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Impact of Disruptive Innovation on Shipowner's liability

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Agenda

- Introduction
- Maritime Law & New Technology
- Today's Technology
- Case Study
- Conclusion



Introduction



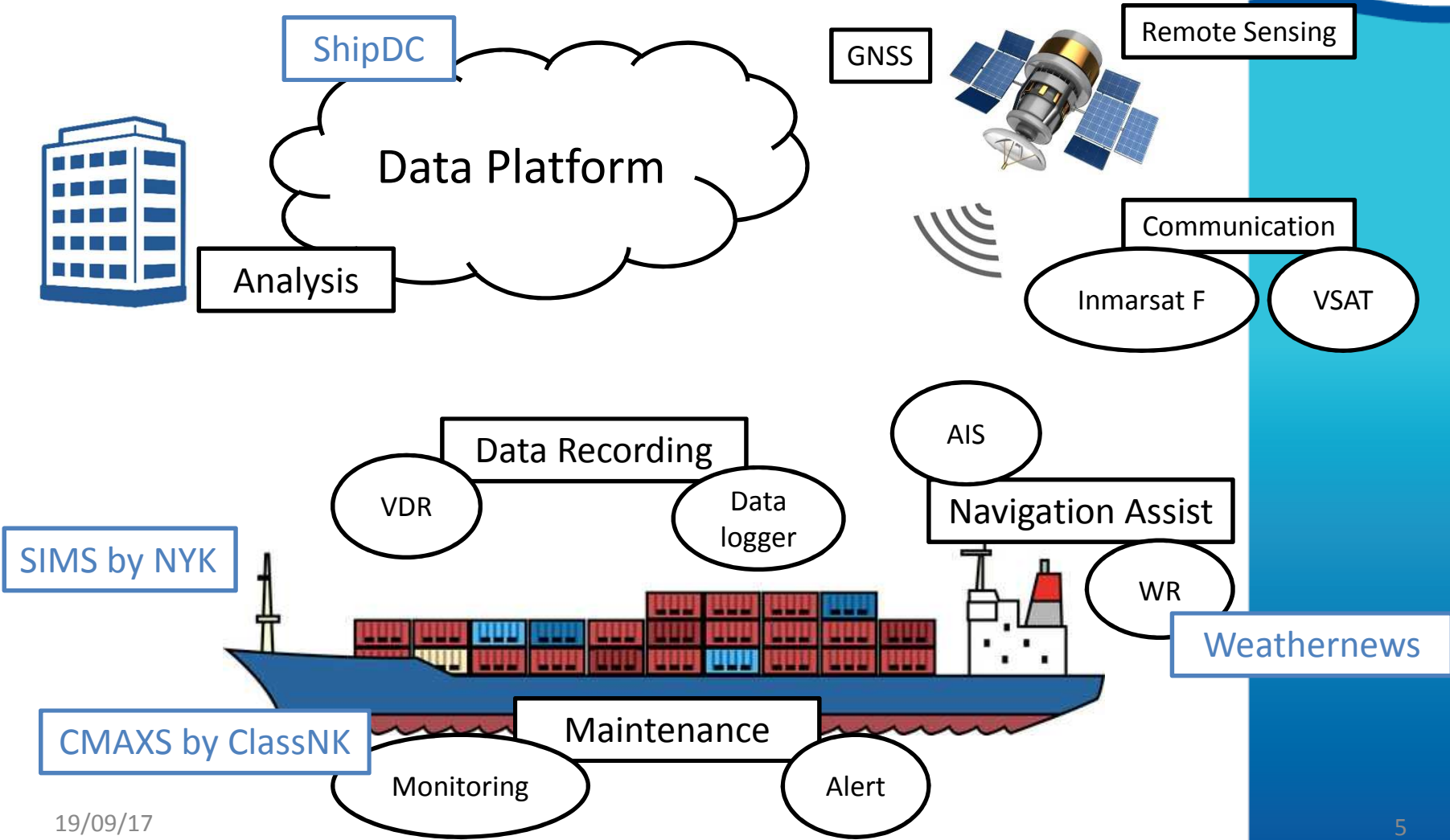
- What is the problem?
 - What is Legal Impact of Technological Development?
 - Change of Background justifying Current Rules
 - Liability or Exemption under unreasonable Cause
 - Premium not reflecting Real Risk

Maritime Law & New Technology



- Steam Engine (19C)
 - From Bottomry to Carriage
- Container Ship (1960's)
 - Combined Transport
 - Visby Protocol 1968
- Radar and Communication
 - Reduction of Marine Casualties
 - Error in Navigation?
- EDI (1990's)
 - Electronic B/L and Sea Waybill
 - Signature, Control and Transfer of Rights

Today's Technology





Case Study

Setting the Scene

- A Ship was sunk in the middle of ocean with crew and cargo
- Cargoowner's claim under contract of carriage of goods by sea
- Japanese COGSA (Implementation of Hague-Visby Rules)
 - Fault-based Liability (Art. 3 (1))
 - Error in Navigation Exemption (Art. 3 (2))
 - Duty to Make a Ship Seaworthy (Art. 5 (1))
 - Carrier's Burden of Proof for exercising Due Diligence (Art. 3 (1) and 5 (2))



Way of Proving

- Carrier may: get the data emitted by VDR every minutes (or seconds)
 - VDR with Communication Facilities
- Reproduce a probable situation at the time when the damage has occurred
- Reduce the case of “*non-liquet*” which brings carrier’s liability



Due Diligence and Exemption



- A crew member might have ignored the alert noticing abnormality of engine: probable cause of sinking
 - Exemption by Error in Navigation?
- Alert system is not required by SOLAS Convention nor other regulations, but effective to prevent casualties
 - The ship was seaworthy?
 - Carrier has exercised due diligence to make the ship seaworthy?

Error in Technology



- Suppose: Error in navigation defense was dismissed
- Monitoring system did not work due to error of communication facilities
- Carrier shall be liable for the loss caused by error in technology?
 - Disconnecting by the fault of satellite operator
 - Mistake by manufacturer of facilities

Conclusion

- Today's technology would affect current liability system
 - Way of Proving; Its Degree and Burden of Proof; Due Diligence and Exemption
 - Error in Technology instead of Error in Navigation



Thank you for your attention!
Any questions? Feel free to ask me.

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