

Who is in charge of armed guards on board?

by John AC Cartner

As the master is responsible for the acts of his or her officers, crew and any personnel on board, does this mean he or she would give the order to fire and to cease fire in the event of piracy?

THE question arises in blog and press: “Who controls armed guards on board?”

On the one hand, the contracted security business culture requires taking control of matters as the team leader sees it by brandishing guns, making loud noises, dancing choreographed skits and shouting in sing-song jargon.

The business occasionally conflates internal discipline with control by lawful authority.

On the other hand, vessels, masters and armed guards are creatures of law. A vessel under a flag is an extra-territorial chattel of the flag state and by law it is administered by the master who is the warrantee of the flag state.

This is a sovereign matter of delegation of authority and responsibility to the master — not to armed guards.

The status of armed guards may be of three kinds. Armed guards may be put on board: (1) as seafarers on the crew list as any other seafarers; (2) as riding crew; or (3) as the expression of the powers of a sovereign as boarding military or civil persons.

The first two are regulated in law similarly. The third is governed otherwise and will not be discussed here.

The master may hire whomever he pleases to prosecute the voyage, subject to the rules of the flag state and the company's directives. There is no difference in law between a person with gun-firing skills and an able seafarer or a boatswain.

Neither has any special privilege. Each has skills the master deems necessary to assist in performing his or her duty to prosecute the voyage safely while taking care of other duties. Each then is on board to assist the master.

The master may delegate some of this authority to those competent in law to accept the delegation. However, the master may only delegate to certificated officers.

Therefore, in law, the chief engineer, for example, is certificated as being legally competent to accept the delegation and to manage all other engineers on board for the master. The holding of a certificate is prima facie evidence of the competence within the certificate's constraints in most flag states.

The master commands by law. Officers and ratings assist the master and the delegated officers. What does this make an armed guard? He has no certificate. Therefore he is incompetent in law to accept any delegation of the master's duties or authorities.

An armed guard is as any other uncertificated person on board. He is always, without exception, under the dominion, control, authority and responsibility of the master.

The company may hire riding crew for technical work. Riding crew are not paying passengers but are contracted workers. The riding crew as situated as are passengers and under the command, dominion and control of the master by law.

They differ from no other person on board who is incompetent to accept delegated authority. Even if one or all of the riding crew is certificated, he or she is not of the officers of the vessel and remains incompetent for delegation.

Thus, in the case of an armed guard with a certificate, he or she is as riding crew under the dominion, control and command of the master as any other incompetent uncertificated person.

How does this work with piracy? For example, who gives the order to fire and to cease fire? The master is responsible for the acts of his or her officers and crew unless an officer or crew commits an illegal act.

The master may not delegate authority to an uncertificated armed guard. Hence, the master has the responsibility of firing and must give the order. The order may be in the future such as: "When you see a person in a pirate suit who fires at us you may fire at him at will."

Hence, the local 'rules of engagement' are the master's to provide or to approve if given by his company — but not the armed guard's company. The master is not an agent of the guard company.

Does the riding crew leader or rating in charge of the armed guards have any authority aboard? The short but accurate answer is "No". He or she remains under the dominion, control and command of the master from the time of boarding until departure, as do any assistants.

The company may give lawful orders to the master about armed guards. The master may agree if these orders do not violate his or her principal duties. The master is under a duty at law to exercise his professional judgment. To the extent there is a conflict, on-the-scene professional expertise is the deciding factor.

What happens if armed guards disobey and detour and frolic? They are on their own. The master may arrest them or suppress them for mutiny if warranted. The master may punish them within reason or restrain them.

The armed guards may be liable civilly or criminally for their acts if they step outside the dominion, control and authority of the master. Armed guards get no special treatment on board or in law.

Bottom line, armed guards have no authority aboard. They are as incompetent in law to accept the master's delegation as an ordinary seafarer. The master is in full dominion, authority and control of armed guards at all times as he or she has of any other person on board.

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