

2015 Report of Activities

Director's Report

The Institute of International Shipping and Trade Law (IISTL) has continued to advance on all fronts in 2015. One of the highlights was our eleventh annual colloquium held in September 2015. This event, on the theme of "international sales and the carriage of goods", attracted the usual top-notch speakers from legal practice and academia, and a record number of delegates to listen to them. The guest of honour was Commercial Court stalwart The Hon. Mr Justice Males, who enthusiastically dived into the debates and very kindly chaired one of the sessions.

Of course this was not the only event which the Institute was involved in in the course of 2015. Earlier on, in May, we set up a five-day advanced seminar in Athens in co-operation with Athens University Law School and the Scandinavian Institute of Maritime Law in Oslo. This international event attracted over 200 delegates from legal and shipping practice, including a gratifying number of our own Swansea alumni. Its purpose was to discuss and provide updates on recent developments in international maritime law. By common consent it was hailed as a great success, and it now seems set fair to become an annual fixture. Engagement with academics and practitioners from other jurisdictions is a very important exercise for the members of the Institute and the seminar at Athens allowed us to obtain a deeper understanding as to how the Greek shipping sector has been dealing with the global crisis and financial downturn.

Furthermore, as you will read in detail elsewhere in this newsletter, individual members of the IISTL have been invited to teach in numerous universities and speak at prestigious events all over the globe. This is a clear indication that the international community holds the work of the Institute and its members in very high esteem. Likewise, members of the IISTL have published their usual collection of insightful and critical academic outputs in prestigious books and leading journals, hence making an immense contribution to the development of law and practice of various aspects of shipping and trade law.

In the light of this it gives me a great satisfaction as Director to see that the areas that we specialise in are steadily expanding as the membership of the Institute grows and becomes more diverse. There are, for example, plans in 2016 to organise events and gatherings in areas such as air carriage and energy law (oil and gas), and in the longer term to extend our teaching to cover not only marine but general commercial insurance.

Last but not least, I am delighted to report that the Institute has some excellent new blood. Dr Nima Mersadi Tabari, fresh from a PhD from King's College London, joined in May 2015 as a lecturer. Three months later, the Institute was delighted to welcome another lecturer on board, Youri van Logchem, who is in the final stages of completing his PhD at Utrecht. He is an expert in law of the sea; Dr Tabari in oil and gas and investment disputes. Both will certainly make a huge contribution to the Institute and blending young talent with the experienced colleagues that are on the ranks of the IISTL will ensure that a bright future for the Institute is around the corner. We are ready and looking forward to 2016!

Professor B. Soyer

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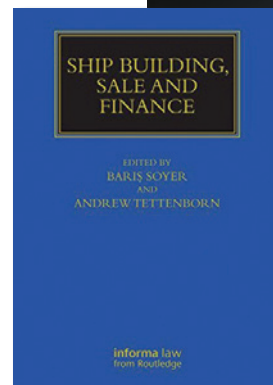
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Extramural Activities

Professor Simon Baughen – In June 2015 Professor Baughen delivered a paper at a conference organised by Norton Rose Fullbright on “Marine pollution in EU waters: Expanding the scope of the Environmental Liability Directive.” In September 2015 he gave a paper jointly on “The Role of UCTA in Forwarding and Logistics” with Dr Theodora Nikaki at a conference organised by the University of Edinburgh on “Current Issues in Freight Forwarding”.

Dr George Leloudas – On 17 April, Dr George Leloudas presented a paper on the complexity of international aviation litigation against multiple tortfeasors at the 8th Annual McGill Conference on International Aviation Liability & Insurance in Montreal, Canada. He also presented a paper on the regulation of planetary defence and near earth-objects at the International Conference on New Challenges in Space Law organised by the Law School of the University of Athens and the Institute of Air and Space Law of McGill University (28 – 29 August).

Associate Professor Theodora Nikaki – On 4 September, Dr Nikaki delivered a joint paper (with Professor Simon Baughen) on UCTA and Logistics. The paper considered the relevance of the Unfair Contracts Terms Act 1977 to contracts involving shipping and forwarding (not involving a consumer). In particular, the paper focused on contracts with UK forwarders on BIFA terms and contracts with and bailments to terminal operators at ports of loading and discharging within UK and examined how the English courts have applied the statutory test of reasonableness to exceptions clauses, limitation clauses, time bar clauses, and anti set-off clauses in such contracts. She also delivered visiting lectures on commercial and comparative law at the Department of Law, University of Cyprus in November and was invited to give a number of lectures to undergraduate and postgraduate law students at Lorraine University in France.

Mr Simon Rainey QC – On 25 March 2015 Simon Rainey QC delivered a paper at the Maritime Law Association of Singapore entitled “Consequential Loss Clauses: Are They Any Use?” which considered the recent case law on these and similar clauses both in England as well as in Singapore and Australia; analysed defective drafting techniques and suggested some rules of good practice in drafting these clauses whether as ad hoc provisions or amendments to industry standard forms. On 27 March Simon Rainey was the speaker at a seminar held by the Singapore Chamber of Maritime Arbitration on Ship Sale and Purchase and the Singapore Ship Sale Form 2012, presenting a talk entitled “‘As Is’... as you were? The Union Power and ‘As Is’ Provisions in Ship Sale and Purchase Contracts” on the decision in this case and its ramifications for other newer standard ship sale forms and in the light of recent case law on the meaning of ‘as is’ in a sale context in England, Singapore and Malaysia. He has also presented numerous lectures to law firms, P&I Clubs and oil majors in London and the Far East during the year.

Professor Barış Soyer – Professor Soyer was invited by the Comité Maritime International (CMI) to speak at their Colloquium held at Istanbul in June 2015 and hosted by the Turkish Maritime Law Association. His paper, entitled “The OPOL Regime and its Shortcomings”, was well received and generated lively debate on its subject: namely, the scandalous lack of any international liability regime to compensate the victims of pollution from offshore and equipment. He also delivered a paper by invitation at the China Maritime Law Association’s 8th International Conference on Maritime Law, held on 13–15 October in the major seaport city of Dalian. Professor Soyer, in a stimulating address, focused on the impact on insurance law and practice of the Insurance Act 2015. The discussion generated by the paper showed unambiguously that

it had hit home. In the course of the year, Professor Soyer delivered guest lectures at various institutions including University of Lorraine, Shanghai Maritime University and Dalian Maritime University.

Professor Andrew Tettenborn – During 2015 Professor Tettenborn was a member of the group under Professor Andrew Burrows QC which concluded its deliberations on the Restatement of English contract law.

In addition he taught a course on Transport Law in June at the University of Vytautas Magnus, Kaunas, Lithuania; delivered papers on shipping and international insolvency in Dalian in October at the 8th International Conference on Maritime Law, and in December by invitation



Professor Tettenborn speaking at China Maritime Law Association’s 8th International Conference on Maritime Law

addressed two major common law world conferences in Australia: namely, “Private Law in the Twenty-first Century” in Brisbane, and “Contracts and Commercial Law” in Sydney. Here he spoke on (respectively) the suspension of contractual rights in the event of non-performance, and the relation between damages and equitable compensation.

In addition he has continued to act as general editor of the Professional Negligence and Liability Reports, and as a member of the Editorial Boards of Lloyd’s Maritime & Commercial Law Quarterly and the Journal of International Maritime Law.

Professor D. Rhidian Thomas delivered a series of lectures on marine insurance law to postgraduate students at Gothenburg University, Sweden, from 9 – 13 February. On 17 March he led a doctoral research seminar on developments in English marine insurance law at the Law School, Bangor University. On 11 – 12 June he gave a speech on the “Reform of English Insurance Law” at the Vth Association Internationale de Droit des Assurances (AIDA), Europe, Conference, held at Copenhagen. On 29 June – 3 July he chaired and spoke at an International research seminar on Maritime and Transport Law, organised by the University of Bologna and held at the Ravenna Campus. On 15 – 16 October he delivered a paper titled “Development of Compulsory Insurance in the Maritime Sphere – EU and International Initiatives” at the International Transport and Insurance Conference (INTRANSLAW 2015), organised by the Faculty of Law, Zagreb University and the Croatian Academy of Legal Sciences. On 26 – 27 November he delivered a paper titled “Constructing Insurance Cover and Related Economic Dimensions” at the Third Annual Young Academics Transport Law Conference, organised by the Department of Law, Elbasan University, Albania. He was also appointed external examiner to doctoral candidates at the Universities of Gothenburg, Bangor and Bristol.

Mr Yuri van Logchem – He was invited to contribute as an external expert to a research project of the British Institute of International and Comparative Law (BIICL) titled ‘Law of the Sea – Rights and Duties of States in the Undelimited Maritime Area’. The project seeks to investigate what the rights and obligations of States are in areas that remain undelimited by way of maritime boundary, with a focus on those areas that, in addition, are not governed by provisional arrangements.



IISTL Leading the Way in Disseminating Research

Ever since its establishment in 2000, the IISTL has been at the forefront of academic research. Since then, as it has grown, it has increasingly attracted world-leading scholars to its ranks, providing them not only a fruitful environment to undertake research but also a forum to disseminate their findings to others in the field.

To this end, the Institute regularly organises academic conferences and events. This year was no exception. The Institute has been involved in the organisation of two significant events which attracted a significant number of participants.

In May, a large contingent from the IISTL (Professors Baughen, Soyer, Tettenborn and Williams and Associate Professor Nikaki), were involved in the organisation and delivery of the first Athens Advanced Maritime Seminar, in collaboration with the Athens University Law School and the Scandinavian Institute of Maritime Law. The event, held at the Evgenios Evgenides Foundation in Palaio Faliro just outside Piraeus, attracted 200 participants. Papers delivered included the incorporation of charterparty clauses in bills of lading, damages for breach of time charters, the impact of the Rotterdam Rules, letters of indemnity, rights to sub-freight, bareboat charters and fraudulent insurance claims. The reception of the IISTL team by the participants was overwhelming, and it was also very pleasing to see several of our own LLM graduates there, all of whom turned out to have obtained themselves impressive positions in numerous shipping and law firms. The success of the event means that it now looks increasingly likely to be an annual fixture.

In September, this time we were at home running our Eleventh Annual Colloquium, devoted to international sale contracts and related issues such as carriage, documentary credits and cargo insurance. The event was, as ever, enthusiastically embraced by the international shipping and trade community, attracting 72 delegates from 11 jurisdictions. In addition to academics, lawyers, arbitrators and P & I interests were well-represented; from the commercial judiciary we were delighted to welcome the Hon. Mr Justice Males (Presiding Judge of the North Eastern Circuit), who enthusiastically participated in the debates and chaired one of the sessions. Apart from academics

from the IISTL (Professors Baughen, Soyer, Tettenborn and



Professor Baughen speaking at Athens (Advance Maritime Seminar)



One of the Panel sessions during the Colloquium: from left to right - Dr Frank Stevens, Professor Michael Sturley, Mr Justice Males, Mr Simon Rainey QC

Williams and Associate Professor Nikaki), there were presentations from Professor Jason Chuah (City Law School), Professor Olivier Cachard (University of Lorraine, Nancy); Professor Michael Sturley (University of Texas, Austin; Dr Miriam Goldby (Centre for Commercial Law Studies, Queen Mary, London); Sara Cockerill QC (Essex Court Chambers); Ruth Hosking (Quadrant Chambers); Simon Rainey QC (Quadrant Chambers and IISTL); Peter MacDonald-Eggers QC (7 King's Bench Walk and IISTL); Damian Honey (Partner, Holman Fenwick Willan LLP); Stuart Shepherd (Partner, Ince & Co LLP); and Dr Frank Stevens (Roosendaal Kezer Advocaten, Antwerp). The Colloquium dinner, most generously sponsored by leading commercial law publisher Informa Law, was held at Sketty Hall and provided a great opportunity to the participants from all around the world, from the USA to China, to socialise and develop their network. Participants expressed great satisfaction with the event and there was consensus to meet again around the same time next year at Swansea for our Twelfth Colloquium, which will be devoted to charterparties.



IP Wales

IP Wales® has continued to support innovation in the course of the year. In this regard, its recent work has focussed on developing a new approach to intellectual assets management for IP intensive companies listed on the London Stock Exchange Alternative Investment Market (AIM). To this end, IP Wales investigated over 1000 AIM listed companies for patent holdings during the period 1 January 1993 to 1 January 2013. Well over 10% of the companies were found to be patent active to a varying degree during the period, holding in excess of 12,000 patent records between them. We analysed these 12,000+ patent records and [using forward citation analysis, territorial coverage, legal title and legal status of the patent family, technology clearance searches, claims clearance searches, size of firm by market cap] narrowed the field down to less than 12 patent records showing evidence of very high commercial potential, graded as either a 4 star or 5 star patent investment prospects. This work attracted the support of Marcus Stuttard, Head of AIM & Head of UK Primary Markets, London Stock Exchange Group who invited the Director of IP Wales, Mr Andrew Beale OBE, to be his guest at the Annual Dinner of the Quoted Companies Alliance at the Savoy Hotel, London in the course of the year.



Associate Professor Andrew Beale OBE, IP Wales Director

Professional Training

Members of the Institute continue to serve the training needs of international shipping organisations and companies, and City international law firms in various ways. Members of the Institute participated in the following professional training courses in 2015:



Professor Williams speaking at a training course

BIMCO Courses

Professors Barış Soyer and Richard Williams provided specialist masterclasses for BIMCO (the world's largest shipowners' organisation) in Istanbul, Limassol, Lugano, Rotterdam, and Antwerp on charter party issues, bills of lading, cargo claims, laytime & demurrage and time charters. Professor Williams also provided classes at the BIMCO Summer School in Denmark and at in-house courses organised by BIMCO for international shipping companies in Greece and Germany.

Shipping Foundation Courses for the Consortium of Law Firms in the City of London

Members of the Institute provided Foundation Courses on marine insurance, bills of lading, charter parties and shipbuilding contracts for a consortium of six City international law firms. The lectures were delivered by Professors Simon Baughen, Baris Soyer, Andrew , Tettenborn, D. Rhidian Thomas and Richard Williams.

Lloyds Maritime Academy (LMA, Informa London)

Professor Richard Williams chaired and gave lectures on a range of topics at a number of Masterclasses in London relating to bills of lading and charter parties.

IBC (Asia)

Professor Richard Williams conducted his annual series of courses on charter party and laytime and demurrage issues for IBC (Asia) in Singapore.

Guest Lectures

In the course of 2015, the Institute organised the following guest lectures for its members, PhD and LLM students:

Mr Steve Davies, CEO, Graig Ship Management Group, "Legal Aspects of Ship Management".

Mr Nicholas de Figueiredo, Solicitor at Capital Law LLP, "E-commerce, compliance and IP: protecting yourself and your brand when trading online".

Mr Peter Grube, Chief PR Officer, BIMCO, "The Role of BIMCO in Shipping and Producing Documents".

Mr David Hertzell, Former Law Commissioner for Commercial and Common Law, "The Insurance Act 2015".

Mr Fabien Lerede, Off-shore Syndicate Claims Director, Charles Taylor, London: "P&I Clubs".

Mr Richard Neylon, Partner, Holman Fenwick Willan LLP, "Hijacked By Pirates: A Maritime Lawyer's Role in Crisis Management".

Mr Michael Powell, Key Supplier Manager, Graig Shipping Plc, "INCOTERMS".

Mr Simon Rainey QC, Quadrant Chambers, "Consequential Loss" Clauses: are they any use?"

Dr Christoph Schaefer, Senior Legal Counsel, Lufthansa Cargo, "Overview of the Regulatory Framework of Aviation".

Ms Jenny Tetlow, Trainer at RAP International Ltd, "An introduction to risk assessment and mitigation in the oil and gas industry"

Publications

Professor Simon Baughen authored a chapter on "Lease Finance and Demise Charters. Lessors; Risks and Liabilities" published in *Ship Building, Sale and Finance* (Informa Law 2015). Also, his monograph *Human Rights and Corporate Wrongs: Closing the Governance Gap* was published by Edward Elgar Ltd in December 2015. He is currently working on an article on the liabilities of offshore installations in the UK in the event of a catastrophic oil spill, and on a book chapter on UCTA and UK terminal operators (Lawtext 2016).

Dr George Leloudas authored an article on "Door to Door Application of the International Air Law Conventions: Commercially Convenient, but Judicially Dubious" (2015) LMCLQ 368. He also authored a chapter on the "The response of the European Union to Terrorism Risk Events in the Field of Aviation" in published in the Handbook of Public International Air Law (Routledge). He is one of the editors of Shawcross and Beaumont on Air Law with responsibility for the chapters on Carriage of Goods by Air (Chapter 32), Rights in relation to Aircraft (Chapter 11) and Classification of Aircraft (Chapter 10). His monograph with Professor M Clarke on Air Cargo Insurance is expected to be published in 2016.

Dr Nima Mersadi Tabari authored a chapter in Kato Kulovesi and Eliza Morgera (eds) *Research Handbook on International Law and Natural Resources* (Edward Elgar, 2016) together with Dr Federico Ortino of King's College London on "Internationalisation of Dispute Settlement in Natural Resources". Dr Mersadi Tabari is currently working on the final stages of a monograph titled *International Investment Law and Lex Petrolea: Law and Practice in the Persian Gulf*, expected to be published by Informa Routledge in 2016.

Associate Professor Theodora Nikaki authored a chapter "Financing Newbuilding Vessels and BARECON 2001: A Fair Deal?" pp. 212-240 published in *Ship Building, Sales and Finance* (Informa 2015). She also contributed (with Professor Marc Huybrechts) Chapter 12 titled "Marine Insurance" in *The International Handbook of Shipping Finance: Theory and Practice* (Palgrave 2015). She is currently working on a book chapter on the impact of slow steaming clauses on international sales contracts, as well as on an article on UCTA and logistics.

Mr Simon Rainey QC contributed Chapter 15, entitled "The Law of Towage", to *The IMLI Manual on International Maritime Law, Volume II: Shipping Law*, ed. Attard and Fitzmaurice, published by Oxford University Press for the International Maritime Organisation and the International Maritime Law Institute (published 2016). He is currently working as chief editor of and contributor to the 11th Edition of *Chalmers' Marine Insurance Act 1906* (Bloomsbury Professional, publication Spring 2016).

Professor Baris Soyer edited together with Professor Tettenborn a book, *Ship Building, Sale and Finance* published by Informa Routledge in August 2015. He also wrote a chapter for this book "The Evolving Nature of Builders' Risks Cover" pp. 80-97. He also contributed to the Vol 4 of the Modern Law of Marine Insurance edited by DR Thomas and published by Informa Routledge with a chapter "New Parameters in Construing Insurance Contracts" pp. 43-65. He continued to provide editorial support for the Journal of International Maritime Law and is currently working on two projects: completing the third edition of his award winning monograph, *Warranties in Marine Insurance*, and a book designed to provide a critique of 2015 Insurance Act.

Professor Andrew Tettenborn published, among other things, the "Damages" section of Halsbury's Laws of England; "The Negligent Broker: Three Problems in the Assessment of Damages" in Vol 4 of Rhidian Thomas' *Modern Law of Marine Insurance*; "Good faith, the DCFR and Shipping Law" in Verhayen et al, Common Core, PECL and DCFR: could they change shipping and transport law?; and "Contracting by Numbers – the Example of Shipbuilding" in *Ship Building, Sale and Finance*. He is currently working, with other members of the IISTL, on a book on recent developments in marine insurance.

Professor D. Rhidian Thomas edited, *Modern Law of Marine Insurance*, Volume 4 (2015, Informa Law from Routledge, and contributed Chpt. 4 (pp 79 – 107) titled "Co-insurance and Leading Underwriter Clauses". He published an article, "Charterparties and Agreed Damages Clauses under English Law and DCFR" in (2015) 12 European Journal of Commercial Contract Law, 77 – 81; and an article "A Comparative Legal Approach to Demurrage Clause – English Law and European Initiatives" in (2015) 21 Journal of International Maritime Law, 300 – 308. He continued to act as editor-in-chief of the Journal of International Maritime Law, contributing editorials, digest, case analyses and book reviews.

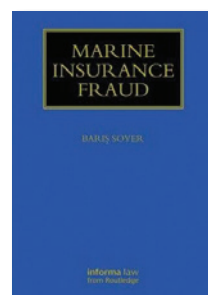
Mr Yuri van Logchem is currently in the process of finalising his PhD concerning the 'Rights and Obligations of States in Maritime Areas of Overlapping Claims'. He is also working on a monograph on this topic.

Professor Richard Williams authored *The Gard Guidance to the Rules* which explains and comments on the protection and indemnity insurance cover and extended cover that is now provided by the Gard club and other similar insurers and on the history and development of P&I insurance.

Marine Insurance Fraud Awarded BILA Book Prize

Professor Soyer's most recent monograph, *Marine Insurance Fraud*, has been awarded 2015 Book Prize of BILA. This prize, for the best book on insurance law, is awarded annually by the British Insurance Law Association Charitable Trust, a body existing to promote research on the interrelationship between law and insurance. Alison Green, chair of the BILA Charitable Trust observed: "Fraud has bedeviled marine insurance for centuries. This book provides a clear and very readable analysis of the legal and evidential issues raised by fraud both in the marine context, but also beyond the confines of both marine and insurance. His distinguishing pre- and post-contractual fraud and fraud by insured, insurer and by agents is helpful and instructive. His thorough review of relevant cases and the extent to which fraudulent activity of third parties is covered by marine insurance policies, will be invaluable for practitioners, academics and postgraduate students alike."

The IISTL wishes to congratulate Professor Soyer for this Prize.



Staff News

Dr Nima Mersadi Tabari has joined the Institute as a lecturer, having obtained his PhD from King's College London. Informa have already agreed to publish a book in 2016 based on his PhD thesis, which focuses on arbitration of investment disputes in oil and gas sector.

Mr Youri van Longchem has joined us from Utrecht, also as a lecturer. An expert in the law of the sea, he has already got off to a flying start by publishing several articles in the field and simultaneously carrying off the 2012 Law of the Sea Institute (LOSI) Research Competition Award for Early Career Researchers.

We are also delighted to welcome back our administrator, **Ms April Napier**, from maternity leave.

In the course of 2015, the Institute provided visiting opportunities to various academics around the world:

Dr Bülent Sözer from Yeditepe University in Turkey spent several weeks with us in the summer whilst

Associate Professor Zhang Li from Dalian Maritime University was at Swansea for almost a year!

Last but not least, we like to thank **Dr Richard Caddell**, who left the Institute in November to take up a position at Utrecht University, for his invaluable services over the years.

Members of the Institute of International Shipping and Trade Law

Professor Barış Soyer - Director

Admiralty law, marine and non-marine insurance and carriage of goods by sea

Associate Professor Andrew Beale OBE

IP, asset management and trade

Professor Simon Baughen

Shipping law, carriage of goods by sea and trade law

Professor Iwan Davies (Pro-Vice-Chancellor (Internationalisation and External Affairs))

Finance and security

Dr George Leloudas

Multimodal transport and air law

Mr Youri von Logchem

Law of the sea, regulation and oil and gas law

Associate Professor Theodora Nikaki

Carriage of goods by sea, multimodal transport, international trade law and conflict of laws

Professor Dennis Patterson

International trade and world trade law

Ms Tabetha Kurtz-Shefford

Admiralty law, trade law and law relating to oil and gas

Dr Nima Mersadi Tabari

Oil and gas law, arbitration and investment law

Professor Andrew Tettenborn

International trade law, payments and finance, commercial law

Professor D. Rhidian Thomas

International trade and payments, carriage of goods, marine insurance, reinsurance, admiralty and arbitration

Dr Shuangge Wen

Corporate law and conflict of laws

Professor Richard Williams

Carriage of goods and maritime liabilities

Research Assistant

Mrs Ceren Cerit

VISITING FELLOWS

Mr Peter MacDonald-Eggers QC

Insurance and reinsurance law, commercial law

Mr Fabien Lerede, Charles Taylor

Liability insurance and energy law

Mr David Hertzell, Former Law Commissioner for Commercial and Common Law

Insurance and marine insurance law

Mr Simon Rainey QC

Admiralty law, maritime law, arbitration

ADMINISTRATION

Ms April Napier



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The IISTL is a Research Centre within the College of Law and Criminology.