

It is well to keep everyone up to date before the full-scale “Silly Season” when most of us take our holidays.

Domestic Happenings

Ian Bouskill, our excellent IMIF Secretary, who has for so long battled against ill health, has had a bad time recently. Present advice from his consultant indicates that it will be some time before he can resume his regular 3-day week at the office. Meanwhile the office will be open on Monday, Wednesday and Thursday though messages can be left of course on Tuesday and Friday.

We wish Ian well meanwhile and look forward to his return.

Until then our full complement will be Jennifer and me, only.

There is much that could be achieved by Ian “working from home” as it would be a massive blow to lose him completely. There is the sad possibility that he may never be able to return full-time so I ask our Members to consider whether they have ideas on a possible replacement part-time of course.

The Dinner

This year our Dinner will be **Tuesday 10 November 2009** (one week later than in previous years and not Wednesday 4 November 2009 as previously advised). It will, again, be at the Radisson SAS Portman Hotel, 22 Portman Square, London W1H 7BG. We look forward once again to a “full house”.

Recent Lunches

We seek always to highlight the main current problems confronting our industries and so the recent topics and speakers have been:

Piracy on 12 May by Spyros Polemis, inter alia, Chairman of The International Chamber of Shipping (hosted by Norton Rose LLP – Gordon Hall).

Issues Facing the Salvage Industry on 9 June by John Noble (hosted at The Baltic by Tsavlis Salvage and Shipping – Andreas Tsavlis).

The Criminalisation of Seafarers on 22 June by Mark Dickinson, General Secretary of Nautilus (hosted by Brit Insurance – Simon Stonehouse).

Reports on each of the above are attached.

The Maritime Industries

As for the general state of affairs of the maritime industries, I shall leave my comments for the moment. Briefly, the industries are in trouble.

Future Lunches/Events We are in the process of arranging lunches for the autumn. Among topics which will be addressed are:

1 Finance

Michael Parker of Citi has agreed to host an IMIF Buffet Luncheon on **Wednesday 21 October 2009**. He will chose the topic and speaker in consultation with IMIF – to be advised shortly.

2 Shipbuilding

The oversupply of shipbuilding capacity worldwide and what is the likely outcome. (NB particularly China and Korea.)

3 Piracy

Although we have had a lunch seminar the piracy/kidnapping saga continues and is apparently getting worse. Have nations really got their act together concerning prevention, protection and, most important, Rules of Engagement and appropriate punishment? P (Muku) Mukundan has said that he will be happy to continue the debate on Piracy first started by Spyros Polemis (as reported elsewhere in these pages).

4 Other Topics

There are plenty more relevant issues and we would welcome views or suggestions.

5 The Dinner

The other firm date as mentioned for the autumn is of course

Tuesday 10 November 2009

As in previous years the invitations will be sent out in September, but member tables can be booked in advance by contacting Jennifer Wybrew-Bond

Jim Davis

REPORTS

IMIF would like to thank Mr James Brewer for kindly agreeing to cover these luncheons and to providing the very professional reporting for which he is justly renowned.

IMIF Buffet Luncheon Tuesday 12 May 2009

Hosted by:	Mr Gordon Hall, Partner, Norton Rose LLP	
Guest Speaker:	Mr Spyros Polemis, Chairman, International Chamber of Shipping	
Subject:	Piracy	

Piracy is proving to be a moving target, and there is consensus that it must be dealt with on an international basis. Mr Spyros Polemis, chairman of the International Chamber of Shipping, advocated a policy of “zero tolerance” towards pirates, but diplomatically would not be drawn on exactly what that might mean in practice. IMIF chairman Jim Davis, agreeing that the United Nations should be taking a lead as opposed to a reliance on initiatives by geographical regions, ventured a partial definition of zero tolerance, which was that “you are going to hurt somebody.”

Mr Polemis set the scene by admitting “it seems that piracy will be with us for some time to come,” and reminded us that we must not forget that seafarers are being attacked in other parts of the world besides the Gulf of Aden. After referring to the capture of two significant ships, the *Sirius Star* and **Maersk Alabama**, off Somalia, he said that the protection of shipping was a clear and legitimate role for governments, and he welcomed the setting up of the UN contact group on Somali piracy, and the almost unprecedented degree of co-operation among naval powers.

The long-term solution, he reiterated, lies with the international community, including taking action to facilitate the arrest and prosecution of those engaged in piracy. The ultimate solution must be the restoration of law and order within Somalia itself. The couple of weeks previous to his talk had seen an escalation, not just off Somalia but also in the Indian Ocean. In this vast area of open sea, there should be more use of patrol aircraft, with the focus on pirate mother ships.

There were steps that shipowners can, and must, take. It was of the utmost importance that all ships should register with the European force Eurnavfor via its website. He had been very surprised to find that only 50% of ships transiting the area did so.

In general, the industry remained opposed to the use of private armed security guards, which would be likely to escalate the danger, but it was concerned for crews, and there should be zero tolerance towards hijackings. Mr Polemis referred to two areas of concern: one that US shipping companies might be prohibited from trading in the area, which made no sense unless the shipowner had alternative means of trading; and that US ships would be required to employ armed guards, which would lead to “an arms race” with merchant ships pitted against the pirates.

Mr Davis outlined the dilemma when he warned that the zero tolerance approach might lead to appearances before the Court of Human Rights in the Hague, but everybody had to acknowledge that the oceans were sacrosanct.

Mr Polemis underlined the difficulty that the navies have of getting a grip on the situation when he pointed out that pirates might commandeer a fishing vessel one day for use as a mother ship, and then return it soon afterwards to innocent fisherfolk. Many fishing boats used the area, and it was hard to tell one from another.

Asked for his opinion about reports that there were organisers or intelligence for the pirates based in London, he replied: “It is not easy to establish the truth.”

Much debate ensued about the role of the London insurance market, where hull and war risk underwriters bear the brunt of piracy claims. One delegate suggested that the P&I clubs were turning their backs on the plight of shipowners and seafarers, but Mr Polemis said that “this is not the impression I have,” and that there was good communication with the clubs.

Just before Jim Davis thanked Mr Polemis for his presentation, and Mr Hall for his hospitality on behalf of Norton Rose, the guest speaker neatly summed up the deliberations:

“The more you think about it, the more you see that this is a matter for governments to address.”

IMIF Buffet Luncheon Tuesday 9 June 2009

Hosted by:	Mr Andreas Tsavlis, Tsavlis Salvage & Shipping
Guest Speaker:	Mr John Noble
Subject:	Issues Facing the Salvage Industry

SALVAGE is hot and dangerous, John Noble reminded his IMIF audience at the start of his talk at the Baltic Exchange. Salvors are obliged to put themselves in harm's way, and by the time Mr Noble had outlined the multiplicity of issues facing the industry, the entire field of operation at shore and at sea, including the political climate, was shown to be hot and dangerous.

Bitterly cold as well as dangerous on many occasions... as Mr Noble recalled, through examples from his extensive attendance at casualties, as one of the world's top salvage and survey experts. During the Braer casualty of 1993, Mr Noble spent three weeks at the top of a cliff off Shetland, and on only one day did the winds dip below Force 8.

These days, there is much more emphasis when a ship is a casualty on environmental considerations. "Get the oil off first" is very often the call to the salvors, without any look at why that may not be a good thing in the circumstances. Mr Noble carried out a study of 162 Lloyd's Open Form cases in 2008. In only one instance was bunker removal required as part of the salvage: the rest of the time it was done to placate the authorities.

Who is in control of the salvage operation? Thirty years ago, the answer was the salvage master, and things usually went much better than today. Does the existing regime adequately reward salvors? That is subject to considerable debate.

The origins of cost are government requirements, where environmental agencies internationally can put a salvor into an invidious position if he is not allowed to do his job. That must put up the costs considerably, said Mr Noble. Environmental costs are outside the control of the salvors. There is a perceived, and maybe actual, mistrust between the salvage industry and its users. One casualty on everyone's mind is the *MSC Napoli*, where costs have risen well beyond \$200m.

Turning to the Lloyd's Open Form, which has been in use for a century, Mr Noble said this was no longer a 'no cure, no pay' facility, with the advent of the Special Compensation P&I Club Clause (Scopic). Is the Lloyd's Open Form becoming the contract of last resort, he asked? When signed, it works extremely well, he believed, but he admitted that the level of awards had caused concern in certain quarters. Is it time for a complete change to the Form?

Mr Noble showed some hair-raising images of salvors at sea, including the makeshift equipment they were sometimes expected to climb. He put up a slide of a salvage man dangling from a helicopter in horrendous conditions and commented: "It goes beyond extreme sports!" People who work in offices and deal with salvage should just have some idea of what they are asking the salvage industry to do, he added.

Question time brought out audience concerns over what were said to be drastic changes in the Lloyd's arbitration system, and debate over the role of underwriters, both in London and Norway.

The exchanges elicited additional concerns for salvors, who it was said could come up against pirates or hostile authorities. In some cases, said Mr Noble, "it is the guy with the machine gun who is in charge."

Thanking Mr Noble and the host for the day Andreas Tsavlis, IMIF chairman Jim Davis re-iterated that salvage was a vital job, taking place amid increasing governmental oversight. The ability of nations to say, "not in my backyard," was a very dangerous thing, those who spoke and doubtless most others present, agreed.

IMIF Buffet Luncheon Monday 22 June 2009

Hosted by:	Mr Simon Stonehouse, Brit Insurance
Guest Speaker:	Mr Mark Dickinson, General Secretary, Nautilus International
Subject:	The Criminalisation of Seafarers

With the release of the *Hebei Spirit* master and chief officer – who suffered 550 days in detention in South Korea "locked up over a situation over which they had no control," as Jim Davis put it – fresh in our minds, this was bound to arouse as much passion as any subject tackled by IMIF. Mark Dickinson, recently inaugurated as leader of one of the few truly international trade unions, Nautilus, called for partnership with shipowners over the issue of criminalisation of seafarers, but equally appealed for a more urgent approach internationally, and lashed out at the "hypocrisy" of some sectors of the industry. He was confident that while his audience at this session of the IMIF comprised those who were seized of the problems, there were others, including the low quality end of the industry, who were much harder to reach.

If we do not act in partnership, he told the interests represented by members of IMIF, the list of cases of unfair treatment is going to get longer and longer. The past 10 years in particular have seen an increasing list of potential offences, many involving imprisonment of seafarers.

Regulators were cracking down, as zero tolerance was demanded by public and politicians over pollution incidents, and this attitude was fed by the media, said Mr Dickinson, while kindly exempting the maritime journalists present from this stricture. There was an ever present desire to find someone to blame, he observed, showing a slide on screen of the master of the steamship *Californian*, who allegedly failed to respond to one of the biggest of all maritime emergencies: the loss of the **Titanic** in 1912.

Mr Dickinson cited a headline from *The Independent* in 1996 describing the *Sea Empress* casualty: “Built in Spain, owned by a Norwegian, registered in Cyprus, managed from Glasgow, chartered by the French, crewed by Russians, flying a Liberian flag, carrying an American cargo, and pouring oil on to the Welsh coast... but who takes the blame?” A complex web of actors was thus involved, but he admitted: “We all share some part of the responsibility for what goes on in some part of our industry.”

He said that in many cases, crew members had no permanent relationship with their ultimate employer, “and have little or no idea of whom they work for.” He strongly criticised what he said was the lack of official inquiries into incidents. “If you have a proper investigation, we feel the pressure to prosecute is reduced.” He saw hypocrisy in that flag states in some cases lacked effective administrative and diplomatic clout. The failure of flag states had forced port states to act, with serious consequences for crew. In several high-profile cases: the *Prestige*, *Nissos Amorgos*, *Tasman Spirit* and *Hebei Spirit*, the flag states failed to act in support of detained seafarers, claimed the Nautilus leader.

The problem was not confined to countries with questionable political and legal systems, he said, citing the plight of Capt Mangouras of the *Prestige* in 2002. It did not matter to the authorities in Spain that he had asked for a place of refuge for his ship and was denied. Investigations should be globally of the standard and approach of the UK’s Marine Accident Investigation Branch.

The *Hebei Spirit* affair demonstrated the urgent need for governments to adopt the Fair Treatment Guidelines of the IMO and International Labour Organisation. The industry needed to mount an effective campaign to ensure the guidelines - which had been “sitting around” since 2006 - were implemented. These set out rights and responsibilities of the various parties following maritime accidents.

Referring to the spate of fines for oily water separator offences, Mr Dickinson warned that cases were not always as clear-cut as they seemed, and might obscure such concerns as the reliability of equipment and its ability to distinguish between particles.

He said that definitions of negligence were becoming increasingly blurred, striking at one of the principles of justice, that of criminal intent. A crime was committed by intent, not by omission.

He wanted to see better legal protection for masters and officers in the exercise of their judgment, free from unfair commercial pressures. Professional sanctions, not criminal sanctions, were the answer to “mere human failings.” Such were applied, for instance, in the aviation or medical professions – he agreed with a member of the audience who contrasted the hero treatment conferred on a pilot who successfully landed his plane on the Hudson River, with the vilification of officers whose actions minimised potential nautical disasters.

Jim Davis forcefully expressed his own views on the move to a blame culture, and the transformation of what used to be a glamorous job into a “pretty dangerous profession.” Now you can be made a criminal for doing your job to the best of your ability. Years ago, the great shipowners were ready to accept responsibility for certain events, but things had become more complex, “and there is no doubt who the victim can be.” In the case of the Hebei Spirit, the jurisdiction was South Korea, a nation which built a large portion of the world fleet. The industry should be making strong points to the chaebol groups which derived benefit from the construction of ships.

On a much-needed positive note, Mr Davis and the gathering expressed warm thanks to Mr Dickinson for his wide-ranging presentation, and to Mr Stonehouse and his colleagues from Brit for their generous hospitality.