

Report of Activities 2008

DIRECTOR'S REPORT

The last twelve months have been another full, busy and progressive year for the Institute and its members. The commitments of the Institute range far and wide and, consequently, so also do the demands placed on all who serve and support its goals and aspirations.

In a world shrinking under the power of electronic communication and flush with limitless sources of information serving the cause of the advancement of pure and applied knowledge and understanding in the fields of international shipping and trade law is no light matter. Nonetheless, the Institute continues undaunted and determined to grow its contribution both nationally and internationally.

The flagship of the Institute's activities is undoubtedly the annual international colloquia which have now settled into a fixed location in the calendar and are held at Swansea in early September. The 2008 event examined the subject of *voyage charterparties* and we were again privileged to have attracted an eminent panel of speakers, who spoke on a range of relevant topics to a diverse, well informed and lively body of delegates. These papers will again be published by Informa at a date in early 2009 under the title

The year was also particularly significant because it saw the launch of our first special subject symposium. In early July at the Old Library in the Lloyd's Building the Institute, in association with the English Law Commission, organised a symposium on *Reforming Marine and Commercial Insurance Law*. The symposium attracted great interest and was addressed by an eminent panel of speakers drawn from the legal profession, the market and academia. The papers have been published as a book which bears the same title as the symposium and which is published by Informa. The event owed its existence to the initiative of Dr Bans Soyer, a valued member of the Institute, who is also the general editor of and a contributor to the resulting book.

The wider activities of the Institute continued unabated over the course of the year. A variety of training, foundation and in-house courses were organised for a number of significant international law firms, organisations and commercial companies at venues dotted around

philosophy of the Institute, and also feed priceless commercial awareness and know-how into the research of the members of the Institute. These events are serviced by the members of the Institute but I wish, in particular, to pay tribute to the selfless industry and dedication of Professor Richard Williams who assumes a major role and responsibility in this branch of the Institute's programmes.

The year 2008 will also be remembered for the emergence of the UNCITRAL *Convention on contracts for the international carriage of goods wholly or partly by sea*, which is likely to be signed at Rotterdam in September 2009, and, thereafter, to be

known universally as the Rotterdam Rules. The Institute intends to provide an emphatic response to this important new development over the course of 2009, with the 5th international colloquium devoted to this development, details of which appear below. The Institute has already embarked upon its response with three of its members contributing articles to a special issue of the *JIML* (2008), issue 6, in which the new convention is comprehensively analysed by twelve international expert contributors. The published research of the members of the Institute over the course of the year is recorded elsewhere in this Report. In its totality it reveals the level of energy, breadth of interests and contribution made by the membership, individually and collectively. I take this opportunity to congratulate them all on their achievements and commend them for their commitment and support to the Institute and its Director.

I close by looking forward to next year's international colloquium on *Cargo Claims under the International Conventions - Present and Future*, which will be held at Swansea on September 10th-11th.

Professor D Rhidian Thomas

the Institute continues undaunted and determined to grow its contribution both nationally and internationally



From left to right: Mr Chris Baker, Sir Anthony Evans and Steven Gee QC deliberating in one of the sessions at the 4th Institute Colloquium on Voyage Charterparties

The Evolving Legal Nature of Voyage Charterparties. We have been flattered by the success and published reviews of the early books in this series which, to our great satisfaction, is becoming as much part of the diary of annual maritime events as the colloquia themselves.

the globe, the details of which are recorded elsewhere in this Report. The benefit of these events travels significantly beyond the income they generate for the Institute. They help to bridge the divide between academia and commerce and legal practice, a policy at the core of the

The Institute of Shipping and Trade Law

Swansea University Prifysgol Abertawe

INSIDE

Symposium on Marine and Commercial Law Reform

PAGE 2

The Institute Continues to Serve the Maritime Community

PAGE 2

Research Publications and Contemporary Research

PAGE 3

Professional Training

PAGE 3

Visiting Speakers in 2008

PAGE 4

Extramural Engagements

PAGE 4



Swansea University Prifysgol Abertawe

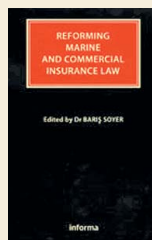


SYMPOSIUM ON MARINE AND COMMERCIAL LAW REFORM

The Institute, in collaboration with the English Law Commission on the 3rd July 2008 hosted a Symposium at Lloyd's of London on the Law Commissions' Reform Proposals on Marine and Commercial Insurance Law. The event attracted more than a hundred delegates from the legal profession, insurance markets and academia, and provided a forum to debate the proposals put forward by the English and Scottish Law Commissions.

The following distinguished speakers presented papers at the event:

- The Rt Hon Lord Justice Aikens** (Court of Appeal);
- Mr Martin Bakes** (Partner, Herbert Smith LLP);
- Professor Howard Bennett** (Nottingham University);
- Mr Derrick Cole** (Past BILA Chairman, Broker);
- Mr Peter MacDonald Eggers** (7 King's Bench Walk and Visiting Fellow, Swansea University);
- Mr David Hertzell** (Law Commissioner, English Law Commission);
- Professor Rob Merkin** (Southampton University);
- Dr Barış Soyer** (Institute of International Shipping and Trade Law, Swansea University);
- Mr Mark Templeman, QC** and **Mr Alan Weir** (Partner, Ince & Co).



The papers delivered have been published by Informa under the title: *Reforming Marine and Commercial Insurance Law*, edited by Dr Barış Soyer. The book

contains following chapters:

- Chapter 1 - Insurance Contract Law Reform in England (and Wales) and Scotland**
David Hertzell, Law Commissioner
- Chapter 2 - Pre-contractual Information Duties and the Law Commissions' Review**
Martin Bakes, Partner, Herbert Smith LLP
- Chapter 3 - Materiality: The Search for Practicality**
Alan Weir, Partner, Ince & Co
- Chapter 4 - Reforming Pre-contractual Information Duties of the Intermediaries of the Assured**
Professor Rob Merkin, University of Southampton and Consultant Barlow Lyde and Gilbert LLP
- Chapter 5 - Reforming Warranties**
The Rt Hon Lord Justice Aikens, Court of Appeal

Chapter 6 - Reforming Insurance Warranties: Are We Finally Moving Forwards?

Dr Barış Soyer, Reader in Commercial and Maritime Law, Institute of International Shipping and Trade Law, Swansea University.

Chapter 7 - Reflections on Values

Professor Howard Bennett, Hind Professor of Commercial Law, University of Nottingham

Chapter 8 - Reforming Insurable Interest

Mr Mark Templeman QC, Barrister, Essex Court Chambers

Chapter 9 - Utmost Good Faith and the Presentation and Handling of Claims

Peter MacDonald Eggers, Barrister, 7 King's Bench Walk

Chapter 10 - Law Commissions Reform Proposals on Marine and Commercial Insurance: A Practitioner's Perspective

Derrick Cole, Past BILA Chairman and Insurance Broker



Dr Barış Soyer presenting his paper - on the left The Rt Hon Lord Justice Aikens who delivered a paper in the same session

4TH INTERNATIONAL COLLOQUIUM ON VOYAGE CHARTERS

THE INSTITUTE CONTINUES TO SERVE THE MARITIME COMMUNITY

The Institute hosted its fourth International Colloquium in Swansea on the 11th - 12th September 2008. The colloquium focused upon voyage charterparty contracts and addressed complex legal and practical issues arising out of the relationship between voyage charterparty contracts, bills of lading and international sale contracts. There was also discussion of other distinctive features of voyage charterparty contracts, such as deviation, laytime and demurrage, seaworthiness, cancellation clauses and of recent case law developments in jurisdiction and arbitration clauses.

The following experts in the field from the UK and abroad presented papers:

- Charles Baker** (North of England P & I Club) - *The Wreck of the Hesperus revisited. A review of the obligation of seaworthiness in contracts of affreightment*
- Simon Baughen** (Bristol University) - *Charterparty bills of lading*
- Professor Jason Chauh** (Westminster University) - *Laytime and demurrage clauses in contracts of sale - A survey of the New York Society of Maritime Arbitrators' Awards (1978-2008) and English case law*

Sir Anthony Evans (Essex Court, arbitrator and retired judge of the Court of Appeal) - *The commercial and legal context of voyage charters*

Emeritus Professor Michael Furmston (Bristol University) - *Cancellation clauses and repudiatory breach*

Steven Gee Q.C (Stone Chambers) - *Jurisdiction and choice of law clauses*

Robert Gay (Hill Dickinson, London) - *The concept of legally dangerous cargo*

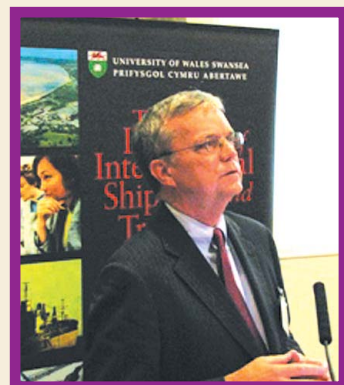
Mark Hampshire (Maritime Arbitrator, London) - *The running of laytime and demurrage when a charterer does not have sole use of the vessel*

Le Roy Lambert (Blank Rome LLP, New York) - *Comparative observations on aspects of the US law relating to voyage charterparties*

Dr Theodora Nikaki (IISTL, Swansea University) - *The cargo obligations of voyage charterers*

Emeritus Professor Francis Reynolds Q.C (Oxford University) - *Bills of lading and voyage charters*

Professor Frank Smeele (Erasmus University, Rotterdam) - *Bills of lading as transferable contracts under European national laws*



Le Roy Lambert presenting his paper at the Colloquium

Professor Andrew Tettenborn (Exeter University) - *Frustration in voyage charters - backwater or navigational aid?*

Professor D Rhidian Thomas (Director of the IISTL, Swansea University) - *The evolving nature of voyage charterparties*

Professor Richard Williams (IISTL, Swansea University) - *The Impact of Deviation on Contracts of Affreightment*

The event was supported by the international maritime community, attracting 64 delegates from 12 different jurisdictions. In addition to academics, specialists from the shipping industry, legal practitioners, arbitrators and representatives from P & I clubs were amongst the delegates.



Dr Nikaki presenting her paper at the Colloquium.

FIFTH INTERNATIONAL COLLOQUIUM (2009) ON CARGO CLAIMS AND INTERNATIONAL CONVENTIONS - The Institute of International Shipping and Trade Law will be organising its 5th international colloquium on the 10th-11th of September 2009. Details of this event will appear on the Institute website early in 2009.

RESEARCH PUBLICATIONS AND CONTEMPORARY RESEARCH

Professor D Rhidian Thomas edited *Legal Issues Relating to Time Charterparties* (2008, Informa London, 378pp) and contributed chapter 7 (pp 115 - 150), titled: 'Time Charterparty Hire: Issues relating to Contractual Remedies for Default and Off-hire Clauses'. His article titled: 'Bills of Lading and Their Transferability in English Law' was published in (2008) *Annuaire de Droit Maritime et Oceanique*, University of Nantes, 545-570. Another article on the 'The Liability Regime of the New UNCITRAL Convention on the Carriage of Goods Wholly or Partly By Sea' was published in special issue 6 of the *Journal of International Maritime Law (JIML)* 2008, which was devoted to the UNCITRAL Convention. He also published a paper entitled 'Dynamism and Diversities of the Carriage of Goods by Sea Conventions: Perspectives on the New UNCITRAL Transport Instrument and its Impact on Developing Countries' in the published Proceedings of the 10th Maritime Seminar for Judges, Nigeria (2008).

Professor Thomas over the course of 2008 contributed several editorials and many case analyses to the *JIML*. His editorials addressed *SCOPIC agreement and time charter hire payable for detained vessels, the Rotterdam Rules, both-to-blame clauses and the new international convention for bunker oil pollution*. The cases analysed included *The Capaz Duckling* [2008] 1 Lloyd's Rep 54 (fair and proper use of freezing orders); *E D & F Man Sugar Ltd v Lendoudis* [2008] 1 All E.R. 952 (enforcement of foreign judgments and arbitral awards at common law); *The Elli and The Frixos* [2008] 1 Lloyd's Rep 262 (impact of changes in MARPOL on cargo carrying capacity of tankers operating on Shelltime 4 form of charterparty); *Society of Lloyd's v Henderson* [2008] Lloyd's Rep IR 317 (the legal status of Lloyd's of London and its relevance to legal liabilities and remedies); *The Vicky I* [2008] 2 Lloyd's Rep 45 (damages for loss of a fixture caused by collision) and *The Voutakos* [2008] 2 Lloyd's Rep 516 (the disparity principle and the quantification of salvage awards).

Professor Thomas continues to research the law and practice relating to the arrest of ships, and is also researching aspects of charterparty contracts and the new UNCITRAL Convention on

the Carriage of Goods Wholly or Partly by Sea. At the Institute's fourth international colloquium on voyage charterparties he delivered a paper titled: 'The Evolving Nature of Voyage Charterparties', which will be published in the forthcoming book of the proceedings.

Professor Richard Williams was lead contributor and editor of the *Gard Guidance to the Statutes and Rules* published by Gard AS (2008) and contributed Chapter 16 (pp 269-281) titled, 'The Effectiveness of Liens as A Self-help Remedy?' to *Legal Issues* relating to Time Charterparties (2008, Informa London) At the Institute's fourth international colloquium on voyage charterparties he delivered a paper titled: 'The Impact of Deviation on Contracts of Affreightment', which will be published in the forthcoming book of the proceedings. Professor Williams also published an article entitled 'Transport Documents' in the special issue of the *JIML* (2008), which was devoted to the UNCITRAL Convention. Professor Williams is currently working on another *Gard* publication relating to maritime claims and on various features of charterparties and the New UNCITRAL Convention.

Dr Baris Soyer edited *Reforming Marine and Commercial Insurance Law* (2008, Informa London, pp 294) and contributed Chapter 7 (pp 127-154), titled: 'Reforming Insurance Warranties- Are We Finally Moving Forward?'. He also contributed Chapter 2 (pp 17-42) titled, 'Construing Terms in Time Charterparties- Beginning of A New Era or Business as Usual?' in *Legal Issues* relating to Time Charterparties (see above). Dr Soyer also published an article titled: 'Reforming the Assured's Pre-Contractual Duty of Utmost Good Faith in Insurance Contracts for Consumers: Are the Law Commissions on the Right Track?' (2008) *Journal of Business Law* 385 - 414.

Dr Soyer, an editor of the *JIML*, wrote several case analyses in 2008. His case analyses included *Kosmar Villa Holidays v. Trustees of Syndicate 1243* [2008] EWCA 147 (condition precedent-breach- waiver by election or estoppel) and *Pratt v Aigaion Insurance Company SA (The Resolute)* [2008] EWCA 1314

(Admly) (fishing vessel- fire-crewing warranty-construction- breach).

This year, Dr Soyer completed the research project on reforming pre-information duties of parties in insurance contracts funded by the Nuffield Foundation. He is currently working on various other aspects of the current reform proposals in insurance law.

Mr Richard Caddell published an article entitled 'Biodiversity Loss and the Prospects for International Cooperation: EU Law and the Conservation of Migratory Species of Wild Animals' (2008) 8 *Yearbook of European Environmental Law* 218 - 263. He also produced an official report for ASCOBANS on the relevant EC laws and instruments in the conservation of dolphins and porpoises. On a slightly different note, he published a chapter entitled 'Legal Responses to People Trafficking' in P. Downes (ed), *Not One Victim More*, the first major review of people trafficking and policy responses in the Baltic States.

Mr Caddell is currently researching the international and regional law governing marine mammals and the interplay between EC law and public international law concerning marine environmental protection.

Dr Theodora Nikaki published a book chapter on 'The allocation of cargo claims as between owners and charterers in NYPE charterparties' in *Legal Issues Relating to Time Charterparties*, (2008, Informa), pp. 225-246. Dr Nikaki also published an article on the 'Fundamental Duties of the Carrier under the UNCITRAL Convention on the Carriage of Goods Wholly or Partly By Sea' in the special issue of the *Journal of International Maritime Law (JIML)* devoted to the UNCITRAL Convention.

Dr Nikaki is currently researching in the area of carriage of goods by sea and in particular, the UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. At the Institute's fourth international colloquium on voyage charterparties she delivered a paper titled: 'The Cargo Obligations of Voyage Charterers', which will be published in the forthcoming book of the proceedings.

PROFESSIONAL TRAINING

The Institute continues to serve the training needs of international shipping organisations and companies, and City international law firms. Members of the Institute participated in the following professional training courses in 2008:

BIMCO Courses

The Director, Professor Richard Williams and Dr Baris Soyer provided specialist masterclasses for the members of BIMCO (the world's largest shipowners' organisation) in Rotterdam, Athens and Geneva on a range of subjects including international sale contracts, insurance and carriage of goods, time charterparties, dry cargo and tanker laytime/demurrage. Professor Williams did specialist courses for BIMCO on Bills of Lading in Bremen and on general transportation issues in Athens.

BP In-House Training

The Director and Professor Richard Williams organised in-house legal training courses on charterparties, bills of lading and related topics for BP personnel in London and Singapore.

Foundation Courses for City Consortium of Law Firms

The Institute provided Foundation Courses on marine insurance, bills of lading and charterparties for a consortium of six City international law firms, attended by trainees and newly qualified solicitors. The lectures were delivered by the Director, Professor Richard Williams and Dr Baris Soyer.

Lloyds Maritime Academy (LMA, Informa London)

Professor Richard Williams chaired and gave lectures on various topics at a number of Masterclasses in London relating to bills of lading and charterparties, and Dr Baris Soyer chaired various sessions and delivered lectures at the summer course on shipping and marine insurance law.

The Director and Professor Richard Williams authored modules on marine pollution and charterparties respectively for the Post-Graduate Diploma in Maritime Law by distance learning. The Director also authored a module on Marine Reinsurance for the Post-Graduate Diploma in Marine Insurance: Law, Practice and The Markets by distance learning organised in conjunction with the World Maritime University.

Cambridge Academy of Transport (CAT)

Professor Richard Williams gave lectures in London and Cambridge on various topics related to bills of Lading and charterparties at specialist courses organised by the CAT for the shipping industry.

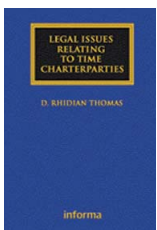


Professor D Rhidian Thomas, Mr Torben C Stand (Courses and Seminars Director at BIMCO), Professor Richard Williams and Dr Baris Soyer - Trading and Carrying Goods - Athens (31 March - 3 April 2008)

LEGAL ISSUES RELATING TO TIME CHARTERPARTIES WAS PUBLISHED IN MAY 2008 BY INFORMA INTERNATIONAL

This book, edited by Professor D Rhidian Thomas, is a product of the International Colloquium on Time Charterparties organised by the Institute in July 2007. It addresses all the major questions and issues that arise in connection with time charterparties, examining them in a logical manner, progressively tracing the subject from the creation to the termination of the contract.

The book is an anthology of speakers' papers, refined in the months following the colloquium, together with relevant source materials set out in the



Appendices. The Foreword to the book was written by Sir Anthony Evans and the book contains the following chapters:

Chapter 1 - Standard Forms - the BIMCO experience

Grant Hunter (BIMCO, Denmark)

Chapter 2 - Construing terms in time charterparties - Beginning of a new era or business as usual?

Dr Barış Soyer (IISTL, Swansea University, UK)

Chapter 3 - Ascertaining the charter period

Paul Herring (Partner, Ince & Co, UK)

Chapter 4 - Safe ports and places - Professor Howard Bennett

(University of Nottingham, UK)

Chapter 5 - Seaworthiness and the "Hong Kong Fir" decision - Mark Hamsher

(Maritime Arbitrator, UK)

Chapter 6 - Indemnities in time charters

David Foxton QC (Barrister, Essex Court Chambers, UK)

Chapter 7 - Time charterparty hire: Issues relating to contractual remedies for default and off hire clauses

Professor D Rhidian Thomas (Director, IISTL, Swansea University, UK)

Chapter 8 - Assignees of hire: how fare can they ignore charterers' claims against owners?

Professor Andrew Tettenborn (Exeter University, UK)

Chapter 9 - Time charterparties and bills of lading

Emeritus Professor Francis Reynolds QC (University of Oxford, UK)

Chapter 10 - Clauses paramount in time charters

Yvonne Baatz (Southampton University, UK)

Chapter 11 - War, terror, piracy and frustration in a time charter context

Professor Keith Michel (University College London, UK)

Chapter 12 - Termination rights under time charters

John D. Kimball (Blank Rome LLP, USA)

Chapter 13 - The allocation of cargo claims between owners and charterers in NYPE charterparties

Dr Theodora Nikaki (IISTL, Swansea University, UK)

Chapter 14 - Containerisation, slot charters and the law

Christopher Hancock QC (Barrister, Essex Street Chambers, UK)

Chapter 15 - Damages for breach of time charter: some recent developments

Andrew Taylor (partner, Reed Smith Richards Butler, UK)

Chapter 16 - The effectiveness of liens as a self-help remedy?

Professor Richard W. Williams (IISTL, Swansea University, UK)

Chapter 17 - The effectiveness of liens as a self-help remedy?

Professor Richard W. Williams (IISTL, Swansea University, UK)

2008 VISITING SPEAKERS

In the course of the year, the Institute organised a series of guest university lectures, delivered by the following distinguished speakers:

Ian Derrick (Deputy Agent of the Bank of England - Agency for Wales) - *The Work of the Bank of England*

Mans Jacobsson (Former Director of the International Oil Pollution Funds) - *The International Regime on Liability and Compensation for ship-source Oil Pollution damage: The Legal and Political Aspects*

John McDonald (Independent Average Adjuster) - *General Average - Law and Practice*

David Thomas (Master Mariner, Consultant, Marine Surveyor) - *The Collision Regulations*

EXTRAMURAL ENGAGEMENTS

Professor D. Rhidian Thomas delivered guest lectures at the World Maritime University and University of Lund, Sweden (14th - 17th January 2008). He delivered the overseas guest lecture at the 10th Maritime Seminar for Judges, organised by the Nigerian Government and the National Judicial Institute, and held at Abuja on June 24th-26th 2008. He also delivered a series of lectures at the Faculty of Law, University of Bologna (October 20th - 24th, 2008). The lectures were also sponsored by the Italian Maritime Law Association.

Mr Richard Caddell presented a paper entitled *The Role of the Convention on Migratory Species in the conservation of whales at Tromsø University in February 2008* and a further paper entitled *EU Law and the Conservation of Migratory Species of Wild Animals* at the SLSA Annual Conference in March 2008. He also acted as an invited legal expert at a series of meetings of ASCOBANS (Agreement on the Conservation of Small Cetaceans of the Baltic, North-East Atlantic, Irish and North Seas), a regional treaty operated by UNEP (February and April 2008) and assisted in the redrafting of the UNEP Recovery Plan for the Baltic Harbour Porpoise.

Dr Arwel Davies presented a paper titled: *Interpreting the Chapeau of GATT Article XX in the light of the 'New' Approach in Brazil - Tyres*, at the International Conference on Theorising the Global legal Order held at Swansea University, on 21st - 22nd May 2008.

Dr Barış Soyer spent part of his sabbatical at the TC Beirne School of Law (Queensland University, Australia) as a visiting fellow.

PERSONNEL

The Institute is delighted to welcome Professor Volker Røueben who has recently joined the Institute. Professor Røueben is a public international law expert with an interest in matters relating to the law of the sea.

The Institute is also delighted to welcome Mr Rui Zheng who has been appointed as a research assistant. Rui is also working towards his Phd under the supervision of Dr Soyer and Dr Nikaki.

Dr Angela Zhang was awarded her PhD in December 2008 and has taken up an academic position in her native country of PR China. We thank Angela for her services to the Institute and wish her all the best in her academic career.

Also, this year Professor Thomas was appointed as an Adjunct Professor at the World Maritime University, Malmö, Sweden.



Members of the Institute of International Shipping and Trade Law

Professor Rhidian Thomas - Director
International trade and payments, carriage of goods, marine insurance, reinsurance, admiralty and arbitration

Professor Richard Williams
Carriage of goods and maritime liabilities

Professor Volker Røueben
International law and law of the sea

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

Mr Richard Caddell
Law of the sea, marine pollution, European maritime law

Dr Arwel Davies
International trade law and world trade law

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

Rui Zheng
Research Assistant

Visiting Fellows

Mr Peter Macdonald-Eggers
Insurance and reinsurance law, commercial law

Mr Mans Jacobsson
Oil pollution, environmental law

Administration

April Adanah - Administrator

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