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## **Alice in Wonderland and weaponizing ships**

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President Harry S. Truman is credited with saying: "If you want a new idea, read an old book." The 'new idea' discussed in this article is the debate over whether lethal weapons should be carried on merchant vessels for the purpose of deterring or defending against piratical attacks. The 'old book' that I will utilize to examine this debate is *Alice's Adventures in Wonderland*, written in 1865 by Charles Lutwidge Dodgson under the pen name Louis Carroll.

### **The King**

Begin at the beginning and go on till you come to the end: then stop.

Piracy is a problem worldwide, and has reached near-crisis proportions in waters of the Indian Ocean near Somalia. After initially ignoring the Somali situation, numerous naval powers finally weighed in, dispatching warships and patrol aircraft. The governments established protocols for checking into and out of high risk water, preferred transit corridors, and possible convoys. Governments also worked with the maritime community to develop best management practices to be utilized by owners, operators, and masters to reduce the risk of a successful piratical attack. Most, but not all, commercial vessels operating in waters near Somalia are following the recommended protocols and best management practices. Piratical attacks are still being launched, although the success rate is down.

### **The Duchess**

Tut, tut, child! Everything's got a moral, if only you can find it.

A few ship owners and the US Government are advocating that merchant vessels transiting high risk waters be weaponized. The most vocal of the ship owners in favor of placing lethal firearms on merchant vessels has been Mr. Phillip Shapiro, chief executive of Liberty Maritime, whose ship *Liberty Sun* was unsuccessfully attacked by pirates off the coast of Somalia on April 14, 2009. A number of US Government officials have contended for some time that merchant ships should defend themselves against pirates. The *Maersk Alabama* recently defended itself against a second piratical attack with measures that included, but were not limited to, armed contract security guards. The US Coast Guard is the most specific, issuing mandates to owners and operators of US-flag ships that might operate in high risk waters requiring development of detailed security plans. The guidance does not absolutely require that

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the ships be weaponized, but makes clear that the likelihood of approval of a security plan will be improved if either the crew is provided with lethal weapons or armed security guards are carried on board. Meanwhile, the House of Representatives approved a bill that would provide limited immunity for a person who uses force at sea to defend a vessel against an act of piracy, provided that the force used was not substantially in excess of what was reasonable. The current wording of the bill does not engender comfort.

### **The Queen**

Sentence first -- verdict afterwards.

The International Maritime Organization (IMO) and numerous ship owner associations worldwide have gone on record opposing the weaponizing of merchant ships. They point out that merchant mariners are not trained in the use of lethal weapons and few have the disposition required to utilize such weapons effectively. There is concern that placing weapons on merchant ships will initiate an arms race with the pirates. Further, if a suspected pirate or an innocent fisherman were to be killed by a crew member or contract security guard on a merchant ship, the crew member or security guard might be subject to arrest and prosecution by a coastal state. There have been two such deaths to date. Both were by naval personnel and there was no prosecution (although reparations were paid in one case by the US Government). Other firearms accidents occur on naval vessels. On October 28, 2009, a sailor was cleaning an M240 machine gun on the destroyer *USS Ramage* while the ship was making a port call in Gdynia, Poland. Three rounds were accidentally discharged into the city. Fortunately, no one was injured. If such incidents can occur with trained military personnel, the likelihood of a similar event is higher with civilian security guards and even higher with merchant mariners.

### **Alice**

I don't believe there's an atom of meaning in it.

To assist owners, operators, and mariners in understanding the implications of the use of lethal weapons in defense of the ship, the US Coast Guard issued a detailed advisory explaining such concepts as self-defense, imminent danger, great bodily harm, use of deadly force, and retreat. The advisory was clearly written by a lawyer and can be understood by other lawyers. It is unclear how meaningful it will be to a merchant mariner when under piratical attack.

### **The Mock Turtle**

Well, I never heard it before, but it sounds uncommon nonsense.

While the Coast Guard may want all US ships operating in high risk waters to be weaponized (preferably by contract security guards), US law makes that quite difficult. Lethal weapons can be loaded on a US ship only in compliance with the International Traffic in Arms Regulations, promulgated by the US Department of State. It requires, among other things, that the ship obtain in advance written approval from each port state at which the ship intends to call for carriage of the weapons. While the official requirements remain unchanged, there are indications that the Department of State may only require the applicant to certify compliance

with the requirements of each port state. Full compliance with other standards, such as the Gun Control Act, is still required.

**The Mock Turtle**

What is the use of repeating all that stuff, if you don't explain it as you go on? It's by far the most confusing thing I ever heard!

The State Department sent demarches to numerous foreign nations seeking information on their requirements for obtaining such permission. Few foreign nations have replied to date. Of those that have replied, three have stated that no such weaponry is allowed on merchant ships calling in their ports. Several nations stated that such requests would be handled on a case-by-case basis. Others indicated that there would be unspecified Customs clearance and related requirements related to such weapons entries. The ability of a ship owner/operator to obtain the necessary permissions and approvals to legally have weapons on board a ship making a port call in all of the foreign nations that the ship is likely to visit remains problematical. Some ship owner/operators have to decline carriage of certain cargoes due to the inability to garner port state approvals in advance for the weapons on board.

**Alice**

Curiouser and curiouser!

Few US ships have successfully completed all the prerequisites required in order to obtain approval from the State Department to legally carry lethal weapons on a foreign voyage since promulgation of this guidance. So far as I can determine, fewer still have garnered in advance all the permits and licenses required by all of the port states in which the ship is likely to make a port call. We are thus faced with a situation of the US Government encouraging owners, operators, and masters to undertake a course of action that the US Government has made highly complex and foreign governments have rendered even more difficult.

**Alice**

It would be so nice if something made sense for a change.