

## NEWSLETTER

### SHIPPING

October 2012

#### Piracy and Greek law 4058/2012 regarding the use of armed guards

##### What is considered piracy?

Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), piracy is defined as *“any illegal acts of violence, or detention or any act of depredation committed in the high seas for private ends against another vessel, or persons, or property on board”*. Articles 105 et seq of UNCLOS allow warships and other authorised ships of any State to stop, search and seize any vessel on the high seas which they have reasonable grounds of suspecting to be engaged in piracy.

UNCLOS defines the high seas, for the purposes of acts of piracy, as those waters which lie beyond the seaward limit of the territorial sea (generally 12 miles). Acts within the territorial sea which would be regarded as piracy if committed on the high sea are treated as *‘armed robbery at sea’* and are subject to the primary jurisdiction of the coastal state in which the acts take place. UNCLOS does not permit seizure of a pirate ship and arrest of pirates in the territorial sea, unless the ship flies the flag of that state. Exceptionally for Somalia, there are UN Resolutions which, in broad terms, allow States to treat acts of piracy

committed within Somali territorial waters as though they were committed on the high seas.

##### The prosecution of pirates

Whilst rights to board, search and seize foreign ships and persons on board exist under UNCLOS, the prosecution of pirates is subject to national law. Specifically Article 100 places a duty on States to cooperate in the repression of piracy. This would involve States making arrangements to transfer suspected pirates from the arresting ship to another State for prosecution. Very few States have accepted the UNCLOS mandate and legislated specifically against piracy. The reasons for the reluctance of States to embrace the rights created by UNCLOS to exercise extra-territorial jurisdiction over pirates are essentially political but also economic. An example is Kenya which for a period was willing to accept arranging the prosecution of pirates, but without international funding its willingness to devote its own resources to the project soon faded away.

##### The use of armed guards

The reservation of anti-piracy measures in

territorial seas to the coastal state only (with the notable exception of Somalia) and the non existence of an international scheme for pirates' prosecution contribute to the continuance of piracy. 439 attacks were reported to the International Maritime Bureau (IMB) in 2011 of which 275 took place off Somalia on the east coast and in the Gulf of Guinea on the west coast of Africa. According to the IMB quarterly report, as of 30 June 2012 Somali pirates were still holding 11 vessels with 221 hostages captive.

Shipowners and their insurers were therefore forced to react individually to the problem of piracy with the use of specially trained guards on board the vessels during passage through piracy infected waters. After a relatively short international debate many legislations allow now the use of armed guards on board.

### **Law 4058/2012**

The Greek Parliament passed recently law 4058/2012 allowing the use of armed guards on board Greek flagged vessels under the following conditions:

- a. Armed guards may board a Greek flagged ships only upon specific permission, valid for 6 or 12 months (which may be extended), issued by the Coast Guard which will need to examine the ship's particulars and an analysis of risks for the voyage in question.
- b. The armed guards are not considered members of the crew and must be employees of a company holding ISO certification that has entered into an agreement with the shipowning company.

- c. The weapons and ammunition must be kept on board the ship at a place with the common access of the Master and the person in charge of the armed guards.
- d. The armed guards on board the ship are subject to the authority of the Master and the use of weapons is allowed only upon an order of the Master to the effect this is necessary to avoid the risk of piracy attack.
- e. The Master of a Greek ship with armed guards on board sailing within territorial waters or within an anchorage or port of another State must advise the coastal authorities, upon any request, of the kind and quantities of weapons and ammunition kept on board his vessel. The same obligation exists if the request is presented by the Commander of a war ship of any State in the open seas.
- f. The Master of a ship under foreign flag with armed guards on board must inform the Greek Coast Guard 24 hours before entering Greek territorial waters of the kind and quantity of arms and ammunition and the place where these are kept on board his ship.
- g. The use (and even maintenance) of any such weapons and ammunition within the Greek jurisdiction is prohibited.

Article 10 of said law imposes penalties of imprisonment up to 9 months or pecuniary fines for any breach of the obligations imposed (except above (e)). This criminal liability involves not only the Master of a ship but also the legal representative of the owning and the managing company.

## Injury or illness on board : A first- aid kit

### **1.A death on board that could have been avoided**

On the last day of 2011, just before midnight, a 55 year old Greek Chief Officer died from heart attack on board a Greek-owned tanker while the ship was dropping anchor at a French port in the Mediterranean. The Chief Officer had felt unwell 7 days prior en route from US to Gibraltar and had handed his resignation to the Master requesting to be discharged as soon as the ship would sail in Spain. During the voyage, although his condition was at less alarming he continued to work and was only receiving some medication for a cold which had been attributed to the temperature changes. The Chief Officer was communicating every day with his family describing his illness while the Master throughout this period did not contact the Medico for medical instructions. What was worse was the Captain did not give the full picture to the Owners and, thus, they did not know the seaman's exact condition in order to give instructions for urgent medical assistance. Likewise he was scheduled for substitution on arrival at the discharge port in France. As a result, the seaman remained on board for 7 days without any medical assistance and eventually died from myocardiac infarct just before his scheduled discharge. This may have been avoided if the Captain had made what was self-evident under the circumstances: Assessing the situation properly, taking urgent medical advice and providing immediate medical assistance.

Now, the Owners face a claim in the area of €1,500,000 for compensation and moral

damages based on breach of safety regulations under Greek Law.

Although safety conditions on board have improved during the recent years, the seaman's profession will always be a dangerous occupation and accidents and illnesses on board will, inevitably, always happen. Due to the nature of the shipping trade a ship is susceptible to unpredictable or extreme conditions, while geographical restrictions and limited sources make the provision of proper and prompt first-aid to the injured and the ill seaman even more difficult. From our experience over the years in dealing with cases of personal injury on behalf of Clubs and Owners, the handling of each occurrence from the first moment is decisive for minimizing the Owners' liabilities and for avoiding huge claims. Pro-active measures and immediate action are always crucial and necessary in all cases.

The focus of this note is to provide some legal "first-aid" advice on what to do before and after an injury, illness or suspected illness on board. Although many of these tips may sound obvious or self-evident, experience has shown that in many cases seamen have lost their lives due to the Master's and/or the Owners' negligent handling or even to failure to observe common sense rules.

### **2.Pro-active measures: Some things to do before any accident or illness:**

- a.** observance of the ISM Code and of all international and local safety regulations;

- b.** training of the officers and crew (especially the Chief Officer) and repeated drills to provide first-aid on board and for the immediate evacuation of any injured personnel from holds, etc;
- c.** zero-tolerance to all crew for not using safety gear at all times (shoes, gloves, helmet, overalls, safety belts, safety harnesses, etc);
- d.** provision of all obligatory medicines and medical equipment under the World Health Organization (WHO);
- e.** always keeping the ship's medicine chest efficient and checked regularly before sailing from every port, immediately replacing exhausted or expired stocks;
- f.** performance of elaborate (and not just for the sake of formalities) pre-employment medical examinations, especially for the high-ranked officers where stress and age factors are very incriminating;
- g.** training of the Owners' land-based personnel in order to enable them to assess any suspected illness or health problem on board and deal with it immediately and efficiently;
- h.** maintaining and having immediate access to a network of medical centers specialized on incidents on board for urgent reference in the event of injury, illness or suspected illness and
- i.** the Captain and the ship's officers must always insist that crew members advise them immediately of any health problem or injury on board (relevant warning signs must always be kept in the mess rooms).

### 3. Immediate measures and tips in case of an incident

- a.** the Captain and the Chief Officer must immediately go to the scene of the injury to receive information and provide instructions for the safe evacuation, first-aid etc;
- b.** the Captain must immediately communicate for medical instructions with the Medico e.g. the telemedicine center of the Red Cross or the International Radio Medical Centre (C.I.R.M.) which provide round-the-clock free radio-medical assistance to patients on board ships of all flags all over the world. C.I.R.M. can also decide and coordinate, wherever possible, the evacuation of a patient from a ship by naval craft or helicopter, cooperating mainly with National Marine Rescue Coordination Centre (M.R.C.C.) and, if necessary, with other rescue organizations e.g. the U.S. Coast Guard;
- c.** in case of illness or suspected illness monitor the situation on a 24-hour basis, insisting that medical instructions are followed;
- d.** evaluation of the medical situation with the Medico and, if needed, order for immediate deviation of the ship to the closest port and request for helicopter or speed boat service for the urgent transfer of the patient to a port with hospital facilities;
- e.** minor symptoms such as common colds, or light injuries, must never be underestimated and medical assistance must always be sought and followed;
- f.** if the patient or injured seaman wants to be repatriated on medical grounds

the Owners must do their best to discharge him as soon as possible;

- g.** the Captain must take all necessary measures for medical assistance and evacuation even if the seaman is reluctant or wants to remain on board to work till the expiry of his contract;
- h.** the Captain must immediately advise and take instructions from the Owners for the incident (even a common cold or light injury) and the Owners must always keep in contact with the sick seaman or the injured (if he can communicate) to receive first hand information without the Captain's interference;
- i.** in the case of a serious incident the Owners must communicate with the seaman's family to notify them, and take advice regarding the patient's history, etc;
- j.** the Chief Officer or other crew member with medical training must provide medical treatment as per the Medico's advice;

**k.** the injured or sick seaman must immediately be released from duty until the Medico gives clearance;

**l.** in the event of serious injury or illness the seaman must be transferred to the sick bay and instructions must be given to the crew for -round the clock- shifts at the patient's side and

**m.** Last but not least: for serious incidents receive as early as possible legal advice for the handling of this matter

#### 4. Epilogue

These are the most crucial pro-active or direct measures that should be taken. The most important is to always remember that it is better to discharge a seaman whose illness or injury subsequently proves lighter than originally thought, than to keep on board someone with a light injury or suspected illness which proves to be fatal or life-threatening. This may save lives and keep the Owners immune from million-dollar claims

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