The Federation of European Marine Associations of Surveyors and Consultants

FEMAS

NEWSLETTER

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NEWBUILDINGS AND RULES

by Dimitri Capaitzis, HMTCA

RULES

With the increasing number of rules, their correct and wise application in Newbuildings is required and the positive contribution of Shipping in their creation, development and application.

Newbuilding tankers and bulkers with continuous development in size and types are subject to the following Rules:

Registry / IMO:

IMO studies and coordinates current work on International Rules. Its task is based on its various Committees (Environment, Design, Safety etc) and results in recommendations, discussed and approved at international meetings as international conventions and rules with their timetables of application.

The role of IMO is basically legislative. The executive is exercised by the Registry, the greatest part of it however is transferred to the Class Societies.

Class

The majors have associated in IACS. Their rules both during construction and subsequent operations are similar. There are differences in the structure and size of their organizations and presence worldwide.

For Newbuildings, Class approve the Yard's basic drawings and confirm compliance with their own rules and Registry rules. Construction follows and it is supervised by the Yard (Quality Control), Class and the Buyer.

The role of Class is therefore both legislative and executive. Their close contact with the shipyards during construction and with shipping both during construction, as well as the following years of trading and operations, gives them unique opportunities for coordination and innovation.

There is however the danger that the lawmaker's excessive zeal may prevail, as well as the shipyards' tendency towards production economies, against the long term commercial and operational needs of Shipping.

Standards

Shipyards preferably apply their own national standards. All apply ISO standards, the metric system and English language.

Other matters are also covered by International Rules and Guidelines, such as vibrations and noise, stability, Model Tank Tests, Seatrials etc.

Shipping

Nowadays, Shipowners' organisations such as Intercargo, Intertanko, BIMCO, show their own interest. Specifically Intertanko, have issued a precious guide: 'The Oil Tanker Specification Awareness Guide'.

Various

- AWWF. / Hold Ladders, - NOx / Exhaust gases - USCG / Pollution, Hygiene- USDA. / Hold Paints, - ILO. / Accommodation, - Suez, Panama / Canal passage

- EEC - Europe – Some Machinery and Safety Equipment must have EEC approval by the EEC for member country ships. There is also much activity in ships' condition surveys by their port authorities. The EEC is trying to acquire various legislative and executive functions both in parallel and independently of IMO and Class. There is here however lack of the traditions and knowledge of the sea, which, together with the political identity of the

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EEC, may have negative results.

CONSTRUCTION

Orders are based on the Contract about 50 pages, and Specification 500 pages. They are both issued by the Shipyard.

Buyers face a tough confrontation, but can gain advantage by their own effective coordination and quick decisions. A strong negotiating team can maximise their contribution. Preparation is about 1-2 months and negotiation 1-2 weeks.

The Contract and the Specification negotiations lead to the ship's final price. Signing is followed by Machinery and Equipment Makers selection and subsequent Plan Approval by Class (100) and Buyer (500). A process of about 12 months.

The Specification and Plans should further cover cargo as well as loading and discharging parameters. It is necessary to have full cargo, such as grain with proper trim and stability, ore cargo with empty holds, steel products with adequate tanktop strength, timber on deck, various oil cargoes with proper paints in cargo tanks etc.

Supervision is also important in newbuildings. The Buyer's team deal with Shipyard, Class, Makers etc in the fulfilment of their obligations and also deal with matters that they do not cover. They also cover crew training and ISM.

APPLICATIONS

The subject of rules is delicate and thorny. Ships are usually ordered on fixed price with Delivery 2 to 3 years later. Rules to be applied are those that are valid at the time of signing the Contract. For rules, due after Delivery, matters depend with the dates of the rules and cost.

The relevant Article in the Contract covers all this, the Buyer however should be protected from Extras.

Here below is an example of 4 Handymax Dry Bulker Newbuildings in China. With the Contract and Specification many advantageous terms were achieved for the Buyer at no Extra cost:

- Margins of speed, consumption, deadweight, delivery - Choice of Makers of machinery, outfit etc. -
- Number of Drawings and approval terms - Supervision team - Modifications, Changes, Extras -
- Lloyd's Class - Greek flag - 'Shipright' - Fatigue Design Analysis: Structure Design Analysis -
- Strengthening for Heavy Cargo - Grab Discharge - NOx Limitation

During Plan Approval and Construction the following were done with minimal Extra:

- Deadweight 51,500 instead of 48,000 - Ballast Management - AWWF Cranes - Manuals / Programs Stability

Knowledge of rules and updating on their development with knowledge of procedures of construction and good coordination give opportunities for correct forecasting and positive decisions.

For a Panamax Dry Bulker in Korea, ordered in November 95 and delivered May 97, we foresaw the final requirements of IACS / IMO for 98 and asked for them in mid – 96 and applied them for a cost of USD 80,000. When these rules became mandatory in 2005 the cost would have been about USD 500,000 plus delay.

Similar opportunities and challenges became available with the many subsequent new rules eg.

a) Bottom Paints: The toxicity of tributyl tin paints with their adverse influence on the environment started being news in the 80 / 90s. IMO adopted the convention with final and complete abolishment in January 2008. Many countries however applied it earlier.

b) IACS requirements: Reinforcement of bulkhead and double bottoms between holds #1 and 2 / hatchcovers #1 / forecastle outfit / hatchcovers / frames. Water ingress alarms in holds / forward.

c) Loadline Convention: 1966 Convention updating.

d) Double Skin: Following technical work of many years Tankers went on an IMO fixed road map and timetables.

The EEC however went for earlier applications. IMO were pressed for corresponding amendments and the USCG to modify OPA 90, to prevent rejected single hull tankers from Europe to end up in USA ports.

Bulkers were a substantially different matter. Right away a cargo leak is not so tragic. Pollution from grain does not compare to pollution from oil. Beyond this Bulkers already have double-bottoms and their steel structure is different to that of Tankers. The hold openings / hatch sizes are serious matters. It is known that in tankers, with single port / starboard tanks, longitudinal centreline bulkheads were needed for stability and operations. In a Bulker this would be inadmissible.

The fors and againsts were many and were repeatedly debated. They were both technical and operational. IMO, SOLAS, Class and the Operators were struggling for a practical and viable balance.

In spite of all this the EEC was pressing hard on the basis of an oversimplified view that directly

correlates double skins with safety without proper assessment.

CONCLUSIONS

New buildings multiply, sizes increase and Rules proliferate.

IMO do their duty with great diligence and the long time taken to finalise rules is a useful safety valve.

The dangers are from bodies like the EEC, with political motives, little knowledge and experience of the sea and an executive attitude without the necessary and wise legislative process.

Class carry out brilliant base work. Competition however within and outside IACS, as well as an extension of their terms of reference looks as if some wish to be all things to all men.

The Shipyards dream of imitating the automobile industry with full control of type, standardization and price of their products. The clients would only chose colours.

Where Rules are concerned Shipping is the Cinderella of the tale, who obeys them all with respect. With the good market they build more ships, with the bad market they cry and wail at the tyranny of the wicked sisters, they protest, they guerrilla with changes and postponements, but finally yield to the 'establishment'.

Efforts like Intertanko's, are glorious rays of light.

Shipping needs a dynamic and vital presence both with IMO, Class and EEC.

With others, Shipping should pass in the counterattack. They should insist on severe ISM from ports, stevedores, surveyors, insurers, lawyers etc. American Airlines demand high standards in the equipment and management of airports.

With Shipyards there should be closer and more effective cooperation. Shipyards cover design and production. Every saving benefits both the Shipyard and final cost.

All parties contribute in the Construction. Shipping, who ultimately use the product of the endeavours, knowledge and experience of them all, have a special role to play and of course care not only for good Rules, but effective and practical ones. A strong efficient and safe ship is vital to carry effectively a miscellany of cargoes, with a variety of origins and destinations and over a considerable number of years.

The 7th Maritime Human Resources & Crew Development Conference

Captain John Banister, FCMS

The conference was held over two days, 27th and 28th October, 2010, at the Pestana Chelsea Bridge Hotel, London. This informative and enjoyable gathering of maritime professionals heard from experts in the fields of promoting and attracting seafarers into the industry, securing quality crews, improving working conditions, providing adequate training and the effects of impending National and International Regulations.

In his opening address conference chairman on day one, Captain Roger MacDonald, Secretary General of The International Federation of Shipmasters' Associations, IFSMA, spoke of the current status of the industry and reminded the delegates of the current difficulties of recruiting seafarers in the developing world of today. Captain Ajay Chitnis, Head of Training Services for Great Offshore, India, an integrated offshore service provider, conference chairman on day two recalled the previous day's presentations stressing the need for competence management.

Two recurring themes suggested during the conference, as to why the challenges for recruiting young seafarers have become more difficult, were "piracy" and "criminalisation of the seafarer". Clearly there is much being done to overcome these problems but a great deal more requires to be achieved before these unacceptable disincentives to entry are removed.

Exploring best practice, John Drake of Teekay Shipping, Glasgow, provided an excellent overview of the employers' need to promote the industry to the younger generation, to "recruit - to retrain - to retain", the essential three "R's" of any successful approach in maintaining a viable seafaring base.

"Best Practices – Piracy" a presentation given by John Drake a senior risk consultant with AKE Intelligence identified those areas of the world in which attacks on ships and their crews are to be expected, with 50 % occurring in the Indian Ocean off Somali, one in 250 vessels passing through the Gulf of Aden is assaulted, and other locations including West Africa, Indonesia and Malaysia. The main factors which have con-

tributed to the acts of piracy include "Poverty", "Lawlessness" (lack of government) and access to "Busy Shipping Lanes". The average cost of a pirate incident is currently running at about nine million dollars U.S., the current average detention period of a vessel is 126 days and the average time between vessel sighting and boarding is some 15 minutes. The delegates learned that AKE do not advocate arming the crew nor placing trained and armed personnel on board a vessel transiting those areas of concern.

The on board solutions suggested by AKE include the use of water cannon, razor / barbed wire barriers (hardening), citadels (impregnable safe rooms) and dedicated crew training. Mr. Drake reported that as recently as 25th October a vessel's crew closed down the main engine, the steering gear and the electronic navigation equipment before repairing to the citadel. The pirate gang having boarded failed to penetrate the citadel and left the vessel urgently upon the approach of naval forces.

Earlier this year it was announced that Nato's mission in the Somali Basin of the Indian Ocean, "Operation Ocean Shield", working to deter and disrupt pirate attacks has been extended to 2012.

Despite reports that the number of attacks off the coast of Somalia, during the first half of 2010, has been reduced from recent years, piracy remains undoubtedly one of the biggest challenges facing international shipping today, undermining security and not least creating an additional discouragement for young persons to consider a career at sea.

"Criminalisation of the Seafarer" was not advertised as a presentation title in the conference, however as noted above it proved to be a recurrent theme within a number of the presentations. Beginning with the "Exxon Valdez" case, over the past 22 years it is irrefutable that there has been a growth in the criminalisation of seafarers. Whereas there should be no doubt that the owners / operators of substandard vessels and those seafarers who are actively and intentionally engaged in criminal behaviour must be held to account, masters and other members of crew should not be made scapegoats for genuine innocent mistakes or accidents.

Professor P.K. Mukherjee of the World Maritime University, Malmo, Sweden in his published paper "Criminalisation and Unfair Treatment: The Seafarer's Perspective", admirably sums up the dilemma faced by recruiting agents today:-

"The grim situation regarding the treatment of seafarers must be turned around before it is too late otherwise no young person in the 21st century will wish to pursue a seagoing career."

Training.

The STCW Code has provided guidance to assist in the educating, training or assessing the competence of seafarers since 1978 and subsequently by a first amendment of 1995. Major revisions were again adopted by the IMO at a diplomatic conference held in Manila during 2010. These are known as the "Manila Amendments" and are due to enter force on 1st January 2012 with the transitional period ending in January 2017. A number of the presentations referred to the challenges raised by these amendments and noted for example under the amended regulation I/14 companies will be bound, in order to maintain competency, to ensure that all seafarers have received refresher and updated training as required by the convention; further to ensure effective oral communication according to SOLAS, Chapter V, Regs. 14, (3 and 4) at all times.

Education and training for all grades of seafarers was stressed by each of the speakers, especially the training which must be provided on board vessel. In this respect it is interesting to note the reliance placed on simulation systems usually located within shore establishments and the recent news published in the September 2010 issue of The Naval Architect. This states that two simulation systems will be delivered and installed onboard two "K Class" Cape-size Bulk Carriers, "Lancelot" and "Percival" currently being built in China. The former vessel will include a dedicated cabin, or "secondary bridge", housing a Ship Handling Simulator; the latter will be fitted with an Engine Room Simulator. Clear and forward thinking by a ship-owner, for on board provision of basic training, refresher training and the maintaining of competency for revalidation of certificates of competency.

A very interesting presentation was given by Professor Ralph Becker-Heins of The University of Applied Sciences, Bremen which he entitled "SafeBridge – How to Cope with Endless Numbers of Bridge Consoles". He advised that recent

concern by a director of a U.K. based P&I Club, whose special interest is data collected from recent collisions, groundings as well as near misses, had reached the conclusion that on the modern ship's bridge certain basic navigational skills were sadly wanting. Investigations apparently revealed, in a number of these cases, although the subject vessels were equipped with ECDIS, the navigators on board had not been properly trained in the use of ECDIS and regarded that array as a back up to the traditional paper chart system. Professor Becker drew attention to the fact that a modern ship's bridge is full of digitalised equipment offering on the one hand enhanced operational aids and on the other a new medium for human error. (*e-navigational error*). The thrust of the presentation suggesting that many seafarers are, through lack of relevant instructions, utilising a fraction of the facilities available on ship's bridge equipment. The challenge facing the ship-owner will be whether their ships' bridges could be economically fitted or alternatively retro-fitted with digitised equipment from a single manufacturer as found on modern airliners. Crew fleet training/familiarisation/ revalidation for a single manufacturer's equipment would be less expensive and more feasible than that for fleets where each vessel has different or various manufacturers' equipment on board.

Human Resources.

The industry has witnessed and in many cases encouraged rapid technological changes over past years. Recruiting today is in a very tough environment thus if young people are to be encouraged to make seafaring a career, their life-style must also be properly and sincerely considered, with speedy thought and change given to encourage our young people to become seafarers.

Ships personnel are captives of their work environment especially when long contracts are signed. Ship owners for their part should endeavour to create and retain quality crews by building trust, long term commitment and innovation. A small example repeated in a number of the presentations drew attention to the extensive use by young people today of the internet. In future on board access to broadband internet will be an expectation of crew members serving on all types of vessels.

In order for a career at sea to be chosen the ship-owner / employer will require to show that it is interesting, has potential for advancement, is financially secure, is safe, offers good benefits both to an employee and his family.

A number of the presentations confirmed that many seafarers today are encouraged to actively study whilst at sea in order to further their ambitions to eventually take up shore employment.

When the traditional source of Marine Surveyors has been from seafarers wishing to further their careers ashore it is in our interest to promote seagoing as a career for the younger generation.

Valuation of Ships and Real Estate similar or different?

Dipl. Ing. Gerd Wesselmann, VDSS

Last year we have heard of the existence of TEGoVA, The European Group of Valuers' Associations. As our company is mainly working in the field of ship valuations we tried to find more information about this Association. They are so far only representing European national associations of real estate experts and valuers. They have a total of 40 national associations as members in 24 European countries with around 120,000 individual experts. They have permanent representatives in Brussels who are doing lobbying work at the EU and who are following up the legislation work of the EU commission and try to influence it. So this group is quite powerful. In their rules they have very strict requirements, like MER "Minimum Education Requirements" and EVS "European Valuation Standards". We however found out that all these rules and requirements are vey much corresponding with our requirements within FEMAS.

Finally they became interested in the profession of marine experts and ship valuers and I received an invitation to their winter meeting in Barcelona to make a presentation on our profession.

I made a 30 minutes Power Point presentation on this subject in which I explained our organisational structure with membership in national associations and within FEMAS.

I have shown how we are surveying and valuing ships, which is very similar to valuation of real properties, but with the following differences

Differences between Appraisal of Real Property and Ships

- Real Properties are immovable – Ships are movable

- Ships are trading world wide and can be bought or sold worldwide
- One common international world wide market existing with almost no national influences
- Market prices for ships are the same worldwide
- Lifetime of a ship is about 25 years, with just scrap price at the end
- The shipping market is fluctuating very much and is acting in cycles independently from economic trends
- Prices are strongly dependable on the freight rate mechanism
- As a result of long construction periods for newbuildings second hand prices can be above or below newbuilding prices.

Finally I came to the conclusion that **"Valuation of Ships and Real Estate is very similar"**.

The reaction of the audience was very positive and interested. The Board of TEGoVA was of the opinion that opening of their Association for professions other than real estate would be good and advisable for the future.

We have completed the first step by becoming member of one of the German societies who are TEGoVA members. So we try to get our foot a bit deeper into the European door to the benefit of our profession and hopefully also to the benefit of FEMAS.

State and Sea

Henry Monasterolo, UPEM

A few considerations on a specific incident at sea: a coastal State boarding a ship on the high seas.

Documentation.

- UNO Convention on the High Seas, Geneva, on April 29, 1958 and subsequent texts.
- UNO Convention on the Continental Shelf, Geneva, on April 29, 1958.
- UNO Convention on the Territorial Sea and Contiguous Zone, Geneva, on April 29, 1958.
- UNO Convention on the Right of the Sea signed at Montego Bay on December 10, 1982, entered into force on November 16, 1994.
- Final Act of the UNO Convention on the Law of the Sea signed at Montego Bay on December 10, 1982.
- Convention of Vienna of May 23, 1969.

The material framework.

On May 31, 2010 the armed forces of the Israeli State boarded the ship "Mavi Marmara", which at-

tempted to break the embargo imposed by that State on the Palestinian enclave of Gaza. At that time the vessel was **not** in territorial waters. The intervention killed several passengers and the international opinion moved, relayed more or less accurately by the media and Web comments. The case immediately took a political turn, altering the serene appreciation of the truth and responsibilities.

Through this framework, this study aims to recall the right of States on the sea, which should govern their action, as well as the relations between communities which complicate the application of this Right.

The legal framework.

Note 1 : The text of the related articles of the Convention of Montego Bay is reproduced at the end of this study. The legal study that follows only gives their number ; the reader should refer to them at the last pages.

The full text of the Convention may be loaded on the UNO website (www.un.org/fr/ or www.un.org/en/).

Note 2 : boarding : action to board a ship. Syn. examination, inspection, recognition, visit (Robert dictionary).

Note 3 : blockade : investment of a city or a port, a coastline, an entire country, to isolate, cut off his communications with the outside. Syn. seat (Robert dictionary).

Note 4 : embargo : prohibition by a government to let go foreign ships anchored in its ports, measurement of coercion to prevent the free movement of a good (Robert dictionary).

The boarding occurred in the exclusive economic zone EEZ, which extends from the limit of the territorial waters (12 miles) up to 200 miles at sea (*Conv. part V*). Thus the articles relating to territorial waters (*Conv. part II*) cannot be applied to this case.

The article 58 on the Exclusive Economic Zone (*Conv. part V*) applies, but only in reference to article 87 on the high seas, because the exclusive economic zone relates to the exploitation of sea grounds and therefore has no connection with the cause of the boarding.

The article 87 on the high seas (*Conv. part VII*) provides an absolute principle : the high seas are open to **all** States, they are an untouchable field of freedom to the navigation and must be peaceful.

However, certain circumstances may waive this freedom of movement. They are explicitly listed in article 110 and allow a boarding if there are reasonable grounds to suspect that :

- the ship is engaged in piracy ;
- the ship is engaged in the slave trade ;
- the ship serves as a clandestine radio station ;
- the vessel has no nationality ...
(- For the record, the pollution of the sea).

In the boarding of the 31st May 2010, only piracy can be optionally selected.

Under article 101, piracy is an illegal act of violence, detention or depredation committed for private ends by the crew or passengers of a private ship against another ship or persons or property on board such other vessel, either at sea or outside the jurisdiction of any State. Complicity is treated as piracy.

In this context, article 105 allows any State to seize the pirate vessel, arrest people and seize property.

A difficulty arises in the definition of private ends: what is the nature of these ends that pirates use against ships, persons, property? The jurisprudence only admits financial interest. Are therefore absolved of the charge of piracy humanitarian, political, religious objectives ...

For example, Greenpeace's actions, reprehensible and punishable for when they are attacking goods and work or production tools, are not considered as acts of piracy.

One must admit that on the 31st May 2010 piracy could not justify the arrest.

As none of the exceptions to the absolute freedom of navigation on the high seas can be accepted here, therefore **the boarding of "Mavi Marmara" is an illegal action** under the Convention of Montego Bay.

Consequences

The unfounded arrest leads to the following results :

- vis-à-vis the ship boarded, the due compensation provided by article 110 § 3 ;

-vis-à-vis the State flag of the vessel boarded, the liability for loss or damage caused by the boarding.

In the latter case, any dispute between the State flag and the boarding State must be resolved peacefully in the light of articles 2 § 3 and 33 § 1 of the Charter of the United Nations (*Conv. part XV section 1 art. 279*), depending on the option chosen at the time of signature or ratification (*Conv. part XV section 2 Art. 287*).

If the States do not agree on the interpretation of the Convention in the context of their dispute, the procedures of the article 297 should apply (*Conv. section 3*).

Criticism

The action of a State on the sea is perfectly framed by the Convention of Montego Bay, including the boarding of a ship at sea. All those States that ratified the Convention are compelled to apply it in full. This is the rule called «*pacta sunt servanda*» (*Conv. Vienne art. 26*).

But what about the States that have not ratified?

The Table of the 1st June 2010 drawn by the French Division for Maritime Affairs and Right of the Sea gives the detail of ratifications. Among the States that have not ratified the Convention one finds Cambodia (signature only), Israel, Kiribati (membership only) and Turkey. But any convention (or agreement or treaty) is "*a voluntary agreement designed to produce an effect of law.*" There is no convention in the absence of agreement.

It follows that the Montego Bay Convention does not apply to Israel or Turkey (*Conv. Vienne art. 34*).

It also follows that all the legal study exposed hereabove in the context of this convention no longer has any merit.

So what is the applicable rule in this case?

First observation : the customary law.

The custom is a "rule" not enacted in the form of command by a government, but which emanates from a general and prolonged use - *repetitio* - and belief in the existence of a sanction if complying with that use - *opinio necessitatis*. The custom is therefore a source of Right, if it does not violate an existing law and if it is followed equally by all nations.

The action at sea of such States that did not ratify the Convention of Montego Bay could therefore meet the customary maritime freedom of navigation on the high sea (*Conv. Vienne art. 38*).

Second observation : an earlier agreement.

The Convention on the high seas that preceded that of Montego Bay was laid down in Geneva on April 29, 1958. Israel ratified it with reservations. On 1st November 1990, the States that had not ratified it were Comoros, Kiribati, Greece, Saint Vincent & Grenadines and Turkey.

This agreement, the forerunner of Montego Bay, thus applies only to the Israeli state. But if the compensation of a wrongfully boarded vessel is regulated by article 24 § 7, there is no provision for settling disputes between States. Again an international Court or UNO could decide on any sanctions, particularly in light of articles 300 and 301 (*part XVI*) of the Convention of Montego Bay which, though unenforceable, can be a guide to common sense.

The community context

The legal analysis is insufficient to explain the reasons for boarding on 31 May 2010, if one pays no attention to the historical relations between the communities involved. We may consider the following points:

- The characteristics of vessels that attempted to break the Israeli embargo (and not the blockade) are, according to the site Equasis www.equasis.org/ :

  • Mavi Marmara, 4142 GT, passenger ship, flag Comoros (convenience).

  • Challenger I, 20,717 DWT, general cargo, St Vincent & Grenadines flag (convenience).

  • Defne Y, 4412 DWT, bulk carrier, Kiribati flag (convenience).

  • Gazze, 3142 DWT, general cargo, Turkish flag.

  • Rachel Corrie, 1205 DWT, general cargo, Cambodian flag.

  • Plus two other Greek freighters ignored by Equasis : Sfendoni and Eleftheri Mesogeio.

All these vessels were chartered by a Turkish Islamist organization, The Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH). The press alleged that more than 600 passengers and 10,000 tons of so-called humanitarian cargoes were being carried. Yet two ships would have been sufficient to carry everything.

- IHH is not on the list of non-governmental organizations (NGOs) associated with UNO (see website www.unric.org/).

- An undisclosed number of passengers were activists, especially among the wounded and killed ones (news release).

- On April 13, 2010, the newspaper "Hürriyet Daily News" announced the formation of the convoy and the willingness of participants to ignore the embargo. The known opposition of Israel to every attempt to force the embargo made the boarding inevitable.

- The excuse given by Israel to justify the embargo is the anticipated delivery of weapons and equipment to Palestinian militants in Gaza. Also IHH is deemed close to Hamas and other organisations of armed struggle which deny the right to existence and lead a guerrilla war against Israel. This link, which remains to be confirmed, based the presumption of agreement between the convoy and Hamas activists.

- Hamas represents the Palestinian Authority elected by the Gazans and is currently struggling with other representatives of the same Authority. That Authority which signed the Convention (*Res. III Final Act*) is actually not the Palestinian State, which does not exist among the UNO States. The Hamas armed action and that of its allies cannot be regarded as a *casus belli*, since war can be declared only between nations. Hence Israel cannot claim a state of war to justify its intervention on the high seas.

- NGOs are generally respectful of the rules edicted by the States among which they operate, even if those rules are condemned by the international community. Adversely IHH has chosen the provocation and the State of Israel the use of force. Admitting that Israel was party to the Convention, it would not comply here with the Final Act (*Res. III b*).

- Since the implementation of the embargo by Israel and Egypt, the international community has failed to reconcile the parties. This may explain the exasperation of Gazans and the use of violence as a substitute for political impotence.

- The action of the Israeli State would have been grounded if it had been conducted in territorial waters where the innocent right of passage applies, which Israel, for the same matters of safety which led to boarding in open sea, would have legitimately objected. One wonders why this way of action was not adopted. However the action of the State in territorial waters is not the subject of the present study.

Here and now the weight of History and accumulated hatred triumphed over the Right. The time has not come when sections 300 and 301 part XVI of the Montego Bay Convention will be respected, both by the State of Israel and the Palestinian Authority in Gaza and its allies.

Maritime Arbitration in London and Piraeus

Dimitri G. Capaitzis, HMTCA

1. History

The maritime and admiralty law that governs today's maritime transactions can be traced back through Roman Civil Law to the laws of Rhodes. The Phoenicians, Greeks and Romans had a set of codes and laws that covered commercial marine practice.

Traditions were kept with the Byzantines and then Venice, Genoa, Pisa, Amalfi.

With Elizabeth I and England's multiple involvement with the sea and ships, expansion in the 18th century, Industrial Revolution and steam in the 19th and parallel sea power into the 20th, laws, codes of practice, institutions, knowledge and invention from the British Isles were dominant worldwide.

The Arbitration Act was first passed in England in 1697, it was subsequently amended a number of times and finally in 1996.

2. Disputes and Resolution

The volume and variety of disputes are certainly dependent on the special circumstances of shipping and the international nature of their operations and trade.

Current disputes that are not settled between interested parties, either end up in court or arbitration or mediation. The latter two are commonly termed 'Alternative Dispute Resolution' (ADR).

Arbitration covers some universal principles.

The parties must have an agreement for arbitration in the case of a dispute arising in the course of their mutual business.

Arbitration is considered preferable to litigation for complicated commercial or technical disputes, as it is more flexible than the rigid court procedures. It can also be cheaper and quicker.

It is private and confidential and thus protects the business secrets of the parties. Awards are final and more easily enforceable internationally than court decisions.

3. LMAA / PAMA / Others

The London Maritime Arbitrators Association (LMAA) publishes the LMAA Terms (Preliminary, Application, Tribunal, Jurisdiction, Fees, Procedures, Powers, Meetings, Settlement, Adjournment, Availability, Awards, Documents, and General).

The LMAA also recommend an Arbitration Clause for inclusion in all Contracts compiled after consultation with BIMCO: The BIMCO / LMAA Arbitration Clause.

To enhance, facilitate and expedite procedures the LMAA have adopted the Small Claims Procedure (SCP), the Fast and Low Cost Arbitration (FALCA) and the Intermediate Claims Procedure (ICP).

Arbitrators in New York, Paris and Hamburg, Hong Kong and Singapore have a limited number of cases.

Piraeus has been relatively late with the Piraeus Association for Maritime Arbitration (PAMA) only going back to 2005.

This was combined with the adoption by Greece of the United Nations Commission on International Trade and Law (UNCITRAL) Model Law on International Commercial Arbitration.

The Rules contain a framework for the conduct of a maritime arbitration. They provide for a documents-only arbitration and a sole arbitrator in some disputes or a tripartite tribunal in others.

The Tribunal may convene anywhere in the world, documents may be submitted through e-mail and in English. An award may be issued without reasons, or with a summary of reasons, if the parties agree.

Awards are enforceable internationally through the New York Convention of 1958 to which Greece and around 140 countries are members.

In general the same model as the LMAA is used and special attention is given to commercial and technical aspects to outbalance the current emphasis on the legal aspect.

4. Operators and Disputes

Regional Centres can have their usefulness. Users generally like services to be readily available.

An Operator in Piraeus orders a ship from a Pusan yard, finances her in New York, fixes her through the Baltic in London to a charterer in Paris for an ore cargo from Tubarao to Yokohama, has his Insurance and P & I Club in Denmark and his crew from Odessa.

The Principal can stay put, communicate by phone, fax and e-mail, make his decisions and “sign” his Contracts.

Globalization appears to favour speciality centres.

Through the years London has been a favourite shipping centre with large brokerage firms in sale and purchase, agencies from the world’s shipyards, banks specializing in shipping finance, the Baltic Exchange, chartering for grain, ores or oil, Lloyd’s underwriters, P & I clubs, average adjusters, chartered accountants, legal firms, the court, Lloyds Register, universities, consultants, surveyors, naval architects, marine engineers and still many owners or operators.

However the many changes in the world industry and trade, have to be considered.

Shipbuilding has moved to the Far East, where shipyards design and build. Contracts, Specifications and Plans are processed by the Operators’ technical staff at their headquarters, but construction is supervised on site. Class approve Plans and supervise on site. Specifically in Greek Shipping a very large number of operators have moved home attracting significant services around them. Many law firms, average adjusters, brokers, P & I Clubs, underwriters have large offices in Piraeus / Athens with a large number of international and local staff.

This is in addition to the local equivalent and other services that have also developed and expanded.

There are currently about 5,000 tankers and bulkers operated by Greeks, about 20% of world deadweight tonnage, with organizations staffed with competent and experienced personnel and in a large variety of disciplines.

It is against this background that PAMA was established. It is considered to have the potential to do work complementary to the London set-up by providing local expertise in the technical commercial and management areas together with knowledge of the local operators.

In the old days contracts were agreed with a handshake. Nowadays standard contract forms have many pages, are reviewed and modified every few years and end up in practice with more addenda than the already long original text.

One can consider that normal and reasonable action is unduly limited and thwarted with too much emphasis on the legal aspect, to the detriment of due

commercial and technical initiative and expediency.

In 1997 the London Shipping Law Centre (LSLC) was inaugurated, to coordinate the many disciplines involved. Hereby is an extract from the Chairman's – Lord Mustill – Foreward at the Inauguration.

> *The law and practice of shipping law have always been closely entwined. They can surely be no other branch of commerce where the practical people know, and need to know so much of the law; and where professionals know, and need to know, so much of the practice. The skills and qualifications of those who occupy the broad spectrum between the judges and the master mariner merge almost imperceptibly. It is a fact of history, not a vain glory, that we can identify London as the place where practice and theory have so uniquely been blended.*

5. Mediation and Experts

In Mediation a neutral third party facilitates negotiations between the parties in a dispute and helps them to reach settlement. Mediation should be quick, inexpensive and confidential. It is not however binding. Many current contracts require parties to try mediation prior to arbitration and prior to court.

In 2009 the LMAA / Baltic Mediation Panel was formed.

Expert Determination (ED) is a quick and cheap alternative, offering a solution to a large number of disputes.

The spectacular advance of science, technology and economics has brought in innovation, but also significant specialization.

Arbitrators have to cover legal, commercial, operational and technical issues.

The use of experts could be useful generally and also in Arbitration and the Courts.

Operators' technicals attend ships worldwide during construction, overhauls, accidents and repairs. They proceed alone to remote parts and deal expediently with matters that are mainly technical, but also commercial, administrative, related to insurance and frequently legal. They are general practitioners with adequate competence and experience.

Nevertheless their technical vernacular is not always compatible with 'legal latin' and does not always facilitate efficient communications. Some bridge building is necessary and their catalytic possibilities and expertise merit serious consideration.

6. Shipping, Laws and Rules

Shipping works within a framework of laws and rules. Ships carry a variety of cargoes across the seas. One country's oil is needed by another for energy to produce goods that are then exported to yet another.

We have Ships, Builders, Operators, Navigators, Traders, Cargo and Port personnel and others, working in far off places with a miscellany of interests and customs, in vast oceans and in a variety of climates, each with their own characteristics, parameters, rules and laws.

There are equivalent hazards, the weather, possible accidents and commercial risks. There is also war, piracy, robbery and theft. There is however insurance, policing and banking to assist in the cash-flow.

A vast collection of laws and rules are there to cater for all this.

Other than national ones, there are international conventions. The Rotterdam Rules (2009), the Hague-Visby Rules (1971). The York-Antwerp Rules of 1871 on General Average were amended six times to reach their 2004 version. We also have the International Convention on Salvage 1989 and Lloyd's Open Form.

There is also the whole edifice of rules for the construction of ships and their safe operation, embracing the standards of naval architecture and marine engineering as well as the rules and surveys of the classification societies.

Beyond that we have the international rules such as SAFCON, SOLAS, MARPOL and Codes for Dangerous Goods, Bulk Cargoes, Timber on Deck, Chemicals, Liquefied Gasses.

Ultimately we have the various Contracts for a variety of charters, GENCON and BALTIME, shipbuilding contracts such as SAJ (Japan), AWES (Europe), MARAD (USA), NSA (Norway), sale contracts NSF (Norwegian Sale Form), LSSC (London Ship Sale Contract). BIMCO (Baltic International Maritime Council) are also issuing Contract Forms for Shipbuildings, Repairs, Connections etc.

The second half of the 20th century saw the Second World War 10,000 ton Liberty Tweendecker and 16,000 ton T2 Tanker develop into the 180,000 ton Capesize Dry Bulker and the 350,000 ton VLCC of today.

The ships of today are fit for purpose, efficient, practical and safe.

Over the recent years however society appears to have resuscitated the sea monsters of mythology and the EEC in Brussels for one is out to tame them with new legislation.

While the legal implications should be carefully considered on signing, the implementation of agreements is over a considerable time period and the Captains, Superintendents have to be constantly vigilant and continuously negotiating the ways and means of this implementation and the maintenance of Principal's obligations and interests.

In shipping too much legislation may lead to the centre of gravity shifting to the Law Courts, Arbitration or Mediation instead of the Bridge and the Operators' office.

A flow of daily events and transactions on a worldwide stage is routinely dealt with by the captain and his crew, with his agents, the stevedores, the receivers, authorities, class, ship chandlers and others.

On a drydocking, delivery of a new purchase or newbuilding the superintendent on the spot resolves many an arising problem.

Operator Principals get involved and negotiate with Principals of Charterer or Shipyard or Class or Authorities.

Should differences still remain they may lead in turn to mediation, arbitration and ultimately the Law Courts.

There is a current increase in legal disputes due certainly to the great expansion of merchant fleets worldwide. The proliferation of rules and laws, the emphasis on legal standards over commercial and technical ones being applied are a possible added reason for this increase and a possible complication in its processing.

Operators should get seriously involved in the process of rule making to make it seaworthy. BIMCO, Intertanko, Intercargo, are usefully active, they and others should be encouraged to go on the warpath.

SEMINAR - April 2011 - London

Following the success of last years event, another Seminar is schedueld for Wednesday 6th April 2011 - it is being organised by SCMS with full support from FEMAS. The title will be:

"Merchant Ships in Use In A Time Of War"

The programme is:

09:30 Registration and Coffee

10:00 Welcome address by Chairman

10:10 A Historical Overview of the subect - Chris Jones, Royal Naval Reserve Rtd.

11:00 Legal Positions & Charter Parties

12:30 Lunch

14:00 Piracy - Hardening Vessels Entering Risk Zones, David Bancroft Maritime Security Solutions

16:00 Close

The programme is still being finalised.

The Venue will be the Headquarters for the Royal Institution of Naval Architects, located at:

10 Upper Belgrave Street
London, SW1X 8BQ, UK

If you are interested in attending please contact the Secretary:

The Secretary
FEMAS
C/O The Society of Consulting Marine Engineers and Ship Surveyors (SCMS)
202 Lambeth Road
London, SE1 7JW

Email: sec@femas.info

Further information to follow.

Next Newsletter

Do you have any ideas for a news article for the next FEMAS Newsletter?

If the answer is yes, then please contact the Secretary, contact details on page 1.