Captain´s duty – The constant and continuing changes of captain´s legal position. How can we ensure that Masters are on map?

Senior Lecturer, Captain Ninna Roos
Senior lecturer of Maritime and Commercial law
Peter Ivar Sandell


Abstract The aim of this article is to examine the ship master’s legal position and his rights, responsibilities and obligations. The idea is to find out what the ship master’s role is with respect to the ship owner and ship’s charterer and to what extent the master is allowed and expected to make his independent decisions. In addition, the purpose of this thesis was to clarify the general view of the master’s roles and tasks in legal and contractual context and to examine how different changes in the transport industry over time have affected the development.

The ship master’s role has changed over the time especially through development of technical means of communication and increase of internalisation of legislation and contract practice. The focus of the article is to describe the present situation predict some of the coming changes in horizon. Shipping is controlled by various international and national laws which impact the master and ship’s crew. The changes in laws and regulations create new challenges for the master to maintain his/her knowhow and legal knowledge. This creates a constant challenge for the maritime Universities, but it also offers possibilities and need for further education. Some models for further educating the Masters will be offered.

The master works in close cooperation with different authorities who look after the safety of vessels. In this article, different methods of educating the authorities together with the Master Mariners have been found useful. Further education of the authorities and Master Mariners in co-operation with the Maritime Universities influences the ship safety and the protection of marine environment.

The article also focuses on the seaworthiness of ships, which is a significant issue when it comes to the charter party. It is in the best interest for both the master’ and ship owner’ to be concerned with seaworthiness. This is considered a serious issue, the breach of which may lead to the cancellation of the charter party. Marine insurance and charter parties are essential topics which are based on international development and which can be taught for Master Mariners on a global basis.

The final section of the article focuses on accidents at sea and general average decision making from the master’s point of view.

Keywords: Captains legal position, safety and security, maritime environment, seaworthiness, education, further education, maritime accidents, general average.

1. Introduction

The ship master’s role and status are exceptional compared to many other managerial duties ashore. On board the vessel he/she controls global operation of many matters and advantages of the different interest groups. His/her duty is to act behalf of the ship owner and the charterer.

When operating a vessel in the international traffic, the master has to act under several different legislations and be aware of and to take into account laws and rules which are valid in different sea areas and harbours.
The ship master's essential role is to manage risks which are related to safety of the ship, crew, passengers, cargo and environment. The master should always be authorised to make independent decisions and perform whatever acts are necessary for the safe prosecution of the voyage.

2. The ship master’s role today and in the future

2.1 Master’s role today

The ship master’s role has changed over the time especially through development of technical means of communication and increase of internalisation of legislation and contract practice. Various international and national laws control shipping and impact the ship operation. [1]

The master is the agent of the ship owner and the bailee of the cargo and he/she has to act like the ship and cargo were his/her own uninsured property so as to complete the voyage with the minimum of delay and the minimum of expense. [2] According to most time-charter parties, the master and the vessel's crew have to give "customary assistance" to charterers, which means that, they have to give the same assistance to the time charterers as they would give to ship owners if they were trading for their account. [3]

The ship master is responsible for implementing ISM code on board the vessel and motivating the crew in the observation of shipping company’s safety and environmental-protection policy. According to ISM Code, 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." On the other hand, the Shipping company's obligation is to make sure that master and other personnel are qualified and trained for their tasks. [4]

Sometimes position of the master as an employer of the shipping company and as trustee of the charterer can be challenging, for example under the circumstances which are related to both safety/seaworthiness and time/economic issues. The threshold to settle against the employer can be high if priorities differs.

2.2 Challenges of the master in the future

The ship master's role has changed within time with development of a technology and society. Increasing international and national legislation and rules challenge both seafarers and shore operators to update their knowledge and competence. The essential feature for masters and supporting organisations ashore is that most decisions at sea need to be taken fast if not immediately. Courts of law can weigh the facts of the case even years while the master has to act often in minutes based on the existing knowledge and often without possibility for consultation. The ever growing amount of legislation and technology creates challenges also for education and further education during the careers at sea and in supporting roles of those ashore in shipping companies and in maritime administrations.

Before we turn into the problem of preparing the masters for these challenges through education we take up some issues which describe more closely the challenges the masters meet and what kind of decisions they have to make in modern seafaring. We take a closer look at the issues of seaworthiness and general average situations.

3. Seaworthiness

The seaworthiness of the vessel and cargo is one of the highest priorities of the ship master's duties.

Many parties have their own interests involved in vessel’s seaworthiness – insurance companies, classification societies, charterers and investors.
There are many aspects how to define a vessel’s seaworthiness. In one circumstance a ship can be seaworthy and in another not. Because of new technological advantages, what was earlier considered to be a seaworthy ship may not be that anymore. The simple definition for the seaworthiness, - a vessel is seaworthy when it's reasonably fit for its intended purpose.[5] Other requirement is that a vessel has to be able to meet the ordinary perils contemplated for the voyage.

The demand of seaworthiness can be roughly categorised to three different layers. First of all, the vessel has to meet the demands of relevant authorities like flag state, classification societies, authorities of countries where the ship is intended to visit while its journey.

The second layer is the insurance companies and the demand of seaworthiness described in the insurance contract and insurance legislation. Most marine insurance is still based on the warranty of seaworthiness of vessels, but some insurance contracts have taken another view: Nordic Marine Insurance Plan has since 2007 (at that time still carrying the previous name “Norwegian Marine insurance Plan”, which was changed to Nordic Marine Insurance Plan 2013) been based on the idea that insurers are not able to deny cover based on seaworthiness of the ship but only on a basis of breach of safety regulations. [6] Many ships are however nowadays insured with several different insurance conditions and have to follow both of these demands. Typical combination is to insure a vessel with German or English conditions for hull insurance and with Nordic conditions for loss of hire.

The third layer of seaworthiness is the guarantee offered by the ship owner’s in charter parties where they give a guarantee that the vessel is offered for chartering in seaworthy condition and is to remain seaworthy at all times during the charter party period [7]. This requires that the vessel remains seaworthy in relation to all loaded cargoes and combinations of cargo. For masters this demand is the most difficult as the cargoes need to be well planned and their positioning in especially container vessel’s causes headache as the loading should also meet the tight time constraints. Far too often the cargo inside the containers is not what was announced in the documents or the properties of the carried substances are not in order. Especially this is endangering the vessels seaworthiness when dangerous goods are carried in containers.

Seaworthiness is also a matter of human error which causes most accidents at sea. Lack of education or induction to the vessels safety measures or technical specifications still causes accidents even though the education levels have been harmonised through STCW convention.

Obligation to make the ship seaworthy lies foremost with the master of the vessel. He must ensure that the vessel is seaworthy before the vessels leaves port and this must be done by stages every time when leaving a new port during the voyage. The owner’s role is also crucial. The owners need to make everything at their disposal to guarantee the master a seaworthy vessel. The owner’s must take into account the masters opinion and demand of maintaining the seaworthiness of the vessel. The last thing the master can do is to decline leaving port if the vessel is not maintained in a seaworthy state in every respect or if it not possible to meet the demands of every safety regulations.

4. General average

When at sea, the master is the master of the ship. Despite modern communication equipment the master still has authority to make independent decisions and he/she is expected to act accordingly in matters of urgent danger. The most important issue in this regard are the acts which are formulated in order for the master to be able to protect the ship and cargo in imminent danger and to make continuation of the voyage possible despite urgent measures which need to be taken fast.

The general average act is an issue which has existed in seafaring since the times of Rhodian maritime law. At that time according to the Rules the master was able to decide that cargo will be thrown overboard and sacrificed for interest of common safety for all to save the “common adventure” from total destruction. Another rule from those ancient times was that if a broken mast has to be cast into sea in order to save the rest of the vessel and its cargo, the value of the mast will be compensated for the
owner by the cargo owners whose cargo was saved by that action. The Rule of General Average was formulated to divide the risk in GA situations between all contributing interests whose property was saved by sacrificing the others property in danger.[8]

In the modern world the same basic rules are in heart of seafaring – Only in much more complicated form covering many different kinds of perils of the sea. The rules of General Average have existed in all seafaring nations in all times since the Rhodians. The law on General Average was diversified since the fall of Roman empire but the Rule were again unified in York 1864 and again in Antwerp 1877. Since then they have been called York-Antwerp Rules. The newest version of the Rules was accepted 2016 in New York and is called York-Antwerp Rules 2016. BIMCO gave its acceptance to the new rules on following Tuesday after the acceptance of the new rules by CMI on previous Friday.[9][10]The Rules are expected to be incorporated in Bills of Ladings and Charter parties as soon as new versions of them are implemented.

According to York-Antwerp Rules the master is able to decide on matters like stranding the ship when necessary in order to prevent it from sinking, he/she can make the decision on extinguishing fire on board even though this would mean destroying the containers above the containers on fire, he/she can drop the cargo like in ancient times, he/she can enter into a salvage contract on terms which are commonly accepted in maritime community or he/she can deviate to port of refuge and the costs of getting and staying there in order to be able to continue the voyage will be divided according to the York-Antwerp Rules.

5. Models for education

Learning rules and legal issues can be boring. Reading rules by heart seldom makes sense if they are not visualised from practical point of view. This applies to all students but especially seafarers as they are often practically orientated persons. The lecturers in law in law schools are too often lecturing just by referring to legislation or cases just briefly explained. Quite often when a new convention in maritime world enters into force, this method is used also when masters are taught to understand the new rules. This is sometimes caused by cautiousness of the lecturers who do not want to guess how the law will be implemented in practical life. This is the specific problem in a situation when something totally new is implemented in maritime community. We have good and recent examples of this: Many of us have been sitting and hearing about the implementation of the ISM code and later the ISPS code.

Also when conventions like ISM and ISPS are taught for the first time before they are implemented and taken into practise, they should be put to life for the masters. Problems which lead to the very existence of the new rules should at least be opened up. But as soon as the implementation is started and the practical examples are available, they should be used. In Finland the Maritime Universities worked together to educate the masters in both these conventions. Combining the forces and experiences was made not only together with the Universities teaching in Finnish language but also together with the Finnish maritime administration. The whole maritime industry in the country was taught systematically. This is the first example of national co-operation which combined all the best resources in a situation where all masters needed to be updated at the highest possible speed to meet the deadline by the implementation.

In the beginning of 21st century the maritime administration and shipping companies as well as the Maritime Trade Unions started to discuss the problem of ageing of the workers in the maritime management professions ashore. Finland like many other countries had seen the growth of maritime sector after the second world war and persons who had been born before or immediately after the war and had been recruited to maritime professions were ageing fast. The need for persons working ashore who had maritime experience from sea were vanishing and retiring rapidly. Master Mariners education was based on a lower University degree. With strong support from the maritime industry a new Master degree was established and developed starting 2006 in Satakunta University of Applied Sciences.
The Master of Maritime Management degree programme in Satakunta University of Applied Sciences was based on the idea that Master Mariners –bachelor degree programme was the basis for further education supplemented first by reasonable amount of working experience at sea (minimum three years) and then supplemented by theoretical and practically oriented studies on maritime economics, maritime law, marine insurance, charterparties, shipbroking, safety of ships etc. The Master of Maritime Management program has since then produced tens of Master Mariners now also holding a higher degree in Maritime Management. The program was developed and built up in close co-operation and with support from the industry. The degree programme has been beneficial for those still working at sea but especially for those who wanted to develop their careers ashore. There we have been able to fulfil a hole in education and respond to the need of professionals with seafaring experience in shipping companies and maritime administration. The careers after the education in general have been quite successful.

These successes however need to be followed by the next steps to be taken. The Master of Maritime Management programme is now starting 2017 in English language and has been enlarged also to cover Marine Engineers Master-level education. Not all Master Mariners want to take a higher University degree with a demanding thesis to be written during and in the end of the studies. The problem based methods developed for the Master program can however be applied to also further education for Master Mariners in general. Keeping the Masters on map on legal issues should be explored on the basis of the needs explored during the development of the Master programme. This cannot be done by Maritime Universities only. There we need again co-operation. Some models for co-operation are already under observation and development.

Seminar activities together with maritime administration and the alumni organisation has already been established. The growing number of alumni’s are also further educating in their respective organisations. They have been allowed to use the materials for in-house education for free of charge. They need to be further educated and updated. The idea of meeting the alumni’s once a year and using this meeting for updating has already been tested and found useful.

Maritime law, Law of charter parties, law of marine insurance and General Average are topics which are heavily based on development on case law. Master Mariners are dealing mostly with English law beside their national legislation. Case studies are used in Satakunta University of Applied Sciences in both levels of mariner’s education on bachelor and Master degree programmes.

Using the case studies also for further education is an idea that could be even tested as an international co-operation together with Maritime Universities. One possibility for financing these activities and mobility of teachers could be using the existing teacher exchange programmes. The other possibility could be financing it with fees from the students whose employers would participate in travel costs and fees.

6. Conclusions

Master Mariners role is constantly changing and they are required increasing amount of information. At sea google doesn’t help much. And often there is no time to search information as the decisions are made fast. As Maritime University we should take care that the Masters have enough knowledge when they graduate and help them to maintain the essential skills and knowledge. All Maritime Universities need to do or cover everything. From legal point of view our Maritime industry is unique – there is no other field of education where harmonisation through international conventions and case law of one single country makes it possible for us to unite education and work together. It’s time for co-operation and specialisation. At least it’s time for developing and dividing teaching and learning methods and best practices – Time for ensuring together that the Master Mariners are on map globally.

References