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SEAVIEW

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JOURNAL OF THE INSTITUTE OF SEATRANSPORT

Law Column -

**Court of Appeal Decides Obligation to
Pay Charterparty Hire is Not a Condition**

香港航運：盛景與危機



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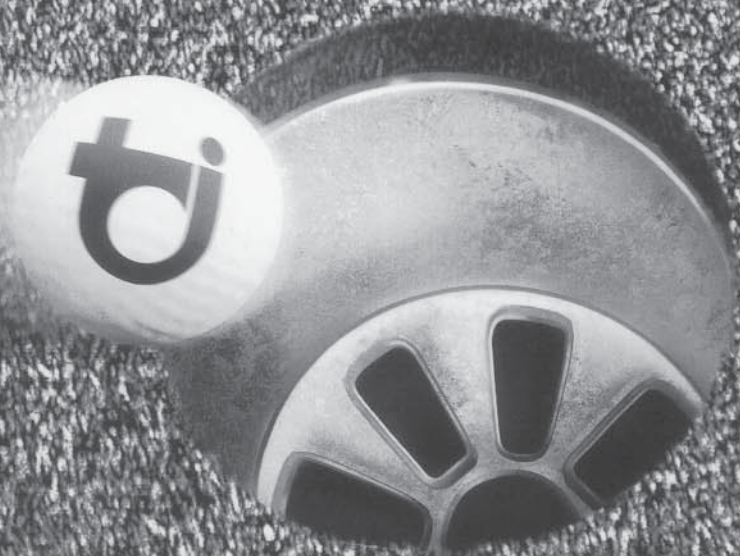
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香港是世界最繁忙港口之一：每周 340 班貨櫃船從香港出發，駛往全球 470 個港口；至今，在香港註冊的船舶 2,482 艘，總計 1.03 億噸位，繼巴拿馬、利比利亞、馬紹爾群島之後，世界第四大註冊港。

但是，危機正在迫近。

曾經全球第一的香港貨櫃吞吐量，排名連年下跌，2015 年更創下十三年來新低，全球排名再下跌一位至第五名，退居上海港、新加坡港、深圳港、寧波舟山港之後。

數據顯示，香港 2015 年全年貨櫃吞吐量為 2,011 萬標準箱，按年下跌 9.5%，是連續四年錄得下跌；2014 年海運收益 13.4 億港元，比 2013 年下跌 2.9%。

從事航運四十多年的退休船長陳錦榮，也感覺到航運業的衰退，尤其本土人才後繼無人。

他較早前接受本報專訪，談起早年在金山輪船公司高級船員訓練班畢業後，1969 年加入一間船公司當「學師仔」，每月工資三百元。「在我們的年代，當船員的收入高，同時我有個夢想，就是見識世界，這是我選擇這行最主要的原因。當然，同樣是船員的父親亦啟發我不少。」

「行船」苦與樂 家書抵萬金

陳船長指當時只有兩處訓練船員的地方，分別是「華人世界船王」包玉剛創辦的環球航海學校，以及董建華家族的金山輪船公司開辦的高級船員訓練班。當年報讀船員課程的人數眾多，設有收生門檻，中學畢業是最基本的要求，完成課程取得證書才可上船工作。

初當海員時的日子不易過，他曾在船上呆了三年沒回過香港，幾乎走遍東南亞、非洲等地。「那時我只能以書信與家人聯絡，每去到一個地方就寄信回香港，『家書抵萬金』。」

當年他那一艘船有 32 位船員，全都是香港人。當他 1974 年升職二副時才有外籍海員加入，主要來自菲律賓，有幾位來自台灣，並不像現時只有寥寥可數的本地海員。

「行船」多年，陳船長去過多個大型港口，包括日本的橫濱、東京、神戶；台灣的高雄和基隆；美國的加爾維斯敦、侯斯頓、費城、洛杉磯；南非的德爾班、開普敦；英國的南安普敦、倫敦；還有荷蘭、鹿特丹、新加坡等等。當中他最難忘的經歷是印度：「那邊的人貪污腐敗，不論移民局官員還是海關，都會上船給你添麻煩，向你索取煙酒。」

不過，亦有美好的事情讓他銘記在心：「菲律賓南部有很多小島，那裡的中國人很熱情招呼我們吃飯，原來他們很少遇見其他中國人前來的。他們當時沒有豉油，問我們船上有沒有，如有可否賣幾樽給他們？結果我們船上的管事送出半打豉油，他們非常高興。」

還有一次，「我去南美洲的委內瑞拉，那裡的中國人又是十分熱情，招呼我們到他們開設的餐館吃飯。餐館後面種了很多芒果樹，叫我們摘一些芒果帶回去，還用手推車幫我們運送，結果裝了好幾袋帶上船。」

當遠洋船員十多年，陳船長表示自己是升職較快的其中一位。升職要通過考試，從三副、二副、大副到船長。他認為

升職主要的條件是既要勤力，亦要「醒目」，才會得到別人欣賞。

他指，香港航運業最輝煌的時期約有六萬名船員，不過到了九十年代，香港已經很少人「行船」，幾乎全都是外籍船員。

香港航運業統計數字顯示，目前本地香港船員在遠洋航線上只有近 200 人。

「一帶一路」難刺激香港航運業

為鞏固國際航運中心地位，特區政府重組原有海事機構，今年四月成立「香港海運港口局」，持續推出 2004 年開始的「航海訓練獎勵計劃」，培訓甲板高級船員和輪機師。學生每月有 6,000 元獎勵金。培訓期分別為 18 個月和 12 個月。

政府措施加上國家的「一帶一路」，香港航運業是否可以重返當年盛世？

對「一帶一路」有深入研究的陳文鴻博士對此不樂觀。他指香港航運業面對的最大問題是整體競爭力不足，因貨源是在珠三角，而珠三角的貨櫃碼頭如深圳，規模已經比香港大很多。

「香港貨櫃碼頭的競爭力很弱，回歸前殖民地政府不願投資，回歸後特區政府又沒有作為，未來只會每下愈況。『一帶一路』本可帶來新的需求，特別是海上絲綢之路，可是現在主要發展並非集中於此，反而是陸上的絲綢之路，即所謂的經濟帶那裡。因此帶出一個重要問題：如果海上絲綢之路發展並不理想，特別中間有馬六甲海峽的因素（中國希望迴避馬六甲海峽的風險如海盜、軍事衝突），有可能令中國整體航運受阻滯；再加上南中國海的航道政治磨擦，所以從香港往印度洋的途中存在很大風險。」

海運吸引力不如陸運 面臨被邊緣化

資料顯示，香港有九個貨櫃碼頭，二十四個泊位，由於近年吞吐量減少，政府已經擱置發展第十個碼頭。作為全球第八大貿易經濟體，香港海路出口只佔整體出口的 18.5%。

陳文鴻博士認為，香港航運業最大的挑戰，是現時海運吸引力不及鐵路：「內地很多城市都有火車貨運到歐洲、中亞。換句話說，很多貨主選擇經鐵路去歐洲，因為時間短，例如由成都往歐洲需十天半，海運最少需四十至五十天。內地陸上絲綢之路發展得很快，分流了很多經海運貿易的貨品。」

他說東莞已經開通到中歐的班列，廣州亦將於今年內開通，反之香港仍無動於衷。「中國『一帶一路』的布局有兩個南下通道，六大經濟走廊其中一個是孟中緬印，基本上主要是中國和緬甸，而另一是中國和巴基斯坦，將很多貨物從中國內陸運往中亞，然後經巴基斯坦運往印度洋，或待將來緬甸的鐵路開通後，於雲南運往緬甸再去印度洋，就不用經馬六甲海峽或南中國海，於是香港就會被邊緣化，海運會逐步沒落。」

老船長陳錦榮也像陳文鴻博士一樣，有點悲觀：「以前的年代，當船員是可以做很久才『上岸』，高級船員的工資更是其他工種的兩倍或以上。現在，普遍年輕人不再有遠航見識世界的夢想，船員的工資亦與其他行業拉近了，入行的人便越來越少。」

（《珠海新聞》記者：

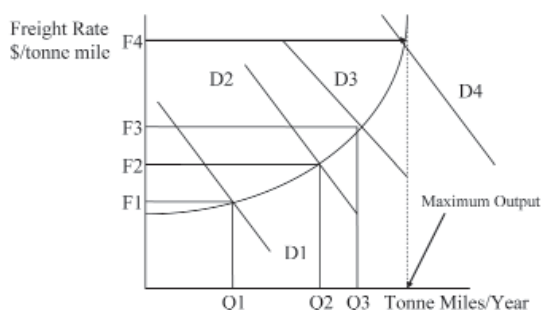
盧芷盈，張愛林，張嘉希，魏嘉敏）

“Commercial Aspects of Shipping – Market Dynamics – Part 3”

In this article, we will look at the changing dynamics and game changers in the shipping industry followed by the effect of port congestion, scrapping and increased supply on the charter rates for dry bulk vessels, with specific emphasis on the market conditions in the last few years.

A market is defined as the interaction of supply and demand, both together determine the equilibrium freight rate and quantities sold at that rate. Figure-1 below shows different possible short run market equilibrium, each determined by distinct demand conditions. The key factors that alter demand conditions relate to the volume of world trade, which is driven by overall economic activity, and changing degrees of openness towards trade by individual nations. Demand curves further to the right, represent larger trade volumes.

Figure-1: Short Run Market Interaction



Demand volumes can be seen to increase from D1 to D4. Between D1 to D3 there is a relatively small rise in the market freight rate, and a large rise in tonne miles produced. However between D3 and D4 the increase in demand translates into large increases in rates as a result of the supply becoming very inelastic, and the scope for increases in supply starts becoming increasingly limited.

The above model is a useful framework to explore fluctuations in freight rates in the short run, but cannot be used to examine long run fluctuations. This is because the supply schedule represented in Figure-1 is drawn for a given stock of ships, which will not remain constant in the long run.

Consider the shift in demand from D3 to D4. Rates move up very sharply, and supply does not increase much. This creates large profits for existing shipowners, who will be encouraged to order new vessels. The value of existing vessels will also rise, reflecting the markets' expectations that profits will be healthy in the future. The increased number of orders will translate into a rightward shift in the supply curve in the long term, and will lead to a fall in rates if demand remains at D4.

On the other hand, a fall in demand from D2 to D1 means a fall in supply and a rise in vessel lay-ups. Remember that in the short run, some vessels will be trading at rates which do not cover their full costs. While this is acceptable in the short term, it is not the case in the long term. Some vessels will either be laid up, or scrapped. The scrapping of vessels leads to a leftward shift of the supply curve. This process will help raise rates if supply shifts far enough to the left.

Everyone who is reasonably involved in or with the Shipping markets knows the effect of over supply (vis-à-vis demand) and its impact on the resulting freight rates. Let us very briefly consider some of the possible game changers. They will

have effect on the way we think and do business.

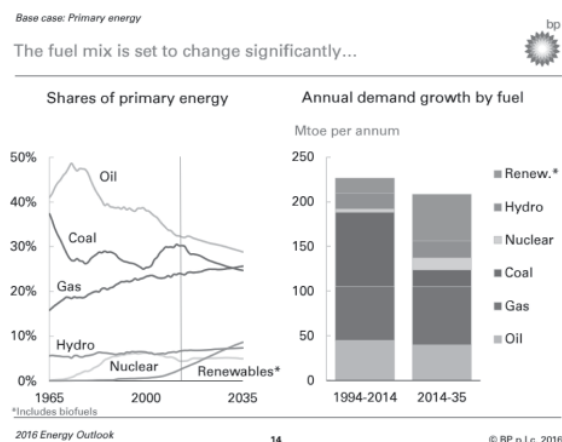
- a. Oil Price: The previous article illustrated that the market forces largely determine oil price and not the breakeven price (or the cost curve). The impact of oversupply and the desire of the OPEC cartel to retain their market share (with efforts to curtail if not drive out shale oil) resulted in low oil prices. Recent developments in the OPEC meeting, pointing towards controlling oil production, has boosted the oil prices, as we can see in the CMC markets price curve for the last one year (Figure-2).

Figure-2 : CMC Market Price : Crude Oil Brent - Cash



The effect of low oil prices increased the demand for “transportation and storage at sea” which was, in turn, positive for the tanker charter hire from the second half of 2014 till the beginning of 2016. However, as it generally happens in shipping market, extensive ordering and increased deliveries result in an oversupply situation and softening of rates (approximately 8% net fleet growth in 2016 as compared to about 2.3% in 2015 resulting in a drop in TD3/TD6/TD7 rates by 36% / 47% / 41% in the first 9 months of 2016 as compared to similar period in 2015). It is worth noting that although the tanker charter market remained high and well supported during the stated period, the assets prices did not follow this trend due to the looming heavy order book and scheduled deliveries. On the demand side, the use of oil and coal as a primary energy source is expected to decline. In Figure-3 (from BP Energy Outlook 2016), we can see the change in fuel mix. The proportion of fossil fuels such as coal and oil is expected to decline; natural gas and renewables to increase; and, nuclear power and hydro to remain relatively steady. The impact on shipping will be a result of reduced demand for the transportation of coal and oil in terms of tonnes. While the impact on tonne-miles shall depend upon origination and destination, it is expected that the ton-miles demand for both these commodities will contract. One of the surprise factors can be the reduced reliance on the domestic coal production by China, and her increased coal imports. A number of unknown factors will continue to keep analysts and pundits busy.

Figure-3 : Changing fuel mix



The main consumption of oil is transport sector. However, with the increased focus placed on the electric cars and eco-friendly fuels, the rate of reduction in oil consumption may perhaps be faster than what is being foreseen today.

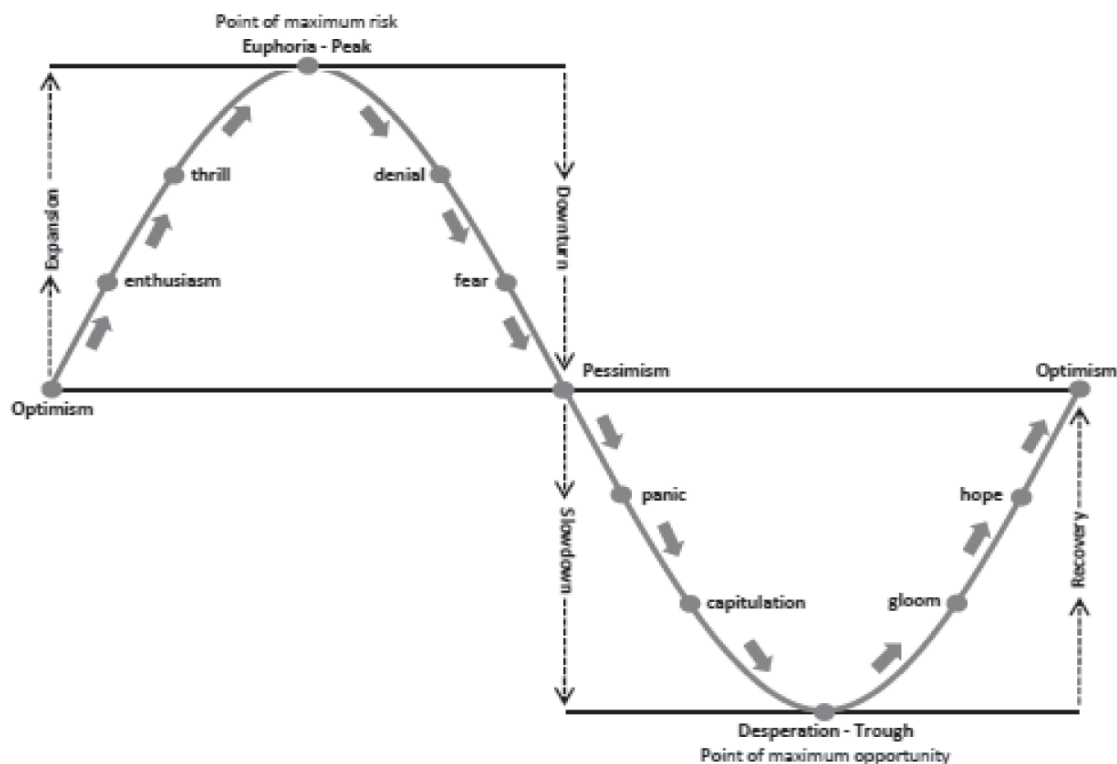
b. Commercial Scrapping

Commercial scrapping may be defined as the scrapping of ships at a younger age for commercial reasons. We have seen that the average scrapping age of the vessels has been reducing due to the poor market conditions where the owners are unable to meet the operating expenses of running the ships, let alone servicing their debt or booking a profit. Figure-4 (titled “Investor Confidence and Cycle Phases”) illustrates that we are in the trough region which is marked by “capitulation” and “gloom”. This is where we find more commercial scrapping, when the owners suffer from prolonged negative cash flows. On the other hand, this phase of the cycle also presents the “Point of Maximum Opportunity” for those who can enter the market and sustain the pain inflicted for an unknown duration, and are rewarded

significantly when the market does improve. It is not a question of “if” but of “when” the market improves. Whether the signs of the improving market will result in a beeline for ordering more ships (a

self-inflicting phenomenon we are all too familiar with), is to be seen. With the hope that finance providers are becoming more cautious, however, this time the damage may not be as severe. Who knows?

Figure-4 Investor Confidence and Cycle Phases



Source: Shipping Investor Sentiment by Dr. Nikos C. Papapostolou

c. Shipyard Capacity

While we have seen consolidation of some shipyard capacity, it is difficult to foresee how many Chinese shipyards will actually shut down, keeping in mind labour and social issues. It is expected that state owned ships will still be ordered even if the Greek and/or other shipowners reduce their orders significantly. Thus, demand destruction is not expected to the extent that will force shipyards closure. The opportunity for specialised ships such as cable/pipe laying vessels, wind mill

transportation and installation ships will be exploited by some of the owners and shipyards.

d. GDP Versus Global Trade Growth

As per the IMF, world trade grew about 2 – 2.2 times the GDP during 1985–2007. Since then, it has grown at just about the same pace as the GDP or even less. While, it is difficult to pinpoint the key reasons for this happening, the impact on shipping is expected to

be significant if the multiple continues to further decrease. Some of the reasons cited are the “protectionism” and reduced pace of liberalisation. If we believe the rhetoric, we are hearing from one of the presidential candidates in the US elections, the world trade growth may suffer further. Other factors that present challenges and opportunities are changes in urbanisation, consumption habits, demographics, and geographical workforce shifts with large young population such as India and African countries. Those who move quickly will be in a better position. Shipping is a derived demand and the global trade growth is the underlying factor for shipping.

e. Trend Towards Captive Cargoes & Shipping

The Valemaxes on water, (along with twenty-seven new 380K dwt vessels on order), and FMG (following suit with their 260K dwt ships) will carry these miners’ captive cargoes. It is expected that such moves will take away market cargoes (as of now, four voyages per annum, multiplied by 72 vessels, with about 180,000 dwt equivalent cargoes) comes to about 52 million tonnes per annum, without taking into account the tonnage-on-order for Vale and FMG. Additionally, the new orders placed by the Cosco Group, China Merchants Group and ICBC Financial Leasing Co. will start being delivered in the schedule beginning 2018 from Shanghai

Waigaoqiao Shipbuilding (SWS), Beihai Shipbuilding, CIC Jiangsu and Yangzijiang Shipbuilding.

f. Technological Advancements

This is an era of disruptive technologies leading to faster innovation, and adaptation leading to structural changes. Thus, developing “Techno-Economic Thinking” is not a choice but a necessity for long term planners. The shipping business model issues after sixty-five years of economic evolution also need to be addressed. Developments and innovation in ship propulsion systems (choice of technology and life cycle issues), production moving closer to consumption, 3D printing, robotics, electric cars and changes in consumer behavior (buying without feeling the need for physically holding a product leading to gigantic leap in online shopping) are some of the factors that will have significant impact on the transportation of raw materials and finished products. There are some factors that we may be able to control, and some beyond our sphere of influence. Those who foresee and adapt to the changes will succeed. It has only taken a few years for Walkman to change into iTunes, YouTube or Spotify, to name a few. There are a number of such examples. It is important to recognize that the rate of change (the second derivative) is much faster than ever before in the human history.

g. Regulations

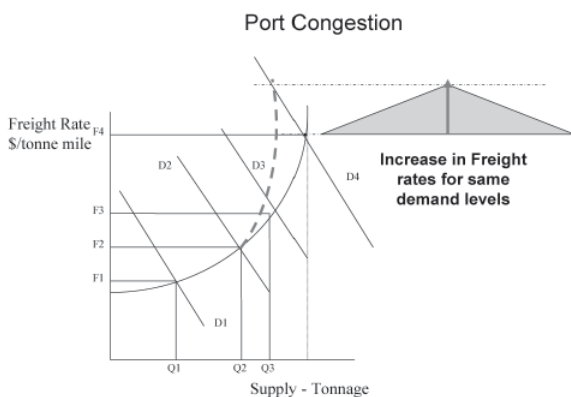
Whether it is Basel III or environmental protection (IMO: Ballast water, air pollution etc.) regulations, these regulations will change the way we do business. Off-balance-sheet deals are becoming more difficult, tax havens are coming under increased scrutiny, counterparty and credit risk issues are gaining importance and media attention, and of course there is additional concerted focus on financial transactions in view of sanctions, terrorism and money laundering. It is important to keep in mind the direct impact of the regulations and their wider unintended consequences.

A number of wild cards including changing geo-political and social situations; migrating populace and its consequences; increased protectionism and its consequences on global trade growth (especially in view of present huge overcapacity in many areas including shipping, steel production and commodities); increasing expectation for better quality of life of a growing population, expected fresh water shortage etc. will continue to present challenges and opportunities.

Coming back to the supply and demand equilibrium in shipping and the impact of the changes, given below are various scenarios and examples with brief comments. These should be useful both now and in future as reference material.

Scenario

Demand & Supply Model

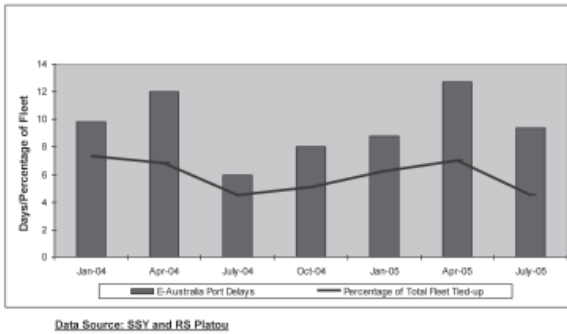


Comments

In case of demand surges, when the port infrastructure is unable to cope with the cargo handling requirements, port congestion occurs. The effect is to tie up the ships in the ports. Less tonnage is available to carry new cargo stems and thus a short term shortage is created. The dotted line depicts the virtual tightening of supply.

A steep rise in the freight rates takes place. Recall the levels to which charter hire rose during the super cycle (Q4 2003 till Q3 2008 with a low period in 2006 for some time).

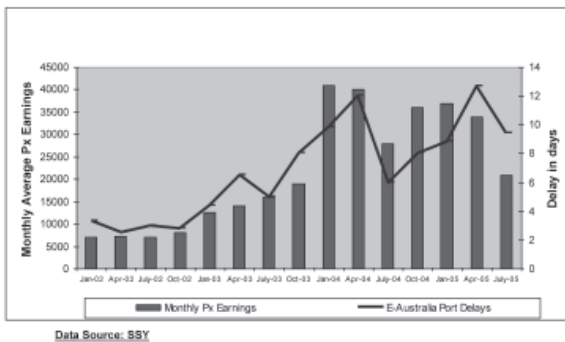
Effect of Port Delays on % Fleet Tie up



The Y-axis scale is both for the number of days (columns) for the port delays and in terms of percentage for the fleet tie up (line).

See the effect of port delays (in days) in the East Australian ports on the percentage of total fleet tie up due to congestion. This percentage of the fleet is then out of circulation, resulting in virtual tightening of supply for a given demand.

Effect of Port Delays on Earnings

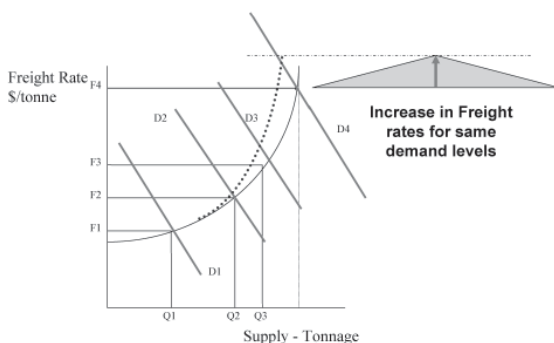


In general, we can see that the sharp increase in the charter hire experienced when the percentage of the fleet tied up in port increases. The X-axis data is from Jan 02 to July 05 on a quarterly basis i.e. each column and line represents the average of previous 3 months.

While the data is outdated, it is presented here to explain effect on the equilibrium freight rates.

Demand & Supply Model

Scrapping

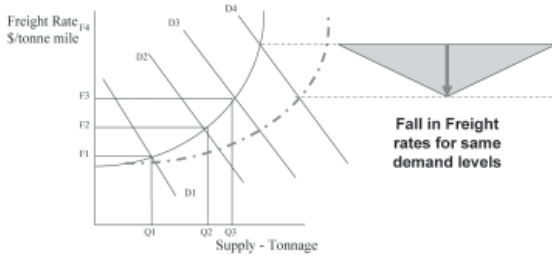


The effect of scrapping is similar to port congestion, but on a reduced level and spread over a period. The dotted supply curve is now less elastic. In recent times, the scrapping levels are high with oversupply of tonnage.

The impact of scrapping is an increase in the freight rates for the same demand (provided the net effect of new deliveries and scrapping is still negative in terms of fleet growth). If more ships are being delivered as compared to tonnage scrapped, logically the effect will be reversed for the same demand.

Demand & Supply Model

Increased Supply

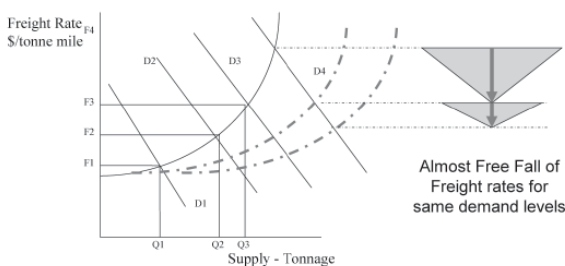


An increase in tonnage entering the market increases the elasticity of supply, as shown by the dotted curved line on the diagram. This means that more ships are available for a given demand and come into service to cater for this demand. The supply curve shifts to the right.

The effect is a fall in the freight rates for the same demand. Unless the demand level increases (either in absolute terms or by virtue of change in trading patterns i.e. increase in tonne-miles), the induction of new ships will depress the market.

Demand & Supply Model

Further Increased Supply



For further increased supply conditions, a rush for ordering new ships in a good market results in heavy new deliveries in the near future and an inevitable crash unless of course demand keeps up with this increased supply. Recall early 80's, late 90's and dry bulk situation since last few years!

When the freight market is good, a perception (or an illusion in most cases) that it is going to last forever injects optimism in the minds of bankers and investors (as seen in 2007/2008).

Shipping Fundamental Trends

(Dr. Martin Stopford)

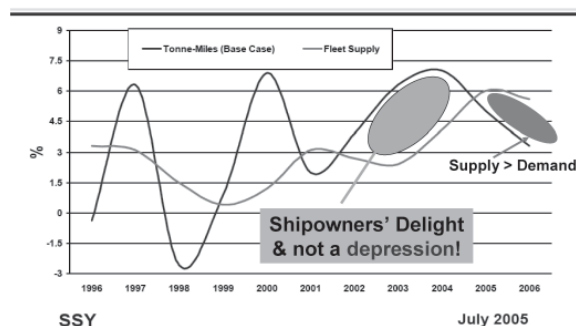
Period	Demand Tendency	Supply Tendency	Market Tone
1869-1914	Fast	Expanding	Competitive
1920-1930	Fast	Over-capacity	Weak
1930-1939	Falling	Over-capacity	Depressed
1945-1956	Very Fast	Shortage	Prosperous
1956-1973	Very Fast	Expanding	Competitive
1973-1989	Falling	Over-capacity	Depressed
1988-2000	Slow	Expanding	Competitive

The adjacent table taken from “Maritime Economics” by Dr. Martin Stopford helps explain the trends.

We can see that it is the interaction of the supply and demand that produces the resultant called the “market tone” or the trend of the “freight rates”. Even during the period when the demand tendency was fast, the market tone was either competitive or weak because of expanding or over capacity in the supply.

What does the future hold with a large number of Capesizes, Panamaxs, Supermaxs, handymaxs and Handysizes on water and on order? Much will depend upon what will be the demand tone in the short to medium term.

bulk carrier supply & demand growth:
SSY base case



The adjacent graph further shows the interaction between Supply and Demand. The graph shows some offset (out of phase) between the changeover (intersects) and the actual boom points. The future projection, showing that vessel supply will be greater than demand is only an opinion and not a statement of fact!

While the data is outdated, it is presented here for academic purpose.

(The views expressed here are solely those of the author, and do not necessarily reflect the views of the organization he represents.)

*(Mr. Jagmeet Makkar: FICS, FRINA, FIMarE (I), MCIArb Past Chairman, Institute of Chartered Shipbrokers, Hong Kong Branch *Director, Pastiche Holdings Ltd. (Maritime Registrar, Hong Kong, St. Kitts & Nevis International Ship Registry)*



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時光飛逝，日月如梭，轉瞬本人在香港停留了兩年零四個半月的日子了。這段日子說長也不長，說短也不短。兩年零四個半月的日子對於人生而言很短暫，而對於留港考試的甲板見習生其實是相當長，甚至是不合理的。部份甲板見習生天資敏悟，大半年內就已經取得商船甲板高級船員證書——三級證書考試合格成績，獲得海事處簽發合格證書 (Certificate of Competency, C.o.C.)。而本人投入這麼長的時間是因為自己能力稍遜，對於考試模式不太適應，未能把考試的內容牢記於心，故需要比別人花更多時間去準備，讓自己有足夠的信心去應考。考試的過程並不十分順利，所應考的科目不是一次過就可以取得合格成績，最少要應考兩次才通過。經過多次的努力和嘗試後，本人最終於二零一六年二月二十二日通過筆試、通訊熟練試、口試所有部份，符合資格向海事處申請簽發商船甲板高級船員證書——三級證書。在應付考試的這段時間裡，本人幸運地獲得香港航海學校 (The Hong Kong Sea School) 聘為海事科教學助理，主要協助學校編寫二級遊樂船操作人證書課程教材，提供行政及後勤支援等。這份工作除了讓自己賺取適量的薪金及累積行政工作經驗之外，還可以與航運業界相關公私營機構、民間組織及政府部門保持聯繫，接收最新行情及消息，不致於與業界脫節。此外，承蒙業界內前輩的錯愛，本人於二零一四年十一月被選為海運學會理事，代表現役遠洋商船船員於業界參與不同議題的討論，同時收集意見向業界反映。參與

各種會議及座談會，能從各範疇的代表身上學習到不少的知識及資訊，無疑是最好的機會讓自己為未來做好準備，迎接挑戰。

取得合格成績後，本人當天下午立刻聯繫公司商量安排上船的事宜，並表明把香港航海學校工作的細節交給下一位同事後，可於四月初上船工作。公司有鑑於我有一段長時間沒有在船上工作，故安排先擔任見習生一段時間，好讓我對船上工作的程序及安全溫故知新。隔了一段時間，公司透過電郵通知，於二零一六年四月九日在香港葵涌現代碼頭登上「東方舊金山」輪 (M.V. OOCL SAN FRANCISCO)。同時，我亦按照公司的指示辦妥一切手續、申領相關文件及證書，待上船時交給船長保管。上船當天，我收到來自家人、朋友、前輩傳送的短訊 (包括文字及語音)，內容大多是鼓勵及祝福的字句。當天的心情是既興奮又戀戀不捨，可謂百感交集，五味雜陳。興奮的是我終於可以再次投奔大海，朝著心中的理想前進；不捨的是終於要與家人及朋友暫別一段時間，不能像昔日隨時隨地聯繫，相約見面談天說地。慶幸現今資訊科技發達，縱使大家相隔異地，但仍可以透過智能手機應用程式與對方溝通。不禁想起二十年前電視播放的一個電訊公司廣告，讓我深深體會到「遠在天邊，近在咫尺」這句話的真正意義。二零一六年四月九日下午五時三十分，船上所有纜繩解開，脫離纜樁，意味著我的航海生涯再次開始。船長及值班駕

駛員按照領港員的指示，經過昂船洲大橋、青洲、南丫排 (Lamma Patch)、銀洲、橫瀾島 (Waglan Island) 後，船終於離開香港水域，向東南亞 (舊稱「南洋」) 進發。

「東方舊金山」輪是一艘裝載 5,714 個標準箱的貨櫃輪，長 277.35 米、寬 40 米、高 60 米，排水量 66,677 噸，在公司船隊中屬於中型偏小的貨櫃輪。她與「東方芝加哥」輪 (M.V. OOCL CHICAGO) 同屬姊妹船 (sister ships)，乃公司兩艘在中國造船股份有限公司 (現稱台灣造船股份有限公司) 高雄船廠二零零零年建造的貨櫃輪。按照船齡，她已屆中年至晚年之間，操縱性未能迎合現今貨櫃運載的需要。每當吃水較深時，領航員使用船艏側推器 (bow thruster) 協助靠泊或離開碼頭時，船的轉向反應比較慢，需要花更多的時間去進行操作。船舶靠泊或離開碼頭時需要加倍小心及十分謹慎，偶一不慎便會把船身壓向碼頭的護墊，對船身造成不必要的損壞。猶記得剛上船時，大副先把我帶到船艏甲板熟悉一下纜繩絞車啟動步驟，協助其他船員把纜繩整理妥當，讓纜繩絞車把纜繩順著指定的方向捲進滾筒。隨後我們靜心等待船長的命令，把船艏甲板容易鬆脫的部件固定，收拾完畢便回到住艙了。說到大副，他原籍浙江省舟山市，是公司早期招聘的國內甲板實習生，已經在公司工作達到二十年的光景，曾接受不同國籍的船長訓練，可謂見慣風浪。雖然他是一名「老江湖」，不過對於甲板實習生照顧有加，經常抽時間指導我操作不同電腦軟件，得益匪淺。此外，每天清晨四時至早上八時值班完畢，我便協助大副處理大大小小不同的業務，不管是行政支援或甲板維修保養，一律照單全收。到了中午至傍晚六時就是休息時間，回到房間檢討

一下今天的業務有甚麼地方可以改善，或者換另一個方法去處理比較妥當，好讓工作效率提高同時可以提升工作質量。這些工作技巧除了是以前的船長及各級船副 (Deck Officer) 教導外，還有在岸上工作時從其他同事身上學到的。有一次，當船在上海外高橋碼頭收到過百個危險品貨櫃 (Dangerous Goods Container) 的運載清單及相關資料，大副要求我協助把它們悉數輸入電腦，以便算出各類危險品總量作船舶穩性計算及報關之用。本來需要兩小時才完成的工作，卻只花了一小時便完成了。大副感到十分詫異，我便解釋是利用了電腦軟件的快捷鍵，省卻了用滑鼠去選取空欄的時間。

至於在駕駛台的日常工作，基本上與過去在其他船沒有太大的區別，唯一最大的區別就是船上只有一名甲板實習生。每逢船靠泊或離開碼頭，接送領港員時必須在駕駛台隨時候命，等待船長及各級副船長的指示。由於人手緊拙，有一次在印度離開碼頭時因為來不及把領航員送走而遭到三副的責罵。幸好船長及時出現，向三副解釋因為甲板實習生未熟悉航線上所有碼頭的重要事項，故此情有可原。有鑑於此，船長和大副一致決定我於上述時間在駕駛台候命。時間久了，我開始熟悉每個港口的特點及特定操作程序，例如懸掛訊號旗、打開訊號燈、填寫表格等。此外，為了在每個細節上節省時間，我提早在與領港員乘搭升降機時取得靠泊資料，然後向船長及值班船副匯報。有時候，甚至領港員需要甚麼飲品及是否需要用餐也一併問清楚。部份船長及值班船副對於上述細節比較在意，甫看到領港員從升降機走出來，就叫我馬上準備一切。在國內港口的時候，當領港員要求飲用礦泉水時，

我會多問一句：「請問您要『常溫』還是冷的？」「常溫」是指正常室溫的礦泉水，一般而言駕駛台都備有已冷藏及未冷藏的礦泉水供領港員選擇，以迎合個人不同需要。至於咖啡及中西茶類飲品也可以選擇，唯咖啡粉及白糖的比例需要小心控制，免得味道走樣了。

一如既往，甲板實習生在船上會被分派跟隨不同的船副，學習不同工作崗位的職責及從旁協助。恰巧船上有一位香港籍的三副，基於語言溝通的考慮，大副把我安排與他一起工作，讓我重溫三副的工作，為未來晉升打好基礎。在過去數篇散記中，曾經提及三副的職責是負責消防與救生設備的維修及保養。碰巧三副也是負責這個範疇，我亦趁機向他多吸取經驗與心得，以便將來可以獨當一面。除了上述的職責，所有船副的首要工作是確保船舶的航行安全 (navigational safety)，按照當時的情況 (prevailing circumstances) 去操縱船舶，避免形成緊迫局面 (close quarter situation) 及碰撞風險 (risk of collision)。三副對於船舶操縱頗有心得，面對不同的情況也從容不迫。每當中國休漁期結束後，中國籍漁船就會出現於中國沿海水域。海面上的漁船密密麻麻，在雷達上的畫面形成一顆又一顆的小圓點，好像蔥花餅上的蔥花一樣。正當我在思考應如何穿越的時候，三副已經把手放在自動駕駛系統上的旋鈕，準備調整船的駕駛航向。只見他用兩指左右撥動旋鈕，不消半個小時就已經穿過密集的漁船了。看著他熟練的操縱技術，感覺好像一輛電單車在車輛間左穿右插一樣。由於我未被擢升的關係，故只可以從旁觀察，或者在一些比較簡單的情況下學習如何採取有效的行動去避讓。經過一段長時間的訓練後，我已經學會基礎技

巧及於適當時間採取行動，對於船舶操縱亦開始上手了。

至於甲板維修保養及其他故事方面，則留待下一期為各位分享，暫且擱筆。

(方威先生：

東方海外貨櫃航運有限公司甲板見習生)



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Non-contentious

- Ship Building
- Ship Finance
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On 7 October 2016, the Court of Appeal handed down the eagerly awaited appeal decision from the Commercial Court decision in *Spar Shipping A.S. v. Grand China Logistics Holding (Group) Co. Ltd.* The Court of Appeal dismissed the appeal made by Grand China Logistics Holding (Group) Co. Ltd (“GCL”), providing definitive guidance on the question of whether the obligation to pay time charter hire is a condition. Answering the shipping market’s unease that arose out of conflicting first instance court decisions on the issue, the Court determined that a charterer’s failure to pay its hire instalments punctually and in advance under a time charterparty did *not* constitute a breach of condition. It also provided helpful guidance on the legal principles surrounding renunciation in the context of late and non-payment of hire under time charterparties.

The background facts

The background of this case has been laid out in previous articles and so will not be repeated at length here. In brief however, this was a dispute regarding the non and/or late payment of hire under three long-term amended NYPE 1993 form charters dated 5 March 2010 (the “Charterparties”). The unpaid period for which the Owners claimed spanned April to September 2011. The Owners also sought to recover the resulting damages for loss of bargain for the considerable unexpired period of the Charterparties thereafter.

The Commercial Court decision

On 18 March 2015, the Commercial Court delivered its judgment. Notwithstanding careful consideration of the principles laid down by Mr Justice FLaux in *The Astra* [2013] EWHC 865 (Comm), Mr Justice Popplewell disagreed with that decision and ruled that punctual payment of hire in fact did not constitute a condition for the following reasons:-

- A withdrawal clause gave owners no more than an option to cancel. On this basis, Clause 11 (the hire payment/antitechnicality clause) of the Charterparties could not be said to amount to a condition. Had there been express wording to the effect that the clause was more than an option to withdraw, the position may have been different. However, as it stood, the clause provided no more than a liberty to the Owners to withdraw the vessel from service.
- Even had there been no withdrawal clause in the Charterparties and, consequently, no express right to terminate, payment of hire would not have been treated as a condition of the Charterparties. It could not have been intended that any breach of the hire payment, no matter how serious or trivial, would have the same consequences and allow the Owners to terminate a long-term charter even for a trivial breach.

- Payment of hire in commercial contracts was not generally considered to be “*of the essence*” unless the contract expressly stated so. On that basis, in a time charter context, there was no good reason to treat payment of hire as a condition (unless expressly stated), since in any event the owners could exercise their contractual right to terminate the charter and put an end to the future performance of the vessel (and, therefore, the future expense of operating the vessel for the benefit of the charterer). Where an owner no longer has to provide a charterer with service of Master and crew, then the owner’s interest in the prompt and punctual payment of hire disappears.
- Commercial certainty was not good reason to treat payment of hire as a condition. A withdrawal clause offering an option to cancel without conferring on the owners an unmerited right to damages was said to “*adequately protect[s] this commercial interest*”. The Court was clear that the desire for commercial certainty needed to be counterbalanced so as not to impose liability for trivial breaches in undeserving cases.

The Court did, however, find in favour of the Owners on the ground that the Charterers had evinced an intention not to perform the Charterparties in a way that deprived the Owners of substantially their whole benefit under them. The Charterers were, therefore, in renunciatory breach.

GCL sought and obtained leave to appeal.

The Court of Appeal decision

The appeal was heard by Sir Terence Etherton MR, Gross and Hamblen LJ in June 2016, with judgment handed down on 7 October 2016. The Court of Appeal determined that the Charterers’ failure to pay instalments of hire punctually and in advance under the Charterparties was not a breach of condition. Indeed, the appeal judges considered that failure to make payment (without more) merely permitted the Owners to withdraw the vessel from service in accordance with Clause 11 of the Charterparties. The decision therefore confirms that the obligation to pay hire under a time charterparty constitutes no more than an intermediate or innominate term.

The leading judgment of Lord Justice Gross provides considerable and helpful guidance as to the legal principles surrounding renunciation where there is late and/or non-payment of hire under time charterparties. In rejecting GCL’s argument that the test for renunciation was applied too strictly, and in conflict to the Court’s approach in other instances of non-payment (albeit in different types of contract), the Court of Appeal ruled that ultimately the obligation to pay hire promptly and in advance lay at the heart of the time charterparty. Where there was evidence of intent not to make such payment, that conduct went straight to the root of the contract, amounting to renunciatory breach and thereby entitling owners to terminate. It remains to be seen whether this conclusion will cause future courts and arbitrators to be more willing to find that a number of missed or partial payments of hire amounts to a renunciatory breach entitling an owner to terminate and claim damages for future losses.

Comment

The outcome of this appeal now answers the market unease resulting from the decision in the *Astra*, whilst also offering more definitive legal guidance as to renunciation in the context of late and non-payment of hire in time charterparties.

It may be argued that the decision lacks the certainty of a rule that a single failure to pay hire in full and on time gives rise to a right to terminate and claim damages. However, as highlighted by Lord Justice Gross, the key question is “*striking the right balance*”. Where the likely breaches of an obligation to pay hire may have consequences that can be either trivial or serious, then the certainty achieved by classifying an obligation as

a condition is that trivial breaches will have disproportionate consequences. This, in Lord Justice Gross’s view, was “*an unsatisfactory balance*”. Rather, sufficient certainty was provided by the withdrawal clause.

It remains open to parties to include a term in their charterparties to the effect that the obligation to pay hire is a condition, as those drafting the NYPE 2015 form have sought to do.

(David Richards, Partner, London
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「一個國家，兩種制度」是中國政府為實現國家和平統一而提出的基本國策，並通過《中華人民共和國憲法》第三十一條為「一國兩制」原則提供了直接的憲法依據。作為香港特別行政區的憲制性法律的《香港特別行政區基本法》則將「一國兩制」原則法律化和制度化，明確香港是一個直轄于中央人民政府但同時享有高度自治權的地方行政區域。作為「高度自治」的一項重要體現，香港政府可自行制定經濟政策。其中，《基本法》第一百二十四條明確規定，香港保持原有實行的航運經營和管理體制，並自行規定在航運方面的具體職能和責任。

在今年3月公佈的施政報告中，針對海運方面，特首梁振英明確提及政府決定整合現時的航運發展局和港口發展局，成立新的「海運港口局」。4月1日，特區政府正式宣布了新成立的海運港口局成員名單，成員主要來自業界、學術界和相關法定組織。自去年11月中旬提出成立「新航運機構」這一構思，到以施政報告方式明確公佈新機構名稱，再到正式公佈成員名單，可謂靴子落地。

香港航運業避免邊緣化需政府「適度有為」提供支持

事實上，原有兩個發展局在2003年成立的時候也是為了加強航運港口業的吸引力和競爭力，但過去十多年香港航運港口業恰恰經歷了由區域乃至全球領先到被競爭對手超越的過程。以貨櫃吞吐量為

例，香港正是由2004年的全球第1而排名逐漸下降，在2015年更是因為吞吐量連續4年下跌而被寧波港超越降至第5名。更甚的是，根據最新碼頭吞吐量數據顯示，香港貨櫃吞吐量累計今年首三個月下跌10.4%至441萬箱，而同期青島港則上漲4.8%至442.8萬箱，香港貨櫃吞吐量排名已經跌至全球第六。另外，就航運服務業來說，由於近些年缺少政策支持及成本增加等原因，逐漸有香港航運企業選擇遷冊至新加坡，在港業務也隨之逐漸轉移。

同時，不止是香港航運業伴隨全球航運市場低迷而陷入低谷，香港作為國際金融中心的地位在今年第一季度也接二連三傳來負面消息。先是國際評級機構穆迪和標普接連將香港信貸評級展望由「穩定」下調至「負面」，緊接著英國智庫機構Z/Yen發布的全球金融中心指數顯示香港排名跌出三甲被新加坡超越。雖然認為「紐倫港」就此被「紐倫坡」取代之尚早，但評級下調和排名下跌無疑為香港金融業競爭力敲響警鐘。

金融業和航運業是香港兩大傳統優勢產業，今年3月出臺的「十三五」規劃中明確支持香港鞏固和提升國際金融、航運和貿易三大中心地位。但是，由於在《基本法》框架和「一國兩制」原則下無論是金融還是航運政策都屬特區自行制定的範疇，而港府一直奉行「積極不幹預」的自由市場經濟政策，不但使金融業創新發展缺少動力，更導致航運業近幾年嚴重邊緣化。在這種情況下，港府有必要「適度有

為」，為實現香港國際航運中心向「高端服務型」轉變採取積極有效措施，加大政策幫扶及資源整合，從而提高香港航運業競爭力。同時，港府還應該提供制定並推動有效利用香港作為金融和航運中心既有優勢的政策和措施，加強兩個中心的關聯與互動，從而達致金融業和航運業互補互推共同發展的雙贏局面。

海運港口局切忌「新瓶裝舊酒」

香港航運港口業每況愈下與最近幾年全球經濟環境不好以及航運市場長期低迷息息相關。另一方面，原有兩個發展局未能積極有效作為導致功能，成效不彰也是無可否認的事實。按照特首梁振英在今年施政報告中所述，成立海運港口局是為了發展高增值航運服務業，從而提升香港國際航運中心地位，推動海運服務業群進一步發展。海運港口局的主要功能有三項，包括推動人力培訓，進行市場推廣宣傳及研究發展，以及協助政府制定策略和政策。因此，如何避免僅是「新瓶裝舊酒」式的改頭換面，切實履行相應，只能真正在鞏固和提升香港航運業競爭力方面有所作，才是新航運機構未來極需解決的問題。

制定有效策略 反映業界聲音

過去十多年之所以出現航運相關企業遷冊情況的一個主要因素是特區政府「口惠而實不至」，雖然一直表示要支持航運業發展，但並沒有通過提供直接資助或政策措施以支持香港航運業維持競爭力和吸引力。海運港口局應該通過參與政策研究及發展的方式在制定航運政策時向政府提供意見，積極反應業界聲音。為了在政策制定過程中向政府提供更全面且有的放矢的意見，海運港口局需要投入人力和資源針對業界關心的問題進行專題研究，及時發佈研究結果，以供政府及航運業界參考。

例如，由於行業特殊性班輪公司一般會通過聯盟形式運營班輪航綫，從而降低經營成本。但這種聯盟可能違反去年底生效的《競爭條例》，而因「集體豁免」申請尚未得到批准所導致的不明朗因素已開始令船公司減少靠泊香港貨櫃碼頭。海運港口局應該在此事件中扮演更加積極主動的角色，瞭解航運業界對《競爭條例》的普遍看法，爭取政府相關機構的支持，代表業界與競爭委員會充分溝通以爭取盡快排除因為實施新法可能對航運發展帶來負面影響的不確定因素。另外，面對全球航運業持續不景氣以及香港港口吞吐量連年下跌的窘境，海運港口局應該積極發聲，推動政府出臺支持更多貨船選擇停靠香港的優惠援助措施，例如可以爭取凡是在香港港口靠泊不超過5天的貨櫃船和幹散貨船未來一年可獲一定比例的港口費優惠，從而吸引更多船舶前來靠泊。

著力宣傳推廣

如今早已不再是「酒香不怕巷子深」的時代，因此海運港口局應該探索制定有效的市場營銷和宣傳策略，積極宣傳推廣香港作為國際航運中心地位，進一步提升內地及海外市場對香港優質高端航運服務的認知。例如，海運港口局應該聯合貿易發展局與投資推廣署，支持、協助甚至主持舉辦國際性或地區性的與航運相關的會議和活動，令香港高端航運服務業有機會獲得國際上更廣泛的認可。同時，海運港口局還應該聯合業界其他機構，例如香港船東會等，積極與中央和內地相關部門溝通聯繫，爭取國家層面制定支持香港航運業的更多有利政策，並與上海、天津等內地其他航運城市探索可行的合作方式，集中優勢對外競爭。同時，海運港口局還應該在國際航運事務上與內地一道積極發聲，在維護香港利益的同時，借力中國參與完善現有國際航運規則和秩序，甚至制定適應未來國際航運發展需要的新規則。

培訓及吸引優秀人才

人才向來都是一項事業能否發展及成功的關鍵基石。海運港口局應該負責整體航運服務業及港口業的人力發展需要，檢視業內不同界別的人力供應與需求情況，使航運相關課程能夠「因地制宜，因材施教」，才能有的放矢地吸引香港本地人士選擇投身航運業。根據市場對人力資源的實際需求，海運港口局才能進而推動相關政府部門制定航運人才的集聚、發展規劃和培養與引進計劃，支持航運企業和機構通過市場機制從海內外引進各類優秀航運人才。同時，海運港口局應該與政府部門探討入境政策，建議制定和實施有利于香港航運業招聘海外人才的措施，使香港成為國際航運人才發展事業的首選地點。

同時，為了應對人力需要，海運港口局應該主導制定合適的培訓措施，推動政府盡快設立航運職業教育與培訓基地，與內地和海外的航運院校合作，培養本地各類航運專業人才。例如，香港理工大學目前設有物流及航運學系，海運港口局就應該積極促成其與內地例如上海和大連海事大學以及世界海事大學等專業航運院校增進交流，開展合作辦學。另外，香港城市大學設有海事及運輸法研究中心，海運港口局應該積極推動該中心與香港的航運律師行、保賠協會和航運保險公司等交流與合作，資助培訓更多專業航運法律的人才，同時實現理論與實踐的結合，提升香港在海事和運輸法律研究的國際認受性和影響力。

打造金融航運「雙中心」

今年的《施政報告》明確提出香港發展高增值航運服務，而航運金融恰好就是高端航運服務業的重點，應該成為金融和

航運「兩個中心」未來互動發展的方向。因此，盡快找準發展方向從而發揮獨特優勢，才是香港金融業迎頭趕上乃至重新騰飛的重中之重。

航運業作為一個資本密集型產業，投資金額需求較大，港口、船舶公司和船廠難以依靠自有資金滿足投資需求，而通過金融業融資則能為航運業發展提供穩定的資金保障。倫敦之所以在 21 世紀的今天依舊成為全球當之無愧最頂尖的國際航運中心，其中一個主要原因就是其金融服務優勢在航運市場得以充分發揮，發展成為全球最主要的船舶融資市場之一。與倫敦相比，同樣作為金融中心的香港具有金融產品多樣化，投融資環境優良，外匯可以在市場上自由買賣以及背靠中國內地等優勢。世界主要的航運金融銀行在香港都設有區域總部或辦事處，聯繫在香港及鄰近地區的船東和船廠等為他們提供船舶及海洋工程設備等融資服務。

為鼓勵航運企業利用資產證券化等手段從證券市場上募集資金，海運港口局應該牽頭盡快成立一個工作組，聯合香港船東會和港交所等一起鼓勵更多香港和內地航運企業在港上市，從而進一步擴大航運企業的融資渠道。香港船東會目前登記的航運公司超過 60 家，而在香港船舶註冊處登記的船舶更是超過 2500 艘，因此香港證券市場大可以在航運領域尋求廣闊機遇，同時也可進一步將香港打造成為領先的航運金融中心。此外，海運港口局還應該聯合金融發展局等金融機構探索、拓展航運融資產品與服務，例如推進航運價格衍生品的開發與創新，拓寬內地和國際航運相關企業在香港進行航運融資渠道。

另外，為了體現「適度有為」鞏固和提升金融和航運中心地位並推動高端航運

業發展，港府應該效法新加坡海事信托基金模式，盡快成立一個政府主導下的航運信托基金進入資本市場，從而拓寬航運企業融資渠道和基金退出渠道。政府應研究制定相關稅收優惠賦予航運信托基金，為經核准的船舶租賃公司、航運產業基金或信托公司等提供稅收優惠，使它們的船舶營運租賃和融資租賃業務收入均能獲得全額免稅。此外，還應使航運信托基金享受優于上市公司的制度優惠，銀行對航運信托沒有貸款額度限制，航運信托不根據會計收益分配紅利，而是依據運營現金流分派股息，無論是香港本地、中國內地還是外國投資者，投資航運信托的所得稅和印花稅全免。

響應「十三五」號召提升香港航運業競爭力

今年全國「兩會」通過的國家「十三五」規劃明確提出支持香港鞏固國際金融、航運和貿易三大中心地位，參與國家雙向開放以及「一帶一路」建設。由此可見，從國家層面香港發展高端航運服務業以及鞏固和提升作為國際航運中心的地位必然繼續得到中央政府的大力支持。因此，香港航運業應該抓住機遇，發揮“超級連絡人”作用，強化香港作為亞太地區高端航運服務業的領導地位。

中國綜合國力的日漸增強也體現在對世界航運格局的影響上，而中國已成為世界航運業發展的重要推動力量。無論從運輸需求、港口條件還是船隊規模，中國在國際航運業地位日益重要。隨著中國影響因素的逐步擴大，香港航運業應該積極探索將市場機制與中國巨大的市場規模和龐大的航運能力有效結合並加以利用，使「中國規模」轉化為「中國優勢」。

回顧香港航運業發展歷程和成就，香港航運業的成功得益是由于自身良好的營商環境，較低的營商成本，合理的錯位競爭，以及完備的金融和法律支撐。但是，中國航運業整體上在技術標準、規則制定和高端服務等軟實力領域尚有很大空間需要完善和發展。面對世界航運業的發展、挑戰和格局變革，香港航運業應該充分利用中央支持，與內地政府及航運業界加強協調，促進理念、管理和技術等方面的交流合作，從而發揮中國市場的規模優勢和香港市場的機制優勢。同時，香港航運業應該在引導內地港航企業在尊重市場機制和公平競爭，以及對熟悉運用國際通用商業法律規則和國際慣例等方面發揮更大作用。香港航運業可以借力中國港航業界積極參與完善現有國際航運規則和秩序，倡導並參與制定適應未來國際航運發展需要的新規則，從而使中國在國際航運領域中承擔更為積極且重要的角色，為世界航運發展做出與之規模相匹配的貢獻。

從自身發展著眼，香港應該盡快確立並加強國際航運與金融兼容的核心競爭力，使國際金融中心能夠為國際航運中心的鞏固與提升，提供更加堅實的金融服務保障，同時使國際航運中心為國際金融中心發展與多元起到巨大的推動作用。同時，香港航運業應該與特區政府一致地，繼續通過各種推廣活動向內地和海外推廣現有高端航運服務，例如海事仲裁、船舶融資和航運保險等，搭建內地企業「走出去」以及外國航運企業進入中國市場的平臺。另外，在鞏固和提升航運中心的進程中，特區政府「適度有為」也是必不可少的。因此，特區政府應盡快加強航運和港口管理職能，為航運業界提供更多與內地及國際的溝通和交流渠道，並針對航運企業的實際情況和需要制定相關行業扶持政策，密切政府和航運業之間的服務合作關係。

總之，香港航運業應該以更加積極的姿態投身國家「十三五」規劃，透過參與「一帶一路」建設更好地發揮國際航運中心的輻射和帶動作用。同時，「打鐵尚需自身硬」，在發揮現有比較優勢並確保持續進步的情況下，香港航運業還應該盡力彌補短板和局限，抓住國家發展機遇，聯手內地，面向全球，實現鞏固和提升國際航運中心地位的目標。作為國際航運中心，香港未來數年必將大大受益於「一帶一路」建設的宏圖大計，為眾多香港航運企業及相關服務業，包括航運金融、保險、經紀和法律等創造巨大商機。作為金融航運「雙中心」，香港能夠很好地為亞太區乃至全球航運市場提供一站式的金融服務。當香港航運業發展壯大的同時，反過來能吸引內地和國外投資為香港資本市場注入更多流動性，帶動金融服務業發展。隨著全球經濟包括航運市場重心繼續東移並伴隨「一帶一路」建設的深入，香港憑藉自身優越的地理位置、國際網絡和「一國兩制」下的體制優勢，勢必可以成為中國內地航運企業「走出去」以及國際航運公司進入內地市場的「超級連絡人」。

(劉洋：香港禮德齊伯禮律師行律師)



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Hong Kong Maritime Awareness Week, 12th-18th November 2016, was jointly organized by the Hong Kong Shipowners Association and the Hong Kong Maritime Museum, arranging various activities and functions with a view to introducing and promoting the development of the HK maritime industry to the younger generation. A few members of the Institute of Seatrtransport (IST), including Ms. Karen Cheung, Mr. Thomas Cheung and the Editor of this AA Talk column (here below referred to as “I” and “me”), gave talk to secondary school students on maritime careers (shipping lawyer, insurance broker and average adjuster respectively).

Hong Kong Maritime Industry Week (HKMIW 2016), 20th-27th November 2016, was organized by the Hong Kong Maritime and Port Board to “*propel Hong Kong*” as a renowned international maritime centre. The objectives were to make Hong Kong a preferred based for operating maritime business, and to foster interest and professionalism in various port and maritime services.

During the HKMIW 2016, to celebrate Hong Kong as an international maritime centre that provides superb maritime and port facilities and services, international and local industry luminaries and

practitioners came together for a myriad of diversified and fun-filled activities ranging from industry briefings, seminars and conferences, corporate functions, maritime-themed sports to networking events.

The IST was joint organizer of the “Maritime Law Seminar” and “An Interactive Workshop on Marine Insurance and Average”.

Maritime Law Seminar - On Monday evening, 21st November 2016, Ms. Rosita Lau, who was awarded the individual prize at the Lloyd’s List Asia Awards winning the Asia Maritime Lawyer of the Year Award, gave a superb bilingual presentation to over 80 participants at the venue in the China Taiping Tower, highlighting the effect of three recent judgments, namely:

The “Res Cogitans” (2016)

Grand China Logistics Holding (Group) v. Spar Shipping (2016)

Volcafe Ltd. & Others v. Compania Sud Americana De Vapores (2016).

Hopefully the commentary on these law cases will be published in future issue(s) of “SEAVIEW”.

An Interactive Workshop on Marine Insurance and Average

On Friday evening, 25th November 2016, a panel consisting of Messrs. Jon Zinke, Rohan Bray, Stephen Cheng, Thomas Cheung, Richard Oakley and I presented to an audience of exactly 80 at the same venue provided by China Taiping Insurance Co., Ltd. (a) Game Plan for Procurement of Marine Insurance and (b) a hypothetical collision between a container vessel and tanker off the China coast; various aspects were examined, including liability, salvage, pollution, limitation, jurisdiction, cargo claims and general average; also the scope of shipowners' needs and the interplay between hull and P&I underwriters were discussed.

Readers are requested to visit <http://www.hkmiw.hk/english/index.html> for more information about the HKMIW 2016.

50 Years in Average Adjusting

I joined the profession of Average Adjusting in November 1966. It was excitingly co-incidental that I was spending my 50th anniversary during the Hong Kong Maritime Industry Week.

On the 9th November I received unexpectedly an email from Mr. D John Wilson, the popular Editor of the 10th, 11th & 12th editions of Lowndes and Rudolf on the Law of General Average and The York-

Antwerp Rules, advising that his old friend and partner is now 88 years of age! The email reminded me of having burnt the midnight oil for 5 evenings in Tokyo in 1984 reading carefully the draft analysis prepared by John Wilson (who was then based in Tokyo) on the ITC HULLS 1.10.83. The book was for internal use of Richards Hogg International, the world leading average adjusting firm and has never been published to the public though arrangements were made to have the book translated into Chinese and published in Taiwan in 1988. John kindly granted me the copy right to produce the second edition to which I did not pay much attention since I never imagined that after 30+ years, the ITC-Hulls 1/10/83 remains being the most popular standard clauses!

Another prominent average adjuster, Mr. Christopher J Barstow who spent some 8 years working in Hong Kong, 1975/82, visited Hong Kong during November and a small get together lunch with few old colleagues and clients (with large complicated claims) was full of joy and laughter – those were the days!

A question was raised - What is the most interesting case I have ever had?

In 1983, a 2-year old tanker whilst proceeding in ballast under a time charter in the Arabian Gulf to load cargo for the Far East, was hit by a missile in the accommodation, followed by fire.

The crew failing to fight the fire abandoned the ship and was picked up by Royal Saudi Navy ships with the injured ones being sent to hospital. The fire was subsequently extinguished and the vessel towed to a safe place in Bahrain waters by salvage tugs under LOF. Inspection revealed severe damage to the vessel's wheelhouse/accommodation. Specification for repairs was drawn up and tenders for repairs invited from shipyards. The quotations ranged from US\$2.45m requiring 100 days (Dubai) to US\$4.50m requiring 60 days (Singapore) whilst a shipyard in Japan quoted US\$3.40m requiring 45 days. The Shipowners decided to tow the damaged vessel from Bahrain waters to Japan for repairs!

The professionals assisting the Shipowners included mainly the Insurance Brokers, the Solicitors (for the salvage proceedings and possible legal action against the time charterers) and the Average Adjusters. We attended frequent meetings in the early stages to follow up closely on the progress of the casualty. We did not have mobile phones and we had to standby at home after the office. Over the very first weekend, these professionals arranged to standby together playing mahjong at my home, which was quite relaxing though, as anticipated, intermittently.

The most interesting and exciting adjusting aspect in this case was to consider the choice of repair yard which was most material in determining the "reasonable cost of repairs" in terms of the policy of insurance. The investigations on this topic involved considerable correspondence and meetings with various parties concerned, also third parties (other independent ship-owners, technical consultants, etc.) focusing on quality of repair work, war risk, the Dubai Dockyard and time on repairs. After giving due consideration to the outcome of the investigations, I set out a comparison of the overall financial position had repairs been effected at Dubai as against Japan taking into account repairs etc. necessary for towage, towage cost and insurance premiums, tender price for repairs, cost of repairs additional to the original specification, spares used on additional repairs, superintendence on permanent repairs, additional insurance premiums on war risks, loss of hire and the likely effect on the ship's value, resulting in it being in favour of the Shipowners' choice. Obviously the last two items are conjectural and are taken in to account to test the Shipowners' argument that on commercial grounds alone repair at a Japanese yard was to them the prudent choice.

The test that seems to be closest to what the Courts have held is "What would the prudent uninsured owner have

done?” It was believed that in this case two paramount considerations led to the Shipowners avoiding the use of the Dubai Dockyard, namely its geographical position, unhealthily close to the war zone, and its then unproven ability to repair the particular type of damage in a satisfactory and timely manner.

The claim on policy of insurance was satisfactorily approved and settled by London Underwriters. I would stress that the claim was successful only under the prevailing circumstances in 1983.

Before November 2016 ended, I received an excellent gift to mark my 50-year average adjusting career, which was an extract from a message of a Lloyd’s syndicate to an Insurance Broker:

“...we are hopeful that the assured will take on board the helpful comments and observations from TCW in their draft adjustment as well as the various adjusting scenarios that TCW has presented. The figures presented by TCW in the draft adjustment represent the professional assessment of a respected and very experienced average adjuster who has reviewed the presented sue & labour claim on a completely impartial basis. The TCW adjustment carries considerable weight

and is a credible assessment of those costs which would be considered reasonable in all the circumstances.”

(Mr. Raymond T C Wong: Average Adjuster)


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一九八一年六月筆者協助黃漢明老師出任助教工作，教導的是利比利亞船長班，使學員能有充份的預備參加利比利亞船長牌考試。班中的學員不像參與英牌考試的水準，所以他們想像不到要解決某些問題時背後的原理是怎樣的，經過充份的解說才有所悟。

筆者於一九八六年加入海事處擔任了四年考牌主任，當時聽過、見過不少奇形怪異的答案，真的不知道考生從那裡得到的培訓，誰人擔任教導的。

由一九九八年四月開始，筆者在一間海事訓練學校任教。直至二零零零年尾，學校轉換新環境，昇級至訓練中心，所有課程均提昇至 IMO / IALA 標準，增加現代教學儀器如海上交通管理員 (Vessel Traffic Service Operator) 模擬操控台、GMDSS 模擬船舶電台、全功能船舶模擬駕駛台和模擬海上救援協調中心等。

二十多年後的今天，筆者目睹部份年青學員的另一種態度，部份人士對學習上抱著一種求取考試貼士的態度，要求提供範本答案 (Model Answers)，不想思考和搜尋參考文件與書本；不是嚴謹學習，只求過關，得過且過便算有所交待，完全沒有古代韓國「大長今」女御醫的精神，不能刻苦耐勞，很想一蹴即至。將來……唉！若然他們成為下一代的導師、講師或教授後，他們用什麼學問和功夫來培訓下一代呢？

現今看來，為什麼時下的僱主時常批評時下的畢業生，東不成西不就，語文能力差，削弱競爭能力。語文並不代表一切（日本便是一好例子），本身職業上的基本技術和知識才是最重要的。例如：幹貿易的連市場上的變動、海陸空運輸狀況、罷工與戰爭皆不能掌握，那再好的語文也無法改善。

航海學問、技術和知識皆是物理學上的東西，上至天文，下至地理都包括在內；如沒有下過功夫，努力學習，根本是掌握不到學問所需，付之應用，求取經驗；甚至稍有差池，意外頻生；人為疏忽，有時也因為學問上的不足造成的，更甚者，則會造成傷亡嚴重，損失很大。

科技發達，現代航海已靠很多科技儀器，人類的劣根性便是「有得倚賴便倚賴」，於是全部相信儀器提供的資料，從不互相交叉檢查 (Cross Check)，找出誤差和缺點；認為優點多於一切，不曾想過「先進科技促進事故的發生」，這也是致命的關鍵。

培訓就是提供給學員學習的機會，給與基本知識和技術，使學員能靈活、變通地應用所學的知識和技術，以求更佳效果。啟蒙令到學員日後自動自覺去學習與之有關的、更新的學問、知識和技術。相信接受培訓的人已不是小孩，無需旁人嘮嘮叨叨的吧。

## 傳統訓練與模擬訓練

傳統的航海訓練是只在課室上課，單向性傳授海事科學知識，學員學得的知識只能在船上工作時獲得實際工作經驗，從而更瞭解所學的知識。學習過程上也比較納悶一點，尤其是教授助航儀器，沒有模擬助航儀器協助講授，就好像純屬紙上談兵一樣，學員看不到現象的變化或變更，有時真的很難明解的。

那麼，為什麼不使用實物儀器來教授呢？使用實物儀器時會添了不少麻煩，可能導致誤會而令行業上出了大亂子。例如：如果使用實物無線電來教授如何發出遇難求救訊號，無線電發射機真的發出遇難求救訊號，像 DSC 數碼選擇性遇難示警，訊號真的發射出去，附近所有船舶和岸台便會接收到，人們不知就裡，以為真的有船舶遇險，岸台的救援中心和船舶，馬上進行拯救，這豈不是誤導他人，浪費人力和物力，妨礙其他通訊電台運作，也使人有狼來了了的感觉，對真正遇險船舶帶來了絕對的危害，海上人命便沒有保障了。

駕駛船舶的訓練，傳統上只用木製的模型船在書桌上推行，這是沒法理解真正船舶的特性，例如：緊急停船 (Emergency Stop)，衝距，緊急煞停 (Crash Stop)，機器停止運行所需時間，迴轉所需海面大小、時間等等。那為什麼不使用真實船隻來訓練呢？由於使用真實船隻來訓練，出了意外事故，會危害人命，船東一定不願意，保險又如何？還要等候真正的條件如所需天氣、日間、晚間、視程等，才能符合所需的訓練。

使用模擬船舶就不同了，可以模擬小船至超級油輪，訓練時，採用什麼模擬天氣、視程、日夜時間皆可以。出了「意外」如撞船，撞碼頭等，只是在課室內出現，不會危害人命，課後可馬上檢討，找出錯誤之處。而且學員同時可取得一點經驗，而不只是得過「講」字；還有，在學習過程中，學員與模擬器出現互動情形，導師與模擬器會有互動情形，因而導師與學員也會出現互動情形，在訓練上，不單只是傳授知識，還有技能、技術，這已不再是訓練 (Training) 那麼簡單的了，實是學習 (Learning) 的了。

總的來說，模擬器材、模擬儀器和模擬船舶皆是上好的培訓工具。航空界就是最早採用模擬駕駛艙來培訓機師的了，不同型號的飛機使用與之相同型號的模擬駕駛艙，學員的訓練裨益實在很大，提高知識和技術水平，保障安全。

## 基礎教育與科技

雖然香港沒有科技發明和發展，但香港人有一個最大的優點，就是善用科技產品來幹自己的活。也因此，如沒有科技產品的應用，現今人類也就沒法子完成應有的工作。舉一個實例：某天，筆者到某銀行存入票據，到達銀行時才發現該座銀行大廈停了電力供應，銀行整個運作也停止了。櫃台工作人員要求筆者改天再來，因為電腦無電不能存入款項；而筆者的即時反應是：「銀行在未有電腦協助工作前，你們如何操作的？」那個工作人員即時啞口無言，只能說聲「對不起」，打發筆者離開。



從這一例子，筆者意識到現今人類如沒有科技產品便無法工作了。回想起來，現在的基礎教育也令下一代不用腦子，只要有工具便可，為什麼呢？你看看，現在所有接受基礎教育（即由幼稚園至中五）的學生都可以批准使用計算機 (Calculator 或 Scientific Calculator)，算什麼數字按按計算機便有答案的了，那他們還用什麼腦子思考呢？無須查數學表，或運用手算、心算來完成計算。因此，一個學生如沒有計算機使用，也就沒法計算數學的問題。其實，計算機只是用來協助用家提高工作效率，節省一點時間而矣！對數學理論而能用手作及數學表運算，才是真正對數學有所認識。事實上，計算機有一缺點，就是按錯了鍵出錯了答案是無法辨別的，因此，我們應該要用其他方法互相檢查才是，不能單靠計算機。所以，筆者個人認為，並且強烈反對基礎教育批准使用計算機來做數學上的學習計算。學生須讀至中六或以上的教育才可以批准使用計算機，也即是該學生已有一良好的數學基礎根基，沒有計算機也不影響他的數學根基。

或許，你覺得筆者是一個很保守的人物。筆者只有小學基礎教育程度，但能完成並考獲英聯邦遠洋船長合格證書 (Certificate of Competency (Deck Officer) Class 1 (Master Mariner)；就是多用手算和數學表而熟能生巧，使到筆者在考試時能準確查閱數學表；當年考試規則是不可使用計算機的，沒有計算機的協助也能完成數學上的問題，原因是用腦子思考、審核和分析問題。由一九六八年開始出海工作，從沒有攜帶計算機來協助工作。直至


一九七八年，筆者才購買了人生的第一台科學計算機來協助工作，期望提高工作效率。所以，筆者雖然只是小學基礎教育程度，但數學根基不會因計算機的出現而忘記。

有句說話：「居安思危」。沒有儀器的協助，你可否使用最基本的方法去完成工作。航海人員每分鐘都想著面前的危險，你不知道下一分鐘會發生什麼意外，行船跑馬三分險，就是這個道理；不過，仍有七分安全的，尤其是根基好，沒有人為疏忽，完全遵守海洋法規，避碰規例等等。

(林傑船長：Master Mariner, F.I.S., MH.)

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