considered two Supreme Court cases: *Golden Strait Corporation v Nippon Yusen Kubishka Kaisha (The Golden Victory)* [2007] 2 Lloyd’s Rep 164 and *Bunge SA v Nidera BV* [2015] 2 Lloyd’s Rep 469.

- *The Golden Victory* was a case concerned with whether, when assessing damages for anticipatory breach of a long-term charterparty, account had to be taken of the fact that, by the time the damages came to be assessed, the contract would have been lawfully cancelled as a result of the outbreak of the Second Gulf war. The Supreme Court held that the owners were not entitled to recover damages for the full-term of the charterparty, and that the value of the contractual rights of which the shipowner had been deprived was the hire which would have been earned at the charter rate up until the outbreak of war and no further.
- In *Bunge SA v Nidera*, the contract provided for cancellation of the contract without liability, in the event of a prohibition of export by the Russian government. Such prohibition was announced and the seller cancelled the contract. However, the seller’s action was premature, since by the time the

contract was to be performed, there was still a possibility that the prohibition would be lifted (though in the end, it was not). The Supreme Court held that the buyer suffered no loss, despite the seller’s anticipatory repudiation, since the sale would not have taken place in any event due to the export prohibition.

“The compensatory principle applicable to the assessment of damages for breach of contract involves putting the innocent party in the position it would have been in if the contract had been performed”

The Court of Appeal distinguished *The Golden Victory* and *Bunge SA v Nidera* since these cases were concerned with the assessment of damages for anticipatory breach, and the present case was concerned with actual breach. Subject to clause 32, the charterer’s obligation to supply cargoes was an absolute obligation. Since clause 32 did not provide the charterer with a defence, the charterer had to pay damages for its failure to perform. The compensatory principle required, therefore, a comparison between: (1) the freights which the shipowner would have earned less the cost of earning them; and (2) the actual position in which the shipowner found itself as a result of the breach. Consequently, damages were awarded for US\$20 million.

Comment

This case brings important clarification to the interpretation of force majeure or exceptions clauses. It would seem that contrary to what textbooks such as *Chitty and Treitel on Frustration and Force Majeure* suggest, this matter suggests that there is no general principle confirming that it is not necessary for a party trying to rely on a force majeure or exceptions clause, to show “but for” causation. The clause in *Bremer v Vanden Avenne-Izegem* was held to be a “contractual frustration clause” which did not import a “but for” causation requirement.

On the issue of damages, the court distinguished between damages for anticipatory breach of contract and damages for actual breach. Supervening events rendering contract performance impossible will only be relevant when assessing damages for anticipatory breach.

While permission to appeal was refused by the Court of Appeal, an application for permission to appeal is being made to the Supreme Court. *MRI*



Elizabeth Turnbull

Elizabeth Turnbull, partner, and Maribel Sabatino, paralegal, Clyde & Co LLP

Feeling the squeeze in enclosed cargo spaces

Mike Yarwood, from TT Club, looks at the very real dangers of working in the enclosed spaces inherent in cargo transport

The issue of enclosed space incidents on ships continues to plague the industry, involving both seafarers and shore-based workers. Ships at sea are governed by the International Convention for the Safety of Life at Sea (SOLAS) and are required to operate within the International Safety Management (ISM) Code that mandates the establishment of safety objectives and a safety management system (SMS).

When a ship arrives in port, however, there is an additional dimension, with shore workers and stevedores employed under local legislation, entering an environment whose physical attributes and safety management procedures are likely to be unfamiliar, while operating under applicable laws relating to the ship's flag of registry. So, do the regulations on ships and ashore bridge the gap for contractors working aboard?

In one example, three stevedores boarded a ship in a European port and entered an enclosed space. There were no known hazards from the cargo, but oxygen depletion had taken place in the access space they entered, during the ship's 40 days at sea. The space had not been ventilated sufficiently and correct enclosed space entry procedures were not followed. The ship allowed the shore workers to enter the space without atmospheric testing and the consequent and tragic death of all three stevedores was probably due to oxygen depletion.

The flag state report identified there was insufficient ventilation prior to entry, no enclosed space entry permit was issued and the ship did not follow the relevant guidelines to prevent unauthorised entry. In this case, was it a gap in the regulations between the ship and shore, insufficient training, or poor safety management systems?

Looking at the regulations affecting ships (SOLAS), the ISM Code is to ensure safety at sea, prevention of injury or loss of life, and avoidance of damage to the environment and:

- Provide for safe practices in ship operations and for a safe working environment;
- Establish safeguards against all identified risks; and
- Continuously improve safety management skills.

This is very clear with respect to the responsibilities for the ship's personnel. For shore workers aboard, guidance for shipmasters states that contractors on ships are entitled to adequate provision against pitfalls and traps, while the master has a common law duty to provide such protection.

With respect to regulations ashore, EU law outlines that employers' duties include the need to:

- Adapt the work to the individual and to technical progress;
- Avoid, evaluate and combat risks;
- Replace the dangerous by the non- or the less dangerous;
- Develop a coherent overall prevention policy; and
- List accidents and inform/consult employees.

Interestingly, the employee also has a duty of care to make correct use of personal protective equipment and inform and cooperate with the employer when presented with serious or immediate danger.

In terms of lessons that can be learned from incidents such as above, despite a ship master's responsibility to all contractors that board his ship, shore employers and workers cannot assume there is a consistent application of the ISM Code across each flag states, or across the many and diverse ship owners.

Experts affirm that the regulations may be in place, but many believe that either the current regulations are insufficient or the application of them is lacking. Delegates at two recent events (an International Cargo Handling Coordination Association cargo handling conference and one convened by the International Dry Bulk Terminals Group) believed more education and training is needed, accepting that even well-trained people make mistakes. It is more than investing in a safety management system; this is about long-term development of a safety culture that breaks the psychology that "it will not happen to me". Ironically, the International Ship and Port Facility Security Code provides an overarching framework that brings together ship and terminal systems when managing security, but there is nothing similar for safety.

Since 2016 it has also been mandatory under a new SOLAS regulation for all ships to carry portable gas detectors capable of testing for concentrations of oxygen, flammable gas, carbon monoxide and hydrogen sulphide prior to entering enclosed spaces. Testing of the space should be carried out before any person enters, and at regular intervals thereafter until all work is completed.

While this should improve the testing for the lack of oxygen in enclosed spaces and the ability to detect dangerous gases, given the responsibility of care required in many jurisdictions to avoid, evaluate and combat risks to workers, port and stevedore employers are urged to develop their own risk assessment, gas testing and risk coding of spaces to ensure their employees may safely work on every ship they board.

Enclosed spaces present risks throughout the global supply chain due to the intermodal nature of cargo carrying equipment. Thus, tank containers and all types of enclosed cargo transport units (CTUs) can also present risk. There are estimated to be around 15 enclosed space fatalities each year in the UK alone, with 60 per cent of these deaths involving people attempting to rescue colleagues who are already trapped or injured. Enclosed spaces present real risks in our industry and should demand attention when managing risk. Awareness training and robust procedures in this context will help prevent serious injuries and save lives.

An enclosed space is any place which has limited openings for entry and egress, inadequate ventilation and is not designed for continuous worker occupation and where serious injury may occur from hazardous substances or conditions (generally resulting from asphyxia). Tank CTUs used to transport bulk cargoes globally, including road tank trailers, tank railcars and (ISO) tanks present prime examples of an enclosed space risk in the supply chain.

Lack of oxygen is a silent killer; there are no obvious warning signs such as coughing or feeling breathless. Where the oxygen



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levels are sufficiently depleted the first sign is often that the individual becomes unconscious. This can happen so quickly that there may be no opportunity to raise an alert. Where there are pockets of atmosphere lacking sufficient oxygen breathed, an individual will start to feel very weak and confused; unable to undertake the simplest of tasks such as reaching the exit of the enclosed space. If not rescued quickly they will likely fall into unconsciousness. Rescue operations are therefore time critical.

Where it is essential that a worker enters a tank CTU, atmosphere testing in advance is necessary, but critically oxygen levels should be adequately monitored throughout the required activity. Even where the tank is certified to be clean and the atmosphere adequate to support life, undertaking any work within the tank, whether it be cleaning, polishing or grinding, gives rise to the possibility of changes to the atmospheric content of the enclosed space.

The key issue is whether the atmosphere is suitable to sustain life. Initial and monitoring testing of the atmosphere inside the tank should be undertaken by a competent person using appropriate calibrated instruments to ascertain acceptable levels of oxygen and acceptable levels of toxic and flammable vapours.

A competent “watcher” should be physically present throughout the work, providing an immediate response in case of emergency. The watcher should monitor each stage of the work undertaken to ensure compliance with the defined safe system of work.

Annex 8 of the ILO, IMO and UNECE Code of Practice for Packing of Cargo Transport Units (CTU Code) focuses on the risk-assessment process covering items such as competence, working at height and emergency preparedness. A risk assessment should consider as a minimum the following elements:

- The task;
- The working environment;
- Working materials and tools;
- The competence of those undertaking the work; and
- Arrangements for emergency response/rescue.

Access should only be allowed under a safe system (permit) of work and the supervision of a responsible person.

Additional training, instruction and signage should be considered. Are the workers aware of what is considered to be an enclosed space and are they sufficiently trained to recognise such spaces? Do they have experience of undertaking this type of work? Are the workers physically capable of entering into and egressing from the tank container? Consideration may also need to be given where the person may suffer from claustrophobia or their fitness to wear and operate breathing gear.

It is vital to develop an established method of communication between those workers inside the enclosed space and those outside it. This serves as the first step in emergency response.

An emergency rescue plan should be developed and communicated. Regular drills should be undertaken to ensure the effectiveness of the plan and familiarity of the workforce with procedures. The arrangements of the emergency rescue plan should be sufficiently communicated to the entire workforce who may ultimately need to rely on it.

These enclosed space risks are persistent in shipping, stevedoring and also unitised cargo operations (not limited to tank units discussed here). It is paramount that steps are taken to heighten awareness of these risks and implement work practices that fully and adequately protect workers, including testing and monitoring of applicable atmospheres, as well as appropriate emergency response preparedness. **MRI**



Mike Yarwood

Mike Yarwood, claims executive at TT Club

Inexorable increase in ship size creates huge risks for cruise industry

Accident investigator **Arne Sagen** has sent an open letter to IMO, EMSA and CLIA expressing concern for the safety of the mega-sized cruise ship fleet and produces a summary of that below

The world fleet accident statistics for 2018 is showing an incident rate of 15 per cent for mega-sized cruise ships above 50,000 gt and this trend seems to continue for 2019.

In the wake of the *Costa Concordia* accident in 2012, there are several key issues of concern, including:

- The safety concerns of passengers and crew of mega-sized cruise ships of open and convenient shipping registers calls for stricter regulation and control, compared with trading ships of national registers.
- There are too many variations in flag state implementation of the ISM Safety Code.

Unacceptable incident rates for mega-sized ships

The mega-size cruise ship *MS Costa Concordia* capsized in 2012 with a loss of 33 lives. In spite of the ISM Code's statement that a company has the ultimate responsibility for the ship's operation, the company in this case delegated this responsibility to the captain and paid a fine of €1 million. The captain was sentenced to 16 years in jail.

A similar scenario was nearly repeated in March this year, when the large Norwegian cruise ship *MS Viking Sky* lost power during a passage along the Norwegian coast. The vessel drifted for five hours and was around 100 m from a shore reef, before propulsion was re-established. If such accidents should happen in Arctic or Antarctic waters, out of range of the rescue centres or helicopter evacuation, the consequences might be catastrophic. These events demonstrate the vulnerability of the very big cruise ships, compared to the traditional trading ships.

The Norwegian statistical bureau, Maritime Safety Data, states that, of all the active ships in the world those above 500 gt, reported 1.496 incidents for 2018, or 3 per cent on average. Passenger ships in general had an incident rate of 5 per cent, but among the 314 cruise vessels in the world today 14 per cent of them faced an incident last year. We know that the ship's size, complexity and capacity increase the risks and, of the world fleet of 192 mega-sized ships of more than 50,000 gt, 29 of them, or 15 per cent, faced an incident. This trend also continues in 2019. The dominating causes of incidents were machinery failure and fire outbreak, which is the most common cause of loss of propulsion and need for ship evacuation. This trend is totally unacceptable.

We are concerned that the IMO regulations for the big cruise ships have not kept pace with the heavy increase in size and passenger capacity we have seen the last few years. This is out of scale for coping with the worst possible consequences of cruise ship accidents, such as fire or evacuation in harsh weather in distant or isolated waters.

This problem is not a captain's problem, but rather an organisational and cruise ship operation problem. The state of

safety in design and operation of the large cruise ships today – carrying up to 9,000 souls so far – is not at all acceptable in a modern industry world. One of the problems is that about half of the cruise ship fleet of elderly ships are more or less obsolete, because of ignorance of the IMO's grandfather clauses.

The “grandfather clause”

More than half of international cruise ships are elderly ships, built before 2006, and there is reason to believe that most of these ships are not passing new and amended rules and regulations.

One of the problems is the quite common practice of the “grandfather clause”, allowing existing vessels to bypass important new IMO regulations or amendments around the safety aspects of ship design, ship operation, navigational instruments, lifesaving equipment, crew qualifications, etc.

The IMO is fully aware of this problem and is urging its member flagstates to avoid an increase of the technical gap between the “new” and “existing” ships by frequently reviewing new and amended instruments; and to consider the relevant upgrading of requirements of the existing ships. (Ref IMO circular letter MSC 756/ MEPC clause 3.15.)



Practical experience indicates that applying such new instruments is not a common practice for all IMO flag states. This is of course relevant for all ships, but this is particularly important for cruise ships, as we now see a prolonged lifetime cycle for cruise ships of up to 30 to 40 years, while the traditional lifespan of conventional trading ships is in the order of 15 to 20 years.

The ISM Code is insufficient as the quality standard for passenger ships

The ISM Code was instigated by the IMO regime after the capsizing of *MS Herald of Free Enterprise* with a loss of 193 lives in Zeebrugge in 1992, following a ship management error. The ISM Code was adopted as chapter IX of SOLAS in 1998 and thereby became mandatory for all IMO member flag states (172). The ISM Code was basically intended to be a ship-specific guideline to enhance the standard of safety management of ships and shipping companies. After more than 20 years of service, we have seen that the ISM Code has successfully contributed to an immense improvement of the procedural standards for ship operation, but failed to meet the requirement of an appropriate quality standard for passenger and cruise ships. Also, in hindsight, we can see a significant number of legal implications of the Code, which were certainly not anticipated by the IMO regime during the development phase.

The legal aspects of the ISM Code

The ISM Code is an umbrella code, embracing the IMO regulations and the major international shipping conventions, but does not qualify as a quality standard level. The development of the ISM Code was based on the consensus principle. This is a common policy within the IMO regime but, as there were some disagreements within the working committees and the flag states

in the development process, several vital requirements were compromised by rather vague expressions in the original English text, which again had to be translated into different languages.

Examples of such vague requirements are the use of words such as “should be”, “to ensure”, “provide for”, “establish safeguards for”, “ultimate responsibility”, etc, which are not easily translated. Some examples can be used to explain this problem:

- The ISM Code’s definition of a “major non-conformity” is very close to the term “not seaworthy”, which is a commonly used term by both administrations and insurance laws. As an example, a ship which has a major non-conformity, defined as “a serious threat to personnel, ship safety and environment”, should not be admitted to leave the port at all.
- The ISM Code’s definition of “the designated person” is not in harmony with legal terminology and insurance law’s definition of a company’s responsibility and liability.
- The ISM Code’s definition of the duty “to ensure” the various requirements, is too vague and ambiguous.

Due to the vagueness of the ISM Code, there are great variations in the different flag states’ implementation of the ISM Code. Most flag states seem to have implemented the ISM Code as a transcript of the original IMO text in the national law, while others have transformed the ISM Code to a specific maritime code by the national language. Norway has implemented the ISM Code as a national ship safety law (SSL), which entered in force in 2007. Due to the ISM Code’s vague and ambiguous wording, Norway had to make several modifications in the translation of the English text to Norwegian text. As an example, as the Code’s requirement “to ensure” has no Norwegian synonym, the Norwegian translation of “to ensure” was divided in three different ways:

- The company shall “see to” (provide) – and also “look after” (verify).
- The captain shall “look after” (verify) – in cooperation with the company.
- The captain – and everybody onboard and ashore – shall “cooperate”.

In the ISM Code section 3, the company’s responsibility and authority is defined as an exception: “If the entity who is responsible for the operation of the ship is *other than the owner*, the owner must report the full name and details of such entity to the administration”. The Norwegian SSL simply states that it is *the company* who has the *main responsibility* for the operation of the ship, which cannot be delegated.

In Italy, after the *Costa Concordia* accident, the Italian court made a plea bargain with the company, which delegated the main operational responsibility to the captain. This plea bargain is a grave breach of the ISM Code. [MRI](#)



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Arne Sagen

Arne Sagen, FNI, accident investigator

Maritime 2050: the way forward?

Mark Lloyd, of Kennedys, reviews the UK government's latest thinking on the state of the marine industry and the way ahead

The UK Department for Transport's National Maritime Strategy Document, Maritime 2050, has now been "live" for six months. Since its launch there has been some debate as to whether the vision and recommendations set out within the document will be achievable or whether there has been an underestimation of other potential clusters and macroeconomic imperatives that impact on the UK's current position on the world maritime stage.

It can be said that the 2050 strategy has already been the catalyst for substantive positive change in the UK maritime sector and is ambitious, but realistic, in its outlook for the sector. There is, however, much more to do.

The development of a national maritime strategy was one of the strongest recommendations of the Maritime Growth Study published in 2015. Maritime 2050 is the resulting acceptance by the government. It is important to note that Maritime 2050 was produced in true collaboration between industry and government, the sector has "ownership of the document" and the industry will hold the government's feet to the fire in regard to the implementation of the recommendations. The government in return will expect sign-up, input and true partnership and collaboration from the industry.

The Maritime 2050 document is a weighty tome but there is a very useful executive summary (of only 46 pages) which gives an introduction to the background aims and objectives of the strategy.

The executive summary sets out the strategic ambitions which include enhancing the UK's strength and maritime professional services to maintaining, and enhancing the UK's competitive advantage; leading the way on maritime growth; strengthening the reputation for maritime innovation with a focus on maritime technology; focusing on our leading role in maritime safety and security and growing the maritime workforce and (transforming its diversity); supporting a liberalised trading regime; supporting the maritime infrastructure within the UK

and enhancing the UK's reputation as a leading country in the IMO and other international organisations. Finally, the ambition is to expand the UK-wide maritime cluster and showcase UK maritime to the world.

The strategic ambitions are also flagged as part of the seven high-level themes. The Recommendations of Maritime 2050 can be found from page 34 onwards of the executive summary document.

The development of a national maritime strategy was one of the strongest recommendations of the Maritime Growth Study published in 2015. Maritime 2050 is the resulting acceptance by the government"

The purpose of this article is not to go through the values, ambitions and recommendations of the strategy document in detail but to merely comment on debate as to whether the UK government has underestimated the move of global trade and business to other maritime centres.



Much has been written about the rise of alternative maritime centres such as Singapore, Dubai and Shanghai. There are a number of excellent studies/indices that refer to the position of the UK in the global world maritime economy, such as the global financial centres index. Professional bodies such as the London Maritime Arbitrators Association publish statistics setting out the use of arbitration services in the maritime sphere within the UK and also provide substantiated correlation/cross-referencing to alternative dispute resolution centres. From all of these studies it is clear (as is recognised in the strategy document) that the UK still remains in a pre-eminent position in maritime law, marine insurance, ship broking and maritime education and, despite the prevailing discourse to the contrary, we continue to maintain market share in these sectors.

In the professional services industry, since the days of Edward Lloyd's coffee house, UK-based maritime law, insurance, ship broking, finance, accountancy, classification and consultancy has always been central to the facilitation of global seaborne trade. Services remain a core element of our maritime offer and is a sector where the UK remains the undisputed global leader. This said, the shift in trade eastwards, the rise in technical innovation and the fast-changing regulatory environment have created, I believe, the greatest challenges but also opportunities of a generation within our industry. Therefore, this strategy document could not have come at a more crucial time.

As part of its implementation, the Maritime 2050 strategy document is to be supplemented by route maps, including a maritime business environment study commissioned by Maritime London with the support of the DfT and the City of London Corporation. The report will be published during London International Shipping Week (LISW) in September, providing up-to-date analysis of the UK's position in the global maritime services and the framework to ensure London and the UK retains its pre-eminence in maritime professional services.

Since the first event in 2015, LISW has gone from strength to strength and includes very substantial engagement at senior government level including Secretary of State and Ministerial support. LISW and the initiatives which will be announced and developed during the conference will be very good opportunities to establish the progress that has and will be made since the launch of Maritime 2050 in January 2019.

A strong business environment for shipping interests is fundamental to the rest of the UK remaining at the top of the tables/indices for the centres of maritime excellence. It is for this reason that this objective is a central tenet of the Maritime 2050 strategy.

There is also welcome recognition in the strategy of the need to take a modern approach to regulation particularly as the sector moves towards decarbonisation. The UK's ability to remain the regulatory and intellectual capital of global shipping must be instrumental in retaining our competitive advantage. To that end the industry government body, the Clean Maritime Council, is laying out how the UK will take the lead in regulation regarding the decarbonisation of shipping, thus supporting research and development and, importantly, our insurers, lawyers and financiers.

The report does recognise that the move in global trade eastwards will be a fundamental driver in the sectors future and the fact the UK must do more to engage internationally and ensure it wins a higher percentage of new business in what is an ever-expanding market. Off the back of the findings, the

Department for International Trade has already bolstered its resource to promote the UK maritime industries in overseas markets and will be implementing a five-year export plan, highlighting the markets that are going to be supported and, importantly, what the nature of that support will be.

We are in uncertain times and how the UK reacts to the fast-changing environment will define our future. Maritime Research Innovation UK is a recent initiative, led by industry as an example of the objectives of Maritime 2050 being taken forward. This initiative to which companies, industry and academic institutions are being invited to sign up has been created to address the lack of coordination and resource in maritime research and development within the UK. The tech and research and development environment (together with the objectives to support and promote education and the people that are so critical to the continued growth and success of the UK) is a continued and developing focus of government.

“Maritime 2050 is a major and positive step forward for the UK government and the maritime sector within the UK but does not underestimate the competition or the need to constantly adapt and innovate”

Maritime 2050 is therefore only the beginning of the story. It is now up to industry and government to work proactively together to achieve the recommendations within it. Until the deliverables can be judged there will remain some debate on whether the UK has done enough to retain its position in global shipping. One thing is for sure however: if we carry on at this pace, I believe we are well placed to succeed in Maritime 2050 lofty but educated and realistic objectives.

In concluding, I consider that the Maritime 2050 strategy document is a major and positive step forward for the UK government and the maritime sector within the UK but does not underestimate the competition or the need to constantly adapt and innovate.

Maritime 2050 should also be viewed in conjunction with other wider initiatives being developed by the UK government such as the GREAT Campaign, focusing on the strengths and advantages of doing business both within the UK and internationally with UK companies, particularly flagging legal, maritime, export and other aspects of the UK economy and business environment. *MRI*



Mark Lloyd

Mark Lloyd, partner, Kennedys,
chairman of the Admiralty Solicitors
Group and director of Maritime London

Sustainability in shipping

Vijay Arora, of the Indian Register of Shipping, discusses the importance of sustainability in a shipping context and says more can be done but welcomes the changes already underway

Defining sustainability is not straightforward but it is important to establish a shared understanding of what is meant by the term. In 1987 the World Commission on Environment and Development developed a definition of sustainability that was subsequently incorporated into the Brundtland report (1987) which stated that: “Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs”.

Although this definition is widely accepted, the term sustainability is not limited to one concise definition.

Sustainable shipping is a holistic management concept for sustainable development, applied to the shipping sector, incorporating environmental and social responsibility. Sustainability includes three main pillars: environment; society; and economy; and the development of sustainable shipping is the result of the strengthening of these three pillars.

Different factors affect the development of sustainability in shipping, from regulatory to socio-economic issues, market-related aspects and human factors, which together contribute in different ways to the development of these three pillars. Since many different stakeholders are involved in the process, it follows that one of the critical factors in supporting sustainable shipping is understanding the concerns, needs and expectations of all stakeholders. Constructive dialogues, partnerships, synergies, joint research and development, are some of the key instruments in developing sustainable shipping.

In the maritime sector sustainability acts both as a challenge and an opportunity. The IMO has proposed several ambitious

targets for the shipping sector starting with the sulphur cap by 2020, the targets for improvement in ship design efficiency for various ship types by 2030 and the target for 50 per cent reduction in CO₂ emissions by 2050.

With these historic resolutions, the maritime industry is making it clear to the world that it is working towards global climate control and aiding the efforts towards mitigating the disastrous effects of climate change.

The drive for sustainability is rewriting the rules for all industries – and shipping is no exception. The longevity and profitability of the operators depends on their proactive approach to sustainability. Business as usual is not an option: there is a need to change to meet new regulations and technology.

“The maritime industry is making it clear that it is working towards global climate control and aiding the efforts towards mitigating the disastrous effects of climate change”

Today consumers are increasingly understanding the impact of pollution on human health and the environment and are demanding more transparency in everyday products and services. This societal trend will continue as the world population grows, communication technology develops and with it there is a need for all actors in the supply chain to meet consumer needs.



Changing landscape

Various factors such as environmental issues and decarbonisation, combined with trends in technology, regulations and changing trading patterns will shape the maritime industry in the next decade. The anticipated, radical changes in the operating environment will create challenges and uncertainty for many operators. The industry needs to prepare itself to deal with the major issues which are likely to affect it during the next 10 years.

The scope of sustainability in an organisation is dependent on many socio-economic and market-related factors that together serve to define the sustainability goals of that particular institution. As the impact of these factors is different for every organisation, sustainability objectives differ from company to company. The nature of the industry is changing and there are many issues that could bring unwelcome disruption, but there are also opportunities for those companies that are well prepared. This makes it essential to look at the market, regulatory and technological challenges and opportunities of future scenarios to make shipping fit for the future.

The common areas of development which could be targeted towards sustainability are:

- Compliance with environmental regulations;
- Focusing on decarbonisation targets;
- Provision of education to mobilise action;
- Create innovation;
- Creating a sustainable work environment;
- Improving vessel design and increasing vessel efficiency;
- Use of sustainable alternatives by developing alternative and cost-effective fuel technologies for shipping;
- Cooperation among companies by creating partnerships;
- Public and private collaboration to provide new perspectives and shape industry's decision making; and
- Effective use of resources.

Efforts are already being made to reduce NO_x (nitrogen oxide), SO_x (sulphur oxide) emissions and CO₂ (carbon dioxide) emissions by compliance with MARPOL Regulations. The potential for reducing CO₂ emissions is still significant and can be done through more efficient operations and technologies such as:

- Reducing fuel consumption for existing ships and improving energy efficient of engines and hulls for new builds. These new global measures will improve the efficiency of ships, and at the same time reduce greenhouse gas emissions;
- Implementing the IMO mandatory measures for a global industry such as the Energy Efficiency Design Index for new ships by eco-efficient ship designs, better designed engines, propellers, hull forms and coatings;
- Implementing the IMO Ship Energy Efficiency Management Plan for all ships;
- Slow steaming, speed optimisation and weather routing systems;
- Developing hybrid solutions, battery systems and ship electrification;
- Change of fuel usage from heavy fuel oils to natural gas, biofuels and fuel cells;
- Improving infrastructure to enable faster turnaround times and increase port capacity;
- Maturing technologies within scrubber and exhaust gas recirculation;
- System integrations, smart maintenance, automation and remote operations;

- Use of sensors, big data, computational fluid dynamics, performance management systems; and
- Developing legislation to ensure ship-generated waste can be delivered to port waste reception facilities efficiently.

Many companies are already taking action and adopting both technological and operational measures to become more sustainable, including Nippon Yusen Kaisha (NYK), Royal Caribbean Cruises, Carnival, Maersk and Wilhelmsen to name a few. NYK is already in the process of transforming its business to meet market and societal demands and has established a strategy plan to 2022 that focuses on digitalisation and the environment, and also is aiming to go beyond compliance and work on all the UN Sustainability Development Goals.

Companies can benefit from sustainable practices, however, the full potential of sustainable business models will only be realised through a broad industry collaboration involving all stakeholders in the entire value chain. Even governments should support and take part in their efforts to unlock low-carbon growth in the maritime sector by bringing the public and private collaboration to provide new perspectives and shape the industry's decision-making to implement a new maritime strategy.

Regulations will actively drive greater sustainability. Steps have already been taken by the IMO and state actors that have introduced measures to limit and reduce emissions to air and sea. Such controls on the industry will only intensify in the coming years as public and regulatory scrutiny builds.

In addition to international regulations on emissions, it is likely that stakeholders such as bankers, charterers, insurance companies and investors will set stricter requirements for operators to improve energy efficiency and reduce greenhouse gas emissions.

While supporting international regulations to regulate pollutants, it is considered that regulators should be sensitive to the financial impact of these requirements and work with the industry to find solutions that encourage investment in sustainable practices.

More needs to be done

More needs to be done to make international shipping truly sustainable. Encouraging the industry to change has to go hand in hand with demonstrating what opportunities and solutions the changes offer and how they can help strengthen a company's position on the market and create value for society. Collectively we need to find answers to the challenges and be part of a much broader dialogue that will have to take place between operators, regulators and society at large. Together in the industry we must meet the challenges and work in a collaborative, strategic manner to deliver transformative technology and solutions that will lead to a more sustainable industry. *MRI*



Vijay Arora

Vijay Arora, joint managing director,
the Indian Register of Shipping

Salvage: a necessity or an afterthought?

In the first four months of 2019, incidents at sea seem to have dominated attention with high-profile cases, including raging fires on container ships, underlining the significance of salvage operations. With bigger ships coming in as some of the problems of the past persist, how is the salvage industry coping with the task at hand, asks **Anastasios Adamopoulos** of *Lloyd's List*



This is a busy time for salvors. The year kicked off with a number of high-profile casualties, particularly with container fires coming to the forefront once again. While their frequency appears to be particularly high, containership fires and other vessel incidents that require salvage response are nothing new. However, with larger vessels being built, how are salvage operators coping with the challenge?

Ardent, one of the largest salvors in the world, was involved with two of the five fire-related cases that have occurred this year, *APL Vancouver* and *Grande America*, and dealt with 80 to 85 grounders, drifters and fire cases around the world in 2018 alone.

Ardent vice-president for emergency management Oliver Timofei said after a respite beginning around 2009, fires have recently returned and are the biggest operations in terms of revenue, as well as risk, assets and aftermath for salvors.

“Yet in the past two years – and even if you look at this year – there is a huge increase [in the number] of container fires and right now those are the largest cases,” he said.

In this landscape, where the number of contracts directly impacts the size of the salvage firm, rightsizing is crucial. The salvage industry suffered a brutal year in 2016, Timofei says, and Ardent downsized significantly. However, business has recovered

since and Ardent currently has 110 employees, as well as a global cooperation pool from which it can draw on equipment and people.

Things are picking up further. Timofei said Ardent has had an “unbelievably busy” 2019 thus far, with more than 18 salvage contracts in the first quarter alone.

However, he also admitted Ardent’s in-house staff are not always enough to meet demand; not at the pace at which casualty incidents – especially ones that can take months to deal with, such as the *APL Vancouver* and *MSC Zoe* cases – are happening this year.

“Shipowners will continue building large vessels because it is economical to them. The issue is, larger vessels mean larger salvage operations and increased operational costs”

“You cannot have a 400-people salvage company in a such volatile market,” said Timofei. To plug that gap, Ardent cooperates with partners all over the world, which enables it to respond to crises globally, he added.

International Salvage Union secretary-general Roger Evans recognises vessels are getting larger but is confident this is not impacting safety, arguing ships are inherently safer than they were 30 years ago. However, it does affect salvage operations. “Shipowners will continue building large vessels because it is economical to them. The issue is, larger vessels mean larger salvage operations and obviously operational costs,” he said.

At the same time, major salvage companies have kept up to speed with major technological developments, maintained customised equipment and continued to be staffed by specialised personnel. Pointing to the salvage of the wreck of *Costa Concordia*, the cruise ship that capsized in January 2012, leading to the death of 32 people, Evans said it was a very technical and challenging operation successfully carried out, but which previously would have been difficult to envisage: “However, salvors are, by nature, inventive and will react to all situations, as that is their business.”

For salvors, larger ships can mean more people and equipment are needed to combat fires. Yet they also have other important implications for the aftermath of the salvage response. Though there have been concerns raised that ports will not be able to handle these larger vessels, Timofei believes there are sufficient ports of refuge that can handle the big ships.

Size is not the only factor. Ardent senior salvage master Bram Sperling notes that often ports are not keen to accommodate salvaged ships due to the complications that creates.

Nonetheless, Timofei said in the past two years, the clean-up has become more complicated. Dirty water in the hold from fire-fighting efforts, containers that have to be scrapped and a host of regulations and permits – which often vary according to the location – can restrict flexibility and options.

While more incidents may mean more business, they have also brought up more questions about the causes and the preparedness of crews and vessels to deal with fires, especially as larger ships come into service.

Container vessel owners are ordering increasingly larger vessels in the name of efficiency and better service. However, it is not clear whether preparations for potential problems have been stepped up at the same rate by those responsible.

Sperling decries what he sees as a lack of preparation by classification societies and regulators for not introducing new mandatory equipment and other precautionary measures, despite fires on board container ships being a problem 25 years ago. In his view, there appears to be a lack of drive to use cases from the past – when fires happened on what would be considered small vessels today – to develop adequate measures that could help avert current disasters.

The basic fire-fighting gear on board, such as hoses and nozzles with water and CO₂, is not enough to contain fires – particularly when one considers the design of ships that are geared towards packing as much cargo as possible in as little space as possible. “Every inch of room on these vessels is used for storage of containers and not [for] doing something, if something goes wrong. It is just not taken into account. Space is fully dedicated to containers,” said Sperling.

With fire spreading rapidly, crew are more focused on protecting themselves rather than salvaging the ship and the cargo on board. “The only thing you think is: ‘How can I stay on board safely or how can I leave the boat safely?’,” he said.



Containers from MSC Zoe

ASSOCIATED PRESS

Inadvertently, perhaps, bigger vessels give crew more time to move out. Sperling explained the biggest enemy of the crew is smoke and the larger the vessel, the longer time they have to survive it.

“Basic fire-fighting gear on board is not enough to contain fires – particularly when one considers the design of ships that are geared towards packing as much cargo as possible in as little space as possible”

Amid headline-grabbing vessel fires, much emphasis has been given to misdeclaration of hazardous cargo that can cause these fires – something Sperling agrees needs to be addressed to avoid fires on these ships to begin with.

“Decent people declare ... dangerous goods. Decent people pack [them] in the right way. However, the world is full of other people, of other kinds and they just go for the cheap way. They do not realise the potential risk,” he said.

Timofei noted that container operators – the larger ones, specifically – have been working hard to combat the problem by liaising both with salvors and with classification societies.

Evans said he believes there is a move for some kind of review to find better ways of isolating containers, such as introducing firewalls that would separate sections of the hold. “However, these are things that are for ship design and ship legislation and the shipowners themselves. They then come to us about what we think about it – but that is generally an afterthought,” he said.

At the same time, Timofei wants the container industry to learn from other sectors, especially tankers and liquefied natural gas carriers. The tanker industry, he believes, has developed effective rules and measures after suffering fires decades ago, while LNG carriers have seen limited incidents due to robust risk mitigation.



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