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Unwarranted largesse

THE French language employs the words "le marché libre" where English speakers talk of a free market, but somehow something gets lost in translation.

We do not yet know the outcome of CMA CGM's request that sovereign wealth fund Fonds Stratégique d'Investissement consider making an investment in the world's number three boxship operator, but for the health of competition in the sector as a whole, it is devoutly to be wished that the proposal is politely declined.

Acceptance runs the risk of reversion to the bad old days of national champions, when states "picked winners", as the saying went, invariably with deleterious results for the public purse.

This was the kind of thinking that typified the bad old days of indicative planning under the communist-supported administration of François Mitterrand between 1981 and its abrupt U-turn two years later.

It is not the sort of conduct that should be countenanced by an ostensibly centre-right politician such as Nicolas Sarkozy, who was touted on his election in 2007 as the French Margaret Thatcher.

But then, capitalism on the other side of the Channel has always had a dirigiste colouration, with ready intervention in the private sector where this is perceived to be in the national interest.

As leading shipping industry figures have warned, the coming period is likely to see countries across Europe shrinking from seeing through the creative destruction that is vital for the health of our economic system, and instead propping up the local shipping giants for essentially protectionist reasons.

This is all very well for those on the receiving end of the largesse, but as unfair as it is possible to get for

those with no alternative but to secure their financing through conventional means. It is a subsidy by the back door and, as such, the implications cannot but be retrograde.

The UK has survived without even a half-share in a major boxship operator since P&O was swallowed up by AP Moller-Maersk, and is not noticeably the worse off for it. France Inc should look to this example and draw the appropriate conclusions.

Yemen on the brink

WE CAN only commiserate with our colleagues in the air cargo business.

The discovery last week of explosives-packed printer cartridges on two consignments from Yemen will inevitably see air cargo operators' business subject to the kind of scrutiny to which shipping was subject after September 11.

Rightly or wrongly, the perception will be that existing mechanisms have been found wanting, and there will be calls for 100% scanning, irrespective of the viability of any such proposal or the impact it will

have on world trade, particularly in the type of goods for which carriage by air is usually preferred to carriage by sea.

Shipping, of course, knows to its cost that Yemen is a dangerous part of the world. It was there in October 2002 that a suicide attacker rammed a small boat into a very large crude carrier laden with 400,000 barrels of crude. The effects could have been catastrophic, but fortunately were merely disastrous instead.

Maritime security experts believe that Yemeni nationals participate in many of the piracy incidents usually attributed to Somalis. Some analysts raise a nightmare scenario under which Yemen joins Somalia on the list of failed states, allowing pirates complete freedom of operation on both coasts of the Gulf of Aden.

The track record of western intervention in Middle East countries is, of course, hardly felicitous. But this is a bullet that might have to be bitten if untrammelled anarchy is to be avoided in this key waterway. Finding a permanent solution for both Yemen and Somalia is becoming increasingly urgent. ■

Industry Viewpoint



JOHN A C CARTNER

The unresolved tension between a master and a rig manager, between legal and commercial considerations, is often the key to why accidents happen

BENEATH the Deepwater Horizon hearings lies how the master of the rig performed. If the US Coast Guard sees failure, action against his US certificate and possible criminal charges may result.

The master's certificate was issued by the USCG and thence by comity from the Marshall Islands, the flag state. Therefore, he had the warrant of the flag state to enforce its laws on the Deepwater Horizon. His original certificate is governed by US law.

Let us look at mobile offshore drilling units and dynamically positioned vessels, and ask: who is in charge in the various modes of operation of either — the master or the rig manager? The Marshall Islands has said a scrivener's error in its records led to the Deepwater Horizon being listed as a MODU rather than a DPV. Is that meaningful? Right now, it is hard to say.

However, a MODU is self-propelled and a DPV is not. The master had the superior qualifications for a self-propelled vessel. It remains to be seen how the USCG will interpret this. My conjecture is that there will be little difference, even with the confusion engendered by a regulation that attempts to equate the master with the "person in charge".

The tension is obvious. The master's duties are to protect the safety of the MODU as a vessel, all the people aboard, the equipment and the mission as defined by the charter, the environment and in the orders of the chartering owner.

The rig manager's duties in their contract are to respond to the charterer's instructions. Typically, this means the minimisation of time on station and maximisation of productivity.

The oil patch custom is to marginalise the master. The regulations require one. There is one. Stand aside, Captain, while the real men — drillers — take over. The USCG is likely to take a different position. The master has duties at law and if they are not carried out, he is liable. The rig manager is irrelevant to the USCG by those lights. He probably should be.

Oil and profit are why oil companies are in business. Profit usually prevails; other considerations are often secondary. Yes, laws and regulations must be complied with, but oil, not law or regulation, is the business.

Rigs were designed for oil — it is the only reason for their existence. Hence, the oil patch thinking is that the master may be required by law to be on the rig as window dressing, but the person in charge is the rig manager. Thus, a rig manager is a revenue creature, while the master is a mandated cost.

But the master remains a creature of law. His duties are well defined. He has the warrant and authority of the flag state to enforce its laws. He, and only he, is in charge and command.

Oil is fine. Protecting the rig, lives and the environment are the master's duties beyond the mission as defined by the charterer's interpretations. Oil is

Ignoring the law is a dangerous business



Deepwater Horizon fallout: the oil industry has yet to grasp questions of responsibility. Bloomberg

superseded by safety. This thinking prevails whether the rig is self-propelled or not.

Who is correct? Each might be, but both can never be. By analogy, a research vessel has a master with his duties and it has a chief scientist. The chief scientist knows the mission; the ship is a platform. He knows that the master is the flag state magistrate and that the science cannot progress without the master's co-operation.

The chief scientist is analogous to the time or voyage charterer's agent. He can direct the master to go or stay while mission work goes on under the charter, but the work must not encroach on the master's duties. The master may be directed to go elsewhere and he complies if it is within the scope of his charter without violating his duties.

The rig manager here is no different to

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the scientist. He has a group of drilling experts. He is the time or voyage charterer's agent. He has equipment. For the rig, he should defer to the master. For the mission, the master is guided by the rig manager's wishes as the time or voyage charterer — if those directions can be done within the master's five duties in a lawful manner.

Thus, whether MODU or DPV, drilling or manoeuvring, fixed to the ground by a string or not, at anchor or under way, on station or off, powered or towed — at any time the rig is required to have a master, he prevails.

One would also assume the law of towing governs in the case of a DPV. However, if the master has a certificate for a MODU — a more complex vessel — he should be held to the standard of that certificate implying greater knowledge.

More importantly, the rig manager has no warrant; he is a hired hand and is as a supercargo or other supernumerary or shoreside agent aboard. His powers are contractual between him and the charterer. The master's powers and duties and liabilities are legal and between him and the owner.

It seems that neither commenting regulators nor the oil men fully comprehend the arrangement. ■

Maritime Blogspot

Well-drilled procedures are the way to reduce risk

IN FEBRUARY, I spoke about the purposes that led to the founding of the North American Marine Environment Protection Association. It is now three years since we were organised, in October, 2007.

A lot has happened since February. In my remarks at that time, I called for a partnership between industry, local and national governments, environmental organisations and concerned individuals, acting together as preventers and responders.

I also commented on the importance of the period of investigation and remediation, after an environmental incident.

Recently, BP chief executive Bob Dudley announced that "the sole criterion for performance reward... in the fourth quarter of 2010 will be performance in safety, silent running and operational risk management — and exhibiting and reinforcing the right behaviours consistent with these goals".

He added that fourth-quarter performance would be measured "solely according to each business' progress in reducing operational risks and achieving excellent safety and compliance standards.

Mr Dudley concluded with the observation that "we are taking this step in order to be absolutely clear that safety, compliance and operational risk management is BP's number one priority, well ahead of all other priorities."

In my presentation, I observed: "Through organisations like the American Petroleum Institute, and more recently Namepa, the somewhat insular world of our technical bodies and entities, including classification societies, is being increasingly integrated in the entire concept of marine environmental protection."

We must reaffirm that there is no substitute for drills. I am speaking not of drilling equipment or drilling rigs, but of exercises aimed at developing preparedness and teamwork before the incident occurs.

Much of what we are doing, and planning, should be credited to the establishment of new systems of national security preparation after September 11.

The importance of the US Coast Guard, and its new organisational framework, has required that not only the USCG and the National Oceanic and Atmospheric Administration, but also its private sector partners, establish and evaluate their objectives and goals, based on field exercises and test results.

This requires tracking and analysis of real-world as well as hypothetical events, and the participation of government and private entities in planning. ■

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