



Cadwallader Debate

Master under Attack?

Authority and Responsibility in an Age of Instant Access

Edited transcript of the debate at Drapers' Hall,
London on 26th October 2016

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Cadwallader Debate

Master under attack? - Authority and Responsibility in an age of instant access

Chairman

The Right Hon. the Lord Clarke of Stone-cum-Ebony
President of the LSLC

Moderator

Captain Kuba Szymanski, Secretary General of InterManager

The Panellists

Michael G. Chalos, Partner at K&L Gates, LLP (New York)

Michael Kelleher, Director at West of England P & I Club

Jeff G Lantz, Director of Commercial Regulations and Standards at the US
Coast Guard

Faz Peermohamed, Partner and Head of Global Shipping at Ince & Co



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LSLC revisits the Responsibilities & Liabilities of 21st Century Command

The 2016 Cadwallader debate considers the professional and legal position of the shipmaster, as established over centuries of law, custom and practice, but showing signs of strain in the light of 21st century ship operation and technical innovation. The debate is intended to tease out areas of concern within the industry, both ashore and afloat, that derive from recent developments, which make it appropriate that the shipmaster's role be revisited.

The traditional authority of the shipmaster is widely perceived as having been diminished whilst responsibility has increased, frequently in areas where the master has little or no control.

There is an abundance of evidence that the master's position is being undermined by external operational interference. This trend is aided by modern technology facilitating communication with the ship, wherever it is located. Interference extends to matters of navigation, including the course to sail and speed and performance in various weather conditions – matters which were once the sole prerogative of the master in command. Such shore-side 'input,' occasionally reinforced by a lack of respect tantamount to harassment, is now common.

Moreover, masters are increasingly vulnerable to prosecution and civil and criminal sanction simply because, as owners' representatives, they are on the spot. They have been incarcerated after drugs have been found on board or in the cargo; guilt is equated with being in charge of the vessel. They have been savagely penalised for pollution caused by obstacles on the harbour bottom or in an allegedly clear channel. They have been dragged into court after pollution incidents in which they played no part. Corrupt officials, bent on enriching themselves, have found them liable for real or supposed damage or faults.

Masters and their representative organisations are very concerned that the powers of charterers to intervene in ship operations are being enhanced and reinforced in law and practice. Masters have been pressurised and even threatened over unwarranted changes to stowage plans, loading unsafe cargo, sailing into bad weather or shaping a course which the master judges imprudent.

Are such pressures and interference restricted to shipping or are they essentially the facts of modern business life in general, with its increased requirements for transparency and accountability? Must shipmasters come to terms with more regulation and rigorous enforcement and closer scrutiny of their conduct of ship operations and voyages? Could the safety and efficiency of the whole operation actually be enhanced by instant communication and data flow between ship and shore? Are intervening charterers merely protecting their legal interests and reflecting the disposition of 21st century liabilities?

The Cadwallader debate is given added significance by the recent BIMCO/ICS report, which identified the global shipping industry's requirement for nearly 150,000 new merchant officers by 2025. Ambitious and bright officers need to be attracted to the prospect of command. However, many senior officers appear to be put off by first hand observations of masters' growing burdens. This suggests a cogent case for reinforcing the authority of the master, re-examining his responsibilities and reconsidering the burdens of command.

This debate, bringing together exceptional expertise on these matters on both the panel and within the audience, should add weight to a blueprint for action on how the master can be supported in law and his liabilities and responsibilities made more reasonable, reflecting the realities of 21st century command at sea.

Welcome

Lord Clarke

It gives me great pleasure to introduce any function organised by the London Shipping Law Centre of which I have the honour, albeit a very recent honour, of being President. In just over 20 years, there have been over 200 seminars and special events with hardly a pebble unturned as the Centre has pursued its highest successful policy to get the best people to talk on the most important topics to the most knowledgeable audiences.

The result and spread of information and the intensity of interchange helps us to build a picture of how to best navigate the increasingly choppy waters stirred up by national and international bodies, and by port authorities, let alone the courts. Whatever the subject we discuss in the LSLC, it is certain to be a very important one for a wide range of shipping industry professionals on board and on shore, including maritime lawyers.

It would be difficult to think of a more important topic than the changing and challenging, or perhaps challenged, position of the master of a ship whose role is made ever more complicated and difficult by many different circumstances including instant communication, a raft of legislation and regulations, the requirements of charterers and other commercial interests and, of course, the courts. We will hear from those who can shed a bright light on what is happening in this most emotive area of concern.

The panel will be led by our moderator Captain Kuba Szymanski. His fellow panellists are Michael Kelleher, Faz Peermohamed, Michael Chalos and Jeff Lantz. We extend our warmest thanks to them and indeed to everyone here. We would also like to give particular thanks to our main sponsor Holman Fenwick Willan and to Cheeswrights, Clyde & Co, Essex Court Chambers, St Philips Stone Chambers and Ince & Co. Without them we would not be here. Even more important, I would like to thank Dr Aleka Sheppard, our Founder and Chairman of the LSLC, without whom the Centre wouldn't exist at all. With Jeremy Thomas, she has spearheaded this event and thanks go to them and the members of the Council, who have contributed to it - especially to Michael Grey, who suggested the subject to be debated and honed its structure, and to the Executive Manager, Gerard Matthews, again without whom the Centre wouldn't exist.

I am conscious that I became the President of this august body following the death of Michael Mustill last year. We should always remember that it was he who encouraged Aleka Sheppard to go ahead with and build on her foundation of the Centre and he remained closely involved with it until shortly before his death.

A master needs to be well trained and experienced

Captain Kuba Szymanski, Secretary-General, InterManager

It is very important to understand what shipmasters have been doing before they come ashore. It is impossible to become a master within two or three years of graduation: it usually takes 10 years, a little less than formerly. Some people in our industry are maintaining that we are promoting very fast. However, my statistics show that nowadays we are promoting later and later.

How do masters progress their interests? My own case involved a number of examinations and courses to maintain my ticket, as demonstrated by some 32 different certificates. Nevertheless, I feel the typical perception of the master is unflattering. Let me put it this way: 'I am being grilled almost every month; somebody comes on the ship and tries to prove to me that I am absolutely stupid, absolutely incompetent and shouldn't be here.'

So, in my role with InterManager, I have to defend shipowners, and ship managers almost all the time.

In 1994, InterManager decided that since ship managers wanted to be accepted and listened to in the shipping world, they needed a code of conduct. A lot of lawyers' bills are being paid today because of lack of compliance with the ISM Code by some shipowners and managers. InterManager was very much concerned with the terms of that Code and the enforcement of its provisions.

In terms of the nationalities of seafarers, I can confirm that the Philippines and China produce the highest number, with India, Turkey, the Ukraine and Poland yielding significant numbers. At 35,000, the latter is the biggest supplier of officers and crew in the European Union.

Let me give you a scenario about the way air and sea people are likely to be treated in an accident. Consider the public and authority reaction to an airliner making a forced landing on American soil, hitting and killing birds, saving everybody on board but dumping 50 tonnes of diesel fuel in the process. The captain is a hero and should be regarded as one. The idea of his going to jail for his actions would generally be regarded as preposterous.

Contrast the fate of the airliner captain with the ship's captain sailing close inshore, incurring a problem with his steering gear, hitting a whale and having to dump 50 tonnes of oil in order to run aground to save the ship. Would he be standing in front of you now or would he be behind bars?

A delicate distinction between supporting Club members and mariners

Michael Kelleher, Director, West of England P&I Club

My job is to review the role of the P&I clubs in today's world where the burdens on masters and their shipowner principals are increasing year on year.

Some 39 years ago, when I joined the P&I industry, a Club manager or board member might have said that the Club's primary objectives were service driven and cover supportive. Now, the response might well refer to combined ratio and capital objectives. Things have moved on but hopefully the Clubs' service ethic has remained as well as a compassionate outlook towards members and their employees.

Clubs were created to protect and indemnify shipowners and, nowadays, their present day members, including charterers and other parties----but not masters or crew members specifically. Under their rules, Clubs can provide Defence costs cover to their shipowner members and to the "master or a seaman on board an insured vessel, or some other servant or agent of the member, to protect their interests before a formal enquiry into a loss or a casualty involving the insured vessel, or in connection with the defence of criminal proceedings against the Master or a seaman on board the insured vessel."

Cover is not automatic but has to be confirmed by the Club managers or board or committee at their discretion. This can lead to tricky situations where judgements need to be made, at the outset, during or even at the end of the case, ensuring testing moments between Club managers, members, masters and seamen.

Public policy demands there is no support affordable to crew members involved in "magic pipe" or oily water separator cases until the end of a case. Discretionary Defence cost support cannot automatically be anticipated or provided to seafarers involved in deliberate pollution and criminal cover ups. The clubs generally draw the line at providing bail in criminal cases or paying fines determined by a properly constituted court.

Captain Schettino of *Costa Concordia* infamy could not expect Club support for his defence costs after his antics off Giglio in January 2012. The shipowners may well have decided to provide it but not the lead Club without discretionary consideration by its board.

Consider the *Rena*, a small container ship which grounded on a delicate reef off Tauranga, New Zealand in 2011. The Master had tampered with the preferred safe passage plan to regain lost time whilst under charter, perhaps trying to respond to pressure from owners or charterers. It left him cruelly exposed to the full anger of the authorities and a heavy criminal process against him, his second officer and his owners.

However, Clubs would, by and large, support their masters and crew after a serious collision with another vessel resulting in injuries or loss of life on either vessel----where there may be negligence on both sides; where the Club can see the justice of providing support; and where mitigating civil liabilities eventually arising from wreck removal, cargo loss and collision damage may be commercially advantageous.

In a serious fire case, cover would extend to support for the owner and perhaps his DPA or managing director in an enquiry. Such cases are on the rise as authorities bring actions against owners and their servants, sometimes acceding to external or media pressure to attack individual targets on board and ashore using the criminal law.

Cases involving severe pollution from vessels at sea attract the most outrage and publicity and have the most severe personal consequences for masters and seafarers. The experiences of poor Captain Mangouras of The *Prestige* provide a cautionary tale to seafarers present and future. Defence costs support for the member was provided at all stages by the concerned Club and by the International Group Pool, encompassing at-cost primary reinsurance. In an exceptional discretionary award, the Club provided the Euros 3 million bail demanded by the Spanish authorities to release the poor Captain.

The *Prestige* exemplifies the slow processes involved in local criminal investigations, prosecution, bail application and trial. The First Instance Court hearing took place in 2013, 11 years after the casualty. The case has since proceeded to the Spanish Supreme Court and will be subject to delays and appeals, perhaps for years to come. The IG, ICS, BIMCO and Intercargo have protested against Spanish governmental claimants and seeming abuse of legal process.

So, the Master and crew are often seen as the soft underbelly for putting pressure on an owner, and possibly his P&I insurer, to gain an advantage in a casualty situation. More and more crew members are being detained in jail or under house arrest whilst an investigation is being mounted.

What else can Clubs do to protect Masters? First, provide training for members to assist them in learning lessons from events, even near misses; and to work with them on better procedures to avoid repetition of incidents. Direct liaison with members' managements, crew and superintendents over the past 15 years has focused with some success on oily water separator use and best practice. Clubs' loss prevention and survey departments are heavily engaged in this work.

Clubs work with members' own academies for crew training on bridge and engine resource management. Our very professional third party management members are excellent in this area. More third party management can be a bonus in respect of best practices and the development of a corporate culture.

Through their network of lawyers and commercial representatives, Clubs are well placed to provide local and influential assistance to respond to casualties and to alleviate undue pressure on masters and crew.

Clubs can liaise through the International Group and with other professional bodies to better the positions of shipowners and masters involved in incidents. However, they are in no position to attack the perceived unfairness of local laws in jurisdictions worldwide but can use their influence to facilitate the adoption of best and fairest practices re casualties - using their best legal and commercial resources locally and the weight of industry associations.

Where marine accidents equate with criminal investigation

Michael G Chalos, Partner, K&L Gates LLP (New York)

I will explore the evolution of the criminalisation of the master in the U.S. resulting from maritime accidents. In the U.S., it's an absolute truism that if you are involved in an accident which results in pollution or death, there will be a criminal investigation and most likely a criminal prosecution.

I've observed over the years, practising maritime law in the U.S., an erosion of masters' authority. The reasons include the regulations, policies and procedures we have these days, not the least of which is the ISM Code; and the multinational crews who may not have the same respect for the master as homogenous crews.

I have represented several masters in high visibility matters, including defending the Master of the *Exxon Valdez*, Captain Hazelwood. However, when you have a spill of the magnitude of the *Exxon Valdez* in the pristine waters of Alaska, which killed thousands of birds and other animals and spoiled the landscape, it was a horrific event for the general public.

Government, the industry and the press were interested parties. Worst of all, politicians saw an opportunity to get their names and faces in front of the cameras. Although there was nothing intentional about what happened, when the various interests come together, they ask who can they blame? The captain is in charge of the ship so blame the captain. They did.

Captain Hazelwood faced a number of very serious but phoney charges. Happily, we obtained acquittals for all the charges except for a minor misdemeanour offence for which he received 400 or 500 hours of community service. It was the very first case in the U.S., and probably around the world, where a captain was held completely liable. Until then, there was confusion as to the standard for prosecuting a master, e.g. negligence, recklessness or a *mens rea* standard?

In the *Exxon Valdez* case, it was a combination of *mens rea* and strict liability prosecution. We were very fortunate that the jury, despite the negative publicity, listened to the evidence and acquitted him. They were not going to permit government, press or politicians to railroad this poor man.

Prior to this case, there really was no criminalisation of maritime accidents in the U.S., and probably nowhere else in the world. Since then, a number of cases have involved spills and deaths. The government learned a lesson from the *Exxon Valdez*, where they had really been looking for a conviction. Now they charge the captains under a welfare statute which does not require a *mens rea* element, just a simple negligence element and where they don't have to prove any intent to commit a crime. So these poor captains get convicted very easily. If you are the captain and you have an accident and a spill, you are liable. It's that simple.

It is very hard to defend such cases. So, every master who comes into the U.S. faces the possibility of going into jail after an accident. The same thing is happening around the world.

With high visibility cases, press and politicians get involved and captains get charged. They are sometimes held for an inordinate amount of time, while the authorities investigate and pursue the matter.

In the U.S. now, we have MARPOL cases under the Act to Prevent Pollution from Ships. Under this Act, there is an 'inexorable element' encouraging whistle blowing. Aided by modern technology, every crew member becomes an agent for the U.S. government. If a chief engineer does something illegal, these guys have cell phones and film what's going on. Then they turn the material over to the U.S. authorities - and they get 50 per cent of any fine! This is really undermining both the master's authority and the compliance efforts of the industry.

A case out of the "famous" Fifth Circuit has effectively determined it is the captain, not the chief engineer who is responsible for maintaining the oil record book. Now, the poor captain has to worry that his chief engineer doesn't do something crazy down in the engine room!

Ensuring those who are truly responsible are held accountable for their acts

Jeffrey G Lantz, Director of Commercial regulations and Standards, US Coast Guard

My job is to present the regulator's perspective. I will focus on the master's responsibility and how, over time, that responsibility has become shared with others. Then, I will talk about compliance and the need to hold the right people accountable when there is an incident.

We know that the vessel owner, operator, master and crew all have a responsibility for the safe operation of the vessel and for compliance with international and domestic laws and regulations.

Every Master licensed under the laws of the US must take an oath stating that he or she will faithfully perform the duties required by US law.

Some laws and regulations place equal burdens on several parties and some place a higher responsibility on the master, particularly for operational decisions, navigational safety, shipboard training, drills and vessel safety.

The International Convention for Standards of Training & Certification Watch-keeping (STCW) defines the Master as “the officer having command of the vessel.” He remains in charge of overall vessel operation, particularly at sea and, most important, when there is a vessel incident.

The International Safety Management Code clearly outlines the Master’s authority and responsibility. His duties include implementing safety and environmental policies; vetting the crew; issuing orders and instructions; and verifying specific requirements.

Numerous US regulations outline the responsibilities and authority of the Master. SOLAS, SCTW and the US Regulations demonstrate the clear regulatory regime that the master is in charge and in control of the vessel, ultimately responsible for the safety of the crew and potentially liable for damages, following regulatory enforcement actions arising from vessel operation.

However, today’s interconnected shipping industry and increased communications and oversight whilst the vessel is at sea have pushed the regulatory regime ashore, including environmental matters-----mainly through the ISM Code. This lays out the company’s responsibilities and names the designated persons responsible for making sure the Code is complied with. Shore-side management is now responsible for ensuring the Master has adequate resources and shore-based support to ensure compliance with safety and pollution prevention requirements.

With extended responsibility comes extended liability for violations of regulations. US regulations encompass people other than the master, including owner, agent and operator. Extended responsibility for shore-side management exists within US domestic law to include the Seaman’s Manslaughter Statute. This extends criminal liability to the owner or charterer or any corporation executive officer for knowingly and willingly causing or allowing fraud, neglect, connivance, misconduct or violation of law.

This does not relieve masters of their obligations for environmental compliance but ensures there is a regulatory deterrent to prevent masters succumbing to economic pressures that might lead to MARPOL violations.

Mariners and operating companies may still be prosecuted for environmental crimes. However, while the master signs the Oil Record Book, the operating company and the chief

engineer or other engineering officer are more likely to face prosecution. Most convictions for environmental crimes are against the operating company as usually it has the most to gain.

The following aspects must be considered in determining enforcement options in respect of an incident:

- *did non-compliance result in the casualty, property damage, injury, pollution or death?

- *did the Master, owner, operator, crew or designated person benefit from misbehaviour?

- *what is the cost of the compliance?

- *what is the tangible impact on the company of non-compliance?

The US Coastguard relies on a number of tools to gain compliance, including civil penalties against company, owner, operator or even the master; suspension or revocation against an individual, crew member or of the master's credentials; and criminal referral. The latter is the largest hammer in the tool box but is not used as frequently as other tools.

How far these options are applied will depend on the penalty provisions of the underlying statute, the seriousness of the offence, whether there have been injuries and deaths, and the roles of master, company, owner and other crew members. Has there been negligence, gross negligence or wilful misconduct?

These considerations enable the enforcement authorities to apply the laws and regulations properly so that the people who are truly responsible are held accountable for their acts.

There were more than 57,000 port state control boardings by the US Coast Guard from 2010 to 2015. This yielded just 92 environmental crimes referrals, only two of which resulted in a master's conviction. In the first instance, the master pleaded guilty to conspiracy to obstruct justice, for his role in destroying evidence and instructing crew members to lie to the Coast Guard during an inspection. In the second, the individual pleaded guilty to violations of the Clean Water Act and Refuse Act.

Coping with commercial pressures, extra surveys and bullying

Faz Peermohamed, Partner and Head of Global Shipping, Ince & Co

Does the perception reflect reality? Is the Master truly under attack? Do the commercial pressures on the Master impinge more significantly than previously? Are the legal burdens on the master more significant than before? Is there bullying? Is there interference by the authorities? Is criminalisation on the rise?

Sadly, having been involved in many significant casualties, I have to tell you that that the perception is indeed the reality in many parts of the world. Masters are often treated as the poor relation. Their treatment is different to that which would be afforded to an airline pilot in similar circumstances.

The most basic commercial pressures come from the charterer. Masters often bow to the requirement to overload. This makes the ship more liable to incidents.

Pilots sometimes refuse to engage sensibly with the Master and make unreasonable demands. In the middle of the Suez Canal, pilots have refused to take the ship further unless given cigarettes. Given the Bribery Act and awareness thereof within the seafaring community, masters do not want to do this. One pilot threatened to put the ship aground (although he did not).

As a large LNG Carrier was going into port, the pilot insisted the Master sign the Conditions of Use Form for the terminal. The master refused to give priority to working through a four-page form, given the immediate need to focus on the main task of negotiating the channel safely. Further, terms had already been agreed in advance between owner and charterer, so the Conditions of Use form was not relevant. The pilot threatened to turn the ship around and take it back to anchorage unless the form was signed. The Master stood his ground and made contact with his owners who promptly solved the problem with the charterers.

Such bullying and pressure is not uncommon. Good owners should support their masters, contact the charterers and find a solution. Many owners in this room would do exactly that but not all are in a position to do so. Some owners and managers seek to micro-manage

every step the master takes. Obviously, this breeds a lack of trust and leads to its own problems.

There are legal burdens for the Master on compliance issues. Class and Flag State surveys are mandatory but the master is subject to a significant amount of extra surveys from Port State Control, MOC, charterers and even cargo interests at the discharge port, as well as SIRE inspections.

If the vessel is only in port for 12 hours after a three-hour pilot inwards with a three-hour pilot to get out, he hasn't much time for his main duties. These encompass dealing with agents, monitoring the progress of cargo, and signing paperwork and bills of lading. Yet there is only one master and each person who walks up that gangway wants his undivided attention.

So, the poor Master delivers and delivers and delivers even though he is tired. He has to comply with the STCW guidelines and get ten hours' rest in any one day, six of them continuous. How is he going to achieve that with all these surveys?

Since I sailed as a master, the number of documents on board has effectively tripled. Many relate to non-essential items and could be dispensed with, perhaps halving the overall number.

Rescue at sea is another issue, given the number of would-be migrants and refugees. Masters have to reckon with the demands of the authorities and even those of the refugees who want a port where they feel they will get favourable treatment.

We do need to look at how the industry deals with masters. They need to be treated fairly. When a casualty happens, every step the master takes is challenged, irrespective of right or wrong considerations. His or her actions are often misinterpreted by the authorities. On conviction for offences, sentence is rendered according to damage caused rather than level of negligence.

PART B

Forum Discussion and Q & A Session

Commodore Jim Scorer, Secretary General, IFSMA

What more should flag states be doing to protect shipmasters?

Faz Peermohamed

Flag States have a great opportunity to help seafarers. They have a unique position because they carry the authority of government. They have access to people in government where the incidents occur. Where there is unfair criminalisation, Flag States are well placed to use their contacts with the authorities in the country in question and with other stakeholders like the IMO. If all those fail and sentence is rendered unfairly, they can go to the International Tribunal for the Law of the Sea and ask for a judgment in favour. The coastal state might listen to this.

Kuba Szymanski

There are some very good Flag States which take these matters seriously. They are in the same game as stakeholders and do not want their flags tarnished. We have great support from them but not necessarily from other Flags. There are problems in relation to who pays the bills. P&I Clubs are not going to look after seafarers; they are going to look after owners. So, an owner will use the Flag State most convenient to him which, I am afraid, is not necessarily so for us masters.

Michael Chalos

The US Government always says it prosecutes because Flag States do not do enough to enforce the regulations. The US is especially keen on infringements of MARPOL regulations. The American authorities feel Flag States do not punish seamen who are guilty of environmental crimes and do not oversee their owners and operators properly to make sure they are running compliant vessels.

That is true to a certain extent but I believe Flag States don't do enough to help out when someone gets pulled over in the US. We have a situation now where crew members, including masters, are held for more than a year in hotel rooms, away from family and work, while the Department of Justice takes its time to prosecute and investigate cases. This approach aims to drive up the costs to the shipowner and operator to encourage them to settle. Flag States

should step in and assert 'these people are under our jurisdiction and they have our licences; it is unfair to hold a seaman for a year or 18 months when investigations could be done in a month. There is no reason to deprive people of their liberty as a tactical ploy in seeking a bigger fine.

Michael Kelleher

There are Flag States and Flag States. At Club level, we may sigh with relief when we have to deal with Flag State X. With Flag State Y, however, there will be no support for the owner or the captain as there is no infrastructure to provide it. With some investigations relating to oily water, we have found that owners under certain Flags get in touch with the Club to see if we can get those States to get an investigation going in advance of the US authorities taking a hand. Investigations, which could well take no more than a month, show that the State has exercised its jurisdiction. Some Flag States are very good at this but others you cannot trust. It is a mix and match.

Captain Bogodan Cojocar, Carisbrooke Shipping

I am a Designated Person Ashore (DPA), the emergency person within the company in case things go wrong in safety and environmental terms. I am the company's security officer when a ship is attacked by pirates; and the marine manager and claims manager when I have to deal with the P&I Club and the underwriters.

With over 12 years' experience, I stress the need to keep things real and focused. The masters are all under attack, including by us (the companies), and by people boarding vessels in ports. Our problems do not lie with pilots seeking cartons of cigarettes before doing their job, nor with 50 centimetres over draft, which does not happen often by the way.

West Africa is the main problem as things are getting out of hand there. Last Sunday, I had to approve two sets of bribes----I repeat 'bribes'----to Nigerian authorities. The Anti- Bribery Act notwithstanding, this was necessary to allow the vessel to sail next morning. In West Africa, the officials alighted on imaginative deficiencies, such as shortcomings in Filipino seamen's books. So, our captain had been under attack from morning until evening, subject to huge harassment from several immigration and Port State Control officers. To ensure that the vessel was not delayed, we approved payments.

That is the reality. We need to find solutions where the master has been charged or harassed for imaginary deficiencies.

Kuba Szymanski

I noted some laughter when a spade was called a spade. Bribery or a facilitated payment is a reality. It occurs internationally, even in Europe and in the UK. The TRACE organisation is concerned with monitoring it.

George Tsavlis, Tsavlis Salvage Group

I noticed Mr Kelleher was a bit hesitant when he mentioned that a P & I Club was reluctant to put up a bond for Captain Mangouras, Master of the *Prestige*. He was probably the most horrifically treated innocent in modern history----an elderly but very experienced captain, who had never made any real mistake, awaiting justice for such a long time. In my view, the people who judged him, judged him wrongly. But why was the Club so hesitant in putting up the bond to have him released?

Michael Kelleher

Although the Club in question had scope to exercise discretion in this matter, it had to take into account that the criminal case was at its beginning. At an early stage of the investigation, it is always very tricky to understand whether the full support of the Club's Board and managers should be extended. In this case, the Club concerned did not feel comfortable with supporting a very, very large bail so early on. Doing so might have fettered the discretion of its Board at the end of the case when the Board would have the right and obligation to make decisions of support in the light of full facts. However, there were grounds for getting early recompense and alleviating the position of Captain Mangouras. As I recall, the Club gained the International Group's support for bail being put up at an early stage.

Kuba Szymanski

Can we learn a lesson from all this and make provisions in agreements with P&I Clubs to put a bond aside? We should strengthen procedures to deal with such situations and contingency plans.

Michael Kelleher

Sometimes we do not know what charges are going to be levelled at an early stage against the captain, officers or crew. So we have to wait until there is an arraignment, some grand jury investigation or something else---and that takes time.

Captain Fredrik J van Wijnen, General Secretary, CESMA

In the past 20 years, I have been involved in many cases of criminalisation. I have assisted many shipmasters who have run into trouble, with the help of other organisations.

The reduction of the shipmaster's authority is a safety issue. I have been a captain on container ships for many years and it is the master who takes the decisions. If you have to ask the world before you make a decision, sometimes you are too late. The authority of the master should not be attacked because there is only one man on the spot who can make a decision about the ship's safety.

Kuba Szymanski

It comes down to the issue of trust. We should trust the master.

Faz Peermohamed

I agree. We have got to trust our masters. They carry more and more responsibility and exercise less and less authority. This surely has to stop. In my 20 years as a lawyer, I have dealt with over 50 cases involving criminalisation where we have defended masters and helped them out of difficult situations. Unfortunately, each one arose because of an unrealistic position taken by the authorities.

Victoria Papageorgiou, London P&I Club

We were the Club involved in the *Prestige* incident. In that case, the International Group took an exceptional attitude, very different to every other case. We put up security for the Master and supported him, even though the facts were not clear, both as a club and at International Group level. Club and Group acted together.

It is very difficult for the Clubs when there are criminal proceedings until we know the facts of particular cases. In the *Prestige* case, we stood very close to the master, making sure that he was comfortable despite what he was going through from the authorities.

Les Chapman, TMG

Are not the rights of the shipmasters circumscribed by the fact that so many are employed under conditions that amount to casual labour?

Kuba Szymanski

Most of the audience this evening are probably on permanent contracts with notice periods. By contrast, 70 per cent of seafarers are employed like people in the film industry---a contract for one film and then they are fired. That's probably why owners do not necessarily get very close to shipmasters. Do our panellists feel very strongly about this? Do you believe having more of a contractual relationship would help?

Faz Peermohamed

Masters and crew need a sense of identity. Having 70 per cent of mariners on a single contract is not really going to breed any loyalty towards a company, with seafarers buying in to its systems and operations. Seafarers need to be on a level playing field and treated exactly the same way as shore staff. Not everybody might agree but that's how I feel.

Michael Kelleher

I tend to agree with Faz but again, there are owners and owners and cultures and cultures. I would say the Greek culture is excellent at being supportive to crew from the master down. The officer class has always been looked after almost as a family. I think third party managers bring something to the party. For example, their academies in India provide excellent training to crew members at all levels, developing a positive corporate culture which will permeate through to the ships they serve on.

Chris Adams, Steamship Insurance Management Services Ltd

Do attacks of the type described this evening serve as an effective deterrent against quality individuals pursuing a seagoing career? Should we fear for the quality and safety of future shipping operations?

Michael Kelleher

In some countries, a career at sea is still very, very attractive and seafarers are regarded with pride in their communities. Our Club has done a lot of business with Vietnam in the last 30 to 40 years. When we first drove from Hanoi to Haiphong, the individual houses being built along that road belonged to ships' captains. For crew members employed worldwide, I think the attraction is still there. However, we are not talking about European cultures where there is a fear factor. Maybe in the more mature jurisdictions in Europe there is less incentive to a seagoing career, courtesy of the stories about what is happening to masters.

Jeff Lantz

Choosing a maritime profession as a career is very complicated. There are requirements for US citizenship on a lot of American vessels. We are experiencing a manpower shortage and a lot of factors go into this, including the fear of being prosecuted for a crime. Other factors include lifestyle and pay. We should not emphasise the fear factor too much.

Kuba Szymanski

If I may bust the myth, there are 2000 cadets in the UK today wishing to go to sea and Ireland is pulling in a lot of youngsters. So I do not think we have a big problem at the moment with youngsters being attracted to sea. We have a problem placing those youngsters because shipowners are not taking them on board. To become a Third Officer, you need to have sailed for 12 months. However, some sandwich courses at UK colleges and universities in the UK are pushing people out before they have acquired the sea time.

Graham Westgarth, Gas Log Ltd

The role and responsibilities of the master have evolved and developed over the centuries, accompanied by corresponding legislation. Faz painted a very good picture of a master having to be superman to meet the requirements of charterers, owners and legislators. It's not going to get better; it is going to get worse as we develop more and more legislation, more and more requirements, more and more checklists.

Will the legislation and punitive actions that now follow any failure make for a sustainable future? Should the model be looked at in a totally different way? Having had discussions with various IMO Secretaries-General on this subject, I would particularly like to hear from Jeff as he knows about the workings of the IMO.

Jeff Lantz

As a Regulator, we have to be very careful that we do not layer too much on the master so that the burden and the responsibility become impossible. When it comes to implementing a good safety management code, the authorities set out the responsibilities of the company and the master. This highlights Flag State responsibility to make sure everything is implemented correctly and throughout the company so that it becomes embedded in the company culture. There are lots of things to help make sure the master is not overburdened. The company, operator and owner should make sure that does not occur.

However, I do not see the existing burden being reduced. The master is in charge. Ultimately, we hold him responsible for what goes on. It is a tough situation, I agree.

Michael Chalos

In a maritime accident, the master should never be prosecuted or charged with a crime if it was truly an accident and there was no intent and no gross negligence. The main reason for these prosecutions is not necessarily to punish somebody for an accident. Ultimately, it is to put the burden vicariously on ship owners and operators. When you have a maritime accident and the captain is prosecuted, he should be supported by all means, with the Club or owner appointing a lawyer.

If the master goes down, the costs to the club are likely to increase. The master should, therefore, be supported right from the very beginning. It would be better if the authorities did not criminalise maritime accidents. I see no social value in charging a man who is carrying out his job when something goes wrong.

Michael Kelleher

In large casualties---typically involving a major collision with loss of life and even a wreck, it is incumbent on the Clubs to try to support the Defence costs of the master because it could change the civil liabilities emerging at the end of the case. That is a commercial reason and the right thing to do.

One of our vessels collided with a unit off Hong Kong and 16 lives were lost. The Hong Kong government brought criminal proceedings against both the captains, both pilots and officers of the watch. Everybody was found guilty at first instance; all were appealed and, in the highest court, just one of the captains and one of the pilots was blamed. Our captain had been in the right position and was exonerated. And the Hong Kong government paid up!

Lord Clarke – (*concluding remarks*)

Masters are the backbone of the maritime world and should receive every conceivable support. That is what Clubs, owners, managers and States should be doing. Masters should not be prosecuted unless they have genuinely committed a crime which deserves some kind of penalty. Sending them to prison for careless driving is clearly inappropriate. If the United States is doing this, they should stop.

The real lesson derived from this debate is that the master should be supported fully by everyone.

PART C - Debate Participants



Top l-r clockwise: Faz Peermohamed, Michael G. Chalos, Captain Kuba Szymanski, Michael Kelleher, Jeffrey G. Lantz and The Lord Clarke.

Chairman

The Right Honourable The Lord Clarke of Stone-cum-Ebony

Anthony Clarke is President of the London Shipping Law Centre. He has been a Justice of the Supreme Court since its inception in 2009 when he was awarded a life peerage. He was the first Justice to be appointed directly to the Court without having sat as a Lord of Appeal in Ordinary. He was appointed to the Court of Final Appeal of Hong Kong in 2011 as a non-permanent judge from other common law jurisdictions.

Educated at Oakham School and King's College, Cambridge, Anthony Clarke was called to the bar in 1965 and specialised in commercial and maritime law. He became a Queen's Counsel in 1979 and was a Recorder sitting in criminal and civil courts from 1985 to 1992.

He became a High Court judge in 1993, being allocated to the Queen's Bench. He succeeded Mr. Justice Sheen as the Admiralty Judge. He sat in the Admiralty, Commercial and Crown Courts.

He was promoted to the Court of Appeal in England and Wales in 1998 and was appointed to the Privy Council. He took charge of the Thames Safety Inquiry and the judicial inquiry into the Marchioness disaster. He was appointed Master of the Rolls in 2005 and Head of Civil Justice in England and Wales.

Moderator

Captain Kuba Szymanski

Having started his sea career in 1985, Captain Kuba Szymanski graduated from the Maritime University of Szczecin with a master's degree and joined Dorchester Maritime Limited as a deck officer. He served in gas/chemical and product tankers, obtaining his first command as a master in 1999.

In 2001, he became Marine Superintendent for Dorchester Maritime Ltd. IOM, and was promoted to Marine Manager (Designated Person Ashore) in 2004. Three years later, Captain Szymanski joined MOL Tankship Management in London as a General Manager. In 2010, he was appointed Secretary-General of InterManager, the international trade association for the ship management industry, and moved back to the Isle of Man.

InterManager members are involved in managing more than 5,000 ships, employing over 250,000 seafarers. The organisation lobbies to ensure members' views and needs are taken into account within the worldwide maritime industry. InterManager is committed to improving transparency and governance in the shipping world and ensuring high standards throughout the ship management sector.

In 2012, Captain Szymanski joined TK Foundation's Board of Directors. He gained an Executive MBA from the International Business School, Isle of Man.

Faz Peermohamed

A former Ship's Master and UK qualified lawyer, Faz Peermohamed is a Partner and Global Head of Ince & Co.'s Shipping group, headquartered in London. His practice includes wet and dry shipping and he regularly advises CEOs and management on complex legal matters.

Mr Peermohamed has an established reputation in shipping litigation, encompassing collisions, salvage, total losses, groundings, shipboard fires and general shipping disputes. As an ex-tanker man, he is frequently instructed in tanker cargo disputes and contamination claims.

He is well known for his expert advice in the highly charged atmosphere following maritime casualties. He handled the complex and high profile *Prestige* and *Costa Concordia* incidents; the collisions between *Corvus J* and *Baltic Ace*, and between *Maritime Maisie* and *Gravity Highway*; and the *Stolt Valor* explosion. His expertise in insurance matters stems from earlier experience as CEO for a leading marine insurer.

In 2013, Faz Peermohamed was named as Lloyd's List Global Maritime Lawyer of the Year and ranked among the Lloyd's List Top 10 Law Personalities.

Michael Kelleher

After reading jurisprudence at Oxford University, Michael Kelleher qualified as a barrister. In 1978, he left the bar and joined the West of England P&I Club's Claims Department. In the mid to late 1980s, he managed the West of England's Hong Kong office and on his return to the UK was appointed a Director. Mr Kelleher is now the Senior Claims Director at the West of England and is responsible for the claims service in all the Club's offices worldwide.

He chairs the International Group of P&I Clubs' Large Casualty Working Group and is a member of the International Group's Salvage Sub-Committee and of BIMCO's Documentary Committee. In 2010, he was involved in the revision of BIMCO's Wreck Hire, Wreck Fixed and Wreck Stage contracts with International Salvage Union representatives.

Michael G. Chalos

A partner at K&L Gates, LLP, Michael Chalos specialises in traditional maritime law and environmental civil and criminal law. He is a 1970 graduate of the State University of New York's Maritime College, where he received a Bachelor of Science degree in Marine Transportation and a Third Mate's license in the United States Merchant Marine. Mr. Chalos attended Fordham University School of Law, graduating in 1975 with a Juris Doctor degree.

He has represented clients in high profile civil and criminal environmental litigation, including the successful defence of the Masters of the *Exxon Valdez* and *Selendang Ayu*. Other clients have included United States and foreign based corporations, shipowners, managers, operators and crew members subject to criminal investigations by the U.S. Government. Mr. Chalos has specialised in defending and resolving oil pollution incidents and other environmental claims. He liaises with governmental bodies enforcing environmental regulations, including the Department of Justice, the Environmental Protection Agency, the United States Coast Guard, Federal and State Trustees, the Oil Spill Liability Trust Fund, and various state departments of environment.

Mr. Chalos has authored several environmental management systems/compliance programs, used in settlement agreements. A former Chairman of the US Maritime Law Association's Committee on Environmental Crimes, he lectures to industry groups, governmental bodies, law students and environmental groups.

Jeffrey G. Lantz

Jeff Lantz is the Director for Commercial Regulations and Standards for the Coast Guard. His responsibilities include the development of U.S. national and international maritime safety and environmental protection regulations and policies. He represents the U.S. at the International Maritime Organization as head of delegation to both the Maritime Safety Committee and Marine Environmental Protection Committee. He currently serves as the Chairman of the IMO Council.

Reception & Dinner at the Drapers' Hall



PART D

The Cad Tradition and its Ethos

Francis J J Cadwallader - to whom we pay tribute through the 'Cad' Lectures and Debates - was the first ever Professor of Shipping Law in the United Kingdom when he was appointed to the Chair by Cardiff University in 1976. With Professor Edward Brown, he set up a Centre of Excellence in Maritime Law and Policy. He built up his reputation in this field through his work at University College, London from 1963 to 1982. He continued teaching at Cardiff until his death in 1992.

He is remembered as a scholar for challenging the law and as a teacher for his enthusiasm and for understanding the needs of students. He made a major contribution to the advancement of maritime law as an essential part of contemporary legal education. Since 1994, Dr Aleka Sheppard has taken up this mantle. Through her pioneering the founding of the LSLC, she has conceptualised and delivered enhanced education programmes in maritime law to practising professionals. At the same time, she has forged significant synergies between the law, industry, the judiciary and all key sectors of the shipping industry. These 'Cad' Debates and Lectures have consistently tackled areas of major concern to the international shipping industry.

CADWALLADER LECTURES/DEBATES OVER THE YEARS

First

The ISM Code: The Road to Discovery?

Chaired by The Rt. Hon. The Lord Mustill; delivered by The Rt. Hon. The Lord Donaldson of Lynton (26th March 1998)

Second

The Civil Justice Reform – Its Impact on Maritime Litigation, the Maritime Industry and London

Chaired by The Rt. Hon. The Lord Mustill; delivered by The Rt. Hon. Lord Justice Clarke and The Hon. Mr. Justice Rix (7th July 1999)

Third

The European Commission and the Shipping Industry

Chaired by Graeme Dunlop – Chairman, P&O; delivered by Georgette Lalis – The European Commission and Epaminondas Embiricos – Greek Shipping Co-operation Committee (14th September 2000)

Fourth

Sink Or Shelter? – A Question of Collective Responsibility in Ship Safety

Chaired by Alfred Popp QC; delivered by Willem de Ruiter – The European Commission, Frank Wall CMG – UK Dept. of Environment and Transport, and Michael Everard – F. T. Everard & Sons (4th October 2001)

Fifth

Shipping and the Fight Against Terrorism

Chaired by The Rt. Hon. The Lord Bingham of Cornhill; delivered by Frank Wall CMG - UK Dept. of Environment and Transport and John D. Kimball – Blank Rome LLP (24th October 2002)

Sixth

Challenges facing the Shipping Industry in the 21st Century

Chaired by William O'Neil, Secretary General – IMO: delivered by Chris Horrocks – International Chamber of Shipping, Fotis Karamitsos – The European Commission and Dr. Peter M. Swift - INTERTANKO (5th September 2003)

Seventh

Criminalisation in Shipping – Human Pawns in Legal and Political Games

Chaired by The Rt. Hon. The Lord Steyn; delivered by Dr. Frank L. Wiswall - CMI, Captain Rodger MacDonald - IFSMA and Stephen Martin - SIMSL. Keynote address by Efthimios Mitropoulos - Secretary General, IMO. (6th October 2004)

Eighth

The Extra-Territorial Jurisdiction in Criminalisation Cases: Sovereign Rights in Legislation and New Risks for the Shipping Industry

Chaired by The Rt. Hon. The Lord Hoffmann; delivered by The Rt. Hon. Lord Justice Clarke – Master of the Rolls, Fotis Karamitsos – The European Commission, Judge Thomas Mensah - ITLOS and Epaminondas Embiricos – Andros Shipbrokers. (4th October 2005)

Ninth

The Ship and the Plane, are they the same? Corporate Social Responsibility; Shipping and Aviation Compared

Chaired by Dr Aleka Mandaraka - Sheppard – Founder, LSLC; delivered by Professor Erik Røsæg - Scandinavian Institute of Maritime Law, Sir Stelios Haji-Ioannou - Chairman of the of easyGroup,

Spyros Polemis – Chairman, International Chamber of Shipping & President, International Shipping Federation, Rupert Britton - Secretary and Legal Adviser to the UK Civil Aviation Authority. (16th November 2006)

Tenth

Lawmaking and Implementation in International Shipping: Which law do we obey?

Chaired by Efthimios Mitropoulos – Secretary General, IMO; delivered by Birgit Solling Olsen – Danish Maritime Authority, Sir Michael Wood KCMG – 20 Essex Street, Dr Thomas Mensah – former Presiding Judge, International Tribunal for the Law of the Sea (1st October 2008)

Eleventh

Politicians, the European Commission, Regulators and Shipping: What is the missing link and the way forward?

Chaired by The Rt. Hon. The Lord Hoffmann; delivered by Jan Kopernicki - President, Chamber of Shipping, Spyros Polemis – Chairman, ICS, Michael Grey MBE – Maritime Journalist, Fotis Karamitsos – Director, DG Mobility & Transport, European Commission, Lee Scott MP - Parliamentary Private Secretary to the Secretary of State for Transport (24th November 2010)

Twelfth

From Titanic to Concordia: The Achilles Heel of Passenger Ships

Chaired by The Rt. Hon. The Lord Clarke of Stone-cum-Ebony: delivered by Dr Stephen Payne OBE and Rear Admiral John Lang DL (26th November 2012)

Thirteenth

“Regulatory Challenges: Shipping between a Rock and a Hard Place” This House believes that parochial policies of regional regulators will wreck international shipping

Moderated by Julian Bray - Editor-in-Chief, Tradewinds. Panellists: Clay Maitland - International Registries Inc. and Dr. Christine Berg - Head of the Maritime Safety Unit, European Commission (25th November 2014)

Fourteenth

The Master Under Attack? Authority and Responsibility in an Age of Instant Access

Chaired by The Rt. Hon. The Lord Clarke of Stone cum-Ebony. Moderated by Capt. Kuba Szymanski: Panellists: Michael G. Chalos - Partner at K&L Gates, Michael Kelleher – Director, West of England P & I Club, Jeff G Lantz - Director of Commercial Regulations & Standards, US Coast Guard and Faz Peermohamed - Partner and Head of Global Shipping, Ince & Co. (26th October 2016)

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