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Bulletin 672 - 01/10 - Illegal Pornographic Material - South Africa

In May 2009, five Filipino seafarers from two separate vessels were arrested and detained in Liverpool, England, following the discovery of pornographic material on personal laptops and mobile phones by HM Custom officers (see Bulletin 640). In December 2008, HM Custom officers had also caught a Filipino seafarer with child pornographic material and it was reported that he was the second seafarer to have been caught that month being in possession of such illegal material.

It has also been reported that in New Zealand, 2 seafarers were convicted in the North Shore District Court having been prosecuted by the Customs Service for the importation of objectionable material involving sexual exploitation of children.

We can now report that in South Africa, a seafarer has also been arrested and successfully prosecuted for being in possession of illegal material involving the sexual exploitation of children.



In terms of South African law, it is quite legal for the South Africa Police Services to carry out a search of any vessel within South Africa's territorial waters. In our experience, such searches are on the increase and are now taking place regularly on vessels shortly after they berth in a South African port.

Masters should be advised, that in South Africa between 20-30 police officers will attend on board the vessel, and the master will be presented with a letter by the senior police officer. This letter sets out the rights and under which statutory legislation the South African Police Services can rely on to carry out the search. The letter also states that the master or any seafarer on board a vessel who interferes with a police officer in the execution of his duties will be arrested and prosecuted for such interference.

If the police feel that the vessel may have sailed from a port or country that is associated with illegal substances then they may also use dogs to assist them in the carrying out and executing the search.

In this regard, we have already reported on one major case of a vessel being detained by the South African Custom Services after an illegal substance, namely 250kg of cocaine, was found on board the vessel. The owners of the vessel concerned were charged with breaching various statutory offences. One of the issues arising out of the above case, which the owners faced, was that the custom services argued that the owners had breached the provisions of the ISPS code, in that they had failed to adequately check what was being brought on board their vessel by the crew and other third parties.

Recently, during the execution of one of the above searches, the South African Police Services, found illegal material involving the sexual exploitation of children. The seafarer concerned was immediately arrested and charged with various criminal offences. The vessel, thankfully, sailed

without being detained or the owners fined. The seafarer was clearly acting outside the scope of his employment and had to cover his own legal expenses but the cost to the owners and the P&I Club could have been far greater had the seafarer been an officer and the need to call for a replacement in terms of the vessels safe manning certificate and watch keeping requirements.

The issue that should also be highlighted is whether the vessel could have been detained and the owner fined along with the seafarer for having such illegal material on board their vessel. It is quite plausible that the South African Custom Services and/or the South African Police Services could take the arguments raised in the drug ship case and argue that the owner of the vessel failed to enforce the provisions of the ISPS code in that they allowed illegal material to be carried onto and on board their vessel. The owners would be expected to demonstrate what efforts they had implemented to prevent such events occurring and in this regard, such steps could be interpreted as carrying out searches of cabins, checking mobile phones and lap tops and also checking at the gangway to see what is being carried onto the vessel by crew and visitors, for example, surveyors, stevedores, and agents.

We will of course keep monitoring such cases but in the meantime, owners should be advised to continue with their efforts to remind seafarers that they should not be in possession of illegal material whether in publication form or on their mobile phones and laptops and that regular reports are maintained of such searches and checks at the gangway, in cabins or other spaces.

These written reports would then be available for inspection by the authorities and would thus serve as evidence and act as supporting demonstration of the shipowners efforts in terms of ISPS at curbing such events.

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