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## Not a very SMarT move

**T**HE debate over whether the state or the student should pay for higher education is effectively over, at least in the UK.

A generation of politicians who not only did not have to find hefty tuition fees, but who were even given generous grants in order to study, is united in the contention that today's young people should pay their way if they wish to acquire qualifications.

That presumably goes for the seafarers of the future, too. An announcement on Support for Maritime Training, the training subsidy scheme

worth millions of pounds a year, is expected shortly.

We do not know what it will contain. But the best-case scenario is that available funds will be dramatically reduced, and it is possible that SMarT will be scrapped altogether.

After all, this is a government that is about to end all financial backing for arts and social science degrees. No one can expect it to show any particular mercy to a few hundred cadets.

Given the current furore over Thursday's vote to remove the cap on what universities can charge those attending them, this is a question that the mainstream press will not even find worthy of coverage. But it is no exaggeration to state that the entire future of British shipping could be at stake.

The truth is that maritime education is by its nature expensive. UK cadets are only getting trained in any numbers because SMarT picks up half the tab that would otherwise accrue to the sponsoring company. Without it, there will be no more British officers, and in just a few years, there will be no more British shore staff with sea time under their belt.

As the Department for Transport is well aware, shipping, one way and another, contributes £1.0bn (\$1.6bn) a year to the UK's gross domestic product. All that is being put at risk to save a meagre £10m. In short, getting rid of SMarT is not particularly smart.

Normally an editorial like this one would end with a plea to politicians to see sense. But with their minds already made up, even that now looks rather too much to ask.

## The cost of safety

SCHOOLCHILDREN are taught in elementary mathematics that three points make a plane — a rule of thumb that many take into adult life with them.

So when the third dry bulk carrier moving iron ore or nickel ore from Indonesia to China in the space of six weeks capsized, it is hard not to conclude a pattern is emerging.

The fact is that nickel ore with a high moisture content has a propensity to liquefy during

carriage, which causes serious stability problems, with a high possibility of these leading to a capsizing.

It has so far been the case that the onus for the proper testing of moisture content has been with the shipper. It has also been the case that the shipper should properly declare the actual cargo content and its condition to the shipowner prior to sailing, and it appears that in both respects shippers are failing in this obligation.

Yet the burden of proof post-capsize is with the shipowner — it is going to be very, very difficult for anyone to prove that a cargo's high moisture content was to blame when the offending load is lying on the ocean bed.

One interim measure is for shipowners to be far more circumspect about the loads they carry, which ought to mean surveyors contracted to inspect cargoes at the ports of loading.

This will, of course, involve a cost, both in terms of fees and the time it takes. However, insurers are bound to take a far tougher stance and shipowners need to be prepared for that. ■

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### Industry Viewpoint



JOHN AC CARTNER

# Who is in charge of armed guards?

**As the master is responsible for the acts of his or her officers, crew and any personnel on board, does this mean he or she would give the order to fire in the event of piracy?**

**T**HE question arises in blog and press: "Who controls armed guards on board?"

On the one hand, the contracted security business culture requires taking control of matters as the team leader sees it by brandishing guns, making loud noises, dancing choreographed skits and shouting in sing-song jargon.

The business occasionally conflates internal discipline with control by lawful authority.

On the other hand, vessels, masters and armed guards are creatures of law. A vessel under a flag is an extra-territorial chattel of the flag state and by law it is administered by the master who is the warrantee of the flag state.

This is a sovereign matter of delegation of authority and responsibility to the master — not to armed guards.

The status of armed guards may be of three kinds. Armed guards may be put on board: (1) as seafarers on the crew list as any other seafarers; (2) as riding crew; or (3) as the expression of the powers of a sovereign as boarding military or civil persons.

The first two are regulated in law similarly. The third is governed otherwise and will not be discussed here.

The master may hire whomever he pleases to prosecute the voyage, subject to the rules of the flag state and the company's directives. There is no difference in law between a person with gun-firing skills and an able seafarer or a boatswain.

Neither has any special privilege. Each has skills the master deems necessary to assist in performing his or her duty to prosecute the voyage safely while taking care of other duties. Each then is on board to assist the master.

The master may delegate some of this authority to those competent in law to accept the delegation. However, the master may only delegate to certificated officers.

Therefore, in law, the chief engineer, for example, is certificated as being legally competent to accept the delegation and to manage all other engineers on board for the master. The holding of a certificate is prima fascia evidence of the competence within the certificate's constraints in most flag states.

The master commands by law. Officers and ratings assist the master and the delegated officers. What does this make an armed guard? He has no certificate. Therefore he is incompetent in law to accept any delegation of the master's duties or authorities.

An armed guard is as any other uncertificated person on board. He is always, without exception, under the dominion, control, authority and responsibility of the master.

The company may hire riding crew for technical work. Riding crew are not paying passengers but are contracted workers. The riding crew are passengers and under the command, dominion and control of the master by law.

They differ from no other person on



A member of the Dutch special forces on board the *MV Jumbo Javelin* heavylift vessel as it passes through the Gulf of Aden in 2008: the bottom line is that armed guards have no authority aboard. AP

board who is incompetent to accept delegated authority. Even if one or all of the riding crew is certificated, he or she is not of the officers of the vessel and remains incompetent for delegation.

Thus, in the case of an armed guard with a certificate, he or she is as riding crew under the dominion, control and command of the master as any other incompetent uncertificated person.

How does this work with piracy? For example, who gives the order to fire and to cease fire? The master is responsible for the acts of his or her officers and crew unless an officer or crew commits an illegal act.

The master may not delegate authority to an uncertificated armed guard. Hence, the master has the responsibility of firing and must give the order. The order may be in the future, such as: "When you see a person in a pirate suit who fires at us you may fire at him at will."

Hence, the local 'rules of engagement' are the master's to provide or to approve if given by his company — but not the armed guard's company. The master is not an agent of the guard company.

Does the riding-crew leader or rating in charge of the armed guards have any authority aboard? The short but accurate answer is no. He or she remains under the dominion, control and command of the master from the time of boarding until departure, as do any assistants.

The company may give lawful orders to the master about armed guards. The master may agree if these orders do not violate his or her principal duties. The master is under a duty at law to exercise his or her professional judgment. To the extent there is a conflict, on-the-scene professional expertise is the deciding factor.

What happens if armed guards disobey and detour and frolic? They are on their own. The master may arrest them or suppress them for mutiny if warranted. The master may punish them within reason or restrain them.

The armed guards may be liable civilly or criminally for their acts if they step outside the dominion, control and authority of the master. Armed guards get no special treatment on board or in law.

The bottom line is that armed guards have no authority aboard. They are as incompetent in law to accept the master's delegation as an ordinary seafarer.

The master is in full dominion, authority and control of armed guards at all times as he or she is of any other person on board. ■

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### Maritime Blogspot

## New Paris MoU regime needs port state probity

TIME was when 200 Marlboro Reds and a bottle of Johnnie Walker Black would have been enough to keep most port state control inspectors sweet. But usually the need for such a recourse was restricted to the less salubrious ports of the third world.

Now it seems that some western European countries are intent on extorting serious cash for even minor infringements. Steady on, guys. You are going to have to bust an awful lot of ships if you are trying to save your deficit-crazed government from being next in line for a eurozone bailout.

If the latest claims about a Paris MoU member are substantiated, then the news could not have come at a worse time for the secretariat, given the controversies that surround the new inspection regime to be introduced from January 1.

Shipowners have long argued that standards of inspection vary between jurisdictions, and that some ships could find themselves banned from European ports for up to three months on the basis of as few as two detentions.

Keeping things in perspective, BIMCO surveyed inspections on 4,000 ships last year and found that the overwhelming majority of them were conducted with a high degree of professionalism. But 2004 Intertanko research uncovered cases where inspectors went out of their way to target ships from jurisdictions that they felt had targeted their jurisdiction's vessels. That makes a mockery of the idea of port state control as a mechanism for the enforcement of shipping safety, reducing it instead to the level of those petty 'Royaume Uni, nul points' votes in the Eurovision song contest.

Intertanko also found port state inspectors putting pressure on owners to use certain port services, and even harassing vessels so as to drive operators away from specific trades to the benefit of the competition.

So it was almost encouraging to note that good old fashioned unsophisticated fingers in the till behaviour remained common enough, with demands ranging from cash on the nail to a requirement that an owner make unwarranted repairs or parts replacements to avoid a deficiency report or a detention.

The issue here is that if the Paris MoU's new inspection regime is going to work as it should, then everybody needs to have confidence in the system. If some maritime administrations see the purpose of the exercise as offsetting the pain of austerity packages for the population at large, it will undermine the legitimacy of the procedure.

Any failure to manifest the highest standards of probity at any time should rightly be regarded as a hanging offence. Nothing less is acceptable. ■

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