

The Climate Show Episode 17

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Transcript

00:00:04 Linnéa Nordlander

Hi and welcome to the Climate Show, a podcast that explores the law and politics of climate change. This podcast is brought to you by the University of Copenhagen.

00:00:16 Beatriz Martinez

Hi. We are Beatriz Martinez and Linnéa Nordlander. And Alessandro Monti.

00:00:20 Beatriz Martinez

And we are your hosts at the climate show. In previous episodes, we have explored the contribution of shipping activities to climate change. Last July, the IMO adopted a strategy which includes an ambition to reach Net 0 greenhouse gas emissions from international shipping close to 2050, and some indicative checkpoints for 2030 and 2040.

00:00:44 Alessandro Monti

A month earlier, we hosted a workshop on remaking global trade and shipping. Which is related to our Carlsberg funded InterAct project, which stands for international law making actors in shipping and climate change. This workshop was organized in collaboration with Yale University and University College London.

00:01:04 Linnéa Nordlander

At the workshop, our colleague Victor Weber interviewed Professor Michael Tsimplis on the topic of shipping and climate change from a private actors perspective. Professor Tsimplis works at the City University of Hong Kong, where he is associate director of Hong Kong commercial and Maritime Law Center. He holds a PhD in physical oceanography and is a world renowned expert on maritime law. So let's learn more about this crucial topic.

00:01:37 Viktor Weber

Professor Tsimplis welcome to the climate show. Thank you for joining us in Copenhagen for the workshop on remaking global trade and shipping and for making time for this interview. Also, it is a special pleasure for me to welcome you here as my former PhD supervisor. The topic for today is the tackling of climate impact of international shipping from a public and private perspective. And with that, let's jump to the first question. In addressing the contribution of shipping to climate change attention at the moment is at the IMO and their forthcoming meeting of the NPC in July. In a parallel process, the EU has decided to go ahead and include bringing EU emission trading scheme. You see these developments. How do you see these developments?

00:02:18 Michael Tsimplis

These are only encouraging signs. The shipping industry had stayed out of the carbonization for almost 30 years, so all of these movements indicate that the world is trying to move towards the right direction. The problem, of course, is whether the agreement that will come out of the IMO will be sufficient to satisfy the needs for keeping the temperature at 1.5° or lower.

00:02:46 Viktor Weber

Thank you very much. Several of us developed economies are opposed to the international decarbonization efforts, claiming that the shipping sector will become less competitive. Why is this considered the cheaper, less are typically located in the United States and the final bill will be fitted by the consumer of the goods carried?

00:03:05 Michael Tsimplis

There is a real problem with some of the developed economies because the local services, what we usually call cabotages is actually supported by ships that are owned locally and perform locally under the local economies. Therefore they cannot be very profitable. So, there is a distinction between the global market, the largest ships that do the trading around the world and these smaller economies. Some countries are using the latter as an excuse to avoid changes in the format, but this is something that the international community is well aware of. And this argument should not stop decarbonization.

00:03:49 Viktor Weber

Thank you very much. This is a very interesting insight. Another area of law that is relevant here besides the regulatory is private maritime law? Are there any special clauses in preparation in the industry that would govern who bears the bill for EU emission allowances and potential future fuel levies?

00:04:09 Michael Tsimplis

Well, that's a very good question, Viktor, and thank you very much. Yes, private maritime law and contract law is going to be crucial in distributing the profits or the losses from the carbonisation effort. How this is going to be done is really for the parties who are involved in the contract. And the problem with contract law is that it operates only when there is a loss, when there is something substantive, financial, that affects one of the parties, otherwise it will not work. To give you an example, in recent case in the UK in the English. But there was a claim for the death of a worker. Who was used who was working in decommissioning ship in Bangladesh and the widow brought a claim against an English company that had mediated to sell the ship to a cash buyer and then to this recycling factory. Now the claim was not taught, but the interesting point is that in the contract through which the ship was sold to the cash buyer, there was a requirement. That the commissioning should be done with safety and environmental precautions, and the judge commented them in the Court of Appeal that these are words on a paper because they are not linked to any laws. So, the important point for contractual clauses to work is first of all to reflect to financial losses that will incentivize one party. To get the other party to comply with the contract. Now the laws these financial laws cannot be generated without a very strong regulatory intervention. So a tax on clear and high tax in of carbon will create such a loss. There are other ways of doing dealing with that. You can actually argue that the contractual reasonable person has changed and the reasonable person nowadays cannot do business without having some awareness of the efforts of decarbonization. But this is much more difficult to make work, at least in some legal systems. So yes, there is a role. Yes, there are clauses developed at the moment, but we will not operate

until we have a clear mandate of how much it will cost. If you keep polluting at the levels that you're polluting now.

00:07:14 Viktor Weber

Thank you very much for this very detailed answer. Certainly, a lot of development has to take place in this field. Continuing with the role of the private sector and increasing number of companies are pledging to use greener, green or 0 carbon forms of shipping. Is this already visible in shape chartering? Are there any clauses in use that require the ship owner to provide the ship with specific emission and efficiency values? And specifically, if there are such clauses, what damages may a charter and or a product owner expect in the case of a breach?

00:07:41 Michael Tsimplis

Again, a very good question. This is a second way through which you can incentivize the parties to a contract environmental social governance is something that becomes more embedded in the corporate governance of many States and consists on the one hand of reporting responsibilities and on the other hand of value in the company. By keeping those shares high or popular for people and consumers who care about green value. Therefore, it is arguable at least that if a company has such commitments, either voluntarily or by law, and these commitments are violated by somebody in the consumer chain, there could be an argument for damages. For the loss of sale value and so on and so.

00:08:42 Michael Tsimplis

Forth, again, a difficult argument. And it again it needs some sort of intervention so the the green values that the company is fulfilling should not stop on things that happened only within the company. It will have to link with what the customers and the users of the products of the company do. So there must be some due diligence on what the shipping company, what the logistics company. I mean does in relation to employing vessels to carry the goods and how they load, how they discharge, how they perform their duties. But in principle, yes, that is a good way of creating this interest for the contract to operate.

00:09:25 Viktor Weber

Thank you very much. This is also very encouraging. Following on from the previous question, are there any contractual arrangements in news at the moment that can be useful for indirectly reducing GHG emissions from shipping, for example, sea traffic management?

00:09:43 Michael Tsimplis

There are contractual clauses. Bimco has a collection of clauses that relate to the carbonization and to the Sea Traffic management. Some of them have very progressive writing. They involve expanding reasonably to include environmental considerations, but I think the keyword in your question is. Whether they are in use and this is something we don't know, we haven't had any case law coming into course. We are not aware of any arbitration in this sense. So whether they are used and are controversial, whether or whether they are not used at all, we cannot tell. I would suspect that until there is this loss, this contractual incentive that will make one party sue the other so that they perform in accordance to the organization is in place until this is in place, I don't think we will see any dispute. So perhaps they will use, but I don't think they do much.

00:10:50 Viktor Weber

Thank you very much. Finally, I would like to ask if there's anything else that you would like to add to before we wrap up.

00:10:58 Michael Tsimplis

Well, I would like to thank you and the Center for International law and governance for your great work and particular for your emphasis in shipping and the organization. I think it is a bargain for international institutions and I think. That in a number of events that I've participated is your link with industry promises that your interventions will be fruitful. So thank you very much for having me here.

00:11:27 Viktor Weber

Thank you very much. Thank you very much. Once more for joining us in Copenhagen and for the climate show. And we look forward to seeing you again soon.

00:11:44 Beatriz Martinez

Thank you for listening to this episode of the Climate Show. If you are interested in learning more about Professor Tsimplis work and our interact project, check out the show notes and stay tuned for more in our next episode.