

At the recent meeting of the Company of Master Mariners of India – Chennai Chapter on 27th October 2000 the subject 'Criminal Law & the Seafarer' was discussed in the aftermath of ERIKA.

The subject case & the legal position was placed in perspective by Capt. S. Bhardwaj & Capt. A.K. Bansal and then 'brainstorming' as a creativity workshop was conducted in its copy book style with ground rules laid & with the core question 'How do we protect the Shipmaster'.

A lot of responses & suggestions were generated & some important ones are listed below:-

AA) THE NEED established was to provide immediate legal assistance to the Seafarer & Shipmaster, including bail expenses and even counselling for him & his family

Suggestions Received, deliberated & finalised to put forward to IFSMA / IMO.

1. Given the complex issues involved, Seafarers and Masters must take own initiative to protect themselves & not rely on owners to do so. (The subject of Insurance covers though seafarers unions was discussed at length but put down on the basic principle that there cannot be Insurance cover for own criminal offences.)
2. Build cross-cooperation amongst various Shipmasters' Associations & strengthen IFSMA for its role at IMO.
3. IFSMA to push through IMO the Association of P&I Clubs to allow owners entry only if they have taken adequate cover for Master's needs as stated above.
4. Through IFSMA push International Chamber of Shipping, International Shipping Federation, INTERTANKO, IACS develop a Code of Conduct & allow an owner membership only if he demonstrates compliance to this Code of Conduct – a de-facto regulation in itself.
5. Strengthen IMO for its efforts in halting this move of individual states coming up with own regulations & to strive for Unified Regulatory Regime that is practicable & manageable; although this may seem difficult to happen as every sovereign state is at liberty to form own laws to protect itself.
6. Masters to exercise their pride of profession & log the condition of vessels as they are & leverage ISM for better Safety Management and inform the owner regardless of valid certificates.
7. Pressurise Owners through ITF & Maritime Unions to take proper cover for Masters for the needs as stated.
8. Regulate Ship Manning & Management businesses & establish minimum standards of professionalism, codes & ethics for them to be able to operate.
9. To avoid any casualty in the first place - & if it happens, to carry out root cause analysis & take suitable preventive actions, in terms of proper training. This to be initiated by Flag State administration.

10. CMMI, IME, ICS etc. to take up lead roles in cooperating with DGS/MMD/Flag State administrative in regulating the training regime in the country.

11. To work towards disassociating the Master from what is owner's liability.

SUMMARY OF LEGAL POSITION

1. A private person present within a Sovereign Jurisdiction is subject to its laws and procedures and cannot take shelter under the laws of his own country, while he is elsewhere. Such subjugation is not illegal in THAT foreign Country. Seafarers are no exception to this rule.

2. No sovereign state will willingly accept obligations which are alien to its own systems.

3. Every state is responsible to assist its citizens in a foreign country through its Embassies and Consulates. But such assistance usually comes too little too late due to procedural delays, protocol and bureaucratic red tape.

4. It is legal and convenient for a coastal state to pin liability under their own laws, on the ship, master, officers and crew, present within their Jurisdiction.

5. But SEAFARERS, involuntarily present in a foreign country because of their calling, do not usually get competent legal advice and assistance promptly and effectively.

6. Professional indemnity policies do not cover acts of omission and commission of seafarers when their competence to hold their certificates is NOT IN QUESTION.

7. Historically reputed shipping companies did assist their SEAFARERS anywhere in the world. But changing employment patterns have made it less of an obligation.

8. Master is responsible for his ship, officers, crew AND their wrong doings. But criminal acts of omission and commission of individuals not related to the ship or cargo, do not fall under this obligation, despite every effort by port authorities and shore establishments to make it so.

MOST PRACTICAL SUGGESTION

1. Most practical suggestion to achieve this objective is for IFSMA, and other like minded organizations, to persuade International Association of P&I Clubs through IMO, to include a worldwide cover for prompt legal assistance and lingual interpretation to all bonafide seafarers.

2. It will by-pass all matters of Sovereignty of Nations, International law, rules and Conventions.

3. Yet, it will give SEAFARERS worldwide legal cover to protect them in accordance with rules, regulations and Laws of any Country for whatever offence he is charged with, regardless of whether it is connected with his ship or not.

4. Costs of such a cover, though minimal, will naturally fall on Shipowners. But they should not be given a choice.

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