

REPORT of ACTIVITIES 2013

The
Institute of
Shipping and
Trade Law

Swansea University
Prifysgol Abertawe

Director's Report

It has been yet another remarkable year for the Institute, in terms of increases in both membership and impact on practice, policy-making and academia.

With the aim of consolidating its position as the leading British research centre in the field of international shipping and trade law, Professor Simon Baughen was appointed in September 2013 as Professor of Shipping Law. Simon, who joined the Institute from Bristol where he had been a well-established figure for many years, is an impeccable and world-renowned scholar with an enviable list of publications; he will add enormously to the expertise and leadership already available within the Institute. Also in the course of the year, Tabetha Kurtz-Shefford was appointed as a lecturer, having put in a distinguished performance in the LLM in Commercial and Maritime Law at Swansea and being currently engaged on a PhD on pollution from oil-rigs and similar installations and the best way to compensate for its effects when it happens. There is no doubt that the Institute, and the College as a whole, will benefit immensely from these appointments.

This year has been very productive for the Institute in terms of disseminating its research and contributing to general policy-making. Its ninth annual colloquium in September 2013, dedicated to 'Offshore Contracts and Liabilities', attracted a record number of delegates. The event provided an unrivalled opportunity to bring together judges, academics, lawyers, administrators and others to discuss the extraordinarily complex legal issues that can be thrown up by the operation of offshore installations and equipment. In doing so, moreover, it merely continued the fine tradition of the annual IISTL Colloquia, which having begun in 2005, swiftly established themselves as a key event within the maritime law calendar.

Earlier, in April 2013, the Institute had been instrumental in setting up a symposium in collaboration with the Law Commission at the

Association of British Insurers in the City, aimed at providing lawyers, law-makers and market participants with an opportunity for high-powered deliberations on the ongoing reform proposals of the English and Scottish Law Commissions on a number of vital aspects of insurance law. Most papers presented there appeared later in the August issue of *Lloyd's Maritime and Commercial Law Quarterly*. This was the second collaborative symposium organised by the Institute with the Commission since the latter began its project on insurance in 2006; it built on the success of the first event, held in 2008, and which itself had led to a book (*Reforming Marine and Commercial Insurance Law*) that had been frequently referred to by the Commission in its 2011 and 2012 Consultation Papers on the subject.

The year also witnessed the Institute further cementing its relationship with legal practice. In addition to organising training courses for a new generation of maritime lawyers, in May it organised a seminar in the City in partnership with leading solicitors Hill Dickinson to consider the impact of sanctions on all aspects of shipping and trade law. The event attracted a sell-out audience of over a hundred representatives of traders, insurers, ship operators, charterers and lawyers, all of whom needed to understand not only the relevance and impact of the various sanctions regimes in force, but also the various drafting issues and due diligence requirements that they brought up. Collaborations of this kind are a new initiative of the Institute and it is hoped will continue in the next year; it is evident that such events assist the organisation immensely in fulfilling one of its main missions: namely, bridging the gap between academia and practice.



Professor B. Soyer delivering his paper at the Insurance Symposium

You can read further on the Institute's website about these events, together with news of the contribution of its members to academic writing and scholarship. Its members' publications are frequently cited by the courts, both in England and elsewhere, not to mention by law reform bodies and other policy-makers contributing to the development of the law. You may also notice that Institute members frequently appear in conferences, symposia, and seminars as speakers, and that many hold visiting positions in other academic institutions around the world. Some offer consultancy to legal firms and other non-governmental bodies. As the Institute's Director, I can confidently say that both it, and its members on an individual basis, are making a huge contribution to the discipline of law. The most recent additions to its membership make it one of the largest research centres in the world working in the realm of shipping and trade law. All of the members are very talented, hard-working and committed; that alone gives me a genuine belief that 2014 will be even a better one for the IISTL!

Professor B. Soyer

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IISTL LEADING THE WAY IN DISSEMINATING RESEARCH AND ENGAGING WITH LEGAL PRACTICE

In 2013, the Institute organised three major events. All presented a great opportunity to its members and other maritime/commercial lawyers to share the findings of their research with other practitioners, academics, market participants and other stakeholders. In more detail, these were:

■ Symposium on Reforming Commercial and Marine Insurance Law - April 2013

The Institute opened its 2013 season with a major symposium at the headquarters of the Association of British Insurers in the City in collaboration with the Law Commission. The event subjected the proposals of the Commission (and its equivalent in Scotland, the Scottish Law Commission) for reform of insurance law to close, effective and expert scrutiny. It brought together leading speakers and an audience of 120 representative of all sides of the insurance industry; the result was an unparalleled opportunity for an exchange of ideas, and for all to share in the benefits of the research conducted within the Institute. Apart from significant contributions from Professors Barış Soyer, Andrew Tettenborn and D.Rhidian

Thomas of the Institute, a number of leading outside commentators also delivered papers, including the responsible Law Commissioner (David Hertzell), three silks and a top junior at the Bar (Simon Rainey QC, Peter McDonald-Eggers QC, Claire Blanchard QC and Guy Blackwood), together with representatives from leading brokers (Paul Maynard of the Willis Group) and risk management organisations (John Hurrell of Airmic). Lord Justice Longmore chaired the proceedings, along with Peter Rogan from Ince & Co and Stephen Lewis of Clyde & Co. A productive and thought-provoking, but nevertheless thoroughly enjoyable, day concluded with a cocktail reception. Some of the selected papers presented at the event were published in

the August issue of *Lloyd's Maritime and Commercial Law Quarterly*.



From left to right: Professor Rhidian Thomas (IISTL), Professor Howard Bennett (Nottingham University), Professor Andrew Tettenborn (IISTL) and David Hertzell (Law Commission)

■ Seminar on the Impact of International and National Sanctions on Various Aspects of Shipping and Trade Law - May 2013

The Institute organised this seminar in collaboration with leading solicitors Hill Dickinson at their London offices. Sanctions involve a complex mix of both public and private law considerations and have both a direct and an indirect important impact on commercial, shipping and insurance activities. Consequently, the seminar attracted an audience of over one hundred traders, insurers, ship operators, charterers and

lawyers who were keen not only to fully understand the relevance and impact of the various sanctions regimes that are currently in force but also the various contractual terms and enhanced due diligence that are now required. Michael Harakis of Hill Dickinson opened the proceedings with an overview of sanctions from the perspective of international law. Professor Richard Williams (IISTL) talked about the impact of

sanctions on charterparty contracts, followed by Professor Andrew Tettenborn (IISTL) who considered the implications of sanctions in the context of trade law. Finally, Simon Rainey QC (Quadrant Chambers and IISTL) presented a paper commenting on insurance aspects of the debate. Panel discussions were led by George Leloudas (IISTL) and Anthony Woolich (Holman Fenwick Willan LLP), who shared his considerable personal experience of this subject.

■ Ninth IISTL International Colloquium - September 2013

The last event of the year was the Institute's Ninth International Colloquium, which attracted more attendees than ever before. The subject was "Offshore Contracts and Liabilities", a matter of especially pressing importance in the light of ongoing legal developments following the *Deepwater Horizon* disaster and other less-publicised but still horrendous offshore incidents.

The event boasted a stellar cast of speakers, including the leading practitioners, academics and regulators. It opened with an analysis of recent industry documentation, such as WINDTIME and HEAVYCON, before considering problematic issues in current contractual and insurance practice. The second day featured presentations examining the regulation of industrial activities, liability concerns and environmental implications. Outside speakers and chairmen included Sir David Steel (the former English Admiralty Judge), Professor Erik Røsæg (Scandinavian Institute of Maritime Law, Oslo University), Stephen Tromans QC (39 Essex Street), Simon Rainey QC (Quadrant Chambers), Gregory Jones QC (Francis Taylor Building), Elizabeth Blackburn QC (Stone Chambers), Chris Kidd (Ince & Co), Paul Dean (Holman

Fenwick Willan LLP), Robert Gay (Hill Dickinson), Lars Rosenberg Overby (Kromann Reumer), Grant Hunter (BIMCO), and Fabien Lerede (Charles Taylor & Co Ltd). The Institute's in-house contribution included presentations by Professors Barış Soyer, Andrew Tettenborn, Richard Williams and Simon Baughen, and also excellent papers from Dr George Leloudas and Dr Richard Caddell. Professor Iwan Davies (Pro-Vice-Chancellor of Swansea University) also chaired one of the sessions and was actively involved in deliberations. This Colloquium was very generously sponsored by Informa, publishers of *Lloyd's Law Reports* and *Lloyd's Maritime & Commercial Law Quarterly*, who will publish the book featuring the conference papers in early 2014. The Institute, as always, is enormously grateful for their long-standing support and encouragement.



From left to right: Lars Rosenberg Overby (Kromann Reumer), Grant Hunter (BIMCO) and Sir David Steel (the former English Admiralty Judge) during panel discussions

Guest Lectures

In the course of 2013, the Institute organised the following guest lectures for its members, PhD and LLM students:

Mr Rob Collins, Solicitor, Clyde & Co: "P & I Clubs".

Mr Ian Derrick, Bank of England: "Economic Update".

Mr Måns Jacobsson, former Director of the International Oil Pollution Compensation Funds: "The Relationship between EU Legislation and Maritime Liability Conventions".

Mr Richard Neylon, Partner, Holman Fenwick Willan LLP: "How to Resolve A Hijacking: A Maritime Lawyer's Perspective on Somali Piracy".

Mr Hugh Shaw, SOSREP: "Dealing with Maritime Emergencies in the UK".

Professor D. Rhidian Thomas, Emeritus Professor of Maritime Law, Founding Director of the Institute of International Shipping and Trade Law: "Maritime Law in the 21st century".



Extramural Activities



Professor Simon Baughen delivered a paper at the Global Challenges-Global Law symposium held at Swansea University in June 2013 which will be published in the Rutgers Law Journal in 2014. He is a member of the advisory board of Shipping and Transport Law.

Professor Baughen joined the IISTL in September 2013

Dr Richard Caddell presented a paper on environmental protest and freedom of navigation at the *Sixth Annual Polar Law Conferences*, convened in October 2013 in Akureyri, Iceland. Also in October 2013, he presented a paper on wilderness conservation at the University of Tilburg, Netherlands. Dr Caddell continues to serve as the Convenor of the Maritime Law Section of the Society of Legal Scholars, organising the Maritime aspect of the Society's annual conference, held this year at the University of Edinburgh in September 2013

and to which he contributed a paper examining the regulation of ocean noise under EU law. In March, Dr Caddell joined the Chambers of Andrew Tait QC at Francis Taylor Building as a Member of the Academic Panel. Francis Taylor Building, which boasts over 20 QCs, was recently awarded the accolade of the leading set of Chambers for environmental law in the UK. He also joined a working group to address the reform of marine mammal law within the EU.

Dr George Leloudas delivered guest lectures on aviation insurance law and international air law for the International Air Transport Association (IATA) in London, Geneva, and Singapore. Dr Leloudas was also invited to speak on multimodal carriage at the 9th *IATA Cargo Claims and Loss Prevention Conference* which was held at Limerick, Ireland in November 2013. He was also invited to give a lecture on multimodal transport to the LLM students of the Institute of Air and Space Law, McGill University and he acted as moderator at the exclusivity panel of the 2013 *Fifth Annual McGill Conference on International Aviation Liability & Insurance*. Dr Leloudas delivered a presentation on "Risk and Liability in Air Law" at the *2nd International Research Seminar on Maritime, Transport and Mobility Law* organised by the IISTL in collaboration with the University of Bologna, the Rotterdam Institute for Shipping & Transport Law of Erasmus University, the Scandinavian Institute of Maritime Law at the University of Oslo and the University of Sassari, Ravenna, Italy.

Professor Barış Soyer delivered guest lectures at Dalian Maritime University and Shanghai Maritime University on damages for breach of charterparties. He also delivered a paper at the *8th International Conference of Maritime Law* organised by the Piraeus Bar Association in October 2013 on "Early Redelivery of Chartered Vessels - Remedies Available for Shipowners". The theme of the event was *Shipping in Periods of Distress* and it was the latest in a prestigious series, first established 22 years ago, which provides a forum for maritime academics, practitioners, public officers and experts from all over the world to discuss timely issues of theoretical and practical interest.

Professor Andrew Tettenborn has given highly successful lectures in Dalian and Shanghai on shipbuilding and the arrest of ships; on carriage and the Hague-Visby Rules in Palermo, Sicily; on insurance broking and on trade sanctions in the City. In addition he was closely involved in the production this year of the first English restatement of the law of unjust enrichment.

Emeritus Professor D. Rhidian Thomas delivered a paper titled "Bills of Lading as Documents of Title at Common Law", at the *2nd International Research Seminar in Maritime, Transport and Mobility Law*, a paper titled "Prospective Reform of Marine Insurance Law in the UK" at a *CMI Symposium* held at Dublin in the autumn: and a paper titled, "Developments in English Marine Insurance Law" at the Europe and China Law Symposium, held at Bangor University in October. Professor Thomas continued as Editor-in-Chief of the *Journal of International Maritime Law*, to which he also contributed editorials, case analyses and book reviews. He is also a member of an International Working Group established by the CMI to enquire into mandatory liability insurance in the context of international maritime conventions.

Dr Shuangge Wen was invited to deliver guest lectures on issues of company law and corporate governance at the University of Salford. She was also invited to the prestigious event of 2013 International Symposium of Young Scholars on Corporate Governance in Beijing.

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 2013:

BIMCO Courses

Professors Barış Soyer and Richard Williams provided specialist masterclasses for BIMCO (the world's largest shipowners' organisation) in Hamburg, Copenhagen and Antwerp on charter party issues, bills of lading, marine cargo claims and laytime and demurrage. Professor Williams also provided classes at the BIMCO Summer School in Denmark.

Shipping Foundation Courses for City Consortium of Law Firms

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 Barış Soyer, Andrew Tettenborn, D. Rhidian Thomas, Richard Williams and by Dr Theodora Nikaki.



Professor Williams delivering a lecture as part of one of the training sessions

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 a twice-yearly series of courses on charter party and bills of lading issues for IBC (Asia) in Singapore and Hong Kong.

In-House courses

Professor Richard Williams conducted a series of courses on charter party and bills of lading issues for shipping and oil companies in Singapore and Malaysia and presented a paper at the summer seminar of the Gard P&I club in Norway.

The IISTL is involved in the training of research students



From left to right: Dr George Leloudas, Professor Frank Smeele, Professor D. Rhidian Thomas and Mr Sebastian Meyer at the Seminar at Ravenna

In June 2013, the IISTL in collaboration with the University of Bologna, the Rotterdam Institute for Shipping & Transport Law of Erasmus University, the Scandinavian Institute of Maritime Law at the University of Oslo and the University of Sassari co-organised the *2nd International Research Seminar on Maritime, Transport and Mobility Law*. The event was held at Ravenna, Italy and provided a forum to current doctorate students on transport law from across Europe to present their research and receive feedback from distinguished academics in the field, namely Professors Frank Smeele, D. Rhidian Thomas, Stefano Zunarelli, Henrik Ringbom, Krijn Haak and Michel Comenale Pinto. During the final day of the event, academics, who

have recently obtained PhDs, presented papers with a view to show-casing current PhD students how their academic career and research have progressed since completing their PhDs. Three members of the IISTL played an active role in the delivery of the event. Professor D. Rhidian Thomas delivered a masterclass on "The Bill of Lading as a Document of Title at Common Law". He tirelessly attended all the sessions making constructive comments on how the students could improve their research. Dr George Leloudas presented his doctorate research on "Risk and Liability in Air Law" and also commented on the topics that related to carriage by air. Mr Sebastian Meyer, third-year PhD student and research assistant at the IISTL, contributed to the Seminar by presenting a paper on the Rotterdam Rules which was entitled "What the Maritime Industry Really Wanted and the Problem Riddled-solutions They Got!"

Publications

● **Professor Simon Baughen** published a case note on the Supreme Court's decision in *The Kos* in LMCLQ in 2012 and contributed the sections on international maritime law and EU law to the LMCLQ yearbook for 2012 and 2013. His article "Holding Corporations to Account - Crafting ATS suits in the UK?" is published in the Fall 2013 issue of the *British Journal of American Legal Studies*. He is currently writing a monograph *Human Rights and Corporate Wrongs: Closing the Governance Gap* and preparing the sixth edition of *Shipping Law*, both of which will be published in 2015.

● **Dr Richard Caddell** co-edited (with Professor D. Rhidian Thomas) *Shipping, Law and the Marine Environment in the Twenty-First Century* (London: Lawtext, 2013). He co-authored (with Arie Trouwborst and Edmund Couzens) an article entitled "To Free or Not to Free? State Obligations and the Rescue and Release of Marine Mammals: A Case-Study of Morgan the Orca" (2013) 2 *Transnational Environmental Law* pp. 117-144. He also contributed (by invitation) "Inter-Treaty Cooperation, Biodiversity Protection and the Trade in Endangered Species" (2013) 22 *Review of European, Comparative and International Environmental Law* pp. 220-245. He is currently working on a monograph addressing the management of marine mammals and has a series of papers and book chapters currently in press, addressing protest rights at sea, wilderness protection and inter-treaty cooperation.

● **Mr Måns Jacobsson** published an article entitled "Perspective of the Global Compensation Regimes; the Relationship between EU Legislation and Maritime Liability Conventions" in the *European Journal of Commercial Contract Law* 2012, pp 63-76. He also published an article on "Liability and Compensation for Ship-source Oil Pollution in China" in the *Journal of International Maritime Law*, 2013 pp. 142-164. He further contributed to a book *Selected Issues Maritime Law and Policy: Liber Amicorum Proshanto K Mukherjee*, through a chapter entitled "Places of Refuge - Who Pays Compensation When Things Go Wrong". He is at present working on several articles in the field of maritime law and environmental law.

● **Ms Tabettha Kurtz-Shefford** published an article entitled "Liability for offshore facility pollution damage after the Deepwater Horizon? What Happened to the Global Solution?" (2012) *Journal of International Maritime Law* pp. 453-474.

● **Dr George Leloudas** authored a chapter "Multimodal Transport Under the Warsaw and Montreal Convention Regimes: A Velvet Revolution?" pp. 77-110 published in *Carriage of Goods by Sea, Land and Air: Unimodal and Multimodal Transport in 21st Century* (Informa, 2013). He has been appointed as a contributing author to Shawcross and Beaumont on Air Law. This is arguably the main publication in the field of air law and he will be responsible for the chapters on carriage of cargo by air, multimodal transport and property interests on aircraft. Dr Leloudas is in the process of completing the UK national report on "the Cape Town Convention and its implementation in national law" to be submitted at the International Congress of Comparative Law which will take place in Vienna in the summer 2014.

● **Dr Theodora Nikaki** published an article entitled "Bringing Multimodal Transport Law into the New Century: Is the Uniform Liability System the Way Forward?" (2013) 78 *Journal of Air Law and Commerce* pp. 69-119. She also contributed Chapter 11 (pp. 191-216) titled "The Quest for An International Multimodal Transport Convention: Does the CMR Liability System Fit the Bill?" in the book on *Carriage of Goods by Sea, Land and Air: Unimodal and Multimodal*

Transport in 21st Century (Informa, 2013). Dr Nikaki also made an invited contribution to the *Tulane Maritime Law Journal* in 2013 (pp. 591-604) with an article entitled "UK Perspectives on International Shipping". She is currently working on a monograph on multimodal transport.

● **Mr Simon Rainey QC** published "What Is A Ship under the 1952 Arrest Convention?" [2013] *Lloyd's Maritime and Commercial Law Quarterly* pp. 50-86 and "The Law Commission's Proposals for the Reform of an Insurer's Remedies for Fraudulent Claims under Business Insurance Contracts" [2013] *Lloyd's Maritime and Commercial Law Quarterly* pp. 357-383. He is currently preparing an article on the effect of sanctions on insurance and P&I cover for the *Journal of International Maritime Law* and he has accepted an invitation to join the Editorial Board of that Journal.

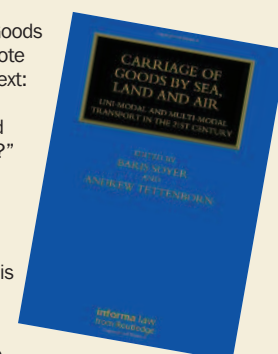
● **Professor Barış Soyer** co-edited *Carriage of Goods by Sea, Land and Air* (Informa, 2013). He also wrote Chapter 16 ("Cargo Insurance in Multimodal Context: Full and Complete Cover?") of the same book pp. 286-307. He also published an article entitled "Beginning of a New Era for Insurance Warranties?" (2013) *Lloyd's Maritime and Commercial Law Quarterly* pp. 384-401. He continued to provide editorial support for the *Journal of International Maritime Law* and also published several case analyses in that Journal. He has also completed his monograph on Marine Insurance Fraud due to be published in the spring of 2014.

● **Professor Andrew Tettenborn** wrote "Damage, Destruction and Consequential Loss - Should Carriers Be Different?" in the 2013 issue of *Marius*; and "Section 53 of the Marine Insurance Act 1906 - An Exercise in Streamlining?" [2013] *Lloyd's Maritime and Commercial Law Quarterly* pp. 401-408. In addition he continued on the editorial board of LMCLQ and also as general editor of the professional *Negligence and Liability Reports*. At present he is working on a new edition of *Marsden's Collisions at Sea*.

● **Emeritus Professor D. Rhidian Thomas** contributed "Dimensions on Inherent Vice as An Excluded Peril in Marine Insurance", Chp. 4, pp. 69-84, in *Selected Issues in Maritime Law and Policy: Liber Amicorum Proshanto K Mukherjee*, ed. Meija (2013, Nova Science Publishers Inc. NY). And "Extending Concepts of Laytime and Demurrage" in *Marlus* nr. 424, pp. 237 - 252 (2013, Nordic Institute of Maritime Law).

● **Dr Shuangge Wen's** research monograph, entitled *Shareholder Primacy and UK Corporate Governance - Practices, Legal Aspects, and Future Directions*, was published by Routledge in 2013 in its *Research in Corporate Law* series. He also published "The Achilles Heel that Hobbles the Asian Giant - The Legal and Cultural Impediments to Antibribery Initiatives in China" (2013) *American Business Law Journal* pp. 483-541; "Less is More - A Critical View of Further EU Action towards a Harmonised Corporate Governance Framework in the aftermath of the Crisis" (2013) *Washington University Global Studies Law Review* pp. 41-93 and "Revisiting the Corporate Objective through the Economic Lens" (2013) *International Company and Commercial Law Review* pp. 503-517.

● **Professor Richard Williams** wrote the "Gard Guidance on Maritime Claims and Insurance" which was published by Gard AS in April 2013 and an article entitled "The Impact of Sanctions on Charter Party Operations" in the *Journal of International Maritime Law* in the *Journal of International Maritime Law* pp. 290-303. Professor Williams continues to work on the next edition of "Limitation of Liability for Maritime Claims".



Carriage of Goods by Sea, Land Air edited by Professors Soyer and Tettenborn was published in August 2013

Members of the Institute of International Shipping and Trade Law

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Mr Andrew Beale OBE
IP, asset management and trade

Professor Simon Baughen
Shipping law, carriage of goods by sea and trade law

Dr Richard Caddell
Law of the sea, marine environmental conservation, fisheries, EU maritime law

Dr George Leloudas
Multimodal transport and air law

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

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