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BY

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CHIEF JUSTICE OF NEW ZEALAND

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MARITIME LAW AND THE ENVIRONMENT

ADDRESS BY SIR RONALD DAVISON
CHIEF JUSTICE

Less than 400 years ago renowned Dutch publicist and statesman/^{Hugo Grotius}in his book "The Freedom of the Seas" described the oceans as -

"That expanse of water which antiquity describes as the immense, the infinite, bounded only by the heavens, parent of all things: the ocean which the ancients believed was perpetually supplied with water not only by fountains, rivers and seas but by the clouds and by the very stars of heaven themselves; the ocean which although surrounding this earth, the home of the human race, with the ebb and flow of its tides can be neither seized nor enclosed: nay, which rather possesses the earth than is by it possessed."

Does such description of the oceans accord with the waters we find today encircling the land masses of the world?

Waters upon which ply millions of vessels of all shapes, sizes and descriptions carrying out their numerous tasks in the service of man, vessels which leave in their wake or carry within their holds materials destructive of life in these waters and detrimental to the use of the very waters themselves.

Max Nicholson the noted environmentalist in his book "The Environmental Revaluation" reminds us -

"Man has suddenly emerged from the period of intense struggle against stronger adverse forces through which his outlook and make up have been moulded to a position of immense power and responsibility for which his background has done

developing a consciousness of our marine environment and of new acceptance of our responsibilities for its preservation.

The greatest environmental effects on our oceans are caused by pollution introduced by pollutants in one form or another. Marine pollution has been defined as:

"The introduction by man directly or indirectly of substances or energy into the marine environment resulting in such deleterious effects as harm to living resources, hazard to human health, hindrance to marine activities including fishing, impairment of quality of sea water and reduction of amenities. "

Proposals for pollution control are complicated by the variety of pollutants, their chemical composition and behaviour, the sources and pathways by which they enter the marine environment, the nature and intent of their effects and the degree of threat they pose over a period of time.

We may classify them broadly as -

Domestic wastes

Pesticides

Inorganic wastes - acids, alkalis, mercury, lead, etc.

Radioactive materials

Oil and oil dispersants

Organic wastes

Heat

Solids such as dredging wastes

Of the various types of pollutants, apart from those proceeding from land based activity, almost all reach the oceans through the agency of shipping in one form or another.

It is of this latter category that I wish to speak mainly today. The attempts to control them have resulted in

ships sewage and ships garbage. It gives the Minister of Transport wide powers of control over marine casualties and imposes civil liability and conditions for payment of additional compensation from the Oil Fund - the International Fund for compensation of oil pollution damage which requires owners held liable to pay a maximum of \$134 a ton of ships tonnage or \$14m whichever is the less.

Although those statutory provisions exist for enforcing by way of penalty, and payment of clearing up costs and compensation, the obligations imposed on ships to prevent pollution, how effective are they in achieving their object? It is true they may deter the deliberate polluter. They may make shipowners and crews more careful of accidental pollution. But do they go far enough? Are not accidents - due to faulty navigation, collisions in busy waterways, defective equipment, faulty or inadequate construction of vessels more prone to cause polluting discharges into ocean waters? Is this not especially so in the case of oil pollution?

Since the "Torrey Canyon" disaster an immense amount of research both by industry and by Governments, has been conducted into the problem of how to deal with an oil pollution incident once an accident has occurred or after an oil slick has been discovered. But what about preventive measures to avoid pollution?

Provisions designed to prevent accidents in U.K. waters and involving U.K. ships are contained in the new U.K. Merchant Shipping Act 1979 which establishes a Pilotage Commission with responsibility for extending pilotage in busy and dangerous waters and considering a compulsory pilotage scheme in appropriate circumstances. But do such measures

made recommendations for more stringent preventive measures to be adopted by shipowners and others. Legislation for such purpose has been strengthened. The developing fishing industry in this country is bringing new requirements for prevention of pollution into our maritime environmental law and as the pressure upon our fishing increases, further controls are likely to be imposed.

Whilst New Zealand is not situated near the busy sea lanes of the world where the sheer volume of marine traffic compounds problems of pollution of the seas, it is important that we should maintain effective controls and keep abreast of measures for control of pollution negotiated by international agencies.

Maritime Law in the future will become more complex. Fortunately, there will be a large measure of uniformity due to the various International Agreements and Conventions which have been and are still being negotiated. These provide a basis for uniform legislation which is necessary to control an international industry in a contracting world. Liability in the future to an even greater degree than at present will become absolute, depending not on the degree of care exercised by ships but upon the simple principle of pollute at your peril. Such a course will affect the Marine Insurers and have other implications for the shipping industry.

The world can no longer permit the deterioration of the largest and perhaps least polluted of its three resources: the land, the air, the sea. The future will make increasing demands upon our oceans. Can we speculate how far they will be essential to our future survival? Will we need to foster

with a frank recognition that mankind must finally and unequivocally renounce all claims to be above ecological laws. "

In this day and age Maritime Laws must be in harmony with Ecological Laws. Maritime lawyers must be ecologically orientated. The environment is a responsibility of you all.

Wellington:
13 September 1979.