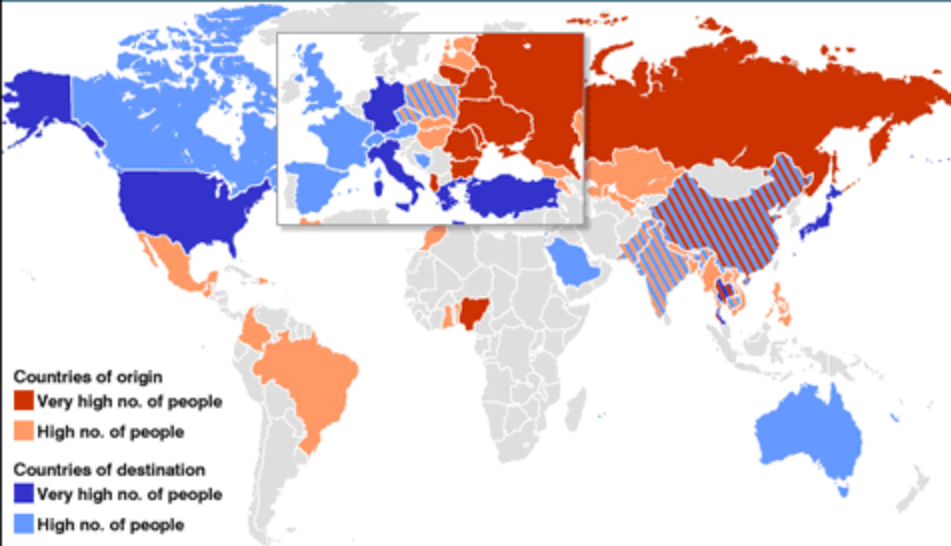


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CRIMINAL LIABILITY (OR NOT) OF THE MASTER OF THE SHIP FOR TRAFFICKING



Criminal liability of the master of the ship

Presumed innocence

- proof of guilt
- Any other physical person
- Not connected with the function of the master of the ship

Command liability

- Commander of a ship
- Strict liability
- What for? What are his functions?

Trafficking

Wider sense

Every organized illicit trade in different commodities, provided by criminal activity

- People, drugs, arms, organs etc.

Narrower sense

Only trafficking in persons

The victim has not given consent

Prolongued abuse

“...recruitment, **transportation**, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Art. 3. par. 1 a) Protocol to prevent, suppress and punish trafficking in persons, especially women and children Of the UN Convention Against Transnational Organized Crime, 2000

Smuggling

- ♦ “...procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”
- ♦ Art. 3. par. 1 a) Protocol Against the Smuggling of Migrants by Land, Sea and Air of the UN Convention Against Transnational Organized Crime, 2000.

Supranumeraries on board of a ship

Found during voyage & declared

- Stowaways
- Administrative procedure of repatriation

Found by the port state authorities

- In part of the ship
- In the cargo
- Liability of the master?

Criminalization of seafarers for trafficking

- ◆ Capt. Laptalo Case 2007, Greece
 - ◆ Carriage of 187 000 boxes of bananas, palletes wrapped in plastic
 - ◆ Guayaquill, Equador to different Mediterranean ports
 - ◆ 2 boxes – cocain
 - ◆ Master: 16 months in prison, 1° Court: 14 years of prison; 2° Court: released of all charges
- ◆ Case “Therese” 2008, Panama
 - ◆ “parasite” on the underwater part of the hull
 - ◆ Columbia to Panama
 - ◆ Master: House arrest for months

Trafficking within the cargo or part of the ship



Liability of the master of the ship

- ◆ FOR THE SHIP
 - ◆ Functions of the master of the ship
- ◆ FOR THE CARGO
 - ◆ Cargo handling procedure

Functions of the master

1. Nautical function and safety of the ship
2. Administrative powers
3. Legal representation of the shipping company

1. Nautical function & safety of the ship

- ◆ Early days of shipping
 - ◆ Shipowner (merchant): physically present on board of a ship
 - ◆ Commands the whole maritime venture; commercial duty
 - ◆ Ship: biggest asset
 - ◆ *Magister navis* (master mariner): navigation
 - ◆ Fully independent and liable for nautical function
- ◆ Primitive accumulation of capital
 - ◆ Shipowner: more ships, runs from the mainland
 - ◆ Transfers his powers onto the master of the ship

Master's functions: directly transferred from the shipowner

- ♦ Goal:
 - ♦ safe completion of the maritime venture
 - ♦ profit from carriage of goods
- ♦ Nautical function
- ♦ Safety of the ship
- ♦ Commercial duty for the cargo during voyage
 - ♦ Contractual liability for the cargo
 - ♦ As declared by the shipper

After 9/11 : Security function

- ◆ 2002 Amendments to the Safety of Life at Sea Convention (SOLAS)
 - ◆ International Ship and Port Facilities Security Code (ISPS Code)
 - ◆ Security of ships, crew and ports
 - ◆ Certification of security officer, port, ship
 - ◆ Violation: misdemeanor
 - ◆ Example: underwater hull scan prior to sailing out

Administrative function

- Reasons: Isolation of the ship from the mainland, urgency
- Content: entry into the log book the facts of: birth, death, last will etc.

Legal representation

- Reasons: ship physically remote from the shipowner/company
- Master: contracts for completion of the maritime venture outside of the place of business

Cargo handling procedure

Liability for the cargo in transport

Commercial duty of care by the crew

Shipper's loading and declaration of cargo



Disposition for shipment

DISPOZICIJA											
naručitelj TRAST Verdijeva 3 RIJEKA		brod HAPAG LLOYD HAPAG 00000 BREMEN		pristac HAPAG LLOYD HAMBURG		referent Jasna Tomac [213147]		poz. nar. usl. DRVENJACA			
brod CRILLON						FA L		ukladanje 200		gov. ozn.	
broj putovanja brodar 008W						broj licenja 008W					
rb	Disp. ulaza Plomba	Zaključak Opis robe	Kontejner	Tip	Tez. kont.	Luka iskr.	Zemlja odredišta Br. pak.	Tez. robe	Tranship.	Carinski dok.	Opasan teret
1.	09067173 A2700558	37815353 DRVNA CELULOZA	CLHU8048337	45GP	3,800.00	TNRDS	TN 145	26,100.00		510/7280/28.12.09.	
2.	09067235 A2700559	37815353 DRVNA CELULOZA	CRXU9612258	45GP	3,800.00	TNRDS	TN 143	25,740.00		510/7280/28.12.09.	
3.	09067344 A2700560	37815353 DRVNA CELULOZA	CRXU9707461	45GP	3,800.00	TNRDS	TN 138	24,620.00		510/7280/28.12.09.	
4.	09066900 A2700555	37815353 DRVNA CELULOZA	HLXU6029111	45GP	3,800.00	TNRDS	TN 145	26,280.00		510/7280/28.12.09.	
5.	09067480 A2700561	37815353 DRVNA CELULOZA	HLXU6486946	45GP	3,800.00	TNRDS	TN 143	25,380.00		510/7280/28.12.09.	
6.	09066906 A2700557	37815353 DRVNA CELULOZA	HLXU6528620	45GP	3,800.00	TNRDS	TN 145	26,220.00		510/7280/28.12.09.	
<p>Ukupna težina kontejnera: 22,800.00 kg</p> <p>Ukupna težina robe: 154,340.00 kg</p>											
napomena											
ovjera agenta						ovjera HTZ-a					
agent JADROAGENT-HAPAG LLOYD - JADROAGE						referent HTZ-a					
datum ovjere agenta 29. 12. 2009.						datum ovjere HTZ-a					
referent agenta Nenad Vranic						bez zapreke					
OVAJ DOKUMENT IZRADEN JE ELEKTRONSKOM OBRADOM PODATAKA I VRIJEDI BEZ POTPISA I PEČATA.				datum prijema 29. 12. 2009. 14:20		manip. T-B (F)		odla manip. 0021		dispozicija br. 09068239	
											str. 1

Shipping (loading) plan

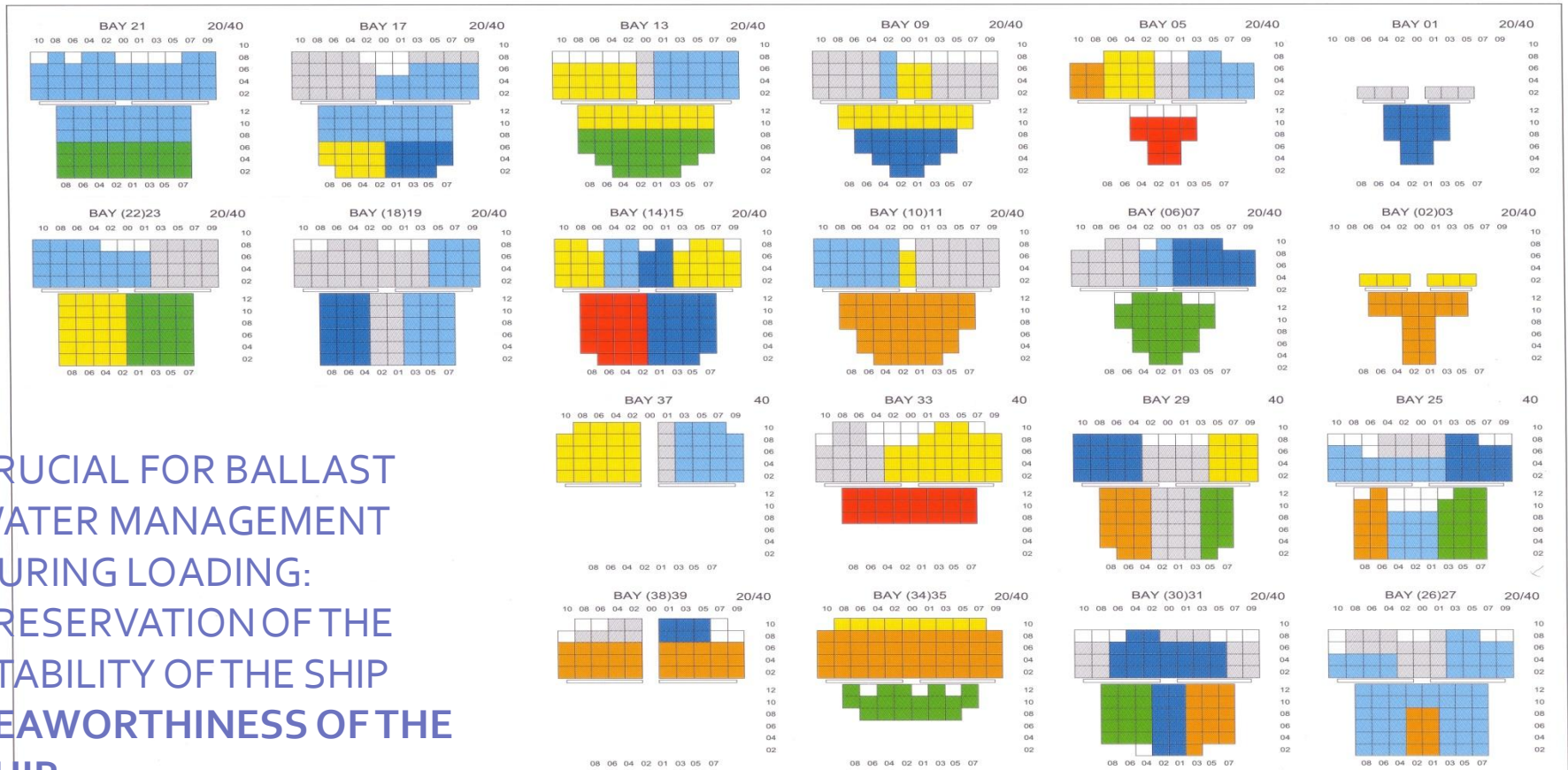


Fig. 18 - Piano di stivaggio che indica la forma e la dimensione delle "baie" da prua a poppa.

Cargo manifest

MANIFEST									
načelnik CMA CGM CROATIA POM Zr. fasizma 2/2 51000 RIJEKA			brod CMA CGM S.A. FRANCE 4 QUAI D ARENC 13002 MARSEILLE			pristup CMA CGM CROATIA POM Zr. fasizma 2/2 51000 RIJEKA			referent CMA-CGM cr
									brod CRILLON
									broj putovanja broda OG016R
rb	Terehnica Plomba	Kontejner Opis robe	Tip	Tez. kont.	Luka ukrc.	Zemlja odred.	Temp. Br. pak.	Tez. robe	Tranship
1.	PK2272680 075149	BMOU2079789 149 CARTON REF: 69-291.124-1-5-000.728.530-062 DLV	22G1	2,250.00	MTMLA	HR	149	1,969.00	
2.	IN1533032 0351139	BSIU2097047	22G1	2,250.00	MTMLA	HR	320	19,424.00	
3.	DJ1253092 5911958	CMAU1057535 1,920 BAGS 6X20FT GROSS WEIGHT: 116,640 KGS NET WE	22G1	2,250.00	MTMLA	HR	320	19,440.00	
4.	DJ1253092 5911955	CRXU1587267 1,920 BAGS 6X20FT GROSS WEIGHT: 116,640 KGS NET WE	22G1	2,250.00	MTMLA	HR	320	19,440.00	
5.	IN1533032 0351140	CRXU1868177	22G1	2,250.00	MTMLA	HR	320	19,424.00	
6.	IN1533032 0351132	DFSU2078906	22G1	2,250.00	MTMLA	HR	320	19,424.00	
7.	PK2272462 6117581	ECMU1183963 335 CARTONS = 3824 PCS-SETS FLANNEL QUILT COVER SE	22G1	2,250.00	MTMLA	HR	335	2,524.00	
na pomoru									
ovjerna agencija									
agencija			referent agencija			referent HTZ-a			
datum ovjere agencija			bez z za prete						
OVAJ DOKUMENT IZRADEN JE ELEKTRONSKOM OBRADOM PODATAKA I VRUJEDI BEZ POTPISA I PEČATA.				datum prijema 29. 12. 2009. 11:33		manip. B-T (F)		sifra manip. 0006	
								dispozicija 0	

CARGO HANDLING OPERATIONS:

- 1ST DECK OFFICER
- Checks only the number of loaded containers, serial numbers of containers
- 2nd DECK OFFICER
- Safety and security
- Ballast waters

The end: Bill of lading



CONCLUSIONS

- ◆ Modern functions of the master of the ship:
 - ◆ No warranty ship is a crime-free zone
 - ◆ Only functions transferred from the shipowner
 - ◆ Safe ending of maritime and commercial venture
 - ◆ Ship's security (ISPS) – public order, anti-terrorist measures
- ◆ Cargo handling: only documentary checks, sealed cargo
 - ◆ Contractual liability for damages of the cargo as declared
- ◆ Criminal liability for trafficking:
 - ◆ COMMAND LIABILITY: ONLY FOR WAR CRIMES
 - ◆ NO ANALOGY IN CRIMINAL LAW
 - ◆ NULLUM CRIMEN, NULLA POENA SINE LEGE

THANK YOU!

