

**SIXTH ANNUAL CADWALLADER MEMORIAL LECTURE
(15 September 2003)**

“Challenges Facing the Shipping Industry in the 21st Century”

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Mr. Chairman, My Lords, Ladies and Gentlemen:

First, I must thank the London Shipping Law Centre for inviting me to be a panellist at this, the Sixth Cadwallader Memorial Lecture. Surprisingly perhaps, I don't think that I ever met Professor Cadwallader, though his name always held a strange fascination for me. Cadwallader is of course a Welsh name, but in its somewhat anglicised spelling it is a name very common in my home county, Shropshire, where about one in three of the farming community seems to be called Cadwallader. I think it was this tenuous resonance with my origins that persuaded me to accept the invitation to speak this evening.

It certainly wasn't the theme selected by the London Shipping Law Centre – Challenges Facing the Shipping Industry in the 21st Century. I suppose lawyers are expected to look at the broad vision as well as the small print, but as we are only some three years into the 21st century I certainly have no intention of trying to second guess what the challenges will be for the industry ninety odd years from now. A speaker in 1903 might have been able to forecast the imminent elimination of sail and a significant increase in the average size of ships, but the implications of the advent of containerisation or the VLCC would have needed more than a crystal ball.

The one forecast I will be presumptuous enough to make is that, whatever transport alternatives are developed in the coming decades, the majority of world trade, at least by volume, will continue to travel by sea a century from now, and the global challenge for the shipping industry will still be to improve the safety, efficiency and competitiveness which world trade will undoubtedly demand.

So what I intend to do this evening is to ramble around what I believe to be a few of the principal challenges facing the shipping industry in 2003, and let the rest of the century look after itself. In doing so I will pass over a number of important issues – the shipping markets, environmental pressures, security, the manpower shortage, the debate about class and the like - and will concentrate on some of the broader issues facing the industry and its institutions.

As an industry, shipping has always enjoyed considerable freedoms. The reasons are obvious enough. In the days before mass communications a ship was out of contact with the rest of the world from the moment it set sail until its safe arrival in an often far distant port. Not only was there little scope to exercise control once a ship was out at sea, but also the safety and welfare of the crew and its cargo depended essentially on the master's unfettered exercise of his professional skills. It encouraged an independence of spirit within the industry which is still very much a feature of ship operations today.

Over the past 50 years the industry has come to be far more heavily regulated – some would say excessively heavily regulated – but still the basic freedoms exist: the largely open markets, the right of freedom of navigation on the high seas, the wide discretion as to the choice of flag and, today more than ever, the flexibility with regard to the nationality of crews. These freedoms are not the result of some philanthropic whim on the part of the global body politic but reflect the sometimes grudging recognition of governments that shipping, as the servant of world trade, is the archetypal international industry, its continued efficiency depending upon a minimum of formalistic constraints.

But the industry must always realise, and accept, that freedom brings with it responsibilities, and it is perhaps this that is at the heart of the debate about the industry's challenges today.

It is often said that advances in the technical regulation of shipping tend to follow a casualty – that the maritime sector responds to rather than anticipates its problems. The charge may be valid, but whether more true of shipping than other industries which involve an element of inherent risk I rather doubt. Emergency lighting was a

response to incidents involving smoke in the cabin of passenger aircraft, central door-locking a response to incidents involving passengers falling from trains and so on. It is the natural reaction of politicians and regulators to demand change after an incident, just as it is unnatural to expect that the rules can anticipate every eventuality. What the industry must recognise, however, is that the climate of discussion about regulatory change is inevitably far more heated after an incident than when an objective debate can take place free from external pressures.

In the 90's it became something of a cliché to say that major maritime incidents seem to happen every 11 years: the "Torrey Canyon" in 1967, the "Amoco Cadiz" in 1978, the "Exxon Valdez" in 1989. The soothsayers predicted that we were due for another major incident in the year 2000, but the break up of the "Erika" off the coast of Brittany in December 1999 sadly proved to be the early arrival that no one was looking for. (As an aside, you will note that these were all tanker incidents. It is striking, I suggest, that the capsizing of the "Herald of Free Enterprise", the fire on the "Scandinavian Star" and the loss of 900 lives on the "Estonia", to say nothing of the seemingly endemic ferry disasters in the Philippines, Bangladesh and elsewhere, have left much less of a mark on the political, if not the public, consciousness.)

The "Erika" incident unquestionably set the industry back on its heels – an incident which should never have happened, and which, rightly or wrongly, had simply not been anticipated. But if the "Erika" incident was a shock to the system in an industry which thought it had more or less got its act together, particularly in the tanker sector, the loss of the "Prestige" last November was an even more serious blow. The "Erika", with the benefit of hindsight, should have been recognised as a substandard ship. But the "Prestige" had hardly a stain on her character. Only two owners throughout her life, classed by ABS from the outset, registered in an unquestionably better register, the Bahamas, and with an unchallenged port state control inspection record – only the age of the vessel could be held against her. The very fact that such a ship could suffer structural failure raised questions about systemic problems in the whole process for regulating the safety of ships at sea.

History is full of fascinating hypotheses. Where would we be now if King Harold had not looked up at the wrong moment at the Battle of Hastings in 1066? Could we

have been spared two world wars if Princip's shot had missed the Archduke of Austria in Sarajevo? What if there **had** been weapons of mass destruction in Iraq? And of course the shipping industry's own favourite "what if" of the moment: what if the Spanish Government had acted more prudently and not driven the "Prestige" out to sea? Such questions make for a good dinner discussion, but ultimately lead nowhere. Of course it is critically important that states put mechanisms in place to handle ships in difficulty and designate places of refuge. But in a sense that is a side issue. Whatever the cause, the "Prestige" incident happened and the regulatory framework has changed yet again.

Let me describe the situation as I see it today. It is an article of faith in the shipping industry that the regulation of shipping should be addressed internationally, not regionally or nationally, and that IMO is the place where proposals for regulatory change should be tabled, discussed and developed. Until about 15 years ago this was the received wisdom and essentially unchallenged. But the principle was badly dented by the adoption by the United States of the Oil Pollution Act of 1990. IMO was hurt by this unilateral action, though the damage was tempered by the fact that the rest of the world rallied behind IMO and decided that they were not going to follow suit.

In the 1990's the European Commission started to flex its muscles on regulatory issues, and Europe started to adopt a distinctly regional approach in IMO discussions. Conspiracy theorists will argue that the "Erika" incident gave the European Commission just the opportunity it was waiting for, providing it with the justification for taking action to protect European interests where IMO seemed unable or unprepared to do so. More charitably, you may argue that the Commission was simply reflecting the wishes of the EU member states to respond to a very serious pollution incident.

As we know, with great personal determination and leadership from Bill O'Neil, and, it should be noted, with considerable encouragement from the EU member states themselves, IMO clawed back responsibility for regulatory change. While the EU proposals for phasing-out single-hull tankers may have had little relevance to the causes of the loss of the "Erika", they were carried forward urgently by IMO and the

international rule book was changed in a manner which satisfied both Europe and the other IMO member states.

Post “Prestige”, we are going through what at first sight appears to be a broadly similar ritual. Once again the EU has taken the initiative. Once again a determined IMO has let it be known, in no uncertain terms, that the regulation of shipping is its responsibility, that it has the competence and the capability to effect whatever changes are necessary and that it is prepared to do so quickly. And once again, with some reluctance other IMO member states have been persuaded that in the interests of international uniformity they must look again - whatever they think about the rationality of the proposals - at the programme for phasing-out single-hull tankers and a series of related issues.

But I suggest that on this occasion there is one very significant and worrying difference.

After the “Erika” incident it was the European Commission, love them or not, who led the European charge for phasing-out single-hull tankers, with Ministers somewhat reluctantly following on behind them. But in the immediate wake of the “Prestige” incident it was the politicians who led the charge and the Commission which had to play “catch-up”. It is not difficult to see why politicians should be exercised by oil on their beaches, particularly if it has happened twice in three years. It is less easy to be charitable about politicians who pretend to be instant experts. For once political decisions have been taken, it is far harder to restore sanity and work towards consensus.

The unhappy result is that while IMO is moving at an almost unprecedented pace to debate the European proposals, Europe has not agreed to await the outcome of the IMO discussions before taking its own decisions. From some time next month there will be a ban on the carriage of heavy fuels in single-hull tankers into or out of European ports, in conflict with member states’ obligations under the MARPOL Convention, and a European phase-out programme for single-hull tankers will be initiated before IMO has decided the terms on which it is either justified or practicable to do so on a global basis.

This is bad for IMO, bad for the whole principle of global uniformity, and certainly bad for the industry. Why should other member states give IMO the credibility it is due if the Europeans are on the one hand calling all the shots and in effect telling IMO what to do, and on the other, taking their own action anyway? Earlier this year at a conference in the United States I drew an analogy between the United Nations, weakened by the readiness of the United States to ignore it when it so pleases, and IMO faced with similar threats from Europe. I would not want to stretch the analogy too far, but the parallel is not so far fetched.

This is not the time or place for a commentary on the European structures, even if I were competent to offer one. But the growing strength of regionalisation which the concept of an enlarged EU implies most certainly bears thinking about in the context of an international industry like shipping. Even within the industry itself it creates its own tensions. Despite the continuing significance of Europe in the ownership and operation of ships, the gravitational pull continues to be towards Asia. Yet the influence of the Asian maritime community, both administrations and industry, on the international decision-making process is much more limited than such commercial heavyweights should command. Europe and the United States remain the engine room of influence in IMO and, to be frank, the same situation prevails in the international industry organisations. While with some honourable exceptions the Asian administrations, and in particular the Asian industry, may be reluctant to dedicate the necessary resources to get their views across, European interests are certainly going to have to make space for Asian and other maritime interests if the traditional concepts of international agreement for an international industry are to be maintained.

Ironically, while the cohesive force of the EU has been providing a challenge to IMO, the continuing but disparate growth of the open registers has presented another. Today the open registers account for more than 50% of the world's tonnage: Panama alone has a fleet more than twice that of the second largest in the world, Liberia, and the Bahamas is not that far behind. The open register system has filled an evident need, providing owners in high cost countries with an ability to compete which would otherwise have forced them out of the industry. Furthermore, whatever politicians

may say in their more colourful moments, the open registers are acknowledged by most administrations to provide an economic safety-valve to release the pressure for improved fiscal incentives for their domestically-owned fleets.

But just as every challenge provides an opportunity, so every opportunity provides a challenge. Theoretically, it is the open registers that are now the shipowning nations, and which might be expected to try to protect the interests of the industry, whereas the very countries that used to have the interests of the industry principally at heart, not least the north-west Europeans, have gradually seen their principal constituency change to that of the coastal state or the port state, rather than the flag state. For the industry, it means that we have to try that much harder to get our arguments accepted, a task we recognise and accept. But for IMO it presents a rather different dilemma, since the organisation is funded in proportion to fleet size, and one wonders how long it will be before the open registers seriously start to question paying more than 50% of the budget and increasingly contributing to the debate, while still enjoying, in my estimation, only a fraction of the influence.

The freedom provided by the open register system also presents another challenge to the industry, at two levels. Running a register confers obligations as well as privileges, and while blanket condemnation of the open registers as irresponsible carpetbaggers is both unproductive and ignorant - as any analysis of the performance of different flags will indicate – there is certainly a fringe element among the open registers which the term “flags of convenience” describes all too accurately.

Pinning down the responsibilities of flag states has proved notoriously difficult, and the current moves in IMO to develop an audit scheme for flag states, albeit at this stage voluntary, are very welcome if arguably overdue. In the same vein, the industry must share in these responsibilities, and we in ICS and the International Shipping Federation, together with our colleagues in the Round Table of industry associations – BIMCO, Intertanko and Intercargo – are just putting the finishing touches to guidelines for the shipping industry on flag state responsibilities, intended to encourage shipping companies to satisfy themselves that flag states are indeed taking their responsibilities seriously, and not assuming that the sovereign right to

open a ship register is simply a money-making venture with no concomitant obligations attached to it.

There is one other rather deeper issue about which the industry needs to reflect with respect to the use of open registers. Historically, owners could generally expect their flag state to offer a full range of services and due protection in case of difficulty almost anywhere their ships might trade to. But to what extent can most open registers be expected to provide such support? However good the services they provide in terms of the operation of the flag, it is simply not realistic to expect that Panama, or certainly Liberia in current circumstances, or Malta, or the Bahamas, or even Cyprus, let alone Antigua and Barbuda, St. Vincent and the Grenadines or Cambodia, can provide the services or diplomatic clout of a major nation state such as France or Germany, Japan or the United States. The “Prestige” incident has provided us with a telling example of this situation, where the blatantly illegal action of Spain and France in “escorting” certain single-hull tankers out of their 200-mile Exclusive Economic Zone, clearly in contravention of the Law of the Sea Convention, went unchallenged by all the flag states concerned until Spain took such action against two Norwegian-flag ships. All credit to the Norwegian Government for promptly protesting against an abuse of perhaps the most important freedom the industry enjoys, the freedom of navigation. We should ponder long and hard about the fact that no other administration had the political backbone to take issue with so public an infringement of international maritime law.

I want to close with just a brief reference to one other issue which some may feel merits its own debate, the industry’s public image. Perhaps I can’t see the wood for the trees, but I sometimes feel that the industry cries into its beer too much about its supposedly poor image. It is hardly realistic to expect large oil tankers to be the object of public adulation. They are at best a social necessity, in the same way that heavy lorries, chemical plants and power stations are. I would submit that in most countries at least, the image of shipping is not so much poor as non-existent. The challenge, and it is a very real one, not least because the precise situation differs from country to country, is how to deepen and broaden the public, and not least the political, awareness of the industry and of the service it provides to the community at large, so that decisions can be taken on the basis of understanding rather than

ignorance. Of all the challenges facing the industry in 2003, this is perhaps the most important of all.

Mr. Chairman, I can only recall attending one previous Cadwallader Memorial Lecture, but I remember that well. The speaker was Georgette Lalis, the predecessor to my fellow panellist this evening in what was then, I think, still called DG7 of the European Commission. After Georgette's spirited defence of the Commission's initiatives following the "Erika" incident, Pandy Embiricos, clearly not one to make concessions to a compatriot, proceeded to embark on a comprehensive paragraph-by-paragraph demolition job on everything she had said. I look forward to listening to Fotis Karamitsos, and I hope that he will not disagree with as many of my remarks as Pandy disagreed with his predecessor's.

Mr. Chairman, Ladies and Gentlemen, thank you for your attention.