conformity with the narrow channel rule.[40] If that criterion is applied, then the Court's Group 3 does not exist as a coherent group. On the facts of *The Ever Smart* as Teare J found them, the crossing rules would apply.[41]

This does not mean that the Supreme Court was necessarily unjustified now to posit a strict criterion for disapplying the crossing rules, given changes in the Collision Regulations to the definition of a crossing situation with risk of collision,[42] and given the desirability of providing clear and practical rules for mariners. It does mean that if the criterion of necessity is relied on, despite the Court's express statements that in the Group 2 cases the crossing rules were correctly disapplied at the entrance to a narrow channel, the question arises whether those cases can stand, and on what basis. But that is a question to save for the next admiralty appeal.

Ralph Morley*

WILL LLMC APPLY TO REMOTE CONTROL CENTRE OPERATORS?

The Stema Barge II

The first line of defence for a shipping entity facing potentially successful claims against it is the Convention on Limitation of Liability for Maritime Claims 1976, familiarly known as "LLMC".[1] LLMC provides specific shipping entities with the right to prevent their liability, in respect of specified shipping claims, from going beyond certain internationally recognised limits. There are two special classes of shipping entity: shipowners and salvors.[2] We are concerned with the first class, ie, shipowners. The term "shipowner" refers to a multitude of parties within the labyrinth of commercial shipping, as is borne out by the case under discussion. In fact, claims often fail for the non-joinder of the correct

40. See [2019] LMCLQ 242, 249–255. Note also the dictum in *The Ada and the Sappho* (1873) 2 Asp MLC 4 (PC), 5 that the crossing rules applied to the facts of that case because "both were of necessity directing their courses to one point", and that the case was therefore distinguishable from vessels navigating up and down a channel; also, further, Sir Francis Jeune P's analysis in *The Pekin* [1897] AC 532 (PC), 537–538 of a case cited in *Ever Smart (SC)*, *The Leverington* (1886) 11 PD 117, that the vessels in that case were crossing so as to engage the crossing rules because "they could not else have reached their destinations".

41. At *Ever Smart (QB)*, [66], Teare J found that, even if the *Ever Smart* had been on her starboard side of the channel, the vessels would still have been crossing vessels with a risk of collision within the meaning of the Collision Regulations.

42. The earliest iteration of the crossing rules was engaged where steam vessels' courses "must unavoidably or necessarily cross so near that by continuing their respective courses there would be a risk of coming in collision": see *Trinity House Regulations: Navigation of Steam Vessels* (1840) 1 W Rob 488; 166 ER 654, appended to *The Friends* (1842) 1 W Rob 478; 166 ER 651.

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1. LLMC is enacted into UK law by the Merchant Shipping Act 1995, s.185 and Sch.7. See generally AM Tettenborn and FD Rose, *Admiralty Claims* (London, 2020), ch.7, esp. [7.050].

2. LLMC, Art.1 ("Persons entitled to limit liability").

party *vis-à-vis* the ship's ownership.[3] Thus, LLMC has defined who is a shipowner for the purposes of limiting liability. Article 1(2) states that the "owner, charterer, manager and operator of a seagoing ship" are the relevant roles that identify a shipowner. It has been observed that, of these, the role of an operator has not been the subject of judicial treatment.[4] That was until the dispute in *The Stema Barge II*,[5] which required Teare J to define the role of an operator for the purposes of bringing an action under the protection of LLMC. It is the aim of this note to analyse the judgment. Thereafter, it will aim to address the question whether a Remote Control Centre ("RCC") operator would be classified as an operator for the purposes of limiting liability. Professor Andrew Tettenborn had identified this possible correlation becoming more apparent when, in 2019, he wrote that an onshore control centre might fit the bill of an operator under LLMC if "entire control" were delegated.[6]

The facts

The case arose from an action brought by RTE Réseau de Transport d'Électricité SA ("RTE") against the *Stema Barge II* for damage to its undersea cable that supplied electricity to England from France. In light of this action, the defendants moved the English & Wales High Court to limit their liability. The limitation action was clearly a sensible decision, since RTE was claiming approximately €55 million for loss and costs, whereas the limit of liability was approximately €6.5 million.

It was accepted by the parties that two out of three defendants had clear roles, as it was admitted, first, that Splitt Chartering APS, a Danish company, was the registered owner of *Stema Barge II* (and of *Charlie Rock*, another barge involved), and secondly, that Stema Shipping A/S ("Stema A/S"), a Danish company, was charterer or operator of the vessel. However, it was disputed that Stema Shipping (UK) Ltd ("Stema UK"), a British company, was an operator of *Stema Barge II*. In essence, the dispute was to resolve the issue whether Stema UK could be called an operator and thereby benefit from inclusion in the list of defendants allowed to limit their liability.

It seems that the contractual relationships showcased in the case of *The Stema Barge II* would be indicative of transactions where remotely operated vessels are involved. Specifically, the judge mentions the role of Stema UK in obtaining licences from the Marine Management Organisation ("MMO").[7] This seems similar to the envisioned technical/operational involvement of a RCC operator in future transactions.[8] Another

3. See the Introduction in Paul Myburgh, "'Possession' and 'Control' of Ships: On the Outskirts of Admiralty" [2014] JBL 667.

4. Richard Williams, "Who Is an 'Operator of a Seagoing Ship' for the Purposes of the 1976 Limitation Convention?" (2020). Available at: https://iistl.blog/.

5. *Splitt Chartering APS v Saga Shipholding Norway AS (The Stema Barge II)* [2020] EWHC 1294 (Admlty); [2021] 2 Lloyd's Rep 307; [2020] Bus LR 1517.

6. Andrew Tettenborn, "Shipping: Product Liability Goes High-Tech", ch.9 of B Soyer and A Tettenborn (eds), *New Technologies, Artificial Intelligence And Shipping Law In The 21st Century* (Oxford, 2019), p.120.

7. At [25–34].

8. Maritime UK, *MASS UK Industry Conduct Principles and Code of Practice 2020* (V4) (November 2020), 85–87. Accessed at: www.maritimeuk.org/.

distinctive feature is that the personnel of Stema UK were responsible for *Stema Barge II* and *Charlie Rock*.[9] This kind of responsibility of operating multiple vessels is seen as one of the economic benefits of RCCs. Much like recognised *de facto* operators, Stema UK held no clear contractual connection to the barge. The Managing Director of Stema Shipping (UK) accepted that *Charlie Rock* and another tug were chartered to them but denied that *Stema Barge II* was.[10] The Managing Director said, "Splitt was responsible for *Stema Barge II*",[11] thereby making the role of Stema UK contractually obscure and unclear.

Ordinary meaning

Teare J concluded that the ordinary meaning of "the operator of a ship" in LLMC "embraces not only the manager of the ship but also the entity which, with the permission of the owner, directs its employees to board the ship and operate her in the ordinary course of the ship's business".[12] It is within the confines of this well-articulated judgment that one finds the tools of interpretation to apply this definition to a host of real-life scenarios where things are not so simple as to be governed by the ordinary meaning.

Requirement of onboarding or physical presence

It is important to note Teare J's view that it may be impossible to widen the scope of meaning of "operator" beyond the meaning of "manager".[13] This observation was made specifically for a conventional merchant ship. However, since his judgment noted a lack of accommodation and therefore of permanent, onboard personnel,[14] it seems clear that presence on board the ship is not a necessary ingredient in determining an operator's role. Again, his Lordship pointed out that the "physical" aspect of a ship's operation in Art.2 is limiting in nature to the actual roles played by various entities whom Art.1 seeks to cover.[15] This limiting nature conflicts with the purpose of LLMC, that of encouraging international trade via ships and is hence inapplicable to Art.1.

Nature of acts of an operator

The court pointed out that the role of an operator can be seen through a higher level of abstraction, one which has "a notion of management and control over the operation of the ship".[16] This operation is in the nature of physical operation, ie, movement and functioning of the ship and its machinery. It is also pertinent to point out that the personnel whose actions were attributed to Stema UK were following manuals/check lists provided by Stema A/S, ostensibly and reciprocally issuing statements to them. In this way, the acts

9. At [36].
10. At [38].
11. At [119].
12. At [99].
13. At [74].
14. At [110].
15. At [84].
16. At [79].

of Stema UK became those of actual doers and of Stema A/S those of command givers. The court accepted this difference in the nature of operating acts and managerial acts, respectively.[17] The court pointed out that Splitt Chartering APS and Stema UK had no contract for the work on *Stema Barge II*,[18] although they had "real involvement".[19] This fits in well with the current commercial landscape in the shipping industry where SHIPMANs (Ship Management contracts) are in vogue, thus creating a balance of convenience in favour of finding the "manager" but not so much for an "operator".

Consequences for RCCs

The conclusions which arise are that RCC operators having the structure of a commercial entity (proprietorships, companies, partnerships etc) will be able to seek refuge under LLMC.

The lines of distinction between an RCC operator and a ship manager may be drawn more clearly and confidently. The theoretical division of commercial and technical aspects between the operator, the manager, the charterer and the shipowner is easily applicable in practice to an RCC operator, on the basis of the lack of a physical connection between the RCC operator and the vessel, whereas for the other three entities this physical connection is apparent or is established through commercial contracts. In essence, the argument here is that the difficulty in distinguishing an operator's role is problematic only when seen in the realm of conventional merchant ships and will become relatively easier to distinguish with RCCs. While not direct, it would seem, from a reading of the judge's reference to a requirement of being on board in his definition of the operator,[20] that this is not synonymous with physical presence on the ship but embodies a notion of management and control over the physical functioning of the ship.

However, only time and economic institutions will tell whether RCCs are able to confine their activities and whether they can restrict their role to an operator and not to merge with the role of a manager. There seems to be some inclination in favour of the latter. BIMCO states that managers will "also provide the remote control centre and the personnel to operate the ship either ashore or on board".[21] While this is a proactive step for new age shipping, *The Stema Barge II* makes it amply clear that RCCs do not need to be represented as agents or affiliates or to share a common corporate structure with the managers to obtain the protection of LLMC.

What is more expedient to address is the question whether RCC personnel should be regarded as "crew". It was made apparent in *The Stema Barge II*[22] that an operator has a "notion of management and control over the operation of the vessel" which is beyond physical operations of the vessel's machinery. However, if RCC personnel are considered to be crew, as in the *MASS UK Industry Conduct Principles and Code of Practice*,[23] we

17. At [72].
18. At [111].
19. At [110].
20. At [79]. See *ante*, text to fn.17.
21. BIMCO, *First Ever Standard Contract for Autonomous Ship Operation Underway* (6 November 2020). Accessed at: www.bimco.org/.
22. At [79].
23. *Supra*, fn.9.

may not require the assistance of the debate on "operator" in *The Stema Barge II*, since they will fall within LLMC, Art.1(2), as is made clear in Teare J's judgment.

Mayank Suri*

CHALLENGING ARBITRAL AWARDS ON GROUNDS OF SERIOUS IRREGULARITY

RAV Bahamas v Therapy Beach Club

A party seeking to challenge an arbitral award under s.68 of the Arbitration Act 1996 must demonstrate that there has been a "serious irregularity" that has affected the tribunal, the arbitral proceedings or the award, which has resulted in substantial injustice. The Judicial Committee of the Privy Council in *RAV Bahamas Ltd v Therapy Beach Club Inc*[1] recently overruled a decision of the Bahamas Court of Appeal, in allowing an application under an equivalent provision of s.68. The Privy Council was concerned with the allegations that the tribunal had failed both to allow the applicant a reasonable opportunity of putting its case and to address all of the issues that were put to it. The decision is significant in many respects, consolidating the numerous English authorities (largely from the High Court) on s.68, many of which were decided since the House of Lords considered the issues in *Lesotho Highlands Development Authority v Impreglio SpA*.[2] In doing so, the Privy Council outlined important principles for the application of the provision, in particular, ruling that explicit pleadings of substantial injustice by parties, and findings of substantial injustice by courts, are not required for a successful challenge.

In December 2011, RAV Bahamas Ltd entered into a lease with Therapy Beach Club Inc for land in Bimini (an island in the Bahamas).[3] The lease was for a term of three years, with an option for Therapy, as lessee, to renew the lease for a further term of three years on giving six months' notice and subject to the parties' agreement on rent. The lease also provided that Therapy was to pay RAV a sum of US$150,000 for the construction of a beach club that was to be completed within 120 days of receipt of payment. A dispute arose when Therapy alleged that that construction work was not properly carried out or completed. RAV contended that the lease was void, and subsequently demolished the beach club and evicted Therapy from the land.

The matter went to arbitration. In 2017, the arbitrator in question held in favour of Therapy on its actions for breach of contract (and various tortious claims). The arbitrator

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1. [2021] UKPC 8.
2. [2005] UKHL 43; [2005] 2 Lloyd's Rep 310; [2006] AC 221.
3. The facts are outlined at [3–20] of the Board's judgment.