

Criminalisation in shipping

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For nearly two years a senior Greek citizen, regarded by the maritime world at large as an innocent hero, has been held in a foreign country without trial. Furthermore, during the first three months of his detention he was kept in a high-security prison and denied access to legal assistance or any contact with those trying to help him.

Only after a P&I club provided a bail bond was he moved from prison to detention. Even now he is too scared to meet any friends or colleagues who may give him moral support, as he feels it might prejudice his case. He is, in IFSMA's opinion, without doubt a political hostage.

Of course today's media headlines illustrate far worse situations than this case, but the fact that Captain Apostolos Mangouras is not being held by terrorists or the dictatorship of a third world country but by a democratic member of the European Union, should make every one of us feel very uncomfortable.

Captain Mangouras was the unfortunate master of the oil tanker *Prestige*, which broke in two and subsequently sank off the west coast of Spain on 19 November 2002. During the voyage, part of the ship's steel plating failed and the strength of the hull was compromised.

The ship would have been more likely to survive intact in sheltered waters, where the remaining cargo of crude oil could have been discharged, if the stresses and the impact damage caused by heavy seas could be minimised. So the master requested a port of refuge, but he was refused.

With his ship listing 30 degrees and in danger of breaking up, the captain evacuated 24 crew members leaving only himself and two officers on board to correct the list and support an attempted salvage operation. Is this the action of a criminal?

While we must all feel total sympathy for those suffering from damage caused by oil pollution to their coastline, there can be no cause or grievance that justifies an abuse of human rights, however legitimate their claim for compensation. That our governments permit this to happen in Europe today reflects our collective failure to uphold the rule of international and European law, and can only fail to instil respect for those laws from other countries.

For the moment we will have to wait (probably for some time) until the courts decide on the fate of Captain Mangouras, so I want to raise a similar case, based on a report provided by the IMO: document FSI 10/9 dated 4 January 2002.

On 8 December 1999, the *Erika* sailed from Dunkirk for Livorno laden with approximately 31,000 tonnes of fuel oil. Soon after sailing, the ship encountered heavy seas in a force 9 gale. While these weather conditions are bad, they are not unexpected in the Bay of Biscay at this time of the year, and ships are designed to withstand these conditions. On 11 December, the master observed a progressive list to starboard and tried to correct it. He also transmitted a distress alert.

On checking the cargo and ballast tanks, he found the segregated no 2 starboard ballast tank, which should have been empty, contained both sea water and fuel oil with the ullage equal to the sea level. Cracks and buckling were noticed on deck in the way of this tank. The master decided to head for a port of refuge.

On 12 December, large quantities of oil were observed escaping into the sea and part of the steel plating of no 2 starboard tank had been torn away. At this time a

second distress message was transmitted and with the assistance of French naval helicopters, and using the ship's port lifeboat, the master was able to abandon the ship without loss of life prior to the *Erika* breaking in two and sinking.

The master of *Erika*, Captain Karun Sunder Mathur, was arrested and charged with putting life in danger and causing marine pollution by the French authorities. He was detained behind bars but after formal pleas from IFSMA, he was eventually released from prison on 23 December 1999 but detained in Paris. He was eventually allowed to return home to India in February 2000.

Seamanlike action

Captain Mathur acted promptly, in a seamanlike manner, with acute awareness of the deteriorating situation in respect of the vessel's hull structure and he deserves full credit for ensuring that the entire crew were rescued without injury in severe weather conditions. In fact, the IMO document observes that the real blame lies elsewhere. Structural weaknesses in the vessel were not detected by the classification society that monitored the vessel, or by the agents responsible for its nautical management despite signs reported by the crew; nor by the vetting of port state control inspections.

On the other hand, the IMO document observes that the master, with his solid marine training and 15 years' experience, had correctly discharged his duties within the state of his knowledge. IFSMA stands by its belief that there was no justification whatsoever for the incarceration of this shipmaster, or the ruining of his career. In spite of this evidence, the French authorities still want to extradite him to face trial in a French court.

In the meantime, the French courts have said that they will not attempt to put the authorities responsible for ensuring and certifying the vessel's seaworthiness on trial as they represent a sovereign

state. I am not a lawyer, but I strongly believe in the principle that nobody is above the law – that includes governments and government officials – and no one should be denied the protection of the law, and that includes shipmasters. Surely every nation that proclaims the rule of law at home must respect it abroad; and every nation that insists on it abroad must enforce it at home.

Sadly, the *Erika* and the *Prestige* are not isolated cases. There are many others, such as the *Tasman Spirit* last year in Pakistan, where the Secretary General of the IMO played a key role in negotiating the release of the ship's master, officers and some of the crew as well as the salvage master from eight months' custody. In this case, the EU also used its political muscle, which is commendable, but also shows its hypocrisy in its failure to deal with the abuse of the law by one of their own members in the case of the *Prestige*.

More injustice

The examples I have mentioned relate to the more publicised pollution incidents but there are many other examples of injustice relating to other types of incident.

What would you expect to happen if your employers went bust? In 1999, Captain Costas Litsakos, the Greek master of the *Achilles 1*, discovered that the owners of his ship had declared bankruptcy and abandoned the vessel while she was at an Algerian port.

The Algerian authorities detained the vessel and the master until such time that the port agent's dues and stevedoring expenses were paid. Captain Litsakos' passport was confiscated and the port authorities stated that he would only be able to leave after he had been replaced by a similarly qualified master mariner. There was no hope of this and he was detained indefinitely in Algeria. With no money left, the 63 year old captain became seriously ill. He was offered an opportunity of escape by the master of another ship and happily arrived safely home.

A similar incident occurred with Captain Maqsood Ahmed, the Pakistani master of the *Delta Pride*. The owners filed for bankruptcy in March 1998. In May while in Tampico, the ship's Mexican agent confiscated the ship's documents and the crews' passports against a small supply of provisions. Abandoned by the owners and in utter desperation, the master sailed out from Tampico and on 24 November 1998, anchored three miles off South Padre Island near Brownsville, Texas – hoping

for justice in the USA. They were in for a shock.

The ship was not allowed to enter port and given no assistance. The master and crew almost starved for several weeks, relying on sea fish and rainwater for their survival. Meanwhile in Brownsville, the court ordered the auction of the vessel which was sold for the measly price of US \$350,000.

The crew's certified claim for wages was US\$270,000 and the master and crew rightly expected that the US court would follow internationally accepted procedures and give crew wages first priority from the proceeds of sale. This did not happen. Instead the crew was taken into custody by immigration authorities and kept in the Brownsville immigration detention centre for six months.

Of course, we have to admit that human errors happen. Collisions and groundings are generally caused through human error and where a serious case occurs, there should be an investigation as to its cause. But does a pending investigation give the authorities the automatic right to criminalise the shipmaster? Consider the following case studies and draw your own conclusions.

First, the *Nissos Amorgas*, a laden tanker sailing down the Maracaibo Channel in Venezuela with local pilot. The vessel struck something just before midnight on 28 February 1997 and her two forward centre tanks were ruptured. She immediately began leaking oil, spilling around 4000 tonnes of Venezuelan crude. Captain Konstantios Spiropoulos, the Greek shipmaster, claimed that his tanker had struck a submerged object, which was quite possible from the allegedly deplorable condition of the Maracaibo Channel at that time.

For five months the shipmaster was kept under house arrest, without any official charges being made against him. He was then allowed compassionate leave on two occasions but honoured his commitment each time and returned to Venezuela. Over a year later, on 12 March 1998, he was finally charged with causing pollution. Interestingly there was no specific allegation of negligence on the shipmaster's part.

Consider the plight of the two British shipmasters whose ships collided off Fujairah on 30 March 1994: Captain Terry Lau Chung Hui, in command of the Panama-registered VLCC *MY Seki* and Captain Donald Shields of the UAE-registered tanker *Baynunah*. Both shipmasters were detained by UAE

authorities without any charges and placed in hotels in Dubai, although they were not under any kind of restraint. However their passports were confiscated so that they could not leave the United Arab Emirates.

The Fujairah court held the *Seki* 60 per cent responsible for the collision and the *Baynunah* 40 per cent. Both masters were fined the equivalent of US \$2,700 in June 1994 but Captain Lau's passport was not released until August of that year.

Finally, a case that shows it is not just administrations that seem to treat shipmasters with disdain. Captain Michael Thompson was in command of the bulk carrier *Union* which grounded on rocks off Japan on 6 February 1995. Although the ship was damaged there was no pollution, no injuries to ship's personnel and no damage to its cargo of coal.

The master took the ship safely to port, discharged the cargo and proceeded to Tokuyama for repairs. He admitted he made an error of judgement to the Japanese Maritime Safety Agency and for this he was arrested, although free to move around within the confines of Moji and Tokuyama. The Japanese authorities did not allow him to discuss the matter with anyone.

No justification

What justification did the Japanese authorities have with a Hong Kong-registered vessel when no damage was caused to their own country's interests? The master was demoralised and very depressed after the casualty but during his ordeal with the authorities, the ship-owners offered no support and there was no response from the ship managers. Finally, at a court hearing three weeks later, the master was freed from responsibility for the incident but still fined 150,000 Japanese yen.

Yes, the master made one error of judgement but subsequently carried out his responsibilities and saw the ship and its cargo safely delivered.

I do not wish to argue about the result of these inquiries or their judgements, but I would ask what justification is there to detain shipmasters pending an accident investigation?

Reflecting on the IMO *Erika* report, perhaps the courts should be looking at the deeper reasons of why these casualties occur and the underlying issues that may have led to the above incidents.

During my lifetime I have seen considerable changes in the shipping industry. For a start there are far fewer

traditional shipping companies today that are vertically integrated, and shipmasters, officers and crew are more likely to be working for a manning agency rather than the shipowner.

What loyalty

How can this promote any sense of loyalty, especially from the owner to the crew? But worse than that, it hides the fact of who actually does own what some people may regard as a substandard ship. It also explains why authorities grasp at holding on to their only possible link to those responsible: the shipmaster.

Administrations compete for tonnage to register under their flag and their aim is to minimise the specifications required to meet the necessary standards. This is especially true in their minimum manning requirement for each ship.

Crew costs are a large part of the ship's operating costs and shipping managers want to be able to pay for the minimum amount of crew. This is in spite of the fact that fatigue is a known problem among seafarers. Another recent added task for the officers of every ship that falls within the Solas Convention is to carry out additional duties as the ship's security officer, which are defined and required under the ISPS Code. Some of the administrations were asked by IFSMA if they would increase their minimum manning requirements for an additional officer to carry out this task. The reply was blunt and along the lines that if we did that, we would lose ships to other flags.

So with a minimum amount of officers and crew to assist him, a master will join his ship under instructions to load and carry his cargo to a distant destination through whatever conditions the vessel will encounter. He or she may judge the condition of the vessel only from what they can see on deck and the hull above the waterline. The shipmaster can judge if the ship is legally seaworthy by ensuring that all the ship's mandatory certificates are in order and that his officers have the certificates of competency required.

Accidents do happen, systems do fail, companies do go bust, and structures can collapse in every activity. The sea is an unforgiving environment, and provided that there has been no malicious intent or gross negligence, no shipmaster should ever be treated like a criminal following a marine casualty.

The shipmaster and officers of the watch have immense responsibility, to protect the lives of their crew, the ship and its cargo as well as the environment. It is

essential, therefore that the maritime industry and the world at large has well trained competent shipmasters, officers and crews; but what will attract potential recruits of a high calibre if they read in the newspapers how shipmasters can be treated so unjustly? There must be an international law to protect the shipmaster from unjust actions.

IFSMA strongly believes that the IMO is the correct forum to provide an effective mechanism through which to seek common maritime solutions to common maritime problems. It acts within the concept of the United Nations Convention of the Law of the Sea (UNCLOS) which with its own Marpol Convention covers the situation of the *Prestige*. As a signatory to both, in my opinion Spain has shamelessly disregarded the conditions set out for the treatment of the master.

At the international level every maritime state needs a framework of fair rules which they can be confident that the others will obey. IMO has provided such a framework. But it would appear that this framework has some gaps and weaknesses and is often applied selectively, and enforced arbitrarily.

I was very impressed when I watched the UN Secretary General give his speech last year prior to President Bush

addressing the United Nations. He made some excellent observations. I quote: 'Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it. Just as, within a country, respect for the law depends on the sense that all have a say in making and implementing it, so it is in our global community. No nation must feel excluded. All must feel that international law belongs to them, and protects their legitimate interests. Rule of law as a mere concept is not enough. Laws must be put into practice, and permeate the fabric of our lives'.

Kofi Annan then urged the delegates to do more to foster the rule of law at home and abroad and to take advantage of the arrangements that have been made to sign treaties on the protection of civilians – 'treaties that you yourselves negotiated' he reminded them – and then, go back home, and implement them fully and in good faith.

Shipmasters would like the same message respected and observed by the IMO member nations.

■ Edited from the 2004 Cadwallador Annual Memorial Lecture, given by Rodger MacDonald last October.



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