



# THE LONDON SHIPPING LAW CENTRE

Forum for Shipping, Trade and Maritime Safety

## Sixth Annual Cadwallader Memorial Lecture “Challenges Facing the Shipping Industry in the 21<sup>st</sup> Century”

**Chairman and Keynote Speaker  
William A. O’Neil**

Secretary General – International Maritime Organisation

Panellists: **Christopher Horrocks** - International Chamber of  
Shipping

**Fotis Karamitsos** - European Commission – Directorate  
General for Energy & Transport

**Dr Peter Swift** - INTERTANKO

at **Lloyd’s of London**  
with a satellite link-up to the **University of Cape Town, South Africa**

**Monday 15<sup>th</sup> September 2003**

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## **The Sixth Annual Cadwallader Memorial Lecture**

### **“ Challenges Facing the Shipping Industry in the 21<sup>st</sup> Century”**

**Welcome (extracts) by Dr Aleka Mandaraka Sheppard  
Founding Director, LSLC**

My Lords, distinguished speakers, guests and members:

On behalf of the Steering Committee of the Centre and UCL, I warmly welcome you to the 6<sup>th</sup> Cad lecture.

Whatever the challenges facing the shipping industry may be, our focus must be on commitment to high standards in shipping services and on perseverance to eliminate sub-standard ships. Such objectives are not vague ideals of common parlance, but must be part of our common vision to cultivate a culture of safe and efficient shipping. Each sector of the industry has a duty to do that. Regulations alone cannot.

We cultivate this culture through the Centre; we may play a small part, but LSLC is the micro cosmos of the larger picture. It mingles the various experts of our industry and creates a synergy – through debate, further education and training - for the furtherance of the broad interests of the industry.

In this connection, I would like to pay tribute to Great Britain, for its remit has historically been to welcome foreigners to create business here. It attracts many ingenious people – from students to professionals - who contribute to the invisible earnings of this country.

With its diverse talents of British and foreigners, the UK continues, and will continue, to be the renowned centre for shipping - delivering high quality of services in shipping, trade, insurance, the law and finance.

One of those numerous foreigners, who has made a significant contribution to the shipping industry and education, is the Chairman of this lecture, Mr. O’Neil. His activities in education, as Chancellor of the World Maritime University, Sweden, and as Chairman of the Board of the Maritime Institute in Malta, are well known. But his most distinguished achievement is that he has led the IMO with a bold and inspiring drive towards attaining a unified regulatory framework. His vision will be passed on, like the Olympic flame, to his successor, Mr Mitropoulos, at the end of this year.

We hope that this event will be an enjoyable and stimulating prelude to the events that will follow during the Seatrade London International Maritime Convention, which is a great initiative and starts tomorrow.

Thank you for honouring this event with your presence.

15<sup>th</sup> September 2003

The lecture was video-linked to the University of Cape Town, South Africa, with the kind collaboration of Professor John Hare.

**Sixth Cadwallader Annual Memorial Lecture**  
**“Challenges for the Shipping Industry in the 21<sup>st</sup> Century”**

**London, 15 September 2003**

**Short Keynote Speech**

**By William O’Neil, Secretary-General,  
International Maritime Organization**

Good evening ladies and gentlemen,

I am pleased to be here this evening to chair the sixth in this series of annual lectures given in the memory of the distinguished Professor F.J.J. Cadwallader, especially when the theme for this session is titled challenges for the shipping industry in the 21<sup>st</sup> Century.

The organisers have certainly selected a thought-provoking subject, one which I am sure your panellists this evening will relish the chance to consider, each from their own unique viewpoint. While the title is broad, I have no doubt that it will provoke discussion on a range of diverse yet inter-related topics.

Whether we like it or not, it is a fact that we now live in a global economy, where decisions made in any of the world’s major cities can affect the lives and livelihoods of people literally on the other side of the planet. Advances in the communication and transport sectors have effectively negated the ages-old barriers of time and distance. Geographical proximity to raw materials and to markets, the factors that, above all others, shaped the world’s economy and the major trade patterns and shipping routes, no longer count. Today, just about anything is available somewhere in the world, provided the wherewithal to pay for it is also available, and the same brands are recognised and valued universally.

The shipping industry is effectively the facilitator for this global economy and, as there is no sign of any new technology on the horizon that will replace shipping as the most cost-effective means of transporting goods, components and raw materials in bulk around the world, it seems reasonable to assume that, as the 21<sup>st</sup> century progresses, shipping will continue to have an impact on the lives of more and more people.

And so, in very broad terms, the overall challenge that faces shipping is to continue to supply what the people of the world want from it. People have always looked for a shipping industry which is inexpensive, which is efficient and which is timely. And in the last 30 years or so, they have increasingly demanded that the industry should also improve its environmental credentials. To my mind, it goes without saying that you cannot achieve those characteristics unless you have an industry which is also safe. And that concept of safety must extend beyond the oil tankers which when in difficulty capture the public imagination to encompass the bulk carriers, general cargo vessels, passenger ships and all the other ship types which rarely appear in the headlines.

On a more detailed level, a key challenge will be to find an acceptable balance between the diverse demands made on the shipping industry when they sometimes appear to be contradictory. Measures to make ships safer and more environmentally friendly entail certain costs, which will inevitably be reflected in the price paid for goods and materials transported by

sea. The world wants quality. It wants an end to foundering tankers and polluted coastlines, but it does not want a significant hike in transportation costs. These are both reasonable demands and I do not believe they are by any means mutually exclusive. But I do think that achieving them both concurrently will be quite a challenge.

We must seek to find some intermediate solution whereby those within the shipping industry who do recognise the importance and the value of quality in their operations and who are prepared to go that extra mile to deliver a safe and clean service to their customers are not financially disadvantaged by operators who do not take on their responsibilities and are able to undercut their prices by cutting corners.

That is why in the future, the role of the IMO, as the international body responsible for establishing the regulatory framework through which those goals can be achieved, will grow in importance. I think this is now widely acknowledged, and a good example is the way that IMO is dealing with the fall out from the sinking of the *Prestige*. The EU countries have brought the proposals they developed in the wake of the sinking of the oil tanker **Prestige** to IMO, and the next step in this process will be taken in December this year when an extra session of the Environmental Committee will decide what is to be done, which again demonstrates the urgency with which IMO can address pressing issues and the realistic, pragmatic and well-balanced approach that can be achieved within the framework of a truly international forum.

As we moved from the last millennium into the new, IMO took the conscious decision to switch its emphasis onto the human element in shipping in pursuit of the Organization's aims of a safer, cleaner and more secure industry. It was recognised that, while technical improvements would always be possible, the opportunity for major advances in the future will lie with the people in shipping. In this context, I think one of the big challenges for shipping in the 21<sup>st</sup> century is the creation of a genuine safety culture within the industry.

Logically, the most important pre-requisite in the creation of a safety culture will be the human resource itself. Which means that recruitment, retention, training and education of the industry's manpower base must become a top priority. Shipping must attract people of the right calibre and it must make sure that they are treated in a way that encourages them to make their career in the industry – which is especially difficult when so many choices are now available. With a serious shortfall in the number of properly trained officers in the industry widely predicted, the whole question of human resources for shipping will be a major challenge in the years ahead.

One further challenge which, in the current climate of international uncertainty, simply has to be faced is that concerning the vulnerability of the international transport network to terrorist attack, which has been clearly recognised and all-too-shockingly demonstrated. Save for a few isolated incidents, such as the **Limberg** attack off Oman last year, shipping has rarely been in the forefront of such activity. Nevertheless, the need to establish a proper international security regime for ships and ports is clearly paramount. IMO has begun this process with the adoption of a raft of new measures, the most far-reaching of which is the International Ship and Port Facility Security Code (ISPS Code), which will be implemented through a new chapter of the SOLAS Convention.

However, all the hard work and dedication that has been put into creating this regulatory framework in such a short space of time will be of little value if the same level of commitment

and expertise is not brought to bear on its implementation. I have already said, and I repeat it here, that because of the worldwide escalation of acts of terrorism, all parties concerned should start putting in place as soon as possible, if they have not already done so, all the legislative, administrative and operational infrastructure these measures require without waiting until the entry-into-force date of 1 July 2004. That is a major challenge that simply cannot be shirked.

Finally, before I hand over to our first speaker, I would like to add a few words about the changing climate within IMO itself. While the Organization continues to display all its traditional strengths to develop and maintain a pragmatic and equitable regulatory regime for the shipping industry, it is also going through a period of transformation, and to recognise and respond to new circumstances is clearly a significant challenge for IMO and all its members.

IMO was established as a technical body, with politics and economics officially outside its scope. But, in recent years, there has been a discernable shift in emphasis and now we have to acknowledge that the decisions made in IMO are becoming increasingly influenced by political factors. It is no longer always the technical experts whose opinions hold sway in the end; their political masters in the capital cities around the world are becoming increasingly important players in the work of IMO as they themselves come under pressure, often from public opinion that may not be as well informed as we might like it to be.

The same shift can also be identified in the growing influence of economic considerations in the Organization's work. Take, for example, the post-**Prestige** proposals from the EU that I referred to earlier, and indeed the post-**Erika** proposals which preceded them; in both cases, the impact studies, which I commissioned so that IMO members would have all facts at their fingertips as they discussed the proposals, were unashamedly designed to assess the economic impact of the proposed changes. And I have repeatedly called for similar thinking to be applied concerning the new security measures that were adopted by IMO late last year. It is important that the proper balance between their rigorous implementation and reduction in risk on the one hand and the facilitation of maritime trade on the other should be achieved.

We must acknowledge the fact that decisions affecting international shipping simply cannot be made without reference to, and a full understanding of, the economic context in which they are taken. IMO has embraced this concept in its new theme, or mission statement, which is safe, secure and *efficient* shipping on clean oceans. I think this new emphasis on efficient shipping reflects a reality that has actually been with us for some considerable time.

The same can be said of the expansion in the influence that the developing countries, and particularly those offering open registry services, are having within IMO. Countries like Panama, Liberia, Cyprus, Malta, the Bahamas and others are increasingly taking the lead on important issues, and I believe they have earned the right to do so. There is no doubt that these countries have joined the ranks of the major players in world shipping, both through the size of the fleets in their registries and the ever increasing importance of the marine service industries that are springing up as a consequence. IMO is unique among UN agencies in that, because of the funding arrangement which sees members' contributions assessed according to the size of their shipping fleets, many of the biggest contributors to the Organization's budget are from the developing world.

This is a natural consequence of the shifting political and economic realities in the shipping world and, through its technical co-operation efforts, IMO has indeed been able to help many of the developing countries build up the necessary capacities, in terms of skills, expertise and manpower, to play their new roles effectively. Another major challenge will therefore be for the developed countries to recognise and acknowledge this shift, and to play their part in supporting the continued efforts of IMO's technical co-operation activities. It is ultimately in

their interests to do so, because, as I said at the beginning, shipping underpins the global economy from which we all benefit.

Ladies and gentlemen, having provided some general comments which I hope may set the views of your distinguished panellists in some kind of context, I should now like to introduce the first speaker, Mr Chris Horrocks [present his c.v.]. The second speaker is Mr. Fotis Karamitsos [present his c.v.]. And the third speaker is Mr. Peter Swift [present his c.v.].

I now invite Mr. Chris Horrocks to take the floor.

Thank you.



**SIXTH ANNUAL CADWALLADER MEMORIAL LECTURE  
(15 September 2003)**

**“Challenges Facing the Shipping Industry in the 21<sup>st</sup> Century”**

**Chris Horrocks, Secretary General, International Chamber of Shipping**

Mr. Chairman, My Lords, Ladies and Gentlemen:

First, I must thank the London Shipping Law Centre for inviting me to be a panellist at this, the Sixth Cadwallader Memorial Lecture. Surprisingly perhaps, I don't think that I ever met Professor Cadwallader, though his name always held a strange fascination for me. Cadwallader is of course a Welsh name, but in its somewhat anglicised spelling it is a name very common in my home county, Shropshire, where about one in three of the farming community seems to be called Cadwallader. I think it was this tenuous resonance with my origins that persuaded me to accept the invitation to speak this evening.

It certainly wasn't the theme selected by the London Shipping Law Centre – Challenges Facing the Shipping Industry in the 21<sup>st</sup> Century. I suppose lawyers are expected to look at the broad vision as well as the small print, but as we are only some three years into the 21<sup>st</sup> century I certainly have no intention of trying to second guess what the challenges will be for the industry ninety odd years from now. A speaker in 1903 might have been able to forecast the imminent elimination of sail and a significant increase in the average size of ships, but the implications of the advent of containerisation or the VLCC would have needed more than a crystal ball.

The one forecast I will be presumptuous enough to make is that, whatever transport alternatives are developed in the coming decades, the majority of world trade, at least by volume, will continue to travel by sea a century from now, and the global challenge for the shipping industry will still be to improve the safety, efficiency and competitiveness which world trade will undoubtedly demand.

So what I intend to do this evening is to ramble around what I believe to be a few of the principal challenges facing the shipping industry in 2003, and let the rest of the century look after itself. In doing so I will pass over a number of important issues – the shipping markets, environmental pressures, security, the manpower shortage, the debate about class and the like - and will concentrate on some of the broader issues facing the industry and its institutions.

As an industry, shipping has always enjoyed considerable freedoms. The reasons are obvious enough. In the days before mass communications a ship was out of contact with the rest of the world from the moment it set sail until its safe arrival in an often far distant port. Not only was there little scope to exercise control once a ship was out at sea, but also the safety and welfare of the crew and its cargo depended essentially on the master's unfettered exercise of his professional skills. It encouraged an independence of spirit within the industry which is still very much a feature of ship operations today.

Over the past 50 years the industry has come to be far more heavily regulated – some would say excessively heavily regulated – but still the basic freedoms exist: the largely open markets, the right of freedom of navigation on the high seas, the wide discretion as to the choice of flag and, today more than ever, the flexibility with regard to the nationality of crews. These freedoms are not the result of some philanthropic whim on the part of the global body politic but reflect the sometimes grudging recognition of governments that shipping, as the servant of world trade, is the archetypal international industry, its continued efficiency depending upon a minimum of formalistic constraints.

But the industry must always realise, and accept, that freedom brings with it responsibilities, and it is perhaps this that is at the heart of the debate about the industry's challenges today.

It is often said that advances in the technical regulation of shipping tend to follow a casualty – that the maritime sector responds to rather than anticipates its problems. The charge may be valid, but whether more true of shipping than other industries which involve an element of inherent risk I rather doubt. Emergency lighting was a

response to incidents involving smoke in the cabin of passenger aircraft, central door-locking a response to incidents involving passengers falling from trains and so on. It is the natural reaction of politicians and regulators to demand change after an incident, just as it is unnatural to expect that the rules can anticipate every eventuality. What the industry must recognise, however, is that the climate of discussion about regulatory change is inevitably far more heated after an incident than when an objective debate can take place free from external pressures.

In the 90's it became something of a cliché to say that major maritime incidents seem to happen every 11 years: the "Torrey Canyon" in 1967, the "Amoco Cadiz" in 1978, the "Exxon Valdez" in 1989. The soothsayers predicted that we were due for another major incident in the year 2000, but the break up of the "Erika" off the coast of Brittany in December 1999 sadly proved to be the early arrival that no one was looking for. (As an aside, you will note that these were all tanker incidents. It is striking, I suggest, that the capsizing of the "Herald of Free Enterprise", the fire on the "Scandinavian Star" and the loss of 900 lives on the "Estonia", to say nothing of the seemingly endemic ferry disasters in the Philippines, Bangladesh and elsewhere, have left much less of a mark on the political, if not the public, consciousness.)

The "Erika" incident unquestionably set the industry back on its heels – an incident which should never have happened, and which, rightly or wrongly, had simply not been anticipated. But if the "Erika" incident was a shock to the system in an industry which thought it had more or less got its act together, particularly in the tanker sector, the loss of the "Prestige" last November was an even more serious blow. The "Erika", with the benefit of hindsight, should have been recognised as a substandard ship. But the "Prestige" had hardly a stain on her character. Only two owners throughout her life, classed by ABS from the outset, registered in an unquestionably better register, the Bahamas, and with an unchallenged port state control inspection record – only the age of the vessel could be held against her. The very fact that such a ship could suffer structural failure raised questions about systemic problems in the whole process for regulating the safety of ships at sea.

History is full of fascinating hypotheses. Where would we be now if King Harold had not looked up at the wrong moment at the Battle of Hastings in 1066? Could we

have been spared two world wars if Princip's shot had missed the Archduke of Austria in Sarajevo? What if there **had** been weapons of mass destruction in Iraq? And of course the shipping industry's own favourite "what if" of the moment: what if the Spanish Government had acted more prudently and not driven the "Prestige" out to sea? Such questions make for a good dinner discussion, but ultimately lead nowhere. Of course it is critically important that states put mechanisms in place to handle ships in difficulty and designate places of refuge. But in a sense that is a side issue. Whatever the cause, the "Prestige" incident happened and the regulatory framework has changed yet again.

Let me describe the situation as I see it today. It is an article of faith in the shipping industry that the regulation of shipping should be addressed internationally, not regionally or nationally, and that IMO is the place where proposals for regulatory change should be tabled, discussed and developed. Until about 15 years ago this was the received wisdom and essentially unchallenged. But the principle was badly dented by the adoption by the United States of the Oil Pollution Act of 1990. IMO was hurt by this unilateral action, though the damage was tempered by the fact that the rest of the world rallied behind IMO and decided that they were not going to follow suit.

In the 1990's the European Commission started to flex its muscles on regulatory issues, and Europe started to adopt a distinctly regional approach in IMO discussions. Conspiracy theorists will argue that the "Erika" incident gave the European Commission just the opportunity it was waiting for, providing it with the justification for taking action to protect European interests where IMO seemed unable or unprepared to do so. More charitably, you may argue that the Commission was simply reflecting the wishes of the EU member states to respond to a very serious pollution incident.

As we know, with great personal determination and leadership from Bill O'Neil, and, it should be noted, with considerable encouragement from the EU member states themselves, IMO clawed back responsibility for regulatory change. While the EU proposals for phasing-out single-hull tankers may have had little relevance to the causes of the loss of the "Erika", they were carried forward urgently by IMO and the

international rule book was changed in a manner which satisfied both Europe and the other IMO member states.

Post “Prestige”, we are going through what at first sight appears to be a broadly similar ritual. Once again the EU has taken the initiative. Once again a determined IMO has let it be known, in no uncertain terms, that the regulation of shipping is its responsibility, that it has the competence and the capability to effect whatever changes are necessary and that it is prepared to do so quickly. And once again, with some reluctance other IMO member states have been persuaded that in the interests of international uniformity they must look again - whatever they think about the rationality of the proposals - at the programme for phasing-out single-hull tankers and a series of related issues.

But I suggest that on this occasion there is one very significant and worrying difference.

After the “Erika” incident it was the European Commission, love them or not, who led the European charge for phasing-out single-hull tankers, with Ministers somewhat reluctantly following on behind them. But in the immediate wake of the “Prestige” incident it was the politicians who led the charge and the Commission which had to play “catch-up”. It is not difficult to see why politicians should be exercised by oil on their beaches, particularly if it has happened twice in three years. It is less easy to be charitable about politicians who pretend to be instant experts. For once political decisions have been taken, it is far harder to restore sanity and work towards consensus.

The unhappy result is that while IMO is moving at an almost unprecedented pace to debate the European proposals, Europe has not agreed to await the outcome of the IMO discussions before taking its own decisions. From some time next month there will be a ban on the carriage of heavy fuels in single-hull tankers into or out of European ports, in conflict with member states’ obligations under the MARPOL Convention, and a European phase-out programme for single-hull tankers will be initiated before IMO has decided the terms on which it is either justified or practicable to do so on a global basis.

This is bad for IMO, bad for the whole principle of global uniformity, and certainly bad for the industry. Why should other member states give IMO the credibility it is due if the Europeans are on the one hand calling all the shots and in effect telling IMO what to do, and on the other, taking their own action anyway? Earlier this year at a conference in the United States I drew an analogy between the United Nations, weakened by the readiness of the United States to ignore it when it so pleases, and IMO faced with similar threats from Europe. I would not want to stretch the analogy too far, but the parallel is not so far fetched.

This is not the time or place for a commentary on the European structures, even if I were competent to offer one. But the growing strength of regionalisation which the concept of an enlarged EU implies most certainly bears thinking about in the context of an international industry like shipping. Even within the industry itself it creates its own tensions. Despite the continuing significance of Europe in the ownership and operation of ships, the gravitational pull continues to be towards Asia. Yet the influence of the Asian maritime community, both administrations and industry, on the international decision-making process is much more limited than such commercial heavyweights should command. Europe and the United States remain the engine room of influence in IMO and, to be frank, the same situation prevails in the international industry organisations. While with some honourable exceptions the Asian administrations, and in particular the Asian industry, may be reluctant to dedicate the necessary resources to get their views across, European interests are certainly going to have to make space for Asian and other maritime interests if the traditional concepts of international agreement for an international industry are to be maintained.

Ironically, while the cohesive force of the EU has been providing a challenge to IMO, the continuing but disparate growth of the open registers has presented another. Today the open registers account for more than 50% of the world's tonnage: Panama alone has a fleet more than twice that of the second largest in the world, Liberia, and the Bahamas is not that far behind. The open register system has filled an evident need, providing owners in high cost countries with an ability to compete which would otherwise have forced them out of the industry. Furthermore, whatever politicians

may say in their more colourful moments, the open registers are acknowledged by most administrations to provide an economic safety-valve to release the pressure for improved fiscal incentives for their domestically-owned fleets.

But just as every challenge provides an opportunity, so every opportunity provides a challenge. Theoretically, it is the open registers that are now the shipowning nations, and which might be expected to try to protect the interests of the industry, whereas the very countries that used to have the interests of the industry principally at heart, not least the north-west Europeans, have gradually seen their principal constituency change to that of the coastal state or the port state, rather than the flag state. For the industry, it means that we have to try that much harder to get our arguments accepted, a task we recognise and accept. But for IMO it presents a rather different dilemma, since the organisation is funded in proportion to fleet size, and one wonders how long it will be before the open registers seriously start to question paying more than 50% of the budget and increasingly contributing to the debate, while still enjoying, in my estimation, only a fraction of the influence.

The freedom provided by the open register system also presents another challenge to the industry, at two levels. Running a register confers obligations as well as privileges, and while blanket condemnation of the open registers as irresponsible carpetbaggers is both unproductive and ignorant - as any analysis of the performance of different flags will indicate – there is certainly a fringe element among the open registers which the term “flags of convenience” describes all too accurately.

Pinning down the responsibilities of flag states has proved notoriously difficult, and the current moves in IMO to develop an audit scheme for flag states, albeit at this stage voluntary, are very welcome if arguably overdue. In the same vein, the industry must share in these responsibilities, and we in ICS and the International Shipping Federation, together with our colleagues in the Round Table of industry associations – BIMCO, Intertanko and Intercargo – are just putting the finishing touches to guidelines for the shipping industry on flag state responsibilities, intended to encourage shipping companies to satisfy themselves that flag states are indeed taking their responsibilities seriously, and not assuming that the sovereign right to

open a ship register is simply a money-making venture with no concomitant obligations attached to it.

There is one other rather deeper issue about which the industry needs to reflect with respect to the use of open registers. Historically, owners could generally expect their flag state to offer a full range of services and due protection in case of difficulty almost anywhere their ships might trade to. But to what extent can most open registers be expected to provide such support? However good the services they provide in terms of the operation of the flag, it is simply not realistic to expect that Panama, or certainly Liberia in current circumstances, or Malta, or the Bahamas, or even Cyprus, let alone Antigua and Barbuda, St. Vincent and the Grenadines or Cambodia, can provide the services or diplomatic clout of a major nation state such as France or Germany, Japan or the United States. The “Prestige” incident has provided us with a telling example of this situation, where the blatantly illegal action of Spain and France in “escorting” certain single-hull tankers out of their 200-mile Exclusive Economic Zone, clearly in contravention of the Law of the Sea Convention, went unchallenged by all the flag states concerned until Spain took such action against two Norwegian-flag ships. All credit to the Norwegian Government for promptly protesting against an abuse of perhaps the most important freedom the industry enjoys, the freedom of navigation. We should ponder long and hard about the fact that no other administration had the political backbone to take issue with so public an infringement of international maritime law.

I want to close with just a brief reference to one other issue which some may feel merits its own debate, the industry’s public image. Perhaps I can’t see the wood for the trees, but I sometimes feel that the industry cries into its beer too much about its supposedly poor image. It is hardly realistic to expect large oil tankers to be the object of public adulation. They are at best a social necessity, in the same way that heavy lorries, chemical plants and power stations are. I would submit that in most countries at least, the image of shipping is not so much poor as non-existent. The challenge, and it is a very real one, not least because the precise situation differs from country to country, is how to deepen and broaden the public, and not least the political, awareness of the industry and of the service it provides to the community at large, so that decisions can be taken on the basis of understanding rather than



ignorance. Of all the challenges facing the industry in 2003, this is perhaps the most important of all.

Mr. Chairman, I can only recall attending one previous Cadwallader Memorial Lecture, but I remember that well. The speaker was Georgette Lalis, the predecessor to my fellow panellist this evening in what was then, I think, still called DG7 of the European Commission. After Georgette's spirited defence of the Commission's initiatives following the "Erika" incident, Pandy Embiricos, clearly not one to make concessions to a compatriot, proceeded to embark on a comprehensive paragraph-by-paragraph demolition job on everything she had said. I look forward to listening to Fotis Karamitsos, and I hope that he will not disagree with as many of my remarks as Pandy disagreed with his predecessor's.

Mr. Chairman, Ladies and Gentlemen, thank you for your attention.

## **SIXTH ANNUAL CADWALLADER ANNUAL MEMORIAL LECTURE (03)**

**(15<sup>th</sup> September 2003)**

### **“Challenges Facing the Shipping Industry in the 21<sup>st</sup> Century”**

**Fotis Karamitsos, Director, Maritime Transport and Intermodality  
DG TREN, The European Commission**

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#### **1. IMPORTANCE OF SHIPPING FOR THE EU**

- International Commerce (90% of external trade of EU by shipping). The effects of Globalisation will continue to affect production lines and thus shipping – EU external trade will increase and thus shipping too.
- Intracommunity traffic – Short-Sea-Shipping / Motorways of the Sea (Shipping the only mode that kept up with increase in Road transport, SSS: + 40% of trade). Important for our policy on sustainable development as shipping is the most environmentally friendly mode of transport.
- Size of the Fleet (Today more than 15% under EU Flags and more than 1/3 EU citizens / companies' controlled – with enlargement more than 25% and 40%) very important strategically. Increasing importance of EU & EEA in the international area.
- Contribution to 2% of EU GDP (3% in DK); Maritime Industries Cluster covers more than 2 million jobs.
- Therefore, our policies to support Shipping and the Shipping industries are genuine and very important for Social, Economic and Strategic reasons.

## 2. CHALLENGES FOR THE 21<sup>ST</sup> CENTURY (not only for the EU)

- Further increase the role of shipping and of the Cluster of maritime industries in Europe: for International, Intracommunity and Domestic transport.
- The Human Element: Attract Young Europeans to the Profession, particularly for officers. (We have gone down from 180,000 to 110,000 EU nationals for almost a double number 20-25 years ago).
- Provide Quality: Respecting Safe, Environmentally friendly and efficient services and be competitive at the same time.
- Security: Secure our Ships, Ports and the whole supply chain against terrorism.
- Technological Developments: Profit of new developments for example in materials and in ICT, for new ship designs, making operations better and safer and improving working conditions on-board.
- Balance the role of the rights of Flag States and Coastal States: (Commodities and types of transport are changing). The types of transport are very different from 50 years ago, when we had much less dangerous and polluting goods being transported; at that time the main problem was for the safety of life of seafarers; luckily safety has increased substantially ever since. So the main question is will UNCLOS stay the same over the next century? I doubt.
- Guarantee equal terms of competition between operators – Level playing field: No advantages by the non-respect of international rules.
- Provide again for a safe/secure – environment where the primary responsibility will lie with the Flag States, which shall meet all their obligations through serious administrations we must use PSC only as a second line of defence for the application of the International laws (Just a Dream?).
- Guarantee Freedom in the markets.

### 3. **POLICIES of the EU**

- Continue efforts for full liberalisation of maritime services at International level through WTO and other bilateral agreements (as with China). (Now of course the results of Mexico yesterday may be a step-back but we are not giving up).
- Guarantee respect of Competition rules (e.g. TACA, P&I clubs).
- Create a level playing field for EU operators, by:
  - Safeguarding respect of International Conventions by all operators (Safety, Environment, Security rules).
  - Require and Control satisfactory working conditions for a well educated and trained personnel (ILO & IMO Conventions).
  - Provide for tax and other incentives (tonnage tax, taxation and social contributions for seafarers, training incentives, etc..) so that costs for ship operations of EU flagged vessels are competitive with open-registers.
- In Europe: Promote Intracommunity shipping as a real alternative to road transport: Develop SSS and Motorways of the Sea; liberalise the services within the ports in order to increase their competitiveness; create equal rules of competition between ports.
- Internationally: Contribute to the development of new improved standards for shipping and support creation of mechanisms for control of their implementation.

#### **4. POTENTIAL MEASURES FOR IMPLEMENTATION OF POLICIES**

##### **A. INTERNATIONAL LEVEL**

- Strengthen the role of IMO within an environment that respects rights of coastal and Flag States:
  - Develop control and Auditing Role of IMO for all Flag States: Conditions and Requirements for Flags – Flag Administrations, responsibilities and the building up of real control capabilities. In addition there is an important role of shipowners to demand minimum services from their flags.
  - IMO must develop its capacity for standards building. It shall – with Class. assistance – develop minimum requirements (functional – performance) for new designs. We have and we will continue to recognise that the IMO has a leading role in fixing technical safety standards (we never developed them in the EU, although we do it in all other transport modes).
  - We will continue supporting the organisation in developing rules for safer ships and environmental protection, and with the development of the Technical capabilities of the European Maritime Safety Agency we will further help ?
- Make sure that ILO rules are respected, through coordinated efforts of Flag States and Port State Control.
- Bring up to 21<sup>st</sup> Century requirements – as concerns Environmental rules on the pollution pays principle for the international Liability (and compensation) regime.

##### **B. EU LEVEL**

- Continue transposing International rules into EU legislation. These rules shall be influenced further development by the EU, not in competition with IMO (or ILO), but through positive inside contributions, and therefore:
  - There is a strong need for the EU to become a member of IMO (Those that talk about regionalisation shall support this approach).
  - Continue rigid control of application of this legislation (EU one of the biggest allies of the IMO rules: about 25 legislative acts under continuous control for their application). The EU has the enforcement capabilities (through the European Court of Justice at the end).

- Develop conditions for further attracting qualified young people to the profession – Use Community financial instruments as for Social Fund; use public functions (PSC, Flag State officers, etc..) to provide long term career prospects. Shipowners shall also contribute to this new stage of the profession! (Young people do not want today to spend all their working life at sea).
- Take initiatives to develop a genuine safety culture in the industry; Promote voluntary policy by the operators, but also develop a reward structure: Adapt PSC, establish ‘green awards’.

(But how much ‘voluntary policy’ by stakeholders can work? The ISM was an industry initiative, but had to be regulated. The oil companies have a ‘vetting system’ for oil tankers –does it work?)

- Develop ‘Motorways of the Sea’ : (Simplify administrative, customs, veterinary and other rules, support the development of technical infrastructure in ports and access to them, support RTD in new innovative ship designs, etc..).
- Control application of competition rules.
- Develop further technical capacities of EMSA, in new areas, making it a centre of technical expertise not only at EU level.
- Develop a complete model system for Follow-up traffic along the EU coasts but also for the whole transport chain. A most advanced VTMISS system interconnected with ports, customs, and administrations, etc..
- Develop a full security control network in EU ports and EU waters.
- And with these create the prerequisites for developing an EU Coastguard for safety, security and environmental protection. Europe is moving towards further integration (EP is highly supportive of this idea).

## 5. LESSONS FROM ERIKA & PRESTIGE

1. The Public image of shipping has deteriorated.
2. The behaviour of Industry on transparency has improved.
3. The Compensation system should have been modified immediately after ERIKA.
4. The Liability system needs to be updated – The polluter pays principle must be clearly established in the maritime world; if the ongoing revision does not lead to any change it will tremendously add to the pressure to replace the existing regime with more “horizontal” environmental liability regimes – (Reference to the particularities of the maritime law may in the longer term represent the greatest threat to these very particularities.)

5. The tendency for continuous optimisation and reduction of costs through uncontrolled competition with no respect for social or safety rules cannot continue: We must create conditions to avoid “undercut prices”.
6. There is a need for identification of places of refuge including plans and clear procedures and responsibilities within Coastal States.
7. The current system where Flag States subordinate all their responsibilities to the private sector has deficiencies: The situation where the same private company offers statutory and classification certificates, paid by the operator, is wrong.
8. We need better procedures for control (particularly of conditions of ships), better designs of ships and verification of their structures. Again Class has a lot to look after!
9. The politicians have overtaken administrators, technicians and economists, responding to the overwhelming public reaction:
  - Phasing out of older ships offered the first solution; one single, global system was the EU proposal for phasing out of older oil tankers. (No different from OPA 90, but a Global System on this basis?).
  - The worst oil by-products must be transported within the best-newest ships.
  - Responsibility must be established for the whole supply chain, and sanctions must be for the intentional or reckless polluters.
  - We need continuous and rigorous control for the application of legislation and International Conventions.
10. Industry itself needs to create a Safety culture and adopt a voluntary policy.
11. There is a need to offer better protection to Coastal States, as transport has changed substantially the last 30 years (after the formulation of UNCLOS). It is preferable to do it within the existing framework: i.e. create rules for navigation within ‘risky’ areas.

The EU decided already in mid-March – the first Council of Transport Ministers of the EU – where the principle framework was set up – to bring the issue to IMO. It was thanks to the Sec. Gen. that we discussed it in July. And you will not disagree with me that the basic principles of the MS proposal have been agreed by the other States in IMO (and principally by Industry too).

## CONCLUSIONS

- Big Business opportunities for shipping and the maritime cluster in the 21<sup>st</sup> Century.
- Need to change culture of part of the industry and support a quality approach.
- Need for administrations and International Organisations to provide for a 'level playing field' introducing all the appropriate mechanisms.
- Need to make sure that when Legislation / Conventions are developed, are accompanied by Control and punishment mechanisms.
- The current 'Flag State' model must be improved, by coming back to its roots.

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## **Challenges facing the Shipping Industry in the 21<sup>st</sup>. Century**

**Peter M Swift, Managing Director, INTERTANKO**

Mr. Chairman, Ladies and Gentlemen.

Good Evening.

I would like to thank the London Shipping Law Centre for inviting me to join the panel this evening to respond to the remarks of the distinguished speakers, whom you have just heard, and for giving me the opportunity to share a few of my own thoughts on this topic.

When I first saw the title for tonight's lecture, like my fellow panellists, I found the challenge itself pretty daunting. In our industry – and definitely in the tanker sector – it is difficult, and probably even dangerous, to try to forecast even a few years ahead, so trying to identify challenges over the next few decades becomes nigh on impossible. Just reflect for a moment on the changes we have seen over the past thirty or so years in the tanker industry.

But then I took a little comfort from the fact that while I am supposed to identify the challenges, I am not necessarily expected to offer all the solutions. I presume, Mr. Chairman, that it is your job to encourage the audience tonight to tell us how we can solve the challenges that have been identified. However I am sure that the shipping industry is well capable of meeting most of the challenges that are thrown at us. In any event I am sure that the shipping media will offer us at least some of their answers over the coming days.

Before I go further, I should perhaps apologise that some of my comments will inevitably be based on my background interest in tanker shipping – although I believe that many of the major challenges are universal and not sector-specific.

So what are the challenges as I see them? I agree that one of these will almost certainly be a shortage of professional skills across the whole of the industry – but was not this always the case ? Centuries back we lacked competent navigators, then over time we had a shortage of engineers, and today insufficient knowledge of electronics. Also, it is ironic that having improved on our standards we now have far fewer accidents and we find ourselves with the problem of dwindling salvage expertise. Safety is, and will always be, a major challenge that we have to meet – but this is one I suggest covers the broad spectrum of almost everything that we do. But tonight I would principally like to focus on four other challenges – *and here I think you will observe a common thread with several of the views expressed earlier.*

The four challenges that I would highlight are:

- The **regulatory** challenge
- The **economic** challenge
- The **environmental** challenge
- The **responsibility** challenge.

For the global business that is shipping, it is absolutely imperative that we maintain – and whenever necessary defend – the international regulatory frameworks that govern our business. This means supporting the IMO, adhering to the UN Law of the Sea Convention, and encouraging others such as IACS to adopt and implement harmonised rules and regulations.

I recognise that the IMO, UNCLOS, IACS all face specific challenges. They have evolved over many years, - today they must be dynamic enough to reflect changing expectations, new needs and new pressures. The need to

balance flag state and coastal state interests in the case of the IMO and UNCLOS; and in the case of IACS and classification societies the need to balance shipbuilder and shipowner interests, and the need to balance industry involvement and independence. There is also a need for all to be more responsive to calls for change and to recognise the impatience of our world today – the need to act quickly when necessary.

Of course there are regional and local interests which need to be accounted for.

- Maritime security is probably a greater concern in the US than in many other parts of the world, but not all.
- Air pollution is a serious concern in many parts of Europe as it is in several other countries, but not everywhere.
- Oil pollution is of concern to those who have suffered or wherever traffic density is high.
- Piracy is high on the agenda in parts of the Far East, Africa and Latin America but lower elsewhere.
- Ballast water discharges affect some ports much more than others.
- Passages through ice-bound waters or narrow straits of course present real threats for those with adjacent coasts.
- Shipbuilding standards affect producers and consumers differently.

Our interests are not universal, nor uniform, nor homogeneous.

But I believe we can have one of two models.

Either we have local rules and regulations, or we have international rules.

If we have the former we will have chaos and confusion and almost certainly lower standards and reduced safety overall.

I suggest we must have the latter – an internationally agreed and implemented framework of regulations.

*In this respect, I agree with Bill O’Neil and Chris Horrocks* - the regulatory challenge is therefore to maintain cohesive international regulatory

structures while also accommodating legitimate specific, national and other interests.

*I might add that I further agree with Chris Horrocks when he highlights the imperative of encouraging greater engagement with, and by, Asian and other representatives – this is something all in our industry should take to heart.*

The second challenge that I would identify is the economic challenge that faces much of the shipping industry.

*As the Secretary General has pointed out, the shipping industry can correctly pride itself on being cost effective and energy efficient – claims that are pretty well accepted universally.*

Over time we have developed larger and more efficient ships, and more and more efficient ways of handling our cargoes. We have benefited from economies of scale and technological advancement. But in many ways we have now reached maturity and it is quite possible that in many shipping sectors we are reaching both physical limits on size and technical limits on efficiency. At the same time, the cost of compliance with today's standards and society's expectations continues to rise – and since the consumer and the shipper are apparently reluctant to pay more for the shipping service, notwithstanding the higher quality – the challenge for the shipping industry is how to absorb these extra costs while not receiving any extra reward. Of course, *as Dr. Sheppard has said*, elimination of the sub-standard goes some way to improving the competitiveness of quality shipping and we must continue to do this. But perhaps the real challenge is to build ships of materials that need little or no maintenance, that last forever and operate with even better fuel efficiency. They should of course also be non-polluting and idiot-proof in their operation, and most importantly affordable. That is quite a challenge !

*I think all of us tonight have acknowledged the reality of the third of my challenges - the environmental challenge. In the tanker sector, as in others,*

it is readily possible to demonstrate an outstanding record of continuous improvement in environmental and safety performance over recent years. Additionally, the shipping industry is addressing constructively each of today's principal environmental challenges – ballast water management, air pollution, harmful antifoulants, oil pollution and recycling. In many of these the industry has been pro-active rather than re-active – but credit has not been forthcoming.

I was tempted to add the challenge of “Image” as one of the key challenges, but in this case I include it as part of the wider environmental challenge, - *and like Chris Horrocks I tend to believe that we may be overplaying this.* The challenge is to be ahead of the game and to have it recognised. While we may be delivering on “safer ships and cleaner seas” this means nothing to the man-in-the street, the average politician or the mainstream media. We are generally off the radar screen until an accident happens and when it does, because our image is usually non-existent, it is not difficult to understand why the perception is of an industry that has “failed”. We talk today of “zero tolerance” for oil pollution – that is an enormous challenge.

So to the fourth challenge that I have singled out – the challenge of responsibility.

We have often spoken of the chain of responsibility – which recognises the interdependence of the various parties if we are to meet our common goals of safe and clean shipping. Most owners, charterers, class societies, flags, ports and pilots accept their share of responsibility, but regrettably still not all - and we certainly must not let up on our efforts to highlight and eliminate the weak links in the chain. *I note with interest the attention that others have paid for good reason to the importance of flag in this chain of responsibility.*

When, unfortunately, an accident occurs I think we are only too well aware of how quickly politicians, regulators, environmentalists and the media are to damn almost everyone involved and to highlight their perception of the weak links.

But are these same parties themselves often just as irresponsible ?

Where are the reception facilities that have been promised and regulated for, but still fail to materialise ?

Where are we with places of refuge – also promised for years, even decades – and why are self-imposed deadlines by certain states allowed to slip by without criticism or action ?

Why should the shipping industry be subject to local and regional legislation on air pollution when the same states have failed for years to ratify conventions governing this matter ?

Why should the shipping industry be pressurised when – on its initiative - it develops a voluntary code on recycling, and when their critics fail to push for legislation governing practices in demolition yards ?

When the industry voluntarily adopts the TBT anti-fouling ban ahead of its planned start date, is it therefore not reasonable for the industry to ask why so few states have ratified the Convention that they themselves demanded ?

Is it responsible to talk about “ecological time bombs” or “rustbuckets” without any evidence and without any investigation or understanding ?

Is it responsible to seek political capital with inflammatory remarks about incidents and accidents without justification ?

Is it responsible to lock up ship masters illegally ?

Is it responsible to force ships, of legitimate design and operating legally, out of international waters in order to grab the headlines ?

Is it responsible for protestors in small boats to “buzz”, or board, a ship and to endanger its navigation ?

Mr Chairman, Ladies and Gentlemen – I think not.

Trust is a two way process. Dialogue is a two way process.

I suggest responsibility is also a two way process – the regulator and the regulated must both be responsible. We need more trust and probably more dialogue. Most importantly we need a responsible partnership with ALL that have any involvement with the shipping industry.

Mr Chairman,

Let us hope that we can maintain an international regulatory environment, cost effective and environmentally sound shipping, and responsible players.

Thank you.