

**Welcoming speech by the Centre's Founding Director,  
Dr Aleka Mandaraka- Sheppard**

Good evening - My Lords, your excellencies, Secretary General, distinguished speakers, ladies and gentlemen. I warmly welcome you to the 10<sup>th</sup> Cadwallader Lecture to address what concerns the industry most: "Lawmaking and implementation in international shipping: which law do we obey?"

We are most grateful to the Secretary General of IMO, Thimios Mitropoulos, for honouring the Centre by allowing us to commemorate the 10<sup>th</sup> Cadwallader event in this prestigious building.

On this auspicious occasion, the Centre congratulates the International Maritime Organisation on its 60<sup>th</sup> anniversary, and pays tribute to the significant contribution it has made to international maritime affairs. The areas of activity over that time show what a fundamental and indispensable role the IMO plays in shipping regulation, safety and international conventions.

The Centre is, comparatively, a youngster of 14 years old. Its mission is education in maritime law and policy for the benefit of all sectors of the shipping industry, legally and non - legally trained; it does this with passion and perseverance. It has pioneered risk management education in shipping - it informs on current legal and practical issues and promotes reform in the law. It provides a neutral forum, for the exchange of ideas, to enable the industry to voice its concerns about legislation. The aim is to challenge and to advance the law - to benefit 21<sup>st</sup> century requirements.

This Lecture was set up in memory to Professor Francis Cadwallader - Cad to those who knew him well. He taught maritime law at University College, London and at Cardiff University until 1992. He is remembered, as a scholar, for challenging the law – and, as a teacher, for his enthusiasm in teaching as well as understanding the needs of students. The Cad lecture is a tribute to his contribution to education and the development of maritime law.

Over the 9 Cad events since 1997, we have ranged wide - and we have ranged far, focussing on sub-standard ships; civil justice reform; the European Commission's Erika packages; places of refuge, terrorism; regulation in the 21<sup>st</sup> century for quality shipping; criminalisation; and a comparison of regulatory controls between shipping and aviation. These lectures tackled the big issues and produced some spirited debates. The constructive dialogues have assisted in the rethinking of proposed legislation. This evening's topic is very much in the Cadwallader tradition.

We are grateful to our generous sponsors for enabling us to hold our 10<sup>th</sup> anniversary event. Particular thanks go to our prime sponsor: Holman Fenwick Willan; special thanks to our shipping friends at Ince & Co for their platinum level sponsorship; AND also to Latsco, Informa Law, Elka Shipping, Lloyd's Register, Chandris shipping, Tsavliris Salvage Group, Tsakos and the Greek Shipping Co-operation Committee.

Let us turn to the subject in hand.

To set the scene, we may ask, but perhaps not be able to answer, all of the following questions:

- Who are the lawmakers in this complex, global industry?
- How can the law be effectively implemented?
- What is the relationship between regulations and rules at international level and those adopted regionally?
- Which law should apply when there is a conflict between international treaties and regional laws?
- Which courts or tribunals would have competent jurisdiction to decide a dispute when there is conflict?
- Supposing the court or tribunal gets it wrong, what then? Which court should determine the issue definitively? Does such a court exist?

Turning now to the two areas which underpin the subject for our debate: legal certainty and harmonisation of law.

First and foremost, we need an agreed set of coherent rules applicable to cross-border international shipping. No one would dispute that **legal certainty** is essential to the delivery of justice; but it is equally important that the right balance must be struck.

Such logic can be traced back even to the Classical period of Athens. When the Athenians were considering how to punish a rebellious ally, it was debated, in the Assembly, whether or not to uphold an old rigid law for the sake of legal certainty; this provided punishment by killing, and would result in the slaughter of the entire male population of the ally. However, common sense prevailed; the Athenian legislators looked at the big picture for Athens' benefit and changed the harsh law.

Insisting on a rigid application of law, irrespective of effect, is tantamount to looking at laws through narrow lenses. For legal rules to work, account must be taken of the context in which they are implemented. For example, the EU Directive on ship-source pollution conflicts with the context of international law.

This is compounded by the recent, equivocal, decision of the European Court of Justice, on questions referred to it by the English High Court. The ECJ decided it could not assess the validity of the Directive in relation to MARPOL, because the European Community is not a party to MARPOL - notwithstanding that its members are. Having reached that decision, the ECJ, nevertheless, proceeded to interpret the term, "serious negligence", in art 4 of the Directive, as a "patent breach of the duty of care". This test is still lower than the test provided by MARPOL.

Such law is hardly consistent with legal certainty, and it does not assist the development of coherent rules, since the EU members will, inevitably, be bound by two conflicting laws, the EU Directive and Marpol; which law should apply?

By analogy to the striking Athenian example, would the enforcement of the Directive not result in the 'slaughter' of the seamen's profession? Let us shift our focus to the big picture when making laws.

As to **Harmonisation**, it aims at a consistent body of law through the establishment of common standards across national borders. Lack of common standards will invariably result in governments avoiding the implementation of the law, thus rendering lawmaking a dead letter.

In shipping, such body broadly exists and for the avoidance of conflict between laws, governments should be strongly encouraged to implement international conventions and principles.

Only then could the law be enforced consistently for ship safety and environmental protection as well as fair compensation to victims of accidents. Only then would we know which law should apply.

Close co-operation between regional legislators and the IMO is imperative for the exchange of knowledge in order to achieve uniformity of maritime law.

Our expert speakers will shortly deal with the niceties of lawmaking, implementation, conflict of laws and the role of courts and tribunals. We are most grateful to them for their preparation and contribution to this event.

I shall now call on our Chairman, Thimios Mitropoulos, to introduce the panellists and lead the proceedings. Mr Mitropoulos needs hardly any introduction. His admirable achievements are well known to you.

He is a visionary, a skilful diplomat, and an effective leader committed to the cause of safe, secure and efficient shipping. His recent unveiling of the bronze statue as an international memorial to the wives of seafarers, the anonymous heroines, is evidence of Mr Mitropoulos's humanity and vision.

Thank you all for supporting this event by your presence and, I anticipate, contribution to what I hope to be a lively debate.

We aim to finish at 8.15. After the vote of thanks by the Centre's President, Lord Mustill, there will be delicious Greek food and ample drinks - so do not hurry home -----

Mr. Chairman, over to you

Dr Aleka Mandaraka – Sheppard 1 October 2008