

# Callidus News

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## THE CHALLENGE OF PIRACY IN THE SHIPPING INDUSTRY

In recent years, the shipping industry has been facing a growing threat from maritime piracy, posing significant challenges to the International trade and the safety of seafarers.

The United Nations Convention on the Law of the Sea (UNCLOS) sets out the legal framework for the use of the world's oceans and resources, including

provisions related to piracy and armed robbery at sea. According to Article 101 of the UNCLOS, piracy is defined as **“any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew of the passengers of a private ship or a private aircraft... on the high seas against another ship or aircraft.”**

The rise of maritime

piracy can be attributed to various factors including political instability in certain regions, poverty, and the lack of effective law enforcement. To address this issue, the international community has taken steps to strengthen regulations and conventions aimed at combating maritime piracy.

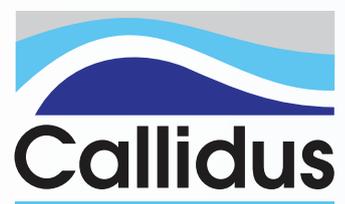
In addition to the UNCLOS, the International Maritime Organization (IMO) has



## THOUGHT for the MONTH

Keep away from people who try to belittle your ambitions. Small people always do that, but the really great make you feel that you, too, can become great

MARK TWAIN



developed guidelines and best practices to help shipping companies enhance their security measures and protect their vessels from pirate attacks. These include the use of onboard security, the implementation of secure communications systems and the establishment of designated high-risk areas where extra precautions need to be taken.

There has also been regional cooperation and information sharing

among countries along with the initiatives taken up regionally such as the Djibouti Code of Conduct and the Contact Group on Piracy off the Coast of Somalia, which have helped to coordinate naval patrols, intelligence gathering and legal framework to prosecute pirates and disrupt their operations.

Despite these efforts, maritime piracy remains a persistent threat to the shipping industry, particularly in high-

risk areas such as the Gulf of Guinea and the waters of the coast of Somalia.

In conclusion, this challenge of the maritime industry required a coordinated and multifaceted approach involving International Regulations, Industry best practices, and regional cooperation. By working together to address this threat, globally we can ensure the safety of seafarers, protect global trade routes and uphold the rules of law on the high seas ■

# LAYTIME AND FREE PRATIQUE

## Introduction

Issues of when the Laytime exactly commence has always been a topic in the maritime industry. It is usually the most debated issue when settling the various claims in a charter party. In this respect, the official Statement of Facts (SOF), Notice of readiness (NOR), Whether in berth or not (“WIBON”), Whether in port or not (“WIPON”), Whether in free pratique or not (WIFPON) clauses become very important. This article aims to explain all these terms and finally analyse the issue of how the WIFPON clause comes into play.

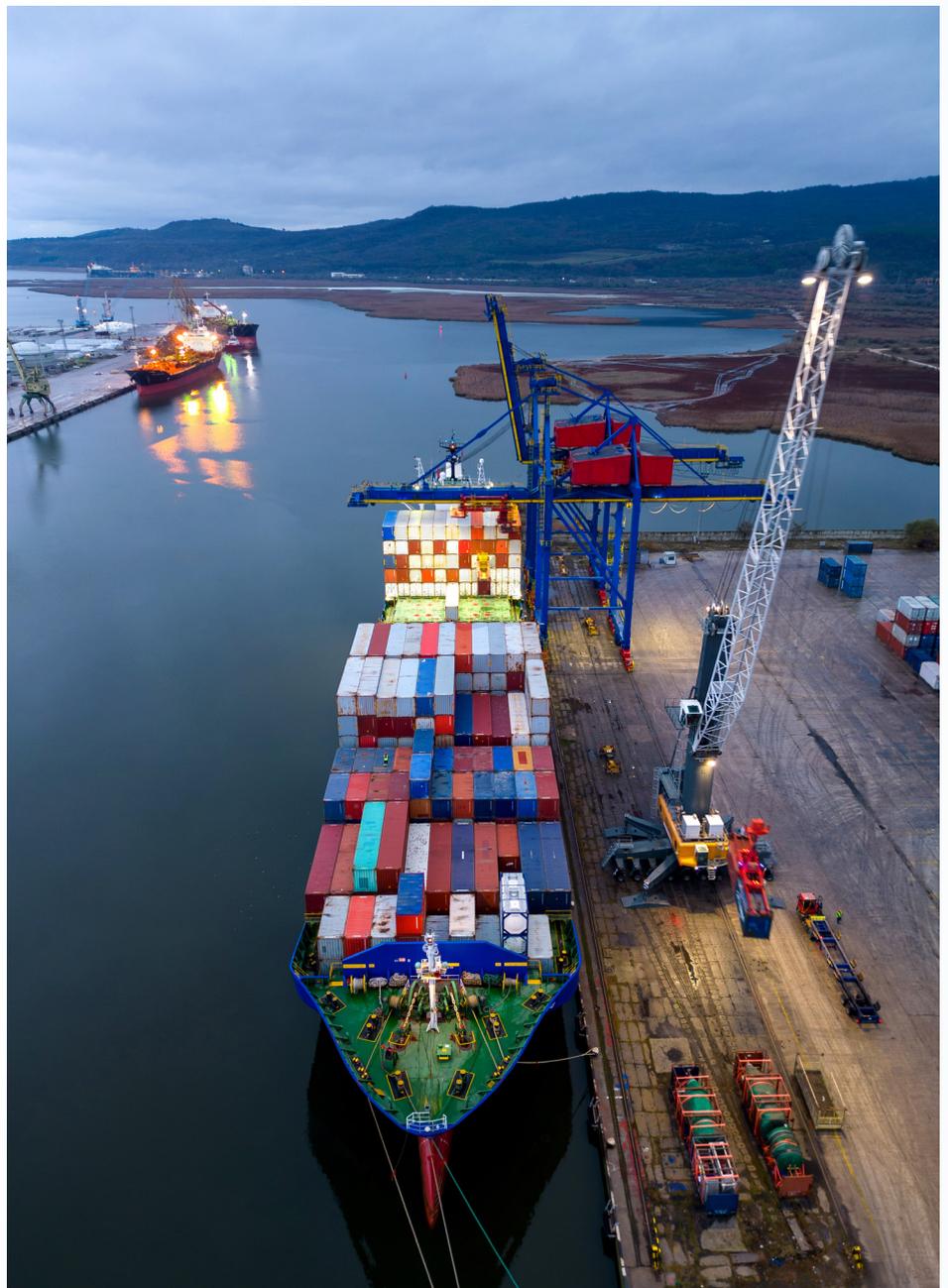
### 1. What is a Notice of Readiness (NOR)

Notice of readiness (NOR) is a notification given by the vessel to inform that she is ready and is available to the charterers, so far as they can then use her.

In order to issue a proper NOR, the vessel must be available in the Legal sense, i.e. no laws or regulations stand in the way of access by charterers, and in the physical sense, i.e. access to the ship and her holds is possible. In addition to this, the vessel must also have reached an agreed place (being an “arrived ship”).

There can be two kinds of charter agreements based on which a ship is considered an “arrived ship”.

(a) A Port Charter – under this, the vessel must normally have reached a



position within the port where waiting ships usually lie. The destination in such contracts is usually described with respect to the particular port, for eg: “London, one safe berth”.

(b) A Berth Charter – The owners can only tender the NOR when the vessel has berthed. The destination in such contracts is usually described with respect to the particular berth, for eg: “one safe berth, London”.

The above basic principles can however be varied by the terms “whether in berth or not” (“WIBON”) or “whether in port or not” (“WIPON”).

### 1.1. Who takes the risk of delays?

The general rule is that the shipowner bears the risk of delays unless covered by an exception clause before the obligation shifts to the charterers after the commencement of laytime. Therefore, we can say that the charter party usually puts the risk of navigational delays onto owners and of commercial delays onto charterers.

Specifically, it is to be noted that the parties can agree in a berth charterparty, a so called “WIBON” clause, transferring thereby the risk of delay due to congestion, but not due to bad weather, to the charterers.

## 2. Laytime and when does it commence?

Laytime is the time during which a ship is laying for loading or discharging, as distinct from moving. This time can be agreed to in the contract and where that time is exceeded, the charterers may be called upon under the charter party to pay liquidated damages known as demurrage.

### 2.1 When does laytime commence?

Whether or not a charter party contains a specific clause specifying the Laytime or not, the following requirements must be satisfied before laytime can begin to count

- (i) Reaching the agreed destination;
- (ii) Readiness of the ship to load or to discharge



(iii) Giving a notice of readiness after arrival to the charterers or their agents.

### 2.1.1. Issue of delay caused due to congestion

In *Dahl v Nelson, Donkin & Co* a ship carrying timber from the Baltic Sea was to go “to London Surrey Commercial Docks, or so near thereto as she can safely get” and there discharge the goods. After reaching the London port, it was found that berthing would be delayed by almost a month. The ship owners then discharged the cargo in another port. It was held that the ship had completed the voyage when she reached the dock entrance. The delay was unreasonable and the ship owners were entitled to insist that the charterers take the cargo elsewhere at the charterer’s expense.

Therefore, it is generally accepted that charterers must be responsible for any unreasonable delays caused in the port they chose.

## 3. Free Pratique and WIFPON Clause in a Charter Party Contract

In “*The Delian Spirit*”, on arrival at the anchorage, a Notice of Readiness (NOR) was tendered and accepted. However, due to congestion, the vessel lay at anchorage for 4½ days. The free pratique was not given until the vessel reached a berth. It was argued that the NOR was not valid. While deciding the issue of whether tendering Free Pratique is a necessary condition in issuing a valid NOR, the court stated the following -

“I can understand that. If a ship is known to be infected by a disease such as to prevent her from getting her pratique, she would not be ready to load or to discharge. But if she has apparently a clean bill of health, such that there is no reason to fear delay, then even though she has not been given free pratique, she is entitled to give notice of readiness, and laytime will begin to run.”

Subsequently, in the London Arbitration 19/04 . The customs clearance was only obtained some three days after the tender of NOR, the delay being solely attributed to delay on the part of the port authorities. It was held that, if on inspection, the ship was passed, then the original notice was valid and so the laytime would have commenced from the decided time.

### Conclusion

The above-mentioned position is maintained because obtaining free pratique clearance is usually tendered as a mere formality. The commencement of laytime should not be dependent on the issuance of the same. That’s why the charter party agreements nowadays specifically include the provision of whether in free pratique or not (WIFPON) clause. However, even with this clause, the position remains the same. If the vessel has a clean bill of health (evidenced by whether they eventually receive a free pratique pass or not), any delay in actually receiving the certificate should not vitiate the NOR tendered beforehand ■



# HOUTHIS MADE POLITICAL DEAL WITH RUSSIA AND CHINA FOR SAFE PASSAGE

For the second time this year, it is being reported that the Houthi militants in Yemen are promising safe passage for vessels associated with Russia and China while the group continues its daily assaults on shipping in the Red Sea and Gulf of Oman. It is further evidence of the commenters' view that the Houthis are using the war in Gaza as a lever to gain more prominence on the world stage.

A political understanding has reportedly been reached between the Houthi and Russian and Chinese diplomats meeting in Oman according to unnamed sources cited in a story released by Bloomberg this morning. While the terms of the agreement are unknown, Bloomberg speculates that China and Russia promised further political support to the militants including possibly blocking resolutions at the UN Security Council in exchange for the promises of safe passage.



Ships transiting the Red Sea informally began highlighting their association with China after the attacks began. They have included on their AIS signals messages such as "all Chinese crew" or highlighted destinations in China. This led to reports from Agence France Presse in January that a Houthi spokesperson was telling Russian media that ships from Russia and China were safe as long as they were not directly associated with Israel.

Yet, despite the previous assurances of safe passage, tankers carrying Russian oil have been among the vessels targeted by the Houthi. Reports have repeatedly suggested that the Houthis are using inaccurate or outdated data in their targeting leading to assaults on ships they protest to be American while they are now owned by companies in Greece and Singapore ■

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*Wishing you and your loved ones a wonderful Easter filled with happiness and peace*

HAPPY  
**Easter**

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