

10th Cadwallader Memorial Lecture

1 October 2008

“Which law do we obey?”

**Chairman’s opening remarks by Efthimios E. Mitropoulos,
Secretary-General, International Maritime Organization**

Mr. President, Dr. Sheppard, ladies and gentlemen,

First of all, let me thank you, Aleka, for those kind and flattering words, which are very warmly appreciated – if you had gone on, I would not stop you! ...

Apart from generally overseeing proceedings, the primary functions of a chairman are to introduce the speakers and make sure that they do not overrun their allotted time, while remaining strictly neutral all the time.

I fear, however, that these may be difficult tasks for me this evening. Of course, it will be my great pleasure to introduce the speakers in a few moments. But it will be with the emotions of a poacher-turned-gamekeeper that I may be forced to impose any time restraint on them, for I am only too conscious that there have been occasions in the past when I have been guilty of “slightly” exceeding my allotted speaking time! But, no matter, I am certain that our speakers today will all have deep wisdom to impart and that the audience will be keen not to miss a single moment of it.

It is, however, in the third virtue of chairmanship, strict neutrality, that I know I shall experience the most difficulty, given the theme for this evening’s Cadwallader Memorial Lecture. For, although I am not a lawyer, I have spent the better part of my career immersed in the creation of the international legislative framework that has, through IMO, shaped the modern shipping industry and which, today, reaches into almost every one of its corners.

IMO’s standards are now firmly embedded in shipping’s consciousness and practice and they regulate the industry of today. Most of the main IMO treaties have all been ratified by States that are, collectively, responsible for more than 98 per cent of the world’s fleet.

Thanks to the extensive network of global regulations that IMO has developed and adopted over many years, shipping today is a safe and secure mode of transport; comparatively clean; comparatively environment-friendly; and very energy-efficient.

The strength of IMO's measures is derived from a number of factors. None of them has been developed overnight as a knee-jerk reaction to an accident or incident. Even though some have been prompted by particular events, all IMO instruments are the result of measured and considered technical work by the best minds and the finest maritime expertise available anywhere in the world. Not only do the Member Governments send their top experts to IMO's technical and legal meetings, the process also benefits from the contribution of the specialist non-governmental organizations to which the Organization has granted consultative status.

Another reason why IMO's measures have such widespread acceptance is that, almost without exception, decisions within the Organization are taken by consensus. There is, of course, a voting procedure, but it is very rarely called upon in the normal course of IMO business. Agreement by consensus means that all countries have a stake in those measures and a genuine desire to exercise the responsibility that comes with a sense of ownership.

International standards – developed, agreed, implemented and enforced universally – are the only effective way to regulate such a diverse and truly international industry as shipping. Such standards provide a framework, but they must be supported by appropriate national measures if they are to be truly effective.

This is illustrated by an issue which has, of late, been very much in the maritime news – that of piracy and armed robbery, particularly in the waters off the coast of Somalia. I am certain you all share my grave concern over the escalation of such incidents, not only in number but also with regard to the ferocity with which they are occurring. Hardly a day goes by without another report of yet another ship being attacked or hijacked and the crew being taken hostage.

What is being done to remedy this? And what law applies? IMO, for its part, has been very active in this arena, developing advice for Governments and for ship operators,

forging initiatives with other UN agencies, seeking the involvement of the UN Security Council, encouraging and facilitating co-operation among States, even involving naval forces and defence organizations.

But it is UNCLOS – the United Nations Convention on Law of the Sea – that outlaws piracy and permits all States to seize pirate ships, and to arrest and prosecute the pirates. In so doing, it reflects long-established principles of public international law. But the UNCLOS provisions, on their own, are not sufficient – as with so many other areas of concern, they provide the necessary legal framework for action but leave the essential operative details to be developed elsewhere.

And, apparently, if recent newspaper reports are to be believed, only some States – by no means all of them – have taken steps under UNCLOS to pass the necessary national legislation, which would enable them to bring pirates to justice. Nor are there currently any effective regional measures in place. The international legal framework is there, but it cannot be effective without appropriate action at national level – and Governments, especially those in a position to make a difference, should address the issue with the seriousness it deserves, and act, either individually or collectively, before seafarers lose their lives. They may perhaps start by adopting and enacting legislation that will allow them to prosecute the perpetrators of the unlawful acts I am talking about and see that they are duly punished for their crimes. Time cannot wait – and we are already late!

In short, therefore, my own answer to the question posed by the title of this year's Cadwallader lecture simply has to be that, within our milieu, the shipping industry has no alternative but to obey those laws which enshrine standards developed and adopted at the international level, principally, but not exclusively, through IMO.

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But enough with my personal views, as the time has come for me to turn to the eminent panellists who will be talking to you at greater length and with greater authority than I can on the general theme of the Lecture. And what a distinguished panel it is!

Judge Thomas A. Mensah is an old friend and colleague, having served from 1968 to 1990 as Legal Counsel at IMO. In 1981 he was designated Assistant Secretary-General

and Director of Legal Affairs and External Relations. He later served as a Judge of the International Tribunal for the Law of the Sea, from 1996 - 2005. Indeed, he was the first President of the Tribunal, from 1996 to 1999.

Prior to his election to the Tribunal, Judge Mensah was the first High Commissioner of Ghana to the Republic of South Africa. Other positions held by him include Lecturer in Law at the University of Ghana; Associate Legal Officer at the International Atomic Energy Agency, Vienna; Cleveringa Professor of Law at Leiden University; and Professor of Law and Director of the Law of the Sea Institute at the University of Hawaii. Judge Mensah was also Chairman of the F4 (Environmental Claims) Panel in the United Nations Compensation Commission (UNCC), in Geneva, from 2000 to 2005.

He has been a Member of the Institut de droit International since 1989, Titular Member of the Comité Maritime International, a Member of the Advisory Council of the British Institute of International and Comparative Law and a Member of the Standing Committee on Maritime Arbitration at the International Chamber of Commerce in Paris. It is indeed a privilege and an honour to have him with us this evening and I warmly welcome him here.

Our second panellist is **Sir Michael Wood, KCMG**. Sir Michael is a member of the International Law Commission, and a Senior Fellow of the Lauterpacht Centre for International Law, at the University of Cambridge. He is a barrister, with chambers in London.

Between 1999 and 2006, he was Legal Adviser to the UK's Foreign and Commonwealth Office. After joining the FCO as an Assistant Legal Adviser in 1970, he was appointed member of the UK delegation to many international conferences, including most sessions of the Third United Nations Conference on the Law of the Sea, the Lancaster House Conference on Rhodesia, the "Two-plus-Four" negotiations on German Unification, the Cambodia Peace Conference and the Dayton and Rambouillet Conferences on the former Yugoslavia.

His postings have included three years (1981-1984) at the British Embassy in Bonn, and a further three years (1991-1994) at the United Kingdom Mission to the United Nations in New York, dealing chiefly with Security Council matters. He was Agent for the United

Kingdom for a number of years before the European Commission and Court of Human Rights, and Agent in the Lockerbie and Legality of Use of Force cases before the International Court of Justice, as well as in the MOX Plant proceedings before the International Tribunal for the Law of the Sea and the OSPAR and UNCLOS arbitral tribunals. Thank you, Sir Michael, for being with us this evening.

Last, but by no means least, may I introduce **Mrs. Birgit Sølling Olsen**. Since 1996, Birgit has served as Director for Shipping Policy and Deputy Director General at the Danish Maritime Authority, where her areas of responsibility include shipping policy, the economic and legal framework for Danish Shipping, maritime law, social protection of seafarers, EU policy and traditional ministerial work for the Danish Minister for Business and Economic Affairs, who is responsible for shipping.

She is Chairman of the board of the Danish War Risk Insurance Company, Head of her country's delegation at IMO's Legal Committee, the IOPC Funds and at ILO meetings on maritime affairs as well as a member of the Danish Maritime Law Committee.

She has chaired a string of committees, working groups and correspondence groups at IMO, the IOPC Funds and at ILO on a range of subjects including piracy and the protection of seafarers. In addition, she has 20 years' experience as a Danish delegate and Danish spokesperson on maritime issues at a number of EU and other international meetings.

A distinguished career has seen her head a division in Denmark's Ministry of Industry, with particular responsibility for maritime law and international shipping policy, serve as lecturer in maritime law at the Institute for Marine Engineers in Copenhagen and act as legal adviser to the Danish register of shipping. Welcome, Birgit, to this Room, which you have, so many times, graced with your presence and in which you have recited some of the finest and most humorous of your poems! ...

And now, ladies and gentlemen, without further ado, may I ask the first of our distinguished panellists, Mrs. Olsen, to give us her presentation.

Thank you.