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Reaching out to China

HERE is a consensus among geopolitical commentators that the 21st century belongs to Asia. The subtext of that view is the dominant role played by China as the fulcrum around which the rest of the continent moves.

This is not the first time that China has commanded the world stage. In the age of Marco Polo (the explorer, not the European Union's modal shift programme), its civilisation and technological achievements were already streets ahead of a comparatively primitive west. The established historical analysis of the intervening centuries

was that while China stagnated in a period of sustained seclusion, European trading nations expanded their influence and strode ahead in terms of technological innovation.

That narrative has concluded. After reopening its doors in 1979 and playing the catch-up game, China's centuries-old isolationist policy has been partially abandoned. And rightly so, because one cannot become the world's leading economy without also assuming some of the political and moral responsibilities that go with it.

In this regard, we commend Lloyd's Register chief executive Richard Sadler's comments that China needs to be at the heart of shaping international maritime policy. The question is whether China has the capacity, or even the inclination, to do so.

According to China Classification Society chairman Li Kejun, China has the will but not yet the wherewithal. That places the shipping industry in a difficult position, because while it is clear that China needs to take a leading role in maritime affairs, it is no good to anyone — least of all the Chinese — if its contribution cannot match the mandate that its economic power demands it holds.

Mr Li's admission is good news because it belies the Chinese view that there is no face to be lost in admitting that its personnel are not yet up to this task. That in itself is one battle won, and Lloyd's List would urge western regulatory representatives to accept the invitations that Mr Li says Beijing has sent out.

Once Chinese government maritime personnel — inevitably senior party members — are up to speed, what course its engagement with the global shipping industry then charts is an entirely different question.

Giving shelter

NO COUNTRY is keen to accept a damaged ship into its waters as a place of refuge unless there is no alternative and the vessel is otherwise at serious risk of becoming a major casualty with loss of life or massive pollution.

Spain's refusal to accept *Prestige* into its waters in 2002 raised the issue to prominence, with many people in the industry blaming Spain for making the oil pollution worse. Spain and some other countries,

including the Netherlands, currently require guarantees before they will grant permission for ships seeking refuge into their waters.

In November, a new European Union directive is due to come into force that implies EU members can no longer impose such conditions before accepting ships seeking urgent refuge. The directive is intended to ensure that decision-making in emergencies is independent and informed and determined by what is in the best interests of the vessel's safety, not governed by short-term or parochial political considerations.

There seems to be some ambiguity in the wording that could leave the legislation open to interpretation and possible legal disputes. But there should be no doubt that its intention should be supported. It is not clear how these countries will respond to the EU vessel traffic monitoring directive and it might take an actual incident to find out for sure.

The prospect that the fate of another stricken vessel could be subject to domestic political wrangling is unacceptable. All countries must accept their responsibility to provide suitable places of refuge without pre-conditions. ■

Industry Viewpoint



JOHN AC CARTNER

When bureaucrats decide to pile on the charges a seafarer stands little chance of justice

IN MY last column I presented a New Zealand case of a Sri Lankan seafarer that combines terrorism, scuttling, refugee status, human rights and perverse government decisions ('Rule by bureaucracy is not always by right', Lloyd's List September 15).

A Sri Lankan engineer, factually tied to the Tamil Tigers, was shanghaied in Thailand; helped scuttle his ship in Chennai; was arrested, tried, acquitted then imprisoned at the prosecution's appeal; served time and went to New Zealand where he was admitted. He applied for refuge.

The hearing officer denied him. The engineer appealed. The subsequent bureaucratic opinion not only denied him — it also piled on every conceivable bad fact and ill fate which ever happened to him, evidence-based or rumour or hearsay without verification. Using remarkably fallacious arguments of motive, intent and guilt by association of past bad acts, it denied him. The High Court denied judicial review of the poisoned well. The Court of Appeal disagreed with the bureaucrats and High Court on the same facts. The government appealed. The Supreme Court held for the engineer.

Seafarer criminalisation is an important phenomenon but seems to be mirrored civilly and administratively by bias against seafarers. Seafarers, as any other class, expect rule of law evenly, fairly and duly applied. That often does not happen to them.

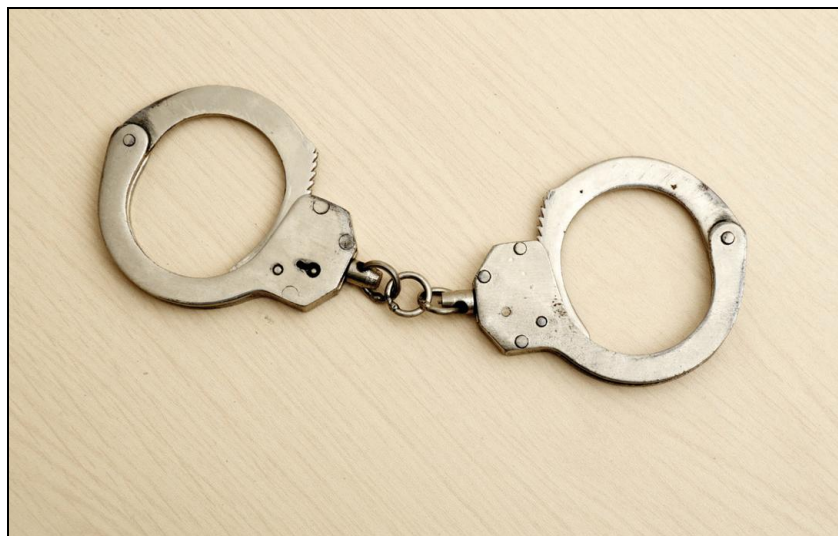
States subtly deny access to civil justice by putting bureaucratic hurdles in front of them. Bureaucrats play by rules not allowed in court. The result is often unfair denial just as surely as denial for a substantive reason. The hurdles are rationalised by legislatures as shielding the courts from frivolous matters.

However, the rejection of claims is a bureaucrat's *raison d'être*. To obtain redress costs money. When comparing insult with purse, the purse often wins; most rejected applicants have no money and fade away. The government is bothered no more. The courts are not clogged. The aggrieved distrusts and resents the government and the courts in equal value. Denial of justice is just as certain. The antagonism created is just as sure.

Seafarers have little political visibility and no united voice. Most shoreside people simply do not care. Company attitudes vary from seeing seafarers as a necessary evil to dealing with them ethically. Bureaucratic attitudes vary with the political winds, often because seafarers, out of sight and out of mind, and perceived of the lower orders, are easy to deal with by denial or rejection. They often just go away.

Bureaucracies sense political moods. When a whiff of either pollution or terrorism is in the air, they go after either civil applicant or criminal defendant tooth and claw. These defences or prosecutions are always defensible within the righteousness of attending the people's business. Civil rejection is much easier with

Poisoned well is a poor fate for anyone



Some kind of justice: conviction at all costs meant the seafarer spent three years in prison.

a person from a weak class. When things get to the law courts, matters may sort themselves out. Let us examine the case for the proposition that bureaucracies playing by different rules can be reversed at great expense — but that the bureaucratic system employed by states denies easy access to justice and is unfair from the start to seafarers of any class.

The inquisitorial procedures of civil law states are similar to the administrative procedures of governments in common law states. New Zealand authorises investigatory commissions having no accusative powers but, importantly, are not constrained by the court's rules of evidence. Commissions draw conclusions and issue reports. Civil law courts on the other hand have scholarly judges scrutinising the facts and the law.

A commission of New Zealand's sort has bureaucrats pretending at law. With no evidentiary constraints, it brought facts not allowable in court about the seafarer. Using them, it spun a tale motivated by its predilections toward denial of entry, the association of facts essentially unassociable, poor logical processes and pandering to the political positions of xenophobia and security. Bureaucracy trampled him because it could. New Zealand uses its commission law as a barrier to justice just as effectively as if the door were shut to the court house. This is legislative wilful blindness and wilful abuse by bureaucracy.

Criminal acquittal of the engineer seafarer did not mean freedom. In India (as in England and many other common law states) if the prosecutor appeals, the Court of Appeal can change the verdict and the

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sentence. There is no jury at the Court of Appeal. Therefore, India in legislative sleight of hand gives the government a second chance at conviction — without a jury. Therefore, the engineer has lost his right to jury merely because of an appeal by the government. This is conviction at all costs. The Court of Appeal relied on the facts. It found no terrorism but found other statutory crimes which had been acquitted. This is unfair, abusive and unjust. The engineer spent three years of his life in an Indian prison because of it.

Piling on charges against the engineer seafarer, although unethical in many jurisdictions, is a tried and true tactic for some governments. If conviction cannot be had on one charge maybe it can be had on other, overlapping ones, as in India perhaps on appeal. In the US the government can drop the predicate charge and convict on associated charges such as money laundering or making false statements to the government, which were in fact not probatively related to the non-existent predicate charge.

Commissions pile on arguments, as in New Zealand. The well can be poisoned. The New Zealand commission poisoned the well; the High Court swallowed the water. The Court of Appeal followed the law. The government protested.

Such state methods seem to violate the spirit of the Human Rights Convention and the domestic laws enabling it. Resolution of cases justly is lost to ends-means arguments. Governments, lower courts and commissions have difficulty distinguishing among crimes, political crimes and crimes against humanity. They are swayed by the political zeitgeist.

The only refreshing outcome here was that the Supreme Court of New Zealand got the answer right for a man tarred bureaucratically with terrorism by association. ■

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Maritime Blogspot

Respect is so much more than political bunfight

I MUST confess to a slight shiver whenever I hear or read the phrase "When I was at sea". It has the same effect as listening to my father when I was a kid tell me about the "Great Youth" he had, or my grandfather tell me about "The War".

Yet here I am, what feels like not so many years later, using those same unfortunate phrases from time to time.

But I feel there is a difference. I am in the midst of a career in shipping that is witnessing a cataclysmic change. The environmental campaign has gone from being the domain of the hippie dropout to the mainstay of many a corporate marketing drive and a key agenda of the United Nations and the International Maritime Organization.

This is good isn't it? Maybe my children or grandchildren can grow up and tell their children that when they were kids they saw the aftermath of a battle between indifference and action.

I am not just talking about fighting climate change, it is more than that. I am talking about respect for things as much as a political bunfight over reduction measures.

The image of shipping is spoken about from the owners, the technology companies with green business on their mind, the regulators and the classification companies.

But what does this matter to the brokers, bankers, insurers and legal firms? Where or what is their incentive to promote green shipping or do their bit? Companies in these industries make plenty of money from those charged with turning a green leaf, yet I see little incentive for them to play a part in either turning the shipping image rosy, or turning its image green.

Shipping needs all its allies, but the ones I see at conferences and sermonising on blogs, newspapers and so forth are from the operating community. I want to see what the banking community, the top lawyers and the brokers are doing other than trying to get the best financial deals. Are they doing anything? Can their children talk about being there for the end of an era and the start of a new one, or will they simply not know what I am talking about?

When I was at sea we cared about the sea, and some say we still do. But I challenge the financial markets to show they do too. ■

Barratry's is an irreverent place, designed for opinionated takes on daily maritime news, where the only unwelcome opinion is a conventional one. We invite you to join the discussion. <http://barratry-blogs.lloydslist.com>



That asset called the sea: do we still care?