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## **I F S M A - NEWSLETTER**

### **The International Shipmasters Link**

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**IFSMA Register of Technical Consultants and Maritime Experts  
(RTCME) now Available on the Internet at "www.ifsma.org"**

**Mark Your Diaries for the 27th IFSMA Annual General Assembly -  
25th and 26th May 2001, in Lubeck, Germany. See Web Site for details**

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## The ISM Code – Is it working?

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(Questionnaire enclosed)

By Phil Anderson, FNI, BA (Hons)  
Vice President – the Nautical Institute

The stated purpose of the ISM Code is to make ships safer and the seas cleaner. By 1<sup>st</sup> July 1998 all tankers, passenger ships, bulk carriers and their Operating Companies had to comply with the requirements of the Code. All other cargo ships will have to comply by 1st July 2002.

The time has come to make an assessment of whether the ISM Code is working as it was intended or whether particular problems may be inhibiting its proper implementation. All those involved in shipping, in any way, will be affected by the ISM Code. IFSMA fully supports this reaserch project to establish how successful the implementation has been so far and to identify what now needs to be done to help ensure that the intentions of the Code can endure.

The contribution of the IFSMA Membership is crucial to the outcome of this project and you are strongly urged to participate in this major survey.

***A Questionnaire for Masters and Seafarers is enclosed for completion and return by mid-July. Ship Operators and Shipmanagers working ashore within the Maritime Industry and related professions should please visit the Web Site <[www.ismcode.net](http://www.ismcode.net)> where other versions of the questionnaire are located that can be completed OnLine. Further information concerning this research project may also be found at this excellent Web Site.***

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## Conundrum 1

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If people from Poland are called Poles, why aren't people from Holland called Holes?

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## ISM Code must not become “Paper Exercise”

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In his opening remarks to the 9<sup>th</sup> Session of the Sub-Committee of Flag State Implementation on 19<sup>th</sup> February, IMO Secretary General, William O’Neil, renewed calls for effective and conscientious implementation of the International Safety Management (ISM) Code. Stressing that the shipping industry should spare no effort in making the ISM Code work, Mr. O’Neil told delegates: “We should not allow it to become merely a paper exercise.”

At the same time, Mr. O’Neil announced his intention to instigate an assessment of the impact of the Code since it became mandatory for passenger ships, oil and chemical tankers, gas carriers, and bulk carriers on 1 July 1998. The Code is due to become mandatory for all other cargo ships of 500 gross tons and above on 1 July 2002. He said “IMO, its Member Governments and the world maritime community at large have placed great expectations in the anticipated contribution of the Code to enhanced safety and environmental protection.”

Mr. O’Neil welcomed the analysis reported by the Swedish P&I Club which had shown that ships complying with the ISM Code have made significant Claims Improvements in comparison with non-ISM Code ships. He said he believed such a demonstration of the benefits to be gained by those who have introduced the systems of the Code should also give encouragement to those who have to implement the same systems between now and 1 July 2002. Mr. O’Neil urged Governments and Industry to ensure that the benefits to be gained from effective implementation of the ISM Code are realised in the second and final tranche of ships as well.

In announcing his intention to make an assessment of the impact of the Code so

far, Mr. O'Neil identified regional Port State control agreements as a useful source of information. He said he intended to ask the Secretaries of the PSC groupings around the world to send him information about the number of detentions recorded for ISM and non-ISM certificated ships, along with any other action taken by PSC authorities in respect of ISM Code deficiencies. Mr. O'Neil hopes to be able to report on the outcome to the next session of the Maritime Safety Committee.

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## ICONS – Final Report

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*The International Commission on Shipping (ICONS) recently released its final report, the Executive Summary and Recommendations of which are provided below.*

### EXECUTIVE SUMMARY

1. Modern ship safety, labour and environment protection arrangements pose international problems that require international solutions. The international regulatory processes have delivered a body of treaties, codes and recommendations that, if properly implemented, would provide for safe, humane and environmentally responsible shipping operations.
2. The failure, however, of many flag States to implement international standards and the inability of international organisations to enforce compliance with their rules has led to the establishment of national and regional actions to protect coastal and port environments. More recently, the role of the human factor in shipping accidents has been recognised and attention has been given to management systems that will improve ship safety and prevent pollution.
3. The Commission notes that most of the recent progress in tackling sub-standard shipping has arisen when a port/coastal State or a regional group of States has taken a strong stand in enforcing international or local solutions on foreign ships. In the absence of better flag State compliance with international obligations, the Commission considers that the likelihood of regional or unilateral port/coastal State intervention inevitably will increase. The effect will be to commercially marginalise non-performing flags, as the financial benefits to shipowners of operating sub-standard ships are eroded. The International Maritime Organization (IMO) may also be increasingly marginalised by such unilateral actions.
4. Little effective attention, however, has been given to the working conditions of seafarers on foreign ships. Although many ship owners act responsibly, the failure of many flag States and the international regulatory system to adequately implement international labour standards has exposed thousands of seafarers to exploitation and abuse. Concerted action is needed to redress this deficiency. Apart from the ethical and moral dimensions, mistreatment of crews affects the safe operation of ships and imposes costs on port and coastal States. The human factor which has been identified already as the principal cause of shipping accidents and pollution incidents is of greater significance if crews are fatigued, malnourished and under personal or social pressure.
5. The underlying cause of sub-standard shipping is the commercial advantage that a ship owner can gain through avoiding international standards for safety, environment protection or labour conditions. Wherever possible, this element of the industry shifts its costs to other parties. The elimination of sub-standard shipping requires a sustained attack on this fiscal advantage, using commercial and regulatory mechanisms.
6. Governments of the main labour supplying countries have a duty to introduce the meaningful regulation of seafarer

employment and training - including comprehensive regulation of manning agencies - in line with international obligations. Particular attention must be given to eliminating the practice of blacklisting and the recruitment of non-qualified seafarers or "passport holders". Avenues for speedy consideration and redress of seafarer complaints about working conditions, and for repatriation in the event of abandonment, are also required. Current procedures for handling seafarer complaints and abandonment are difficult for them to access, costly and all too often practically non-existent.

7. Unions are the seafarers' best form of redress and protection in a competitive labour market. Many shipowners and administrations support the essential role played by unions, particularly in cases of abandonment and non-payment of wages. Developing countries will inevitably form the major source of seafarers for the foreseeable future and open registers will also remain a reality in the international shipping world. It is, therefore, in everyone's interests, especially those of the seafarers, that international and national labour organisations and national governments of both ship registers and labour supplying countries develop closer, positive working relationships.

8. Flag States have the primary responsibility for ensuring that ship owners maintain and crew their ships to international standards. The issue is not whether the flag State operates an open or a second register, or if it places competitive pressures on other flags, it is a question of whether the flag State is properly conducting its operations in accordance with international convention requirements. Flag States have flexibility in deciding how to administer their ship registers, but they have a responsibility also to ensure their choice of delegated authorities are fulfilling the States' international obligations.

9. The most prevalent gap in some flag

States' administrations is the application of minimum international labour standards. The recommendation for delegating of labour regulation verification offers potential for additional commercial opportunities for those classification societies wishing to acquire the necessary skills.

10. Classification societies were the most widely criticised bodies in the course of the Commission's inquiries. Although their technical strengths were acknowledged and considered necessary by all parties, the extent of criticism of their commercial relationships with owners and flag States suggest classification societies must dramatically improve their performance. Unless classification societies re-establish their professionalism by strictly and consistently applying technical standards to all ships, they will face increasing regulation and commercial isolation. The Commission believes that at this stage, independent regulatory monitoring of classification societies' performance is required.

11. Port States also play a key role in ship safety regulation. Port State control data is essential in assisting the industry and regulators to identify and target sub-standard ships. Port State control activities can be enhanced through improved targeting regimes, harmonising regional port State control systems, including labour matters in inspection and targeting programs, greater attention to the International Safety Management (ISM) Code compliance, and tougher penalties on sub-standard owners, charterers and/or cargo interests. The Commission recommends particularly that an assessment of whether or not a ship's flag State has satisfactorily completed the IMO Flag State Self Assessment Form be included in targeting systems. Penalties that could help to eliminate the financial advantages of sub-standard ships include more detailed inspections and enhanced safety system audits, fines, banning from ports persistently offending ships and intervention in

cargo operations until all deficiencies have been rectified.

12. The Commission has proposed the development of an insurance arrangement to assist seafarers who have been abandoned and unpaid. For this proposal to be implemented, port States will have an important role in requiring ship owners to provide proof of adequate insurance cover.

13. There is also a need for improved communications between port State control authorities and those who can provide early warning of sub-standard shipping, such as pilots, unions and seafarer's missions. Funding of missions by port State authorities would alleviate concerns about compromise in the ability of missions to speak out about abuses, as a result of their current dependence on ship owners or agents for funding of their port services to seafarers.

14. The lack of progress by the IMO in monitoring and auditing flag States' implementation of maritime conventions compares poorly with comparable action in the aviation sector by the International Civil Aviation Organization. Nevertheless, the Commission believes a commitment to compliance from flag States is essential. The IMO should vigorously pursue the Flag State Self Assessment Form initiative with the aim of making its completion and return mandatory, and eventually work towards adopting comprehensive binding quality criteria for flag State administrations and ship registers. The IMO needs also to reinvigorate and strengthen application of the International Safety Management Code to address safety systems. Failure by the IMO to undertake positive action in these areas can only further corrode its credibility.

15. Many of the International Labour Organization's (ILO) maritime conventions remain unratified by many countries, and

the majority lack mechanisms for enforcing their provisions by port States. Many authorities feel that international labour rules are difficult to interpret and apply. There is an urgent need for the ILO to revise its guidelines for port State control under Convention No 147. In the longer term, the ILO needs to consolidate and update its maritime conventions, including relevant and effective enforcement mechanisms.

16. The Commission is firmly of the view that the responsible elements of the industry itself must show leadership in promoting quality and disassociating themselves from sub-standard practices and operators. This can be done by promoting Codes of best practice and transparency in their own operations, and by influencing classification societies to take a stronger role in standing up to sub-standard owners and flag State administrations in applying of class Rules and appropriate international maritime standards.

17. There was strong support throughout the industry for greater transparency and increased exposure of information on sub-standard ships. Full exchange of information can only assist in identifying and targeting the rogue operators and more responsible decision making. While noting some concerns about the need for relevance and accurate information, as well as those of commercial confidentiality, the Commission considers considerable amounts of relevant data are in the public domain already and could be consolidated and made available to public data bases.

18. Environmental concerns have increasingly prompted action by port and coastal states to protect their marine environments. Although this has done much to redress regulatory lapses by non-performing flag States, the Commission notes with concern that many port States still fail to provide adequate port waste reception facilities or ports of refuge for ships in dis-

tress. These failures by port States only enhance the risks of pollution or loss of life.

## RECOMMENDATIONS

### ✦ Crewing

1. The European Commission request from the International Group of Protection and Indemnity (P&I) Clubs consolidated statistics on loss of life and injury of crew members on ships entered into the Group's Members' clubs, and place this information on the EQUASIS data base.

### ✦ Fraudulent Certificates

2. The IMO develop a database of all seafarer certificates for open electronic access to assist the elimination of fraudulent certificates of qualification.

### ✦ Employment Practices

3. Governments of major labour supplying nations review maritime training and labour supply arrangements to ensure compliance with relevant IMO and the International Labour Organization (ILO) conventions.

4. Governments of major labour supplying nations introduce legislation to license manning agents, addressing wages, hours of work, allotments, repatriation, job-finding fees, transportation charges and black-listing.

5. Governments of major labour supplying nations prohibit the practice of black-listing of seafarers, and prosecute and publicly name those companies and organisations found to be involved in black-listing.

6. Governments of major labour supplying nations urgently establish independent seafarer grievance agencies to provide speedy and accessible means of resolving seafarer claims relating to employment.

7. The International Transport Workers Federation (ITF), national maritime unions and relevant governments of flag and labour supplying States work cooperatively to implement appropriate working conditions for seafarers based on international conventions.

### ✦ Multiple Inspections

8. The International Chamber of Shipping, in consultation with organisations such as the Salvage Association and the Scandinavian Underwriters Association, develop a common inspection program to minimise multiple onboard commercial inspections which are burdensome to ships' management teams. The common inspection program should satisfy the individual onboard survey requirements of, *inter alia*:

- The Oil Companies International Marine Forum (OCIMF) for the Ship Inspection Report Program (SIRE);
- Oil companies;
- Chemical Distribution Institute;
- Charterers;
- P&I clubs;
- Insurance;
- The Green Award; and
- Cargo interests.

### ✦ Non Payment and Abandonment

9. The International Group of P&I Clubs implement an appropriate ship-specific (non-mutual) bond system to cover crew repatriation and up to two months salary in the event of the ships abandonment. The P&I clubs act as 'trustees' of this ship-specific fund and act on behalf of the crew in the event of abandonment.

10. Port State authorities require ships to provide, prior to port entry, evidence of a P&I guarantee that covers two month's Crew Salaries and costs of repatriation in the event of abandonment, Such coverage should extend for at least 30 days after the date of entry.

### ✦ Cruise Shipping

11. The United States Government:

(i) acknowledge the extensive exploitation of seafarers serving on US port-based cruise ships and ensure that minimum standards of decent work as contained in the ILO Convention No 147 are applied; and

(ii) ensure that representatives from seafarers' missions, welfare organisations and unions have free on board access to crew members.

#### ✦ Fishing

12. The IMO and the ILO, in consultation with fishing industry representatives, investigate the reasons why the Torremolinos Convention and Protocol and STCW-F Convention have not been adopted and draft a new binding instrument for fishing vessel construction and manning, covering both safety and working conditions.

13. The IMO, the ILO and the Food and Agriculture Organisation (FAO):

(i) establish a joint working group to develop voluntary guidelines for port State control of fishing vessels covering both safety and work conditions; and

(ii) expedite their joint efforts to update the codes and guidelines for smaller fishing vessels relating to the safety, design, construction of vessels and on fishermen's training and certification, including provision of specific authority for port State control.

#### ✦ Owners

14. Responsible owners promote industry best practice by informed, directed and widespread advocacy of quality shipping.

15. Quality owners support the maximum exposure of relevant information on their ships to assist the identification of sub-standard ships, so enabling port State control targeting to be more effective.

16. Shipowners, through their memberships of classification societies' boards and committees, influence these organisations to cease to act as Recognised Organisations for consistently under-performing flag States.

#### ✦ Flag States

17. Flag States rigorously apply the IMO Assembly Resolutions A. 739(18) and A. 789(18) concerning the monitoring of their Recognised Organisations.

18. Flag States, where they do not have their own arrangements, delegate to their Recognized Organisations the task of checking the application of national laws concerning crew working conditions and labour contracts.

#### ✦ Classification Societies

19. The major classification societies, through the International Association of Classification Societies (IACS), pursue tougher policies by:

✦ adopting an unbending approach towards owners on conditions, subjects and extensions of class;

✦ dealing with quality lapses by the IACS members without regard to size;

✦ objectively identifying sub-standard flag States and providing technical assistance to aid their development and to remedy their procedures, practices, policies and performance, failing which, delegated authority would be cancelled by all the IACS members.

20. The European Commission establish a permanent Classification Society Oversight Committee to assess the performance of classification societies, with representation from other States and industry groups.

21. Classification societies declare the de-

sign life of ships 'as built', with this designation to be maintained throughout the life of the ship or until major life extension work and surveys are undertaken.

### ✿ Port States

22. The Paris Memorandum of Understanding (MOU) adopt the US Coast Guard targeting matrix for port State control. The two port State control regimes harmonise their inspection procedures and accept each other's survey outcomes. The Paris MOU better focus its resources on targeting by removing its 25% inspection requirement.

23. Port States control regimes, led by the Paris MOU, implement reward systems for quality ships similar to the US Coast Guard "Qualship 21" program.

24. Port State authorities, led by the US Coast Guard, the Paris MOU and the Tokyo MOU include as a factor in the targeting of ships whether or not flag States have satisfactorily submitted and made public the IMO Self Assessment Form on Flag State Performance.

25. Port State authorities introduce penalties, to be applied when vessels are detained for serious safety, environmental or labour deficiencies, which will result in a substantial financial impact on the shipowner.

26. Port States exclude for two years any ship flying the flag of a State with an above the rolling average detention rate of the relevant regional MOU, where that ship has been detained twice within the preceding 24 months.

27. Port State authorities, led by the US Coast Guard, the Paris MOU and the Tokyo MOU develop a system of severe penalties to be applied to charterers and major shippers found to be using vessels that are detained for serious safety, environmental and labour related deficiencies.

28. When a vessel is detained, wherever practicable, port State control authorities stop cargo operations until all deficiencies are rectified.

29. Port State control authorities, led by the US Coast Guard, the Paris MOU and the Tokyo MOU include in their ship inspections specific crew welfare elements under the ILO No 147 provisions or their equivalent national regulations, and publish details of deficiencies and detentions for breaches of the ILO No 147.

30. Port State control authorities increase their efforts to ensure full compliance with all aspects of the ISM Code.

31. Port State control authorities establish toll free telephone services to enable ships' crews and others to confidentially alert port State control authorities to safety deficiencies and crew related problems.

32. Port State control authorities establish standing consultation arrangements with pilots, port authorities, unions and seafarers' missions who could be expected to become aware at an early stage of the arrival of sub-standard ships.

33. Port State and port authorities introduce measures to provide a significant proportion of the costs of seafarers' missions' support services for international seafarers.

### ✿ Cargo Interests

34. Shippers' Councils develop best practice 'Codes of Conduct' and actively encourage their members to adopt the Codes in the selection of ships.

### ✿ International Maritime Organization

35. The IMO vigorously pursue the Flag State Self-Assessment Form initiative with the eventual aim of making its completion and return mandatory.

36. The IMO initiate concerted action for the adoption of comprehensive binding quality criteria for flag State administrations and ship registers.

37. IMO maintain and strengthen the momentum of the ISM Code and remove one of its weak points by amending Assembly Resolutions A. 741(18) and A. 788(19) to increase the frequency of ship-board audits for Safety Management Certificate issuance to an annual basis.

#### ✦ International Labour Organization

38. Recognising the reluctance of many port State control inspectors to become involved in crew related matters, the ILO urgently revise their publication "Inspection of Labour Conditions On-board Ship – Guidelines for Procedure" with a view to making it more precise and easier to use.

39. The ILO expedite the update and consolidation of all seafarer-related conventions, including effective monitoring and authority for port State control.

#### ✦ Environment

40. Coastal States designate ports of refuge for ships in distress.

#### ✦ Transparency

41. All participants in the shipping industry, particularly owners, classification societies, P&I clubs, port State control organisations and cargo interests, support and promote transparency by full disclosure of relevant information to publicly accessible data bases.

42. Port State control authorities publish information on ship charterers and major cargo owners, where a ship has been detained, and this information should also be included in the EQUASIS database.

43. Wherever possible, EQUASIS manag-

ers include in the database details of:

- the history of ship flag changes;
- beneficial owners;
- details of the ship manager;
- and • the name of the designated person on the Safety Management Certificate under the ISM Code.

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## Ports of the Seven Seas

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Today ships spend an increasing amount of time at sea. Port calls are very brief and the demands on crew members for routine jobs, watch keeping and maintenance work are ever increasing. This coupled with the levels of wages earned by many seafarers and other pressures has resulted in a rise in demand for 'seafarers' welfare' services in ports around the world. Recognising these facts, the International Committee for Seafarers' Welfare (ICSW, [www.seafarerswelfare.org](http://www.seafarerswelfare.org)) has produced a new directory *Ports of the Seven Seas*.

This International Directory of Port Welfare Services is aimed at the maritime professional providing services to the seafarer, whether from labour, government, industry or the welfare provider. The Directory may also be used by the individual seafarer in ascertaining facilities available in the next port of call. It contains information on ports, trade unions, shipping companies, seafarers' centres and services, health and medical facilities, transportation, communications, shore leave, local regulations and much more.

The book gives information on different countries and cultures. Each country has its own history, people, languages, religions and customs. Understanding a lit-

tle of these may help seafarers to feel more at home and be more accepted during a spell ashore.

Over 500 ports are listed. In the pages are the answers to simple questions like, 'What facilities exist for making international phone calls?' 'Are there buses into the town?' 'Is it necessary to buy a ticket before getting on board a bus?' 'What time do the banks and money exchange shops open?' 'Are there welfare facilities here?' 'What facilities exist for access to the Internet to send messages to friends and family?'

One of the main objectives of the ICSW is to promote and foster on an international basis the provision of welfare services at sea and ashore for seafarers of all nationalities, races, colours and creeds in line with the International Labour Office Instruments concerning seafarers' welfare. ICSW Chairman Roger Korner says, 'With the publication of *Ports of the Seven Seas* the ICSW has sought to provide a basic resource that cuts across cultural, political and economic boundaries to benefit all seafarers'. Speaking in London Mr Korner acknowledged the financial support that the ICSW had received from the ITF Seafarers' Trust for this project. A copy of "Ports of the Seven Seas" may be viewed at the IFSMA Office.

The pricing structure is as follows:

Full price to commercial organisations:  
£25/US \$40 inc. P&P

Bulk orders 20 to 49 copies less 15%:  
£21.25/US \$34 inc. P&P

Bulk orders over 50 copies less 25%:  
£18.75/US \$30 inc. P&P

<p>Special rate for IFSMA Members: £10/ US \$15 <b>plus</b> P&amp;P</p>
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The International Committee for Seafarers Welfare (ICWS) comprises representatives from Shipowners, Trade Unions, Governments, Seafarers' Welfare Organisations and specialist organisations operating in the field of seafarers' welfare. Membership includes the International Transport Workers' Federation, International Shipping Federation and International Christian Maritime Association. The ICSW is a voluntary 'Not for Profit' organisation established for the purpose of bringing together appropriate interests in the field of seafarers' welfare and providing a forum for the exchange of information.

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## Routeing Instructions and the "Hill Harmony"

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by Finbarr Leahy MNI\*

The discretion of the master with regard to routeing the vessel between ports by an alternative route has recently been considered by the House of Lords in the case of *Whistler International Ltd. V Kawasaki Kaisha Ltd. (The Hill Harmony)*.

### Facts of the Case

*Hill Harmony* was on time charter on an amended NYPE form from Cosco to Whistler as disponent owners who sub-chartered, also on NYPE terms to Kawasaki. The sub-charter period was for a minimum of seven, maximum nine months. She was delivered on 27 October 1993 and redelivered on 25 July 1994. The vessel was ordered to perform two trans-Pacific voyages. For one of these voyages Kawasaki sub-sub-chartered the vessel to Tokai for a Time Charter trip from Vancouver to Shioyama.

The charterers had obtained weather routeing advice from Ocean Routes and had ordered the vessel to take great circle routes from Vancouver to Yokkaichi and Shioyama during the respective voyages. The master however, hav-

ing experienced serious heavy weather damage the previous October whilst following a great circle route, declined to follow the charterers' orders and instead took a rhumb line route. Both voyages took considerably longer following the rhumb line route; 7.7 days and about 1300 miles longer in one case and 4.6 days and 860 miles in the other. The charterers deducted hire and the costs of bunkers in respect of these periods and the owners sought to recover these in arbitration proceedings.

The terms of both charter parties provided, as usual:

*"8. That the captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and equipment. The captain (although appointed by the owners) shall be under the orders and directions of the charterers as regards employment ...*

*16. ... errors of navigation throughout this charter-party always mutually excepted.*

*26. .. The owners remain responsible for the navigation of the vessel, insurance, crew and all other matters same as when trading for own account."*

Article IV of the Hague Rules and of the Hague-Visby Rules (incorporated into the charter-parties) provides:

*"2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from – (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship ...*

*4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom."*

### **The Progress of the Dispute**

There was no oral hearing before the arbitrators. There were two arbitrations (since the dispute involved two separate charterparties) heard by the same tribunal. The majority

found in favour of the charterers. The owners appealed to the High Court where they were successful and an appeal by the charterers to the Court of Appeal failed. The charterers then appealed to the House of Lords, where they were successful.

It is important to bear in mind that evidence about why the master failed to follow the charterers' instructions was rather sparse.

The master had made a brief statement in general terms and there was also available a telex from him in which he explained his reason for choosing the more southerly route as being his previous bad experience with the more northerly route. This, in effect, was the reason found by the Arbitrators for the master failing to comply with the charterers' instructions.

On the other hand, there was also evidence to show that the northerly (great circle) route was the most usual route, and that it had been followed by 360 vessels over a three month period. The charterers argued that, because the master had refused to follow their instructions, the owners were in breach of their obligation to prosecute the voyage with the utmost despatch and of their obligation under Clause 8 to follow charterers' orders and directions as to employment.

The owners argued that the route to be followed was a matter concerned with the navigation of the vessel and was therefore within the sole providence of the master. The arbitrators found that the master was in breach of the obligation to prosecute the voyage with the utmost despatch and that the owners were therefore unable to recover in respect of the amounts withheld.

### **The High Court and Court of Appeal**

In the High Court, the focus was whether routing instructions were orders as to employment, which the charterers were entitled to give and which the master was bound to follow, subject to his overriding responsibility for the safety of the ship or orders as to navigation which was the responsibility of the Master. The Arbitrators had decided that the Charterers gave the Master Routing Instructions or Orders which were orders as to employment and that the master was bound to

follow them unless he could justify his refusal to do so. In the High Court Clarke J held that the route to be followed was a matter of navigation. He said that:

*“in my judgment an order as to where the vessel was to go, as for example to port A or B to load or discharge or to port A or port B via port C to bunker would be an order as to employment which the master would be bound to follow, subject of course (as all parties agreed) to his overriding responsibility for the safety of his ship. An order as to how to get from where the ship was to port A, B or C would not, however, be an order as to employment but an order as to navigation. So, for example, to take an illustration discussed in argument, a direction to a master proceeding to a port of discharge to pass, say, on one side or another of a light vessel or an island or to proceed by way of one channel rather than another would be a direction as to navigation not employment. There can I think be no real doubt that a decision by a master as to which channel to take, what course to set or which side of an island or light vessel to go, would be a decision as to navigation and not as to employment. The same must be true of an order or direction to the master in any of those respects.*

*... these considerations lead to the conclusion that a decision whether to proceed across the Pacific by taking the great circle route or the rhumb line route or course would also be a decision in and about navigation of the vessel and not in and about her employment.”*

Since the orders related to matters of navigation and not employment they were not ones which the charterers were entitled to give, and the decision of which route to follow was one for the master alone. Clarke J did not need to consider in any detail the question of whether the master was in breach of the obligation to proceed with the utmost despatch since he considered that even if the arbitrators had held that the charterers' orders were orders as to navigation and that there was nevertheless a breach of the obligation to prosecute the voyage with utmost despatch, that breach arose as a result of an act, neglect or default of the master in the navigation of the vessel

(i.e. choosing the longer route) and the owners had a defence under Article IV rule 2(a) of the Hague-Visby Rules.

In the Court of Appeal, Potter LJ, who gave the leading judgment, upheld the decision of the High Court. Decisions concerning the route to be followed were matters of navigation and were therefore ones which the master was entitled to make. Since the master took the decision to set and follow the course which he did on the grounds that he would avoid the danger of bad weather and possible damage to the ship, it was a decision as to navigation. As long as the master acted in good faith, even if the decision was not reasonable, the owner was protected because of Article IV rule 2(a) of the Hague-Visby Rules, as mentioned above.

The Charterers argued that whether charterers' orders as to the route to be followed were orders as to “employment” or “navigation” was a question of fact and degree. Lord Justice Potter agreed with the general thrust of this argument. Potter LJ said that there is a difference in kind or category between an order to proceed via a generally recognised sea route to a particular place (such as via the Suez Canal rather than via the Cape of Good Hope) and an instruction prescribing the specific course by which to reach that place or position, and such difference could not be bridged or eroded simply by asserting that the direction given was in the commercial interests of the charterer.

### House of Lords

The House of Lords reinstated the arbitrators' award. Lord Bingham considered that the starting point is the master's obligation to prosecute his voyage with the utmost despatch. He cited an earlier House of Lords decision, *Reardon Smith Line Ltd. v. Black Sea & Baltic General Insurance Co. Ltd.* [1939] AC 562 at 584 as follows:

*“The law upon the matter is, I think, reasonably plain, though its application may from time to time give rise to difficulties. It is the duty of a ship, at any rate when sailing upon the ocean voyage from one port to another, to take the usual route between those two ports. If no evidence be given, that route is presumed to be the direct geo-*

*graphical route, but it may be modified in many cases for navigational or other reasons, and evidence may always be given to show what the usual route is, unless a specific route be prescribed in the charter party or bill of lading.” (underlining added)*

When dealing with the question of employment versus navigation, Lord Bingham said:

*“It is much less easy to formulate any test which clearly distinguishes between the two. The charterers’ right to use the vessel must be given full and fair effect; but it cannot encroach on matters falling within the specialised professional maritime expertise of the master, particularly where the safety or security of the vessel, her crew and her cargo are involved. He is the person, on the vessel, immediately responsible. Technical questions concerning the operation of the vessel are for him. Thus a decision when, in the prevailing conditions of wind, tide and weather, to sail from a given port is plainly a navigational matter... By contrast a decision without good reason to remain in port instead of continuing with a voyage... or to economise on bunkers for no good maritime reason... were properly regarded as falling outside the navigational area reserved for the master’s professional judgement.” (underlining added).*

Lord Bingham went on to consider that the question of which route to follow falls within the second type of decision; namely it is a matter of employment for the vessel and so is within the charterers’ area of responsibility.

Lord Hobhouse also gave a detailed judgment in the case. Again, his Lordship considered that the owners were in breach of their obligation that the master should prosecute the voyage with utmost despatch. He said that as a matter of mercantile policy, and indeed as a matter of the use of English, a voyage will not have been prosecuted with the utmost despatch if the owners or master unnecessarily choose a longer route which will cause the vessel’s arrival at her destination to be delayed. A further difficulty which he pointed out with the owners’ argument is the fact that the owners had agreed in the C/P that the vessel could sail within the Institute Warranty Limits. Barring unforeseen circumstances, the

owners could not then say the vessel was not fit to sail from Vancouver to Japan within IWL limits. It was not a good reason that the master preferred to sail through calm waters or that he wanted to avoid heavy weather. Vessels are designed and built to be able to sail safely in heavy weather.

This aspect of his Lordship’s reasoning is something which could put masters in some difficulty and is arguably open to abuse by unscrupulous charterers. However, readers should bear in mind that his Lordship was not asserting that masters should take their vessels into any weather come what may. Matters may arise on a particular voyage which make the use of, for example, a great circle route (which is ordinarily safe) unsafe in the particular circumstances. The master is then at liberty to take whatever steps he deems necessary to safeguard the vessel, crew and cargo.

Whilst the judgment does appear on its face to circumscribe the power of the master, Lord Hobhouse emphasised that the master remains responsible for the safety of the vessel, her crew and cargo, and if an order is given, compliance with which exposes the vessel to a risk, the master is entitled to refuse to obey it and, indeed, in an extreme situation he is obliged not to obey the order.

In discussing matters of employment and navigation, Lord Hobhouse agreed with Lord Bingham that the “employment” of a vessel would encompass the general route to be followed. Employment effectively deals with the economic aspect of the vessel’s operation and earning potential, whereas “navigation” embraces matters of seamanship. Lord Hobhouse pointed to a distinction made by Mr. Donald Davies, an arbitrator, who suggests in an article about the case ([1999] LMCLQ 461) that the words “strategy” and “tactics” give a useful indication of the division of responsibilities.

Lord Hobhouse also discussed the Hague-Visby defence and decided that it did not protect the owners because it did not apply to breaches of their obligations to prosecute the voyage with utmost despatch and to comply with the charterer’s orders and directions as regards employment.

## Discussion

Whilst this case may appear at first blush to undermine the authority of the master in respect of navigational decisions, I would suggest that is not necessarily the case. The judgment is littered with references to the master's right to take whatever steps he considers necessary to protect the safety of the vessel. Nevertheless, it is a pity that the opportunity was missed to give guidance to masters and owners as to the circumstances in which they would be justified in refusing to obey charterer's routing instructions. It is clear that a master will have to justify the decision to do so, but it is unclear what has to be shown to establish such justification.

It should be borne in mind that the facts of this particular case were rather extreme. Between 1 March and 31 May 1994, some 360 vessels had used the northern route from Canada to Japan without apparent difficulty. In addition, it was commented on by various judges and arbitrators that the evidence of the master was not satisfactory. Indeed, whilst the master had previously experienced heavy weather, this had been in October, whereas the second voyage had been in late April 1994, when weather conditions could have been expected to be significantly better.

I would suggest that if a master is faced with a situation where he believes routing instructions are dubious, he should bear in mind the following points:

1. What is the usual route for this passage? Of course, most vessels will have at their disposal a copy of *Ocean Passages for the World*, and may have previously sailed between the ports in question.
2. Is there any satisfactory navigational reason for taking a longer or slower route? This is a matter upon which the master's judgment is crucial, particularly with regard to matters such as weather, tides and currents, the possible presence of pirates and other factors. If it is shown, on the balance of probabilities, that the master's decision was the correct one then the owners will not be liable. Most courts and arbitrators tend to view the master's predicament sympathetically. The master can help himself by supporting his decision with good evidence as to why he chose a

particular route. Properly documented evidence will also make the master a more credible witness before any tribunal of fact.

3. Is there a provision in the charter party which requires the master to follow a particular route? If so then, in the absence of a reason connected with the safety of the vessel, the master will generally be obliged to follow that route. On the other hand, if the owner is in a strong bargaining position, he may be able to insist on an additional clause in the charterparty to the effect that the Master's decision on routing is to be final.

## Deviation and Clauses Describing routes to be Followed

Two other matters which were touched on in this case are deviation and routing Clauses. An unjustified voluntary departure from the contract voyage will constitute a deviation and can result in the carrier being treated as a common carrier and therefore losing various defences available to him, not to mention insurance cover.

In the *Hill Harmony* the question of deviation was not considered in any detail by the Courts. The arbitrators had not been asked to consider whether following the rhumb line course would amount to a deviation and Clarke J refused to allow the point to be argued in the High Court. The parties did not press the point in the Court of Appeal. It is always possible that a charterer might successfully argue that following a route which is longer than absolutely necessary might amount to a deviation.

A further matter which is not considered in detail was the effect of a routing clause requiring the master to follow the advice of an ocean routing service. Generally these clauses are framed to the effect that the master should provide position and navigational information to the routing service and is to follow the prescribed route so long as the vessel's safety is not compromised. Whatever way the clause is worded, the master is still the person on the spot, and is still entitled to disregard such instructions where the safety of the vessel is concerned.

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## Advice

If masters are faced with the situation where a charterer requires them to follow a particular route, and they wish to follow another route, then the primary consideration must always be the safety of the crew and the vessel.

If faced with such a situation, if time permits, the master should examine the relevant clauses in the charterparty to determine whether or not there is a routing clause. In any event, he should try to obtain advice from his owners, or P&I Club. It is crucial that proper records are kept. The master should set out his position in a Letter of Protest to charterers. When seeking advice from owners or from P&I Club, the basis for the master's decision should be explained. For example, copies of weather forecasts, routing recommendations in Admiralty Sailing Directions and Ocean Passages for the World should be copied and forwarded.

When dealing with charterers, consider other alternatives. For example, one which springs to mind in the present case is that the master could perhaps have followed a composite great circle route. This would have been a shorter route than the one actually followed, saving some time and bunkers and lessening the owner's exposure for loss of hire. This in turn may have made it easier for the parties to settle the matter without going to court.

Finally, where a master is faced with such a situation, the Courts have said in the past that it is reasonable for him to pause in order to seek further information about the source of and validity of any orders which might be received, even if there is no immediate physical threat to the vessel or cargo. See *The "Houda"* [1994] 2 Lloyd's Rep. 541.

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## Conundrum 2

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If a pig loses its voice, is it disgruntled?

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## Study Reveals Seafarer Certificate Forgery is Rife

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### IMO Maritime Safety Committee, MSC73 Summary Report

The Committee heard that the preliminary results of an IMO research study to establish the nature and extent of unlawful practices associated with certificates of competency had revealed 12,535 cases of forgery in certificates of competency and equivalent endorsements. The study, being carried out by the Seafarers International Research Centre, Cardiff, United Kingdom, is in the final stages having completed the data collection phase and a final report is being produced.

During the study, a total of 97 maritime administrations were contacted for information on various aspects of the issue of unlawful practices associated with certificates of competency and equivalent endorsements, of which 54 had responded to questionnaires giving a response rate of 56%. Of those, 39% had reported a total of 12,635 detected cases of forgery in certificates of competency and equivalent endorsements. The Committee noted, however, that, of the total number reported cases, 12,000 had been reported by one single administration in South East Asia, and that all these cases were currently being analysed to assess the level and nature of forgery involved.

A total of 1384 seafarers and 22 employers had participated in the survey. 50% of respondents were manning agents, 32% shipowners and 18% ship managers employing an average of 615 ratings and 1091 officers in their companies. 82% of the respondents had detected forged certificates of competency in the last five years. Of these, 41% reported having detected forged basic safety training certificates, 27% had reported forged sea service record books and 18% had detected forged OOW

(deck) certificates. 14% had also reported false GMDSS (GOC) certificates.

*The Seafarers International Research Centre (SIRC) is a University-sector, independent research institution.*

*SIRC is core-funded by the International Transport Workers Federation's Seafarers Trust but also actively seeks additional funding for specific projects.*

*SIRC aims to produce soundly based scientific knowledge of potential benefit to seafarers of all ranks and nationalities and to play a prominent role in those industrial and scholarly arenas concerned with occupational and labour questions.*

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## **Amendments to the General Provisions on Ships' Routeing**

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The Maritime Safety Committee, at its seventy-third session (27 November to 6 December 2000) adopted amendments to the General Provisions on Ships' Routeing (resolution A.572(14), as amended), reference IMO document SN/Circ.215, relevant details follow:

**Section 2, new paragraph 2.1.14 as follows;**

### ***2.1.14 No anchoring area***

A routeing measure comprising an area within defined limits where anchoring is hazardous or could result in unacceptable damage to the marine environment. Anchoring in a no anchoring area should be avoided by all ships or certain classes of ships, except in case of immediate danger to the ship or the persons on board.

**Section 4, new paragraph 4.6.4 as follows:**

### ***.4 No anchoring areas (figure 19)***

figure omitted for online version to minimise file size

**Section 5, new paragraph 5.6 as follows:**

When establishing a no anchoring area for all ships or certain classes of ships, the necessity for creating such an area should be well demonstrated and the reasons stated. In general, these areas should be established only in areas where anchoring is hazardous, or where there is a possibility that unacceptable damage to the marine environment could result. The classes of ships which should avoid anchoring in an area should be considered and clearly identified in each particular case.

**Section 9, new paragraph 9.5.4 as follows:**

### ***9.5.4 no anchoring areas***

Notes on conditions governing no anchoring areas (classes and sizes of ships, etc.) should preferably be given on charts and should always be given in *Sailing Directions*.

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## **Conundrum 3**

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If lawyers are disbarred and clergymen defrocked, doesn't it follow that electricians can be delighted, musicians denoted, cowboys deranged, models deposed, tree surgeons debarked, and dry cleaners depressed?

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## So What's New – Food for Thought

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Thirty Years ago the Marine Superintendent of London & Overseas Freighters Ltd issued the following Technical Memorandum to all Vessels in the Fleet – the onboard distribution being the Master, All Navigating Officers, the Chief and Second Engineers and the Radio Officer. The guidance it contains is as pertinent today as it was then:

### Bridge Watchkeeping Procedure Whilst Vessel is at Anchor

As a result of further recent isolated instances involving vessels of our Fleet dragging anchor whilst in harbour, investigations into the circumstances onboard have shown that Bridge Watchkeeping Officers are not always fully instructed as to their detailed duties while keeping anchor watch or the action to be taken when an emergency arises.

For this reason we find it necessary to issue instructions on this matter which should be regarded as minimum requirements and which the vessel's Master will amplify or amend according to his personal requirements in any given set of circumstances.

#### I. Duties of Navigating Officers on Routine Bridge Anchor Watch.

1. Never to leave the Navigating Bridge unattended. A relief must be arranged should the Officer of the watch have cause to leave the Bridge at any time (except as provided for in sections (e) and (f) below).
2. Always to be fully conversant with prevailing local weather conditions for the time of year as detailed in the appropriate Admiralty Sailing Directions.
3. To ensure that he receives weather re-

ports from the Radio Officer whenever a scheduled transmission from a nearby Coast Radio Station takes place.

4. Whenever it is suspected that weather conditions might shortly deteriorate to request the Radio Officer to have the ships main receiver tuned into local Broadcast Station and to pass to the Bridge weather reports obtained.
5. To keep VHF Radio Telephone open on Channel 16, or such other appropriate Channel assigned by the local Harbour Authority, so that it is readily and immediately available for use in an emergency.
6. To ascertain whether or not plain language weather reports in English are broadcast on VHF Radio Telephone (for example U.S. Coastguard) and to listen on the appropriate Channel at the time indicated, thereafter reverting to Channel 16.
7. To report directly and immediately to the Master at any time when it becomes apparent that weather conditions may deteriorate, or alternatively, when there has been a change in barometric pressure beyond the limits of the normal local diurnal range.
8. To verify the anchorage position at frequent intervals by compass bearings of fixed objects ashore.
9. In conditions of reduced visibility to switch on the Radar and check the anchorage position by range and bearings taken therefrom. Minimum range should be used and the frequency of such checks must be commensurate with any deterioration in prevailing weather conditions.
10. To locate and mark on the largest scale navigational chart in use, the positions of any vessel coming to an anchor in

the immediate vicinity. Thereafter to keep a watchful eye on their direction of swing and thereby ensure that they do not present a hazard to his own vessel.

11. To ensure that regulation anchor lights are burning at night, that steam/power is available on the windlass at all times, that anti-frost precautions are adhered to and that personnel are available for the sounding of regulation fog signals in the event of reduced visibility.
12. To ensure that Decca Navigator equipment (if fitted) is switched on, that Decca co-ordinates are carefully checked and recorded and any variation therefrom, which is not directly attributable to the swinging of the vessel round her anchor, is brought to the immediate attention of the Master.
13. At all times to ensure that one crew member is available on the Navigating Bridge to act as a messenger in the event of an emergency developing.
14. On change of Watchkeeping Officer, the relieving Officer is to make himself fully conversant with the state of readiness of the main engines and steering gear, the anchor in use, the scope of the cable out and any particular instructions left by the Master.
15. Before taking over a Bridge anchor watch the relieving Officer to attend the Forecastle head, ascertain personally the state of the windlass (whether in or out of gear, break on or off, cable compressor bar open or closed, devils claws on or off, etc.), the direction in which the cable is leading and a visual appreciation of the amount of strain on that cable. In particular he should ascertain the state of readiness of the second anchor in case it is required at short notice.
16. On change of watchkeeping Officer the Officer being relieved must ensure that the Log Book is fully and accurately entered-up and he must report to his relief any movements taking place among other vessels in the anchorage.
17. The Officer coming on duty must not take charge of the vessel until he has personally satisfied himself that the vessel is lying safely at anchor, and has not changed her position apart from normal swinging round the anchor due to wind and tide. When applicable he must also read, understand and sign the Masters Night Order Book.

## **II. Action to be Taken in the Event of an Emergency**

In any emergency e.g. dragging anchor, or being placed in a position of peril by another vessel dragging her anchor, it is vitally necessary that the Watchkeeping Officer detects the situation instantly. He must be constantly on the alert and must act quickly and correctly to avoid a casualty and to do this he must get his priorities right. In such a situation he should:-

- (A) Sound the alarm
- (B) Check power on telegraph and ring to "Stand By Engines"
- (C) Call a man to the wheel
- (D) Check that steering gear is operational
- (E) Switch on radar
- (F) Call both the Master and the Radio Officer
- (G) Establish telephone communication with the engine room.

The order in which the foregoing are executed is not critical but the speed with which the action is taken is vital.

## **III. General Comments re Emergency Situations Whilst at Anchor.**

- a. The quickest and most efficient means of summoning the Master to the Navi-

gating Bridge is by blowing the ships whistle or by pressing the general alarm button. The Master may nominate a specific signal to be employed which will result in his immediate arrival upon the Bridge and at the same time ensure almost instantaneous manning of the Main Propulsion Machinery.

- b. Once telephone communication has been established with the Engine Room it is of paramount importance that the Engineer Officer realizes that an emergency exists and that main engines must be made available in the shortest possible time. A sense of urgency must be communicated, and thereafter telephones must be manned both on the Bridge and in the Engine Room.
- c. Emergencies such as dragging anchor can be dealt with in several ways according to circumstances pertinent at the time. For example, it may be sufficient to veer out a longer scope of cable, or it may be advisable to let go the second anchor or it may be necessary to get the ship underway as quickly as possible in order to return to a safe anchorage in good holding ground.
- d. It is vitally necessary to get an Officer on the Forecastle head as quickly as possible. It is therefore of paramount importance that the bridge messenger should be despatched to send the Chief Officer and the ships carpenter (or other personnel) forward to stand by the windlass and execute the Masters commands with the minimum of delay.
- e. In cases of emergency arising in the middle of the night, the Bridge Watchkeeping Officer may be faced with a time lag of several minutes before emergency personnel can be called to stations. The Master will make known his exact requirements in such an event but the desirability of the Watch-

keeping Officer, having carried out the procedure outlined in paragraph (II), himself going to the Forecastle head and letting go a second anchor should not be ruled out as valuable time in preventing a casualty might be gained.

- f. An emergency can also arise when another vessel in the same anchorage drags anchor and drifts down upon the Officer's vessel. Again immediate action is required and, in all probability, time will not permit weighing anchor to avoid the hazard. The best action is therefore a continuous sounding of the ships whistle which will serve to warn the other vessel and also bring the Master to the bridge, and the immediate veering out of more scope on the anchor cables. Again, if this type of emergency occurs at night it may prove advisable for the Officer of the Watch, having carried out the procedure outlined in paragraph (II), to leave the bridge messenger operating the ships whistle and himself proceed to the Forecastle head. Time gained by this means might possibly permit the Master to use helm and engine movements to manoeuvre his ship clear of the dragging vessel.
- g. Bridge Watchkeeping officers are reminded that when in charge of the Bridge, and until the arrival of the Master on the Bridge, they are responsible for the safety of the vessel and hold the lives of the entire ships company in their hands. Accordingly, whenever in doubt, **the Master should be called without the slightest hesitation.**

In conclusion we emphasize that these guidance notes form the basis of our requirements concerning Bridge Watchkeeping Duties whilst at anchor. They may be varied, amplified or amended by the Master as he may consider advisable or necessary.

Yours faithfully  
 London & Overseas Freighters Ltd  
 Marine Superintendent

**The Secretary General of IFSMA urges all Serving Shipmasters to carefully review their own Company's Safety Management System and their Shipboard Contingency Plans and to ensure that ALL Navigating and Engineer Officers are fully conversant with the Master's Requirements for the Safe Conduct of a Vessel at Anchor.**

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## **"Coastal Bay" Grounding**

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The "Coastal Bay" was a feeder container ship, engaged on a shuttle service between Liverpool and Dublin, which grounded on the coast of Anglesey Island on a fine, clear night last summer. The process by which the vessel grounded was far from unique, readers will recall the grounding to the vessel "Cita" was widely reported and apparently caused by similar circumstances.

There was almost no pollution, no casualties and the vessel was subsequently repaired with little publicity. However, the owner after being charged by the Maritime and Coastguard Agency (MCA), was fined £20,000 with more than £6,000 costs for failing to ensure the safe operation of the vessel. It was reported that the vessel grounded after failing to alter course almost certainly because the exhausted chief officer fell asleep. It is interesting to see in this case that the MCA decided not to prosecute the Master or chief officer. The investigation into the accident concluded that fatigue caused the properly qualified officer to lapse into unconsciousness at the crucial moment when he should have been altering course.

The mate and Master, who did all the pilotage on the vessel, kept all watches between them on a seven day overnight cy-

cle for months on end. The mate was on a four-month contract and had been operating for 84 days non-stop under a regime which never permitted either he or the Master ever to enjoy a six hour period of real sleep. No additional lookout was carried during the hours of darkness, the three hands being employed as dayworkers and there was no functioning Bridge Alarm fitted.

***If the rest requirements of the STCW95 Convention are not capable of implementation then clearly the ship is unseaworthy, and the Charterers and Ship Managers should stand beside the Owner in the Chain of Responsibility.***

Below we repeat two very relevant articles from the 26<sup>th</sup> IFSMA AGA Minutes, which concern Fatigue and Hours of Rest, and Minimum Rest Periods.

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## **Fatigue & Hours of Rest**

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The Antigua & Barbuda flagged mv CITA grounded off Newfoundland Point, Isles of Scilly on 26 March 1997. She was being operated as a Feeder Container Ship on a weekly schedule between Rotterdam, Southampton, Belfast and Dublin. She was manned with a Polish Master, Mate, Engineer, three Deck Ratings, an Engine Rating and a Cook. The Charter Party included the usual requirement that the Master "***... prosecute all voyages with utmost despatch and ...render the customary assistance with the vessel's crew.***" In particular this included opening and closing of hatches, securing of containers and supervision of loading. The planned route from Southampton to Belfast was to be via the northbound lane of the Land's End Traffic Separation Scheme.

The CITA was operating the Bridge watch system so common on Coastal Vessels where the Master takes each 6 to 12 watch

and the Mate takes each 12 to 6 watch. ***No Lookouts were posted - the Officers were the Sole Lookouts.*** Neither the Master nor the Mate had received any written instructions or guidance from the Owners and ***No Standing Instructions had been issued by either the Superintendent or the Manager.*** Although fitted with a functional Watch Alarm to ensure the Bridge Watchkeeper remained awake ***this Watch Alarm had been switched off,*** not only for the voyage terminated by the grounding, but also for some time previously. The Convention in force at the time of CITA's Grounding was STCW 95 with its mandatory Code.

Shortly after midnight on 26 March 1997, the Mate took over the Bridge Watch from the Master as CITA was approaching a course alteration position south of Lizard Point. On reaching it, course was altered to head for the southern end of the Land's End TSS. Some time later the Mate fixed the vessel's position and found he was about a mile to the north of the intended track. To regain it he adjusted the course to port by a few degrees and ***returned to his chair*** to resume his watch. ***Soon afterwards he fell asleep.*** Two and a half hours and about 35 miles later, without anyone onboard being aware of what was happening, CITA ran aground on rocks at Northumberland Point, Isles of Scilly, while heading westwards at 13 knots ***and became a Total Loss.*** The Seven Crew were taken off by RNLi Lifeboat and the Master by Rescue Helicopter.

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## Minimum Rest Periods

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### STCW 95 – Regulation VIII/1 Fitness for Duty states that:

Each Administration shall, for the purpose of preventing fatigue:

- .1 establish and enforce rest periods for watchkeeping personnel; and

- .2 require that watch systems are so managed that the efficiency of all watchkeeping personnel is not impaired by fatigue and that duties are so organised that the first watch at the commencement of a voyage and subsequent relieving watches are sufficiently rested and otherwise fit for duty.

### Mandatory Section A-VIII/1 Fitness for Duty states that:

- 1 All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch shall be provided a minimum of 10 hours of rest in any 24-hour period.
- 2 The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length.
- 3 The requirements for rest periods laid down in paragraphs 1 and 2 need not be maintained in the case of an emergency or drill or in other overriding operational conditions.
- 4 Notwithstanding the provisions of paragraph 1 and 2, the minimum period of ten hours may be reduced to not less than 6 consecutive hours provided that any such reduction shall not extend beyond two days and not less than 70 hours of rest are provided each 7-day period.
- 5 Administrations shall require that watch schedules be posted where they are accessible.

### Recommendatory Section B-VIII/1 Guidance regarding Fitness for Duty states that:

- 1 In observing the rest period requirements, "overriding operational conditions" should be construed to mean only essential shipboard work which cannot be delayed for safety or environmental reasons or which could not

reasonably have been anticipated at the commencement of the voyage.

- 2 Although there is no universally accepted technical definition of fatigue, every one involved in ship operation should be alert to the factors which can contribute to fatigue including, but not limited to, those identified by the Organization, and take them into account when making decisions on ship operations.
- 3 In applying regulation VIII/1, the following should be taken into account:
  - .1 provisions made to prevent fatigue should ensure that excessive or unreasonable overall working hours are not undertaken. In particular, the minimum rest periods specified in section A-VIII/1 should not be interpreted as implying that all other hours may be devoted to watchkeeping or other duties;
  - .2 that the frequency and length of leave periods, and the granting of compensatory leave, are material factors in preventing fatigue from building up over a period of time; and
  - .3 the provisions may be varied for ships on short sea voyages, providing special safety arrangements are put in place.
- 4 Administrations should consider the introduction of a requirement that records of hours of work or rest of seafarers should be maintained and that such records are inspected by the Administration at appropriate intervals to ensure compliance with regulations concerning working hours or rest periods.
- 5 Based on information received as a result of investigating maritime casualties, Administrations should keep their provisions on prevention of fatigue under review.

## “MASTER” THE WEATHER

Weather routing is quite often considered to be a tool for charterers, instead of an operational support tool for the master. This probably due to the fact that the master on board receives a route advise only, without much information on motifs behind the advise (like wind/wave charts). Weather facsimile charts are regularly of poor quality and require adequate reception schedules. Secondly, the master has more knowledge on operational constraints (e.g. rolling, water on deck) than a meteorologist on shore.

A relatively new development is the introduction of on board routing systems. Although previously expensive, there is now a low-cost and simple solution called SPOS (Ship Performing Optimisation System).

For missing diagram visit  
[www.spos.nl](http://www.spos.nl)

### *forecasted wave height on SPOS screen*

It is a computer program installed on the PC which uses daily weather forecast files, sent to the vessel via e-mail. With SPOS, the master can subscribe to a forecast region and receive the forecasts until he cancels the subscription again. Since SPOS operates with a fixed annual fee, no unexpected bills will appear.

The master can display a complete weather forecast with pressure charts,

wind and sea/swell charts up to 5 days ahead. By displaying the charts in animation, the expected movements of high/low or wave fields can be monitored.

Next to showing the charts, the master can enter ship specific data into the system and calculate the optimum route for his voyage. User defined routes can be calculated as well.

Various performance analysis tools like tables and graphs are available to determine the best route for the voyage.

The master decides which route to follow and this is stored in his voyage plan. With the daily weather updates, this voyage plan is updated, giving the staff on board the best possible planning tool for weather routing.

For missing diagram visit  
[www.spos.nl](http://www.spos.nl)

Trials with this system for Jo Tankers on a vessel trading on the North Atlantic have shown a significant reduction in encountering bad weather. The statistics are sum-

For missing diagram visit  
[www.spos.nl](http://www.spos.nl)

marised in the figure above.

Even more remarkable was the fact that these results were obtained on routes which differed significantly from those in the year before SPOS was available on board. Despite the sometimes Northerly routes, the encountered weather was much better. The masters indicated that the complete set of weather data enabled them to select shorter routes when possible.

Today, SPOS is used by hundreds of masters, and feedback is generally positive. Here are some comments:

A master of P&O Nedlloyd:

*“Very nice to have the facility. Looking ahead for up to 5 days does help weather routing. I have learnt, to my cost, that the sea/swell data is accurate and should be respected.”*

A master of Wallenius Wilhelmsen Lines:

*“In my opinion, it would be very wise to continue with SPOS in the future. It gives the Master, a complete picture of what to expect ahead and to make his own choices re course to the next destination. Also, their prognosis have been pretty accurate.”*

More information and a demonstration of SPOS are available at [www.spos.nl](http://www.spos.nl) or via Meteo Consult tel: +31 317 399800

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## Banking Gloom

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Latest news from London's chattering classes, on the Japanese banking crisis...

Origami Bank has folded, Sumo Bank has gone belly up and the Bonsai Bank plans to cut back some of its branches. Karaoke Bank is up for sale and is going for a song. Meanwhile, shares in Kamikazi Bank have nose-dived and 500 back-office staff at Karate Bank got the chop. Analysts report that there is something fishy going on at Sushi Bank and staff there fear they may get a raw deal.

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## Ownership of Data logged by Voyage Data Recorders (VDRs) and Recovery Obligations

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### Advice offered by IMO's Legal Office during NAV46 in July 2000

15.35 The main conclusions of the Legal Office advice are as follows:

#### **.1 *Obligation to retrieve VDRs***

The IMO Code on Investigation provides that the lead investigating State would be custodian of records and evidence. This means that during an investigation the lead investigating State has rights over evidence, including VDRs.

The IMO Code on Investigation makes neither the investigating authority nor the shipowner responsible for recovery of VDRs, though the investigating authority would appear to have rights to claim custody and is obliged to arrange for the read-out of the VDR. The new SOLAS chapter V, regulation 20 does not contain any requirement for responsibility for recovery of the VDRs.

#### **.2 *Ownership of data logged by VDRs***

IMO regulations are silent with respect to ownership of data logged by VDRs. However, "ownership" of the data should be distinguished from "custody" of the data. Under the IMO Code on Investigations, during an investigation, custody of the records or evidence (including VDR and data) gathered by the investigation would be the responsibility of the lead investigating State.

Accordingly, it seems that for the purpose of determining compliance with a safety or pollution prevention regulation following a casualty, the question of ownership rights of the shipowner to the VDR or Data, howsoever deter-

mined, is not the main issue. Any ownership rights will be overridden for the duration of the investigation. Therefore, ownership, as such, is not necessarily the overriding factor to be considered in this situation.

How the recorded information is handled on completion of the investigation would differ depending upon jurisdictional claims of, for example, the flag State, coastal State and the lead investigating State; and also upon applicable domestic legislation and practice in different States.

15.36 The Sub-Committee further concluded that there were five basic issues that needed further consideration, namely:

- .1 recovery of VDR;
- .2 custody of VDR/data;
- .3 ownership of VDR/data;
- .4 read-out of VDR/data; and
- .5 access to the data.

15.38 NAV 46 also agreed to request the MSC to include a new agenda item "guidelines on Voyage Data Recorders (VDRs) ownership and recovery" in the Sub-Committee's work programme and in the agenda for its next meeting to further progress the matter.

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## Carriage of Voyage Data Recorders (VDRs) on existing Cargo Ships

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Resolution MSC.109(73) was adopted on 6<sup>th</sup> December 2000. It instructed the NAV Sub-Committee, in co-operation with other sub-committees as appropriate, to carry out the feasibility study, taking into account such factors as:

- .1 practicability;

- .2 technical problems relating to the retrofitting of VDRs;
- .3 adequacy of existing performance standards, including the possible development of simplified standards;
- .4 experience in the use of VDRs on ships already fitted with them, including data that could not have been obtained without VDR; and
- .5 relevant financial implications, including a cost benefit analysis.

If the study clearly demonstrated the compelling need for mandatory carriage of VDRs on existing cargo ships, to prepare appropriate draft amendments to chapter V of the Convention and associated performance standards, for consideration by MSC and action as appropriate.

To finalize the study not later than 1 January 2004.

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## Castor - No Port of Refuge

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The saga of the stricken tanker 'Castor' dragged on for many weeks. The 31,000dwt tanker developed a 20m long crack across its deck during heavy weather in the western Mediterranean at the end of December and was then caught in the eye of a storm. Its cargo was unleaded gasoline and as the salvors struggled to keep the vessel afloat they requested access to a Port of Refuge so they could transfer the cargo off the damaged vessel in relative safety, the vessel is reported to have been refused permission to enter sheltered waters by no less than eight countries, including Morocco, Spain, Gibraltar, Malta, Greece, Tunisia and Algeria.

The vessel was located between Malta and Tunisia, and during this time the Salvage Master, Nam Halfweeg, said he felt like the most unwanted man in the world. He sent a proposal to the Maltese Authorities

to enter a sheltered area two miles off the Maltese coast. "I sent a plan for a ship-to-ship transfer operation but it was rejected. You don't eliminate the risk if you continue the transfer of cargo in the open sea because if the ship breaks up then the Mediterranean would be polluted." He said. The Malta Maritime Authority instructed Halfweeg to keep the Castor at least 30 miles off the coast.

Under very difficult conditions the transfer had to take place in the open sea with frequent interruptions for bad weather, including Force 8 winds. Although the Cyprus authorities were reported to have offered refuge, this was too far away. The danger was that the ship might break up before the cargo could be transferred off and with such a volatile cargo the risk of fire and explosion was obviously very high.

Despite these high risks the Castor's cargo was completely transferred by February 8<sup>th</sup> without mishap. The vessel then proceeded under tow to Piraeus where it awaits an uncertain future.

If you have access to the Internet, Lloyds' List have posted some video clips on their web site <[www.lloydslist.com](http://www.lloydslist.com)>. The video recording, filmed by the *Castor's* second officer and its pumpman at noon on December 31, 2000, clearly shows how heavy weather came close to tearing the ship in two. The crew of Castor finally abandoned ship on 5th January.

**IFSMA Comments** - In many such instances the immediate need is access to ***Sheltered Waters*** rather than actual entry into a ***Port of Refuge***. We fully support IMO's initiative for a global consideration of the problem and the Shipmasters urge all Coastal States to undertake a regional assesement of the situation.

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## Conundrum 4

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Do Lipton Tea employees take coffee breaks?

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## Criminal Liability Of Designated Person

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***Issues pertaining to liability of Designated Persons are complex. But for the first time, the International Community has found a way to impute a FACE and MIND to a Corporation through a SINGLE individual which makes it possible for a Company to be brought before courts and charged with criminal offences which may result in punishments other than purely financial. On this subject Captain A.K. Bansal, Individual Member, submits the following article.***

There was a time when shipowners took every precaution to ensure that their ships did not infringe International Laws. In fact in the mid Twentieth Century, established and reputed shipping companies would not suffer any violation of International Rules and practices by their ships and personnel, much less instruct Masters to break such Laws. They also fully supported their Masters officers and crew and equipped their ships to comply with prevailing Laws and practices in every way possible.

The case of Adler v Dickson 1954 may have been a high water mark. P & O had no legal obligation to stand behind and defend their Master and Bosun against damages in TORT for injuries to a passenger while climbing the ships gangway which was found unsafe. But as responsible owners and reputed good employers, they defended them to the hilt and paid fines imposed on their persons (Not the Company or their ship).

Attitude of shipowners on International obligations, and their duty to support their employees, seems to have gone through a sea change.

Historically liners of early and mid twentieth century, were eclipsed by large scale ocean transportation through huge bulk carriers, container ships, ULCC's and VLCC's.

Today, high financial stakes and vested interests of shipowners have forced them to make their ships cut corners to save on costs. Thus

masters of merchant ships are faced with a choice between protecting their jobs as against committing breaches of established norms, laws and practices, and have borne the brunt of this situation by being made scapegoats in cases where something goes wrong. Owners usually ensure that there is no evidence of instructions having been given to Masters, such as to falsify the Log Book or to make wrong declarations etc.

Recent Conventions such as ISM, STCW, Hamburg Rules, have opened avenues to lay the blame where it should. For example under Hamburg Rules, shipowner is not protected against damage to cargo through negligence of Master, as management of the vessel is in hands of owners being in regular contact with him on Telex, Fax and Phone. This has robbed owners of the luxury of being able to tell the Master to do something wrong and then protect themselves under the umbrella of Hague Visby Rules.

On 6th of March 1987, the Ro Ro passenger Car ferry "Herald of Free Enterprise" capsized four minutes after passing out of harbour because her inner and outer bow doors were still open. 188 lives were lost.

UK commissioner of wrecks found during inquiry that practice of not closing these doors BEFORE leaving the harbour, was prevalent on this ship as a matter of course and that therefore the blame did not lie solely on Master, Chief Officer and Asst. Bosun, but also lay on owners and managers. They knew that closing such doors before leaving harbour was vital to ship's safety/seaworthiness. They knew or ought to have known it was dangerous to leave them open, but did nothing to stop this practice.

But provisions of Sec 44 of Merchant Shipping Act 1979, only dealt with condition of the ship's hull, equipment and machinery, and NOT with the status of OPEN watertight doors before sailing. Therefore owners and/or managers were not in breach of Sec 44. Also in R v Cory in 1927, a British Court held that a company could not be guilty of manslaughter because it can't have requisite "Mens Rea."

In criminal proceedings against the company, the Judge said that if a corporation does an act which fulfils prerequisites of the crime of

manslaughter THROUGH the controlling mind of a natural person identifiable with it, then that corporation is properly indictable for that crime. But because in this case no individual natural person could be identified, the company could not be convicted of manslaughter.

Now under ISM Code, a Designated Person is to liaise with the ship. Its relevant provision states, ***"The responsibility and authority of the designated person should include monitoring the safety & pollution-prevention aspects of the operation of each ship and ensuring that adequate resources and shore-based support are applied as required."***

Also, Sec. 30 of the 1988 Act, provides for minimum two years imprisonment or unlimited fine if owners, demise charterers or managers together with the Master are found criminally liable for putting a ship out to sea which is dangerously unsafe. It applies to ALL British ships anywhere and all foreign ships within UK waters.

Significantly, ISM Code and the 1988 Act, came into force after the HERALD tragedy. This ensures a personal link of an individual between Master and Management.

In USA, a person can be criminally liable for violation of an environmental statute, if he was in a position to know or prevent the criminal act, even if he did not participate in the illegal activities himself. Thus, requirements of public safety take priority over norms of traditional criminal Law, which still recognise that absence of evil intent or motive cannot criminalize conduct of individuals.

Decision of a US Court in "North Cape" is to the point where individual management persons of the tug company were found guilty of criminal violations of environment statutes. Similarly in an oil spill case in Puerto Rico, Management personnel were fined very heavily.

Recently, a Designated Person has been charged by US Federal Prosecutors, with deliberately directing pollution. Apparently, evidence is available that he told the Master to conceal from US Coast Guard, temporary repair to the ship's hull, deliberate illegal dump-

ing of oily water in the seas, AND deliberately caused the vessel to falsify ship's log book. This appears to be a case where a corporation can be attributed Mens Rea.

Since media reports suggest that in this case the shipowner has gone bankrupt, only recourse of US Coast guard is against the Ship in Rem, the Master and the Designated Person, with no one to stand behind them.

But a viable shipowner must perforce defend his Master and Designated Person not only because their Mens Rea is now linked with that of the corporation, but also because in most cases he is bound to pay fines imposed on them, being legally and contractually liable, as otherwise no one may lend his name to be a Master or Designated Person. He also needs to keep his ship free from arrest.

Since liability for offences such as pollution is almost always criminal and unlimited, owners must perforce cover themselves through Insurance in such a manner as to include criminal liability of their Masters, Designated Persons and consequently that of the corporation, for wilful acts of omission & commission, WITH MENS REA.

Institution of Insurance is a matter of the utmost good faith. A Golden Rule is, that a contract of Insurance covering liability arising from an intentionally criminal act is unlawful being against principles of public policy. Also Section 55 of the Marine Insurance Act 1906 excludes insurers liability against loss attributable to wilful or reckless acts of the assured.

But in *Hardy v Motor Insurers' Bureau*, a van driver was found guilty for inflicting grievous bodily harm on a security officer, by running him down intentionally and maliciously. The Court of Appeal said that principles of public policy do not make such a contract of insurance unlawful per se. If an insurance policy covers liability arising out of an intentionally criminal Act, only the criminal cannot take its benefit. This case did not involve a marine insurance claim. But words used by the Court of Appeal would indicate that this principle applies equally to all such situations.

On the principle that a person charged with a

criminal offence, is innocent till he is proved guilty, insurers are not legally barred from covering owners against expenses to defend a Master or Designated Person even if he is accused of a criminal offence WITH “mens rea.” Since it involves owner’s liability to third parties including prosecuting authorities, such a cover cannot be considered or be meant to benefit the Master, Designated Person or the company. Therefore the exception stipulated by the Court of Appeal in *Hardy v Motor Insurers Bureau* would be met.

Furthermore under the 1981 Pollution (compulsory insurance) Regulation Act, a tanker owner must insure against pollution damage which is a criminal offence in most countries. It is therefore inconceivable that International P&I Clubs would refuse to include such a cover for ships entered with them.

But there is a limit to the extent a Designated Person can be protected through insurance. For example if he is sentenced to prison even after every legal assistance was provided to him, there appears no way that an insurer or owner can stand behind him except perhaps to keep him perpetually out of the Jurisdiction of THAT court. Even THAT may prove to be cold comfort eventually because most countries have extradition treaties which can be invoked by their Government. in the interest of public policy.

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## Abolish GT for Safer Ships

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Following on from the article in the **IFSMA Newsletter #29 “Gross Tonnage / Deadweight, a Matter of Marine Safety”** the debate continues in the maritime press – below are extracts from an article recently published in *Fairplay*.

NEITHER ship owners nor shipbuilders have a practical use for gross tonnage (GT). Its only use is at the design stage when the naval architect is asked to maximise cargo space, while limiting GT as much as possible to reduce building costs and save on port dues. This results in a vessel with a low freeboard, complying with the minimum requirements for re-

serve buoyancy, thus causing vessels to be less safe than prudent owners might wish them to be.

That is what Ernst Vossnack, former naval architect of Nedlloyd, argues and he has been fighting this approach for many years. But earlier this month he and some of his supporters took their arguments to the European Commission where they put their point to Willem de Ruyter, who is responsible for maritime safety, environmental and technical issues in the EU’s Transport Directorate. His response was sympathetic, said Vossnack, but said that it was an issue for flag states to address.

But Vossnack has made a start to influence one flag state – his native Netherlands. He has invited members of the Dutch parliament’s Transport Committee to make a trip on a large and a small container ship to see the problems for themselves. At the time of writing, a few had accepted, but a date for the visits had not been set.

Many owners might be prepared to pay the shipyard for additional safety if this does not result in a lifelong penalty in higher port dues. If Bibby had built the *Derbyshire* with a forecastle, it might never have sunk with the loss of all crew. With a forecastle, it could have coped with a six-degree pitch instead of only three degrees. The additional buoyancy might have prevented green water damaging the forward hatch and the subsequent flooding of the forward holds. But a forecastle, although not a part of the earning capacity of the vessel, is included in the GT. Similarly, the poop has disappeared on many newbuildings with dangerous open transoms in the stern sometimes being installed.

So Vossnack knows that he has a battle on his hands. Ship owners will take the initiative only if they are assured that their profits will increase. Insurers never come forward with proposals for safer ves-

sels. Ports are happy with the current situation. Governments only move after a serious casualty threatens the environment. Greenpeace will find GT an issue too difficult to explain to its members. Regulators do nothing until asked to take action by governments. One can only hope that classification societies will do something and that gradually all the other parties will be shamed into action by groups of individuals as ours. But he has seen some progress. In the Netherlands, both the Directorate General of Transport and the National Ports' Council are studying safety of container vessels in port and at sea. The IMO is sympathetic, but he believes it will move only after a government asks for a review of GT rules. Meanwhile, Vossnack would welcome co-operation with similar groups of concerned seafarers, naval architects or others across the world.

*Taken from Fairplay, 22 February 2001*

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### **More weight for Tonnage Concern**

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Sir, The interesting discussion on the concept of gross tonnage (February 22, p23) brings to mind the strictures of Lord Rochdale's 1970 *Report of the Committee of Inquiry into Shipping*. In its chapter on ports they noted that port dues were often assessed this way, for the port as a whole and often for lengthy periods such as a week or more.

This involved extensive cross subsidisation, e.g. between modern and old fashioned facilities and between ships with fast and slow turnaround times. They remarked that it bore little resemblance to paying for the use of a car or a house, where one expects to pay according to quality and time.

Instead, they considered that a port charge should be related to the facilities used, the length of time for which they were occupied, that this should be as short

as possible and should reflect, from time to time, variations in demand. It should not be derived from gross tonnage, net tonnage or any similar measure that might be derived.

They noted that this was consistent with other public policies, notable that the consumer should pay the true costs of providing the goods and services he consumes wherever these can be sensibly identified. In discussing fleet statistics they remarked that "gross tonnage is an excellent measure of gross tonnage and nothing else!" (It was their only exclamation mark.)

It is not at all surprising that the continued use of this arbitrary measure leads to the harmful results described by Ernst Vossnack. The time has come for a general overhaul and the responses you report from various officials are most regrettable.

Yours etc, Richard Goss, Pershore UK (Formerly professor of maritime studies, University of Wales, Cardiff, UK).

*Taken from Fairplay, March 15, 2001.*

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### **Is Fatigue at Sea an Issue?**

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By Capt. P. Chawla, General Manager  
Quality Assurance and Training  
Anglo-Eastern Ship Management Limited

It is the age of e-commerce. With a click of a button a doctor in Philippines can order the latest edition of a book from U.S.A. A little shop in Turkey may be ordering a load of wine from Australia at the same time.

The way goods are traded has changed dramatically in the last two decades but the cheapest method of moving those goods across the world is still by sea.

Technology is converting the entire world into a single market place, thus bringing in fiercer competition amongst businesses. This in turn increases the pressure on the shipping industry to provide their services at cheaper rates.

The shipping industry has been achieving this basically through improved productivity and efficiency, with the help of technology.

Not too long ago a general cargo ship used to be manned by 30 people. Today it is not uncommon to find a 3000 TEU container vessel manned by as few as 16 people.

The question being asked in the industry today, is whether this reduction of people on board has gone too far. Is the ship's safety being put at risk with this drive of replacing people with machines?

What should be the minimum level of manning for a ship? What is the risk to the environment if the officer on watch of a tanker carrying 400,000 tonnes of oil loses his concentration due to fatigue?

If these questions are being asked in the bars of the seamen's clubs, why are the regulators not doing 'something' about it?

***It is a complex issue and there are strong opinions on both sides.***

The minimum number of people required to operate a ship is decided individually for each ship by the flag state, based on a set of guidelines contained in IMO Resolution "Principles of Safe Manning".

These are very broad guidelines that mention the criteria to be considered by the flag state in deciding the minimum number of people required to operate the ship safely.

***The problem lies in the interpretation of these guidelines by different flag states.***

For example, one of the issues is, whether it should be allowed to operate a ship with only one officer on watch at night.

Trials were conducted by various countries. When the issue came up for discussion at the IMO, majority of the nations voted against allowing one-man bridge operation, but a few countries resisted very strongly.

Owners of ships manned by staff who are relatively highly paid, prefer to reduce the costs of operations, by reducing the number of people with technology.

In the example given above, one of their ar-

guments is that one man bridge operation is equally safe if there are 'dead-man alarms' fitted that can warn others if the watch officer falls asleep.

Flag states compete fiercely to get ships into their register. Registration of ships and the earnings through the registration tax is major revenue source for some countries. If one flag state, interprets the guidelines that allow a reduction on manning, the other flag states feel compelled to do so, even if they disagree with the interpretations of another flag state.

Administrations of many nations, and Accident Investigators of some reputable countries are keen to improve the guidelines of the IMO to ensure that there is more uniformity in the interpretation of the guidelines by all flag states. Unfortunately, nations who are keen to allow operation of ships with lower manning levels disagree, and when the guidelines for manning scales were being reviewed no substantial changes were made.

Flag states presently may not be too keen to address this 'hot potato' issue of manning levels on board due to local pressures especially in the domestic or short-sea trades.

At the same time, research work being done on the subject of 'Fatigue', working hours and rest hours is increasingly making it evident that the reduction in manning scale may have gone too far on some ships and any further reductions may seriously affect the safety of the vessels.

***The seafarers are increasingly complaining of long hours and inadequate rest leading to fatigue and lower levels of alertness.***

The major oil companies, realizing the implications of an oil pollution caused by underperforming officers have taken a lead in looking at the manning levels of ships as part of their vetting procedures. Unfortunately in the dry cargo trade this interest by shippers or consignees in the operational aspect of the ships is minimal.

The main factor in the decision of choosing a carrier for their goods seems to be cost alone.

Perhaps, shippers of containers and of bulk

cargoes also need to take the lead from the major oil companies and look carefully at the overall operation of the ships carrying their cargoes.

Oil pollution is a very 'visible' disaster, but loss of toxic chemicals from a container into the sea, or an accident involving bulk carrier colliding with a tanker or running aground in the middle of the approaches to Rotterdam can be equally disastrous. If that happens, just like in oil pollution cases the Charterers diligence in selecting the ship in question will be under severe scrutiny.

Questions regarding the commercial pressure exerted on a tired crew to sail out, will be asked by the public and the investigators. Pressure to maintain unrealistic voyage schedules will be questioned.

The Charterers and shippers will also come under scrutiny just like in pollution cases.

Charterers, Shippers and Consignees may also suffer a serious loss of reputation.

***Thus ignoring the quality of operations of the ships is no longer an option.***

The issue of Fatigue and Manning levels of ships may be complex and solutions may not be very popular but, it is not an issue that is going to go away in the near future. Will the regulations wait for a high-profile disaster involving fatigue or will a pro-active approach be taken by flag states in deciding a more uniform approach to manning levels?

The 'Smoke' around this issue clearly indicates a smoldering fire underneath the surface. Scientific studies and honest analysis is urgently needed to ensure that there is a proper response to the issue. If regulations are driven by a reaction to disasters they tend to be decided on emotional and political factors instead of being made on the basis of scientific approach or nationality.

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## Conundrum 5

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Why is a person who plays a piano called a pianist but a person who drives a race car not called a racist?

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## Ballast Water Management Tips

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The U.S. Coast Guard has promulgated mandatory requirements and voluntary guidelines to be used by vessel operators to control the spread of aquatic species. You can help control ballast water invasions by taking preventive action. The following measures are recommended to minimize the uptake and release of harmful aquatic organisms.

### **Perform Open Ocean Ballast Exchange When Safety Permits**

Most open ocean species cannot survive in the near shore environment. With open ocean exchange, ballast water containing organisms from near shore sites is replaced with open ocean water containing species not well adapted to the near shore environment. California law requires ships to exchange ballast water at sea or follow other specified management practices.

### **Keep Records Of Ballasting Operations**

Masters of all vessels carrying ballast water into U.S. waters after operating beyond the Exclusive Economic Zone (EEZ), unless specifically exempted, are required to keep records and provide written information to the Commandant U.S. Coast Guard.

### **Reduce Invasions Via Hull And Anchor Fouling**

Non-native species can attach to hulls, piping and tanks and should be removed and disposed of properly on a regular basis. Anchors and anchor chains can be rinsed during all retrievals to prevent transport of nuisance species from their point of origin.

## **Minimize Ballasting In Ports And Coastal Areas**

Historically, ballast water has been one of the primary transport mechanisms for introducing aquatic nuisance species to North America's coastal waters. Although most merchant ships require ballast water for stability, minimizing the amount of ballast water taken in from ports and coastal areas will reduce the number of potential invaders transported to the next port. Preventing new invasions is key to maintaining healthy harbours and coastal areas.

### **Avoid Ballast Uptake At Night**

Some organisms that live on the bottom, or low in the water column during the day, rise in the water column at night to feed or reproduce, making them more available for uptake. The chance of bottom-dwelling organisms and sediments being entrained with the ballast water increase when ballasting in shallow ports where sediments are disturbed by propeller wash.

### **Avoid Ballast Uptake In "Hot Spots"**

"Hot spots" are water bodies that are particularly infested with non-native species, that have toxic algal blooms or "red tides," that are contaminated by sewage outfalls, or that carry a waterborne disease such as cholera. Scientists and managers are working to identify global hot spots. Ballast uptake from hot spots has a greater potential of spreading harmful organisms.

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## **DID YOU KNOW? Harmful Aquatic Organisms.**

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Water bodies worldwide are being invaded by non-native aquatic species. Ballast water is one of the primary vectors for aquatic nuisance species invasions. Most vessels carry ballast water for stability.

Although many species seem much too large to be transported by ballast water,

the majority of marine organisms have a small larval stage (designed for dispersal), that is an ideal size to be sucked into a ballast tank and transported to the next port of call. Under the right conditions and without natural predators and parasites, non-native populations can increase dramatically, threatening or displacing native species and radically changing the natural ecosystem. Once established, aquatic nuisance species are difficult to manage and nearly impossible to eliminate.

The economic impacts can be staggering. Municipal and industrial water users in the U.S. spent an estimated \$2-\$3 billion during the closing decades of the 1900s cleaning clogged water intakes infested with zebra mussels. Commercial and recreational fisheries throughout the world have sustained economic losses due to the depletion of native species. Action to prevent and control future invasions is essential.

- San Francisco Bay is the most invaded aquatic ecosystem in North America with 234 introduced species. Between 1961-1995, an average of one new species arrived every 14 weeks.
- Every hour, an average of more than 2 million gallons of ballast water is released into U.S. waters.
- It is estimated that on any one day more than 3,000 species of freshwater, brackish and marine organisms may be transported in ballast water in ocean-going vessels around the world.
- Large water users in the Great Lakes basin alone spent \$120 million for control of the zebra mussels from 1989-1994.
- Nearly \$1 million per year for the past 20 years has been spent in California to remove the submersed nonindigenous aquatic plant, hydrilla. In Florida, annual maintenance cost for hydrilla, a native of Asia, now exceed \$14 million.

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## Pirate Alarm Systems

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In centuries past it was perfectly acceptable for a ship to defend itself against piracy and armed robbery by any means that were considered necessary, including attacking the pirates using any weapons available. Nowadays, this is no longer acceptable as any pirates or robbers receiving injury could accuse the ship they were attacking of using undue force and the master and crew could well find themselves being charged with a criminal offence. This view was confirmed in the IFSMA 26<sup>th</sup> Assembly Resolution – dated 20<sup>th</sup> May 2000 and titled, Piracy and Armed Robbery Against Ships, a copy of this resolution may be found on the IFSMA Web Site ([www.ifsma.org](http://www.ifsma.org)).

So what can be done? The CESMA Newsletter #15 suggests some new initiatives which include fitting the Bridge with Bullet-proof window glass and manual activation of the Alarm by the O.O.W. from within the protected space.

The latest thinking on this subject is that a ship can and should defend itself by deploying relatively simple systems on deck whilst staying within the limits of international law. Even potential pirates appear to be protected by international human rights' organisations.

One Dutch company with heavy lift carriers and low freeboards has devised an alarm system that is aimed at deterring pirates or robbers who intend to board the ship. It comprises a circuit of electric wiring around the perimeter of the vessel that can be connected to a high voltage but with a low amperage, causing no more than a forceful blow, if touched. At the same time as the wiring is touched, high intensity lights and a sound blaster are activated. The sound blaster produces a sound comparable to the roar of an F16 jet fighter at takeoff with its' after burners on. This should completely disorientate eventual attackers and have the pirates leaping back to where they came from. It hasn't yet been used in anger.

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## New European Agreement

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The European Commission has just announced an agreement whereby English will be the official language of the EU rather than German which was the other possibility.

As part of the negotiations, Her Majesty's Government conceded that English spelling had some room for improvement and has accepted a 5 year phase-in plan that would be known as "Euro-English".

In the first year, "s" will replace the soft "c". Certainly, this will make the sivil servants jump with joy. The hard c" will be dropped in favour of the "k". This should klear up konfursion and keyboards kan have 1 less letter.

There will be growing publik enthusiasm in the sekond year, when the troublesome "ph" will be replaced with "f". This will make words like "fotograf" 20% shorter.

In the 3<sup>rd</sup> year, publik akseptanse of the new spelling kan be ekspekted to reach the stage where more komplikated changes are possible.

Governments will enkorage the removal of double letters, which have always ben a deterrent to akurate speling.

Also, al wil agre that the horrible mes of the silent "e"s in the language is disgraseful, and they should go away.

By the fourth year, peopl wil be reseptiv to steps such as replasing "th" with "z" and "w" with "v".

During ze fifz year, ze unesesary "o" kan be dropd from vords kontaining "ou" and similar changes vud of kors be aplid to ozer kombinations of leters.

After zis fifz yer, ve vil hav a reli sensibl riten styl. Zer vil be no mor trubl or difikultis and evrivun vil find it ezi to understand ech ozer.

Ze drem vil finali kum tru!

And zen ve vil tak over ze world!