

Lloyd's List, 69-77 Paul Street, London, EC2A 4LQ

## Recruitment cap blunder

THE UK government's cap on the recruitment of skilled workers from outside the European Union artificially restricts the ability of shipping and other industries to hire the talented people they need to make businesses grow.

We believe such a policy is bad for the economy and blatantly panders to racist sentiment, and should be scrapped immediately.

Calls for the outright abolition of immigration controls are the exclusive province of smallish coteries of bolder thinkers, who contend the free movement of

people is logically a piece with the free movement of goods and the free movement of capital.

There is, to our mind, a lot to be said for such a stance on principle alone.

But principle holds little appeal to mainstream politicians, who must go about the grubby business of winning elections. Many voters unfortunately are outright racists; many who are not are nevertheless in competition with new arrivals for jobs and housing.

Pragmatism therefore commands more or less elaborate mechanisms to dictate who does and who does not qualify for residence rights.

During its last term in office, Labour introduced a points-based system for immigrants from outside the EU. Since taking over the reins, the coalition has tightened things up with a cap on skilled workers, pending the introduction of a new permanent limit next year.

At the time of the announcement, the nay-sayers concentrated on the implications for the City. Britain's economy is dependent on financial services, and the Square Mile should not find itself unable to take on the best financial brain power.

Less attention was paid to British shipping, which

has long struggled to fill shore-based roles as the pool of Britons with maritime skills continues to diminish.

As recruitment consultants Faststream point out, the impact of the cap is already apparent just a few months after it came in.

The irony is that the move has done little to stem immigration levels overall, as any number of EU nationals snap up jobs at Pret a Manger and Starbucks. The short-sighted exclusion of maritime professionals is a gift to Britain's competitors.

## Cash is crucial

ONE of the golden rules of business is that a company may record a loss year after year and still survive, but if its runs out of cash it is dead.

Never has this been proved to be so true than in the last 18 months, as container shipping lines collectively recorded the mother of all losses.

Perhaps someone should have gone out of business. That is certainly the view held in many boardrooms.

That particular opportunity has passed, and with the rebound in the carrier trades that has occurred since last autumn, carriers have been able to rebuild cash reserves in the event of another downturn — in whatever form it comes.

Yesterday's admission from Israel's Zim Line about the process of its own rescue from the brink of bankruptcy showed how crucial majority owner Israel Corp's cash reserves were in keeping the business afloat while a restructuring plan was drawn up.

Zim is not alone — the well-publicised travails of Hapag-Lloyd's restructuring took such a long and winding road because it too had the backing of a large corporation that was able to furnish it with cash until new investment and equity could bolster the carrier's own accounts.

A similar case could also be said for other lines: the massive losses recorded by Maersk Line were cushioned by profits from AP Moller-Maersk's wider interests is just one example. Being part of larger, diversified corporation has been many a box carrier's safety net, which is what makes the continuing saga of CMA CGM's hunt for new investment so interesting, because it stands alone. ■

### Industry Viewpoint



JOHN CARTNER

# Piracy charge did not fit the facts

**The dismissal of piracy charges against six Somalis has sparked outrage in some circles, but the judge was simply following the law**

ON August 17 charges of piracy against six Somalis were dismissed in the US. The cry is universal outrage. They are pirates. How can this be? The sky is falling. The four horsemen are coming over the horizon.

However, Judge Jackson was exactly right, despite academic twittering and emotional handwringing. My good friend Dennis Bryant, an American observer, reminds us that this was a very narrow ruling on a very narrow question. The world will not end.

So avast chattering. Listen up. Jackson ruled neither knowing nor caring about the claue. He and the case were governed by law. He looked at the facts and the law of piracy. He protected the rights of all parties. He found no piracy by law.

The facts: The defendants, in a small craft in the Gulf of Aden, were approached by a US warship which took small arms fire and returned it with naval gunfire, killing one passenger, burning the craft and observing an AK-47 in it. The survivors were captured and held; they had not attempted to board the warship.

The defence asked for summary judgment on the law as misapplied. The law arose in 1819: "[W]hoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought to or found in the United States, shall be imprisoned for life." Read that three times putting your finger under the words and moving your lips. The congress that wrote the law is the problem: not the ruling.

The law: congress is empowered to "define and punish piracies and felonies on the high seas"; international law — formerly the law of nations — is law separate from domestic US law and is customary law; in civil cases when customary international law is invoked "courts must proceed with extraordinary care and constraint" because there is no definitive source of that law; nations abide by its principles from legal obligation and mutual concern; there is an hierarchy of factors in interpreting customary international law; past decisions must be unambiguous and clear.

The criminal law is strongly protective: a defendant has benefit of due process; there are no snap judgments; a defendant cannot be criminally liable if he did not understand what acts were proscribed; a law cannot be enforced in court if it is so vague ordinary people must guess at its meaning; criminal statutes must be read and construed strictly; no novel or creative reading of a criminal statute is allowed as the government would have it.

A statute is interpreted as at the time enacted — 1819, not 2010. The US relies on prior law to refine and interpret statutes. There is one case in US law which has looked directly at the definition of piracy. It was appealed. The Supreme Court in 1820 defined piracy simply: "robbery" or "forcible depredation" at sea.

That is piracy in domestic law or in the law of nations. Subsequent law has agreed. Bales of hay have been made of "piracy as defined by the law of nations"



An injured Somali suspected of being a pirate is escorted into court.

AP Photo/Steve Helber

by the chattering class. No deal. The government tried to use current definitions. It failed.

Even if it had not, the court found the current definition of piracy is unsettled law. Therefore Judge Jackson — as required by law — relied on the law of 1820 and applied it to the charge of piracy.

The government wanted to expand piracy to include forcible depredation as any act under the piracy statute, not simply robbery at sea. It provided no criminal cases for that.

In civil cases "piratical acts" require intent to plunder. However, there is no civil offence for attempted or intended piratical acts. Other law the government supplied was unclear. Therefore, the court concluded the government's attempt was not persuasive. Further, its definition of "depredation" requiring assault or aggressions was not in the law dictionary. The court rejected the concept that any act at all was forcible depredation.

Another statute says it is an offence to attack a vessel with the intent to plunder. The case law says however, that just because attempt to plunder is law, the

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piracy statute is not necessarily the same thing. The government charged the defendants with offences under that law as well.

The Congress is presumed to know what the law is at the time it passes a statute. This implies in law that two statutes in the same code should not be read as to make superfluous another.

The upshot here: if you want to be a pirate, you must rob or be forcible and depraved aboard. Just because one is in a small craft in the Gulf of Aden wearing a pirate suit and looking like a pirate does not make one a pirate.

The court further looked at the provocation by the defendants. It simply did not merit life in prison for piracy when any provocation will do — even a slingshot or, one would think, a spat wad of gum.

So what do we have? A judge followed the law. A charge did not fit the facts. Each party was protected. A fair and impartial hearing was held. The rule of law works. These men could not be charged with piracy because as a matter of law they committed no piracy.

Hats off. Judge Jackson has furthered the rule of law. ■

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### Maritime Blogspot

## Look beyond the wealthy owners to find real influence

WHEN it comes to the who's who of the shipping industry, it is all too easy to draw on the list of the top 100 wealthy shipowners and industry influencers — the kind of characters who often sit comfortably on a family treasure chest or shape industry through their corporate wealth.

That is in some ways is the easiest of lists to compile, and it has its place in the pages of magazines and newspapers, as these folk have the capacity to help determine the markets if they choose.

But there are another couple of lists on their way.

There's the Lloyd's List top 100 influencers, made up of the top names from around the shipping industry — the people who are shaping today's landscape. And there is also a new list altogether, in the process of being developed and collated by a bunch of maritime bloggers.

These are not lists of the rich kings of the maritime world, these are the unsung grafters and brains behind

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some of the innovations and changes the industry sees.

The bloggers' list is going to be called portfire40. I'll not explain the name in this column, but it has a historical context.

These are 40 personalities who are having a lasting impact on the shipping industry, through the novelty and vigour of their thinking, the strength of their passion for improvement and the positive impact they have on their colleagues and partners.

Maritime bloggers such as John Konrad of gCaptain, James Tweed of Coracle Online, Ken Beck, Peter Mello, Bob Couttie, Humphrey Hill, Sam Ignarski and Ben Strong are all pushing this list to try and uncover the new names who are behind some of the hidden currents of change in the shipping industry.

Got an ideas for behind the scenes influencers to take their place on these lists? Let us know. ■

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<http://barratry.blogs.lloydslist.com>