International Law related to Liability and Insurance
Kevin Cooper – Partner, Ince & Co LLP
Ince & Co’s Humanitarian Involvement

- Thousands of refugees struggling with insanitary conditions
- Each person paying $1,200 to make the crossing

www.lesvosvolunteers.com
Recent Developments

Scale of the crisis:
- 18 April 2016 – several hundred migrants feared dead following an attempted crossing from Libya to Italy

New European Border and Coast Guard:
- 21 April 2016 – EU interior ministers met to approve a new force with significantly enlarged staff and funding
  - The plan will allow the force to step in where countries struggle to manage their own coastlines – the initial controversy over this appears to have been overcome
The Legal Framework at Sea

- The UN Convention of the Law of the Sea 1982 ("UNCLOS")
- The International Convention for the Safety of Life at Sea 1974 ("SOLAS")
- The International Convention of Maritime Search and Rescue 1979 ("SAR")
- The International Convention on Salvage 1989 ("the Salvage Convention")
Master’s Duties

**UNCLOS:**
- “render assistance” to persons “in danger of being lost”
- “proceed with all possible speed” insofar as this can be “reasonably expected”
- A master is only obliged to assist if “he can do so without serious danger to the ship, the crew or the passengers”

**SOLAS:**
- A ship that is “able to provide assistance” must “proceed with all speed”
- The master’s “professional judgement” cannot be interfered with

**Salvage Convention:**
- The master is bound “to render assistance to persons in danger of being lost at sea”
Coastal State’s Duties

**UNCLOS:**
- A coastal state must “promote the establishment, operation and maintenance” of search and rescue services

**SOLAS:**
- “Ensure that necessary arrangements are made for distress” and the “rescue of persons in distress at sea”

**SAR:**
- A coastal state must help those at sea “regardless of nationality”
- Where a commercial ship has provided assistance, the coastal state must “as soon as reasonably practicable” arrange for rescued persons to disembark at “a place of safety”
- So that the commercial ship may then proceed “with minimum further deviation”
The responsibility placed on coastal states by the Refugee Convention is considerable:

“No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion"
Comment

- Master has to make difficult decisions independently

- Coastal states have corresponding duties, but may not always be able to act as they should

- The Refugee Convention can make coastal states reluctant to allow disembarkation of rescued persons

- The growth of Isis attacks may make coastal states more cautious
Case Studies
International Chamber of Shipping Guidance

- Legal considerations
- Practical checklists
- Links to further resources
- Arabic / French safety signs

www.ics-shipping.org
Conclusion

- Shipowners have legal duties that may be enforced

- Although coastal states are more supportive than in the past, their resources are limited and their decision making may not be ideal

- Shipowners can minimise risks by being prepared

- Decisions must often be made quickly, but there may be the opportunity to take legal advice, which may be complex and depend, for example on the location of the vessel when tasked by an MRCC
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