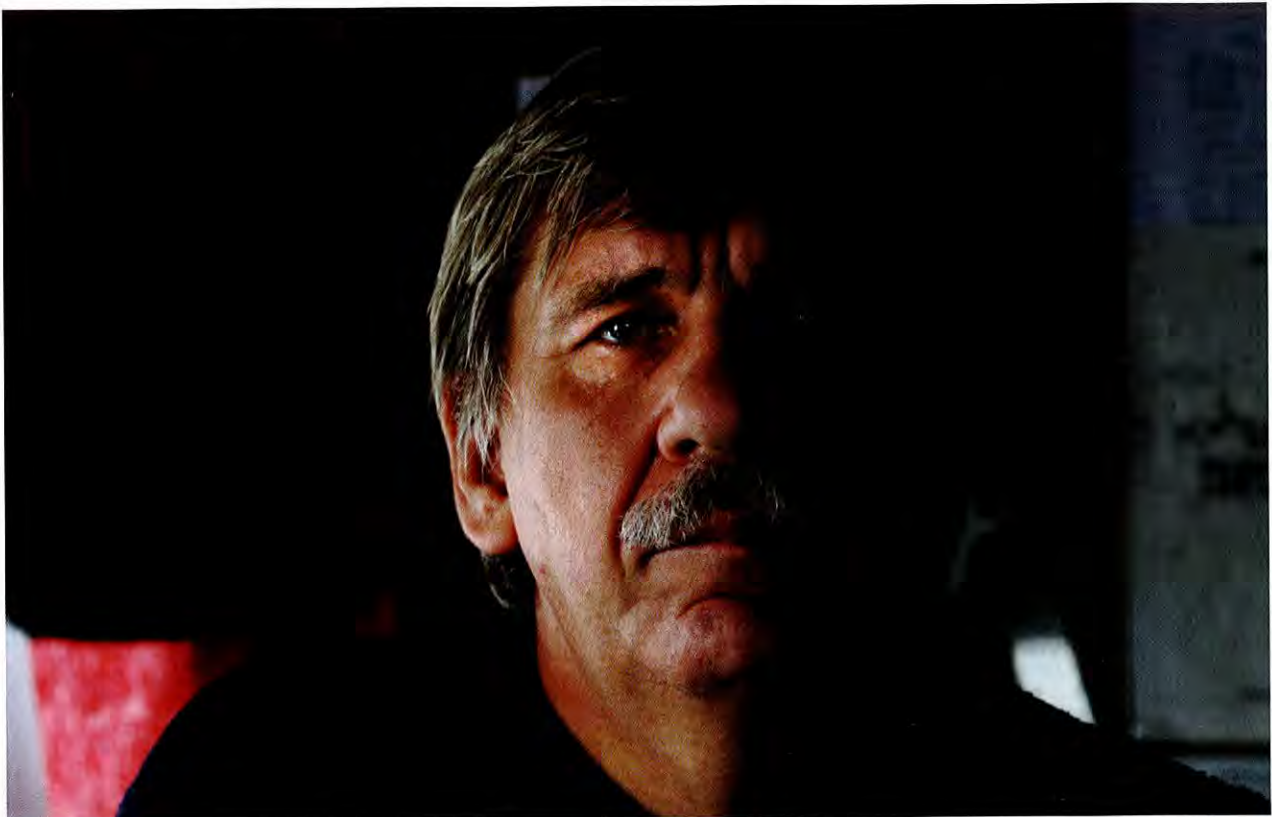


How guilty is your crew?



Television footage of Francesco Schettino, master of the ill-fated *Costa Concordia*, being taken into custody by Italian police on suspicion of manslaughter following the death of at least 16 people after his vessel hit a rock outcrop off the Italian Tuscan coast, is a clear signal of the hefty responsibilities today's officers and ratings bear as they go about their daily work.

But it also demonstrates only too clearly the spectre of seafarer criminalisation that is constantly hanging over the head of every seafarer during every day he is at sea. Capt Schettino immediately denied any wrongdoing, allegedly saying the rocks his vessel hit were not marked on his nautical chart and he also denied claims by prosecutors that he left the *Costa Concordia* before evacuation was complete. He has since

allegedly admitted to making a navigational error, according to the Italian media, and was alleged to have told investigators he had "ordered the turn too late" as the luxury ship sailed close to an island.

At the time of going to press, the captain was under house arrest on suspicion of multiple manslaughter. Prosecutors have also accused him of fleeing the ship before evacuation was complete.

Subsequent investigations should work to uncover what actually happened on the evening of January 13th. But the capsizing of one of the world's most sophisticated cruise vessels and the immediate detaining of its master will send a worrying shiver down the spine of an industry that is desperate to improve its global image and attract talented youngsters to a career in shipping.

Indeed, so incensed was the Nautical Institute about the way the Captain was treated that it sprung to his defence after press reports speculated about the cause of the capsizing of the *Costa Concordia*.

In a prepared statement issued nearly two weeks after the incident, it noted "with extreme disquiet the alacrity with which the ship's owners, Costa Cruises, blamed all on the Master, Captain Francesco Schettino, accusing him of unprofessional conduct before any investigations could have taken place.

"The Nautical Institute is also extremely uneasy with the speculation in much of the world's media. Some evidence which should be in the hands of official investigators is being paraded in newspapers and television news programmes. Blatant speculation into the actions of Captain Schettino and others

before, during and after the accident is being presented as fact," it said.

The NI warned that while Captain Schettino stands accused of very serious crimes in Italy "the Italian State has initiated an official investigation into the sinking of the *Costa Concordia* and the actions of her Master and crew. It would be wise to await the outcome of the official investigation and trial, if one is deemed necessary by the Italian State, before publishing speculation which only serves to make it impossible for any defendant to receive a fair trial or for an unbiased jury to be appointed.

The practice of charging masters and ship's officers with a criminal offence after a maritime accident can be traced back to 1989 in the US with the unsuccessful prosecution of Captain Joseph Hazelwood, Captain of the *Exxon Valdez*. Since then the phenomenon has spread far and wide with a number of high profile cases attracting the attention of the media, the politicians and the regulators.

The 69-year old Greek master of the tanker *Prestige* was jailed for three months after his vessel sank in heavy weather off the coast of Spain in 2002. He was denied access to a place of refuge for his vessel in order to undertake salvage operations and despite the fact that his vessel was effectively taken over by the Spanish maritime authorities and he remained onboard after evacuating most of the crew, he was jailed and only released after bail was set at €3 million. Then a year later, the Maltese flagged tanker, the *Tasman Spirit*, was proceeding with the assistance of an experienced pilot to a berth in the port of Karachi when she ran aground in heavy weather. This time it was not just the Captain who was arrested but six members of the crew. Later, the salvage master, who did not even arrive on the scene until after the ship had broken up, was also detained to make up what has become known as the 'Karachi Eight'.

These cases and many more besides raise concern among those in command of our ships. Whatever the age, nationality, rank or seniority of the seafarers, the fear of criminalisation is both real and sincere. And while it can be statistically argued that the chances of such a fate befalling any seafarer remains very low, perception is a powerful driver against encouraging more young talented people to consider a career at sea.

This is why criminalisation has been chosen as a cornerstone of the research being undertaken by Seafarers Rights International (SRI), an independent pan-industry resource dedicated to advancing the legal protection of seafarers worldwide. And according to SRI, it is an inherent risk in the working lives of seafarers that they may be subjected to criminal charges either of a professional or a non-professional nature. "Seafaring is



Case Study Buket

Sailing back to Turkey in May 2009 after a week long visit to the Georgian port of Abkhazia, the *Buket* was stopped and boarded by Georgian authorities. The ship and its crew were claimed by Georgian authorities to have visited illegally and were taken to the port of Poti and kept in custody for three days, after which they appeared before a Georgian court. The crew were bailed until a second hearing where they were sentenced to three years' imprisonment. This was later altered to a fine of 3,000 Georgian Laris. The money was paid by the ship owner and the crew, except for the Captain, were released. The Master of the ship was sentenced to five years' imprisonment and, for reasons that are unclear, his sentence (when converted to money) was 50,000 Georgian Laris, which the ship owner refused to pay. It appears he remained in prison for three months before his family secured his release.

Coral Sea

The Croatian Master, Croatian Chief Mate and the Filipino Vosun were charged with smuggling cocaine that was found in a cargo of fruit being discharged in Greece. Very sadly in this case, the Chief Officer who spent more than a year in prison suffered severe mental problems and committed suicide.

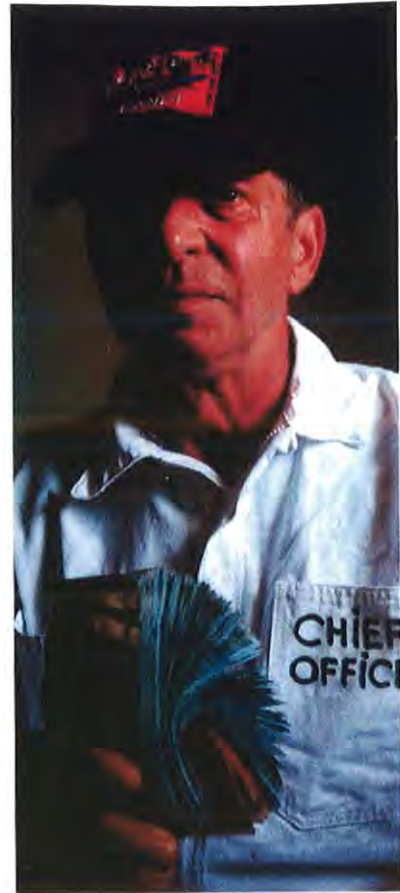
transnational by nature. As seafarers transit from port to port, they are subject to the entire range of criminal laws of those port states. They cannot know and they are unlikely to have been warned about local criminal laws, and hence they are at risk of committing an offence without any awareness or intention to do so. Further, in recent years, several legal developments at international, regional and national levels have criminalised a number of previously considered lawful seafaring activities and created a blame culture, particularly in relation to environmental incidents such as oil pollution."

It added: "In an era where 'human rights' are considered sacrosanct and 'fairness' a right in itself, seafarers sometimes seem to be excluded from the entitlements accorded to others. They may be foreign nationals, and after an incident there is often a reluctance to release seafarer defendants or witnesses who are deemed to be a 'flight risk', and who might not appear at a subsequent trial. They are, therefore, treated differently and less fairly than nationals, and are often discriminated against. They might have the continued support of their employers, but if they are less fortunate once the ship itself is released, they may find themselves friendless in a strange land, facing charges that are

incomprehensible to them under a wholly alien system of justice, and with defence counsel unfamiliar with the technical nuances of a maritime scene. Language, and the lack of adequate translation facilities, might well be a serious handicap," it said.

However, as Deirdre Fitzpatrick, Executive Director of SRI, contends, the question that needs to be answered is what can be done about criminalisation? Yes, there have been a number of initiatives undertaken to counter the problem of criminalisation, but a lot of what has happened has been in a piecemeal fashion only. "The term criminalisation implies two issues," she said. "First that there has been an increase in the number of prosecutions against seafarers for offences connected with their profession; and secondly that there is something unfair about those prosecutions. No-one has ever suggested that seafarers who have committed criminal offences should not face the consequences. The issue is about the element of unfairness."

As Ms Fitzpatrick admits, it has to be deemed unfair how the Master of the *Erika* waited eight years to be found 'not guilty' in a criminal prosecution in France; how the Master of the *Prestige* was criminally charged even though he had warned three States that the vessel would sink unless he could bring it into a port, and he was



unsuccessful in obtaining permission to do so. And how the *Hebei Spirit* Captain and Chief Officer were held in jail for 550 days in South Korea before being found innocent on criminal charges (although a fine against them was maintained).

She added: "For those in command of vessels today, the traditional privilege and honour associated with the position appears instead to have become a risky and perilous burden. And for all seafarers transiting multiple jurisdictions on a daily basis, the risks of violating local laws - sometimes unknown to them - are high and a cause of great concern. It is expected that any seafarer who has committed a criminal offence will be held accountable. But to assume guilt before proof is taken is both an attack on seafarers' human rights as well as a massive disincentive to young people considering the shipping industry as a possible career.

"Whether it is criminalisation, abandonment or seafarers being held hostage for lengthy periods of time, these injustices, and a host of other abuses and other problems that seafarers encounter, are symptoms of an underlying illness.

"Seafarers do an essential job. Much lip service is paid to how seafarers are the unsung heroes of an unsung industry; how without shipping, half the world would freeze and the other half would starve. But

the real issue is why a major global industry with a creditable historical record is so often negligent in the way it deals with one of its most important assets."

The problem facing the industry is that there are no comprehensive statistics available on the subject of criminalisation, which is why the SRI research work should throw a spotlight on the problem of criminalisation. According to Deirdre Fitzpatrick, the industry either does not have, or does not make available, accurate statistics on the extent to which seafarers face criminal charges; the rate of convictions or the punishments given. It is also not known how many seafarers are currently languishing in jails around the world.

There have been two preliminary studies conducted by BIMCO in 2006 and 2008, to evaluate the extent of criminal sanctions against seafarers and the unfair treatment of seafarers. The data was collected from various ship owner associations as well as the IMO, ITF, the Nautical Institute and other web-based secondary sources. Together, they identified 47 cases and from these the report concluded that there was an unfortunate pattern of fair laws being applied unfairly against seafarers; for examples seafarers were being detained after an incident either on a presumption of criminal negligence or



as financial security. The approach seems to be that the accused was presumed guilty until proven innocent. Also the detention of seafarers as witnesses or pre-trial security in an investigation or trial and the failure to advise detained seafarers of their rights was highlighted as manifestly unfair.

What is clear, is that if the industry is to speak with authority about criminalisation of shipping and seafarers, there must be comprehensive and reliable statistics available of incidents of prosecutions to support a campaign against criminalisation of the industry. ■