

CADWALLADER LECTURE: Social responsibility in shipping and aviation

Keep limitation, reject criminalisation

Policy makers, most recently in Europe, keep chipping away at the concept of limitation in marine liability incidents. Faced with excessive or unlimited liabilities in a major claim, shipowners and their insurers could simply go out of business. Then no one will be compensated properly.

This warning was issued by **Spyros P. Polemis, Chairman of the International Chamber of Shipping and President of the International Federation of Shipowners** at the ninth Cadwallader Memorial Lecture in London on November 16th.

He described unlimited liability as a nonsensical concept when aimed at reforming the few low standard operators.

The shipping industry had accepted higher levels of liability, particularly in the context of oil pollution. “Many will recall Tovalop and Cristal, the voluntary industry compensation regimes. More recently, the industry has introduced Stopia and Topia, which make a greater contribution to compensating oil pollution claimants.

“Internationally agreed liability and compensation regimes are an integral part of shipping’s accountability to the public when accidents happen,” continued Mr. Polemis. “The regimes under the auspices of IMO, such as the oil pollution Civil Liability and Fund Conventions, the Bunker Spills Convention and the Athens Convention aim to provide prompt and adequate compensation for pollution or passenger claims.

As the IMO regimes are based on the concept of compensation not punishment, demands for criminal liability posed a significant threat.

He was addressing the theme ‘The Ship and the plane: are they the same?’ and comparing the influence and progress of corporate social responsibility in safety and other issues. The lecture was organised by the London Shipping Law Centre to encourage dialogue between the shipping and aviation industries and chaired by the Centre’s Founding director, Dr. Aleka Mandaraka Sheppard.

Mr Polemis said the last two decades had seen continuous improvement in the safety, operational standards and governance of the shipping industry, not least in respect of environmental pollution. A comprehensive system of international regulations had been put in place and developed, covering construction, maintenance and vessel operation and supplemented by the industry’s own ‘best practice’ self regulation.

Three initiatives were leading to higher and consistent standards.

Common Structural Rules for construction of tankers and bulk carriers.

Implemented by the International Association of Classification Societies, these should ensure all IACS members apply exactly the same construction criteria for these ships. A change within the International Maritime Organization to a ‘goal-based approach’ might see a welcome extension of this process to other ship types.

IMO Voluntary Member State Audit Scheme. Still in its infancy, this should ensure consistent application of rules and international instruments by flag states.

Port State MOUs. These would continue to check that international instruments are complied with and oblige ships to address shortcomings or have their trading activity curtailed.

Compared with other forms of transport, shipping is more environmentally friendly, maintained Mr. Polemis. In terms of emissions per tonne of cargo carried per mile, shipping was far cleaner than any other transport mode, including aviation. CO₂ emissions from aircraft were as much as 20 times greater than from shipping. However, as shipping carried about 90 per cent of world trade by volume, one had to take into account its overall environmental impact.

Society expected more in terms of reducing the environmental impact of air emissions, related to global warming and local pollution; ocean pollution, including management of ballast water exchange and discharge of oily waste; and end of life recycling of vessels.

ICS was playing a leading role in attaining practical solutions for international application, avoiding proliferation of conflicting local regulations and delivering Net Environmental Benefit.

Mr. Polemis pointed out that when a ship is constructed, the warranty and liability on the ship builder only extends for twelve short months, unlike the 'cradle to grave' service and obligation of aircraft manufacturers, who also take a leading role in accident investigations.

"I suspect there is far more scope for safety-related information exchange amongst shipbuilders, insurers, classification societies and shipowners. We should not use commercial concerns as a convenient shelter to hide any failure and share safety-related information."

Shipping has further to go than aviation in the development of a 'safety culture'. The Erika and Prestige disasters marked a turning point in co-operation between regulators and regulated. Actions driven by short term political expedience

have given way to a more considered and genuinely progressive approach to continual improvement. We need to comply not just with the letter of the ISM Code but with its fundamental spirit of corporate social responsibility and management accountability.

The inter-industry working group into a series of explosions on chemical tankers had concluded disturbingly that most incidents studied arose from failures by otherwise competent and apparently well trained personnel to follow correct and established procedures.

A common feature of incident reports was a trail of errors but it only took one break in that chain to avoid an accident. Compliance with procedure and an innate obedience to the safety culture would address problems as they arose and avoid disaster.

Global standards for employment had been progressively developed by ILO and consolidated in the Maritime Labour Convention 2006. Early ratification of this convention would provide a necessary benchmark against which consistent standards could be overseen by flag and port states. Global standards for training through STCW 1995 were shortly to be updated.

“The positive contribution of the shipping industry is not well understood by the public nor by some decision makers who determine how we are regulated. Yet over 50,000 ocean going vessels cover 450 billion tonne miles every day with incredible efficiency, delivering goods all over the world through different cultures and different customs.”

Except for cruise and ferry businesses, the public have little direct contact with or awareness of shipping. Many small and medium size companies did not have the

same means or motivation to spend significant sums on promoting their brand or public image like the large public airline corporations. “However, shipping must continue to provide important services with thorough professionalism, management accountability and corporate social responsibility. In some areas, the aviation industry may have something to teach us.”

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