

## **11<sup>th</sup> Cadwallader Debate 24<sup>th</sup> November 2010**

### **Politicians, the European Commission, Regulators and Shipping – what is the missing link and the way forward**

Good evening – It is my very great pleasure to second the views of Mr Polemis, who has made his several telling points with considerable eloquence, but also perhaps drill down into the industry's concerns about the activities of politicians and regulators.

To me, the opportunity of taking a few well-aimed shots at Brussels and all its works is always a severe temptation, but on this occasion, I am going to resist my inner urges, as it would not be particularly helpful in this context. I would merely endorse the concerns of Mr Polemis about regional, as opposed to international, regulation and especially his views on the way in which EU member states, which are all separate signatories of IMO conventions, and presumably sovereign states with their own mature ideas about maritime matters, are whipped into line like naughty schoolchildren and told how to behave by EU representatives prior to important IMO meetings, at which their individual contributions would once have been appreciated.

I don't think that this does anything to promote better regulation or indeed the relationship between the European Union and the IMO, which really does need our support as the primary maritime regulator. Reasoned debate is stifled and forced into formulae in which political power blocs brandish slogans. Spokesmen for the European Commission like to suggest that its role at IMO is that of a sort of a spur to progress – I would suggest that the need is for a rather softer, less prejudiced, less provocative and a rather humbler and more consensual approach to regulatory matters.

Am I saying that the EU should back off a bit? Not really, but that it should concentrate on some of the things it has shown it can do quite well. I think, for instance that we can applaud most of what the European Maritime Safety Agency

has done in its relatively short life. It has been well-led and expertly directed, and has done a great deal to promote best practice, and above all, to assist the least best performing maritime administrations in Europe, up to the standards of the best, in such matters as accident investigation, port state control inspections, and contingency planning, to mention but three of its success stories.

We can welcome the evident belief in Brussels that shipping is an industry that is essential to Europe and needs to be nurtured, and that the European maritime workforce needs to be strengthened by attracting more bright people into it. Precisely how this to be done is still being studied and debated, but the EU is, I believe setting a good example to member states, some of which have disgracefully allowed their maritime industries to wither and their experienced and expert maritime manpower to disappear.

But this whole evening, I believe should focus upon regulations and regulators and I think that there are certain plain facts about both which need to be emphasised. Historically, the shipping industry has tended towards a reactive approach to regulation; a marine disaster begets a regulatory reaction and I don't know that this is always the best way, as it becomes inextricably bound up with blame and liability, is not assisted by the urgency of the moment, and the inevitability of political pressures. If anyone doubts this just take a brief look at the regulatory firestorm which has raged over Washington following this summer's oil spill in the Mexican Gulf, entirely driven by politicians, with the practical people who know something about oil drilling and its technical nuances, smothered by the avalanche of reactive legislative activity.

I would suggest that as legislation that undertaken in haste is invariably repented at leisure, a sort of cardinal rule about regulations should be that they should not be made too fast, or threatened by time targets or guillotined debates.

Talking of debates, Mr Chairman, I would like just to briefly mention an annual event, which has been held by the Nautical Institute and the World Maritime University in Malmo which endeavours to take a constructive look at Regulations and Best Practice, and how better regulations can be devised, for an industry which many of us think is being rather over-regulated. You might ask why the NI and the WMU should be collaborating in this series and it is a simple answer – the NI is composed

of people whose daily burden is to wrestle with regulations, and the WMU , we might consider is a “staff college for maritime regulators”. The records of these two meetings are available and are entirely relevant to tonight’s debate.

I mentioned the risk of regulating in haste, but there are a number of other important rules which regulators need to keep in mind. An obvious one is that new regulations shouldn’t make things worse – but how often does the law of unintended consequences intrude into particularly “technical” regulation? I can think of regulations like the Tonnage Measurement Convention, or regulations for fishing vessels which have led to diabolically frightful ship designs, which ought to have been foreseen, but were not, such was the urgency of the moment, with time running out, and the need to achieve some sorts of consensus, before a conference ended.

Mr Polemis spoke about his concern that too often in Europe, someone in the executive, far from the action, seems to dream up the basis of a regulation which is then presented almost as a settled viewpoint to a startled industry. I don’t think the EU is uniquely more guilty than many other administrations in this respect, but it is this inability to involve the practical practitioners at the earliest point that just produces more problems. Does anyone ever ask the people who probably know, whether we really need this regulation? Wouldn’t the encouragement of best practice negate this legislative requirement more effectively?

Is the regulation that is proposed making ships safer or the seas cleaner, or the air crisper? Or heaven forbid, is it there to protect the backsides of people who make the rules, or limit liabilities? That wartime slogan “is your journey really necessary?” comes to mind.

I was at sea on the UK coast when the celebrated Lady Gwendolyn judgement refusing a shipowner leave to limit liability because he hadn’t actually spelt out in writing the importance of switching on a radar in fog, was revealed. The paper storm which deluged our ships in the following weeks was quite amazing, but an appeal to common sense and seamanship, rather than terror about liabilities caused by this judgement, would have arguably have produced a better result.

More industry involvement earlier, and an appreciation of what the costs and benefits of regulations might be, are also important criteria for better regulations. And is the regulation even remotely intelligible to somebody who isn't the Master of the Rolls?

In a previous life, when I came ashore I worked in the UK Chamber of Shipping in the technical and marine safety branch, where I was part of a small drafting committee that was putting some of the then recently revised Load Line Rules into UK legislative form. Both in the Surveyor-General's office and on the industry side we were all practical people, naval architects, engineers and master mariners and we fashioned what we thought was a crisp, clear and practical document, that industry people would be able to understand perfectly.

It was then sent to the Treasury Solicitor's department, which apparently had the final say on all UK legislation emanating from the old Board of Trade, from whence it emerged in a form that was completely incomprehensible to somebody who was not a vastly experienced lawyer. It was gibberish, and I have often thought of the same sort of thing happening in every government department, in perpetuity.

So Mr Chairman, in conclusion, I would both endorse and second Mr Polemis' views but also appeal to our friends in the European Commission and indeed other fora where regulations are made, to consider some of the basic rules for good regulations; which I believe are occasionally forgotten. I have boiled them down to six of the best.

1. Are they necessary?
2. What is their purpose?
3. Will they make things better , safer, cleaner – or worse in every way?
4. Can they be afforded?
5. Will they stifle initiative and common sense?
6. Are they supportive of, or inimical to – best practice?

Only you, Mr Regulator, can answer these questions, but you really must ask them.

Thank you for listening.

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