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# IMMTA-News

First Issue 2009

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The Newsletter of the International Multimodal Transport Association

## Editorial

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Dear colleagues:

Welcome to the first 2009 issue of your newsletter.

This issue sets out with an article on the *United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea - “The Rotterdam Rules”*. The Convention was adopted by the United Nations General Assembly on 11 December 2008. As agreed by the General Assembly, the Convention will be open for signature at Rotterdam, the Netherlands, following a signing ceremony to be held on 23 September 2009.

Several articles deal with the maritime mode of transport, notably on *Third Global Shipping Summit* in Dalian, *The Shipping Bubble*, *The Global Economic Crisis - Linkages to Shipping*, *Who is the carrier in the carriage of goods by sea?*, and the *UNCTAD Expert Meeting: Maritime Transport and the Climate Challenge*.

We also include a short note on IMMTAs’ support to the *Economic Cooperation Organization workshops on multimodal transport*.

IMMTA members are encouraged to share information of interest to colleagues with us for inclusion in the next newsletter, scheduled for the second half of 2009.

Geneva, April 2009

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## **United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea - “The Rotterdam Rules”**

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The Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea was finally adopted by the United Nations General Assembly on 11 December 2008. As agreed by the General Assembly the Convention will be open for signature at Rotterdam, the Netherlands, following a signing ceremony to be held on 23 September 2009. The General Assembly further recommended that the Convention be known as “The Rotterdam Rules”.

It should be recalled that the text of the Convention had been prepared first within the CMI (Comite Maritime International) and then submitted, in December 2001, to the United Nations Commission on International Trade Law (UNCITRAL). The UNCITRAL Working Group on Transport Law worked on the text over thirteen sessions (of two weeks duration each), from April 2002 to January 2008). The Draft Convention was then submitted to the UNCITRAL Commission for consideration in June/July 2008 and then to the General Assembly for adoption.

Particular features of the Convention include:

- i) the adoption of a totally new approach to risk distribution between carrier and cargo interests with a shift favourable to carriers,
- ii) its wide scope of application and the extension of the maritime liability regime to all multimodal transport contracts involving a sea leg without addressing particular issues arising from modern multimodal transportation,
- iii) exempting a large number of contracts in liner trade (“volume contracts”) from the mandatory scope of application of the Convention allowing extensive derogations from its provisions,
- iv) regulating issues not currently covered by the existing maritime transport conventions such as delivery, right of control, and transfer of rights,
- v) including provisions on electronic communication and electronic substitute to paper documents,
- vi) including optional articles on jurisdiction and arbitration so that ratifying States may choose whether or not they would like to be bound by them.

While the text has been subject of very lengthy and painstaking negotiations and compromises, the outcome is an extremely lengthy and complex instrument (98 articles contained in 18 chapters) entirely different from the existing transport conventions. There is obvious potential for national differences in interpretation of provisions and in many cases lengthy and costly litigation may be required in order to clarify the meaning.

It should also be recalled that a central feature of existing transport conventions has been to restrict freedom of contract in order to: (a) promote uniformity of law of carriage, and (b) protect small parties against unfair standard contract terms. The new Convention, unfortunately, does not seem to have made any attempt at achieving any of these objectives. The wider use of volume contracts together with voluntary provisions on jurisdiction and arbitration will result in a marginal application of the Convention, hampering international uniformity. There is also considerable potential for abuse of “freedom of contract” by parties with stronger bargaining power. Furthermore, the obligations of the shipper which are much more extensive than under the existing transport convention are also mandatory, with no monetary limits of liability.

As far as multimodal transport is concerned, unfortunately it seems highly questionable that the new Convention will in any case improve the current already unsatisfactory situation. On the contrary, it would result in more uncertainty and confusion as to the applicable rules governing multimodal transport contracts.

While the primary objective of the work had been to develop an international legal instrument to promote uniformity of law in the field of sea carriage, it seems unlikely the Convention would achieve this objective.

The Convention requires ratification or accession by 20 States in order to enter into force. It is hoped that countries give serious consideration to implications of the Convention before deciding whether or not to become a party to the Convention.

For further information on the Convention see also IMMTA Newsletters 2008, issues 1 and 2.

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## **IMMTA support to the Economic Cooperation Organization (ECO) workshops on multimodal transport**

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As part of a joint ECO, UNCTAD and IDB (Islamic Development Bank) project on multimodal transport the ECO secretariat has been organizing a series of national workshops in member countries. The project, which is financed by the IDB, aims at promoting multimodal transport in the region and assisting member States in removing the obstacles for the development of multimodal transportation. In this context the IMMTA President has been closely cooperating with the ECO secretariat by delivering lectures, highlighting potential benefits of multimodal transport for the region and assisting in identifying possible obstacles to its development including measures for improvement. Participants of the workshops include representatives from both public and private sector including various segments of transportation industry.

Between July and March 2009 national workshops on multimodal transport have been held in Iran (Tehran), Afghanistan (Kabul), Kazakhstan (Astana), Azerbaijan (Baku), Kyrgyzstan (Bishkek) and Turkey (Ankara).

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*Containerized trade into Kabul*

## Third Global Shipping Summit, Dalian, China

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The 3rd Global Shipping Summit was held from 8 to 9 November 2008 in Dalian, China. The Summit brought together over 500 senior officials from 30 countries. Upon the invitation of the organizers the IMMTA President and some members of the IMMTA Committee participated at the Summit.

The theme of the Summit was “New New Partners” with a particular focus on the global financial crisis and its impact on trade and transport sector. The participants had the opportunity to explore and analyse possible new measures to minimise the impact of the global economic crisis on their relevant industry.

For further information see <http://gss2008.shippingchina.com/en>



## The Shipping Bubble

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The financial crisis initiated with sub prime mortgage in U.S. is now targeting the Maritime Industry World wide. Maritime industry caters to 95% of world trade. The slow down has started.

The Maritime Industry peaked from 2000 till 2008, when freight rates for shipment of Rice cargo from Karachi to West African Ports peaked to 120/USD per metric ton on Free in and Out basis and now have plummeted to new low of USD 60 per metric ton. I recall that in 1980/90 it was hard to fix a ship on same route beyond 26/28 PMT on FIOS basis. Ship-owners made windfall profits and some of them got their vessel free from bank liens within 5 years. The Baltic dry index (BDI) has touched new low of 900 from 11000 mark, thus the party is over. The global financial crisis continuous to bite and stories of ship-owners and operators in financial trouble are being printed world wide.

Ukraine industrial carriers and Britannia Bulk are the first two to admit to go down as casualties with many to follow. Nordic Bank Denmark and Lloyds TSB has demanded USD 158 mill from Britannia bulk operator due to default on loan terms. South Korean Dry Bulk specialist Pak road Corp is on the verge of bankruptcy and have terminated a number of existing contracts. Cosco of China has slashed spending by delaying the project investment. Daebo Shipping Chairman Kim warned of serious defaults by ship-owners .

The bankers, who not long ago were impatient to lend to shipping companies are now most inhospitable, to then about 12 months back. No Ship-owner should remain in illusion of leniency over meeting payments or breaching loan covenants, is likely to be disappointed. Ship-owners have faced similar attitude of Banks in Asian Financial crises, but unlike Asian crises the impact is truly global and the scale of the fall out on the shipping industry will be evident. Rina, the Italian classification Society agrees that crisis will bite deeper but expects significant opportunities as shipyards world wide are idling and it is time to buy for people having liquidity and sustainability.

The Terminal Operators have jacked up tariff by 20% in Gulf Countries, so are dormant charges by terminals in Pakistan, thus not only Carriers are suffering from high handling charges, but it is making our Expo/Impo in-competitive. Ministry of Ports and Shipping in Pakistan must enforce strong regulatory regime on tariff charged by terminal operators, as they differ at all three Pakistani terminals, virtually free for all. The worst sufferer is captive import at the hand of Pakistani terminal operators. The free market economy concept may be revisited as profit for private sector/losses for socialization and tax payers can't be justified.

The Ship-owners in order to mitigate further losses, have started laying up container and bulk carriers world wide. Singapore has dozens of vessel laid up at Anchorage, it reminds me of Piraeus Greece in 80/90 when hundreds of ships were laid up. Neptune Orient Line (NOL), which was established by late Capt. M.J. Saeed a Pakistani, who was declined a job of Manager in then NSC, laid foundation of NOL and took this Shipping Line to its new heights by acquiring assets of American President Lines, still remains the founding father of NOL, well respected and the Govt. Of Singapore has scholarship in its University recognizing his services. NOL, present CEO RON has planned strategy to lay up its vessels by making drastic capacity cuts to bring supply closer into line with demand even the Maersk line admits that some of its vessels are idling. All Major ship-owners are making strategic decisions to restructure their services to face the incoming tropical revolving financial storm.

It is strongly feared that ship-owners will face foreclosures by bank or else be arrested at various Ports for non payment of dues.

Morgan Stanley reports that share prices of Bulk Carriers and Containers do not reflect real asset value. The maximum greed has now turned into maximum fear. The forecast is gloomy as freight rates will continue to fall and charter rates in 2009 will decline by 60% when bench marked with 2008.

### *Tail piece*

Pakistan has only one public sector entity in ship owning and it is imperative to restructure the organization by throwing extra fat and laying up of ten 28 year old vessels with skeleton crew, rather than to incur losses. Decision has to be taken promptly to address the issue. The previous management was naïve to claim having turned around the company, but factually it was only boom in industry, which brought it into green. Since Pakistan is facing serious problem in opening Letter of Credit for Oil, it will be advisable to place our vessel on charters to reliable parties who do not default, as oil being energy will be needed world wide and tanker market has not suffered so badly as bulk and container market. The present management is alive to situation and have placed Tankers on charter.

The cash rich gulf countries are out to exploit the situation by purchasing vessels at half the cost and turning the event to opportunity. Our Public sector entity may also consider this option, but trimming of organization and cutting down establishment expenses is one option. The conservative approach with good future strategy and turning crisis into opportunity be planned by our public sector entity, enable keep afloat, glow and grow.

The Ports have to enforce strict discipline, and tariff regime of all operators be seriously looked into and supervised by strong regulatory regime.

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## The Global Economic Crisis - Linkages to Shipping

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Maritime transport can help in providing a better understanding the wide impact of the global economic crisis on trade and development.<sup>1</sup>

1) **Demand for maritime transport services:** The price of chartering different specialized ships may be seen as an indicator of the demand and supply of transport services for different commodities, and the deployment of ships is an indicator of trade flows on specific routes.

2) **The shipping industry:** Those countries that are home to maritime transport related businesses may be particularly strong affected by the economic crisis because of the double exposure to a decline in trade in goods and in shipping services.

3) **Trade Costs:** These are a consequence of both demand and supply and have the effect of altering trading patterns which will also produce winners and losers.

### 1. Demand for maritime transport services

The price of chartering different specialized ships is an indicator of the demand-supply balance for different shipping services, and the deployment of ships is an indicator of trade flows on specific routes. Below, we present long term trends in the three main shipping sectors: dry bulk, containerized goods, and tankers.

#### *Dry bulk shipping*

The demand for dry bulk carriers can be a good indicator for industrial production and economic growth, as the traded commodities are used as raw materials and energy supply in industrial production. In this context, the “Baltic Exchange Dry Index” (BDI) has recently received a lot of public attention following, inter alia, an article in Slate magazine in 2003, titled “The best economic indicator you’ve never heard of”.<sup>2</sup> The BDI is a composition of four indices covering different vessel sizes of dry bulk ships, i.e. ships that specialize in carrying raw materials such as iron ore, grains and coal.

However, when interpreting the data from the BDI, care has to be taken to also consider the supply side. The BDI as a compendium of charter rates not only reflects changes in *demand* for raw materials and also changes in the *supply* of shipping capacity. This contributes to the fluctuations of the BDI, and thus reduces the usefulness of the BDI as a “leading indicator” for industrial production. In fact, observing the development of the BDI and its increased volatility over recent years (see also Figure 1 below), it is perhaps no longer such an excellent leading indicator as it was during the period from 1985 to 2002. Possible reasons for the increased fluctuations in the BDI include the following:<sup>3</sup>

- There exists a general shipping cycle, which is independent of demand. Shipowners order new vessels when times are good, yet delivery takes place two to three years later. At the end of March 2009, “About 17.3m dwt of bulk carriers, or 9% of the global fleet, is now idle”<sup>4</sup> Even if demand were to pick up now, the surplus of capacity will still prevent charter rates to return to the high levels of 2008. The orderbook for new dry bulk vessels in February 2009 comprised 3,387 vessels representing 70 per cent of the existing fleet in tonnage terms.<sup>5</sup>
- In the longer term, charter rates need to cover average total costs, while in the short term they only need to cover variable costs - and the proportion of the latter has gone down. New technologies and

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<sup>1</sup> See also the two articles on “Declining freight rates: Opportunities and challenges for developing economies” and “Boom and bust in shipping” in UNCTAD *Transport Newsletter*, No. 41, Fourth Quarter 2008.

<sup>2</sup> *The Shipping News*: “The best economic indicator you’ve never heard of.” By Daniel Gross; 24 October 2003. <http://www.slate.com/id/2090303/>.

<sup>3</sup> See also UNCTAD *Transport Newsletter* #4, 2008.

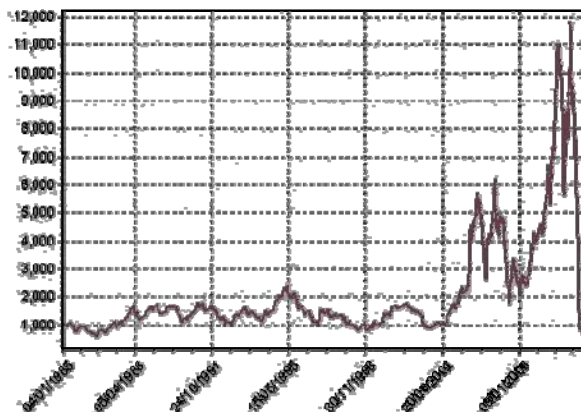
<sup>4</sup> *Lloyds List*, 23 March 2009.

<sup>5</sup> Clarkson Research Services: “Dry Bulk Trade Outlook”, February 2009.

vessels are more expensive, while requiring lower expenditures for fuel or manning. Small variations in demand thus lead to larger variations in prices.

- The BDI appears to be increasingly influenced by market players who are not themselves providers or users of shipping capacity. An indicator of this trend is the growth in forward freight agreements (FFAs). In 2005, the volume of physical trade was twice the (financial) volume of FFAs, while in 2008 the volume of FFAs was 10 per cent above the volume of physical trade.<sup>6</sup>

**Figure 1: Baltic Dry Index (BDI), 4.1.1985 to 25.2.2009**

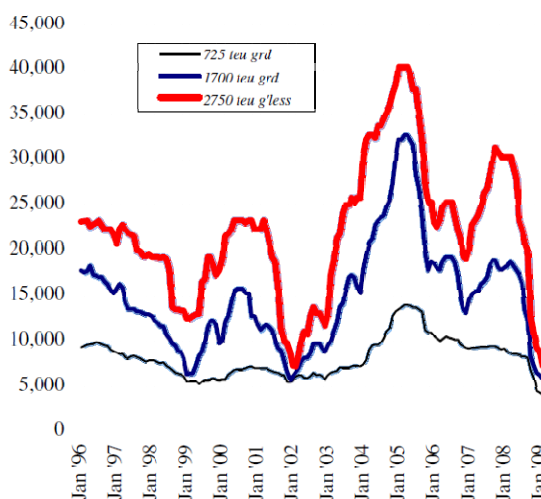


Source: The Baltic Exchange, [www.balticexchange.com](http://www.balticexchange.com), copyright Baltic Exchange 2009.

### Manufactured goods

Manufactured goods are mostly shipped by container carriers or specialized vessels such as car carriers. Similar to the BDI for dry bulk vessels, there exist indices that capture the cost of chartering container ships, e.g. the Hamburg Index (HIX), which quotes containership time-charter rates based on data from some 30 Hamburg-based brokers published by the German Shipbroker Association.<sup>7</sup> According to the HIX, for different container ship types the charter rate declined by between 24 and 75 per cent during the 12 months to February 2009.<sup>8</sup>

**Figure 2: Containership Time Charter Rates (US\$/day)**



Source: Clarkson Research Services: *Container Intelligence Monthly*, March 2009.

Note: “teu” stands for a twenty foot equivalent unit (container); “grd” is a vessel with its own gear (cranes) and g’less are ships that do not carry their own cranes.

<sup>6</sup> Ian Stables, Freight Investors Services, presentation made in Beijing, December 2008, via [www.balticexchange.com](http://www.balticexchange.com).

<sup>7</sup> [www.vhss.de](http://www.vhss.de).

<sup>8</sup> Dynamar: *Dynaliners*, Annex 08A/2009, 25 February 2009.

The charter rates for three representative container ship types up to February 2009 is shown in Figure 2. The costs of chartering a container ship obviously have a bearing on the freight rates charged by shipping companies to shippers for the transport of individual containers. By way of example, in early 2009 some shipping lines are quoting an all-in rate of 250 US\$ for shipments from China to Dubai compared with about 1,000 US\$ per TEU three to four months earlier.<sup>9</sup>

However, just as in dry bulk shipping, the global downturn in container ship charter rates is not only attributable to the downturn in demand, but also to an oversupply of shipping capacity. Today's tonnage on order in the world's ship yards amounts to almost 50 per cent of the existing container carrying capacity, and already today eleven per cent of the container ship fleet is reported as "idle" or "laid up".<sup>10</sup>

Furthermore, freight rates for shipments of containers on specific different routes depend on numerous factors that are not necessarily related to the global economic crisis. Instead, they may be linked to a country's port characteristics, trade imbalances, economies of scale, levels of competition, or even specific issues related to security or pirate threats.

The global economic crisis does have an impact on the deployment of the container vessel fleet, and also on port traffic volumes: Data on the routing and deployment of container ships provides some insights into the impacts of the global economic crisis on different regions. Although the global container ship fleet continues to grow in line with new deliveries, ships are increasingly being withdrawn from service and others are re-deployed on different routes. Comparing fleet deployment in February 2009 with mid 2008 for selected countries in different regions shows how container carrying capacity is being withdrawn: Chile is down 22 per cent, Barbados -33, Angola -13, Tanzania -8, India -2, China -5 and Fiji -3 per cent.<sup>11</sup> Data on port traffic provides additional information on the downturn in containerized trade. Year-on-year data for January 2009 and 2008 port traffic shows the world's largest container port Singapore to be down by 19 per cent; Hong Kong -23 per cent, Long Beach -14 per cent and Le Havre -25 per cent.<sup>12</sup>

### *Crude oil and products*

The charter rates for tankers are at historical low levels too, albeit not from a record boom as had happened in the dry bulk sector. The economic crisis has led to reduced demand for energy, which contrasts with a carrying capacity increase of about 13 per cent forecasted for 2009.<sup>13</sup>

## **2. Supply: The components of the maritime business**

The backbone of global merchandise trade, maritime transport is probably the most globalized industry itself. A typical trade transaction may easily involve providers of goods and services from twenty different countries. As an example: A container, made in China and filled with goods from Nepal, is exported through a port in India; the port is operated by a concessionaire from Dubai, using cranes assembled in Malaysia and software developed in Belgium; the Korean-built container ship is owned by a German investment fund, managed by a company headquartered in Cyprus, operated by a Danish carrier, flagged in Panama, certified by a classification society from the United States and crewed with Philippine nationals, applying global employment conventions from the International Labour Organization; the shipping agent in the port belongs to a Norwegian network while the freight forwarder is Swiss and the ship's Protection and Indemnity Club from the United Kingdom; en route to the Netherlands, the ship fights pirates off the coasts of Somalia, pays canal dues in Egypt, and bunkers fuel in Spain; it implements global IMO rules to avoid an oil spill, e.g. in France.

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<sup>9</sup> Lloyds List, 10 February 2009.

<sup>10</sup> Containerization International On-line, 28 February 2009 estimates 8 percent, while Journal of Commerce 27 February 2009 reports 8.8 per cent; both sources state that the percentages are increasing.

<sup>11</sup> UNCTAD connectivity database, derived from Containerization International On-line.

<sup>12</sup> Containerization International Online, 20 February 2009.

<sup>13</sup> Lloyds List, 24 February 2009.

In order to understand which companies and countries will be mostly affected by the economic crisis, as far as the downturn in demand for shipping services is concerned, we present below in brief overview where some sectors of the industry are located and their global importance as regards market share.

### *Liner fleet*

Together, the 20 leading carriers account for about 70 per cent of the total container capacity deployed (see Table 1). Four of the top 10 carriers are based in Europe - including the three largest companies - and six are based in Asia. Operators tend to charter a large proportion of their vessels, which are often owned by “non-operating” owners. The ownership of containerships is less concentrated than its operation. The three largest owners of container ships are “operating” owners, i.e. carriers, notably Maersk, MSC and Evergreen, followed by two non-operating owners from Germany. The largest non-operating owner currently is C-P Offen, controlling 90 ships with a total capacity of 355,000 TEU in February 2009.<sup>14</sup> In Europe, the ownership and operation of vessels tends to be more split between different companies than in Asia, where companies own a relatively larger proportion of their operated fleet. Among developing economies, the major owners of container ships are based in China, followed by Taiwan (Province of China), Singapore, Republic of Korea, Hong Kong (China), Malaysia, Turkey, United Arab Emirates, and Islamic Republic of Iran.<sup>15</sup>

**Table 1: Twenty-five leading service operators of containerships in January 2009**

Rank	Company	Ships	TEU	Market share TEU	Combined market share TEU	Order book TEU	Order book TEU as per cent of fleet	Order book ships	Average vessel size fleet	Average vessel size order book
1	Maersk Line	440	1772545	12.4%	12.4%	304489	17%	56	4029	5437
2	Mediterranean Shipping Co SA	423	1463162	10.3%	22.7%	490766	34%	47	3459	10442
3	CMA CGM SA	290	883818	6.2%	28.9%	600904	68%	69	3048	8709
4	Evergreen Line	182	630229	4.4%	33.3%	0	0%	0	3463	na
5	Hapag-Lloyd AG	132	496724	3.5%	36.8%	122500	25%	14	3763	8750
6	Cosco Container Lines Ltd	154	491481	3.4%	40.2%	444752	90%	59	3191	7538
7	APL Ltd	129	474453	3.3%	43.5%	132232	28%	17	3678	7778
8	China Shipping Container Lines Co Ltd	119	420562	2.9%	46.5%	167596	40%	23	3534	7287
9	Mitsui OSK Lines Ltd	107	376501	2.6%	49.1%	109410	29%	19	3519	5758
10	Orient Overseas Container Line Ltd	93	365240	2.6%	51.7%	128912	35%	20	3927	6446
11	NYK Line	82	356512	2.5%	54.2%	84600	24%	16	4348	5288
12	Hanjin Shipping Co Ltd	78	350274	2.5%	56.6%	240495	69%	26	4491	9250
13	Kawasaki Kisen Kaisha Ltd	99	310251	2.2%	58.8%	167356	54%	35	3134	4782
14	Yang Ming Marine Transport Corp	84	304564	2.1%	61.0%	178809	59%	29	3626	6166
15	Zim Integrated Shipping Services Ltd	82	251747	1.8%	62.7%	289010	115%	40	3070	7225
16	Hyundai Merchant Marine Co Ltd	58	245323	1.7%	64.4%	34400	14%	4	4230	8600
17	Hamburg Sud.Dampfschiffahrts-Ges.KG	78	239585	1.7%	66.1%	100470	42%	18	3072	5582
18	Pacific International Lines Pte Ltd	80	159337	1.1%	67.2%	69308	43%	22	1992	3150
19	United Arab Shipping Co (SAG)	47	152864	1.1%	68.3%	145728	95%	15	3252	9715
20	Compania Sud Americana de Vapores	57	144481	1.0%	69.3%	131739	91%	21	2535	6273
21	Wan Hai Lines Ltd	72	127545	0.9%	70.2%	51324	40%	18	1771	2851
22	CSAV NORASIA	31	126692	0.9%	71.1%	0	0%	0	4087	na
23	Islamic Republic of Iran Shipping Lines	45	92191	0.6%	71.7%	47080	51%	16	2049	2943
24	MISC Berhad	27	89731	0.6%	72.4%	0	0%	0	3323	na
25	Safmarine Container Lines NV	51	87583	0.6%	73.0%	9634	11%	6	1717	1606
Subtotal Top 25 carriers		3040	10413395	73.0%	73.0%	4051514	39%	590	3425	6867
All others		6384	3853368	27.0%	27.0%	2172727	56%	770	604	2822
<b>World TOTAL</b>		<b>9424</b>	<b>14266763</b>	<b>100.0%</b>	<b>100.0%</b>	<b>6224241</b>	<b>44%</b>	<b>1360</b>	<b>1514</b>	<b>4577</b>

*Source: UNCTAD secretariat, based on Containerisation International On-line.*

<sup>14</sup> Clarkson Research Studies, March 2009.

<sup>15</sup> For detailed data see UNCTAD *Review of Maritime Transport* 2008.

### *Dry bulk fleet*

The control of the world fleet of dry bulk carriers by owners from developing countries includes China with a fleet of 42,973m dwt, followed by Republic of Korea, Hong Kong (China) Taiwan (Province of China), Turkey, India, Singapore, Islamic Republic of Iran, United Arab Emirates, Viet Nam, Croatia and Thailand.<sup>16</sup>

### *Oil tanker fleet*

Owners from China control the largest oil tanker fleet (19,426m dwt), followed by Singapore, Saudi Arabia, Hong Kong (China), Russian Federation, Republic of Korea, India, Malaysia, Islamic Republic of Iran, United Arab Emirates, Taiwan (Province of China), Kuwait, Turkey, Indonesia and Brazil.<sup>17</sup>

### *Ship construction*

The top ten container shipyards are located in Asia, notably in Republic of Korea, Taiwan (Province of China), China, and the Philippines.<sup>18</sup> The world's four largest shipyards are located in the Republic of Korea and almost two thirds of containerships are being built in this country plus around 40 per cent of large tankers. Japan is the largest single builder of bulk carriers, followed by the Republic of Korea, China and Taiwan (Province of China).

### *Classification societies*

The ten largest classification societies are also the ten members of the "International Association of Classification Societies" (IACS). Together, they have a market share of approximately 85%. The companies are from China, France, Germany, Italy, Japan, Norway, Republic of Korea, Russian Federation, United Kingdom, and the United States.<sup>19</sup> A still growing world merchant fleet (even if idle) means more business for classification societies.

### *P&I Clubs*

Most of the major Protection and Indemnity (P&I) clubs are based in the United Kingdom; others are located in Scandinavia, Asia and North America. Together, the major P&I Clubs form the International Group of P&I Clubs which has a market share of around 95 per cent of the world's fleet.<sup>20</sup> Apart from revenue from calls (premiums) P&I Clubs traditionally derived substantial income from investments, and due to worldwide declining share values this revenue stream has dried up. As most P&I Clubs are mutually operated, members (shipowners) will be more likely asked to contribute additional funds.

### *Seafaring*

The by far largest provider of seafarers is the Philippines, with 28 per cent of the world's crew, followed by Russia, Ukraine, China, India, Indonesia and Poland.<sup>21</sup> The Philippines, the world's largest supplier of seafarers, has instituted a weekly reporting system as it tries to gauge the impact of the global economic slump. Around 270,000 Filipino seafarers are deployed on international trading ships and crew lay-offs could have a major impact on the economy. Seafarers accounted for one-fifth of the 16.4bn US\$ in remittances that were sent home to the Philippines by workers overseas last year.<sup>22</sup>

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<sup>16</sup> For detailed data see UNCTAD *Review of Maritime Transport* 2008.

<sup>17</sup> For detailed data see UNCTAD *Review of Maritime Transport* 2008.

<sup>18</sup> Clarkson Research Studies, March 2009.

<sup>19</sup> <http://www.iacs.org.uk>.

<sup>20</sup> <http://www.igpandi.org>.

<sup>21</sup> BIMCO/ISF manpower 2005 update, London.

<sup>22</sup> *Lloyd's List*, 24 February 2009.

## *Ship scrapping*

Effectively, 99% of world ship scrapping (i.e. the recycling of old ships) takes place in Asia. The largest market share is that of Bangladesh, followed by India, China, Pakistan and Turkey.<sup>23</sup> Ship scrapping is one of the few shipping related business that appears to benefit from the economic crisis. More than 7.5m dwt of vessels were scrapped in 2008, compared with 4.8m in 2007 and 7.4m in 2006.<sup>24</sup> “The ship recycling industry is now experiencing its largest growth period in history, after the financial crisis saw rates for many vessel types collapse. With a three-fold increase expected in ship scrapping globally this year, and more than 1 000 ships destined for the breakers’ yards, there are now fears that existing yards cannot handle the workload.”<sup>25</sup> However, scrap yards with large stock piles of steel have also been victim to the downturn in steel prices which have fallen from more 700 US\$ a ton last year to around 200 US\$.

### *Implications for developing countries providing maritime transport related services*

Apart from the South and East Asian countries involved in ship recycling, several developing and transition economies will be severely impacted by the downturn in demand for shipping services. Ship building countries such as Republic of Korea, China and Viet Nam will be abruptly affected by a cancellation of existing orders and the drying up of new orders. Economies providing port services such as China, Hong Kong (China), Malaysia and Singapore, especially for container traffic, will see a substantial reduction in volumes. Countries which generate foreign exchange through the remittances of seafarers such as the Philippines and Ukraine will also suffer.

The strongest impacts will probably be on those economies which also have control over large fleets. The top five ship-owning developing economies are China, Hong Kong (China), Taiwan (Province of China), the Republic of Korea and Singapore. If combining containerised, dry bulk and tanker tonnage these three economies control around 17 per cent of the world’s merchant fleet. In particular the Republic of Korea with its large fleet of dry bulk carriers, container ships and oil tankers plus substantial container traffic volumes and ship building yards is set to be among the countries most severely affected by the economic crisis.

## **3. Trade Costs**

While those who provide shipping and related services suffer from low freight rates, shippers (i.e. importers and exporters) benefit from the reduction of transaction costs. Until mid 2008, high freight rates, a shortage of shipping supply and congestions in ports were increasingly considered as obstacles and bottlenecks to a further growth of trade. Today, transport costs for shippers have been significantly reduced. Currently it costs an exporter or importer around 3 USD to move one ton of dry bulk cargo 1,000 miles in a small “Handymax” vessel - down from 16 USD eight months ago. However, the volatility of transport costs increases the risks of traders and suppliers of transport services, who can do rather little against the fluctuations in freight costs.

There also exist important of economies of scale in international transport - unit costs are much lower on larger vessels, and economies of scale also apply to ports and other transport services and infrastructure. A country that trades more will - *ceteris paribus* - benefit from lower transport costs, and lower transport costs help to enhance the competitiveness of the country’s foreign trade.

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<sup>23</sup> Nikos E Mikelis: *A statistical overview of ship recycling*, IMO, 2007.

<sup>24</sup> *Lloyd’s List*, 11 November 2008.

<sup>25</sup> *Lloyds List*, 26 February 2009.

## Who is the carrier in the carriage of goods by sea?

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The definition and the identification of the carrier of goods by sea do not cease to be one of the central problems in the cargo claims. William TETLEY mentions accurately in his last edition of *Marine Cargo Claims*, “who is the carrier is the first major problem facing the cargo claimant, the ship, the shipowner and the various charterers” .

This major problem of the carriage of goods by sea, or more exactly the research of appropriate and viable answers to it, constituted the subject of the author’s PhD thesis.

The carrier of goods by sea is commonly held to be the one who contracts in this capacity (called “contractual carrier”), but it may also be the one who actually execute the carriage (“actual carrier” or “real carrier”) since, even when he is sued in tort, the legal regime of carriage of goods by sea is applied to him by the force of the law (he is then a sort of “legal” carrier). The carrier may then be a shipowner or even sometimes a ship itself (when sued in rem), and this happens particularly when the contractual carrier is not duly identified in the bill of lading.

While the concept of contractual carrier is predominant in French law, in English law, the maritime carrier is still traditionally understood first of all as a shipowner.

The carriage by sea naturally involves a lot of intermediaries and different annexed contractual agreements: charterers and sub-charterers, NVOCC, freight forwarders, commissionaires de transport, different sub-contractors... There are therefore a lot of persons “eligible” to the carrier position or, at least, a lot of carriage operators being possible to be confused with the maritime carrier.

The risk of the confusion is usually amplified by legal particularities inherent to each national system. For example, whether the freight forwarder is an agent, commissionaire (as per French law) or a principal contractor will depend not only on the facts of each case but also on the law in the particular jurisdiction in question.

The person who is treated as a carrier in English court may be treated as a commissionaire de transport (legal figure peculiar to French and derivate from French legal systems) in France if he has acted in his own name but for the purpose of another. On the other hand, the freight forwarder, subject to agency law in England, will be treated either as agent (mandataire) or as commissionaire if the case is submitted to the French court.

The existence of these national and even international particularities favours a forum shopping attitude which is already largely adopted by the maritime lawyers in this field.

The UNCITRAL convention on contracts for the international carriage of goods wholly or partly by sea (adopted on December 2008) takes into account the world wild practice of sub-contracting in the carriage of goods. According to this text, a contractual carrier is subject to a joint and several liability together with his sub-carriers and other sub-contractors called performing parties.

The UNCITRAL convention mainly applying to the contract of carriage in liner transportation except to the charter parties and to the contracts for the use of a ship or any space thereon, the inclusion of the volume contract to its scope of application was a real challenge during the work of the WG III. The UNCITRAL convention being mandatory in its majority, a possibility to depart from some of its provisions was granted to the volume contracts as some sort of compromise.

The Bill of lading and other carriage documents are supposed to make it clear who is the carrier. But rather curiously the confusion about the identity of the carrier is often caused by these documents. The glance of bill of lading usually contains a lot of signatures (as master for, as agent for, as carrier) or marks and stamps that are not always easy to elucidate. Moreover, the signatures do often contradict what is written on the heading of the transport document. The glance of the document is, at its turn, usually contradicted by the identity of carrier clauses or demise clauses drafted on the back of the Bill of lading.

The French judges usually do not consider the identity of carrier clause as a valid one for the purpose of identifying the carrier. Although the English courts have had adopted an opposite posi-

tion, the analyse of some recent cases (e.g., The Starsin case) shows that in the case of contradiction between the clauses on the front and the reverse of the Bill of Lading, those printed on the front prevail.

This attitude is in accordance with the credit practice of the financial institutions. The banks do not in practice examine the contents of the terms and conditions of carriage on the reverse of a bill of lading. The opposite solution would create an unacceptable trap to allow the detailed conditions on the back of a bill of lading to prevail over an unequivocal statement of the identity of the carrier on the face of the bill (of course, in the case when it is unequivocal).

The UNCITRAL convention 2008 lays down some set of rules that permit to identify the carrier in the case when the transport document terms fail to do it. It reiterates the principle putting the registered shipowner in the position of a presumed carrier unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. But the both may rebut the presumption of being the carrier by identifying the carrier and indicating its address.

The difficulty that the cargo owner may be confronted to at this stand is that the registered ship owner can be the insolvent subsidiary of another company (mother company). The practice of single ship insolvent subsidiaries is well known in maritime trade.

The French courts are known to be more favourable (while this tendency currently goes down) than the English ones to the demands of the claimants willing to pierce the corporate veil and to prove that the prosperous mother company of the group is the true shipowner rather than its single ship affiliate (especially in case of single ship companies). The fictivity theory commonly used in France is not welcomed by the English courts applying instead some other available legal tools.

The action in rem and saisie conservatoire (used to enforce a maritime lien (or privilege) for cargo damage) are the powerful “alternative” means of pressure at cargo owner disposal when he does not know the name of the maritime carrier and do not want to waste his time on it. The arrest of ship Convention (May 1952 as well as the new one adopted on March 1999 but which is not still in force) permits to arrest the ship for any agreement relating to the carriage of goods in any ship whether by charterparty or otherwise. So, this may be a sort of “alternative” mean of pressure by a cargo owner to obtain the indemnity even though he does not know who really was the maritime carrier!

The defence of the outhor’s PhD thesis “DEFINITION AND IDENTITY OF THE CARRIER OF GOODS BY SEA” took place on November 2008 and this work will be soon published in French by PUAM (Presses Universitaires d’Aix-Marseille) [www.puam.univ-cezanne.fr/indexcontact.php](http://www.puam.univ-cezanne.fr/indexcontact.php). The present work not only recapitulates the practice and the legal solutions of French and English courts in the maritime carriage context, but it also aims to provide the viable answers to the cargo owners when they are confronted with the question “whom to sue”.

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## UNCTAD Expert Meeting: Maritime Transport and the Climate Challenge

*UNCTAD Multi-year Expert Meeting on Transport and Trade Facilitation: Maritime Transport and the Climate Change Challenge, 16-18 February 2009, Geneva.*

About 180 delegates from 60 countries, 20 organizations (UN agencies, intergovernmental and non-governmental) and representatives from the international shipping and port industries participated in UNCTAD's Multiyear Expert Meeting on Transport and Trade Facilitation: Maritime Transport and the Climate Change Challenge, held on 16-18 February 2009 in Geneva. The three-day meeting offered experts from a broad range of backgrounds a unique platform for fruitful and substantive debate on the potential implications of the climate change challenge for the maritime industry. Discussions at the meeting focused both on GHG emissions and climate change mitigation options, as well as on the potential impacts of climate change factors on maritime transport supply-chains and their broader economic, social and developmental implications, which are yet to be better understood and adequately addressed.

Participants commended UNCTAD on the timeliness of the meeting and for the quality of panellists and the technical level of the expert discussions, which helped gain a better understanding of the various maritime industry approaches to mitigation, the evolving regulatory and institutional framework dealing with GHG emissions from the international maritime sector and the extent of potential climate change impacts on maritime transport infrastructure, in particular in coastal zones and low-lying areas. Experts highlighted the urgent need to reach agreement in the ongoing negotiations towards a regulatory regime for GHG emissions from international shipping. At the same time, experts noted with great concern that so far, insufficient attention had been paid to the potential impacts and implications of climate change for transportation systems, and in particular for ports - key nodes in the supply-chain, and vital for global trade. In this context, the central role of technology and finance was highlighted, as well as the need for international cooperation between scientists and engineers, industry, international organizations and policy makers in relation to the preparation and design of adequate adaptation measures.

Key issues raised at the meeting are highlighted in the extract from the Chair's conclusions below:

[...] "(a) The available scientific evidence suggested that growing concentrations of GHG in the atmosphere had already resulted in significant climatic changes, which were predicted to increase in the future. The scale of the global challenge was enormous and, as climate change accelerated, there was an increasingly urgent need for action;

(b) Although predictions based on current trends already suggested an enormous challenge, it must be stressed that there was an inherent degree of uncertainty associated with those predictions. Natural systems were complex and non-linear, and there was a very real risk that growing GHG concentrations could trigger various feedback mechanisms that would drive climatic changes and their consequences to levels that were extremely difficult to manage. From a risk-management perspective, it would be unwise to wait for perfect scientific predictions concerning the response of the



non-linear natural system before taking action. In view of the potential very substantial monetary and non-monetary costs of climatic change, particularly the very worrisome consequences of “tipping points”/abrupt climatic changes, inaction and business-as-usual approaches were not viable options. Dealing with the climate change challenge was a priority, which should not be undermined by other concerns, including the current global economic and financial constraints;

(c) Time-frame was a real concern. Current trends in terms of energy consumption and carbon path suggested that if no action were taken within the following two years, including relevant investment decisions which would determine the type of technologies that would be locked in, the world would forever miss the opportunity to stabilize emissions at “manageable” levels along either the 450 ppm or the 550 ppm CO<sub>2</sub> equivalent scenarios. It was crucial that the world be informed very soon of which scenario would be realistically achievable. This information was of the essence for adaptation planning;

(d) Despite the current unfavourable economic conditions, projected growth in international trade suggested that GHG emissions from shipping would continue to increase, unless effective regulatory, technical and operational measures were agreed and implemented without delay. Thus, there remained an urgent need to address GHG emissions from the maritime transport sector and to step up mitigation efforts. In view of the global dimension of international maritime transport and the climate change challenge, a global and concerted solution was urgently required. To this end, negotiations towards regulation of CO<sub>2</sub> emissions from international shipping should be pursued with all due speed;

(e) Various technical, operational and market-based mitigation measures were currently under consideration under the auspices of MEPC at IMO. While the reduction potential and the effectiveness of each measure were yet to be fully established, there remained a need to improve the understanding of the respective merits of different options and to assess the potential implications of the proposed mitigation measures for global trade and market distortions. UNCTAD was encouraged to make use of its expertise and conduct relevant work in this area, especially regarding the trade and development of developing countries. There was also a need to ascertain the added value of these proposals in terms of energy efficiency to be achieved by the world fleet and their impacts on international shipping;

(f) The meeting was an eye-opener in that it helped raise awareness about the importance of climate change impacts and adaptation in relation to maritime transport systems. While international maritime transport was responsible for around 3 per cent of global CO<sub>2</sub> emissions from fuel combustion, it was important to note that more than 80 per cent of global trade (by volume) was carried by sea, from port to port. Given the potential impacts and implications of climate change for transportation systems, and in particular for ports – key nodes in the supply-chain, and vital for global trade – maritime transport should be seen much less as a culprit than as a victim. Thus, increased focus on responding to the challenge was important for the long-term prospects of the maritime transport sector and, more generally, global trade. Planning for the already-predicted impacts should be pursued without delay;

(g) Further studies were required to improve the understanding of potential climate change impacts for the maritime transport sector and the hinterland. For ports and transport infrastructure in coastal zones, especially in developing countries, appropriately funded, well-targeted vulnerability studies based on adequate data – as well as better data and dissemination of existing information – were required to assess potential climate change impacts and to develop appropriate adaptation responses;

(h) Studies on the vulnerability of the maritime industry to the impacts of climate change would strongly benefit from the availability of information on climate variability and change both at the global and regional scales. Efforts to develop a system to provide such information should be encouraged and supported;

(i) Scientific research based upon accurate and relevant data was essential for better predictions of climatic impacts on maritime transport and coastal infrastructure, especially in more vulnerable

regions such as SIDS and low-lying areas. In this respect, there was an important need for cooperation among scientists and engineers, industry, international organizations and policymakers to ensure that up-to-date relevant information on climate change impacts and adaptation measures was available, widely disseminated and taken into account by policymakers, transportation planners and development strategists;

(j) Further awareness-raising, knowledge sharing, education and information dissemination was needed. The intention to pursue the possibility of including a compulsory subject on climate change in the undergraduate curriculum at the Cass Business School of City University, London – as well as a series of lectures for postgraduate students – was a step in this direction. As noted by experts, other approaches in this respect could include capacity-building and technical assistance initiatives, especially with a view to helping developing countries and the most vulnerable gain an improved understanding of the climate change challenge from a maritime transport perspective to ensure that they were better prepared to cope with its various effects;

(k) Assessing the costs of climate change impacts on ports and, more generally, supply chains, was seen as important. Understanding the implications for trade and development especially for developing countries needed to be enhanced and relevant studies should be carried out;

(l) Climate change mitigation in maritime transport and the need to adapt to climate change impacts posed a particular challenge for geographically disadvantaged landlocked countries with significant population, especially for their already-volatile trade and development prospects. In that context, further attention should be focused on the impact of potential mitigation measures and adaptation requirements for the trade and development prospects of landlocked developing countries, as well as LDCs. In that context, financial and technical assistance, as well as capacity-building, were important;

(m) Adequate funding was paramount for successful climate action in maritime transport and the wider supply chain, in particular for adaptation purposes. In that context, it was important to explore ways in which financial resources could be generated as part of mitigation efforts in relation to maritime transport and ensure that any proceeds were reinvested within the industry for climate change action, in particular for the purposes of effective adaptation, especially in developing countries;

(n) Taking advantage of existing technology and development of new technologies would go a long way in helping address the climate change challenge in maritime transport. For developing countries, being able to access and benefit from such technologies and advances would be crucial;

(o) The international shipping and port industries were already active in addressing the climate change challenge and were committed to stepping up their efforts to ensure that broader climate change implications for maritime transport were taken into account. In that respect, indications by representatives of the global port industry of their willingness to explore the possibility of including considerations on impacts and adaptation in work under the World Ports Climate Initiative constituted an important step in the right direction;

(p) It was felt that it would be useful to preserve some continuity to these deliberations and plan for a follow-up meeting in a year's time to assess progress with respect to the key issues raised and take stock of achievements made, as well as reflect on potential next steps.”

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*Summary can be accessed and downloaded at [www.unctad.org/Templates/meeting.asp?intItemID=1942&lang=1&m=15862&info=outcome](http://www.unctad.org/Templates/meeting.asp?intItemID=1942&lang=1&m=15862&info=outcome).*

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