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## Problems in marine insurance in the Mozambique marine industry : developing a local marine insurance infrastructure

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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**PROBLEMS IN MARINE INSURANCE IN THE  
MOZAMBIQUE MARINE INDUSTRY:  
DEVELOPING A LOCAL MARINE INSURANCE  
INFRASTRUCTURE**

By

**LUCAS JOSE CIPRIANO**

Mozambique

A dissertation submitted to the World Maritime University in partial fulfillment of the requirements for the awards of the degree of

**MASTER OF SCIENCE**

in

**MARITIME EDUCATION AND TRAINING  
(Nautical)**

1996

## DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me .

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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## ABSTRACT

This dissertation is an invitation to all shipping companies, shipowners and navigation enterprises to study and find a way of creating a local marine insurance since that does not exist at all.

It outlines the investigation of current practices of marine insurance policy in Mozambique, marine shipping and trade. A brief look at the government's policy regarding marine insurance and identification of national insurance as well as any problems existing in this area are also included on this dissertation. The dissertation identifies and examines the need to insure subject matter such as: ships, goods, personnel and freight. It also evaluates the comparison of clubs created by shipowners and those created by shipping companies and the importance of having these clubs in the country.

The assessment of world-wide practices and their impact in a developing country such as Mozambique are investigated.

Education and training in the subject is strongly recommended in the concluding chapter, and cooperation with marine insurance abroad is suggested.

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## LIST OF ABBREVIATIONS

CIF	Coast Insurance Freight
EMOSE	Empresa Mocambicana de Seguros
FOB	Free on board
ILU	Institute of London Underwriters
IMPAR	Companhia Mocambicana de Seguros
NAVIQUE	Empresa Mocambicana de Seguros
P&I	Protection and Indemnity

## **CHAPTER I**

The history of insurance is no more than historical effort undertaken by man to free himself of poverty. With insurance man tries to recover, almost entirely, the damages and prejudice caused in one accident of the object insured.

### **1.1. INTRODUCTION TO INSURANCE**

#### **(General definition)**

The origin of insurance is a product of development and evolution of primitive man's economic reasoning.

The impulse for that evolution had its origin in man's economic activity that was destined to please his needs. Such needs are distinguished by priority, urgency and other qualities. Food, clothes and accommodation are primary and undoubted needs on which the existence of man depends.

With the development and perfection of the culture of man there is verification of a refinement of his needs. Besides the anxiety of a primitive human being to please the needs of his existence, the wish to please such needs in a better way rapidly appears: he

wants good food, good clothes and comfortable accommodation. Once these needs are achieved an ardent wish is announced to please other needs.

The wish to satisfy present needs whilst also thinking about future needs can be considered as the first impulse for an imagination of insurance.

Man learned to share his income and started to consolidate his stocks and the economy to face the future needs, without thinking only of the needs that he is able to see but also those that may not be seen. This idea became extremely important due to man being continuously threatened by numerous perils as his existence or his work are exposed to a total or partial annihilation at any time.

To respond to this man reached two conclusions: Firstly, he recognized that it is almost impossible to overcome all future needs, alone. His resources are not sufficient to accumulate or store to solve all eventualities. Secondly, he recognized that a number of existing economic activities (man, big and small enterprises) are threatened by perils.

Clearly from that way of thinking came the idea of joining other groups threatened in the same way, so as to distribute the weight of perils represented in each body to be spread throughout the group. Thus, the individual burden is distributed among a large number in a group threatened by the same perils. From this point of view insurance is an idea of spreading the risk amongst members of the group. Therefore, insurance can be defined as a way by which a big number of existing economic institutions, threatened by analogous perils, are organized to mutually face the possible threats.

### **1.1.1 Marine insurance**

Marine insurance is a way whereby the shipowner or cargo owner tries to prevent the effects of perils derived from a possibility of any maritime disaster. This problem is solved when there is an appropriate institution (marine insurance companies or enterprises) that issues a contract which is expressed by an instrument called insurance policy.

As a consequence of this contract, the insurance institution collects an amount called insurance premium. That premium is variable depending on:

- The object or matter.
- The goods or interests insured.
- The name.
- The reputation of the shipowner or cargo owner in matter of disasters.
- The value of the insured goods.
- The kind of transport and the cargo packing form.
- The age of the ship.
- The transport mode (under hatch or holds, containers, bags or other).

### **1.1.2 Types of marine insurance**

There are several types of marine insurance, which from the point of view of the shipowner can be:

- Hull insurance.
- Machinery insurance.
- Third party liability insurance (Protection and Indemnity insurance).

- Cargo insurance.

In this can also be included insurance of crew, war risks insurance and strike insurance. The insurance cover can be agreed for a period of time or for a voyage (covering only the mentioned voyage).

For all these cases the policy as well as the premium will be special, depending on the factors and circumstances mentioned above.

### **1.1.3 Main markets of marine insurance**

Marine insurance represents an authentic market with a lot of competition among the agents of insurance. Traditionally, the United Kingdom was the predominant market which began with the foundation of Lloyd's. This company was founded in Lloyd's coffee house in the seventeenth century, by a Mr. Lloyd. Lately other insurance markets have appeared such as Japan, the USA, and the Scandinavian countries, but all these agents conduct their business activity with mutual respect and, to some extent, the markets are connected with each other.

## **1.2 CURRENT SITUATION IN MOZAMBIQUE REGARDING MARINE INSURANCE**

### **1.2.1 The marine shipping and trade situation in Mozambique**

Mozambique is a coastal country where more than 95% of the external trade is carried by sea. This means that the country depends almost entirely on maritime transport for exports and imports. Consequently, maritime transport is of great importance for the

economy of the country. Taking this dependence of its external trade on maritime transport, the Mozambique government should place emphasis on the maritime sector in general, and on shipping policy in particular, as well as the insurance area.

After its independence in 1975, Mozambique undertook to have its own coastal and regional fleet and in 1976 the Empresa Mocambicana de Navegacao, E.E. (NAVIQUE) was created. Until 1992 the fleet was composed of twelve cabotage vessels, but today, due to an economic slump, the enterprise has only two operational vessels.

In 1987, Mozambique became a free country with an open market which permits privatization in all sectors including the maritime sector. New shipping enterprises and companies were created. These new companies and enterprises do not own ships but charter them for export and imports purpose.

## **1.2.2 The external trade of Mozambique**

### **1.2.2.1 Export**

Exports in most developing countries are mainly based on agricultural products and raw materials. With a few exceptions, the future of Mozambique exports is very similar to those of many developing countries.

Agriculture and fishing are huge assets for Mozambique. They contribute about 20% and 50% respectively of the Gross Domestic Product.

### 1.2.2.2 Principal commodities (US \$'000)

#### Exports f.o.b.

Copra	2,500
Cotton	11,055
Cashew nut	8,151
Oranges	2,000
Shrimps, prawns, etc.	68,793
Sugar	6,655
Lobsters	3,188
Total (including others)	140,554

### 1.2.2.3 Principal trading partners (US \$'000)

#### Exports f.o.b.

Germany	949
Japan	13,163
Portugal	18,221
South Africa	23,033
Spain	41,028
United Kingdom	681
USA	18,610
Zimbabwe	8,270
Total (including others)	139,305



### 1.2.3 Import

The leading imports include machinery and transport equipment, chemicals, textiles and domestic utensils. As with exports, the features of Mozambican imports are similar to those of most developing countries which are mainly represented by manufactured articles.

#### 1.2.3.1 Principal commodities (US \$'000)

imports c.i.f.

Consumer goods:	
Foodstuffs	253,924
Other	83,888
Primary materials:	
Chemicals	31,953
Metals	29,808
Crude petroleum & petroleum products	95,860
Others	97,723
Machinery & spare parts	83,628
Capital goods	200,736
Total	877,520

### 1.2.3.2 Principal trading partners (US \$'000)

#### Imports c.i.f.

Belgium-Luxembourg	8,141
Canada	11,504
France	32,789
Germany Democratic Republic	29,140
Germany Federal Republic	30,594
Italy	48,355
Japan	45,309
Portugal	55,130
Netherlands	16,475
South Africa	187,652
Sweden	24,406
Switzerland	4,590
USSR	78,842
Unite Kingdom	38,533
USA	57,279
Zimbabwe	22,858
Total (including others)	807,676

*Source: Europe Publication: Africa South of Sahara 1996 p. 658*

Having considered both the main exports and imports of the country, one can draw the conclusion that the external trade balance shows a deficit.

It shows that maritime transport in Mozambique is a very young industry in terms of its size, which implies that marine insurance is very young too, since both industries are closely related.

### **1.3 CURRENT PRACTICES OF MARINE INSURANCE IN MOZAMBIQUE**

#### **What has been done and what should be done?**

Marine insurance activity in Mozambique is very limited. What little exists is largely handled by foreign insurance companies. In general, risks are handled in foreign countries without local involvement, and there seems to be no connection between the Mozambique industry and the country where risks are being insured.

Domestic marine insurance is not well established throughout the country. Vessels in domestic trades (cabotage) are usually not insured at all. As an example, when there was a fire on M/V "SAVE", the crew were not paid their wages and the vessel also could not be replaced. There was a total loss since the ship and cargo were completely destroyed by fire. It is clear that even those companies considered mature insurance companies, would have had problems compensating the damages, unless a reinsurance was made.

Reinsurance plays a very important role because an insurer could not exist on his own in modern conditions. The liabilities which shipowners and other maritime people face are or can be catastrophic.

By reinsurance, the insurance company tries to spread the risk to other insurers so that in case of accident which results in a total loss, all these companies share the expense to replace the lost object.

A hypothetical example to illustrate the preceding comment is shown below. The company and the insured decide on the amount of expense called the deductible or franchise that, in case of an accident the company is not supposed to pay, which is on 20% of the total amount insured, and for the rest the company is responsible, figure 1.

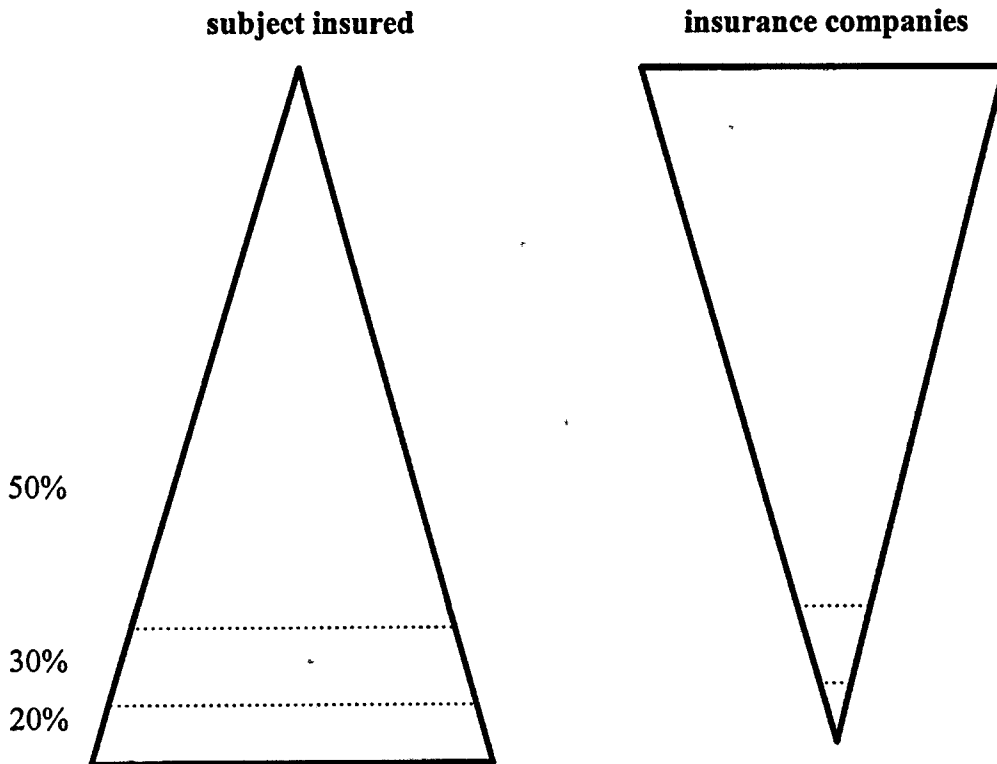


FIGURE 1

In this case, the company will try to divide up the other 80% among the various other insurance companies, taking for their own responsibility about 30% of the risk which they are obliged to pay for any accident happening in that range.

The remaining 50% of the risk is spread out to the other insurance companies by the system called reinsurance.

The advantage is that buying insurance from other insurance companies you may make a significant profit, since the part reinsured is very seldom threatened by accidents, or the accidents covered in the reinsurance occur in small numbers.

This means that the large part of risk that corresponds to the large amount of money, (50%) will be a reinsurance responsibility, the 30% of risk will be handled by the insurance company to whom the subject insured was addressed and 20% will be the responsibility of the assured.

If a law regulating insurance business had been promulgated by the government under Mozambican law, and if insurance and reinsurance had been practiced in Mozambique, the situation of M/V "Save" would have been entirely different.

In view of the present marine insurance set up, it is evident that there is a serious need to establish intermediaries inside the country, to make marine insurance in Mozambique work.

There are two kinds of intermediaries found in the market: Brokers and general agents.

### **1.3.1 Brokers**

The brokers are usually the intermediaries between the insurance companies, the agents and the assured. The broker is the authorized agent of the assured. He is the one to whom the premium is handed over. He is the real person negotiating the policy for the assured. Therefore his existence in the business of insurance is a considerable contribution and is indispensable.

### **1.3.2 General agents**

Another kind of intermediary are the so called general agents. They represent the insurance companies and bring to the traders the security of the companies for which they underwrite. They carry out their business like a liberal occupation and can offer the businessman the services of an insurance company in a decentralized way. In short, they are close to the buyer of insurance.

## **1.4 THE GOVERNMENT POLICY WITH REGARD TO MARINE INSURANCE**

The Government has not yet imposed a very strict policy to rule marine insurance in Mozambique. Although it is not compulsory to insure goods, ships or personnel the Government could require that an arrangement with regard to marine insurance has to be made by whom it may concern, since without insurance, a shipping company can spend large sums of money to cover possible losses, money which could be profitably used for other company business.

The Mozambican laws regarding marine insurance should therefore adopt precedents set by developed countries as well as developing countries in their heavy reliance on British laws. It might result, and it can be simple since Mozambique has just become a member of the Commonwealth, in some rules being compulsorily followed by Commonwealth country members such as English as one of the primary languages to be spoken in the country.

As the law of marine insurance is international, it is strongly recommended that the Mozambican law should, as far as possible, be in conformity with a model that is accepted in common law countries.

### **1.5 IDENTIFICATION OF NATIONAL INSURANCE ENTERPRISES**

In Mozambique, there have been insurance companies since the time of colonial administration. EMOSE (Empresa Mocambicana de Seguros) was created in 1977 through a merger of four existing enterprises namely Nauticas, Tranquilidade and Lusitanea located in former Lourenco Marques City and Mundial de Confianca located in Beira City. EMOSE was created with the objective to insure all subjects against risk.

For the same reason IMPAR and Companhia Mocambicana de Seguros were created. All these enterprises are located in Maputo City.

## **1.6 SUMMARY:**

### **Problems in marine insurance in Mozambique**

Maritime activities in Mozambique are not seen as a priority. Consequently marine insurance meets great problems in becoming established because it does not have a place to act. Lack of information and lack of incentives contribute a lot to the problems faced by marine insurance in Mozambique.

The idea of having seminars related to marine insurance, where shipowners, agents, the government and all sectors dealing with maritime activities would participate could help. Furthermore, advertising by TV, radio, newspapers and other means available could play an interesting role in convincing the people involved in insurance, to be interested.

### **Lack of communication**

The fact that the assured are not properly informed of what they should do when damage or loss occurs is a sign of lack of communication between the assured and the insurer. If the assured is not properly informed as to what he should do when there is an occurrence of loss or damage, he cannot do what he is supposed to. Then he cannot understand what the main reason is of insuring his goods either. This information should be given either by the insurer himself or by the broker while the contract is concluded, and the assured should be reminded as soon as the damage occurs.

### **Mistrust of the public**

This point is a very difficult one. The public in general consider insurers or insurance professionals as people who use their money to become rich, and this opinion is so wide-



spread that it will take time and effort to change it, especially in a country like Mozambique where trust is a subject to take into account.

Only the insurance professionals can do anything to lead the public to change its opinion towards them. This will be a very long and exacting task, because they have to show, on top of everything, more professionalism.

## **CHAPTER II**

### **2.1 ADVANTAGES OF THE INSURANCE ITSELF**

One of the fundamental concepts of insurance is that one cannot insure against loss of or damage to property unless the proposed assured has some sort of interest in the property. Such insurable interest is found to exist wherever the assured stands to benefit from the safety of the property insured or be prejudiced by its loss or damage.

#### **Indemnity**

Brown (1986,37) says:

In theory, the purpose of any form of insurance is to replace that which has been lost. It is not intended that the assured should make a profit from his loss but that he should merely be in no worse position than he was before the loss occurred.

It could, therefore, be agreed here that the principle of indemnity is central to the definition of marine insurance.

In case of total loss of the subject matter, the insurer is liable for the full measure of indemnity which may be fixed by the policy. Also where there has been particular

average loss that is, partial loss caused by a peril insured against, or where there has been general average loss, that is, a loss caused by or directly consequential on any extraordinary sacrifice or expenditure, voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in the common adventure, such as in voluntary stranding to avoid shipwreck, the full measure of indemnity less policy deductibles may apply.

**Agreed value** - In a marine insurance a value can be agreed between insurer and assured and this will be conclusive of the actual insurable value of the insured property, except in cases where there has been a constructive total loss or partial loss.

**Good faith** - A contract of insurance is deemed to have been effected in good faith, in the absence of which the policy can be avoided. In the case of marine insurance an underwriter may have never seen a ship but acts on the word of the assured as to its existence, value, destination, and such description will be considered by potential insurers in deciding whether or not to accept the risk and at which premium rate.

**The policy** - A contract of marine insurance must be embodied in a marine policy for it to be admissible in evidence although reference may be made to the slip or covering note in attesting to the conclusion of such a contract.

*source: The principle of marine insurance pp. 20/24*

These principles are merely some of the concepts underlying the basis of the marine insurance contract. Each country may have different legislation governing such contracts. Although the exact content of such legislation varies from country to country, broadly speaking, it can be said that such legislation often, though not universally,

contains these principles as well as aspects of the contractual relationship governing such subjects as double insurance, warranties, assignment of the policy, the voyage and the premium.

## **2.2 SHIP INSURANCE OR HULL INSURANCE (RISK)**

### **2.2.1 Definition (background)**

Mozambique possesses a national merchant marine as mentioned early in chapter one. As other insurance, the hull insurance is not practiced in the Mozambique shipping industry.

In hull insurance practice, the market provides facilities whereby the shipowners, managers or other persons responsible for the safekeeping of a ship can protect themselves from crippling financial loss by paying a premium which is relatively small when compared with the value of the ship. The hull insurance cost will probably be recovered by the manager of the ship in the freight earned by the operation of the ship.

In the hull insurance, the indicated person for business is the broker who is not obliged to accept the instructions of the assured to place the insurance contract. Although a Lloyd's brokerage concern must fulfill certain requirements imposed by the committee of Lloyd's, the broker remains free to act as an agent for the assured.

The broker is the agent of the assured, not the underwriter, although he is remunerated by brokerage paid by the underwriter. When the broker places a marine insurance contract, he makes himself responsible for the premium payment to the underwriter, and

he is permitted to deduct his brokerage from the premium before he pays it to the underwriter.

A broker is not obligated to complete a placing. If he finds he is unable to complete the placing as instructed by his Principal he must advise his Principal of the situation, or he can ask assistance of another broker to help him. If he is still unsuccessful, he must take care to advise his Principal before the risk becomes a big problem.

### **2.2.2 Advantages**

There are two parties to a hull marine insurance contract. These are the insurer, who agrees to bind himself to the true performance of the contract, and the assured, who agrees to pay for the performance. This consideration is, in fact, the sum of money paid or payable to the insurer and is called premium as explained earlier in chapter one of this dissertation.

The premium is vitally important to the insurer for it is from his premium income that he accumulates the funds set aside to meet possible claims. The difference between premium income and claims, less overheads, represents the insurer's profit. It follows that the insurer must use all his skill, judgment and knowledge to ensure an adequate premium income and to assess the premium to be charged but, at the same time, not to underwrite business which may result in large claims, thus reducing the profit ratio. Such skill, judgment and knowledge is gained by experience and, for this reason, the premium is assessed by the leading insurer on a slip. The other insurers simply follow the leader and accept the premium rate assessed by him.

The rate of premium for any particular type of insurance will remain, more or less, constant but the premium derived therefrom will be higher or lower depending on the sum insured. If the insurer stated the actual premium on the ship he would have to make a calculation with the sum insured in each case. To avoid this necessity the rate of premium is shown as a percentage. This percentage is then applied to the sum insured when the insurance is closed.

### **2.2.3 Disadvantages**

An insured who approaches an insurance company is considering the possibility of loss in the future and is concerned with covering himself in the event of that loss occurring. On the other hand, the insurer must consider the risk in the same light and charge the premium accordingly. It may happen that the risk does not take place or that even if it does it may do so in such circumstances that the insurer would have charged the lower premium. The assured may then feel he has been unjustly overcharged and that he is entitled to a return of part or whole of the premium.

## **2.3 THIRD PARTY LIABILITY INSURANCE**

### **2.3.1 Definition and background**

The principle of mutuality in marine insurance was one of the first to be traced because of the large scale of damage caused by fire, whereby the victims could not recover the losses.

In those times the cover of such kinds of accident was made by donations or contributions by non-affected parties, if they wanted to. After some time, the idea of mutuality was developed and it has had good results up to today. The loss of the individual thus became the loss of the particular community.

In marine insurance, the application of this principle took time to be implemented, maybe because owners of insurable property were satisfied with the form of protection available to them through the system of private underwriting. The history and development of P&I clubs was a title of a report made by the Insurance Institute of London, where it was pointed out that mutuality in marine insurance had been relatively widespread in the eighteenth century. Compared with fire and disasters, which made mutuality appear in 1666 or earlier, it is easy to understand that in marine insurance P&I insurance was long in coming.

Third party liability is a liability incurred as a result of some form of negligence whereby loss or damage is suffered by someone who is not a party to a contract with a person who caused the loss or damage. The term derives from the fact that there are two parties to a contract and any person outside the contract is a third party. So a third party liability is one incurred in absence of a contract. Third party liabilities not acceptable to marine insurance are normally covered in shipowners' mutual societies, known as Protection and Indemnity clubs (P&I clubs).

In P&I matters, there is no restriction or otherwise, also there is not any obligation on the owners of insurable property to place their insurance in the ordinary market. If a number of shipowners care to pool their losses on the basis of mutuality, they are free to do so. Thus a mutual insurance association must be formed and stamped policies should be

issued in accordance with necessary requirements. Such associations are free, within their respective constitutions, to accept any or all risks to insurable property

Putting the things together, it is concluded that the essence of mutual insurance is to indemnify by contribution. A question can be raised. Why is all insurance not conducted on a mutual basis? The answer could be easy by saying because there are different kinds of losses, partial loss and total loss, and in the P&I system the basis of all successful underwriting is a wide spread of risk so that the law of partial loss may be given full play. Another answer to this question is given by the existence of reinsurance where, one more time, the risk is spread out, not by individuals but by insurance companies.

Protection and Indemnity clubs, being mutual organizations, have no share capital. If in any case the membership exceeds twenty ships, they must be registered as companies. The security consists in the values of ships entered. The method of assessment of the contributions to be made in respect of the entry of the vessel in a club is laid down in the rules, which vary from one club to another. For example, it may be requisite to pay one dollar per ton per year or annum, in respect of Administration costs. In addition, a basic call may be made of a given amount of dollars per ton, the amount of this call sometimes being adjusted according to the size of the vessel entered.

The P&I clubs cover loss of life, personal injury, damage to fixed and floating objects, loss or damage to cargo, property, seamens' effects and many other liabilities which could result from the business of shipowning.

As mentioned earlier, members of the club contribute in respect of each policy year only towards the total amount required to meet claims and expenses in that year. They pay



firstly a percentage of the estimated total cost as an advance but a supplementary call may be required to make good the club's shortfall.

### **2.3.2 Advantages**

The main objective of a P&I club, is to bring people together, insuring against various liabilities in one club. Loss of life and personal injury risks is one of the issues covered by a P&I club. If a crew member is unable to continue working because he is injured during his normal work, the club will reimburse the shipowner for medical expenses for the employee. If continuing working will prejudice his health, there is a law imposing the employer's liability to compensate a workman and the club will indemnify the shipowner.

Collision is another risk partly covered by P&I where the liability of a member in respect of the entered ship for loss of or damage to any other ship arising from improper handling or negligence of the people for whom the member is responsible, is taken into account.

In cargo risk, liability to carriers is applied if damage is caused by deviation of destination of the ship, collision and consequent loss of cargo or other negligence of people on board or alongside as well as bad stowage, pilferage, over-carriage, short delivery, mis-delivery and negligence in loading.

P&I insurance covers harbour risks - Liability for loss of or damage to stationary objects, including liability created by the usual terms of contracts for towage or for the hire or use of tenders, with a franchise of some amount.

One of the most important advantages of Third party liability is the quarantine and infection disease risk cover. This takes care of liability in respect of unexpected expenses for disinfect the ship, persons or things on board, discharge or reloading of a cargo subject to deduction from the claim of the estimated cost of discharge where the cargo would have been discharged in the ordinary course, and discharge and re-shipment of passengers or crew. Such expenses not being recoverable if the change of the vessel being subjected to ought to have been anticipated. Loss by detention of the ship and the wage of the crew, and the cost of provisions of passengers and crew are not recoverable.

### **2.3.3 Disadvantages**

Where there is third party liability no prior agreement can be reached to establish the extent of recompensation properly due except that in the case of loss or damage to property the value of the property lost or damaged is the maximum liability. However for the loss of life or injury it is practically impossible to establish the value of the life lost or the injury sustained. Nevertheless, one thing is clear so far as insurance is concerned the maximum liability of an insurer is the sum fixed by the policy.

It is true that the person suffering loss because of the fault of another should receive generous consideration as a compensation for the loss suffered, the negligent party is not always in a suitable financial position to pay a just compensation, thus the problem arises. Lack of insurance cover does not remove the liability, so common prudence encourages the shipowner to effect insurance to protect himself from financial loss resulting from the negligence of his employees.

## **2.4 CARGO INSURANCE**

### **2.4.1 Definition and background**

To insure a cargo is to prevent the economic effects of its losses. Preventing losses is clearly a laudable aim, because every single loss adds up to a loss for the community as a whole. People have knowledge about how to stop losses occurring, and if they act on it they could probably eliminate the vast majority. Yet cargo continues to be lost unnecessarily. In developing countries the problems caused by inadequate loss prevention are more acute than in the developed countries. Lack of handling and storage facilities within ports, and internal transport services subject to severe disruption from weather, are among the reasons why developing countries as a whole, and Mozambique in particular, suffer from relatively high levels of loss or theft which ought to have been easy to prevent.

Clearly if losses never occurred there would be no need for insurance. However, it is impossible to eliminate loss entirely because of dangers inherent in cargo transportation. Even the most skilled and attentive workforce can make mistakes and a moment's carelessness can lead to all kinds of damage. Marine perils and the risk of fire or flood are always present and cannot always be avoided. Thus there will always be a need for insurance and even when the insurer takes action to reduce the level of loss, he will continue to receive an income on which to make a satisfactory return.

With cargo insurance in Mozambique at present mainly concerned with covering imports, loss to shippers' insurers and the domestic economy is far more acute in respect of imports.

### 2.4.2 Advantages

The basic purpose of marine cargo insurance is easy to understand. The assured obtains a promise of protection from his insurer so that if his goods are lost or damaged he is compensated.

For the users of vessels, insurance is the major form of loss prevention. In exchange for a relatively low premium, they protect themselves from the consequences of a loss actually occurring, and as they do not suffer those consequences, any money spent on preventing the physical occurrence of loss is an additional burden on them. But if they do spend money on prevention of actual losses, the insurance premium may be lower.

An additional premium can be seen as an advantage for both the insurer and insured, defined as an extra premium to be charged over and above the basic rate, when a certain state of affairs exists. In practice, an additional premium is not charged at the time the contract is concluded because it is usually in respect of a risk which may be anticipated as likely to happen but which need not necessarily happen. Therefore, when the contract is concluded the basic rate is agreed and a provision is made for an additional premium to be charged if certain circumstances occur. If the circumstance does not occur no additional premium is charged. In most cases an actual rate or a set scale specified, when the contract is concluded.

The objective of an additional premium is to charge for the cover of something not normally covered by the policy. Since neither party knows for certain that this additional risk is going to arise, it is said to be "held covered", which means that the assured wishes to be certain, in advance, that his interest will continue to be insured in the event of a

circumstance arising whereby the insurance will not continue in the absence of any prior agreement.

The following example of by Brown (1986, 55) illustrates the application of the "held covered" provision in marine insurance and the relevant additional premium.

Goods are insured from A to B at 1.00% and the insurance terminates when the goods are delivered to the warehouse at B. The assured anticipates long periods of hold up in the destination warehouse before he can dispose of the goods and is concerned about the fire risk since the marine policy will have ceased to operate. he does not want to effect a separate fire policy because he is not certain about fire hold up taking place. The answer is for the marine policy to continue if and when the goods are held up in the destination warehouse, but only for fire risks. Let us assume the marine insurer agrees to this and applies an additional premium of 0.075% for each thirty day period or part. The policy will show "Additional periods held covered at destination warehouse against fire risks only at an additional premium of 0.075% for each period of thirty days, or part thereof". The assured will pay basic rate of 1.00%, but not the additional premium, and the policy will be delivered to him. In due course, the goods will arrive and the consignee will know if, and for how long, the goods are held up in the destination warehouse. When the goods finally leave the warehouse the assured will notify the insurer and the additional premium will be calculated and paid.

Using this system requires a high degree of honesty and good faith from the assured for, unless there is a loss under the policy, the insurer is unlikely to know whether there has been any warehouse risk at all. Anyway, the system seems to work very satisfactorily, being another illustration of the good faith which persists between the marine insurance market and commercial interests.

### **2.4.3 Disadvantages**

The idea of insuring cargo may be simple but the practical problems can be extremely complex. Many of the difficulties faced by users of marine insurance are caused by misunderstanding the nature of the policy bought. The assured may not understand that there are limits to the cover provided and not know that the basis for compensation is not necessarily the exact amount lost. He must know and understand that his protection depends on the goods having been properly prepared and packed, and he may not realize until he is making a claim the extent of supporting documentation he has to produce. These misunderstandings are found throughout the world, but are of particular concern in developing countries where many of those in the maritime trading community often do not have the long experience of their counterparts in the developed world. This handicaps marine insurers as well as their customers. Customers become dissatisfied with the service they are given, and so aim to spend as little as possible on what they see as a valueless guarantee. As a result, the opportunity for growth within the marine insurance industry is restricted, its unit costs remaining higher and its reinsurance purchases must also account for a higher proportion of direct income.

From the point of view of some insurers, the best way to prevent losses is to introduce deductibles and exclusions into the cover they give. Alternatively, they may make cover conditional on the assured taking specific precautions, letting the burden of loss remain with the assured if the insurer's stipulations have not been followed. Each party prevents loss from affecting them but there is no long term benefit to the community because the loss itself has only been transferred and not eliminated, so far the idea is not constructive.

## **2.5 FREIGHT INSURANCE**

### **2.5.1 Definition and background**

Freight is the fee charged by the carrier and is payable to him by the cargo owner for safe carriage and delivery of goods. Denny (1986, 1) defined freight as:

The consideration paid for the use of all or part of the ship for the carriage of cargo either by the shipowner or charterers to whom the ship is hired and the word is so used herein, with warning that its meaning may be in the process of changing.

Freight is a separate insurable interest in its own right with a relatively easily proven value at any one time.

In freight insurance, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance, whether paid in advance or otherwise.

Freight insurance is the payment made to the carrier in case of an eventual loss. It may include, also, profit derivable by a carrier for carrying his own goods. Freight insurance is an insurance contract to cover the insurable interest that cargo owner, shipowner or charterer, as the case may be, has in freight.

There are many types of contracts involving payment for the carriage of goods by sea, and, consequently, insurable interest in freight. Some of them are illustrated below:

#### **2.5.1.1 Oral contracts**

In an oral contract, the ship is sent to a port of loading in ballast condition where it will load cargo under a bill of lading. This document is evidence of a contract of affreightment which rules the relationship between the shipowner and cargo when the cargo is loaded. During the ballast voyage there is no written contract. Sometimes parties make an oral agreement to change the terms of a written contract. Denny (1986, 5) says that:

There seems no doubt that there is no necessity to express an agreement to carry goods under a written contract unless the Hague Rules are applicable when a bill of lading must be issued. Oral agreement to vary the terms of a written contract will also be admissible.

#### **2.5.1.2 Bill of lading freight**

This is a document that refers to the relationship between ship and cargo and can certify that a certain cargo is transported by a certain ship. Bill of lading freight has variable



terms. The terms of a charter party may be included, otherwise references would be made. It may be signed by the Master of the ship. Sometimes in the liner trades, the shipowner's agent may sign bills of lading, if he has been authorized, the document having a legal status as a receipt and as evidence of title to the goods. The bill of lading is also proof of a contract of carriage. This is true when the Hague Rules apply, and should be referred to for other terms. This is to be compared with charter freight, that is the hiring of a vessel or part of it. In cases where no charter party is involved, the bill of lading freight is sometimes called freight proper.

### **2.5.1.3 Voyage charter party**

When a shipowner sends a ship to a port of loading to carry a cargo to a certain port of discharge, he is doing it under a Voyage Charter Party contract. The contract can include ballast and loaded conditions, depending on the circumstances or the voyage trade. The quantity of cargo loaded determines the amount to pay for freight. This idea does not always please the shipowner. As a result it can be agreed that the amount of cargo can be varied by a certain percentage, for instance, to load 10,000 tons plus or minus 10%. In the voyage charter party, expenses deriving from insurance, port charges, crew, bunkers, costs of loading and discharging cargo are, subject to other terms being agreed, paid by the shipowner.

There are many clauses in a voyage charter party, but some examples of the most important are listed below:

- Type and tonnage of cargo to be carried.

- Correct description of the vessel, including characteristics, class and particulars of loading and discharging port.
- Date to receive cargo.
- Vessel to be available to charterer
- Payment of freight. When and how: normally on cargo delivery or prepaid.
- Arbitration to handle disputes.
- Demurrage: Covers penalty if number of agreed days for loading and discharging is exceeded.
- General Average Clause.
- Exceptions.

#### **2.5.1.4 Time charter hire**

This is when a shipowner is paid by the charterer under an agreement that the charterer has the control of the ship for an agreed period, then the hire is called a Time Charter Hire. The laid down rules to be met in a time charter hire include:

- How long the time for hire is and the rate per day that the charterer shall pay.
- The agreement on the types of cost sharing. Normally the charterer has to pay the hire money for example, so many dollars per day, as well as bunkers and port and cargo handling costs. The shipowner pays the ship's operating costs like crew salary, maintenance of the vessel and insurance.
- The true information about the vessel, such as classification, tonnage, service speed and fuel consumption
- The information about the type of cargo to be carried and limits of her run, for example, definitive geographical area.

- Agreement of the date and the port to deliver and redeliver the vessel and the quantity of bunkers on board the vessel.
- In the case that a vessel is not delivered on time, the charterer has the right to cancel the contract.
- In the case of loss of time due to bad crew operations or an accident that stops the working of the ship (usually for more than 24 hours), payment of hire can cease until the problem is solved.
- In the case of a missing vessel, the hire will cease from the date when she was last in contact.
- The Master as the representative of the shipowner, has the right to sign bills of lading at any time for any freight rate as instructed by the charterer.

#### **2.5.1.5 Demise or bareboat charter**

In Bareboat Charter the charterer uses the vessel for a fixed period of time. During this time she is under his control. The payment of bareboat charter is as so many dollars per day. This payment covers capital costs and is paid by the charterer. The period of bareboat charter varies from several months to several years. The hire is payable every month and starts to be paid from the moment the ship is delivered to the charterer until the moment the ship is redelivered to the shipowner. The places for that are an item of negotiation.

The charterer is responsible for repairing any damage to the ship. Also he is the one who profits in case of any salvage made by the vessel since he is the operator of the vessel. The shipowner has no lien on cargo for his charter hire.

### 2.5.2 Advantages

The main advantage of freight insurance is that it is never beyond risk, so called "off risk", unless the freight has been prepaid and is non-refundable. Many contracts of affreightment, particularly in the liner trades, include a stipulation that the freight shall be paid either at the port of shipment or at destination; it does not matter if the ship or cargo is lost or not lost. The effect of this provision is to make the freight payable whether the goods are delivered or not and such freight is treated for insurance purposes in the same manner as freight prepaid, that is to say, it is regarded as being at risk of the owners of the goods or of other persons making the advance and is either included in the insured value of the cargo or insured separately.

If, for any reason the cargo cannot be delivered at destination and has to be brought back, the shipowner can charge back freight for the return carriage of the goods to the shipper.

Dead freight is advantageous to the shipowner since once the shipper pays and he fails to fill the vessel, dead freight is still charged. A contract may stipulate the basis for the payment of dead freight, otherwise the amount due to the shipowner is arrived at by ascertaining the amount which might properly have been carried over and above the amount shipped, estimating the freight on this difference and deducting the additional expense, if any, which the shipowner would have incurred in connection therewith. In other words, dead freight is much more in the nature of damages for non-shipment of the agreed amount of cargo, rather than a reward for carriage of goods.

## **CHAPTER 3**

### **3. WORLD-WIDE MARINE INSURANCE**

#### **3.1 IDENTIFICATION OF WORLD-WIDE MARINE INSURANCE**

##### **English and Norwegian markets**

The historical development of the English Marine Insurance Markets, epitomized as they are by the Lloyd's tradition, need no further introduction in this study. Suffice to say that the historical economical predominance of Britain in all spheres of life, and particularly shipping which facilitated its leading position in discovering the new world, served to promote it as the dominant international center for marine insurance.

Like the English, the Norwegians have also been held to be a seafaring people. Commercial shipping has been a major Norwegian industry for centuries. Marine Insurance business has been transacted within Norway from the beginning of the 19th century. Before that and during Norway's period of union with Denmark, insurance was arranged through Copenhagen and the European Continent, Hamburg being particularly important.

During the Napoleonic wars communication with the Continent became very difficult. This stimulated the establishment of a number of insurance companies in Norway. The

first companies concentrated on cargo insurance, while the concept of mutual hull insurance spread rapidly to the coastal towns. The two Norwegian Protection and Indemnity Clubs (P&I) were established around the turn of this century.

Since the second half of the last century a number of insurance companies covering all classes of insurance, were established in Norway.

Today the Norwegian market does more than just serve the needs of the Norwegian fleets. It makes a significant contribution to the international market and is used by many non Norwegian shipowners.

*source: brochure by Norwegian Insurance Industry "The Norwegian Marine Insurance Industry, a leading alternative"*

### **3.1.1 Structure of Norwegian insurance market**

The Norwegian insurance market is divided into four sectors:

- The Company Market - This comprises a significant number of Norwegian Insurance Companies (mostly joint stock companies) which also carry out marine insurance business. These companies belong to the Central Union of Marine Underwriters which acts as a coordinating body and provides a number of services to its members. These companies have formed the Norwegian Hull agreement and, associated with that, the Norwegian Hull Committee for the rating of domestic vessels. Its renewals are based on annual statistics over a five-year period.
- The Mutual Hull Clubs - These clubs, three in number, practice the concept of mutuality, as it is followed by P&I clubs. These clubs specialize in being claims

leaders in the settlement of claims. All the mutual clubs belong to the Mutual Hull Clubs Committee. This committee, along with the Central Union of Marine Underwriters, cooperates with representatives of the Norwegian shipowners in producing clauses for the whole market as well as ratings and other matters of common interest. The companies and the clubs may be seen as somewhat analogous to the British Companies Market. However, the major differences being the concept of the claims leader, which is very unlike the rate leader in London, and the fact of hull ratings being actually fixed by the committee in contrast to the guidelines for the fixing of rates laid down by the London joint hull committee, set them apart.

- The P&I Clubs - There are two P&I Clubs operating in Norway, namely Gard and Skuld. They started operating around the beginning of the 20th century from the modest start of serving the needs of local shipowners but have now expanded to provide cover to vessels totaling in excess of 70 million gross tons or about 20% or one fifth of the world's tonnage. The clubs are members of the International Group of P&I Clubs and hence provide cover on basically the same conditions as other clubs of the group save for certain exceptions.
- The Scandinavian Market Association (Regional Cooperation) - As Norwegian insurers became more involved in the international field, it was natural to seek cooperation with the rest of Scandinavia (Sweden, Finland, Denmark). This cooperation was organized through a market agreement. Through the Scandinavian Market Association an independent and coordinated market has been established in the field of international hull insurance.

### **3.1.2 The brokers and others support services**

Norwegian brokers handle directly the support services for most domestic fleets. Since the establishment of the Scandinavian Market Association, brokers have been actively encouraged to secure international business. There are now some 10 brokers firms dealing in international business, several of whom have established offices abroad especially in Singapore, Hong Kong and Houston in the USA. Average Adjusters, by virtue of the agreement can act as advisors, consultants and adjusters, as well as having the authority to take whatever measures they think reasonable in dealing with a claim. Average Adjusters are appointed by the Government.

**Laws and conditions** - Despite the existence of a Marine Code, General Insurance Act and Marine Insurance Act, the pertinent regulations relating to Marine Insurance in Norway, are comprehensively contained in the marine insurance plan relating to hull insurance (1964) and the plan relating to the carriage of goods by sea (1967) and the standard conditions. The 1967 plan, issued formerly by the Norwegian classification society, Det Norske Veritas, is said to represent the fulfillment of long negotiations between shipowners, insurers, shipyards and other parties in commerce and industry, forming the embodiment of their common interest.

As a background regime the plan is designed to be both more complete and more specialized than the general legislation affecting marine insurance. Whilst it reproduces the more important of the mandatory provisions of Norwegian law, it has its own rules in areas where there is freedom of contract. These are better adjusted to the special needs of marine insurance.



As is to be observed, the historical development and legal basis and in some respects, the structural base of the British and Norwegian markets appear to be different. The historical domination of world tonnage by the British fleet as well as the British colonial power in regulating trade in far away territories, most of which now comprise the developing countries, afforded Britain an international base in the development of its world markets and practices. At the same time, however, the mentioned power of the British system served as a limiting influence on the international character of the market.

↳ Hence, although a certain amount of informal international consultation is said to take place between some markets, say during the revision of the Institute Clauses, the overall content and form of the British legal regime remains for the most part a national product geared to meet national needs and national laws (*UNCTAD report, 1987, page 4*). ↴

The development of the Norwegian market is based upon national needs and national laws or conditions and the insurance plan. Indeed the internationalization of the market may be seen as a direct response to national demands in this case, decreasing national demand caused by decreasing national tonnage, rather than any conscious attempt at internationalization. However, whilst the laws of demand and supply may be taken to respond in the same manner nationally as well as internationally, the laws of a nation inherently reflect the values and customs of a people.

Nonetheless, the clear and comprehensive layout of the Norwegian law in the plan as against the English law as it is contained in various fine printed documents comprising the Institute Time Clauses, Liner Negligence Clauses, Additional Perils Clauses and others with the 1906 act, court cases and practices, may be preferred. Additionally some

of the differences considered to be substantive between the English and Norwegian conditions include:

1. Hull and machinery conditions - In the definition section of the Norwegian conditions, ship, includes hull and machinery but excludes bunkers and consumable stores, some of which are, however, included under the English conditions, if owned by the assured. By the perils clause of the Norwegian condition the assured is covered for all losses save those specifically excepted so that there is no danger of a loss being rejected because it was not named in the policy. Under the English hull clause the assured must choose which perils are likely to affect his vessels. Following a loss he must then prove that the loss resulted through the operation of a peril named in the policy.
2. Agreed value and under insurance - Both sets of conditions provide for agreed values to be conclusive. However, whereas under section 70 of the Norwegian conditions general average contributions are based on the actual market value of the vessel, under English conditions the contribution is limited to the agreed value in the policy. Hence, where the actual value is higher than the agreed value, the insured is treated as being technically underinsured for such contributions, although this shortfall may be covered by the British P&I Clubs
3. Deductibles - Under Norwegian conditions the application of a deductible on claims for general average contribution and other costs incurred by the assured to minimize the loss is exempted. Under the English condition there is no such exemption, if such conditions serve to exceed the agreed value the recovery will be lessened.
4. Formerly under the English conditions there was an additional deductible for machinery damage only where there had been crew negligence. However, the new policy form introduced in October 1983 does not include a penalty for crew

negligence but there is now a separate additional machinery damage deductible clause selectively incorporated with certain appropriate risks. Norwegian conditions impose a general machinery damage deductible.

5. Payment on account - By section 90 of the Norwegian plan the insurer has a duty to make a payment on account. Under English conditions there is no such legal obligation but merely a discretionary exercise on the part of the insurer.
6. Interest on claims - By section 86 of the Norwegian plan the assured is entitled to interest on his claim at 18% per annum from the expiration of one month from the day on which notification of the claim was sent to insurers. There is no such provision under English conditions.
7. Subrogation - By section 96 of the plan, the insured is entitled to share pro rata in any recoveries from third parties. Under some English policy conditions the insurer retains all recoveries up to the full claim and only after this will the insured share in any of the recovery.
8. Cargo condition - Both the Norwegian cargo conditions and the English institute cargo clauses purport to cover on an all risks basis. They contain similar coverage of risk and expenses. However, section 70 of the Norwegian plan to which the conditions refer, specifically excludes monetary and other consequential losses whereas the English clauses are silent on this. Section 65 of the plan, also referred to, implicitly covers constructive total loss which is expressly excluded by clause 13 of the English conditions.

### **3.1.3 Relevance to developing countries**

From the above conditions, it may be concluded that the Norwegian market appears to provide more benefits to the assured. Furthermore, the provision for interest payment on

claims imputes a greater urgency on the part of the Norwegian market towards the settlement of claims. The Norwegian market also seems to offer a more direct and personalized service.

The governing laws and conditions of both markets seem to contain inherent national biases. However, the only solution towards curtailing any such biases may lay in recommendations by the UNCTAD Secretariat for the establishment of International Legal Regimes or Conventions relating to marine insurance (*UNCTAD report p.42*)

Hence, although it is now being asserted that conditions of the Norwegian market are as easily adaptable to the English market as English conditions are to the Norwegian market, such adaptation may prove to be disadvantageous to the assured, as in the case of interest payments.

For developing countries to make placements on or to adapt to any of the practices of either market, for instance, (the one tried, tested and proven and the other new and promising), other considerations such as premium costing, services and flexibility in addition to the age old requirement of continuity, of course, have to be made.

In the final analysis, however, whatever conditions or practices are chosen, and if such are to be fitted to the needs of a developing country, then they should at least reflect the necessary aspects of legal, social and economic realities of such a country.

## **3.2 CLUBS CREATED BY SHIOWNERS (P&I CLUBS)**

### **3.2.1 The origins of the clubs**

Talking about P & I is to say mutual insurance, where more than two people are involved and agree to insure each other against marine losses.

The members of a P&I club comprises not only shipowners, but also charterers, managers and operators of the ships which are insured with it. A club is controlled by a board of directors who represent and are appointed by the members. The directors comprise a cross section of the members and reflect the differing flags, types of ships, trades and sizes of the member's fleets. Each club has its own set of rules which are subject to the memorandum and articles of association and contain terms upon which the clubs conduct their business. These rules are constantly changing in order to meet the needs and requirements of members.

There is no mutual protection and indemnity clubs for cargo owners, maybe because the interests to be insured are diverse.

### **3.2.2 Liabilities**

Originally the liabilities covered by the clubs were limited to loss of life of crew. Now it covers not only funeral expenses, but also payment of medical, maintenance and other expenses incurred in relation to the injury, illness or death of a crew member. These expenses include repatriating the crew member and the expenses of sending a substitute to replace the injured or deceased crew member.

### 3.2.3 Shipowner and third party liability

In the marine field it is the shipowners who are most concerned to insure third party liabilities. When insuring their ships they turn to the traditional markets such as Lloyd's or the marine insurance companies, whose policies are primarily for the purpose of indemnifying the insured against damage to his property. Third party liabilities are sometimes written in the market, setting out the risks covered.

For third party cover during the daily operation of their ships, most shipowners turn to one of the mutual insurance associations usually referred to as the P & I clubs, so called because cover originally was classified as either a protection or an indemnity risk. This distinction is only of academic interest, it has since been abandoned but briefly, protection covered liabilities to personnel and damage to property, whilst indemnity was mainly concerned with the liabilities arising from the carriage of cargo.

Much has been said and written about the history and development of the clubs and it is unnecessary to dwell on this aspect. Suffice to say that they appeared on the scene rather more than a hundred years ago, covering the few potential liabilities which then confronted a shipowner.

Currently the picture is vastly different. Perhaps it is desirable to emphasize two fundamental differences between the format and operation of a club as compared with a more traditional form of insurance company:

1. The most fundamental distinction is that a Club is controlled by the shipowners insured with that Club and from whose number the board of directors is appointed.

The Board determines the liabilities against which cover is to be given, ordains Club policy on points of principle, and supervises the day to day conduct of business by Club Secretaries or managers who are appointed by them for this purpose.

2. The Clubs are run on a mutual or non-profit making basis. This is achieved by adjusting the annual premiums so that they cover, with modest surplus, the claims paid and outstanding in respect to any particular policy year. Thus, under the mutual system, the calls may fluctuate upwards or downwards, depending upon the claims experienced in any given year. The trend today is usually upwards, higher wage levels attract bigger awards in claims involving personnel, and there are the overall effects of inflation and the devaluation of sterling or other currencies which affect all manner of liability claims. However, it may be mentioned that in the immediate post-war period there have been a few notable occasions when a modest saving was achieved.

### **3.2.4 Gard structure, statutes and rules**

#### **3.2.4.1 Structure:**

Gard is a Norwegian P & I Club which was founded on the 9th October, 1907, and has its head office in Arendal, Norway.

The purpose of the association is to insure on a mutual basis liabilities, losses, costs and expenses incurred by the members in direct connection with the operation of ships entered with the association. It consists of the committee, executive committee and administration.

### 3.2.4.2 Statutes

A - **The Committee**, is responsible for seeing that the purposes of the Association are met in accordance with the statutes. It approves the Rules of the Association, and it may empower the Executive Committee to make such amendments to the Rules as the Committee considers appropriate. It also establishes general principles for the administration of the funds of the Association, and makes the decision on the levy of contributions and catastrophe contributions or the repayment of excess advance premiums and contributions.

The Committee is the body who shall also:

1. set the rates at which release contributions are to be levied;
2. decide on closing of open policy years;
3. determine whether a member should be compensated for the loss of a ship following confiscation, pursuant to Rule 49 of the Rules for ship;
4. decide on the engagement and dismissal of the Managing Director and on his conditions of service;
5. make recommendations to the General Meeting for the election of all the elected members of the Committee, The Executive Committee, the Supervisory Committee and the Election Committee;
6. submit to the annual General Meeting, together with its recommendations, the income and expenditure account and balance sheet proposed by the Executive Committee.

The number of members elected by the General Meeting, to constitute the Committee, shall be 30. The Chairman and the Deputy Chairman are elected every year amongst the



members. Every year the six members who have the longest period of service shall retire, but may be re-elected. The system of voting is used to take decisions. In the event of an equal number of votes being cast the Chairman of the meeting shall have the deciding vote.

#### **B - The Executive Committee**

The Executive Committee makes amendments to the Rules, to the extent empowered by the Committee, and administers the daily business of the association. It also administers the funds of the association in accordance with the general principles laid down by the Committee. It is a duty of the Executive Committee to submit to the Committee, the proposal for the income and expenditure account and balance sheet.

The Executive Committee shall also:

1. recommend to the Committee any variation to be made in premium ratings in accordance with the rules;
2. recommend to the Committee the levy of contributions and catastrophe contributions or repayment of excess advance premiums and contributions;
3. recommend to the Committee the rates at which release contributions are to be levied;
4. recommend the policy of the reinsurance treaties as it may deem appropriate;
5. effect as agent on behalf of the Members or any of them as it may deem appropriate additional insurance in respect of risks not covered by the Rules;
6. determine which types of floating structure shall be eligible for entry with the Association, to the extent empowered by the Committee;
7. engage and dismiss the personnel of the association and determine their condition of service.

In any particular case the Executive Committee may decide that the Association shall accept an entry on terms or conditions that vary the provisions of the Rules as well as payment of compensation in respect of a liability, loss, cost or expense which is not covered under the Rules where in view of the purpose of the Association this is deemed natural and desirable. The decisions taken are final and there is not any obligation to give reasons for them.

*Source: handbook on P&I insurance, p.26/Gard Structure and Rule 1996, pp. 8-9*

### **3.2.5 Rules**

The author concurs with most of the rules that have been laid up by Gard. However, the most striking that caught the eye of the author have been rewritten below.

*Rule 2 the cover* A member shall be covered by rules specifically mentioned and set up, losses, liabilities, costs and expenses incurred by him which arise in respect of the member's interest in the ship, or in direct connection with the operation of the ship.

It shall be a condition of Defense cover that the ship has valid and subsisting P&I cover with the association, except in the case of building or purchase contracts where there must be an undertaking by the member to enter the ship for P&I cover at the latest on taking delivery of the same.

*Rule 27 liabilities in respect of crew* According to this rule, the P&I Association is supposed to pay for the medical care of a crew member, including funeral and other expenses in relation to an injury and the loss of employment caused by total loss of the vessel. Rule 27, also covers the social insurance or social security, where a crew member is entitled to receive compensation in case of an accident. Regarding repatriation and

substitute expenses, a shipowner may be obliged to pay it to a crew member. In the case of termination of the contract of crew, sale of the ship or any other cause which finishes the work of a crew member, the shipowner will be responsible for the expenses.

Rule 28 liabilities in respect of passengers The Association shall cover liability for injury to, illness, death, loss and damages to the effects of passengers and hospital, medical and or funeral expenses incurred in relation to such injury, illness or death.

Rule 29 liability for other persons carried on board The Association shall cover liability arising out of the injury to, or illness or death, or liability for loss of or damage to the effects of persons carried on board other than crew or passengers provided that, in the case of a person other than a close relative of a member of the crew the Association has approved the presence of such person on board. It shall also cover costs and expenses incurred as a direct consequence of complying with an order for the deportation of any such other person carried on board which would not have been incurred had no such order been made.

Rule 30 liability for persons not carried on board Liability resulting from the injury to, or illness or death of persons, other than crew, passengers and other persons carried on board shall be covered by the Association. This rule provides that where the liability arises under the terms of a contract or indemnity and would not have arisen but for those terms, the liability shall only be covered when and to the extent that those terms have been approved by the Association.

Rule 33 life salvage The Association shall cover acts of salvage operation at sea and shall pay services made to save, or attempt to save, the life of any person on the ship.

Rule 34 cargo liability A contractual agreement for the carriage of goods by sea is described as a contract of affreightment. In commercial practice this type of contract is more commonly referred to as a contract of carriage. A person who has entered into a contract of affreightment with the shipper of cargo is called carrier. The most common forms for contract of affreightment are bill of lading, charter party, waybill, through transport document and long-term contract of affreightment. The Association shall cover liabilities related to cargo intended as being carried on ship.

Rule 36 collision with other ships This rule provides cover for liabilities to third parties rather than the owner of the cargo and persons on board ship. If the collision occurs in the territorial waters of a state, liability is governed by the law of that state. In the case of a collision on the high seas it is more difficult to define which law will govern liability, because the high seas are outside the jurisdiction of any state.

Rule 38 pollution This Rule provides cover for liability or loss which arises as a result of the escape, or the threat of escape, of oil or any other substance from the ship. Most states prohibit all forms of marine pollution, from dumping garbage to the discharge of crude oil. There are some states which have introduced specific laws incorporating the terms of the International Convention on Civil Liability for Oil Pollution Damage 1969.

Rule 53 oil pollution limitations The Association's liability under a P&I entry for any and all claims in respect of oil pollution is limited. The club's liability for any single event of pollution is limited to USD 500 million (in the case of shipowner). An appendix to the rules of the clubs describes in great detail various situations where special provisions apply, for instance the limit of insurance for charterers covered by the insurance and the cover offered for oil pollution liability in the United States.

Rule 58 war risks The Association shall not cover under P&I entry liabilities, losses, costs or expenses when the loss or damage, injury, illness, death or other accident was caused by war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power.

Rule 87 payment first by member It is a condition precedent to a right of a member to recover from the Association in respect of any liability, loss, cost or expense that he shall first have discharged or paid the same. The Association is not obliged to compensate a member for a payment made to a third party unless the liability of the member to make that payment has been determined by a final judgment, final arbitration or final settlement of the dispute approved by the Association.

*Source: Gard Statutes and Rules 1996 pp. 62 to 116*

### **3.2.1 Advantages**

The advantage of having a P&I club is not far from the general advantage of insurance itself where the people involved, Shipowners and charters, share to recover a payment of total or partial loss of cargo or crew injury among other losses. It becomes more advantageous because of the known principle of mutuality used by the system, where each member is at the same time an insured and an insurer.

Another great advantage is that the members of a club have a duty to refund the damage suffered by any of the members in the group, so each undertakes to contribute and to pay on a mutual basis each other's claims.

P&I also provides cover for salvage remuneration which is payable to any third party in respect of services rendered to save, or attempted to save, the life of a person on board ship.

P&I does not cover any liability or loss which is insured under the ship's hull policy or any other insurance the member may have. In addition, the P&I cover also excludes any liability or loss in respect of a person performing work in the service of the ship, which is covered by social insurance or compulsory public or private insurance

### **3.3 CLUBS CREATED BY SHIPPING COMPANIES**

Navigation companies or enterprises created and controlled by the Government can be called shipping companies, and those controlled by individuals, or private companies can be called shipowners' companies.

In Mozambique, shipping companies are very mature and strong on handling marine activities, while private companies need time to stabilize. Thus a club created by shipping companies, to satisfy mariners' needs could play an important role. The idea arises because the shipping companies are the ones who control the shipping activities with strong support from the Government.

The basic purpose of creating of such a shipping club in Mozambique could be the same as for shipowner clubs in the developed countries, and the rules or laws to guide it might also be similar. In this way it could be ensured that the objectives of the club could be achieved.

### **3.3.1 Advantages**

The advantages are that for entry to the club the shipping company will not have problems with the initial capital, as mentioned earlier, these companies being directly controlled by the government. The insured objects can be combined, i.e. the company can have insurance for the company itself, and insurance related to the ship or personnel.

## **CHAPTER 4**

### **4 SHORTCOMINGS: HOW THEY CAN BE OVERCOME**

#### **4.1 PRACTICE OF MARINE INSURANCE IN THE WORLD**

London has been universally recognized as the principal international centre for marine insurance despite the establishment of markets in developing countries and the tendency towards expansion of insurance markets of the developed economies which were previously satisfied to confine their operations to domestic business. A review of the structure of the London market is therefore to be considered as a fair representation of the international market structure.

##### **4.1.1 The Lloyd's market**

The Lloyd's market has often been described as the only true market place in the insurance industry due to the flexibility and good service offered by it. It is in fact a market place to which brokers bring risks and underwriters openly compete with each other to insure against these risks.



Though regarded as the oldest and largest market place in the world Lloyd's has no branches in the UK or overseas. The sole place of business is the underwriting room at Lloyd's in the City of London. This market place is, however, not open for business from the general public. Instead, all transactions must be conducted by a Lloyd's broker. Such brokers are approved by the ruling body, the General Council or the Committee of Lloyd's after the strictest examination of their financial position, and who may then be allowed the name of Lloyd's broker.

Though joined together for the purpose of writing insurance the Association at Lloyd's, in fact, consists of individual insurers, numbering some 14,000, each with unlimited personal liability for the risks they underwrite. These individual underwriters are grouped into some 300 syndicates. The affairs of each syndicate are managed by an underwriting agency which is responsible for appointing a specialist underwriter to accept risk on behalf of the other non-active syndicate members. In addition to brokers, there are agents approved by Lloyd's in practically every part of the world. They are not underwriting agents but are at the service of all underwriters, and not only Lloyd's underwriters.

#### **4.1.2 The companies' markets**

The companies' markets comprise over 100 companies. They transact their business on a similar system to Lloyd's. The big difference is that the company underwriter is the salaried official of a limited company. Thus whereas the liability at Lloyd's is unlimited, that of a company is limited to the capital of that company.

The companies are represented by the Institute of London Underwriters (ILU). The institute was created on much the same lines as Lloyd's, i.e. a number of underwriters exchanging views over coffee in one of London's 18th century coffee houses. The purposes of the Institute are the advancement of marine insurance and the protection of the interests of companies writing marine business through consultation and united action. The affairs of the Institute are managed by a Committee.

Although marine insurance is conducted on keenly competitive lines, tariffs are virtually non-existent. In normal conditions hull premiums are regulated according to shipowners' claims experience over a period of years and are influenced by various "Understandings of the Joint Hull Committee". Understandings are mere codes of practices to be followed at the policy renewal with the insurer and broker being left free to negotiate the best terms possible.

In all, there is said to be considerable cooperation between Lloyd's and the companies and there are several joint committees such as the Joint Hull Committee, and the Joint Cargo Committee.

#### **4.1.3 Other commercial insurers**

##### **4.1.3.1 Non Institute Companies**

The other commercial markets comprise those companies not yet acceptable to the Institute of London Underwriters or of foreign companies who wish to participate in the London Market offerings through foreign branch offices. These markets deal primarily with portfolios other than those consisting of large fleets and vessels not immediately

concerned with the carriage of cargo such as trawlers, fishing vessels, yachts, hovercrafts and other such specialist vessels.

#### **4.1.3.2 Captive Insurance Companies**

A captive insurance company is a wholly owned subsidiary of a parent company formed for the purpose of carrying on the latter's insurance business. In order to obtain maximum benefit it is desirable to incorporate and manage it from somewhere where there is no local taxation, where premium and claims may be freely remitable and where legal, banking and accounting facilities are thought to be first class.

## **4.2 THE IMPACT OF WORLD-WIDE PRACTICES OF MARINE INSURANCE ON THE MOZAMBIQUE SHIPPING OPERATORS**

For a country like Mozambique where marine activities are not the highest priority, the practices of world insurance have become very difficult to implement due to the lack of education and training in the area. For some of the operators, especially fishing vessel operators, it is enough to have an Administration authorization for ships operating in coastal waters.

The major difficulties that operators can face are the initial capital to create a strong marine insurance, trained people in the subject as well as lawyers to write down and discuss what is possible to be implemented in Mozambique compared to other developing or developed countries.

#### **4.2.1 Problems confronting Mozambique**

It must be remembered that every marine insurance organization in the world has serious difficulties from time to time, and from the point of view of those working in the sector there are always problems to overcome. Therefore, the existence of problems in the Mozambique marine insurance industry should not be seen as casting a question mark over their existence but rather as a series of specific targets to be aimed at and reached.

#### **4.3 DEVELOPED MARINE INSURANCE FOR MOZAMBICAN SHIPPING OPERATORS**

The Mozambican shipping operators should look to the fact that other classes of business form part of the marine insurance portfolio. The London Market, for instance, is not solely concerned with insuring large fleets and eliminating smaller vessels from their account. The shipping industry consists of many other types of vessels not immediately concerned simply with the carriage of cargo. There is, therefore, the need for the insurance of trawlers and fishing vessels, yachts, salvage tugs and harbor crafts as well as other such vessels, which are peripheral to the commercial carriage of cargo.

#### **4.4 A PLAN FOR IMPLEMENTATION**

An urgent and strong plan is necessary for Mozambique marine insurance. Appropriate legislation has to be introduced gradually to this effect with the result that the vast majority of imports have to be insured within the country. Education and training is a very important issue for solving a great part of existing problems, thus, it is

indispensable for a plan for implementation of marine insurance in Mozambique to be decided upon.

### **1. Strengthening of a regulatory system**

In most developing countries, such as Mozambique, the law rendering insurance of imports compulsory has been circumvented for many reasons. Should it be different if the four insurance types, ship insurance, third party liability insurance, cargo insurance and freight insurance, discussed were made compulsory? The answer which comes to mind is yes. Positive because the owners and shippers will be obliged anyway to insure their goods.

This matter will not affect the cargo insurance as the goods imported are often insured abroad and the insurance is taken by the seller up to the port of arrival.

It is true that people would have difficulties with a compulsory insurance law. The cost to pay would be higher. The shippers would not be willing to pay for two insurances or they would complain that insurance bought locally is much more expensive, but having no choice, they would try to reduce their expenses by subscribing to only one policy.

Another important measure would be to appoint some persons, well aware of the practice of insurance, at the points of delivering goods. These persons would then be the actual controllers who would verify the certificates of insurance in order to determine which insurance company or broker had issued them.

## **2. Solutions to the financial problems**

### **Control of the financial situation of the insurance companies**

Financial control by the Authority should be made first when the candidates to the profession ask for their approval, and later on, control should take place at the time of the establishment of the insurance company. The Ministry of Finance can be responsible for appointing the insurance controllers to carry out financial control. This statement can be provided by the law relating to insurance business, but it can not be strictly applied.

### **3. Statement of the outstanding premiums**

After the establishment of an insurance company, it should take some measures to stop the practice of embezzlement of premiums by the brokers and non-payment by the assured. Even the experienced insurance companies complain about this malpractice. Thus, they should be very careful when they conclude a contract of insurance with a broker or a client. This means that they should not trust anybody and that they must have their regular clients or brokers with whom they do business. Maybe in practice it is not so easy to select clients since the companies need them to run their business, but things being as they are in the market, it would be better for them to have less clients, but clients who pay. This selection could be useful to the profession. As a matter of fact, if people know the insurance companies may refuse to insure their goods or if the brokers know they could be blacklisted. That could make them think before trying to cheat the insurance companies or their clients. In this way the insurance companies can do much themselves to help their profession.

#### **4. Settlement of claims against carriers**

In an insurance company, a judicial system dealing with claims against carriers should be adopted. In fact, sometimes the insurers face big difficulties in recovering claims from shipowners or carriers held responsible. When they are paid, the amount is so trifling compared to the ship or cargo insured by the assured that it does not help enough even to collect it sometimes. To avoid this situation the settlement of the judicial system is requested. A person with maritime background, who can help the magistrates any time when such claims are to be arbitrated should be appointed by the government. If possible, such a person should be a member of an arbitration court. With those lawyers, senior officers in shipping and navigation could be appointed so that a team of marine specialists would be set up to deal with the claims, which would be a great help.

#### **5. Training of insurance professionals**

Problems in marine insurance could be solved if there were professionals dealing with them, i.e. more professionalism. The insurance professionals and particularly the insurers and brokers, should have a perfect knowledge of the techniques of marine insurance, particularly marine cargo insurance, as well as the commercial and legal practices related to it.

Surely this knowledge is acquired by attending specialized lectures on the subject, insurance being a very specialized topic for those graduates who enter the profession without any specialization. Seminars could be organized for them by the whole body of the profession which would be a great help to them and more so for their companies.

Marine insurance deals with international trade and marine transport. Therefore, the training of professionals of marine insurance will do more to keep them informed of the changes or innovations occurring in the practices of the insurance itself and in the commercial or transport fields, and obviously, this needs a regular up-date of their requirements. Generally speaking, training is held in order to improve the practice of the business by the professionals.

#### **4.4.1 Immediate needs**

Improvement of knowledge of those who have specialized roles to play in marine insurance should be seen as a primary issue. Without their ability to handle their duties in a professional manner any wider knowledge among the trading community would be fruitless.

**Staff** - The staff must be identified. On the shipper's side they should include any person with responsibility for buying insurance or claims presentation. Some staff, in large concerns, may concentrate full-time, or spend a significant part of their average working week, on insurance questions.

The range of ability and extent of involvement is clearly wide. In designing a program for ensuring satisfactory training to suit all levels it is not possible to cater for every level, but it would be pointless to provide a single training scheme which would only suit a limited number. For example, professional education would be too abstract and complex to be useful for staff concerned with day-to-day claims processing. At the same time, a course prepared for technicians might not be suitable for professional staff even at an early stage in their education. A balance must therefore be struck between the



practical restraints of course organization, on the one hand, and catering for a wide range of abilities and needs, on the other.

#### **4.4.2 Future needs**

##### **Cooperation between professionals**

A cooperation between national brokers and insurers with brokers and insurers in the main markets could give the marine insurance market in Mozambique a quite different face. Problems that the business is facing now will not exist anymore if both the insurer and the broker perform their duties seriously and in cooperation. The insurer should have a good relationship with the broker representing the assured in order to serve the interests of the client adequately. Cooperation amongst them will make things easier for both parties. This cooperation should be an honest one and should start from the beginning, that is to say from the negotiation of the contract.

If there are any problems, both broker and insurer could find a solution to them more easily. They should have the same knowledge of the practice of insurance.

## **CHAPTER 5**

### **CONCLUSIONS AND PROPOSALS**

For a potential and strong local marine insurance market, the following proposals and suggestions have been made. Firstly, that an assessment of the full capacity of the market be taken by way of an in-depth analysis and feasibility study, preferably on a government to government basis.

Further, the opinion has been expressed that the fundamental things that would be necessitated, should a local marine insurance industry be considered, may not be achievable without the intervention of government.

The Authority in charge of international trade in the country should help importers to understand the importance for the country and for themselves in buying FOB (free on board). Once they know why it is vital for the economy and for them to buy on an FOB basis, they will consequently understand the need to insure locally.

The Administration responsible must dedicate itself to educating people involved in international trade. Thus, the Chamber of Commerce, for example, could organize seminars for external trades on how and why to buy FOB and to sell CIF (cost insurance freight). Of course, it is not as easy as it seems, but at least it should be tried.

Actually when people are obliged to do something, they often try, in one way or another to get out of doing it, and the result is either the success wished, or failure.

Also, according to how things are explained to people, the initiative will be successful or fail. In general, human beings do not like to be forced to obey a law, the importance of which they do not see. They prefer to be part of a decision, to be involved and to be asked their opinion. Thus, one can easily make them act the way the law wants them to. This way of strengthening the regulatory system might seem somewhat unusual but it could be a solution to the problem posed by the breach of law. This should not prevent the Authorities from firmly penalizing the infringements by instituting a fine, and this should be strictly applied.

It has further been suggested that given the limited or lack of expertise, the admission of specialists with interest to actively participate in such local or regional industry should be encouraged so as to make the international techniques and technology available to the market. It may, of course, then be necessary to enact legislation governing such participation. In this case joint ventures with companies outside the country may be desirable in this respect.

In order to strengthen and develop the capacity of the market, the enactment of legislation providing, for example, for the placement of a fixed proportion of local marine insurance business to be effected locally, may be necessary.

## **Education and Training**

Attending seminars where all kinds of problems related to the profession are raised can be useful for those employees not very used to the practice of marine insurance. Even professionals with more knowledge should attend those seminars regularly in order to refresh their knowledge and to be in contact with other professionals to share their views and ideas. Companies could also organize internal training sessions periodically or job-training for their technical personnel.

Education and training are to provide the skills necessary for a marine insurance employee in order to perform his job as well as giving him the background knowledge necessary for him to understand why he has to perform his job, and more generally to stimulate his personal development so that he can contribute to the advancement of his organization. Of these, the primary task is to equip the employee with the knowledge to handle those tasks he is expected to carry out.

It is not necessary for all employees to have more than a limited understanding of why their jobs have to be done and done in a particular manner. Nevertheless, without some understanding they will be unable to see the rationale behind their tasks and unable to adapt for special cases or to understand their priorities. Therefore, the first level of formal industry tuition should familiarize staff with insurance procedures in general terms, together with providing simple explanations of the reasons for those procedures, the context in which they are used and the consequences of performing them correctly or incorrectly.

The knowledge most directly important to staff handling shippers' insurance in Mozambique could be grouped as follows: the role and context of marine insurance; hazards faced by goods in transit and general principles of loss prevention; the types and extent of cover available under standard conditions; the legal framework, with emphasis on basic principles of insurance such as utmost good faith and indemnity; the legal responsibilities of bails, recovery rights and claims procedures. This would be of equal value to the insurers' own staff, at an introductory or junior level, with further education being necessary for professional staff.

It should be possible for a single textbook to be prepared as the basis of a course for all such staff, with the possibility of an examination leading to the award of a technical qualification. While the textbook would serve as a useful guide to many who would not wish to take the examination, those who took the examination would have a certificate of competency as an indication to employers of their ability.

The advantage of such a scheme is that it would be a compact, self-contained course blending practical essentials such as claims procedures with explanations of the legal and economic background. By being prepared for both consumers and providers of insurance, it would avoid bias and allow each side an insight into the operations of the other. Most importantly it would enable a working knowledge of marine insurance to be spread among those who most need it but without going into depths unnecessary or unattainable for the intended students. If a study and questionnaires were to be made in the developing countries, they would surely show that the vast majority of recurrent problems, such as inaccurate claims procedures, stem from a lack of knowledge and understanding among those who need to know. Such a course would be the simplest, most cost-effective way of filling the gap.

With respect to the insurers' professional and managerial staff, the training needs are naturally at a higher level, although with careful preparation the general course would be a useful first stage. Many employees would be recruited at graduate level, some with law or economic degrees and others with entirely non-vocational arts degrees which, nevertheless, develop the communications skills necessary but are often overlooked in insurance and other service industries.

One possibility might be the introduction of a specialist insurance degree course at universities or at Escola Nautica, as are at present found in Mozambique. Such a course might register a small number of candidates at the beginning because few candidates for University entrance are likely to understand much about the nature of insurance before selecting their course. On other hand, after completing an insurance degree they may not necessarily have the aptitude sought by insurance employers.

Instead, it seems preferable to concentrate resources on professional education for those who have already joined the industry. This would give the industry greater control on course content and would allow direct funding by those seeking education for their staff, including those professionally engaged in risk management for shippers.

### **Management education**

Specialized professional knowledge is only one part of the education required by junior staff in insurance and risk management. At least as important is an understanding of general management principles. Management education is more suitable than its professional equivalent for handling short intensive courses. Indeed, it is often a positive advantage to take the student away from his everyday working environment and make

him/her to re-appraise his/her attitudes and style of work. Again, the national training institute would be admirably suited for such courses. At the same time, attendance by some senior staff in multi-disciplinary management courses could be useful in allowing cross-fertilization between sectors.

### **Continuing education**

Both professional and managerial education are continuous. A course may last a week or a year, but learning does not stop at the end and insurers must do all in their power to encourage continuing staff development. Through local associations, maybe with the support of foreigners (foreign associations or whatever), it is possible to organize lectures, study groups, study visits and library facilities, with not only voluntary but directed participation. Study groups may also be used in-house by individual companies as a means of spreading existing skills and changing passive knowledge into active knowledge. These methods are cheap, yet most effective. They must, however, be organized and impetus must be maintained if they are to be truly successful.

As has been suggested, education and training for marine insurance in Mozambique needs to cover many diverse areas and include a number of teaching methods. The solutions suggested in this dissertation are a response to the difficulties which have been observed, although there may of course be other equally valid solutions. Of all the tasks, however, the one with greatest priority appears to be the provision of junior level training so that as wide as possible a range of employees in the maritime trade may acquire the knowledge they need to allow them to perform their everyday tasks with confidence and accuracy.

Actually, people involved in the business at different levels have said that if it is indispensable for an insurance company to have specialists, it is also indispensable for those specialists to have good personal qualities to be successful in business. That is to say that someone could be an expert in insurance and fail in business, if he does not have the qualities required. Those qualities required are by and large the following: discipline, integrity or honesty, a good sense of communication, flexibility as well as aggressiveness.



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