

CML Seminar Series: Decarbonisation of Shipping and Contractual Innovations

24 August 2023
Amara Singapore



The Centre for Maritime Law (CML) Seminar on “Decarbonisation of Shipping and Contractual Innovations” took place on August 24, 2023, at the Amara Hotel from 4:30 pm to 6 pm. Professor Mikis Tsimplis, Professor of Law at the City University of Hong Kong and Deputy Director of the Hong Kong Commercial and Maritime Law Centre, delivered the seminar. He is also a Visiting Professor at CML NUS Law and an Academic Fellow of CML.

The seminar began with an introduction to the legal backdrop of global decarbonisation efforts, starting from the 1992 UN Framework Convention on Climate Change to the 2015 Paris Agreement. Professor Tsimplis then focused on the International Maritime Organisation’s (IMO) Greenhouse Gas (GHG) strategy, which aims to achieve net-zero GHG emissions in the shipping sector. He raised concerns about the current certification regime, which seems to prioritise protecting ships over the environment.

According to his analysis, the primary tools for reducing GHG emissions in shipping include design efficiency, operational efficiency, and carbon pricing.

Ships’ design efficiency is now evaluated using the Energy Efficiency Existing Ship Index (EEXI) and Energy Efficiency Design Index (EEDI). In 2021, BIMCO introduced the EEXI Transition Clause for time

charterparties, allowing shipowners to modify ships for EEXI compliance with prior notice. However, questions remain about the clause's nature and whether it can be invoked multiple times.

Professor Tsimplis then discussed the challenges of the CII regime, which rates operational efficiency based on the assumption that ships are fully loaded, even though this isn't always the case. This assumption can lead to misleading ratings, with ships appearing more efficient when carrying cargo inefficiently. He also highlighted the BIMCO CII Operation Clause for time charterparties released in 2022, which gives shipowners significant power in cases of potential breaches of Agreed CII, creating difficulties in determining the correctness of exercising of power by shipowners and the causation of loss.

The seminar also addressed the European Union Emissions Trading System (EU-ETS) for shipping. Professor Tsimplis noted that while carbon trading could be a valuable tool for reducing emissions, its effectiveness relies on global implementation to prevent carbon leakage and ensure success.

Professor Tsimplis concluded by discussing the limitations of solving environmental issues through contractual means, as these often focus on performance obligations and risk-shifting. He suggested an alternative approach of developing a more "principled" and "socially responsible" theory of contractual performance that aligns with social and environmental objectives.

In summary, the seminar provided insights into the complex legal and contractual challenges of decarbonising the shipping industry. It emphasised the need for global cooperation and innovative legal approaches to address environmental concerns in the maritime sector.

