

**EXAMINING THE PERSONAL LIABILITY AND RESPONSIBILITIES OF  
THE MASTER  
LONDON 21ST & 22ND SEPTEMBER 2000**

**PART 1  
(WHY WE MUST WORK TO DECRIMINALISE THE SHIPMASTER)**

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The International Federation of Shipmasters' Associations**

**Summary:**

Every time there is a Marine Accident, the first action of the local authorities is to detain the Master of the ship. People who may have seen the accident, or even viewed the resultant pollution, will be offered "counselling". The Master who has lost his ship, and may have been one of the few survivors from an appalling fire or explosion, will be thrown into jail and subjected to harsh interrogation throughout many days and nights.

Everything from a Collision to a Bill of Lading Dispute can end up with the arrest of the Master of the ship who is then detained as a hostage pending the conclusion of Legal Proceedings. Whether this is part of the Blame Culture so prevalent today or part of a revenue generating exercise matters not but **neither Justice nor the Pursuit of Truth** can be enhanced by such deplorable behaviour. Accident Investigators are hampered by witnesses fearful of prejudicing forthcoming Criminal Trials.

There is a Pollution Incident - throw the Master in Jail. When there is a Breach of Port Regulations - prosecute the customer. A Collision or Stranding which is contributed to because of the stupidity of a local pilot and the inadequacy of traffic control and there will be a Shipmaster standing trial ! Shipmasters, who have always operated under a harsh and unforgiving regime that places his Certificate in Jeopardy in the event of a Professional Mistake, **now have additional hazards to face !**

**Introduction: The Master's Responsibility and Authority:**

Resolution A.443(XI) adopted on 15 November 1979 invited Governments to ensure that (1) The Shipmaster is not constrained by the Shipowner Charterer or any other person from taking any decision which, **in the professional judgement of the Shipmaster**, is necessary and (2) The Shipmaster is protected from unjustifiable dismissal or other unjustifiable action by the Shipowner Charterer or any other person as a consequence of the proper exercise of his professional judgement.

This Resolution was then taken into the Preamble of the ISM Code annexed to Resolution A.741(18) adopted on 4 November 1993 which, in turn, was incorporated by reference into the new Chapter IX of SOLAS "Management for the Safe Operation of Ships" in May 1994.

The ISM Code Section 5.2 requires the Company to ensure that the SMS operating on board the ship contains a clear statement emphasising the Master's Authority. The Company should establish in the SMS that the ***Master has the overriding Authority and Responsibility*** to make decisions with respect to safety and pollution prevention and to request the Company's Assistance as may be necessary. This is particularly important in situations where quick, decisive action has to be taken by the man on the spot. The Master, as usual, is at the sharp end and is the person who actually implements the SMS. Prudent Owners will make sure the Master is allowed, obliged even, to deviate from the procedures laid down in his vessel's SMS whenever it is warranted.

The Professional Judgement of the Shipmaster is again recognised as ***Best Effort*** in the new Regulation 10.1 added to Chapter V of SOLAS "Master's Discretion for Safe Navigation" in November 1995. It states that "The Master shall not be constrained by the Shipowner, Charterer or any other person from taking any decision which, in the professional judgement of the Master is necessary for safe Navigation, in particular in severe weather and in heavy seas".

IFSMA has been pleased to note these developments and welcomes the additional protection afforded to Shipmasters by virtue of these International Conventions and (hopefully) ensuing Domestic Legislation. With proper ***Bridge Resource Management***, risk is minimised by creating positive attitudes towards Communication, Co-ordination, Delegation, Leadership and Standard Operating Procedures. In correct decision making the Master or O.O.W. utilises the combined knowledge and experience of skilled and professional Officers, Maritime Pilots and Engineers.

***But is this enough & are these Safeguards Sufficient ? Quite Clearly they are NOT !***

***Case Study No.1: Arrested Ukrainian Captain VLADIMIR FYODOROVICH ILNITSKY***

***Master of Bahamian Registered MV "MC RUBY" 11223 GRT  
Alleged Murder of Seven Ghanaian Stowaways November 1992  
Violation of Human Rights - Three Years in Jail without Trial***

An Open Letter from the IFSMA General Secretary on 15th November 1995 was published in the IFSMA Newsletter No.9 dated December 1995, and is reproduced hereunder:

***"IFSMA Deplores Treatment of Master "MC RUBY"***

As already reported in Lloyds List the long awaited trial of six Ukrainian Seafarers from "MC RUBY" finally commenced in Rouen Cour d'Assises de Seine Maritime on Monday 13th November and is expected to conclude on Friday 24th November.

The Ukrainian Captain Vladimir Fyodorovich Ilnitsky was arrested in Le Havre on 6th November 1992 in connection with the alleged murder of seven Ghanaian Stowaways onboard the Bahamian Registered Motor Vessel "MC RUBY" whilst on passage from Takoradi to Le Havre with a cargo of cocoa beans.

The Master was accused of criminal complicity in the affair and has been jailed in Rouen without trial since December 1992 and the Defending Barrister has twice presented a Memorandum to the Court (on 10th December 1992 and again on 24th June 1993) to obtain a release on bail but without success.

In December 1992 the President of Odessa Shipmasters' Association (OSMA) and the President of the Captains Society of Overseas Merchant Ships (CSOMS), which together comprise the Captains' Association of the Black Sea Shipping Company, jointly petitioned the IFSMA Council seeking Federation support in the defence of the Master.

In June 1993 Mrs Galina Kuzminichna Ilnitsky, wife of the Master, petitioned the IFSMA President seeking the support and help of the French Affiliate, Association des Capitaines et Officiers de la Marine Marchande (ACOMM) to secure her husband's release from prison pending trial.

At its 20th Annual General Assembly held in Hamburg on 28th May 1994 IFSMA recognised the serious nature of the Accusations, the very emotive issues involved, the Master's right to trial within a reasonable period of time, and the grave concern of the International Maritime Community at the excessively long period of detention awaiting trial.

The Assembly deplored the apparent failure, lack of concern or inability of the Ukrainian Consulate, the Bahamian Flag State and the Cyprus based Ship Manager to instruct competent maritime lawyers to look after and safeguard the legitimate interest and wellbeing of the Master in his time of trouble and tribulation.

The Assembly considered that the Master's right to trial within a reasonable period of time as provided in the European Convention of 1950 had long been violated and abhorred the incarceration of this responsible professional Serving Shipmaster in prison without just cause whilst awaiting trial.

Having confirmed that it does NOT question judicial technicalities IFSMA issued an Assembly Resolution purely on Humanitarian Grounds and in the interests of Clemency. It requested the Government of France, in exercise of powers vested in its Minister of Justice, to curtail the imprisonment of Captain Vladimir Fyodorovich Ilnitsky and to expedite his early trial.

*(See Copy Assembly Resolution 28 May 1994 annexed hereto)*

It is now THREE WHOLE YEARS that the Master and Five Crew Members have remained in jail in Rouen without trial. We believe they have been well treated and that the French Authorities have pursued their enquiries with great thoroughness.

Nonetheless this quite intolerable state of affairs is inexcusable. It cannot be right to incarcerate any person in prison without trial for such an inexplicable and lengthy period of time, no matter what may be the rights and wrongs of the case."

After a four week trial in the Assize Court Rouen, the Ukrainian Captain Vladimir Ilnitsky and his

First Mate Valery Artemenko were each sentenced to Life Imprisonment and three other Ukrainian Crew Members who had admitted their guilt were each jailed for 20 years. A sixth Defendant Dzhamal Arakhamiya from the separatist Georgian Region of Abkhazia, who had insisted he was innocent throughout the trial, was acquitted by the Jury. On Humanitarian Grounds and in the interests of Clemency Captain Ilnitsky (Date of Birth 11th September 1935) should be allowed to serve his sentence in the Ukraine.

***Case Study No.2: Arrested British Captain TERRY LAU CHUNG HUI  
Master of Panama Registered VLCC "SEKI" 293238 Dwt  
Arrested British Captain DONALD SHIELDS  
Master of UAE Registered M.T. "BAYNUNAH" 57211 Dwt  
Collision Off Fujairah 30th March 1994***

This case was first brought to our attention by a Hong Kong Director of World Wide Shipping Agency (who was also an Individual Member of IFSMA) in February 1995 and IFSMA was asked to exert its influence through Diplomatic Channels to secure the release of the Hong Kong based Shipmaster, Captain Lau Chung Hui, detained without charge by the United Arab Emirates since the Collision off Fujairah on 30th March 1994. Captain Lau was aged 46, had been with WWSA for 23 years with 10 years in Command and he held a full British Passport.

On the 1st March 1995 we were told by a London Associates Director that Negotiations at the highest Foreign Office level were at a very delicate stage and that IFSMA should not become involved in the matter. Both Masters were living in hotels in Dubai and were not under any kind of restraint but their Passports had been confiscated so that they could not leave the UAE. Captain Lau Chung Hui had a PandI Club Lawyer provided by WWSA who were also looking after his welfare and wellbeing. No documents were disclosed to us and we received no further advices by telephone or otherwise.

It seems that the loaded VLCC SEKI built in 1993 was struck at right angles by the ballasted MT BAYNUNAH (owned by the Abu Dhabi National Tanker Company) nine miles off the port of Fujairah. The collision ripped a hole in the SEKI's hull spilling 16000 tonnes of Light Iranian Crude Oil into the Gulf of Oman damaging both the Fujairah coastline and the local fishing trade. The nearly new VLCC was detained for six months. This cruel and callous treatment of such well established and responsible Owners with its enormous and unnecessary costs is all the more incredible as Fujairah is a signatory to the Civil Liability and Fund Conventions and the VLCC was also covered by the "Crystal" scheme ensuring that all the liabilities from the oil pollution would be met in full.

The Fujairah Court held the Panamanian Flag SEKI 60% responsible for the collision and the UAE registered BAYNUNAH 40%. Both Masters were each fined the equivalent to \$2700 in June 1995 but Captain Lau's Passport was not made available until August.

There are plenty of other Countries in which the first action after every marine accident is to arrest

the Master of the ship involved. The fact that he might be a survivor of shipwreck, injured or traumatised after the loss of his ship does not impress officials in these Countries. Even after commercial disputes, the Master of the ship is not infrequently marched ashore at gunpoint, and the ship arrested, hostages both, against prompt payment of the appropriate sums by the P&I Clubs, which have become wearily expert at reacting promptly to this form of revenue earning. There is also the *bird in the hand* concept !

***Case Study No.3: Arrested British/Dutch Captain Michael Thompson  
Master Hong Kong Registered M.V. "UNION" 17066GT  
Grounded in Kanmun Kaikyo Japan 06 February 1995***

This case first came to our attention through the Secretary of NVKK Rotterdam on 14 February. It concerns a very experienced Shipmaster of British/Dutch Nationality with an unblemished record extending over some 12 years of Command, aged 51 and holding a British Master's F/G Certificate of Competency issued May 1970 revalidated March 1990.

The Vessel, a geared Bulk Carrier (Laker) built 1984 speed 14 Knots, carrying 26395 mt Coal, draft 10.5 metres even keel, GROUNDED on rocks at Matsu Se No.2 Buoy in Kanmun Kaikyo at 0900 hours on 06 February 1995. She had Philippine Crew and Polish Chief Engineer. The Master, 3rd Officer and Quartermaster were on the Bridge at the time. The Vessel was managed by Pacific Carriers Ltd of Singapore.

The bulbous bow was severely damaged and the hull was holed in the forepeak and in No.1 double bottom. There was no pollution, no injuries to personnel and no damage to cargo. The Master took the ship to the Pilot Station and then discharged the cargo at UBE whereafter she proceeded to Tokuyama for repairs. The Master admitted a too close approach, being over confident and misjudging the strength of the current.

The Japanese MSA investigated the incident somewhat sympathetically and the Master expected to be reprimanded for negligent navigation and fined accordingly. He was free to move around within the confines of Moji and Tokuyama but not allowed to discuss the matter with anyone. He was demoralised and very depressed after the casualty. There was no response from the Vessel's Owners and neither the Managers nor the Drydock Superintendent cared about his predicament.

Although a N.I. Member since 1977 the Master was not a Member of any Maritime Union (Numast). He had no recourse to the services of a P&I Club Lawyer, neither had he been in contact with the British and Dutch Consulates. At this stage, in response to an impassioned plea from NVKK Rotterdam we asked JCA Tokyo to render some Moral Support to the Master and, in the absence of any legal representation provided by the Shipowner, Shipmanager or Employer, to accompany him at the Enquiry and Prosecution.

Things then started to improve! One week of harrowing interrogation by the Moji MSA came to an end at 0100 hrs on 17 February. The Master was in funds, accommodation paid, access to a good agent and a reliable interpreter available at any time. At the Court Hearing on 23 February the Master was accompanied by a representative of JCA. He was freed from responsibility for

the incident and fined 150,000 Japanese Yen (about £974 GBP).

This was not quite the end of the matter. There followed the arrival of the PCL Fleet Director and further interrogation concerning the grounding as a result of which his employment was terminated. In my view this Master does not appear to have been Negligent but only guilty of an ***Error of Judgement in the Safe Navigation of his Vessel.***  
***Was this a case of wrongful dismissal ?*** He lost his job but returned to the Netherlands and became a North Sea Pilot.

***Case Study No.4: Arrested Greek Captain KONSTANTINOS SPIROPOULOS  
Master of Greek Registered M.T. "NISSOS AMORGAS" 89427 Dwt  
Grounded in the Maracaibo Channel on 28th February 1997***

The MT NISSOS AMORGAS struck bottom while being piloted down the Maracaibo Channel just before midnight on 28 February 1997. Her two forward centre tanks were ruptured and she immediately began leaking oil spilling around 4000 tonnes of Venezuelan Crude. The Master claimed that his Tanker had struck a submerged object. This could have been a wrecked vessel known to be in the area or a shaft and propeller previously lost from a dredger. There are some 2000 Tankers per year exporting oil via the Maracaibo Channel.

Within days the Venezuelan Government detained the Ship and her Master and requested from the Owner \$46 million as a guarantee to secure the tanker's release. Local Fishermen's Action Groups then logged \$293 million worth of claims for damages without any supporting evidence. By mid-July the Shipowners had paid a \$7.2 million non-conditioned Bank Bond and started making payments to local fishermen and to PDVSA Subsidiaries for clean-up costs estimated at \$10 million.

While this secured the release of the 1987 Built Vessel, Captain Konstantinos Spiropoulos remained under house arrest in Maracaibo for more than five months without any official charges made against him. Following intense international pressure Judge Ricardo Colmenares granted the Master a one month pre-trial compassionate leave while the Venezuelan Courts were in recess and Spiropoulos flew home to Athens on 16th August.

He was subsequently allowed further compassionate leave over the Christmas Festive Season. On both these occasions he fully honoured his commitment to return to Venezuela !

On the 11th March 1998 IFSMA learnt that Judge Ricardo Colmenares had recently been replaced by Judge Dra Alide Estrada and, by sheer good fortune, managed to establish contact by faxed letter delivered to the newly appointed Judge that very evening. In it we expressed the Federation's deep concern and grave disquiet at the continuing detention of Konstantinos Spiropoulos under house arrest in Venezuela without any charges having been made against him, whilst awaiting trial. (*See Copy RC.350.CPT annexed hereto*)

On the 12th March 1998 the Master of the NISSOS AMORGOS was formally charged under Venezuela Criminal Code for causing pollution by spillage or leakage of oil. No specific allegations of negligence were made against him at the pre-trial hearing but conviction could result in a \$25000 fine and up to three years in prison. His Lawyers vigorously defended the case

stating that neither Captain Spiropoulos nor the Pilot who was onboard at the time, caused or contributed to the accident which was as a result of the deplorable condition of the Maracaibo Channel.

Judge Dra Alide Caldera granted him 45 days compassionate leave on the 25th March and subsequently extended this by a further three months, in consideration that criminal charges were not brought against him until over one year after his arrest. While in Greece Captain Spiropoulos has to report to the Venezuelan Consulate in Athens every 15 days and is therefore unable to work freely. In September 1998 the Master was granted a one year extension of absence from Venezuela and a Venezuelan Court ruled that he can work as Master again provided he checks in with the Venezuelan Consulate in any ports he visits.

However, on 13 May this year, Konstantinos Spiropoulos was sentenced in his absence to 16 months in prison by the Venezuelan Court. It is reported that Judge Alide Estrada had found the Master to be negligent "***on certain grounds which were not alleged by the prosecution and appear misconceived***". It seems the Court decided to disregard evidence presented about the deplorable condition of the Maracaibo Channel. An Appeal has been lodged and ***Intertanko*** intends raising the whole issue of criminal prosecutions at IMO.

At its Council Meeting on 27 May 1997 ***INTERTANKO*** adopted a Resolution condemning the Venezuelan Government's decision to detain the Ship and her Master, which reads:

*" INTERTANKO while recognizing the sovereign rights of all Individual States, deplores attempts made by Governments in various parts of the world to characterize the conduct of Masters and crews as criminal for the primary purpose of pressuring their employers, especially when such action involves the detention of such Seafarers without charge or any ascertainable basis over alleged wrongdoing.*

*INTERTANKO further deplores the detention of vessels by Governments who are parties to the CLC and Fund Conventions, despite the provision of security in accordance with the Conventions."*

***Case Study No.5: Arrested Polish Captain JAN SOKOLOWSKI***

***Thai Registered VLCC "ORAPIN GLOBAL" 268450 DWT***

***Arrested Greek Captain MICHAEL CHALKITIS***

***Cypriot Flagged Motor Tanker "EVOIKOS" 140218 DWT***

***Collision in Singapore Strait 15 October 1997***

These two vessels - the VLCC (Polish Master) in ballast to the Arabian Gulf and the Tanker (Greek Master) carrying 126400 tonnes of Marine Fuel Oil for Singapore - collided in the Singapore Strait on the evening of 15 October 1997, causing a massive oil spill of 29000 tonnes of the Evoikos cargo from three ruptured tanks. The clean-up operation by the Singapore MPA required enormous resources and efforts (some 80 craft and 650 men plus helicopters and aircraft were mobilised) and was accomplished in three weeks.

Both Masters were arrested by Singapore Police on 20 October. They were placed on bail and

not allowed to leave Singapore. They had to surrender their Passports and remain in Singapore for eight months prior to the Court Hearing. An application for the Polish Master to leave Singapore in November had been rejected and, on 12 December, the public prosecutor opposed an application to allow both Masters to return to their home countries for the Christmas holidays arguing that there was “no real pressing need for the accused to leave the jurisdiction”.

The Polish Master of the VLCC ORAPIN GLOBAL was navigating his vessel in the wrong lane (eastbound) of the Singapore Traffic Separation Scheme travelling in the wrong direction when the collision occurred. Despite advice from VTIS to return to the correct lane (westbound) he continued to travel against the flow of traffic. He was charged with and admitted navigating so negligently as to endanger human life and failing to proceed at a safe speed (not more than 12 knots over the ground). He also admitted failing to keep a proper lookout. He was sentenced to two months in jail and to fines totalling S\$11000.

The Greek Master of the MT EVOIKOS was charged with and admitted acting in breach of his duty and failing in ample time to take action to avoid a collision. He also admitted failing to keep a proper lookout. He was given a three month jail sentence and fined S\$60000. The Judge referred to the Master’s 5 minutes of indecision as “the crucial five minutes in a serious crisis situation where the fate of two vessels and the lives of their crews hung in the balance at the end of a thin thread in the hands of the accused.”

Both Masters had finally decided to plead guilty to the charges and not to Appeal against the jail sentences. The Singapore Court had set aside five weeks for the case and the Guilty Pleas came as a considerable surprise. When sentencing the two Masters on 14 July 1998 the Judge emphasised that the protection of the public interest must feature prominently in the assessment of punishment and therefore that “It is imperative that the Court cannot tolerate offences associated with the violation of the Safety Regulations. Such offences must be treated resolutely and with the utmost severity”.

At the date of this collision the Polish Master was 54 years of age with eleven years service in command of VLCCs. The Greek Master was 58 years of age with 26 years in command without accident. Because of this criminalisation the careers of both these very experienced Shipmasters are most probably at an end. ***But there are some questions that ought to be asked.*** What made these Masters “do the honourable thing by entering guilty pleas of their own volition”(Singapore MPA)? What pressures were put upon them or inducements offered and by whom? It has been said that the best option for the protection of the ship owners/managers is the admission of Masters Negligence. Would such an admission be rewarded with early retirement on full pension? ***I wonder what the answers would be !***

In my view custodial sentences for professional mistakes are wholly inappropriate and give precisely the wrong message to all professional mariners. The two Masters are people whose careers have been in every way ruined by their few minutes of confusion and indecision in darkened wheelhouses in these congested and narrow waters. How can they be described as “criminals” even if they do confess to negligence and there is no evidence to suggest that they have “wilfully” hazarded their ships. They have, at worst, contravened navigational regulations,

having misinterpreted the intentions of the other vessel.

***Case study No.6: Arrested Indian Captain KARUN SUNDER MATHUR  
Master of Maltese Registered M.T. "ERIKA" 37238 Dwt  
Broke in Two & Sank - Bay of Biscay Sunday 12 December 1999***

The Maltese Flag Tanker "ERIKA", under the Command of Captain Karun Sunder Mathur, was en route from Dunkirk to Livorno loaded with 30,000 tonnes Fuel Oil. She was believed to have been trying to reach a Port of Refuge. Her Distress Signal on Sunday morning said she had a Grave Structural Problem and 26 Crew needed Urgent Evacuation.

Weather Conditions were severe - Winds of Gale Force 8/9, Sea Swell up to 6 metres and poor Visibility. The 25 year old vessel broke in two at about 0600 and subsequently sank but all 26 Indian Crew were finally airlifted to safety by Helicopters winching them up from the stern section and from liferafts and no injuries were sustained.

It has been reported in the Maritime Press that the "ERIKA" had passed Special Survey in August 1998, Annual Survey on 24 November 1999, and holds Safety Construction, Load Line, and Safety Equipment Certificates, together with the ISM Code DOC and SMC all valid from 8/98 until 8/03. Recent PSC Inspections in Russia, Italy and France.

The Master of the "ERICA" has been charged with putting life in danger and causing marine pollution and he has been detained behind bars in a Prison Cell (Prison de la Santé, 42 Rue de la Santé, 75001 PARIS). La Juge d'Instruction is Madame de TALLENCAY, Tribunal de Grande Instance, Palais de Justice, 4 Rue du Palais, 75001 PARIS.

***IFSMA firmly believes that the Master acted in a timely and responsible manner with an acute awareness of the deteriorating situation in respect of Hull Structure and it is very much to his credit that the entire Crew were rescued without injury in difficult weather and sea conditions. He must be very severely traumatised after such a dreadful experience and we would fear for his sanity if he is now treated in such an inhuman way which lacks any compassionate understanding and defies all reason.***

***IFSMA very much deplores this further attempt to criminalise a Serving Shipmaster for having exercised his professional judgement in circumstances which he was powerless to prevent. There is no justification for the incarceration of this Shipmaster in a Paris Jail and assuredly placing him under judicial supervision would suffice. IFSMA urgently requested and exhorted the IMO to send a strongly worded PROTEST to the French Authorities regarding their behaviour towards CAPTAIN KARUN MATHUR and to secure his release from Jail.***

IFSMA also registered a strong protest with the Conseiller Maritime at the French Embassy in London at this shameful treatment of the Master and urged the French Authorities to authorise his immediate release from Jail. We also wrote direct to Madame de Tallencay, La Juge d'Instruction, and enclosed the undernoted Article which had been published in Lloyds List on 20

December 1999.

*Quarter Points*

*Lloyds List Monday 20 December 1999*

*Prosecute Survivors: it's a Mark of Civilisation*

Two hundred years ago, if one was sufficiently unfortunate to be shipwrecked on the rocky coasts of European countries, and washed ashore in a half-drowned condition, the chances were that the natives would polish you off on the spot.

If you were the Master and perhaps better clad than the other crew members; with a timepiece in a pocket and the possibility of gold about one's person, one's likelihood of survival and a kindly reception were correspondingly diminished.

As we hear of the fate of the wretched Master of the lost product tanker Erika, whisked away to Paris and flung into prison, we might reflect that respect for survivors from the sea has improved, but only marginally. The French authorities could, after all, have asked the Master of the ship if he wouldn't mind obliging them and staying in the country, while the investigations into the loss of his ship were being completed. They might even have asked him, politely, if he would not mind leaving his travel documents with them, just to provide themselves with the necessary insurance.

But no, they have gone the whole hog and, like a common criminal, this survivor of shipwreck has been arrested and awaits his fate in prison.

We hope that the Indian authorities raise Cain about his detention, but they probably won't, as it now seems to be an accepted and acceptable practice to detain Shipmasters. And when there is oil in the water the public, of course, expects nothing else. His crimes, we hear, are several.

For a start he was in command of this ship, which broke up in heavy weather and has caused substantial pollution with very nasty heavy oil that is likely to find its way ashore in quantities. He is the man who carries the can, and in the absence of the owner, who is presumably still out of the country, will certainly be detained.

It will be enlightening to discover whether the person who chartered this ship will be in an adjoining cell, or whether extradition proceedings are under way to arrest the relevant person in the Maltese administration, or the responsible official from the Italian classification society who signed the Enhanced Special Survey certificate for this elderly vessel. It will probably be considered pointless, as long as Captain Mathur is in the can.

In some countries he would be considered a hostage. In even more primitive societies a suitable candidate for a sacrifice. And while the French like to deal with survivors in this severe fashion, they are only one of many countries (the UK is one) which have a penchant for using criminal charges against Shipmasters with considerable alacrity.

The Master is also thought to be in the French firing line as he was trying to get his wounded ship

into a Port of Refuge when she broke up, rather than heading out to sea as the French coastguard had instructed him.

Here too, the exact chronology of the events has yet to be made public, but nobody can be in any doubt that his prime responsibility was to the lives of the 27 crew of his ship, and external influences can have only limited influence in his decision-making in this regard.

In the event, he got them all off using the ship's equipment, which was a creditable performance when the weather was considered. To charge him now with putting life in danger would seem to be, in the circumstances, a sick joke.

The International Federation of Shipmasters' Associations has protested, with commendable speed, although with diplomatic restraint.

“The action the Master of the Erika took,” it points out, “would seem to indicate he acted in a timely and responsible manner, with an acute awareness of the deteriorating situation in respect of hull structure, and it must be largely to his credit that the entire crew were rescued without injury in difficult weather and sea conditions.”

“IFSMA much deplores this apparent further attempt to criminalise a serving Shipmaster for having exercised his professional judgement in circumstances he was powerless to prevent. There would seem little justification for the incarceration of this Shipmaster in a Paris jail and surely placing him under judicial supervision would suffice.”

***IFSMA needs to make its voice heard rather louder on this issue, for the behaviour of law enforcement agencies around the world in their treatment of Shipmasters is often uncalled for and reprehensible.*** There will be Masters who do such stupid things that they perhaps ought to end up in jail, but so often it is the Master who finds himself incarcerated automatically as an immediate reaction, after something occurs aboard his ship that he could have had no control over.

A mistake is made, a valve is turned, some stupid seafarer dumps plastic waste into the sea, or there is an error of judgement on the bridge by the officer of the watch. Should criminal law be invoked in such cases against the Master?

This is an era of blame, and accidents where the environment is harmed are regarded on a par with violent criminality of the most base kind. But at the end of the day, should we not ask ourselves whether we want sensible professionals to seek to serve as Shipmasters?

The terminally stupid, the insensitive, or those of a masochistic bent might be considered more suitable for this thankless job of Shipmastering. We are running short of ships' officers in the world, and it is scarcely surprising.

***Special Correspondent***

***Cries from the Industry***

***Fairplay Thursday 10 August 2000***

***Several Industry Organizations have Policy Positions on the Unjustified Jailing of Ship***

***Masters. These are the comments of three of them:***

***UK Officers' Union NUMAST:***

“While not seeking to defend inexcusable actions or omissions by seafarers, NUMAST is very concerned that in some cases Masters and/or Senior Officers are used as convenient scapegoats for others who are able to evade their responsibilities through the complex chain of shipping operations.

Numast is concerned that the position of the Master, in particular, is often misinterpreted by regulators who continue to view the Master as having supreme responsibility for his/her vessel. In reality, present day shipping operations mean that the Master's real power and resources have been severely constrained.

Simultaneously, drastic changes in employment conditions have increased the pressures placed on Masters and Officers and have eroded the spirit of IMO Resolution A443(XI), which was intended to protect Masters in the exercise of their professional judgement.

Numast believes that there is a strong need for a change in regulatory approach to ensure that Shipmasters and/or Senior Officers cannot be used as ‘pawns’ in wider disputes over liability or damages.

The responsibilities of Shipmasters in particular, must also be endorsed within the regulatory framework to ensure that they are protected in the exercise of their professional judgement from unfair commercial pressures.”

***INTERTANKO:***

“ The International Association of Independent Tanker Owners (INTERTANKO) is deeply concerned about the increasing tendency by nations to unlawfully detain Tanker Captains, and in some cases crews, for extended periods, following oil spill incidents.

Intertanko continues to be concerned over the criminal prosecution of qualified and experienced Seafarers involved in accidents for which the blame may lie with others, or in which their role does not reasonably warrant a criminal process.

Intertanko will shortly introduce a paper in the IMO calling for guidelines on the protection of Masters and Crew against unjustified detentions and prosecution.

Intertanko will invite IMO to take note of the incidents where Seafarers have been detained and to look at the governing principles in the international treaty regimes to assess how far National Sovereignty may be exercised in this field without rendering international treaty obligations meaningless.

The IMO will also be invited to consider measures to improve on the situation in the short term by an MSC Circular to member governments inviting adherence to international treaties and IMO /

ILO instruments.

Finally the industry will invite IMO to consider developing a code of practice to assist flag states and coastal states to provide better protection of Seafarers involved in maritime casualties.”

***International Federation of Shipmasters' Associations (IFSMA):***

“Having examined recent cases where Shipmasters have been jailed for a variety of alleged offences, IFSMA deplores the way in which Coastal States have pursued their prosecutions without due regard to Human Rights and International Law.

IFSMA believes that Shipmasters are entitled to know the alleged offence with which they are charged in writing in a language which they understand and to be provided with legal representation.

IFSMA considers that no Shipmaster should ever be put in jail without a fair trial and no Shipmaster should be detained in jail while awaiting trial for a civil offence.

IFSMA considers further that there is an urgent need to convene an International Conference covering the penal jurisdiction of Shipping and Shipmasters in the context of International Conventions.”

***Staff Editor***

***Some Further Points to Bear in Mind:***

(a) The biggest threat to life is Human Error and the Author would claim that, if you go back sufficiently far in the ***causal chain of events leading up to a maritime accident***, you will find that 100% of such accidents at sea are caused by people making mistakes. IFSMA has long held the view that a very significant amount of what currently passes for Crew Negligence is in reality Management Failure and considers that it must be possible to eradicate all Human Error from both Ship Management Ashore and from Ship Operations Afloat. While Culpability may arise in cases of negligence etc., it must not be automatically attributable in those circumstances where there has been a clearly identified ***error of professional judgement made by a responsible, competent, and careful individual !***

(b) The Shipmaster has to learn the art of self - preservation. Sovereign States have made life just about as difficult as possible for the Master whenever a problem occurs on board. He frequently faces harassment when stowaways are found. Illegal drugs secreted in the cargo turn him into a suspected criminal and if his ship is involved in an accident he may well be charged and sent to jail. It has long been recognised that the Shipmaster may choose to delegate his Authority but that he can NOT delegate either his Responsibility or his Accountability. He must always be answerable for what he has done. ***He cannot escape!***

(c) Much has been said about the carriage of Harmful Aquatic Organisms in Ballast Water often with disastrous consequences for the local ecosystems which may include important fish stocks or rare species. Current options for preventing the spread of these harmful aquatic organisms include exchanging the ballast water in deep ocean, where there is less marine life and where the

organisms are less likely to survive but the ***attendant risk to ship safety needs very careful management.*** Other options include various treatments of the ballast water (filtration, thermo, chemical, radiation) en route to kill the living organisms.

Failure to identify their presence and to properly document their annihilation can have only one result. ***How long before Shipmasters are arrested and imprisoned ?***

(d) A similar situation applies in respect of Antifouling Systems on the External Underwater Hull of Ships. An IMO Resolution A.895(21) on Antifouling Systems used on Ships has already been adopted and it is intended that a global legally-binding Instrument will prohibit the application of Organotin Compounds (such as TBT) in Antifouling Systems by 1st January 2003. There will then be a complete prohibition on the presence of Organotin Compounds in Antifouling Systems by 1st January 2008. This must surely require the gritblasting of the entire hull to SA2.5 standard and a complete build up of new approved Paint Coatings right from the bare steel. It will not suffice to apply a "Sealing Coat" over the existing coatings containing Organotin Compounds. Can you just imagine the field day that over zealous PSC Inspectors will have when they detect these old coatings leaching out from under the Sealing Coat or otherwise sample the dock water alongside the ship. ***Another Shipmaster arrested and carted off to jail !***

(e) Last year it was widely reported in the maritime press that the Master of the Achilles I,

Captain Costas Litsakos, was detained indefinitely in Algeria following the collapse of the Shipowner's Business. The Algerian authorities detained the vessel and the Master until such time as the port and agent's dues and stevedoring expenses were paid. The Achilles I was supposedly abandoned by her owners. The Master's Passport had been confiscated and the authorities suggested that he would only be able to leave after he had been replaced by a similarly qualified Master Mariner. With no money to pay any replacement the situation of 63 year old Captain Litsakos, who in the meantime had become seriously ill, looked bad. After remaining in the Algerian Port for some seven months, Captain Litsakos was offered an opportunity of escape by the Master of another ship and happily arrived safely home shortly thereafter.

### ***Concluding Remarks:***

(f) IMO Resolution A.443(XI) (Professional Judgement of the Shipmaster), the new Chapter IX of SOLAS (ISM CODE Section 5.2) and the new Regulation 10-1 to SOLAS Chapter V (Master's Discretion for Safe Navigation) are not by themselves sufficient to safeguard the Shipmaster. ***IMO is not moving fast enough*** on the Proliferation and Multiplicity of Ship Inspections, Rationalisation and Amalgamation of Ship Certificates, the Human Element and Insidious Causes of Fatigue, and there is ***compelling need to reduce the Paperwork Mountain.***

(g) IMO Guidelines on the protection of the Ship masters and Crews against unjustified Detentions and Prosecutions ***are required.*** Seafarers faced with a Criminal Prosecution in a foreign country should be entitled to legal representation (including interpretation) anywhere in the world up to a predetermined limit and the ***Shipowner should insure this liability with the P&I Club.***

(h) The International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction

in matters of Collision 1952 and the International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents 1952 are now badly out of date. ***They need to be revised to more properly reflect the global nature of shipping and modern employment practices and to include Pollution and Other Provisions not enacted in 1952.***

(i) There are problems with Minimum Safe Manning, Multinational Crews and Fraudulent Certificates. The UK Government considers that under Section A- VIII/2.15 of the STCW Code ships are prohibited from operating with the Officer of the Navigational Watch acting as the sole lookout during periods of darkness. At MSC69 in May 1998 IMO had called upon Administrations to cancel or discontinue authorizations for solo watchkeeping in periods of darkness. ***However***, a number of States reserved their position and have continued with this operational (***mal***)practice although respecting the objections of any Coastal State in accordance with regulation I/13.8! This dangerous (***mal***)practice has become quite widespread particularly throughout the short sea traders in Northern Europe and is very closely aligned with ***Fatigue***. The majority of these cases are brought as part of the ***Blame Culture*** so prevalent today and / or ***as a Revenue Generating Exercise !***

(j) The UAE allegedly threatened to impose the death penalty on Tanker Masters found guilty of wilfully, deliberately and intentionally polluting the region's coastal waters. It is not clear whether Tanker Masters found guilty of gross negligence would also be executed, and what about error, omission or carelessness (***most probably brought about by Fatigue***)? Pollution by Oil Spill from ships is invariably ***accidental and never deliberate with malice aforethought !*** I find it inconceivable that any nation might seek to impose the death penalty on Shipmasters for oil pollution whether deliberate or accidental. Imprisonment and a substantial fine are far more appropriate. However, ***this question is purely hypothetical since the death penalty reports were subsequently proved to be unfounded !***

(k) Shipmasters and their Senior Officers who wish to insure Certificates of Competency ***under Professional Indemnity Policies*** should be aware that such professional indemnity cover is designed to protect the insured only in cases where he is either professionally negligent or his competence to hold his Certificate of Competency is in question. Such Insurance does not usually cover him against his acts of omission and commission which do not involve professional misconduct or otherwise question his competence to hold his Certificate. Thus ***most such acts of a Seafarer which may get him into trouble with the Law in a Criminal Case may not be covered by this policy.***

(l) Every State has the responsibility to assist its citizens in distress in a foreign land through its Embassies and Consulates but, due to procedural delays and bureaucratic red tape, such assistance is usually too little and too late ! Changing employment conditions place less responsibility on the ***Shipowner*** to assist a Seafarer who works onboard his vessel under short term contract and is not in his regular employ. If his problem with the Law is connected with his work onboard the Shipowner has to assist him ***as it involves his ship***. But in situations physically and legally unconnected with his work he may be left to his own devices without any support from the Shipowner !

***(m) An Internationally practicable solution has to be found to effectively and promptly assist Seafarers in time of need while in a foreign country. One way of solving the problem would be for IMO to persuade the International Group of PandI Associations (an NGO with Consultative Status at IMO) to include a Mandatory Legal Assistance Cover for all bonafide Seafarers serving onboard a vessel anywhere in the world. This should be a Precondition to entering a Vessel in one of the PandI Clubs without leaving the Shipowner any choice !***

(n) This would neither involve the Government of any country nor conflict with its laws or Sovereign Rights. It would obviate the necessity for an International Convention which is a time consuming and cumbersome procedure and not the best way to solve such problems. It would ensure that Seafarers have legal cover and protection in any country in the world in accordance with its Sovereign laws, without taking into consideration whether his offence is of a civil or criminal nature and whether it is connected with his work on the ship or not. This would bring Seafarers at par with other nationals of THAT country in such matters.

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***(16th August 2000)***