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A Need to Examine the Effect of Seaworthiness on Seaports Safety

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Abstract

One of the pivotal concepts in Maritime Law is a ship's seaworthiness. Not only its effect is not limited to one element of the shipping industry, but also affects Marine transport, Marine Insurance, Marine Pollution, Carriage of Goods by Sea, Liability, and all other respected bodies in shipping. The concept of seaworthiness has evolved over many years, but it is not clearly pointing to the exact coverage of seaworthiness in any particular stage of the ship voyage, especially while she is making her way through the fairways and channels to be finally alongside. The ship owner is obliged to provide a seaworthy ship which is the core in the carriage of goods by sea, included in charter parties, where the contract of carriage is between the ship owner and charterer. As seaworthiness is not usually defined in modern standard form charter parties, the meaning of the concept must be ascertained from cases being decided at common law. For this purpose, a large number of decisions of maritime courts were reviewed in order to know the main body of ideology of competent maritime courts to explain and interpret the concept of seaworthiness of a ship. As a result, it is important to analyze the position of the current law; the Common Law, the Hague/Hague-Visby Rules and Hamburg Rules, and the other related regulations, to assess the importance of this concept (As a duty), and how the courts dealt with it under the different types of carriage

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contracts. Furthermore, it would be important to assess whether the current law is sufficient to reflect the changes in the shipping industry in general, and especially after the introduction of the ISM and ISPS Codes which could considerably affect the carrier's obligation; or if a desire for change in the law is needed to reflect the changes.

Keywords: Safety of ports, pilot, seaworthiness

Introduction

Maritime transportation is regularly performed under two contractual modalities: charter parties and bills of lading. The carriage of goods by sea under bills of lading is mostly governed by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, adopted in Brussels in 1924 and commonly known as the Hague Rules. This regulation orders carriers to perform two duties:

a).To practice due diligence to make the ship seaworthy and

b).To care for the cargo.

The prevention of cargo damage or losses is a goal of the liability rules set in the governing regime. Both duties have been constantly impacted by the development of technology.

Moreover, the introduction of the ISM and ISPS Codes affected the current position of the Law on Seaworthiness. The Codes were made part of the Safety of Life at Sea Convention (SOLAS) and were made obligatory to all ships covered by their scope, shipping and flying the flags of the member states of SOLAS (Berlingieri, 2002). In addition, it would be important to look at how both Codes could affect the obligation to cover the whole voyage including when ships are lying at port either loading or discharging and even under pilotage, and if their introduction is going to reduce the numbers of marine incidents and casualties. Each set of Rules deals with it in a different way, in terms of having special articles for seaworthiness or not, the burden of proof, and time to exercise the duty. The introduction of the ISM and ISPS Code has had a certain effect on the carrier's obligation to provide a

seaworthy vessel (Stephen Males, 1999), however, do not have an impact on the important part of a voyage that is when the ship is under pilotage.

The safety of ports is a vast area which this paper aims to evaluate the possibility for marine pilots to examine the condition of ships as they are first and last agents of port authorities whose presence on board vessels can be considered as an important way of evaluating the level of ship's readiness for commencing voyage. This raises the following question: Does the current law on seaworthiness satisfy or even comply with the changes in the Marine Industry?

1. Material and Methods

To accomplish the point of this review, a descriptive survey research was led and many courts' decisions were chosen, late or old were considered to figure out how they have managed this issue. Furthermore, the suppositions and contemplations of researchers on this matter will be inspected in arrange to find out their conclusion on the law and its advancement. This paper can be considered a Critical review, due to examination of the concept of seaworthiness has not taken a special form over the years and a series of laws have always been followed, but because the shipping industry is rapidly being updated, the laws have failed to accurately express the seaworthiness of the ship, that can be seen well in the judgments of competent maritime courts.

2. Literature Review

Although our understanding of the scope of the obligation to exercise due diligence to provide a seaworthy ship is reasonably well-defined, law and regulation have developed so rapidly, particularly since the enactment of the Visby Protocol, that the courts will consider the implications of these developments by applying well-established principles (Girvin, 2019).

Many of the seaworthiness cases today require consideration of express clauses in the standard forms, demonstrating the continuing vitality and centrality of the concept. From the ship owners' perspective, the weight of

regulation has been heavy, particularly since the establishment of the International Maritime Organization, and continues unabated. However, not all the difficulties have been resolved, the notable trend is for these later revisions of the standard forms of charter-party to embrace more specific detailed seaworthiness requirements (Girvin, 2017).

3. Advancement of the Doctrine of Seaworthiness in Maritime Law

According to Rule (1) of Article 3 of the Hague Rules and the Hague–Visby Rules, the carrier has the obligations to exercise due diligence before and at the beginning of the voyage. These obligations include:

1) Making the ship seaworthy,

2) Properly manning, equipping, and supplying the ship and,

3) Making the holds, refrigerating and cool chambers, and all other parts of the ship in which cargo is carried safely and preserved upon reception.

However, the Hamburg and Rotterdam Rules have not changed the said major obligations while the carrier's duty to "make the ship seaworthy" is replaced by "making and keeping the ship seaworthy" under the Rotterdam Rules. As a result, the duty is extended to cover the entire voyage.

Despite its important role in maritime law, there is a lack of an integrated definition of seaworthiness. According to section 39(4) of the Marine Insurance Act 1906, "A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured". Hence, the question which arises here implies on the lack of any legal clear explanation about the stages which look for the level of a ship's seaworthiness while berthing at the jetty or making way through the channels. Hence, based on numerous decisions, Tetley described seaworthiness within the following terms:

Seaworthiness may be defined as the state of a vessel in such a condition, with such an equipment, being manned by such a master and crew. Moreover, in such a condition the cargo will be normally loaded, carried,

cared for, and discharged properly in a safely manner on a contemplated voyage (Margetson, 2008).

Yet, it does not make clear the seaworthiness which emphasizes on the ability of the ship to make her way through channels and harbor areas. Therefore, measures such as loading, carrying, and delivering cargo safely are needed to be explained clearly.

4. Due Diligence

The obligation which arises from common law is a strict one which imposes an absolute duty on the carrier to provide a seaworthy vessel; but this absolute duty does not mean that it has to provide a perfect vessel. The carrier is not required to provide a vessel that can withstand any kind of hazards during its voyage merely to provide a vessel that is fit for the purpose of a contracted voyage she is going to perform (Killenny, 1963).

The concept of Due Diligence was introduced by the Harter Act in 1893[6], then the Hague/Hague-Visby Rules and Hamburg Rules adopted it, and it became an inseparable part of the obligation providing a seaworthy vessel. This duty differs in nature from the absolute duty providing a seaworthy vessel.

Tetley defined due diligence as a "genuine, competent, and reasonable effort of the carrier to fulfil the obligations set out in subparagraph (a), (b) and (c) of Art III (1) of the Hague or Hague-Visby Rules (Tetley, 2008). Some American cases defined due diligence as "not merely a praiseworthy or sincere, though unsuccessful, effort, but also such an intelligent and efficient attempt to make it so [i.e., seaworthy], as far as diligence can secure it" (M/V, 1990). So, due diligence means that the carrier must take all reasonable measures that could possibly be taken by him, or his employees or agents, to man, equip and make the ship in all respects be suitable and appropriate to undertake the agreed voyage. Apart from all taken measures as per set rules, there is not any explicit quote of rules that states the importance of being

[6] Under the Act it was not a duty it was just used as a minimum requirement to ensure that the vessel was seaworthy

seaworthy while pilotage operation is going on, obviously this part of voyage normally goes ahead in the port basins and approach fairways that are directly connected to the safety element of all seaports.

5. Legal Analysis

The term absolute can be described as "not limited in any way". In the perspective of the law, if a certain principle is considered absolute, the said principle will not have any exceptions to permit instances where such duties can be breached. Keeping the said fact in mind, when considering the nature of shippers/ carrier's liability on sea worthiness and due diligence, there are two main authorities which will be focused on vastly.

5.1. Hague/Visby Rules

Hague/Hague-Visby Rules took a further step in defining seaworthiness (Kassem, 2006), However, when considering the extent of the absolute liability, under Kopitoff v Wilson, it was held that the carrier may consider a vessel "fit if she meets and undergo the perils of the sea and other incidental risks which necessarily must be exposed during the course of the voyage". What should be understood from the above quotation is that the law does not expect the ship to be invincible, hence, the law requires a ship "as seaworthy as she reasonably can be or constructed by known methods".

Anyhow, the ship-owner cannot evade from the liability to present a seaworthy ship saying that he/she has been ensured for the best he/she could do for seaworthiness of the vessel in question (Margeston, 2008).

5.2. Common law

Under the common law, it is stated that the carrier should provide a vessel 'that fits to meet and undergo the perils of the sea and other incidental risks which of necessity must be exposed in the course of the voyage'. Also, the term 'seaworthiness' is to be described as '…that degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage regarding to all its probable circumstances.' On the other hand, with respect to the Hague/Visby Rules, further steps have

been taken in defining the term. Article III rule1 contains detailed articles about what factors constitute seaworthiness. From this provision, we may find that the Hague/Visby Rules have replaced the absolute duty to provide a seaworthy vessel by the duty to exercise due diligence to make the vessel seaworthy. It can be said that as the concept of seaworthiness lies between a vast ranges of scopes, various approaches can be taken into considered in determining its meaning (Hughes, 2015).

5.3. Hamburg rules

In Hamburg rules, the liability regime is described in an affirmative rule of responsibility stated within article 5(1), as follows:

The carrier is liable for the loss of or damage to the goods, as well as from delay in delivery.

If the occurrence which caused the loss, damage, or delay took place while the goods was in his charge as defined in Article 4, the carrier should prove that he and his employees, or shipping agents have taken all measures that could reasonably be required to avoid the occurrence and its consequences.

The rule is based on the principle of "presumed fault"[7]. It does not make any reference to an obligation to provide seaworthiness or any differentiation of the specific duties. They are implied in the rule taking in mind that the general obligation is not to cause loss of or damage to cargo due to negligence. The previous test of practicing due diligence in making the ship seaworthy before and at the beginning of the voyage and properly caring for the cargo is reduced to a uniform test of liability based on fault (From Hague to Hamburg). In general, and from a practical point of view, it could be said that the regimes in the H/H-VR[8] and in the Hamburg Rules are practically the same. Beside the differences, the rest of the provisions are quite similar in content. Under the Hague system the carrier is obliged to practice due

[7] The Annex II of the same Hamburg Rules clearly states that: "It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule."

[8] The HR, Article 4, paragraph 2, literal (a): "2. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from: (a) Act, neglect, or default of the master, mariner, pilot, of the servants of the carrier in the navigation or in the management of the ship."

diligence before and at the commencement of the voyage. However, if an unseaworthiness condition arises after the voyage begins, the cargo interest may still allege that there was a lack of continuous duty in caring for the cargo. The carrier, in such a case, might be held liable unless he proves that he and his employees were diligent enough to solve the problem in a timely manner. This condition is similar to the Hamburg regime where it is presumed that the fault lay with the carrier when the damage or lost occurred during the time of his custody (From Hague to Hamburg).

5.4. Rotterdam rules

After the failure in ratification of the Hamburg Rules, the Comité Maritime International undertook the discussions of a new set of rules in 1998. The result was "The United Nations Convention on Contracts for the International Carriage of Goods wholly or Partly by Sea", also known as the Rotterdam Rules, opened for signature on the 23rd of September 2009. The Convention repeats the same obligation stated in the HR but introduces two details that make some significant changes. The obligation of practicing due diligence in making the ship seaworthy is not limited to before and at the beginning of the voyage; it is a continuous one. The carrier is obliged to continue exercising it to avoid any cause of unseaworthiness before and during the voyage. The obligation is not limited to make, but now also to keep the vessel in proper condition. The provision brought great concern and was objected to understand the argument that would alter the overall risk allocations between the carrier and cargo interest. The provision places a major burden on the carrier that could be changed into higher freight rates. However, this is simply another argument, and as Sturley argued with respect to the Hamburg Rules, there is not empirical evidence to justify such hypothesis. The obligation of due diligence remains the same as in the HR. Carriers must do what is reasonably possible under the circumstances. The exercise of such obligation depends on where the vessel is and when the unseaworthiness condition is discovered. If it is discovered while the vessel is at port, it may more easily facilitate the carrier in its repair, whereas the same problem will present much more difficulties while at sea. It is obvious that for a carrier it would be more difficult to carry out reparations on the ship during the voyage in high seas as opposed to while in port or at a

shipyard. It is not expected that the carrier performs the same activities or actions that would be possible on shore. The carrier, therefore, must keep the vessel specially equipped to avoid any possible unseaworthiness condition during the voyage. On this point, technology can and will play a very important role (Baatz, 2009).

6. History of Seaworthiness

One of the earliest treatises on maritime law in English, The Sea-Law of Scotland (Cairns, 1998) states that:
Na schip suld be fraughtit without ane charterparty, beirand that the maister sall provide an sufficient steirseman, timberman and schipmen convenient for the schip, with fyre, water and salt on his awin cost… . (This is an Early English text that means "A ship should not be loaded without a charterparty, which specifies that the master shall provide a sufficient helmsman, carpenter, and crew for the ship, along with fire, water, and salt at his own expense.")

Over the next two centuries, similar wording continued to be found in charter parties and was reflected in the decisive cases, now often supplemented by the word ‘tight’. In the leading case, Lyon v Mells, which concerned an action in assumption (Ibbetson, 1999) for the recovery of damages for a quantity of yarn, Lord Ellenborough CJ stated that:

"in relation to the carrier … it is a term of the contract … implied by law, that his vessel is tight and fit for the purpose or employment for which he offers and holds it forth to the public: it is the very foundation and immediate substratum of the contract that it is so: The law presumes a promise to that effect on the part of the carrier without any actual proof; and every reason of sound policy and public convenience requires it should be so" …

From this time onwards the use of the phrase ‘tight staunch and strong’ was in regular usage in charterparty cases. MacLachlan cites six cases from the law reports, together with the authorities cited in Abbott. Carver only refers to English case law, and Scrutton, writing one year later, does likewise. These treatises are important in showing the development of the seaworthiness doctrine in English law (Maxwell, 1860). English law had, by

the mid-nineteenth century, developed considerable confidence in its own authorities on the carriage of goods by sea, not least in relation to the obligation to provide a seaworthy ship (Wisall, 1970).

7. Meaning of Seaworthiness at Common Law

It is clearly comprehended that charter parties and other contracts for the carriage of goods by sea do not usually contain a definition of seaworthiness[9]; indeed, as we already noted, the usual wording provides that the ship owner's vessel is 'strong and staunch' (Charter parties) or 'tight and fit' (Abbott). This is understood as having wide-ranging consequences as below.

7.1 Structural fitness: loading stage

Every voyage at sea has an antecedent phase, the loading stage (Novorossisk Shipping Co v Neopetro Co Ltd (The Ulyanovsk, 1990). It is established that, during the loading, the vessel must be fit to receive the cargo and to encounter the ordinary perils of the loading stage. In McFadden v Blue Star Line, Chanell J explained that:

the warranty is that at the time when the goods are put on board she is fit to receive them and to encounter the ordinary perils that are likely to arise during the loading stage; but that there is no continuing warranty after the goods is once on board that the ship shall continue being fit to hold the goods during that stage and until she is ready to go to sea, notwithstanding any accident that may happen, in the meantime.

Once the loading stage is complete, this obligation comes to an end; the vessel must forthwith be seaworthy for the next stage, which will usually be the voyage or an intermediate stage where the vessel is lying waiting with the cargo on board.

[9] Cf s 2(1) of the South African Merchant Shipping Act 1951, No 57, which defines unseaworthiness 'used in relation to a vessel [as] mean[ing] that she … is not in a fit state as to the condition of her hull, equipment or machinery, the stowage of her cargo or ballast, or the number or qualifications of her master or crew, or in any other respect, to encounter the ordinary perils of the voyage upon which she is engaged or is about to enter …' Note that there is no similar definition in the Merchant Shipping Act 1995, cap 179 (rev ed 1996), or in the (UK) Merchant Shipping Act 1995, c 21.

7.2. Structural fitness: commencement of the voyage

In its most fundamental sense, providing a seaworthy vessel requires the vessel being structurally fit for the intended voyage, 'fit to meet and undergo the perils of sea and other incidental risks to which of necessity she must be exposed during the course of a voyage'. Structural unfitness typically entails some attribute of the ship itself which makes her unseaworthy and a vessel will not be seaworthy if she is unable to cope with stormy weather or rough seas (A Meredith Jones & Co Ltd v Vangemar Shipping Co Ltd, 1997). If a vessel is structurally fit at the commencement of the voyage, but later gets into difficulty thereafter, she is not unseaworthy. Such damage as has occurred would have to be pleaded as a breach of the ship owner's duty of due care (Carver on Charterparties).

Referring to the Hague Visby Rules (HVR), Article III paragraph 1 of the HVR provides that the carrier must, before and at the beginning of the voyage, exercise due diligence to:

- Make the ship seaworthy;
- Properly man, equip and supply the ship; and
- Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods is carried, fit and safe for their reception, carriage and preservation.

Under the HVR "exercising due diligence" means taking all reasonable precautions to see that the vessel is fit for the contemplated voyage.

But the matter that needs to be considered is that the carrier is not obliged to give an absolute guarantee of seaworthiness and the ship needs only to be seaworthy at the commencement of the voyage. However, this means that at any stage of the voyage ship can make any damage due to failure of her machinery or so on. The need of setting a strict law that obliges ship owner to make sure that his/her ship is seaworthy as the safety of the other related bodies such as port facilities are tied up to the safety of ship.

7.3. Manning

It is not enough for the vessel to be structurally fit and cargo worthy. She must also have sufficient crew on board for the voyage including, if required, a pilot. What amounts, however, to 'sufficiency' will be a question of fact in each case. A further factor is the Maritime Labor Convention 2006, 128 which lays down minimum requirements for seafarer's employment and conditions while it must also be expected to impact on the scope of the ship owner's obligation to provide a seaworthy vessel (Zhang & Phillips, 2016).

7.4. Seaworthiness is relative but also absolute

The obligation to provide a seaworthy vessel is not demanded in abstract terms, being relative to the nature of the ship, the particular voyage, the time of the year, the stages of that voyage, the cargo which the ship owner has contracted to carry, and the relevant standards for the carrying of cargo at the applicable time. The standard required is not an accident-free ship, nor an obligation to provide a ship or gear which might withstand all conceivable hazards (President of India v West Coast Steamship Co, 1963). A latent defect will, on the other hand, render a vessel unseaworthy, if causative of the unseaworthiness of the vessel, unless within the terms of a clearly worded exceptional clause (Charles Brown & Co Ltd v Nitrate Producers' Steamship Co Ltd, 1937). In some circumstances, it may be possible for the ship owner to contract out of this absolute obligation, such as by including the wording '… unseaworthiness or unfitness of the vessel at commencement of or before or at any time during the voyage … always being accepted'. If, however, the language of such a clause is ambiguous, the ship owner cannot rely on it. Indeed, the courts have held that, to exclude seaworthiness, 'the words used must be expressive, pertinent, and apposite' (Onego Shipping & Chartering BV v JSC Arcadia Shipping, 2010). However, these rules are not clearly and strictly figured out the exact obligations of being fit at the time of the presence of a pilot. The matter is that whereas being absolute, the rules can be breached by a simple clause in charter party and after the occurrence of any accident; whatever courts decide would not be beneficial to the pilots.

One of the most important parts of a ship voyage is when she is under pilotage and obviously being seaworthy is not considered as a must.

Although the standards of seaworthiness may rise with more sophisticated knowledge, for example in shipbuilding, navigation, and equipment, perfection is not required:

You do not test it by absolute perfection or by absolute guarantee of successful carriage. It must be looked at realistically, and the most common test is: Would a prudent ship owner, if he had known of the defect, has the ship sail to sea in that condition (MDC Ltd v NV Zeevaart Maatschappij Beursstraat, 1962)

One of the issues which arises in charter parties is the interface between any expressive absolute obligation of seaworthiness and a standard of due diligence. This becomes especially pertinent where the charter party is also subject to The Hague (or Hague-Visby) Rules because of a paramount clause (Eridania SpA v Rudolf A Oetker, 2000).

8. Proof of Unseaworthiness. Is it Possible for Pilots?

As discussed above, the ship owner is obliged to render his/her ship seaworthy to begin the voyage. Beginning of the voyage clearly means pilotage operation in most of the times of a voyage, however, figured out that by a simple clause the ship owner would be exempted from rendering a seaworthy ship. The common law rule is that the burden of proving unseaworthiness falls on the claimant.

In certain instances, however, there may be facts which might give rise to an inference of unseaworthiness and, where this occurs, this will shift the burden of proving that the vessel was seaworthy to the ship owner.

Thus, steering gear which broke down after three days of fair weather led to the presumption that the vessel was defective when the voyage commenced (London Arbitration, 1993). Such failures are occurring more and more every day. The issue which is important and really needs to be solved is that there still is not any clear or absolute regulation that requires an owner to make sure that his /her ship is seaworthy. All pilots after entering ship's bridge exchange necessary information with master and normally rely on his statements. Obviously if during the operation any failure occurs due to

unseaworthiness of ship then pilot would not informed. Any factor causing such failure might include proof of the age of a defect, such as corrosion, that is not responsibility of pilot, especially when he is not permitted to check the clauses of charter party after embarkation (The Assunzione, 1956).

9. Remedying Unseaworthiness after Starting the Voyage, what do the Regulations Say?

After years of investigation, it is comprehended that the vessel may start its voyage in an unseaworthy condition; either because the crew were not aware of the cause of the unseaworthiness or because it is the practice of a particular trade to sail in such a condition, which would be remedied at a later stage, with the knowledge of the carrier. Would the carrier, in these cases, be in breach of his obligation to provide a seaworthy vessel? To answer this question, it is necessary to differentiate between two scenarios.

The first is if the unseaworthiness could be cured during the voyage without delay and without causing any danger to the vessel, her cargo, crew or property. The carrier will not be in breach of his duty to provide a seaworthy vessel. In this case, if the crew of the vessel fails to take the appropriate measures to make the vessel seaworthy then this could be classified as negligence of the crew, but not breaching of the obligation of seaworthiness (The Friso, 1980).

The other scenario is that if the voyage starts in an unseaworthy condition, e.g., a defect in the boilers or engine-room. If the carrier repairs the vessel after that, he will still be in breach of his duty because on the initial commencement of the voyage the vessel was unseaworthy, even if the repairs took place before the loss (Moore and Another v. Lunn and Others, 1923).

Both remedies would be beneficial in courts or in white and black, but no one afford indemnifying the port damaged reputation after an accident. Furthermore, the career of that pilot who was not informed about any defect of that ship may get into danger. Had he known, he would not have taken responsibility of piloting her, but referring to which rule one, he could claim about his duty firstly to make sure about the seaworthiness of that ship then to commence the operation after he steps up on the bridge?

10. ISM Code and Seaworthiness

For many years, owners have often relied upon simply having a Safety Management System (SMS) in place to demonstrate their due diligence in ship management and providing a seaworthy vessel. However, in the recent case of the CMA CGM Libra, the owners were found to have failed to exercise due diligence at the commencement of the voyage (The CMA CGM LIBRA, 2019). The ISM Code sets the minimum standards required to eliminate human error; it can therefore be considered as a framework to set high standards of seaworthiness. In other words, we can say that a prudent ship owner would follow the ISM Code to provide a seaworthy vessel. Consequently, the ISM Code can be considered a framework for a good practice to provide a seaworthy vessel (The Quebec Marine Insurance Company v. The Commercial Bank of Canada, 1869-71). Moreover, the ISM Code did not introduce revolutionary ideas; to the contrary, the Code emphasized the existing good practice carried out by prudent ship owners. Some scholars[10] suggest that the effect of the ISM Code is more likely to appear in the case of burden of proof rather than in improving the standard of due diligence. This might be right because anything that happens on board or any non-conformity with the ISM Code should be reported and documented along with the corrective action taken. Therefore, it would be easier for both parties to prove their case when the ship owner/carrier is asked to disclose the relevant documents. However, this would be an incentive for the ship owner/carrier to exercise due diligence to make his or her vessel seaworthy in order to document this and reveal it as proof of his diligence.

11. ISPS Code and Seaworthiness

In broad terms the ISPS Code affects various aspects of carriage of goods by sea, including insurance and limitation of liability. Regarding to the carriage of goods by sea it affects lay time, vessel readiness to load or unload, demurrage, cancellation of contract of carriage and it also affect vessel seaworthiness. However, regarding to seaworthiness, the ISPS Code (as opposed to the ISM Code) might not have much, if any, effect on the physical

[10] Mentioned in Phillip Anderson, p. 119.

or human aspects of seaworthiness of the vessel, as it does not deal with the maintenance of the vessel or its machinery, crew training and competence. It does deal with training some members of the crew to carry out some security duties, regarding the navigational requirement of the vessel and dealing with emergencies that might affect its seaworthiness, i.e., firefighting or engine problems, but it does not deal with updating a vessel's documents, i.e., charts, manuals… etc. The requirements of the ISPS code might influence a vessel's seaworthiness. The reason lies behind the issue says that the Code requires the vessel to comply with its provisions to obtain certain documents and certificates. Further, the code requires a vessel to keep certain records updated, but is it the pilot, who is permitted to check all the related documents?

12. MLC and Seaworthiness

The convention introduces a series of new requirements which are different in both form and character from the standards having been recognized before. Although some of these requirements are not expressly set out directly from the perspective of safety, but they constitute an important supplement to the maritime regulatory regime. The safety of the ship, cargo and environment is inseparable from the employment and labor conditions on board. A ship with a high level of good employment conditions tends to maintain a high standard of safety operation. It must be noted, however, that no judicial view has yet been given on the potential impact of MLC 2006 on the standard of seaworthiness. Nevertheless, there is a clear implication that the Convention is significantly relevant to many inquiries into the matters of seaworthiness. For example, preventing seafarer fatigue is an important subject "linked to ensuring ship safety and avoiding the risk of maritime incidents" (ISPS Code Section 10).

13. Results and Discussion

The seaworthiness of merchant ships plays a critical role in ensuring the safety of life and property and Protection of marine environment. It deals with the fitness and readiness of a ship and its fundamental ability to sail safely toward its destination. The standards of seaworthiness extend to all

aspects of a ship literally, including the human element, certified equipment, cargo worthiness. From what has been shown throughout the study, the current law was sufficient when it was first introduced, although in some situations it was not fair, i.e., the time of exercising the duty and burden of proof, and it may have sufficed until the new millennium. But the Law on the Carriage of Goods by Sea is like any other set of Rules or any other law, being a result of the needs of a certain group of people or industry, which means it should progress to keep up with these needs and the development of the society. The law on the Carriage of Goods by Sea needs to improve, to address the points which have been brought out by this study, the Law on the issue of seaworthiness needs to evolve to meet the recent development in the Marine Industry. Consequently, certain changes need to be introduced in order to meet the interests of the parties of the contract of carriage, i.e., carrier/ship-owner and shipper/charterer, furthermore, all the other related parties such as port authority and pilots who are directly engaged in ship voyage. Finally, the changes should touch on the following areas, Time to Exercise the Duty, Burden and Order of Proof, the need for detailed or general article on Seaworthiness, then importance of the ISM and ISPS Codes measures to ensure strict compliance with the Codes' requirements.

14. Conclusion

As a result, the period to exercise the duty should be extended to cover the whole period of voyage to satisfy and comply with the new development in the marine industry. Some may say that this change will affect the stability of the industry, considering that the existing law has been in existence for centuries. The change should, in fact, not cause problems because some Time Charters already apply a similar duty, where the carrier is obliged to ensure the seaworthiness of the vessel during the whole period of hire. Consequently, it is necessary to change the burden and order of proof to one which is fairer and faster. As a result, it is suggested that the carrier should carry the burden of proving either that the vessel was seaworthy or that the cause of loss or damage is not related to the unseaworthiness of the vessel, and this should be done after the shipper/cargo-owner/charterer prove their loss or damage and before the carrier attempts to use the protections of the

contract or the law. Finally, the IMO should review both the ISM and ISPS Codes, but especially the ISM Code.

It is one of the most complicated concepts in the maritime regulatory regime, and it takes many forms. For instance, Article 94(1) of UNCLOS (1982) requires that flag states are under a categorical duty to exercise jurisdiction and control in relation to 'administrative, technical, and social matters' over ships that are permitted to fly its flag. Seaworthiness is a crucial element concerning this duty, and this is further set out in the remainder of the article, particularly in Article 94 (3) and (4).

In marine insurance law, seaworthiness is an implied warranty of the ship owner, the breach of which results in the loss of insurance coverage, even though there is no causal relationship between the breach and the loss.

A ship might be seaworthy as between the insurer and the ship owner, though unseaworthy as between the ship owner and the shipper of a particular cargo, even more between her owner and the port authority of any port where she sailed to. This was made clear in The Eurasian Dream (2002), where it was held that seaworthiness is relative to 'the nature of the ship, to the particular voyage, or even to the particular stage of the voyage on which the ship is engaged'.

Finally, due to rapid change of technology that has been used in shipping industry, there is a need to overlook on concept of seaworthiness and its all-related matters carefully in order to find the gaps which by considering them, it would be possible to set rules that prevent any future conflict on ships safety while making way through the fairways of seaports, that should include any new regulation or system which figures out the degree of responsibility of pilots to determine if the ship they are engaged in her piloting is seaworthy or not.

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