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Trust is key to box index

CONTAINER shipping needs to find some new way of establishing market prices; that much seems clear. Ocean carriers, shippers and forwarders all claim to be after greater stability, yet how to achieve that goal is far from obvious.

The big global carriers appear to be united in their opposition to freight derivatives that, according to those developing these new products, provide a hedging tool that could be used to protect against extreme price swings. Lines argue that the index against which these instruments are traded is not an acurate reflection of actual rates. Yet those same lines say that index-linked contracts are the way forward. If that is the case, then price benchmarks are needed.

Some lines are starting to use the indices published by Container Trade Statistics when establishing freight rates with their customers. The Transpacific Stabilization Agreement has an internal price index that members can use as a reference in contract negotiations and may eventually publish the data. Drewry also publishes a freight rate index covering the transpacific trades.

None of these is entirely satisfactory. Shippers are never likely to be enthusiastic about an index produced by container lines. The latter, in turn, have little confidence in the Shanghai Containerised Freight Index on the grounds that the way in which it is compiled is not transparent.

Yet there is clearly a demand for either some robust price indices that are trusted by all stakeholders, or some other acceptable mechanism such as a price band, with maximum and minimum rates, that would provide some flexibility in long-term contracts while eliminating extreme movements.

However, both sides have to agree on the broad principles. Perhaps this is where the global box forum proposed by CMA CGM's Nicolas Sartini could play a vital role.

For such a body to discuss supply and demand probably would be too controversial, given the recent abolition of conferences in Europe and shippers' deep suspicion about any backsliding by lines into joint capacity management. However, co-operation on development of price indices or some other formula that provided universally trusted benchmarks would represent real progress.

Fuel to the flames

AS CRUDE oil prices ratchet up to $120 a barrel the prospect of further rises in bunker costs is hitting ship operators at the worst possible time, when many companies already face cash flow problems.

Heavy fuel oil at the two leading bunkering ports of Rotterdam and Singapore now costs well over $600 per tonne, and is often much higher in other ports. It is set to rise further as higher crude prices feed through.

Prices still have some way to go before matching the record prices briefly touching $728 per tonne in Rotterdam in July 2008, but it is a conceivable scenario. They have already risen higher than most operators expected or budgeted for and are well above the average price last year of about $450 per tonne.

In the current economic climate, ship operators struggle to pass on the full amount to shippers and risk facing strong resistance when they attempt to do so. Container lines' bunker adjustment factors continue to arouse suspicion, even though some lines have become more transparent in how they are calculated. In the dry bulk and tanker trades, high fuel charges affect the overall cost profile of industrial shippers' supply chains but they struggle to pass on such cost increases to consumers who are also under financial pressure.

Even cruise line owners are debating the impact of imposing fuel surcharges on already hard-pressed passengers.

There are few easy options left to cut fuel consumption. With the bunker price meter ticking higher, this problem will only get worse. ■

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Industry Viewpoint

John AC Cartner

How to suppress piracy with law

If an armed guard on a ship kills or injures a pirate, it raises the possibility of prosecution or civil lawsuit. The answer is a simple legislative move from the IMO

TWO untamed elephants are in the room: piracy and liability. Taming liability controls piracy. Here is how. Piracy unites to protect owners in investments; labour in lives; states in trade; and law in civil safety and property security. Piracy goes to our hearts — lives, property, money, the rule of law. The stars are aligned.

I challenge International Maritime Organization secretary-general Efthimios Mitropoulos and all maritime stakeholders to suppress piracy by a simple and inexpensive legislative move.

Liability is the problem. It differs not across states. Ships, masters, officers, ratings, owners and armed guards are private parties. The injuring of an imputed pirate by a private party is unlawful under most flag state laws. One is liable to the state for injury, perhaps not prosecuted then, but liable. The UN Convention on the Law of the Sea does not waive it. Few flag states have active anti-piracy laws. None bars prosecution universally.

Piracy understands force. Thus, armed guards work well. Force suppresses piracy, says the history of three millennia. Indelicate? Abhorrent? Uncivilised? Duty of governments? All yes. Controllable? Yes. Successful? Very. What does this mean? Currently, if we are prudent we should not use superior force from our ships to meet piratical force. Why?

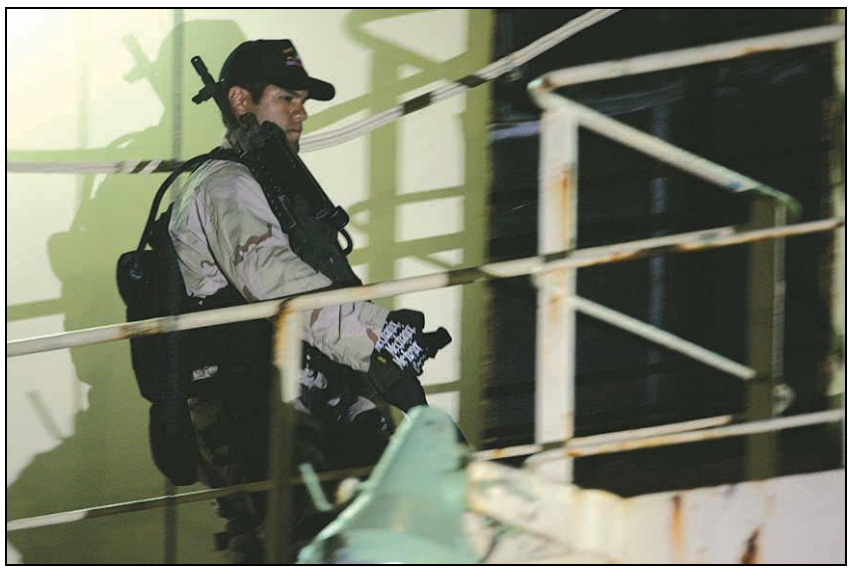
A contract between owner and guards does not exculpate. It is hard to make a prosecutor perform a promise beforehand not to prosecute a crime afterwards. Executing a contract may be evidentiary premeditation. Arming our ships is likely unlicensed privateering, the same as piracy. Without license, anyone may be prosecuted. One cannot arrange to injure a pirate by being a pirate.

Prosecution of armed guards and civil lawsuits may follow unlawful or wrongful injury. The trade is currently faith-based on vague promises, crossed fingers, muttered mantras and bellicose ethic. Your employer cannot shield you from criminal liability.

Masters are in a dilemma: armed guards are carried lawfully; they may not be used lawfully. If used, your duties to keep the people safe and to enforce flag state law are violated. You may be prosecuted. The designated vessel magistrate is unprotected when he protects his vessel and people. Suppress mutiny with force? Yes. Suppress pirates with force? No.

For all parties self-defence is argued at court afterwards. One cannot be excused for a future contemplated crime except by statute. Prosecutors usually go after everyone. Contracting, killing, permitting are the same kettle of fish. One may morally justify the act Sunday; one cannot legally justify on the Friday before.

No party has transactional immunity of the flag sovereign for injuring pirates or is immune from prosecution under the Human Rights Conventions. Our current laws believe that pirates have the right to live. They do not believe a master should be able to perform his magisterial duties against pirates.



Hold your fire: armed guards on ships, and the vessels' masters, need proper legal immunity. *AP*

Immunity is not "permission of the flag state" but bureaucratic mumbling. Without statutory limited transactional immunity, everyone can twist in the cold wind if politically necessary. It is unclear whether domestic anti-piracy statutes, if they exist, help.

Liability unlocks the legal trunk. Pirates endanger lives. Lives and ships endangered are insecure. There is a security code within the Safety of Life at Sea Convention: the International Ship and Port Facility Security Code. Solas protects lives. ISPS secures property. Use them to tame liability and piracy.

The IMO legislates. It is the strong force for law, uniformity and reform. Before 1974 getting even a non-contentious change in Solas was difficult. Tacit acceptance was enabled. After that, necessary changes were rapid. Tacit acceptance binds Solas changes on a state party unless protested immediately, continuously and vigorously. Piracy belongs in Solas. No state party can credibly protest the bettering of Solas, suppression of piracy inexpensively and painlessly, or tinkering with a convention which has worked. Piracy is an invasion of a secure vessel. The plans, pretentions, choreographed drills, your-papers-please boardings, Transportation Worker Identification Credentials and coastguard security theatre do not protect a ship or lives from pirates. The ISPS language does not work here. ISPS, though, is a precedential concept for change in security law.

Armed guards are carried lawfully — but if used, the master's duties to keep people safe and enforce flag state law are violated

The IMO should amend Solas such that (1) on the secretary-general's determination that piracy is a danger in a defined zone that (2) any party involved in injuring an imputed pirate when (3) acting in good faith under (4) specific IMO-expressed rules may neither (5) be criminally prosecuted (6) nor is open to civil lawsuit for the transaction; and (7) arming a vessel and guards (8) solely for the defence against pirates (9) is definitionally not privateering. (10) Violation of the rules brings loss of immunity. There could be a five-year time limit for reconsideration if success is not as anticipated.

Advantages: Solas and ISPS reinforce Unclos; lives are saved. Armed guard teams cost little compared to a warship or capture. Owners hire guards; P&I clubs contemplate premium reductions; people are protected; the private sector deals with it. Limited private transactional immunity is precedented in all states. Co-operation of stakeholders can continue less intensely and less expensively. Non-Government Organisations can help draft rules. If all agree, immunity is universal.

In the infantry, most shots fired suppress but do not injure the enemy. This principle works against piracy. If owners are discreet and if the word goes forth that ships may be armed, pirates are in doubt. Shortly piracy worldwide will be substantially suppressed. Eliminated? No. It cannot be done. We can suppress it quickly wherever it appears, if we have the will to use our tools.

Mr Secretary-General — lead the IMO. The permanent suppression of piracy can be your legacy. ■

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Maritime Blogspot

Surplus ships cast a cloud with no sign of a silver lining

Liz McCarthy

MONITORING the dry bulk market over the past six months has been like watching a car crash in slow motion. You see what is coming, you know how hard it will hit and how awful the aftermath will be, but yet the final impact still draws a small gasp.

Perhaps it can be put down to shipowners' notorious outwards optimism and the belief that an uptick is always just around the corner, but some people still seem surprised to not be commanding high prices for their vessels in the chartering markets.

Despite repeated warnings over the last two years of overcapacity suffocating the markets with excess tonnage, to the point of overkill, owners still think that they will be able to cover all their financial repayments — and make a profit — from newbuildings ordered at expensive contract prices.

It does not take a genius to see, for the short term at least, that this is just not going to happen. The expression "pigs might fly" comes to mind.

The fact is the dry bulk fleet has grown substantially over the last two years. Ships haved poured out of Asian shipyards against lagging demand growth. This has created a fundamental shift in the chartering markets.

For the panamax sector at least, the spot market now appears to represent all the excess tonnage that exists within the fleet. Charterers have taken so many ships on short period charters over the last few months to lock in low freight costs for cargo they have to move, that there is virtually no business left in the spot market.

Whereas a bulk carrier in a strong spot market would be locked in to its next service when it still had two weeks left to go before discharging its current cargo, even large modern economical vessels are now waiting up to a week readily available before finding business. Meanwhile, they are racking up costs that large numbers of shipowners are simply having to swallow.

Some of them have deep pockets, I am sure, but others must be operating on the shipping equivalent of the poverty line.

If companies can survive the market that lies ahead and tread water for the next year or two there at least should be a consolation prize far in the distance, when — fingers crossed — demand growth picks up to meet the growing fleet and charter rates move up to meet financial repayment levels.

The unknown is just how low charter rates might fall and if owners' cash reserves will subsequently dry up. The only certainty is that the black cloud looming over the dry bulk market looks like its here to stay for quite some time. ■

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