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?
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”

# Supranumeraries on board of a ship

<table>
<thead>
<tr>
<th>Found during voyage &amp; declared</th>
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<tbody>
<tr>
<td>• Stowaways</td>
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<tr>
<td>• Administrative procedure of repatriation</td>
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<table>
<thead>
<tr>
<th>Found by the port state authorities</th>
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<tbody>
<tr>
<td>• In part of the ship</td>
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<tr>
<td>• In the cargo</td>
</tr>
<tr>
<td>• <strong>Liability of the master?</strong></td>
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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
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

Crime Prevention Through Criminal Law and Security Studies, Dubrovnik March 22-26, 2010
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
## DISPOZICIJA

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Ukupna težina konijera: 22,800.00 kg  
Ukupna težina robe: 154,340.00 kg
CRUCIAL FOR BALLAST
WATER MANAGEMENT
DURING LOADING:
PRESERVATION OF THE
STABILITY OF THE SHIP
SEAWORTHINESS OF THE SHIP

Fig. 18 - Piano di stivaggio che indica la forma e la dimensione delle “baie” da prua a poppa.
CARGO MANIFEST

MANIFEST

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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

- Stevedores / ship
- Shipping plan
- Stevedores / agent
- List of loaded containers
- Agent / consignee
- On board 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!