

SEACURUS BULLETIN

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2014 MARITIME CRIME REVIEWED

MUTUALISED RISK | MARITIME SAFETY | HUMAN RIGHTS | PETRO PIRACY



Inside this issue we provide our usual in-depth round up of some of the major stories which have been shaping shipping, and we ask some pivotal questions on the matter of whether insolvency should be a mutualised risk, and whether the legal profession is stifling maritime safety.

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Welcome

Welcome once again to another issue of our all new Seacurus Monthly – Inside this issue we provide our usual in-depth round up of some of the major stories which have been shaping shipping, and we ask some pivotal questions on the matter of whether insolvency should be a mutualised risk, and whether the legal profession is stifling maritime safety.

We ask whether seafarers who are utterly abandoned and in need of immediate relief can truly rely on their employers' insurance clubs to overcome the obvious conflicts of interest involved in the mutual underwriting of such risks? Indeed can or should financial insolvency risks be mutualised, should the solvent carrying the can for those who go under?

The answer is as yet unknown, but the debate is important, and we want to explore whether mutualisation of this risk is in the best interests of either shipowners or the seafarers they employ? Last month also heard some interesting views on maritime safety, with one senior Classification executive raising concerns as to whether the fear of liability is stifling

the sharing of experiences when things do go wrong.

Alas it seems that, if the criticisms are correct, we appear to be operating under a regime of legal fear and a crushing weight of fear of liability. The finger has been pointed at lawyers for advising owners against sharing of information – and while there may be some rationale, it means we are becoming an industry which is blinding itself to its duty to help others learn from mistakes.

We also include a look back at the maritime security and crime figures for 2014 – which have been kindly supplied by Dryad Maritime, They make fascinating reading, and Dryad's analysis teases some new level of detail.

It seems that while the advances against Somali piracy, do appear to be holding, it would be wise to avoid any complacency that might emerge from the statistical picture painted in 2014.

There is a concern that something will give, perhaps fuelled by the threat that either owners will pull back on best management provision, the navies will withdraw or armed guards will be quietly dropped.

Elsewhere, in the Gulf of Guinea and Southeast Asia, there is plenty that ship operators and masters can do to reduce the risk of falling victim to crime, but awareness is a key element of this approach.

Away from piracy, there are concerns that 2015 will be the year in which terrorism and civil strife hit shipping hard. We have already seen fighter jets bombing tankers, and even a regasification vessel targeted by a bomb hoax. As shipping comes into the cross hairs of bad people, then bad things will surely follow.

Once again we hope you find Seacurus Monthly of interest, and look forward to assisting you with any further information of requirements you may have.



Managing Director
Capt. Thomas Brown

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IN DEPTH

SHOULD INSOLVENCY RISK BE MUTUALISED?

The following article by Thomas Brown, Managing Director, Seacurus, first appeared in Tradewinds as an Insight Article on 30/01/15

What happens as the Maritime Labour Convention turns the screw on owners and demands guarantees that abandoned seafarers can truly rely on their employers' insurance? With uncertainty as to the role of P&I, we assess the role of mutuality and bankruptcy risks.

➤ Amendments to the Maritime Labour Convention 2006 designed to protect abandoned seafarers are due to enter force in early 2017. Some insurance intermediaries and commentators are predicting that the International Group of P&I Clubs could, and perhaps should, provide the necessary cover to enable shipowners to meet their enhanced MLC obligations. But, contrary to the impression circulating in some parts of the market, this is anything but a done deal. Mutualising the risk of financial insolvency is just one option to set alongside other initiatives from the commercial insurance market and/or other providers of financial security.

This would not be the first time, for example, that the IG has declined to intervene in contentious coverage issues, leaving owners instead to find alternate risk transfer solutions in the non-mutual market. Examples of recent abstentions include additional cover for piracy risks and OPA - Certificates of Financial Guarantee.

In the case of piracy, it was not deemed to be in the interests of public policy for the clubs to become involved in this 'modern-day' insurance requirement, whilst numerous arguments have also been raised against clubs becoming involved in underwriting any form of financial guarantee. In February last year, marine insurance broker Marsh reacted to the proposal by the Standard P&I Club to offer OPA COFRs directly to its members by arguing that the legal defences relied on by owners and their clubs could become blurred if the insurer covering the underlying risk was also the insurer providing the financial guarantee. Marsh questioned how certain the Standard Club could be that the distinction between itself as a COFR guarantor and

its conventional role as a P&I insurer would be upheld in a contested court hearing.

It has long been the overarching view of the clubs that they should not offer financial guarantee insurance to their members. This is exemplified by one IG club which in 2001 issued a circular in connection with the International Guidelines to Flag States on Seafarer Abandonment, which had just been adopted. The circular provided the following advice to members; "Unfortunately the guidelines produced are not only of doubtful utility, they are also of doubtful practicality. The IG clubs have indicated that they would be unable to issue notifications to individual seafarers. In addition, they have pointed out that claims for liabilities to seafarers are always subject to club rules and terms of entry (including deductibles) and that payment could not therefore be guaranteed to individual seafarers. This means that IG clubs will not be able to issue the certificates envisaged in the guidelines."

The circular refers to the very same guidelines that have now been included almost verbatim into the Maritime Labour Convention and will come into force in early 2017.

So, aside from the mandatory nature of the forthcoming amendments, it is hard to see what has changed since 2001 which would now negate this particular club's former position on this matter of regulatory compliance. Why would the clubs abandon their position of not wanting to write COFR business, to now begin writing financial guarantee insurance in respect of abandonment risks as required under MLC 2006? Surely the same rationale should be applied to



the latter type of risk as is applied to other categories of financial guarantee insurance? Surely the clubs face an insurmountable conflict of interest when balancing the interests of seafarers with those of their members?

Unlike the OPA COFR, is it a question of the perceived loss cost and realistic disaster scenarios (RDS) being manageable from the club's perspective? Most recently, in December last year, Marsh reportedly advocated that the clubs should pool liability for owner insolvency, warning that, "The payment of four months' wages to seafarers on even a 30-vessel fleet would exceed the \$9m risk that individual clubs currently retain". If this is proven to be an accurate loss cost, then what cost would the clubs have to assign to their RDS calculations - all this coming at a time when clubs have the pressure of Solvency II to concern themselves with.

It follows that, if the clubs are to intervene in the case of seafarer abandonment, they must be willing to use the mutual funds of their solvent members to enable them to act as financial guarantors to cover the debts of their insolvent members. Moreover, as a matter of insurance law and MLC regulatory compliance, as it is the seafarers who have the 'insurable interest', mutual cover in respect of seafarer abandonment would involve the clubs granting their members' employees (the seafarers) direct access to the club's financial security. Direct access for seafarers would present an interesting claims management challenge for the clubs.

By mutualising the risk of financial insolvency, the industry risks tilting the playing field against well-founded, financially solvent shipowners who, at significant financial cost, employ best practice throughout their operations. Why should such operators assume liability for the debts of less-well-found competitors? And why should such a 'ticket to trade' be demoted to just another 'club benefit'?

Moreover, can seafarers who are utterly abandoned and in need of immediate relief truly rely on their employers' insurance clubs to overcome the obvious conflicts of interest involved in the mutual underwriting of such risks?

There is comparatively little time to reconcile these major issues and to deliver on the true intent of MLC to create a 'seafarer's bill of rights'. To provide a quick fix and engineer further regulatory mediocrity should not be an option.

The question is whether or not to mutualise financial insolvency. The answer is as yet unknown, and we should not presuppose an outcome which has yet to be decided. The real question that merits further discussion and clarity is whether mutualisation of this risk is in the best interests of either shipowners or the seafarers they employ? Until we have clarity on this question from the IG, it will always present a barrier to new product innovation.

SEACURUS LAUNCHES NEW SOUTH-EAST ASIAN PETRO-PIRACY COVER

According to recent figures published by the International Maritime Bureau, South-East Asia accounted for three-quarters of global maritime piracy last year. Seacurus' new cover comes in response to the evolving threats in the region and recognises the need to protect crews against the potential for a kidnapping situation, and ship and cargo owners against the risk of business interruption and property theft.

➤ Seacurus has developed a petro-piracy endorsement which can be added to existing Kidnap & Ransom (KR) insurance cover in response to the evolving threats to ships, their cargoes and crews when transiting the South China Sea, Malacca Straits, Indonesian Archipelago and Gulf of Guinea.

According to recent figures published by the International Maritime Bureau, South-East Asia accounted for three-quarters of global maritime piracy last year after a surge in tanker hijackings helped to fuel a 22 per cent jump in armed robbery and pirate attacks on ships in the region.

There were 183 actual and attempted incidents of piracy and robbery involving ships in South-East Asian waters last year, compared to 150 in 2013. In the Gulf of Guinea, meanwhile, cargo theft is likely to remain on the agenda of Nigeria-based criminal gangs throughout 2015.

Denis Nifontov, Head of Marine K&R at Seacurus, says,

"The criminal reach demonstrated by last year's hijack of the tanker Kerala, coupled with the number of successful and attempted attacks in 2014 and the lack of any evidence that such gangs have been neutralised, suggests that further attempts at cargo theft will take place in 2015 across the region. Seacurus has recognised the need for traditional marine K&R cover to evolve to provide all interested parties with assurance that every eventuality is covered.

"The modus operandi of South-East Asian and Gulf of Guinea criminal gangs differs from the Somalian piracy model. Ships' crews are regularly exposed to life-threatening situations as criminals take control of and ransack vessels, stealing valuable petro-chemical cargoes for commercial gain."

The new cover from Seacurus recognises the need to protect crews against the potential for a kidnapping situation, and ship and cargo owners against the risk of business interruption and property theft. In addition to the benefits of a \$1m marine K&R policy, the cover includes as standard such additional benefits as loss of hire (\$500,000), loss or theft of cargo (\$500,000), loss of bunkers (\$250,000), and loss or theft of money (\$50,000) - all within an aggregate policy limit of \$5m.

Denis Nifontov says,

"Given that, by its very nature, criminal activity is unpredictable, Seacurus believes that, for a small additional voyage cost, cover can be arranged to give all parties to the maritime adventure peace of mind that their interests are insured. Shipowners, charterers and cargo interests (who can be added to the policy as co-insureds to cover their own interests in the voyage), can buy \$5m of cover for a seven-day voyage for a typical premium cost of \$1,250, subject to an assessment of the usual underwriting information. In this way, all parties can protect their standard marine insurances and insurance records from the potential for costly claims, whilst negating the need for costly and time-consuming recovery actions and General Average settlements."



IMAGE VIA STRAIT TIMES

Maritime Crime 2014 Reviewed

Thank you to Dryad Maritime for sharing with us their thoughts, conclusions and data on Maritime Crime in 2014.

➤ Dryad Maritime's Chief Operating Officer, Ian Millen, reflects on the 2014 maritime crime picture and looks ahead to what 2015 might bring. The analysis tells a story of encouraging reductions in the maritime crime threat in some areas, whilst drawing attention to worrying trends in others. The article and accompanying infographic is based on Dryad's professional analysis of reported maritime crime which may vary from other bodies.

Gulf of Guinea

The Gulf of Guinea saw an overall reduction in the number of incidents in 2014: a decrease of 18% when compared to 2013.

Despite this overall reduction, the year saw a marked increase in the number of attacks resulting in the kidnap of senior crew from support craft and commercial vessels trading in the region.

Fourteen vessels had crew taken captive last year, compared to eight vessels having crew kidnapped the previous year. Just two of last year's attacks occurred inside Nigeria's 12 nautical mile (nm) territorial waters, with the remainder further offshore where protection from security vessels is less available.

A further 14 unsuccessful attacks took place within the Nigerian exclusive economic zone (EEZ). Analysis suggests that the vast majority of these criminal gang attacks were aimed at the kidnap of crew, especially given the areas and weaponry involved. Effective defensive measures employed by crews and security teams meant that these 14 attacks were aborted

and were not added to the already higher statistics for kidnap or cargo theft.

This form of maritime crime, a simple extension of a type of crime endemic in Nigeria, is likely to continue in 2015. Victims will likely be released unharmed as long as shipping companies and owners negotiate with the criminal gangs and pay the ransoms demanded. Whilst it is understandable that such ransoms are paid to secure the safe return of crew, such payments will encourage criminals to persist with this lucrative form of maritime crime.

Just three product tankers were hijacked for their cargo of fuel oil during 2014, another steady decrease from a total of five such incidents in 2013 and seven in 2012. The picture could have been a different one with a further five tankers unsuccessfully attacked by heavily armed gangs during the year. The smaller number of successful attacks was, however, overshadowed by a record demonstration of criminal gang reach when Niger Delta-based pirates hijacked the Liberian flagged tanker, MT Kerala, from its Angolan anchorage – some 900nm from Nigerian waters.

Like the kidnap of crew for ransom, cargo theft is likely to remain on the menu of Nigeria based criminal gangs in 2015. The criminal reach demonstrated with the hijack of MT Kerala, the number of successful and attempted attacks in 2014 and the lack of any evidence that such gangs have been neutralised, suggests that further attempts at cargo theft will take place in 2015 across the region.

Horn of Africa

During 2014 there were only two confirmed attacks on MVs transiting the high risk area (HRA) of the Indian Ocean. MV Nave Atropos was attacked on 17 January south of Salalah and MV Andrea was fired upon from two skiffs 10nm off the Somali coast in February. During the attack on MV Nave Atropos, the pirates used a previously hijacked dhow (MSV Shane Hind) as a mother ship.

Despite almost daily reports of suspicious vessels (dhows, fishing boats and skiffs) these three attacks remain the only ones attributed to Somali pirates. Also of significance is the lack of disruption of potential pirate action groups (PAGs) in 2014. During 2013 over a dozen PAGs were detained and destroyed by coalition naval forces but, with the exception of MSV Shane Hind, no other PAG was detected in 2014. This is the lowest level of pirate activity in more than 15 years.

Somali piracy has declined dramatically in the last two years. The continued presence of large numbers of coalition forces, coupled with increased use of best management practices version 4 (BMP 4) measures and the provision of privately sourced armed security teams, has led to the current situation where the threat is broadly contained, if not eradicated. The risk/reward ratio for the pirates is far less favourable now and they have lost the initiative that they once enjoyed when they were able to strike almost at will. Now, the risk of serious injury or death when attacking MVs carrying armed guards, alongside an apparent lack of suitable platforms with which to launch attacks and the positive

law enforcement outcomes evidenced recently have no doubt increased the decline of piracy. However, the conditions ashore in Somalia, which contributed to the escalation of piracy in the first place, have changed little.

In 2015, it is likely that this broad containment of Somali pirates will continue, provided that the measures that have contributed to this favourable outcome continue to be in place. Remove any one of the ingredients that have resulted in the right medicine to combat the pirate threat – coalition forces, armed guards, BMP compliance – and we could see a return to higher levels of pirate action.

Southeast Asia

2014 has seen another annual increase in the number of maritime crimes reported across Southeast Asia with a 21% increase in reported maritime crime across the region when compared to the figures for 2013. Dryad's figures show a total of 214 incidents compared to 177 in the previous year. It is notable that the vast majority of these incidents have taken place within 150 nm of Singapore. These figures include the dramatic rise in cargo theft of fuel from tankers operating out of Singapore. The year also saw the tragic death of a crew member as a direct result of criminal activity.

The three main areas of concern are; firstly, the western Singapore Strait, where we have seen an 80% increase in robberies, attempted robberies and vessel boardings during 2014. Secondly, in the anchorages to the east of the Horsburgh Light where petty theft and attempted theft has been rampant; despite an initiative by the Indonesian Maritime Police to patrol the area, 39 vessels have reported theft or attempted theft. Finally, in the South China Sea there have been 12 attempts at hijacking and cargo theft of fuel from small local product tankers, not all have been successful.

Elsewhere we have seen a rise in petty theft across the Bay of Bengal, mostly in the anchorages around

Chittagong, Bangladesh and a small rise in incidents off Vietnam and the Philippines. These increases are offset by a marked reduction in petty theft in the major ports of Indonesia, with the anchorages at Belawan, Dumai, Balikpapan, Samarinda, Taboneo and Surabaya all reporting fewer incidents than in 2013. Although it is difficult to prove with certainty, it is likely that better patrolling of these areas by Indonesian maritime security forces has resulted in this positive trend. There is no reason to believe that the above areas will continue to feature fewer incidents, again provided that preventative security deterrence remains in place. Unfortunately, the three main areas of concern are likely to remain so unless improvements in deterrence and law enforcement interdiction are made. A very real concern is the fact that criminal gangs are becoming more violent and, without arrest and prosecution, they will continue to operate with impunity, resulting in further injuries and possibly more deaths to mariners.

Rest of World

Figures for maritime crime in areas outside of those already addressed are small by comparison, with only 16 incidents on Dryad's records for 2014. Ranging from robbery alongside in South America to attacks on yachts in the Caribbean and even the hijack of a sailing vessel in the Mediterranean, these crimes highlight the need for vigilance at sea and in port, and illustrate the need for good awareness of the threats present in the maritime environment.

Other types of crime and conflict continue to affect those who rely upon the maritime environment for trade. From criminally sponsored mass migration across the Mediterranean and trade restrictions imposed in Crimea, to ongoing terrorism activity in the vicinity of shipping lanes and the impact of civil war in Libya, mariners are faced with a diverse range of threats which need to be mitigated. The targeting of MT Araevoby Libyan Air Force jets, which resulted in the deaths of two crew

members off Derna on 4 January this year, clearly illustrates the need for local awareness and proper risk mitigation in all areas of operation.

Conclusion

The maritime industry and its mariners welcome the continued decline in Somali piracy, but would be wise to avoid any complacency that might emerge from this encouraging picture.

When something like the multi-faceted approach to the piracy problem appears to be working, the industry would be ill-advised to change the medicine. The current situation does, however, present opportunities for more innovative and cost effective approaches to risk mitigation. Armed guards play their part in the HRA and have clearly evidenced their effectiveness in recent years, but they are not needed on all vessels, in all areas and in all environments. Good maritime domain awareness, comprehensive risk assessments and vessel monitoring can be equally effective and more financially attractive in many circumstances.

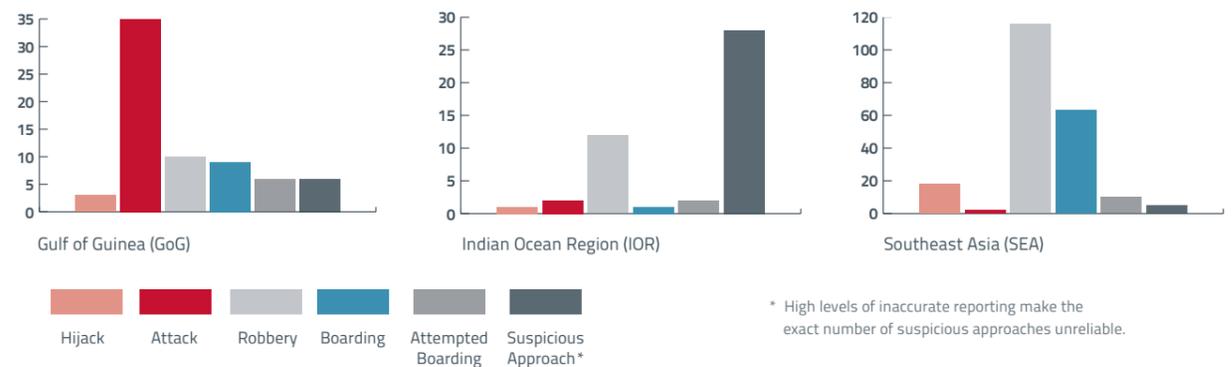
In the Gulf of Guinea and Southeast Asia, the prognosis is for more of the same with the key concern being the level of violence used by criminals in both areas. Regional issues and the nature of the threat in these areas do not lend themselves to an Indian Ocean type solution, but there is plenty that ship operators and masters can do to reduce the risk of falling victim to crime, either themselves or with professional support.

The year ahead will doubtless present new challenges for the industry, but good preparation and consideration of the diverse range of threats will hopefully result in favourable, downward trends in maritime crime. Outside of the normal areas of maritime crime we are likely to see other risks from terrorism to civil strife. Avoiding complacency, doing the hard miles on risk mitigation and investing in protecting mariners are the absolute keys to success.

MARITIME CRIME 2014



Figures by high risk area in 2014



30

Estimated total number of crew currently in captivity

35+ crew kidnapped in 2014

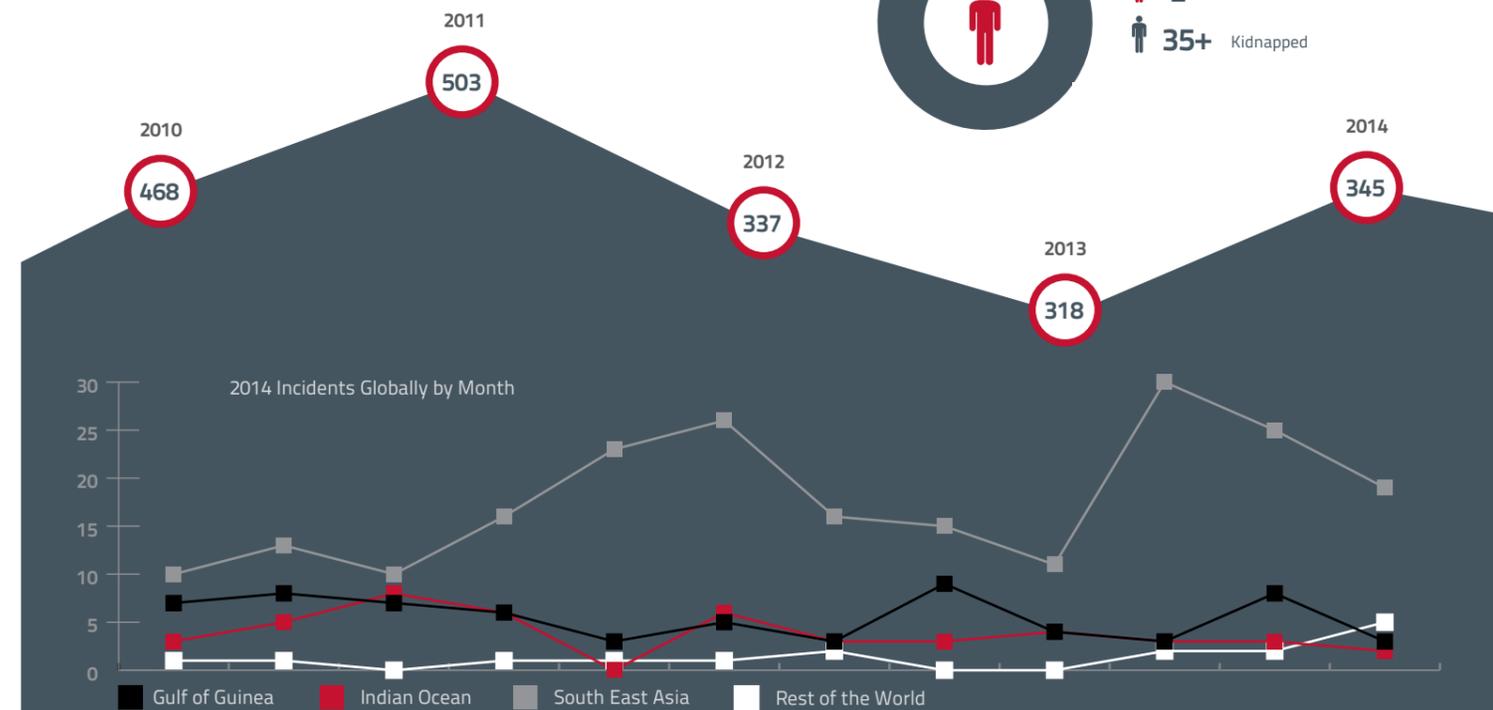
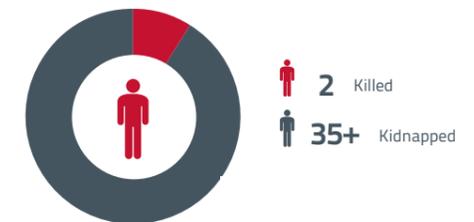




IMAGE: EU NAVFOR

PIRACY ISSUES COMING TO A HEAD

A number of courts around the world are now slowly coming to grips with the legal issues, cases and appeals related to Somali piracy cases. The wheels of justice can sometimes appear to turn rather slowly, and so it can be years down the line before cases come to trial.

➤ These piracy trials have thrown up some rather interesting issues – not least the decision by the European Court of Human Rights to force France to pay out to suspected pirates, but there have been equally contentious verdicts in a number of cases, especially where seafarers have suffered hardship, injury, even death.

One such verdict was handed down in a US Court, in which the widow of a Taiwanese man whose fishing vessel was sunk in the effort to rid it of pirates cannot seek damages from the United States after her husband was killed in a foiled rescue attempt.

Captain Wu Lai-Yu was the master and owner of the ship, “Jin Chun Tsai 68”, which pirates hijacked in 2010. He and two crew members were still aboard the JCT 68 as hostages on May 10, 2011, when the “USS Stephen W. Groves” followed orders from a NATO task force commander to engage the ship and forced its surrender.

Three of the nearly two dozen pirates were killed in the engagement, and a special team also found Wu in his sleeping quarters, “with the crown of his head shot off,” the master’s widow, Wu Tien Li-Shou, claimed in a federal complaint against the United States.

Wu’s crew members were rescued safely, and the USS Groves intentionally sunk the JCT 68 the next day, with Wu’s body on board, pursuant to the NATO commander’s orders.

Though Wu’s widow claimed that the counter-piracy raid under Operation Ocean Shield was conducted negligently, violating the rules of engagement, a federal judge in Baltimore dismissed the action after finding that it raised a “nonjusticiable political question.” Noting that the United States sent Wu’s family money already, a three-judge panel for the 4th Circuit affirmed dismissal of the civil action on Jan. 23. Ultimately, “this case presents a textbook example of a situation in which courts should not interfere,” Judge J. Harvie Wilkinson wrote for the court.

“Resolving this dispute would oblige the district court to wade into sensitive and particularized military matters,” he added.

The 22-page opinion notes that Wu’s case implicates very “precise details of the military engagement: what kind of warnings were given, the type of ordnance used, the sort of weapons deployed, the range of fire selected, and the pattern, timing, and escalation of the firing.”

“Discovery easily could draw the court and the parties into the technicalities of battle,” and tie the hands of NATO and American commanders leading anti-piracy initiatives, Wilkinson added.

The judge stated that they are “not equipped to second-guess such small-bore tactical decisions”. Adding, “We also are ill-suited to evaluate more strategic considerations. We do not know the waters. We do not know the respective capabilities of individual pirate ships or naval frigates. We do not know the functionality and limitations of the counter-piracy task force’s assets. We do not know how a decision to tow and not to sink the JCT 68 would have affected the task force’s mission by tying down valuable naval resources. We do not know the extent of the disruption to commercial shipping caused by any single ship or by Somali-based piracy generally. What we do know is that we are not naval commanders. These are questions not intended to be answered through the vehicle of a tort suit.”

It is moreover “decidedly not our job” to select the proper rules of military engagement, the court found. “Further, if we accepted Wu’s invitation, we would open the door to allegations that soldiers and sailors should treat more sceptically the clear orders of their superiors,” Wilkinson wrote. “We would afford military personnel a reason and incentive to question orders -

namely, to head off tort liability or at least the burdens of litigation that come with being sued. Allowing discovery here would permit inquiry into the wisdom of the order to sink the JCT 68.”

Despite its denial of the claim, the court emphasized that its holding makes no attempt to “trivialize either Master Wu’s death or the destruction of his ship.” However it seems more decisions which reflect the harsh realities at sea could well be set to emerge.

Also in the US, two Somali pirates convicted in the shooting deaths of four Americans aboard a yacht are set to have their appeals heard in a Virginia courtroom. Abukar Osman Beyle and Shani Nurani Shiekh Abrar were sentenced to 21 life terms for their roles in the February 2011 attack off the coast of Africa. A three-judge panel of the 4th U.S. Circuit Court of Appeals will hear arguments in Richmond.

Beyle and Abrar were among 19 men who boarded the 58-foot yacht in hopes of holding the Americans for ransom. The plan fell apart when the U.S. Navy intervened. Yacht owners Jean and Scott Adam of Marina del Rey, California and their friends, Bob Riggle and Phyllis Macay of Seattle, were killed. Four pirates also died.

Legal Fears Stifling Safety

Shipping has not had a terribly good reputation for reporting accidents and incidents, and even less so being able to learn lessons.

➤ When it comes to a lack reporting accidents and incidents, the blame has often been laid at the door of shipowners and operators, with critics suggesting that they have suppressed or ignored the responsibility to adequately respond to events onboard, and attitude which then feeds the further problem of generating flag State investigations and reports.

It seems though, according to a leading Classification Society, that maritime lawyers are the ones we should be blaming for jeopardising safety at sea.

DNVGL's maritime CEO, Tor Svensen, believes that "legal fear" is stopping shipowners from sharing critical "lessons learned" from serious accidents. Svensen said that while he would not "specifically say" that lawyers are warning shipowners/operators against sharing lessons learned from casualties.

The casualty levels are not going down, and that means that something is needed to drive the progress that industry needs to improve. Svensen said: "We often have seen that legal aspects are used as arguments for not sharing information, since this could be incriminating during a later investigation of a casualty. "We have to change this and believe it is possible to create a system in which information could at least be exchanged anonymously. IMO and governments are the natural channels to address this topic for the sake of enhancing safety in shipping."

There are signs of possible hesitancy to really dig deeply into events which lead to accident, and to share findings. With shipping's 2,000 fatalities and 100 ship losses per year and a slew of high profile and serious accidents there is a need for change, or at the very least a sensible evolution.

The case of the "MOL Comfort", which broke in two in June 2013, was an example of this apparent log-jam in reporting and investigation. Svensen said he awaits the Japanese government's report on the incident,

but said that insufficient information has emerged about the incident so far despite ClassNK's report in September 2013 and despite sharing information from the International Association of Classification Societies (IACS).

While IACS has a massively important role to play in reporting, so too do the IMO, flag states, ship-owners, classification societies and other stakeholders in the maritime industry. According to Svensen, there is a need to work together for a "more efficient, proactive and transparent information exchange on shipping casualties in order to thoroughly assess them."



He called for an improved reporting system, but said it was unclear whether this should fall under the IMO or an industry association. "There is a very, very clear need to focus on safety. The public demands zero accidents and there is political and regulatory pressure to achieve it," said Svensen, who added that shipping needs to achieve a 90% reduction in fatal accidents per year to bring it on a par with land-based industries.

It seems it is time for shipping to be more proactive and adopt a new "mind-set", perhaps guided by successes elsewhere and other industries such as offshore, which has to operate in a very dangerous environment.

This is something which has been brewing for a long time, and it is almost depressing as it is frightening to think that lawyers could possibly be holding up safety progress, just because of the isolated vacuum of focus on the outcome of a single case.

It seems that joined up thinking, transparency, and an ability to hold hands up when mistakes have happened is needed. Instead, if the criticisms are correct, we appear to be operating under a regime of legal fear and a crushing weight of fear of liability.

Responsibility and accountability are important, but in advising owners against sharing of information we are seeing an industry which is blinding itself to its duty to help others learn from mistakes.

It should be incumbent on the industry to develop some mechanism by which lessons can be learned, and which ensures that we do not constantly run on an accident treadmill, perpetuated by legal fears. There are excellent schemes out there, MARS and CHIRP to name but two – but these are not full and complete records of the industry, and we need to ensure that all accidents are assessed, understood and guarded against.

This issue of knowledge, of sharing and of understanding risks comes at an important time –

especially in the bulk sector. With a number of recent losses bulk carrier safety is once more in the spotlight.

Bulk Carrier Safety regulation has recently focused on the strengthening of the International Maritime Solid Bulk Code (IMSBC) covering the loading and transport of bulk cargoes, with new guidelines mandatory from January 1, 2015. The new guidelines offer the regulatory response to concerns over continuing incidents of cargo liquefaction, and specifically the dangers identified in transporting nickel ore. Something which has caused repeated losses over the years.

The International Association of Dry Cargo Shipowners (Intercargo) has described nickel ore as the world's most dangerous cargo and attributed the loss of 66 lives in South East Asia from 2009 to 2011 alone to cargo liquefaction. Intercargo recently repeated its concerns over the dangers liquefaction of bulk cargoes following the sinking of the "Bulk Jupiter" off Vietnam last month with the loss of 18 seafarers.

The "Bulk Jupiter" was carrying a cargo of bauxite loaded in Kuantan, Malaysia, which is believed to have liquefied due to the heavy monsoon rains experienced in December. This caused the vessel to capsize and sink. "The recent capsize and sinking of the Bahamas flag Bulk Jupiter in the opening days of January, with the loss of 18 of its 19 crew, may again prove to be yet another casualty statistic in the long list of bulk carrier losses caused by cargo liquefaction," Intercargo said. While a number of P&I clubs joined in issuing revised and restated warnings on bauxite liquefaction.

This highlights the vital role in sharing experiences, data and problems – an industry which can openly address issues is one which can collectively find solutions, and hopefully the 2000 annual death toll onboard ships can drop, and so too can the all too regular loss of around 100 vessels each year.

HUMAN RIGHTS AND LEGAL WRONGS



The US ruling on Captain Wu Lai –Yu, and potentially in the “Quest” case, come at a time when the charity Maritime Piracy Humanitarian Response Programme (MPHRP) is seeking to highlight the hardship inflicted upon seafarers and families. They are also seeking to ensure that the term “piracy” is used correctly, and noting the trend that the industry appears to avoid the word “piracy” in favour of new forms of criminality, specifically “attacks” and “hijacking” – they want to ensure that the message of seafarer suffering is not lost in the classification and differing terms used.

The technical differences denoted by these terms aside, MPHRP said a basic truth is veiled: that violent crime is committed against seafarers. The MPHRP warns against complacency and encourages continued efforts to ensure the safety of seafarers.

The MPHRP calls for seafarers to be made aware, to remain vigilant and to apply themselves to protective measures.

The issue of the human rights angle has also been revisited – there was anger and frustration across many parts of the industry when the decision to award cash to pirates who had suffered a slightly longer spell in detention, than was supposed to be allowed.

You may recall, the two cases concerned nine Somali nationals, who in 2008, having hijacked two French-registered vessels off the coast of Somalia and having themselves held hostages, were arrested and held by the French Navy before being transferred to France where they were taken into police custody and prosecuted for acts of piracy. The Court examined whether the pirates’ right to liberty and security had been safeguarded from the moment of their arrest.

A number of human rights lawyers and experts had supported the payment – stating, as is legally correct, that these are the rules and we need to abide by them. The angle taken by the nascent organisation, The Human Rights at Sea (HRAS) international maritime initiative was of particular interest, given their seafarer welfare approach.

The HRAS verdict on the payment of compensation was that it is somewhat bizarre, if not absurd, that the Court ordered France to pay out. A pronouncement which probably rings true with many people in shipping.

If correctly understood, the HRAS position is not however taken from a perspective that human rights provisions and protections do not apply to suspected or convicted criminals, or that there was not a technical breach of Article 5 in terms of a failure in ‘promptness’ in coming before a court by the French authorities.



IMAGE: www.humanrightsatsea.org

Instead, the HRAS point is that the application of the law was strictly applied and too narrowly interpreted in terms of the context of the detention, resulting in damages being awarded for what amounted to a short 48 hour administrative delay. During this time the then suspected pirates were never physically abused or subjected to cruel, inhumane or degrading treatment. They were in fact protected by the French authorities.

In context, the French authorities otherwise controlled handling of the suspected pirates was in stark contrast to the pirates brutal kidnap, handling and ransom of the seafarers and which involved cruel, inhumane and degrading treatment over an extended period of time for which those seafarers have had no recourse to any equivalent level of compensation, or recognition before the law; itself a human right. That, HRAS says, is the “bizarre” and “absurd” part of the ECtHR judgment in that the court took the step of awarding damages when it could have stopped at an acknowledgement of a technical breach of Article 5 and still sent the clear message that human rights provisions had been violated. In short, the awarding of damages rubs salt in the physical and mental wounds of those seafarers while rewarding now convicted criminals for brutal criminal acts.

The unfortunate fact is that human rights laws are to be applied universally, regardless of circumstance. So for law enforcement agencies tackling pirates or smugglers out on the high seas, it can be very difficult to be bound by the same demands as their colleagues ashore when it comes to the reasonable amount of time between arrest, processing, charging and incarceration.

It may well be that the human rights laws are unequivocal, but it also paints them in a very poor light when they run so contrary to common-sense, and in this case perhaps even common decency.

The authorities, be they naval or law enforcement, must be supported in their efforts to pursue and bring pirates and criminals to justice – and the fact remains that out at sea it is more difficult. There must be answers found to how some extensions can perhaps be added to the timeframes of dealing with suspects at sea, rather than ashore.

In that way human rights can be upheld, and so too can the sterling efforts of those who do so much to keep our seafarers, seas and ships safe and secure.



NEWS ROUNDUP A SUMMARY OF KEY MARITIME HEADLINES FROM ACROSS THE GLOBE

Bomb Hoax Paralyzes Vessel:

Gas supply from Lithuania’s liquefied natural gas (LNG) import terminal was interrupted last month due to a bomb threat that later turned out to be a hoax, the terminal’s operator Klaipėdos Nafta reported. The floating terminal, leased from Norway’s Hoegh LNG, was opened last year and received the first commercial LNG cargo from Norway in late December. The terminal halted gas withdrawals after receiving a bomb threat and was evacuated.

<http://goo.gl/Lxi3kj>

Surprise UK Seafarer Growth:

The number of UK seafarers has increased for the first time since 2010, new figures released by the Department for Transport show. The annual Seafarer Statistics show: – the total number of UK seafarers active at sea in 2014 was estimated to be 22,910 – the total number of UK officers increased by around 1000 compared to 2013. This was the first annual increase in the total number of UK seafarers, since 2010. – Nearly 2000 officer cadets were in training, the second highest level for over a decade. The figures also show that nearly 2000 officer cadets were in training, the second highest level since the Government’s ‘Support for Maritime Training’ scheme was introduced in 1998.

<http://goo.gl/YXsRaq>

Leading Names Come Together For Crew Welfare:

Leading names in shipping have come together to support a new coaching programme designed to enhance crew welfare and improve retention rates. Sailors’ Society, one of the largest seafarer support charities operating internationally, has unveiled “Wellness at Sea”, a coaching and support programme

designed to promote health and well-being among the world’s seafarers. Wellness at Sea has been designed to reflect the needs of mariners and the shipping industry alike by promoting cultural awareness, emotional intelligence, social skills and spiritual well-being alongside more familiar skills competence. The programme will seek to address five specific needs: social, emotional, physical, intellectual and spiritual wellness.

<http://goo.gl/Qtwyx9>



Call for Stiff Concordia Sentence:

An Italian prosecutor asked a court on Monday to sentence the captain of the Costa Concordia cruise liner to more than 26 years in jail for his role in the 2012 disaster that killed 32 people. Francesco Schettino was the commander of the vessel when it came too close to shore and hit rocks off the Tuscan holiday island of Giglio. In summing up arguments at the trial in the nearby of Grosseto, Prosecutor Maria Navarro said Schettino should serve 14 years for manslaughter and causing injuries, nine for causing a shipwreck, three for abandoning ship, and a further three months for giving false testimony. The trial is expected to go to the jury next month.

<http://goo.gl/Svqjlq>

Abandoned Seafarer Concerns:

There are concerns about the welfare of 20 Filipino seafarers aboard a flag-of-convenience bulk carrier berthed at Port Kembla after it was found the stores aboard the ship were severely lacking and none of the crew had been paid in four months. The Australian Maritime Safety Authority (AMSA) has detained the ship, the “Bulk Brasil”, for serious breaches to the Maritime Labor Convention. The “Bulk Brasil” is an 82,000 dead weight ton, Panamanian-registered vessel, managed and operated Japanese-based multinational Keymax. It is a repeat offender and has been found to have deficiencies in 12 ports worldwide. An AMSA inspection found the vessel had deficiencies in pollution prevention, working and living conditions, safety of navigation and fire safety.

<http://goo.gl/hZUvSK>

US Looks to Act on Crew Shoreleave:

The US Coastguard has issued a notice of proposed rulemaking regarding owners and operators of MTSA regulated facilities. Facilities must implement an access system within one year of the publication of the final rule and the system must be included in the FSP. Specifically, the FSP must include the location of transit areas, duties of all facility personnel associated with providing access, the method of escorting or monitoring individuals transiting the facility, agreements with third-parties to provide access, and the maximum length of time an individual will have to wait for access. The FSP must be submitted for approval 60 days before implementation. The Coast Guard is currently accepting comments.

<http://goo.gl/IqY4o3>



Black Sea Hours of Rest Results:

The Concentrated Inspection Campaign (CIC) on STCW Hours of Rest carried out last year in the Black Sea MOU region shows the following preliminary results of the questions related to the verification both deck and engine room watch-keepers' hours of rest. 6 ships have been detained in the Black Sea MOU region during the course of the CIC through deficiencies relating to STCW Hours of Rest. The most notable non-conformities observed were lack of correctly recorded records related hours of rest (7.33 %), followed by lack of watch schedule posted in an accessible area (1.75 %) and endorsement of the daily hours of rest records for each watch keeper (1.48 %).

<http://goo.gl/htH9N7>

Union Bemoans Training Cuts:

Government funding to train UK seafarers has reduced year on year "in real terms", maritime union Nautilus International has warned. Although the 2014-15 funding, at GBP15M (USD22.7M), is the highest it has ever been, Nautilus said this amount will cover barely 20% of course expenses. "The funding has seriously slipped in recent years and the serious impact it is having was discussed at the Merchant Navy Training Board last year," Andrew Linington, director of campaigns and communications, told IHS Maritime. "It is making seafarers more expensive to train than anywhere else in Europe."

<http://goo.gl/uJEaKP>

Ransom Payments to Pirates Protected:

Nautilus has welcomed a UK government pledge not to outlaw the payment of ransoms to secure the release of seafarers held hostage

by pirates. The Union had written to ministers to express concerns over the potential for proposed new counter-terrorism laws to restrict or prevent future general average or kidnap and ransom policy payments to secure the release of ships and seafarers held by pirates. In a response to Nautilus, Home Office minister James Brokenshire says the government intends to maintain the distinction between ransom payments made to criminals and those made to terrorists. "The situation is different in piracy cases...doing so is not illegal under UK law."

<http://goo.gl/2AXDRc>

Commercial Battle Lost over Brilliant Virtuoso:

A number of Lloyd's insurers have lost a \$64.4mn UK Commercial Court battle over a shipping loss that has been linked to the murder of a British loss adjuster. The four-week trial in the UK court related to the loss of the Liberia-registered "MV Brillante Virtuoso" in 2011, following an apparent boarding and attack by pirates off the Somalian coast. Its then owner, Marshall Island-registered Suez Fortune Investments, claims a fire started by the pirates led to a total constructive loss. There had been rumours that there was something strange about the loss since ship surveyor, Capt David Mockett, was murdered in the Yemen after allegedly finding no bullet holes or rocket propelled grenade damage.

<http://goo.gl/F7rwjL>



BIMCO Leads New Dry Bulk Vetting System:

BIMCO is now calling on shipping companies to participate in its new vetting system designed to gather information on the quality of the facilities and service at dry bulk terminals – and use it to drive improvement at terminals around the world. To gather the information, seafarers must complete a quick survey each time they leave a terminal – this can be submitted online or saved offline to send later. The identity of the ship or company sending the survey will be kept confidential by BIMCO. Once BIMCO has enough survey data, it will create and publish information on the quality of the following facilities and services at the given terminals. Terminals will be given a star rating providing a quick overview.

<http://goo.gl/JaXgzD>

Crude Attempts to Disguise Oil Cargoes:

Attempts are being made near the United Arab Emirates' coast to disguise oil from Iran so that it can be sold to countries that are blocked by the U.S. from purchasing such shipments, global ship insurers said. "In recent weeks it has become apparent that sophisticated attempts are being made to dupe shipowners," the London P&I Club said. The attempts to transfer cargoes between ships off the U.A.E.'s coast are to allow the transportation of crude to countries that don't have a waiver to U.S. sanctions blocking the purchase of Iranian oil, it said. The alleged attempt to disguise cargoes was also reported by the West of England Club.

<http://goo.gl/DMRYue>

US Issues Environmental Fines:

The U.S. Environmental Protection Agency (EPA) has issued its penalty policy for violations by ships of new, 2015 Emissions Control Area (ECA) rules. Ships will be subject to a maximum fine of \$25,000 per violation, per day. "This policy is intended to deter potential violators,

ensure that the EPA assesses fair and equitable penalties and allow for the swift resolution of claims arising from noncompliance," said EPA in a statement. "EPA is committed to enforcing marine emission standards." Penalties will be multiplied for serious or serial offenders. The California Air Resources Board announced it had fined four shippers a total of \$147,000 for non-compliance with state sulphur regulations.

<http://goo.gl/IIIwj8>

Seafarers Facing Prison and Fines:

Seafarers Facing Prison and Fines: Seafarers are amongst the most heavily regulated working sector in the UK with up to five governmental agencies dedicated to enforcing law and prosecuting criminal acts. "Even on the best run ship...accidents can, happen", says Howard Quinlivan, solicitor advocate with Bartons Solicitors. Bartons is seeing increased usage of gross negligence manslaughter combined with corporate manslaughter and directors of companies are now more commonly prosecuted in their personal capacities at common law for gross negligence manslaughter.

<http://goo.gl/btp6kw>



IMO to Tackle Admin Burden:

The International Maritime Organization (IMO) has published a report containing the main findings and conclusions of the public consultation undertaken by the IMO on the reduction of administrative burdens in maritime regulations. 60% of those involved in the online consultation named 'Have Your Say,' which ran from May to October 2013, were ship masters,

senior officers and ships' crews. A major – and perhaps surprising – finding has been that the majority of administrative requirements addressed in the consultation process were not perceived as being burdensome by any of the respondents. The tendency to "smother everything we do with paper" is also a result of a blame orientated and litigious culture.

<http://goo.gl/QCk3ME>

Chamber of Shipping Calls for Action:

The UK Chamber of Shipping has warned that despite the fall in Somali piracy, violent "petro-piracy" remains a threat to shipping in West Africa and South East Asia. The chamber warned that progress in the Indian Ocean should not mask the threats to industry and seafarers in the Gulf of Guinea and Singapore Straits, where violent acts of maritime crime take place within the waters of functioning states. "This new form of maritime criminality, which often has links to shore-based oil theft, is taking place within the jurisdictions of functioning nation-states, but ones that pay little attention to maritime security and governance," said UK Chamber ceo, Guy Platten. "

<http://goo.gl/L0gCqD>

Celebrating Oil Spill Progress:

Half-way into this decade and the downward trend in oil spills from tankers is sustained. For the last two and a half decades the average number of incidents involving oil spills from tankers has progressively halved, with the current figures showing the lowest yet, at less than two per year. At a time when focus on protecting the marine environment is high, this trend should provide encouragement to tanker owners, states the International Tanker Owners Pollution Federation (ITOPF). It is also a testament to the ongoing work by industry and governments to maintain high standards of operations in sea-borne transportation.

<http://goo.gl/CNywNH>

Mind Your Language:

The IMO will soon be considering a submission from the Institute of Marine Engineering, Science and Technology (IMarEST) on the implementation of controlled language during operation and in maintenance manuals supplied to the vessels. Chief engineer Paul Doherty co-wrote the submission with the chairman of IMarEST, which looks at the necessity for Simplified Technical English (STE) for non-native speakers.

<http://goo.gl/Hntcww>



IMO Push on Ferry Safety:

IMO secretary-general Koji Sekimizu says action must be taken to improve the safety standards on passenger ferries following the fatal fire on the Norman Atlantic. In a message to the industry Sekimizu said: "2014 will be remembered as another year of very serious maritime casualties involving passenger ships, with the tragedy of Sewol and the fire aboard the "Norman Atlantic". IMO must take action to investigate these maritime accidents and improve safety standards of passenger ships." "In this context, I urge IMO member governments to review the current level of safety standards of passenger ships at the Maritime Safety Committee".

<http://goo.gl/RrD4KS>

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