

Shipmaster in the Red Sea

The authority of the Shipmaster
in dangerous areas

CESMA

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CONTENT

- **Situation Red Sea**

- **Threat**

- Piracy/Armed robbery
- Terrorism
- Hijack/Hostage
- Act of war

- **Operations**

- **Shipmaster**

- Recommendations
- Veto right

Situation Red Sea

Threat

- **Piracy/ armed robbery**
- **Terrorism**
- **Hostage**
- **Act of War**

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| | | |
|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| | <ul style="list-style-type: none">• TTW<ul style="list-style-type: none">• Coastal State (priority)• Flag State• High Seas<ul style="list-style-type: none">• Flag State (exception piracy: every state) | |
| <p>Applicable Law/ Jurisdiction</p> | | |
| | | |

Piracy & Armed Robbery

Armed robbery:

- Stealing property by violence that causes fear
- Inside territorial waters

Piracy

- Armed robbery on the high seas
- private ends (money)
- 2 ships

Example: pirates of Somali

Maritime terrorisme

Systematic use or threat to use acts of violence against international shipping and maritime services by an individual or group.

Example: Houthi rebels in Yemen with drones and missiles

Hijacking/ Hostage taking

Seizing of ship and crew coupled with a threat to kill or injure the crew to compel a third person or governmental organization to take some action.

Example

Filipino crew 'held hostage' on the '*Galaxi Leader*' seized by Houthis in Red Sea

Act of War

An act of aggression by a state against another state with which it is normally at peace (Geneva Conventions 1949)

Terminology

- International Humanitarian Law
- Law of War
- Law of Armed Conflict
- International Law applicable to Armed Conflicts at Sea
- Law of Naval Warfare

These laws limit the effects of an armed conflict

Penal law or Law of War ?

Penal/Criminal Law

- Piracy & Armed robbery
- Maritime terrorism
- Hijacking/Hostage taking

Law of War

- Act of War

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International Operations

- Operation Prosperity Guardian
- Operation Poseidon Archer
- EUNAVFOR Aspides

Operation Prosperity Guardian

- US led coalition of 20 states
- Defense against Houthi attacks on shipping
- Freedom of navigation
- Start December 18, 2023

Operation Poseidon Archer

- US/UK led military operation
- Offensive attacking Houthi rebels by airstrikes

EUNAVFOR Aspides

- EU led military operation
- Protection against multi-domain attacks at sea
- Defensive/peacekeeping

Joint Maritime Information Centre (JMIC)

- Bureau operating in close cooperation with the Combined Maritime Forces(CMF)

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Recommendations for the Shipmaster

- Voyage planning
- Routing
- Military assistance
- Reporting

Shipmaster: Voyage planning

- Appraising all relevant information; yes or no Suez Canal
- Planning the intended voyage; analyses of threat, CSO and active research duty
- Executing the plan taking account of prevailing conditions: BPM 5, websites UKTMO.org, EUNAVFOR.EU, AIS policy
- Monitoring the vessel's progress against the plan continuously;
- Be aware of nearest military assistance.

Shipmaster: Routing

- Military Security Transit Corridor (MSTC)
- Vessel Traffic Separation?

Shipmaster: Military help

- Modern warships to protect the Merchant Navy
- Waiting zones at 18° North; 048° East
- Do not answer to 'Yemini Navy'
- Call warships on Channel 16 for PIM/assistance
- Report incidents to Royal Navy, RNLNavy or US Navy etc.

Shipmaster: Reporting

**Advice to report incidents via
internet/telephone to:**

- Maritime Security Centre-Horn of Africa (MSCHOA)
- UK Marine Trade Operations (UKTMO)
- U.S. Naval Forces Central Command (NAVCENT)
- National authorities

Joint Maritime Information Centre

- Risk assessment
- Review security measures/incorporate appropriate vessel hardening measures into security plans
- No AIS, if this might compromise safety and security
- If AIS is turned off, alter course and speed to minimize tracking
- Do not loiter
- Ignore contact VHF by “Yemeni Navy”
- Describe incident in movement reporting to UKMTO and NAVCENT NCAGS.
- Share instances of suspicious activity with UKMTO

- If any unexploded ordnance and debris on deck:
 - maintain a safe distance and cordon off
 - do not touch any debris
 - radio emissions may trigger the device
 - request assistance from UKMTO
 - ask for Explosive Ordnance Disposal Team (EOD)

- UAV sightings/communication challenges

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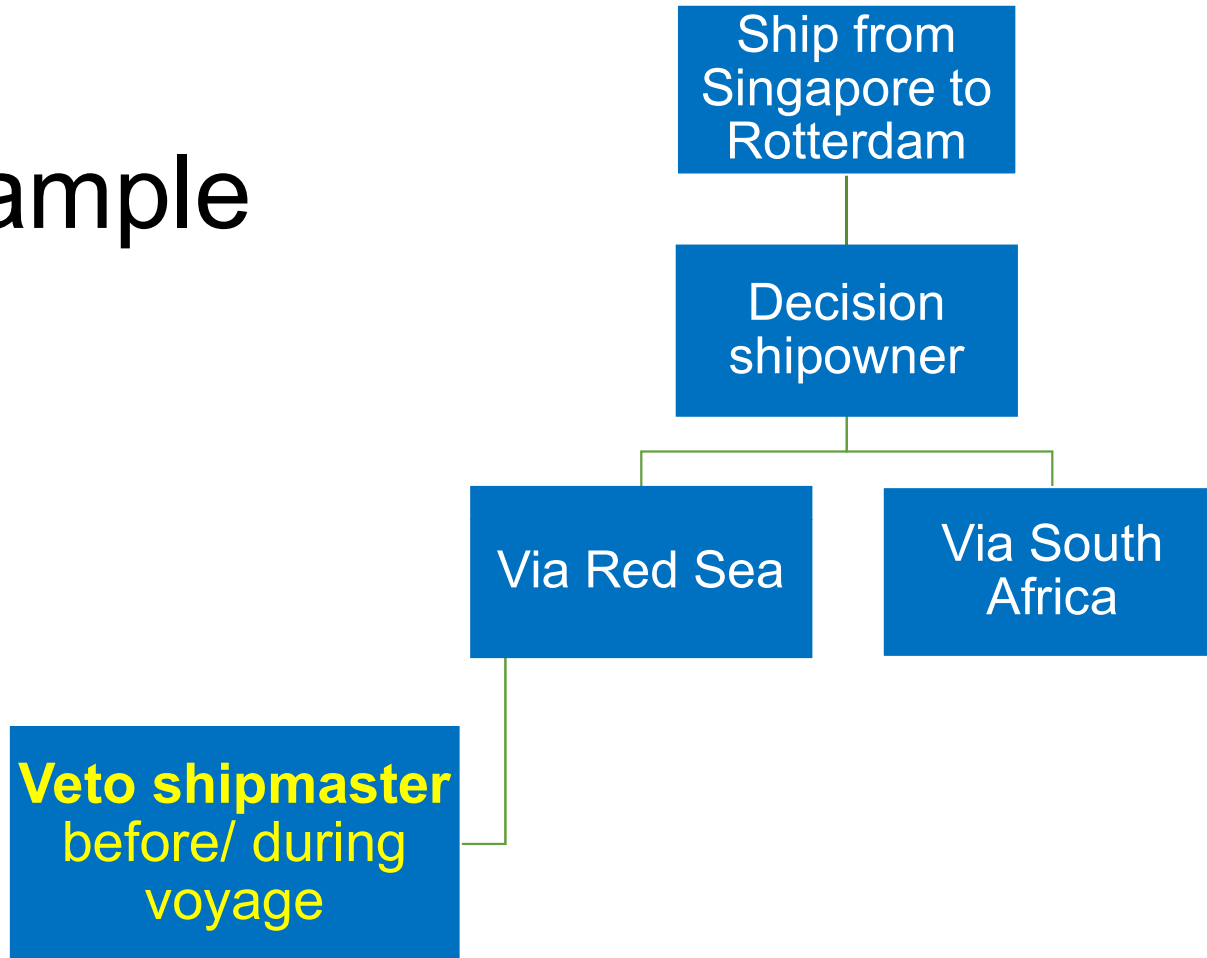
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Example



Veto

Official right to refuse to do something

Example

The Shipmaster has the right to veto the decision of his shipsmanager to sail through the dangerous areas at the Red Sea.

Shipmaster: Right of veto

Shipmaster

- has legal rights and duties to fulfil his tasks properly (laws & regulations, but also from the contracts between the shipowner, charterer etc.)
- Ship ownership involves all legal property rights over the ship, excluding the legal rights of the Shipmaster.

Who has the final authority?

- The overriding authority and discretion of the Shipmaster will be discussed.
- The Shipmaster should be aware that not all countries have the same

Command & control

Command

- Shipmaster gives orders to all persons on board.
- Shipmaster has authority over all persons, he commands his ship and persons on board.
- Command is used during navigation or maneuvering the ship, but also during emergency situations, such as firefighting or abandoning the ship.

Control

- Controlling: governing, managing or administrating the ship.
- Executing and correcting routine processes, such as Standard Operation Procedures (SOP), checking all mandatory certificates or monitoring loading or unloading operations.

Master's discretion

(Annex to SOLAS, Chapter V, Regulation 34-1)

The owner, the charterer, the company operating the ship, or any other person shall not prevent or restrict the Master of the ship from taking or executing any decision which, in the Master's professional judgement, is necessary for safety of life at sea and protection of the marine environment.

Discretion: ability or right to decide something

Master's discretion for ship safety and security (Annex to SOLAS/Chapter XI-2 Regulation 8)

The Master shall not be constrained by the Company, the charterer or any other person from taking or executing any decision which, in the professional judgement of the Master, is necessary to maintain the safety and security of the ship. This includes denial of access to persons (except those identified as duly authorized by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units.

If, in the professional judgement of the Master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the Master shall give effect to those requirements necessary to maintain the safety of the ship. In such cases, the Master may implement temporary security measures and shall forthwith inform the Administration and, if appropriate, the Contracting Government in whose port the ship is operating or intends to enter. Any such temporary security measures under this regulation shall, to the highest possible degree, be commensurate with the prevailing security level. When such cases are identified, the Administration shall ensure that such conflicts are resolved, and that the possibility of recurrence is minimized.

Master's overriding authority (ISM-Code, Part A, Sec. 5.2)

- The Company should ensure that the SMS operating on board the ship contains a clear statement emphasizing the Master's authority. The Company should establish in the SMS that the master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the Company's assistance as may be necessary.
- **Overriding authority:** cancelling decisions of other persons or instructions. Neither the shipsmanager, nor the owner nor the charterer have any right to interfere in the Shipmaster's decision-making.
- **Overriding authority** is not a justification for the Shipmaster to break the law.
- Afterwards the Shipmaster might be responsible and answerable to the shipowner/court.

Shipmaster: Overriding Authority

YES:
Safety
Environment

NO:
Security

Public Law

- International
- National
- ISM/SMS

**Civil Law
Ownership**

**Authority
Shipmaster**

- Safety
- Security
- Environment

**Friction
?**

**Authority
Shipsmanager**

- Property
- Commercial
- Financial

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