THE LONDON SHIPPING LAW CENTRE

TRANSCRIPT

THE 7TH CADWALLADER ANNUAL MEMORIAL LECTURE

**"Criminalisation in Shipping: Human Pawns in Legal and Political Games"**

6th October 2004 at Lloyd's of London, Captain's Room

**Opening by the Founding Director of the Centre, Dr Aleka Mandaraka Sheppard**

My Lords, distinguished speakers, guests and members; Welcome to the 7th Cadwallader lecture; this is a fantastic gathering and I am very pleased to see so many people, familiar and new faces, from London and abroad..

Last year, we discussed the challenges facing the shipping industry in our present times; one of the most serious challenges is the proposed legislation to widen the scope of criminalisation, (I mean the EU directive) even for accidental oil spills. As you know, legislators are stubborn and government officials, who detain seamen after a marine casualty without prior formal investigation, can be wilfully determined.

I sincerely hope, and I repeat, I sincerely hope that, what is discussed tonight will reach their attention, and act as a beacon for their thoughts and actions.

We are very privileged to have an eminent panel. Thank you all for devoting your time to participate and honour this lecture. We are very sorry that we have asked you to truncate your talks to fit the time constraints. Our delegates appreciate that you have a lot of important issues to raise, but we would also like to give our audience the option to contribute.

I trust that our audience will bear with us patiently until the end of the proceedings and go away committed to the idea of support to seafarers. At the very least, their human rights must be protected.

In tribute to the memory of Professor Cadwallader, who, I believe, would have fought for seamen and their rights, with spirit and passion, we are pleased to announce that we have raised a modest donation for "The Mission to Seafarers". As you may know, the purpose of this charity is to help seamen around the world. We thank all those who responded to the Centre's invitation to make voluntary contributions to support this charity. I will hand the sum over to the Vice Chairman of the charity, Mr Everard, at the end of the proceedings.

Our heartfelt gratitude goes to our sponsors. Without them we would not be here tonight. They honoured this Cadwallader event and its cause with their generosity. We have been fortunate to have so many and. I am really touched by the support we received this year. Of

course, Lloyd's of London Press, Elka shipping and Lloyd's/Avenance are our loyal supporters every year.

We warmly welcome our new sponsors: Faros shipping; Chandris shipping, ITF, the UK Club; the London Club; Britannia P & I, and Steamship Insurance Management services; in addition, generous contributions came from some of Cad's Greek students:(Tsavliris Brothers; Thanasis Martinos; Dr Gregory Timagenis; Theo Sioufas; Dr. Anna Brathima; Nicos Pateras; and Captain Spyros Carnessis. Their contributions provide a cushion for the Cad fund, and we are grateful to Tsavliris brothers for their initiative to stimulate interest for the fund.

On behalf of our President, Lord Mustill, Vice-President, Lord Justice Clarke, who apologise for their absence, the Steering Committee, the Dean of UCL law faculty, Professor Bridge, and the Head of the department, Professor Dennis, I thank you all, for coming here to support the event and the Lecture.

Your enthusiastic support over the years has enabled the Centre to reach its 10th anniversary. With your continued support, (to use Tennyson's words from the Happy Isles), the Centre will be "**strong in will to strive, to seek, to find and not yield"**, for the interests of the shipping industry and students of maritime law.

Now, I would like to introduce the Chairman of this lecture:
One could give a whole day lecture about Lord Steyn's achievements, judgments and views expressed on human rights. His judgments, whether leading or dissenting, stand out for clarity, liberalism, and common sense. He has been described as a man of principle, courage, and one of our most respected Law Lords.

He has spoken out even on politically sensitive issues concerning human rights, notwithstanding the effect which, in certain quarters, this is thought to have upon his judicial role. One instance of this was his recent speech on the occasion of the 27th Frances Mann memorial lecture, when he spoke about the Guantanamo Bay detainees, and described their imprisonment, as "**the legal black hole**" and as "a **monstrous failure of justice**".

I have no doubt that your views about the detention of Captain Mangouras of the *Prestige*, and of the crew of the *Tasman Spirit*, may well be similarly expressed. I hope you will enjoy this evening. I now leave the proceedings to the capable hands of Lord Steyn. Lord Steyn thank you

## Lord Steyn

Thank you very much Dr Sheppard.

First of all, the warmest welcome to everybody to the 7th Cadwallader Annual Memorial lecture and in particular to the many delegates here who have come a very long way from abroad.

Since the London Shipping Law Centre was founded in 1994 it's become a very important feature of the London maritime scene. It brings together commercial people, the judiciary, practising and academic lawyers for in-depth discussions about matters affecting the shipping industry. We are very pleased that there are tonight present here a number of representatives of the partners because the words spoken here are not meant to waft out of the window, they are about very serious matters and we hope the Government and Government officials will take note.

Now, the flagship event of the London Shipping Law Centre is the Annual Cadwallader Lecture founded in honour of Professor Cadwallader, the most distinguished shipping lawyer. The quality of the lectures which have all been published and the quality of the panel and forum discussions has been of extraordinary high in the past. Tonight there's been chosen for you a very topical subject – Criminalisation in Shipping: Human Pawns in Legal & Political Games.

There is widespread condemnation by the Shipping industry of the criminalisation of seafarers, survivors sometimes of major accidents at sea, which have left them in dire straits and left them greatly traumatised. Now what can the law do about that? The spirit of the English common law can be summarised quite briefly. It is encapsulated by the spirit of liberty and that is that all individuals are free to do whatever they wish unless it is expressly forbidden. In contradistinction the government and its officials may do nothing unless it is expressly permitted by law. Now that is a very important distinction and that spirit of English law has been reinforced by the European Convention of Human Rights which has created a culture of justification. If all this is so, why is it then that after many major casualties there is utter lawlessness. Why are there knee jerk reactions leaving seafarers imperilled? It may be that in the end, the seafarers like judges, are the only people who are not protected by Human Rights.

Now we are very privileged tonight to have as our keynote speaker, Mr Mitropoulos, the Secretary General of the International Maritime Organisation and I will straight away call on him to speak.

## Mr Mitropoulos

Lord Steyn, Vice-Chairman of the IMO Council, Ladies and Gentlemen,

Good evening. It gives me great pleasure to be here this evening for the seventh in this series of annual lectures given in the memory of the distinguished Professor F.J.J. Cadwallader,

particularly so, in view of the theme that has been chosen for this session. It is a topic that is close to my heart and upon which I have spoken on several occasions already this year.

Let me first of all declare my personal interest in the subject. I am very proud of my maritime roots, coming as I do from Galaxidi, a historic town that was once a major maritime power in Greece, during the era of the tall ships. Today, there are only a few shipowners left in Galaxidi, but still many seafarers. In particular, many captains and engineer officers hail from the town. I come from a long line of seafarers and I started my own career as a Merchant Navy Officer. I have seen the sea; I think I can understand what the sea can do to a ship; I think I can reasonably understand the human behaviour under adverse and severe conditions at sea; and I can understand the consequences of human error. To me, the sea means love, respect and fear, and those who go to sea for their livelihoods – and in so doing provide a service to us all – deserve our utmost respect, consideration and protection.

And, having laid that set of cards on the table, let me also confirm that I am, of course, a law-abiding citizen, and I believe that anyone who deliberately breaks or flouts the law deserves to be punished. Moreover, I have every sympathy for all those who have been the victims of accidents, in particular serious pollution incidents. Such incidents can ruin lives and livelihoods and literally rip the heart out of a community and I understand the need both to discourage violations of pollution laws and make sure that proper compensation is awarded to all those who suffer as a result of an accident.

And so to the subject of this evening's lecture, Criminalization in Shipping. As you no doubt have inferred from my opening remarks, it is my firm belief that what is needed, not exclusively in the particular case we are to debate this evening but in all aspects of life, is a proper balance – something along the lines of my ancient ancestors' call for the "golden mean" or that we should do everything in moderation. And my concern over recent months has been that the balance may be swinging just a little bit too far in one direction.

There can be no doubt about the increasing trend to initiate criminal proceedings following maritime mishaps. Two cases, in particular, have become causes célèbres and have done more than any others to highlight this issue. Above all, they have drawn attention to the terrible plight of seafarers who become caught up in such incidents.

On a foul and storm-lashed winter's day in November 2002, the tanker '**Prestige'** suffered a structural failure and subsequently sank off the coast of Spain facing the Atlantic, in the process spilling thousands of tons of oil into the sea in what became one of Europe's worst pollution disasters. Those bald facts belie a human drama of immense proportions. The master of the '**Prestige'** fought bravely to save his ship and his crew. According to reports, he was on continuous duty for 51 hours after the incident began; with his chief engineer and chief officer he

spent three hours in atrocious conditions trying to make fast a tug and helping the salvage team; and, when it proved impossible to get the lifeboats away, he helped to organise the evacuation of his ship by helicopter which saved the lives of the entire crew – a successful operation which added to the credit the maritime community very rightfully accords to the Spanish SAR authorities for their dedication, commitment and professionalism – characteristics that they so often admirably display in line with the highest traditions of the sea.

What happened next is well known to all those residing in Jerusalem. The moment the master of the ill-fated tanker set foot on dry land he was detained and has not been allowed to return home since.

At this point I should offer a caveat. I am not a lawyer, and I do not intend to comment in any way on the legal aspects of this particular case. I offer these facts purely to demonstrate that the case is anything but clear cut, and to raise the question of whether, in the light of the ambiguity that clearly exists, the '**Prestige'** master should be treated in a different way.

Moving on to the second cause célèbre: in the summer of 2003, another oil tanker, the '**Tasman Spirit'**, was proceeding, with the assistance of an experienced pilot, to a berth in the port of Karachi. She was fully laden and had been called in on a falling tide, in a channel in which silting was known to have been a problem in monsoon conditions. And, as history has well recorded, the '**Tasman Spirit'** ran aground, broke in half and spilled a substantial amount of her cargo.

This time it was not just the Captain who was arrested, but also six members of the crew. Later, the salvage master, who did not even arrive on the scene until after the ship had broken, was also detained to make up the last of what became known throughout shipping as the "Karachi Eight". The whole of the shipping world breathed a sigh of relief and gratitude when the eight were allowed to return home in April this year – but this was only after more than eight months of detention, an ordeal which drove one of the men to such depths that he reportedly attempted to take his own life.

Now then, don't you think we have to ask ourselves:

- Is this right?
- Is this fair?
- And is it in the interests of shipping?

None of these is an easy question to answer because this is a complex and multi-faceted issue. Each case must be looked at on its own merits; each is different, and generalizations are very difficult to make and should, prudently, be avoided.

However, generalize we must, and I have gone on record several times already to express my very real concern about plans in various countries to introduce legislation that would impose criminal sanctions against those found responsible for pollution by ships for what is essentially negligent conduct.

The frustration and the anger of the victims of accidents and of those whose coasts and livelihoods are damaged by catastrophic pollution incidents is understandable and, of course, we can all sympathize with this. I am not suggesting that those who deliberately (or "wilfully and seriously", to use the words of UNCLOS) commit an act of pollution and/or knowingly flout pollution standards such as MARPOL should escape appropriate punishment; indeed MARPOL requires that the penalties to be imposed for such behaviour shall be adequate in severity to discourage such violations. But any move to criminalize polluters for serious negligent conduct, such as the reported original proposal for an EU directive on ship-source pollution and the introduction of sanctions for infringements, could constitute a significant departure from the status quo.

When I addressed the ad hoc Committee on Maritime Safety of the European Parliament in early January, I suggested that the IMO conventions have not been drafted with the aim of requiring criminal sanctions for non-compliance and, therefore, any move to criminalize polluters, particularly for negligence, would constitute a significant departure from the established philosophy in the formulation of relevant IMO conventions. This view is reinforced by the fact that MARPOL does not specify the form that sanctions should take and the UNCLOS Convention limits sanctions to monetary penalties except for wilful and serious acts of pollution in the territorial sea.

Regardless of whether or not a way can be found to tiptoe gently through the legal minefield, there can be no doubting the detrimental impact such moves will have on masters and seafarers, particularly if it includes the prospect of imprisonment. I have a number of deep concerns in this respect.

Most immediate, of course, is the direct concern I think we all share for the seafarers under detention, their families and their loved ones. We can only begin to imagine how dreadful it must be to endure a prolonged period of detention in a foreign country, separated from your family, without any charges having been proven against you. You may not have the protection of your home country's legal system, quite possibly no representation – legal or otherwise – and no idea when your ordeal will end.

My next concern is for the impact these cases have on the general morale of other seafarers all over the world as a whole, who may justifiably fear for their future livelihoods when they see the fate that has befallen their professional colleagues. In our global society today, we

live in what is increasingly becoming a "blame culture". In many industries, however, – and shipping is no exception – wise counsels have tried to keep the blame culture at bay. Instead, we (that is maritime people) encourage an open approach, embracing near-miss reporting and a culture in which we learn from mistakes and mishaps. The trend towards criminalization is hardly going to help in this respect. It is certainly not going to encourage seafarers to co-operate fully and openly with casualty inquiries or accident investigations.

I think we should also be very concerned by the detention of personnel involved in salvage operations. There can be little doubt that the prospect of criminal proceedings might have a detrimental effect on the willingness of salvage and clean-up specialists to respond quickly to any pollution incident and that would certainly be counterproductive. I read recently that the International Salvage Union has announced that it will oppose the provision of salvage services in jurisdictions detaining salvage personnel 'without reasonable cause' and has also lent its support to wider industry efforts opposing the introduction of criminal sanctions for accidental marine pollution.

And, finally, Ladies and Gentleman, I am seriously worried about the negative impact acts of detention may have on the global campaign to attract new recruits to the maritime profession, particularly now when, as we all know, there is a shortage of quality officers and a strong possibility of a shortage of ratings as well in the not too distant future.

It is against considerations – and concerns – like these, that I appeal to the European Union members to choose the IMO channel to analyse and examine all the repercussions of the contemplated legislation to criminalize polluters in case it departs from the provisions of the MARPOL Convention before any action is taken at the regional level and then the Organization is caught in a *fait accompli* situation. Of course, if the matter is brought to IMO and the IMO members, having their wisdom assessed all the relevant repercussions, decide to embrace the essence of the contemplated legislation, the IMO legislative regime will have to be revised accordingly – in which case, we will, at least, have avoided confusing the industry with different regimes applying in different parts of the world.

Many observers have noted recently that shipping has something of an image problem and I believe very strongly that this is an area on which we need to pay attention, doing whatever we can to improve the industry's public perception. We should perhaps start by working, methodically and systematically, to make people stop nurturing the creeping perception that tends to hold shipping responsible every time something goes wrong in the transport system; and pass a "guilty" verdict even without trial, as so often happens, ignoring or occasionally deliberately forgetting what we all owe to it. Assisting those politicians who may know little about shipping to understand the industry's peculiarities and complexities would not, in this

respect, be a bad idea so that, should an accident happen, they do not rush to direct their wrath at shipping, requesting its head on a plate – instead of coming forward with constructive ideas and proposals to rectify any identified weaknesses and shortcomings. As I said this morning at the ISF Conference on Manning and Training, shipping should no longer be treated as the scapegoat against which to turn so that people who apparently know little about the industry may be seen as doing something, anything (as, for example, in the case of pollution incidents irrespective of their causation, even when such incidents may be attributed to *force majeure* instances) because such people consider it easier to seek legislation condemning the industry when their energies should, for better results, be directed towards the real sources of problems such as, in the example of pollution, the land-based sources. And when action is deemed necessary to enhance safety, security and environmental protection, this should be done in a balanced manner and with a due sense of proportionality; in accordance with international law and the provisions of conventions regulating such matters as the design, construction, equipment and manning of ships along with those addressing protection and preservation of the marine environment issues. In order, however, to protect the industry from outside threats, we should simultaneously work together assiduously to put our house in order. Only then will we maintain the moral high ground to defend the industry against unjustified and unfair accusations. To succeed in this, we must be pro-active in taking all necessary measures to prevent accidents happening in the first place and providing quality services in all respects, thereby removing any excuse from the general public thinking maliciously against shipping and politicians acting in a manner that is assessed to be unjust and excessive. And whatever we contemplate to do in the fields of maritime safety, security and environmental protection, we should attempt it through the IMO channels.

Ladies and gentlemen, notwithstanding the complex and delicate nature of the subject of tonight's lecture, IMO is, at present, doing something positive to address it, and I believe this is a cause for optimism. Following a proposal by a number of countries and non-governmental organizations[*] that the Organization that is IMO, in co-operation with ILO, should consider the development of appropriate guidelines based not only on the principles of UNCLOS – the United

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[*] **Fair treatment of seafarers LEG 88/12**

**Submitted by Cyprus, Greece, the Philippines, Poland, the International Chamber of Shipping (ICS), the International Shipping Federation (ISF), the International Confederation of Free Trade Unions (ICFTU), BIMCO, the International Federation of Shipmasters' Associations (IFSMA), the International Salvage Union (ISU), the International Association of Independent Tanker Owners (INTERTANKO) and the International Association of Dry Cargo Shipowners (INTERCARGO)**

Nations Convention of Law of the Sea – but also on the fact that unwarranted detention is a violation of basic human rights, our Legal Committee agreed, in April of this year, to begin work on the development of guidelines on the fair treatment of seafarers in situations such as those I outlined earlier on. It also endorsed a proposal to establish a joint IMO/ILO Working Group on the matter.

I am also encouraged by reported European moves to establish mutually recognized non-custodial alternatives to pre-trial detention that could see those caught up in such situations at least allowed to undergo pre-trial supervision in their own country, where this is within the European Union. I hope such initiatives can be moved forward to fruitful conclusions and perhaps provide a blueprint for some kind of international solution in the future.

I do not think any of you will disagree that anyone who deliberately breaks the law – and by this I mean acts such as deliberately by-passing the oily water separator or knowingly falsifying discharge records – deserves to be punished. But surely anyone who is inadvertently caught up in an accident deserves a better fate than those which we have observed lately? This also begs the question of how those who have acted negligently should be treated; whatever the answer, the first step must be to establish what objective we want to achieve as a result of that treatment. And we should bear in mind that, if too harsh a line is taken, we may discourage exactly the sort of high-calibre people that we need in positions of responsibility for safety and pollution prevention. Today's ships represent very high value assets and, because of their size and the nature of the cargoes they carry, have the potential of incurring unimaginable destruction, both on human lives and the environment. Should we entrust them to individuals who come to sea because they do not have anything better to do ashore?

We can all understand the need felt by those who suffer the effects of pollution – not to mention those who represent them politically – to do all they can to secure proper compensation. But an internationally agreed mechanism to provide such compensation is well established, and there should be no need to resort to what I have seen described as tantamount to hostage taking.

Ladies and gentlemen, I should like to commend the organizers of this event for selecting such a thought-provoking subject, one which I am sure the panellists will relish the chance to consider, each from his 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 and very much look forward to the debate that will follow.

As I said before, I am full of sympathy for the communities and industries that have paid a high toll in the aftermath of a serious casualty, and I recognize, as we all must, the complexity of the issue and respect fully the independence of the judiciary in countries which, having suffered in many ways as a result of accidents, are determined to discourage violations of safety

and anti-pollution rules through an effective system of reasonable sanctions. Whatever the answer to this, we should not, however, allow seafarers and salvors to become pawns in political and legal games.

And a last word: I am deeply concerned at the international repercussions in case there seems to be a wide degree of legal uncertainty regarding the status of the detainees and the preservation of basic human rights involving their welfare. In conclusion, I should like to return to the points I made at the beginning: we need to find a proper balance – and we need to do what is right, what is fair, and what is in the interests of shipping. And whatever we decide to do, which might affect shipping engaged in international voyages, let us do it through IMO. Thank you.

## Lord Steyn

Thank you very much indeed Mr Mitropoulos. We will not have questions at this stage, we will have a session for questions after all the panel speakers have been heard. I will straight away call on Dr Wiswall, an Admiralty lawyer *par excellence* to address us:

## Dr Frank Wiswall

Chairman, ladies and gentleman, my task this evening is to give you in a very limited space of time, an overview of the present state of the law, an examination of the conflicts between legal regimes that crop up in any discussion of this subject and to tell you some of what is being considered as a solution and right away I should give you a disclaimer, I am not going to comment on the European Union pending legislation. I think it would be hubris for an American lawyer to comment on virtually anything that the EU is doing in the legal sense and I am also not going to give you an exhaustive review of existing national legislation where in my opinion the roots of the problem lie.

The essence is if one accepts the polluter pays principle that the issue of who is the polluter is confused now, and what is it that he pays? Unfortunately, the polluter is now taken to be the Master of the ship where the vessel is in difficulty and commits perhaps through negligence and perhaps not through his negligence, has the misfortune to be in command of the vessel. This concept of absolute financial liability in Maritime law has somewhat and especially in national law to use a popular word of the present day, morphed, into a presumption of criminal liability on the part of the Master, whenever pollution results from an incident of navigation and those three words are of very considerable importance as we go further to examine the legal situation.

At this stage, I have to say something about the CMI's involvement. Why is it that CMI is interested in this debate? It's usually taken to be an organisation that is interested in private law and not in public law. For those of you, perhaps most of you, know the history of the CMI, for those of you who may not, I should explain that the Comité Maritime International takes it's name from the fact that it was effectively at one time, the Maritime Law committee of the International Law Association and after a failed attempt involving a couple of diplomatic conferences in the latter part of the 19th century, to codify all the world's maritime law, it turned it's hand to doing this piecemeal and has had better success.

But public law, as opposed to private law has always been an involvement of the CMI right from the very very first convention that the CMI formulated - the Brussels Convention of 1910 on collision and you'll find even reference there to incidents of navigation. But the collision convention of 1910, you will recall, contained the standby rule which is essentially a rule of public international law that a vessel has an obligation to standby and render assistance if this is feasible, following a collision. This is now embodied in Article 98 of the United Nations Convention on the Law of the Sea. Then in 1926, the CMI elaborated the Convention on the Immunity of State-owned Ships with a later Protocol in the 1930s and of course, in 1957, the Convention on Stowaways which added into force for a limited number of states.

What is really relevant here is CMI's 1952 Brussels Convention, not the well known one on arrest but the international Convention For The Unification Of Certain Rules Relating To Penal Jurisdiction In Matters Of Collision Or Other Incidents Of Navigation.

Article 1 entitled Exclusive Competence of the ship's flag. In the event of a collision or any other incident of navigation concerning a seagoing ship and invoking the penal or disciplinary responsibility of the master or of any other person in the service of the ship. Criminal or disciplinary proceedings may be instituted only before the judicial or administrative authorities of the state of which the ship was flying the flag at the time of the collision or other incident of navigation.

Article 3 makes the point that only the state which has licensed a mariner has authority to act with respect to that license and that is not a problem in the present day.

And Article 4 which is sometimes overlooked states that while the convention does not apply to a collision or other incidents of navigation occurring within the limits of a port or inland waters, it is only by making a specific reservation that the contracting parties may opt out of application of this convention to incidents occurring within their territorial waters.

So the 52 convention is a bit ahead of its time in seeking to apply this whole principle, not to incidents specifically of pollution but in general to incidents of navigation that in incidents occurring within territorial waters should also be subject to the control of the convention. Now

that 52 convention, although it did enter into force for, again a relevantly small number of states found its way in substance in Article 97 of the Convention of the Law of the Sea and interestingly enough, the *chapeau* of article 97 is entitled 'Penal Jurisdiction in matters of collision or any other incident of navigation'. In other words, right up front in lights, it isn't just other incidents of navigation, it's any other incident of navigation.

Paragraph 1 of Article 97 is essentially Article 1 and Article 4, paragraph 1 of the 1952 convention. I won't read it again. Paragraph 2 of Article 97 is Article 3 of the Convention of 1952 and paragraph 3 is a variant of Article 2 of the 1952 Convention which says that the detention or arrest of the ship even as a measure of investigation shall not be ordered by any authorities other than those of the flag state.

The other provision of the Law of the Sea Conference which was referred to by Secretary General Mitropoulos is Article 230, monetary penalties and the observance of recognised rights of the accused. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment committed by foreign vessels beyond the territorial sea.

Paragraph 2 of Article 230 is very similar in wording but where a discharge offence is committed by foreign vessels in the territorial sea, those are restricted in punishment to monetary penalties except in the case of a wilful and serious act of pollution in the territorial sea. Now of course the Law of the Sea convention does not extend, neither did the 1952 convention into ports or the inland waters of the states parties, but certainly states parties would be reasonably encouraged to apply these principles that are under the Law of the Sea convention mandatory in international law, to incidents occurring within their own internal waters. This is where of course the variance comes. Many national laws are at variance with this. Possibly in most cases because of oversight, not the realisation that there should be a conformity to the extent that is reasonable under the legal system of national law with international obligations. But in some cases I think perhaps a deliberate or wilful, perhaps is a better word in the context, ignorance of the provisions of the Law of the Sea Convention.

What is more important, perhaps, in the context of the discussion this evening is paragraph 3 of Article 230. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties and it doesn't say anything about monetary penalties here in this paragraph 3, just penalties, recognised rights of the accused shall be observed. Now what does that phrase recognised rights mean? I suggest that it is not, and cannot be read to mean, rights under the particular national law being applied at the time. In the context of the largest and perhaps the longest, series of diplomatic conferences

ever held not only under the auspices of the United Nations but I should think in international legal history. And, where the number of States represented is overwhelmingly larger than any of the other conventional undertakings of the United Nations as such, I suggest that recognised rights can really only refer to the declaration of human rights and in that context, this provision ought to override any conflicts in national law. Now of course, as the Secretary General has observed, wilful acts of pollution are something that should justifiably be punished, justly criminalized and there is nothing new about this.

Reginald Marsden, in his great 19th century 2 volumes of the Seldon Society series entitled Select Pleas and the court of Admiralty records in the 1st of these, as I remember, volume 6, "a grand jury indictment in the 13th century of chalkeries," presumably enterprises having something to do with chalk, just what, I'm not sure, "for casting rubbish into the King's stream". So there really is nothing new about the concept of punishment of wilful pollution activities. But small cases sometimes make a large point and one example is a favourite of mine. The NF Tiger, a case reported at 2 Lloyd's Reports – 564 in 1982.

Here the vessel Tiger committed a Colreg violation under Rule 10 by misbehaving in the channel separation scheme. The Ministry of Transport brought a charge against the master under the Merchant Shipping Act in its relevant provision and brought this charge before the Kent magistrates who dismissed the charge on the basis that the Master did not have criminal intent. The Ministry of Transport appealed this decision, this dismissal to a Divisional court and Lord Lane, then the Chief Justice, in examining the facts of the case and observing that the master at the time of this violation had not been on the bridge but was below, concluded fairly obviously, that he did not have criminal intent, there was no *mens rea* in that case and this is a bulwark of the common law which we don't always find present in the civil law States and I venture to say that the bulk of the problems that seem to have arisen with regard to criminalisation of these offences, have been in the national law or under the national law of the civil law jurisdictions.

In the *Amoco Cadiz* case, I would say that as contrasted with the Captain of the *Tiger*, all that Captain Bardary of the *Amoco Cadiz* was guilty of was *Men's absentia* – he was a person of weak character and was dominated in my view, from the outset by the very Prussian assertiveness of the salvage tug master. Now we all like to retry our old cases, especially the ones that we've lost, and despite my, I thought, forceful arguments on this point, the tribunal of enquiry decided that Captain Bardary was the person who was primarily responsible. I won't go into the details, just to say that I remain unconvinced to this day. Captain Bardary, when the ship went aground, having spent the night on board with the vessel grinding on the rocks and lots of sparks flying around with many crude volatiles in the atmosphere, was taken by helicopter from the ship the next day, briefly reunited with his crew in a hotel in Brest and then promptly jailed

and held for a number of months. He was finally bailed and very sensibly jumped bail. So this is also not a recent problem.

The problem is not simply one, in my view, of a misapplication of law but that the law is often used as a tool to implement hostage-taking, here I use the same word as the Secretary General used, for political purposes. If you think that's a shocking view I will go further. I ponder philosophically what is the difference from a terrorist act of hostage-taking for political purposes merely because the hostage in one case is taken by a terrorist who wants to take a point and on the other by a State government that wants to make a point. We can perhaps reflect, I am being deliberately provocative. But we ought not to split hairs when States do this on the basis of national law that is applied in disregard of human rights.

The problem comes very sharply to focus in the context of the debate over places of refuge for ships in distress. A consequence of the present situation, *Prestige* is one illustration, is that a ship master may now be deterred from requesting refuge for a distressed vessel and it so increases the chances of a whole breach and thereby defeats the purpose of the effort to guarantee places of refuge. At the very least, it is manifestly unjust to force the Master to weigh his personal exposure to criminal liability against the safety of his ship, it's crew and cargo. It is in this light that the IMO Legal Committee with the assistance of the CMI is in the process of elaborating a new legal regime concerning places of refuge and such is the importance given to the issue of criminalisation that Professor Edgar Gold, well known to many of you, will Chair a CMI working group on that specific aspect of this work on places of refuge. And indeed, the Comité may in the fullness of its exploration of this problem decide that it ought to make recommendations to go further than just the context of places of refuge.

The goal is a worthy one, it is increased safety of ships and the Marine environment coupled with the application of the mandate of UNCLOS, the coastal states shall impose only monetary penalties save in cases of wilful acts resulting in pollution in the territorial sea. And even in such cases to ensure that the rights of the accused are in the words of Article 230 - actually observed.

I have deliberately truncated my remarks to you this evening. You will in due course have the opportunity to read a much more lengthy and possibly even more boring paper.

Thank you for your attention.

### Lord Steyn

Our next speaker is Captain Rodger Macdonald, Secretary General of the International Federation of Shipmaster's Associations.

## Captain Roger Macdonald

Chairman, ladies and gentlemen, you've heard it before but I will repeat it, for nearly two years a senior Greek citizen, regarded by the maritime world at large as an innocent hero, has been incarcerated in a foreign country without trial. Furthermore, during the first three months of his detention he was kept in a high security prison and denied access to legal assistance or any contact with those trying to help him. Only after a P&I club provided a bail bond for three million euros was he moved from prison to detention within a country that is foreign to him. Even now he is too scared to meet any friends or colleagues who may give him moral support, as he feels it might prejudice his case.

He is, in IFSMA's opinion, without doubt a political hostage.

Of course today's media headlines fully illustrate to us far worse situations than this, but the fact that Captain Mangourus is not being held by terrorists or the dictatorship of a third world country, but by a democratic member of the European Union should make everyone of us here feel very uncomfortable.

Captain Mangouras was the unfortunate Greek Shipmaster of the *MT Prestige* which broke in two and subsequently sank off the western coast of Spain last November. During the voyage part of the ship's steel plating had failed and the strength of the hull was compromised. The ship would have been more likely to survive intact in sheltered waters, where the remaining cargo of crude oil could have been discharged safely, if the stresses and the impact damage caused by heavy seas could've been minimised. So the Master requested a port of refuge, but he was refused.

With his ship listing thirty degrees and in danger of breaking up, the Captain safely evacuated 24 crew members leaving only himself and two officers on board to attempt to correct the list and support an attempted salvage operation.

Is this the action of a criminal?

Whilst we must all feel total sympathy for those suffering from the damage caused by oil pollution to their coastline, however legitimate their claim for compensation, there can be no cause or grievance that can justify an abuse of human rights. That our Governments permit this to happen in Europe today reflects our collective failure to uphold the rule of International and European law, and can only fail to instill respect for those laws by other countries that trade in the maritime industry.

For the moment we will have to wait for some time until the courts decide on the fate of Captain Mangouras, so I will not go deeper into that case but ask you to consider a very similar case from which I base my evidence on an IMO report provided by maritime experts; it's the FSI 10/9 document dated 4th January 2002 dealing with the *Erika*.

On the eighth day of December 1999 the twenty five year old ship *Erika* sailed from Dunkirk to Livorno laden with approximately 31,000 tonnes of fuel oil. Soon after sailing, the ship encountered heavy seas in a force nine gale. Whilst these weather conditions are bad, they are not unexpected in the Bay of Biscay at this time of the year, and ships are actually designed to withstand these conditions.

During the afternoon of December 11th, the Master observed a progressive list to starboard and tried to correct it. He also transmitted a distress alert. On checking the cargo and ballast tanks he found the segregated No 2 starboard ballast tank which should have been empty contained both sea water and fuel oil with the ullage equal to sea level. Cracks and buckling were noticed on deck in the way of this tank so the Master decided to head for a port of refuge.

On the 12th of December large quantities of oil were observed escaping into the sea and part of the steel plating of No. 2 starboard tank had been torn away. At this time a second distress message was transmitted and with the assistance of the French naval helicopters and using the ship's port lifeboat the Master was able to abandon the ship without loss of life prior to the *Erika* breaking in two and sinking.

The Master of Erika, Captain Karun Sunder Mathur, was arrested and charged by the French authorities with putting life in danger and causing marine pollution. He was detained behind bars but after formal pleas from the International Federation of Shipmaster' Associations (IFSMA) he was eventually released from prison on 23rd of December 1999 but still detained in Paris. He was eventually allowed to return home to India in February 2000.

The Captain had acted promptly in a seamanlike manner, with acute awareness of the deteriorating situation in respect of the vessel's hull structure and he deserves full credit for ensuring that the entire crew were rescued without injury in severe weather conditions.

In fact the IMO document observes that the real blame lies elsewhere. Structural weaknesses of the vessel were not detected by the Classification Society that monitored the vessel, or by the agents responsible for its nautical management despite signs being reported by the crew, nor by the vetting of Port State Control inspectors.

On the other hand the IMO document observes that the Master with his solid maritime training and fifteen years experience had correctly discharged his duties within the state of his

knowledge. IFSMA stands by its belief that there was no justification whatsoever for the incarceration of this Shipmaster, or the ruining of his career. In spite of this evidence, the French authorities still want to extradite him to face trial in a French court.

In the meantime, the French courts have announced that they will not attempt to put the Authorities responsible for ensuring and certifying that the vessel was seaworthy as they represent a sovereign state.

I am not a lawyer, but I strongly believe in the principle that no one is above the law and that includes Government and Government officials, and no one should be denied the protection of the law, and that includes Shipmasters. Surely every nation that proclaims the rule of law at home must respect it abroad; and every nation that insists on it abroad must enforce it at home.

Sadly, the Erika and the Prestige are not isolated cases.

There are many others such as the *Tasman Spirit* in Pakistan where the Secretary General of the IMO played a key role in negotiating the release from custody of the Ship Master, Officers and crew as well as the Salvage Master. In this case the EU also used its political muscle which is commendable, but I find it also hypocritical in their failure to deal with the abuse of the law by one of their own member states in the case of the *Prestige.*

These examples that I have mentioned relate to the more publicised pollution accidents but there are many other examples of injustice relating to other types of incident.

If you were dependent on your company salary, what would you expect to happen if your employers went bust? Would you be expected to be held in captivity? In 1999, Captain Costas Litsakos, a Greek Shipmaster of the *MV Achilles 1* discovered that the owners of his ship had declared bankruptcy and abandoned the vessel while she was at an Algerian port.

The Algerian Authorities detained the vessel and the Master until such time that the port agent's dues and stevedoring expenses were paid. The Captain’s passport was confiscated and the port authorities stated that he would only be able to leave after he had been replaced by a similarly qualified Master Mariner. There was no hope of this and he was detained indefinitely in Algeria. With no money left, the 63 year old Captain became seriously ill. But salvation came in this case when he was offered an opportunity to escape by the Master of another ship and happily arrived safely home.

Perhaps a more serious case, similar to this was a Pakistani Master of the *MV Delta Pride*. The owners filed bankruptcy in March 1998.During May 1998 while in Tampico, the ship’s Mexican agent confiscated the ship’s documents and the crews’ passports against a small supply

of provisions. Abandoned by the owners, and in utter desperation, the Master sailed out of Tampico six months later and on the 24th November 1998 anchored 3 miles off the South Padre Island near Brownsville, Texas - hoping for justice in the USA. They were in for a shock.

The ship was not allowed to enter port and was given no assistance. The Master and crew almost starved for several weeks, relying on sea fish and rain water for their survival. Meanwhile in Brownsville, the Court ordered the auction of the vessel which was sold for a measly price of US $350,000. The crew's certified claim for wages by then amounted to US $270,000 and the Master and crew rightly expected that the USA Court would follow internationally accepted procedures and give crew wages first priority from the proceeds of sale. This did not happen. Instead the crew was taken into custody by Immigration Authorities and kept in the Brownsville immigration detention centre for over 6 months.

No one will deny that accidents such as collisions and groundings are generally caused through human error, and where a serious incident has occurred there should be an investigation as to its cause, so that we can all learn from it. But does a pending investigation into an incident give the Authorities the automatic right to criminalize the Shipmaster?

I do not have time to fully explain all the examples but ask you to take a look at some of the case studies and draw your own conclusions. The *Nissio Amorgas* was a laden tanker sailing down the Maracaibo Channel in Venezuela with the assistance of a local pilot. The vessel struck something just before midnight on 28 February 1997 and her two forward centre tanks were ruptured and she immediately began leaking oil and spilling 4000 tonnes of Venezuelan crude. Captain Konstantios Spirpoulos the Greek Shipmaster claimed that his tanker had struck a submerged object, which was quite possible from the alleged deplorable condition of the Maracaibo Channel at that time.

For five months the Shipmaster was kept under house arrest without any official charges being made against him. He was then allowed compassionate leave on two occasions but honoured his commitment each time and returned to Venezuela. Over a year later on 12th March 1998 he was finally charged with causing pollution. Interestingly there was no specific allegation of negligence on the Shipmaster's part.

Consider the plight of the two British Shipmasters whose ships collided off Fujairah on March 30th 1994 Captain Terry Lau Chung Hui in command of the Panama Registered VLCC *MY Seki* and Captain Donald Shields of the UAE registered *MT Baynunah* Both Shipmasters were detained by UAE authorities without any charges and placed in hotels in Dubai although

they were not under any kind of restraint. However their passports were confiscated so that they could not leave the United Arab Emirates.

The Fujairah Court held that the "*SEKI*" was 60 percent responsible for the collision and the *"Bayanah*" 40 percent and of course the "*Bayanah*" is the UAE flag vessel. Both Masters were fined the equivalent of US $2,700 in June 1994 but in fact Captain Lau's passport was not released until August 1994. And there are many other similar cases.

Now I don't want to argue about the result of these enquiries or their judgments but I would ask what justification is there to detain Shipmasters pending an accident investigation?

Reflecting on the IMO's Erica report, perhaps the courts should be looking into the deeper reasons of why these casualties occurred and the underlying issues that may have led to the above incidents. During my lifetime I have seen considerable changes in the shipping industry. For a start there are much fewer traditional shipping companies today that are what I would call, vertically integrated. The Shipmasters, Officers and crew are most likely to be working for a manning agency rather than the ship-owner. How can this promote any sense of loyalty, especially from the owner to the crew?

But worse than that, this structure can obscure who actually is responsible for what people may regard as a 'substandard ship' This may explain why authorities grasp at holding on to their only possible link - the Shipmaster, to those illusive owners. Explain yes. Condone, no.

In this very competitive world ships are now built to meet the minimum scantling requirements set by class. There is a view that the less steel built in the ships the more cargo it can carry and the more money it can make. The prudence of ship-owners in the past have added 50% to scantling requirements as an insurance policy did not survive the pressures from shareholders demanding a higher return from their investment. This is why IMO's role to maintain and improve standards is so important but I believe some regulatory bodies have failed the industry. Administrations compete for tonnage to register under their Flag and their aim is to minimise the specifications required to meet the necessary standards. This is especially true in their minimum manning requirement for each ship.

Crew costs are a large part of the ship's operating costs and shipping managers want to be able to pay for the minimum amount of crew. This is in spite of the fact that fatigue is a known problem amongst seafarers. Another recent added task for the officers of every ship that falls within SOLAS Convention is to carry out additional duties as the ship's security officer which are defined and required under the ISPS Code.

Some of the administrations were asked by IFSMA if they would increase their minimum manning requirements for an additional officer to carry out the task. The reply was blunt and along the lines that if we did that we would lose ships to other Flags.

So with a minimum amount of officers and crew to assist him a Master will join his ship under instructions to load and carry his cargo to a distant destination through whatever conditions the vessel will encounter. He or she may judge the condition of the vessel only from what they can see on deck and the hull above the waterline. The Shipmaster can judge if the ship is legally seaworthy by ensuring that all the ship's mandatory certificates are in order and that his officers have the certificates of competency required.

Accidents do happen, systems do fail, companies do go bust, and structures can collapse and that's in every industry, but the sea is an unforgiving environment, and provided that there has been no malicious intent or gross negligence, no Shipmaster should ever be treated like a criminal following a marine casualty.

The Shipmaster and officers of the watch have immense responsibilities, to protect the lives of their crew, the ship, its cargo and the environment. It is essential, therefore that the maritime industry and the world at large has a well trained competent Shipmasters, officers and crews.

How can industry attract potential recruits of a high calibre if they read in the newspapers how Shipmasters are treated so unjustly?

IFSMA strongly believes that the IMO is the correct forum to provide an effective mechanism through which to seek common maritime solutions to common maritime problems. .It acts within the concept of the United Nations Convention of the Law of the Sea (UNCLOS) and with IMOS, MARPOL Convention covers the situation such as the *Prestige*. As a signatory to both, in our opinion Spain has shamelessly disregarded the conditions set out for the treatment of the Master.

At the international level every maritime state needs a framework of fair rules which they can be confident that the others will obey. IMO has provided such a framework. But it would appear that this framework has some gaps and weaknesses and is often applied selectively, and enforced arbitrarily.

I was very impressed when I watched the United Nations Secretary General give his speech last month prior to President Bush addressing the United Nations. He made some excellent observations. I would like to quote some of them:

'Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it. Just as, within a country, respect for the law depends on the sense that all have a say in making and implementing it, so it is in our global community. No nation must feel excluded. All must feel that international law belongs to them, and protects their legitimate interests. Rule of law as a mere concept is not enough. Laws must be put into practice, and permeate the fabric of our lives'.

Kofi Annan then urged the delegates to do more to foster the rule of law at home and abroad and to take advantage of the arrangements that have been made to sign treaties on the protection of civilians – 'treaties that you yourselves negotiated' he reminded them – and then, go back home, and implement them fully and in good faith.

Shipmasters would like the same message respected and observed by the IMO member nations. That's all we ask.

I would like to thank Dr Sheppard for inviting me to express the views of Shipmasters at this Cadwallader Memorial Lecture and thank you all for listening.

## Lord Steyn

Thank you very much indeed. Our last panel speaker is Mr Stephen Martin of Steamship Insurance Management Services Ltd.

## Stephen Martin

Thank you very much. Good Evening.

You all have one question for me. Those of you, who don't know me, are asking: what is that? Those of you who do, are asking why in God's name is he up there tonight? I can't help you with the first question. I often ask myself the same one. As to why I'm here this evening it's because Aleka very kindly asked me and I am indeed very honoured to be here this evening.

I work for a P&I club but I am not about to express the formal opinion of that P&I club and still less an opinion of the group of P&I clubs. All I can do, I think, is to give you some thoughts, not original, and I will apologise now for the fact that many of them will be very familiar to all of you.

This is a talk about criminalisation. I fear that the word itself is rather loosely employed. I don't think it is right to say that criminalisation per se is wrong. There are plenty of activities at sea and elsewhere which should be criminalised. It's a good thing for the health of the industry that those who deserve criminalisation should be criminalised. But I think we use it, this evening

at any rate, in a rather different sense. I think we mean exorbitant punishment, if you like, unnecessary and opportunistic punishment and when we talk about criminalisation, I think we refer to three maybe four categories.

First, fines - I suppose in particular exorbitant ones, imposed under strict liability statutes or other regimes. Second, we mean action against individuals about which you've heard quite a lot and I won't go over that. Third we mean exorbitant damages and fourth I think we mean, or should do anyway, punitive damages.

Although punitive damages aren't a particular issue in the United Kingdom, (some might indeed say our law is rather too restrained) they certainly are elsewhere in the world and in the United States in particular. While I hesitate as an English lawyer to discuss the law and goings on in the United States, I don't think I can hesitate as a manager of a P&I club since many, if not all of the world's major shipowners are so affected by what goes on in the United States. So I apologise for the fact that much of this is about United States. Is it out of control over there and if it has been out of control - is there any hope?

Well, about 12 years ago, a Doctor, called Dr Gore, who lived in Alabama bought a BMW for $40,000. He drove it very successfully, but when it was taken in for its first service he discovered, because he was told, that it appeared that some paint repair had been carried out. He later discovered that BMW had done $621 worth of paint repair during the process of transportation and delivery but hadn't disclosed that to him. He got very upset, he went off to court and he claimed $50,000 in damages. This is in the Alabama state court. He successfully convinced the jury that he was 'hard done by' and the jury awarded him compensatory damages of $4,000. ***B***ut his counsel, for good measure, had put in a plea for punitive damages and the jury having been persuaded that there must be at least another thousand other poor and upset BMW buyers in the country who suffered the same fate, decided that they would award Mr Gore a thousand times his damages and gave him a punitive damages award for $4 million, with regard to a $621 paint job. This was considered to be a trifle excessive and the matter went off to various courts for appeal. First to the State Court of Appeal, which thought it should reduce it to $2 million, but the Supreme Court had other thoughts and, eventually, it reduced it to $50,000; so this is a salutary tale in two senses.

It demonstrates, perhaps, the high watermark of punitive damages and it also demonstrates that the courts of United States, it's true, have done quite a lot in the last 7 or 8 years to contain and control what we would regard, and they too, as pretty excessive damages. But then we turn to the EXXON Valdiz with which again you will all be familiar. I won't recite all the facts but EXXON in consequence of carelessness and mistakes, no doubt, incurred costs and liabilities for damages, natural resource etc. of about $3.4 billion. This vessel we need to

remember was carrying a cargo worth $25 million. They incurred these liabilities largely through voluntary clean up, $2.1 billion, by payment of $900 million for natural resource damages to the environment, and by another $500 million or thereabouts to various private claimants for their damages,.

Now even the prosecutor who had negotiated the penalty with EXXON and extracted from EXXON a fine of $125 million plus the $900 million I have just mentioned, acknowledged that this was fair enough punishment and that even EXXON, a large company with a turnover of $18 billion, might still feel the pinch and recognise that the incident wasn't a good thing. But that wasn't good enough.

Some 32,000 plaintiffs, fishermen, through one particular law firm decided they would pursue EXXON for punitive damages. And they did quite well, because the jury, when it first returned its verdict, awarded $5 billion of punitive damages. Upon the basis, no doubt, that EXXON's failure, perhaps even their recklessness, was such as to demand this additional punishment. Things have changed quite a lot, and I'll come back to EXXON Valdiz.

But let's just go back to 1917 in Halifax where there was a true disaster involving a French munitions vessel called the *Mont Blanc* which collided in Halifax harbour with a Belgium relief vessel called the *Imo.* The munitions vessel was full of ammunition and the *Imo* was empty and the two came into collision within the harbour confines at 8 o clock in the morning on the 6th of December, I think it was, 1917. The munitions vessel was laden with materials for the French line. For about an hour, the munitions vessel burned slowly spewing out smoke, the occasional explosion and lots of people came down to watch on the jetties and at the harbour front. At 9.05 in the morning she blew up and killed 2,000 people, decimated 325 acres and left 9,000 people blind and injured. There are still some today, a few who remember it and are the survivors of that ghastly event.

Of course, history doesn't exactly relate what happened but it seems pretty clear that very little in terms of civil liability damages were paid by either of these vessels. Not surprisingly, those who survived, and that is only those on board the French munitions ship, were charged, and they were prosecuted. These charges were eventually dismissed, no criminal convictions and they went on to their respective lives**;** they had made a terrible mistake, but were not criminalised**.**

I'm not making any comment about the Halifax disaster, except to say that it is was an enormous catastrophe and surprising that more people don't know about it, but it does draw some kind of distinction, between what the position was 80 or 90 years ago and what it is now. How can EXXON Valdiz in which no-one died, no-one even got a cold, how can EXXON Valdiz

possibly have justified the kind of awards of damages that were imposed. It's an extraordinary change.

But punitive damages as well as these exorbitant fines that we've been discussing are said to be justified by the public need for punishment of transgressors or whatever you want to call them. The frequent criticism, also it seems to me frequently justified, is that this punishment as meted out by Government under court authority is disproportionate. Look at the American Constitution, the 8th Amendment, 'cruel and unusual punishment'; fines should not be excessive. It is arbitrary, we know it's arbitrary because juries who generally dispense punitive damages in the United States don't all act in the same way. It's expedient all right but it isn't fair and it's certainly opportunistic. It's the kind of privatisation of punishment in which the British Empire indulged in the days of the privateers between 1600 and 1815, when it appears that we were constantly at war with somebody, very often at war with everybody And for 215 years the UK sub-contracted the right to extract penalties, if you like, seize goods, under marque and all sorts of other permissions. Isn't this what punitive damages amounts to? It is a denial of due process; due process exists in two parts in the Constitution – Article 5 for people and Article 14 for companies.

It is perhaps, more seriously a great deterrent to transparency, as are the fines we have been discussing and the jeopardy of criminalisation generally because, why be transparent? Why give a true account of what may have occurred if you know that you are perilously close to criminal prosecution. It achieves precisely the opposite of that which it is said, by its proponents to achieve. So it is an impediment to an effective and genuine investigation into casualties. It is inconsistent we know, and divisive. Divisive essentially, because in a maritime adventure, there are partners - owners and charterers, shippers, importers, even P & I Clubs and hull underwriters and most of all those who serve on board – all partners and all divided when it comes to the criminal investigation with what is in store and often occurs after a casualty. It disrupts trade, and quite rightly, it disrupts the reputation of the countries or governments which engage in or indorse these practices. So it is counter-productive.

But to a lawyer, worst of all, it is contrary to the core principle of natural legal justice. The idea being that those who are punished for misconduct should have some intention, some wilful, wrongful intention, *mens rea* as you have already heard. It does not involve that any more, or so it seems. But I am not the only person to think that punitive damages are not a frightfully good thing. If I may, I will quote from a judgement about punitive damages. It says that; "the true rule, simple and just, is to keep the civil and criminal process and practice distinct and separate. Let the criminal law deal with the criminal and administer punishment for the legitimate purpose of that punishment, reformation and deterrence. Let the individual whose

rights are transgressed, who has suffered injury, go to the civil courts and there obtain full and ample reparation and compensation. Punitive damages destroy every constitutional safeguard within their reach. And what is gained by this annihilation? For no other purpose but to perpetuate false theories and develop unwholesome fruits. We should apply the knife to this deformity. Concerning which every true member of the sound and healthy body of the law may well exclaim 'I have no need of thee'. Is not punishment out of place, absurd, ridiculous when classed against civil remedies? What kind of civil remedy for the plaintiff is the punishment of the defendant? The idea is wrong. It is a monstrous heresy. It is an unsightly and an unhealthy excrescence, deforming the symmetry of the body of the law".

In EXXON Valdiz, it was the jury that initially determined EXXON's liability of $5billion. But this case has been appealed twice now, and guess what? It is the judge who is now fighting desperately to retain the verdict. The case went to the jury sometime in 1998 or 1999, then there were a number of decisions in the Supreme Court which appeared to place some restraint, and impose proportionality upon punitive damages. So back it goes to judge Holland in the First Instance Federal District Court and Judge Holland says 'Well I don't think it is too much at all, but I tell you what, I'll ask the plaintiffs what they want. The plaintiffs say, okay, knock off a billion. So Judge Holland says "Right, we take it down to 4 billion and that's that". So off we go again to the 9th Circuit Ct of Appeal with a $4 billion punitive damages award. The 9th Circuit Ct of Appeal says – no you have not understood. We would like you to reduce this award, actually reduce it significantly.

So Judge Holland purported to go through this whole process of reconsideration and he came back with a figure that he thought right - $4.5billion. So now we can only wait to see whether this does or doesn't irritate the Ninth Circuit Court of Appeals – I think it will, I don't imagine that EXXON having spent $3.5billion plus legal fees is going to stop now and it will eventually go to the Ct of Appeal.

But here are some of the sort of comments from Judge Holland in the second iteration – his second review, bearing in mind he's trying to justify, to those who may care to read his judgement the fact that punitive damages have been awarded – he says this: "EXXON wilfully allowed Captain Hazelwood to continue to operate a super tanker filled with crude oil despite EXXON's knowledge that he was drinking again." Not true. There was no knowledge that he was drinking. They knew that he had an alcohol problem, they didn't know he was drinking again. "More importantly, it was this intentional decision by EXXON that led to the plaintiffs being harmed, wilfulness ignoring reason is a principle component of malice".

"This means that "EXXON's management of Captain Hazlewood amounted to intentional malice towards the 32,000 plaintiffs". Pretty imaginative stuff. He then goes on to justify further

his conclusion by saying "The point to be made here is that EXXON has admitted criminal responsibility for its conduct." Let's think about that.

What EXXON actually did, was to plead guilty to some of these extraordinary and purely strict liability statutes in the United States. One is called the Refuse Act to which they pleaded guilty of one count, one is called the Migratory Birds Treaty Act which is supposed to stop people shooting things out of the sky when they're migrating only. And I think there was another Act, the predecessor of OPA, the Clean Water Act.. That's what they plead guilty to but the way it is presented here, a sort of Trojan horse kind of argument, is to imply that since EXXON has admitted its, so called, criminal responsibilities, it's appropriate to punish them as if they were criminals.

After the third iteration in his Court, Judge Holland talks about what might happen afterwards knowing full well it's going to go back for the third time to the State Court of Appeal. He says this:

"If EXXON accepts this result by paying punitive damages award plus all the interest, that will be the end of the case. However, if EXXON chooses to take a further appeal seeking a more generous reduction of the punitive damages award then the court urges the plaintiffs to cross appeal."

I am sorry but it seems to me that this kind of advice is pretty outrageous.

So how do we actually define punitive damage? I think we define it in various ways. It's a bit like the elephant, we sort of roughly have an idea. It should be awarded for outrageous, deliberate conduct which is in blatant disregard of the rights of individuals or others. Reckless indifference is another kind of definition if you like. But there are so many objections to it. First of all, the jury objection which we've discussed. Secondly, privatisation of punishment which we have discussed. Thirdly, there's the question of vicarious liability.

Is it right, in fact, that a corporation entirely innocent of any recklessness or wrongdoing or acquiescence in such things should be held accountable for the punishment meted out for misconduct of one of it's employees***?*** The law in England says yes and the law in United States says yes just about. But there is one dissent, I think within the House of Lords and in the latest or most recent case called Kuddus *v* one or other of the Chief constabularies, Lord Scott says, and this is an interlocutory motion, " I'm not at all convinced that punitive damages have any place at all". I don't know whether Lord Steyn would agree with that.

He also went on to say that, in his opinion, whether they do or don't have a place, they simply are inappropriate when imposed vicariously. How can you punish a company when the company is innocent of any of these mental ingredients, if you like, that are a component of liability for punitive damages. One of the things that is said in the European Community or

European Commission's proposal concerning criminalisation is this, that the effect of criminalisation will not compromise the rights of individuals to obtain fair compensation in the event of pollution and so forth. That's completely wrong. It must be completely wrong. Once you inject issues of fault and degree of fault and who was more at fault and less to blame and all of this kind of thing into a regime that at the moment provides for simple strict liability and payment of compensation, you will inevitably delay the payment of compensation, inevitably, at the very least because of the fund and the Clubs. A Club covering CLC liabilities, and the Fund providing compensation at levels above CLC, will have to consider whether one or the other has rights against one or the other depending upon the kind of conduct alleged. So the EC proponents of these changes are wrong to think that punitive damages or exorbitant fines for so called serious negligence is going to speed things along – it won't.

Of course, another major objection to punitive damages is the standard of proof. Why, if you're accused of a terrible criminal act should you only be convicted upon proof beyond reasonable doubt? And yet, if it isn't quite such a bad criminal act, in fact, isn't a criminal act at all, should your liability for punitive damages be based on balance of probabilities, the civil test.

Well perhaps I can just make this comment about detention of individuals.

I think it's all very well for us to say, quite rightly, how appalling it is when Masters and others at the con in the locality are seized and turned into hostages. That's wrong and it's certainly wrong when that sort of thing happens in a country that, generally speaking, in the way that we understand, treats it's citizens properly, respecting due process and so forth. But I think it's quite a difficult task to impose a more libertarian regime upon countries which don't have this kind of regime for their own citizens. I'm not going to mention any countries or any names, but in some parts of the world if you're involved in a motor accident - you may be entirely innocent of any mistakes, certainly of wrongful intent - you will be incarcerated. And for an indeterminate period and without a charge being pressed etc. etc. How can we really say that an itinerant vessel with it's crew complement, in particular it's Master, Chief Mate, should be treated differently, in some way with a privilege not available to the population at large for any such kind of incident in their own country? So actually, I think that if there is a criticism to be made it is a criticism to be made of cases within Europe, where we know that people have been detained without due process, contrary to the usual law that applies to the usual citizens of those countries. But we need to be careful about making a similar criticism in countries where they don't have these rights.

Thank you very much indeed.

## Cadwallader Lecture Q&A

## Lord Steyn

Now we have 20 minutes for questions. Could I mention three points.

First of all, identify yourself please, even if you are very famous. Secondly, you will earn very many brownie points from the Chairman if you have one line questions. Thirdly, address your question to a particular speaker although the other speakers can come in on the questions too, we'll be completely relaxed about that. And now the first question:

**Michael Kavanagh - Omniquip** semi retired,

My question is for Mr Mitropoulos, I wonder from what was said this evening, holding the ship's officers and crew seems to be purely vindictiveness on the parts of the individual countries and I wonder how long IMO and International Maritime Court would be strong enough and respected enough to be able to override all these national courts, local courts, it seems to be happening now, but I wonder how long it's going to take?

**Mr Mitropoulos**

I am told that, in the Belgian Parliament, when a question is difficult, the MP who answers always starts with: "this is a good question". This gives him time to formulate an answer. It is a good question but, as I'm sure you appreciate, the strength of IMO is the strength of its member governments. If the IMO member governments wish to discuss an issue such as this – and this is in fact what I suggested when, earlier this year, I appealed to European Union members to bring the issue of criminalisation to IMO to consider - we would then see what the wisdom of all the members of the IMO would decide on this particular case. How long is this situation going to last? I really don't know and I would not risk pre-empting the reaction of IMO to such an issue. But it is something that I strongly believe should not lead to another regional or unilateral measure. We need global standards, as I have said it many many times. It is there that the strength of IMO lies, in regulating shipping - which by nature is an international industry - by means of global standards. And I would be very pleased if an IMO member of government, or an industry organisation, were to bring the matter to IMO for discussion and I would suggest the sooner the better.

**Lord Steyn**

Thank you very much. Dr Wiswall would like to add:

**Dr Wiswall**

If I could just have a brief word. The questioner did not use the word arbitrary, but the word arbitrary has been used in the discussion with regard to the actions of governments in detaining these individuals. I think it ought to be made perfectly clear that in the most prominent cases, there's nothing at all arbitrary about this, it's a result of a deliberate political calculation, which is designed to cover up the fault of some government officer or department and to distract attention indeed to make the Master or in the case of more than just the Master, other members of the crew, scapegoats for what is happened. Let's be honest about it, there's nothing arbitrary about this, it's perfectly calculated.

The next question.

**Eamonn Moloney - EVERSHEDS**

I act for seven of the Karachi Eight and I was very glad to hear what Dr Wiswall said. He held no hostages over compensation, he mentioned the subject absolutely upfront. In the case of my clients, there was no doubt at all, it was in writing from the government of Pakistan, they were there for compensation. Now how is your working group at the IMO going to address that in this code of conduct, will you face it absolutely four square as you did in the speech here?

**Mr Mitropoulos**

Another good question.

We have worked together on the Karachi Eight question so we know each other very well. The terms of reference that the two organisations have agreed to for the joint IMO/ILO working group are actually addressing different questions and therefore seeking some different answers. First of all, they ask that the group examine the issue of the fair treatment of seafarers in the event of maritime accidents and, in so doing, they are supposed to examine the universal declaration of human rights, international conventions on civil and political rights and on economic, social and cultural rights, the United Nations Convention on the Law of Sea, pertinent IMO and ILO instruments including MARPOL 73/78 and the ILO declaration of Fundamental Principles and Rights at Work and, finally, internationally recognised standards and guidelines on settlements of disputes. There may be a million questions relevant to the issue. I don't think that all those questions will be addressed by the IMO/ILO working group but if there is an interest for a question to be addressed by it, which will be submitted to us either by a Member government or by an industry organisation, rest assured, the group will consider it; or, if not the group itself, then the Legal committee will take it on board when the time comes.

Thank you. The next question

**Dimitri Capaitzis. Naval architect.**

I started with liberty ships in the 50s, 10,000 tonnes, 35 crew, so 3 and a half men were in charge of 1,000 tonnes. Later on, we had the liberty replacements, 17.000 tonnes, 17 crew, so 1 man for 1,000 tons. The VLCCs nowadays are 400,000 tons and they have a crew of about 20 so each member of the crew is responsible for something like 20,000 tons, so the burden increases. One day we are going to have remote control ships with no crew – who is going to be responsible for pollutions? So far we have been catching Captains and Chief Engineers or whatever, who are we going to catch in the future? Are we going to catch the superintendents, who repair the ships, are we going to catch the builders, who build the ships, are we going to catch the naval architects who sort of advise on the size of the ships? Are we going to catch Class, who make the rules or IMO, who are sort of responsible for the rules, or perhaps responsible for some rules that have not been made, or are we ultimately going to catch the consumer, who wants bigger and bigger ships, more and more oil, more and more motorcars on the streets and then he says catch the poor Captain, who is responsible for spilling a little bit of it, so this I think is a collective responsibility issue. I would like the panel to reflect on that and see what do we do about collective responsibility in order to match our requirements with the methods by which we implement them? Thank you.

**Captain Macdonald**

Once again, you asked a very good question. I often reflect on this, when I started off at sea I was on a 10,000 ton ship with a crew of about 90. I worked for a company that employed Indian crew, but we had carpenters, we had fitters etc. And the whole concept of shipping then was a vertically integrated system, the top and the guy who cleaned the toilets, the lowest of the low if you like, was still part of the company I worked for, the BI. We all took a particular interest in that ship, we all were there for a long period. The first ship I was on, I was there for two and a half years, you belonged to it and you took a tremendous interest in that ship. One of the big changes that have happened is exactly what you have said. Now there's been tremendous advances in technology. We don't need a sextant so much anymore because we've all got the modern equipment to tell us where we're going, how fast we're going etc. A modern 8,000 tons Container ship today will carry 10 times the cargo that the ship that I first joined, when I went to sea at double the speed. The most important thing is they turn the ships round in 24 hours. We could expect a week in port on most occasions when we could get some rest and revitalise

ourselves. And yes 16/20 people is what it is reduced to now. The problem is, I think, not so much that comparison you made, but I think the fault really lies in what I described in what I was saying, that the minimum manning requirements are not adequate for today's needs. Most of the ships I sailed on were British flags in those days, today you have whatever flag, whatever class you need to use, whatever the cheapest the owners can get really, and that's the problem. It's become competitive amongst the flag states to get this tonnage in, to bring the income in and I think that the minimum manning levels really do need to be addressed and unfortunately I don't know how we can overcome this.

**Mr Mitropoulos**

Thank you. I want to build on what Rodger just said. There is a regulation in SOLAS Chapter 5, on manning, which requires that the ship should be safely manned. It is obvious that, when satisfied that certain requirements are being met, the administration should provide the ship with document of safe manning. The IMO has adopted an Assembly resolution which deals with guidelines for safe manning. Recently we have received reports from UK and Canadian investigators that the application of the guidelines has led to some ambiguity, which in turn has led to accidents. When I spoke this very morning at the ISF Conference on Manning and Training I raised the issue and suggested that, because in IMO we keep our instruments under review and from time to time we change them, there might well be a case that we should undertake at the next opportunity a review of the guidelines for safe manning. The information Rodger has provided would be a good case for further study.

**Alex Gullen, BPP year Law student**

Mr Mitropoulos you mentioned earlier global standards, do you think that these require global enforcement at international level and if so, thereby obviating Section 97 0f UNCLOS and problems arising from that and, if that is so, do you think that any ultimate solution to some of these issues will remain out of the reach of the courts and remain within the realms of the political world?

**Mr Mitropoulos**

I'll answer the first part: when it comes to courts, I'll ask Frank to answer.

Yes, I do believe there is a need for global enforcement at the international level. IMO adopts global standards as a result of strenuous efforts by its 164 members and then these standards are for governments, which are party to the Conventions relating to the standards adopted by IMO, to implement.

It is not the business of IMO to implement the standards. We do not have the executive power. It is for governments to see that standards are implemented by ships flying their flags and for Port States, through the Port State Control system, to ensure that the same standards are enforced on foreign flag ships visiting their ports.

And there this rests. There has been an exception to this system, namely the rights and the authority given to IMO in the context of the implementation of the STCW Convention, to ensure that governments who are party to the Convention give a full and complete effect to the requirements of the Convention.

Things may improve dramatically and I hope that this will be the case when we finalise the development of and eventually adopt the IMO Member State Audit Scheme, which will provide the means, through co-operation to assist those countries, developing countries in particular, to raise their standards so eventually, one day, we eradicate sub-standard shipping.
Frank, over to you.

**Dr Frank Wiswall**

Thank you very much Mr Sec Gen.
Having foresworn any comment on the affairs of the EU, and I realise that this court is not, strictly speaking, a court of the EU, nevertheless, I would be interested to see what the Court of Human Rights would do with some of these cases involving individuals. The problem of international enforcement is a much more complex one with very limited exceptions, such as the present International Criminal Court set up for specific purposes, and I think establishing, hopefully, a precedent that is going to be not generally but, very, very particularly followed. International tribunals do not deal with the cases of individuals but only with disputes between States. That having been said, there, of course, is an international law – the Doctrine of Espousal whereby a State may espouse the cause of a particular individual and take that to an international court for enforcement.
I have to say that in the context of what we are discussing here, all this is very nebulous at the present time. You cannot put the cart before the horse of the work that is being done by the IMO and that is going to be done by the ILO and IMO, jointly also, to try to define what are the particular circumstances in which enforcement ought to be taken. Then you come to the issue of how do you do it.

I really feel strongly that you cannot jump the fence. You have to go the slow way. No one is going to accuse IMO of being excessively speedy in its deliberations, at least, not on its past record. But, I believe things are looking up.

**Lord Steyn**

Sec Gen, we have time for one more.

**Diedre Fitzpatrick – ITF**

Much has been said tonight about the recent pollution incidents and it appears blatantly wrong that seafarers would be used to deflect difficult political questions at the national level and to strengthen the hands of governments in obtaining financial settlements from shipowners, insurers and Classification Societies. There is also, however, an increase in criminalisation in response to the problems of maritime security. Seafarers are in the frontline in the war against terrorism and yet, there is a debate going on in the Legal Committee of the IMO on the revision of the SUA Convention that appears to show that there is a risk that seafarers are to be regarded as terrorists. My question to the panel then is, particularly to Secretary General, Mr. Mitropoulos, this: Do they have any comments to make on how the subject of maritime security is being dealt with at the Legal Committee and how the subject of maritime security will ensure the rights of seafarers and human rights of seafarers are to be protected?

Thank you.

**Mr Mitropoulos**

Thank you.

I believe that the ITF is fully aware of the action that I, personally have taken to safeguard the interests of seafarers within the context of maritime security and, particularly, with respect to the legislation in the US with regard to shore leave and a requirement that they have visas, which is not in line with the ILO Convention on the particular issue.

I wrote to the Secretary for Homeland Security in January. I had the letter co-signed by my counterpart in ILO and those of you who attended this morning's ISF Conference on Manning and Training will recall that I addressed the issue. I said that I do not consider that it is fair if we do not, in this particular case, recognise the contribution of seafarers, who have a very important role to play in the correct and wider implementation of the ISPS Code.

We need them, as part of the equation, to play the game and it is proper to consider them important partners. Yet, when it seems that they have done their job, we do not seem to

appreciate that they do have a need when a ship reaches port, to go ashore. After so many days at sea, seafarers, who have to face the elements, sometimes at full strength, have every good reason to go ashore when their ship reaches port. I do not think that, at that particular point, having played effectively their role as partners in implementing the ISPS Code, we can consider them as potential criminals and therefore deprive them of their right to go ashore.

This is a position which I believe merits due recognition, world-wide. I hope that in all the work of the IMO, the contribution of seafarers to the shipping industry is recognised and appreciated in all respects. This includes the work on the Revision of the Suppression of Unlawful Acts (SUA) and its Protocol, which the Legal Committee is undertaking thoroughly at present. (It is hoped that next month the Legal Committee will consider that they have reached the stage of progress to enable IMO to move on to a Conference next year to adopt the revised text.)

**Lord Steyn**

That brings the Question and Answer session to an end.

Before I hand back to Dr Sheppard there are one or two things I would like to say. We have heard a spectrum of views this evening, very cogently argued by real experts. We have all learnt a great deal, many perspectives which we had not appreciated. We have been given insights into the real shipping world.

**The debate that was generated here this evening ought to reverberate far beyond the walls of this room. It ought to be influential in persuading governments and government officials to bear in mind the plight of seafarers who serve international trade upon which we all depend.**

**What is our demand?**

**The demand is simple – Proportionality. For too long these problems have been swept under the carpet. We hope, no longer.**

We are all very grateful to Mr Mitropoulos and our three panel speakers for their very careful and very thoughtful contributions.

Thank you very much indeed.

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**Dr Sheppard**

Thank you all in the panel so much for enlightening us this evening and those who contributed to the debate by raising interesting and challenging questions.
Now, I would like to come to the LSLC/CTC, (Charles Taylor) Essay Prize Competition and call on Michael Dean from CTC to announce the winners.

The purpose of the Essay Competition is to encourage research into current topics in Maritime law and reward the winners for excellence. This year, it was very pleasing to see that we had a variety of entrants from all over the world and very good quality essays.
I would like to thank CTC for their initiative to sponsor this competition for three years. If others would like to put their name to this competition for the advancement of knowledge, I would like to hear from them.

**Michael Dean – CTC**
Thank you very much Dr Sheppard.
My Lords, ladies and gentlemen.
I am very pleased to be here tonight on behalf of the London Shipping Law Centre and Charles Taylor Consulting in respect of announcing the winners of the 2004 Cadwallader Memorial Essay. Firstly, let me thank the Committee for their diligence in reading all of the essays and for reaching the decision as to the 2 winning entries which we have this evening. Well as most of you will know or, probably, appreciate, the CT Essay awards are the Maritime Law's equivalent of the Booker Awards. Although I would say that this year the content of the essays was considerably better and certainly much more focussed than those submitted to Booker.
The first winner who receives £1,500.00 worth of CT shares is a South African gentleman. Now unfortunately, CT's generosity, as just expressed by Dr Sheppard, did not extend to a return or even a single ticket to South Africa and, unfortunately, he is not therefore here to personally accept his prize tonight. Well I am sure that he is here with us in spirit.

His essay was about the 'Use and Abuse of the Corporate Veil in Shipping' and in his essay he traces the existence of corporations from the early ecclesiastical organisations through to the 14$^{th}$ century development of the Italian industrial based around trade and shipping and then to modern times. He then looks into the future and concludes that it could be in the interests of shipping itself and the world trade community to defrock those who seek the protection of the

veil and the rather perverse comfort of darkness. He believes very strongly that light should be shone where there is dark. The author and winner of this first prize is a gentleman called Michael Wagener, he is a lawyer from Cape Town and, perhaps, in his absence, we could nevertheless, give him a round of applause.
Thank you. I am sure that he will go to bed , greatly heartened by that.

Our second winner receives £500.00 worth of CT shares and is considerably more home-spun than Michael Wagener.

His essay was about the much-discussed and much lamented topic of limitation. He considers in his paper the origins and reasons for shipowners being able to limit their liabilities, starting with the very early 18th century Statutes and then he considers that in the topic of modern times. He concludes in his essay that, on balance, limitation has more advantages than disadvantages although the different regimes that co-exist around the world do in fact make for a great deal of uncertainty , and in fact we heard earlier on tonight one of the speakers talking about the inconsistencies of world-wide regimes in applying the same principles. There is obviously a common thread there.
Now this second winner works for Tindall Riley who are the Managers of Britannia one of, if you want, the rival Clubs to Charles Taylor. His name is Edward Waite. [was unable to attend due to an emergency at work]

**Dr Sheppard**
Now I come to the delivery of the sum we raised for the Mission to Seafarers and I would like to call on Mr Everard.
Because the Centre has received a wonderful support from the industry, we decided, exceptionally, only on this occasion, to donate also to the Mission the sum of £500.00. Here it is all, Michael.

**F. Michael Everard – Vice Chairman – The Mission to Seafarers**
Thank you very much indeed. I stand before you humbly a vertically integrated shipowner. I'm glad that that has the approval of somebody on the panel.
You know, we have seen tonight just how many seafarers get into trouble even without new criminalisation laws and we have had a whole list of them and there are many others. Having said that, most seafarers are treated properly but there is always the danger that people will not.

At the Mission to Seafarers we have the Secretary General here tonight and the person in charge of justice and welfare, Ken Peters. We were very involved, for instance, in the release of the Captain of the Erika. In fact, he was released into the Mission to Seafarers' custody. This is the sort of work that we are doing and that is going on, unsung and quiet all over the world and I tell you, we fully need support. We need the funds in order to help distressed seafarers and others, who are treated badly.

I thank you very much for the support and please continue to support the Mission to Seafarers.

Thank you very much.

**Dr Sheppard**

Finally, I would like you to acknowledge your appreciation to Gerard Mathews who worked hard to prepare for this event with devotion and commitment.

Thank you for your patience; Enjoy the rest of the evening.