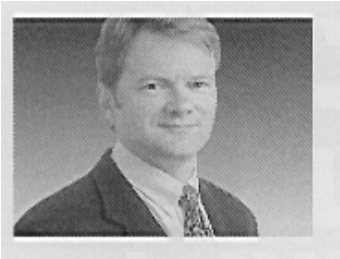

LEGAL IMPACT OF MARITIME TERRORIST THREAT

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In this article I deal with a subject which I sincerely hope will remain largely irrelevant to most readers, being terrorism in a maritime context. However, it is apparent from recent events and changes to the law that the threat of terrorism will impact on those active in the maritime industry, particularly in the international maritime sector.

The nature of maritime activity lends itself to clandestine terrorist activities and worldwide authorities are increasing security measures to try and anticipate the terrorists' next move. Possibilities include the use of vessels to move weapons and supplies, but also attacks on vital maritime infrastructure such as ports. It is sobering to note that NATO is tracking up to 20 ships at any time in the Mediterranean, on the basis they may possibly be involved in terrorist activities. It is even more sobering to note that one of those tracked ships was recently stopped and found to contain some 680 tonnes of explosive materials.

Those involved in the maritime freight forwarding industry have seen the introduction through US Customs Regulations of the 24-hour rule relating to cargo manifests. There have been numerous other legal developments relating to such things as the security of containers destined for the US and a recent initiative approved by the International Labour Organisation to fingerprint over 1 million seafarers.

In the near future (before July next year) in New Zealand we will see the introduction of a Maritime Security Act. This Act is intended to fulfil New Zealand's obligations to implement security measures recently adopted by the International Maritime Organisation (IMO). For those interested in such detail, an IMO Conference in December 2002 adopted amendments to the International Convention for Safety of Life at Sea (SOLAS), which incorporated the International Ship and Port Facility Security (ISPS) Code. The ISPS Code is divided into two parts, with signatory nations being required to implement Part A of the Code, while Part B is for guidance only. The ISPS is directed particularly at ships engaged in international voyages and port facilities servicing such vessels.

While we need to wait for development of the Maritime Security Bill before we will know in detail what will be implemented, it is clear that there will be numerous new security arrangements for vessels in ports in New Zealand which will impact on mariners. No doubt there will be a slew of new acronyms, one of which will be RSOs (Recognised Security Organisations), which will undertake certain security related activities. There will be an introduction of security levels (1-3) reminiscent of the colour-coded security alerts issued by the US Authorities. Additional security measures will include installation of automatic identification systems on relevant vessels. These vessels will also have to carry continuous synopsis records showing their movements. The ISPS will ensure on-going risk management analysis of vessels and ports, which will lead to development of security plans for particular vessels and port facilities. There can be little doubt that all these security measures will add extra layers of bureaucracy for all those involved in the international maritime industry.

It was not so long ago that many of us, particularly in places such as New Zealand, thought that international conflict and war was a thing of the past and only of interest or concern to those who had an interest in history. To a certain extent we have had to change that mindset and even in the legal community academics are starting to review legal issues associated with war that would not have been considered for some time. One example is a recent article in the Journal

of Contract Law[1]. This article notes that many standard Charter Parties have a clause allowing a party to cancel the charter if a country becomes involved in a war. The legal concept of a war is a flexible one and the "informal" conflict that can break out under the guise of terrorism adds further difficulties to this interpretation. For example, the article sites a US decision which decided that the Korean conflict in the 50s was not a war. Apparently the rationale behind this was that it could not have been a war, because it was being fought by the UN and the UN does not make war; the purpose of the conflict was to prevent war or the disturbance of peace. Only a lawyer could love this logic. It does raise the issue though that even the contribution of military engineers involved in civilian reconstruction projects in areas such as Afghanistan and Iraq by New Zealand authorities could expose New Zealand companies to having their Charter Parties cancelled under the war clauses.

Incidentally, in the article it was also noted that during the period 1700 to 1900 there were nearly 150 wars, but only 20 formal declarations of war; apparently countries have always been reluctant to admit in writing responsibility for starting a war.

Apparently the Germans have a word *"weltschmerz"* which describes *"a feeling of inevitable sadness and depression brought about by the state of the world and its evils"*. I wonder if they also have a term dealing with the inevitable sadness and depression brought about by dealing with all the additional forms, bureaucracy and inconvenience caused by the additional security measures, combined with the pain of paying the post-September 11th security premiums.

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1. Written by Anton Trichardt and Nicholas Watts, entitled *War Clauses in Charter Parties "There is more to war than you think"*