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CARRIAGE OF GOODS

IN THE 1980's

- THE ROLE OF GOVERNMENTS

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However, I suggest that when people talk of "freedom of the seas" with respect to merchant shipping they mean:

- . freedom to sail anywhere the ship can physically go;
- . freedom to enter any port along the way;
- . freedom to pick up a cargo at any of those ports and drop it off at any other.

The maritime world has had these freedoms at various stages of history - but not as often nor in as pure a form as some people would have us believe. Variations apart though, when we look at those three basic freedoms and compare them with the scene in the aviation world we gain a fair appreciation of what is generally meant by "freedom of the seas". Our aviation colleagues have lived with specific restrictions on the allied subjects of over-flying, landing, picking up passengers and cargo almost since the beginnings of that industry(4). In comparison then, the sea mode has been relatively free and retains many freedoms.

Staying with the sea mode I suggest that we can add to the list of freedoms which some sectors of the international shipping industry have sought to retain. For instance: the freedom to clean out oil tanks and pump slops and oily water into the sea; the freedom to register ships in the country of the owner's choice; the freedom to man ships with whomsoever the owner wishes; the freedom to choose whether to insure, the level of cover and where it will be placed; freedom to decide on where to build and repair their ships; and if we go back far enough - the freedom to load the ship with the amount of cargo the owner or master considered the ship could safely carry and to equip it in the way the ship owner considered necessary.

My first point is not that the above-mentioned freedoms are desirable or undesirable - merely that there has been change in the degree of freedom in all these areas, and change is continuing.

My second point, and this is central to the theme of this paper, is that almost invariably a restriction on any of these freedoms is a restriction imposed by the government through some form of regulation. Thus as freedoms are restricted so does the involvement of the government increase. In a nut shell then, to some, freedom means freedom from government involvement.

In examining changes that have occurred in the carriage of goods and looking ahead to the changes we can expect in the 1980s, it will be easier to proceed under some headings and I have chosen the following:

It seems likely that the international movement of bulk oil will decline towards the end of the decade.

From Australia and New Zealand's point of view I would see increasing exports of almost all our major commodities although we could expect some shifts with coal returning to favour as an energy source and with importing countries seeking to have more of their imports processed at source to conserve energy.

In our trade with the developing countries we will find more and more that their governments seek to enter agreements with our governments.

## 2. Ship Types

How then will this seaborne cargo move? What types and size of ships will carry it? Will there be similarly dramatic revolutions to those which have occurred in the last decade?

In approaching this part of the subject I freely confess to a personal difficulty in predicting change. If I had been speaking ten years ago on transport of goods in the 1970s I would not have predicted that by 1979 our major liner trades would be almost wholly containerised.

The first container ship in the Europe/Australia trade made its maiden voyage in early 1969 and the New Zealand/European container trade did not see its first wholly cellular ship until 1970. I suggest that this has possibly been the most dramatic and fundamental technological change that maritime transport has ever undergone.

The speed of this "big change" (5) can be compared to the rate at which steam replaced sail in the shipping industry. In that case it took 25 years from the time when ocean going steamers became established in 1865 until the total tonnage of steamers exceeded the total tonnage of sailing vessels. In comparison, containerisation of our liner routes has been achieved in less than a decade.

It has indeed been a dramatic change and the change in ship types continues with a move towards the more flexible self sustaining container and unit load types of ship. Some routes overseas have seen the introduction of huge three tiered barges constructed for the carriage of trailers. This development will continue but only on routes suited to that concept, and the same will apply to the huge barge carrying lash type ships.

While Australia, New Zealand and other countries in the Empire followed the course plotted by England in these matters, there were many countries which did not and the need for international conventions to upgrade safety standards on a world wide basis became increasingly apparent. Probably no industry is more international than shipping and so international conventions became the necessary vehicles for achieving these needed improvements. Progress was made in the early part of this century but it is since World War II that the international convention has become so dominant.

The Intergovernmental Maritime Consultative Organisation (IMCO) which was set up in 1954, has had a more difficult task in trying to achieve consistent safety standards throughout the international shipping industry than has its sister organisation for the air mode ICAO. The concepts of "freedom of the seas" and the application of national law to a country's own ships wherever they may be, has traditionally placed the responsibility for safety aspects with the flag country.

An examination of the length of time taken for agreements reached at IMCO to be applied through national laws to the majority of ships coupled with reports on inadequacies discovered during random ship inspections gives some indication of the difficulties faced by any organisation intent on regulating the international shipping community.

Nevertheless the trend over the last decade has been marked and shows every sign of continuing. Accidents to ships with resultant damage to the environment from oil particularly in Western European and American waters has created a situation where a sense of urgency exists in IMCOs work.

In 1978 the IMCO Conference on Certification, Training and Watchkeeping was held (some 12 months ahead of schedule), and resulted in unanimous support for the introduction of standards for watchkeeping personnel (the majority of accidents at sea are attributable to human failures).

The momentum generated at the Conference is being maintained and it is now being predicted that this convention will enter into force in 1981 or 1982 which would in itself create a record. The result will be that ships flying the flags of countries which have not ratified the Convention will be categorised as substandard.

This trend to look long and hard at the standard of ships flying the flags of other countries came to the fore in the ILO Convention on the Standard of Merchant Ships 1976, the principles of which have already been implemented by eight North Sea States(7) which have banded together and introduced random checks on ships calling at their ports with a view to pointing out deficiencies and, if warranted, detaining them where they do not comply with international safety and welfare standards.

The topic of flag of convenience (or as is now more fashionable "open registry") ships is one I wish to refer to at a little more length. The use of such flags is no modern invention. I read recently that "During the Ottoman Empire it was the policy to keep the Black Sea closed to ships belonging to Christian countries. Only after Catherine the Great had defeated the Turks toward the end of the 18th century was the Bosphorus opened up, firstly for Russian flag vessels. But also Greeks living in Turkey were given the possibility to operate to Black Sea ports by registering their ships in Russia".(8).

Economical as well as political conditions have for centuries been the cause of flag shifting and the practice has persisted and grown despite some strong opposition. The present opposition is from two separate quarters. The international labour movement and UNCTAD.

The International Transport Workers Federation's campaign against flag of convenience ships has intensified during the last two decades. It is largely directed at the flag of convenience ships which are below standard in terms of pay and conditions for crew members as well as physical conditions of the vessel and equipment.

During the latter half of this decade the considerable weight of UNCTAD has been added to ITF in the opposition to flags of convenience. UNCTAD became convinced that the continued existence of flags of convenience shipping was against the interest of the developing countries. UNCTAD expressed the view that if these ships reverted to the country of beneficial ownership it would be to the advantage of the developing countries as well as to some developed countries such as the United Kingdom. Many lengthy documents were produced by the various parties in the lead up to the UNCTAD V Conference in Manila last May where the subject was debated somewhat inconclusively with a final resolution that additional studies be carried out.

Reference to Appendix C will give an appreciation of the growth and importance of flag of convenience ships.

And what of the next decade? - The experts are divided. Doganis(9) believes "there is no real reason to predict a change in the rate of growth of the tonnage of shipping sailing under flags of convenience for many years and it would not be unreasonable to expect to see 40% of world gross tonnage sailing under such flags in 1990".

On the other hand Al Jadir the Director of the Shipping Division at UNCTAD is strongly of the view that the days of flag of convenience ships is fast coming to an end. "The next two decades will see an end to the iniquitous practice of open registry operations which enables one country to maintain domination of shipping operations while using the labour of another".(10).

The main thrust of UNCTAD's work in the shipping field has been in the field of cargo sharing. In 1974 final agreement was reached on the United Nations Code of Conduct for Liner Conferences, the main principle of which is to reserve the right for up to 40% of the cargo in a liner trade for the national flag ships of the exporting country, 40% for the importing country and 20% for the cross traders. The code was strongly supported by the developing countries but as recently as 12 months ago it looked very much as though it would not gain sufficient support from the shipowning countries to allow it to come into force (there is a provision requiring ratification by at least 24 States owning at least 25% of the world general cargo tonnage).

Unilateral legislation on cargo sharing by some countries may have been the catalyst to start reaction in the EEC pot. The result of this reaction was agreement among EEC member countries which allowed them to accede to the Code under a special formula which excludes the cargo sharing provision in intra EEC trades.

The governments in our countries are faced with several options:

- (a) to accede to the Code without reservation;
- (b) to follow the EEC course and allow our 40% entitlements for liner trades to go into the OECD pool for commercial pressures to compete for;
- (c) to accede to the Code with reservations of our own designed to meet our particular needs;
- (d) to turn our backs on the Code and reject the concept of prescriptive cargo sharing in our liner trades.

Whichever course our governments take there is no doubt that an increasing number of the developing countries will be building up their national fleets.

The code may well be the most significant thing to happen in the shipping world in the 1970s - even more than the 'big change'. Who would have predicted a decade ago that by 1981 there would be in force a cargo sharing code (agreed by the major shipowner countries) for the liner shipping routes between the developed and developing world.

**Other Cargoes:** Having largely achieved its objectives for liner cargoes UNCTAD has turned its attention to other cargoes. Developing countries generate 90% of the world tanker cargoes and in excess of 30% of the main dry bulk cargoes but own and operate only 6% of the world tanker and dry bulk fleet. The new UNCTAD objective, under the umbrella of the 'New Economic Order' is to achieve an equitable share of bulk cargoes for ships belonging to developing countries. There are indications, however, that the developed countries will be far harder to get agreement from for sharing of bulk cargoes.

## 8. Law of the Sea Conference

The latest Revised Informal Composite Negotiating Text from the 8th Session on the Third UN Conference on the Law of the Sea has 304 Articles and seven Annexes.

Whether or not the nations of the world can ultimately agree on the remaining contentious issues (such as the exploitation of the minerals on the deep seabed) it is clear that international acceptance of much of the contents (e.g. territorial and economic zone limits at 12 and 200 miles) is sufficiently advanced to allow their establishment where they are wanted.

The only relevant parts of the negotiating text which are relevant to the carriage of goods are those relating to freedom of navigation. These have largely been agreed at the Law of the Sea Conferences (UNCLOS). The text contains a growing emphasis on the duties and responsibilities of ships when they are navigating in the territorial sea and the economic zone.

Sufficient consensus was achieved at the last session to indicate that the final document will require the reporting of any accident to the coastal state traffic control, power to inspect and detain a vessel in the exclusive economic zone and the power to impose penalties for a serious and wilful act of pollution in territorial waters.

In seeking indications for the next decade on likely developments on the freedom of navigation issue, I believe we can look past the winking warning lights which have been activated by the IMCO and ILO standards conventions. We can look at action which has already been taken in the United States where the Washington State imposed legislation to prohibit tankers in excess of 125,000 tonnes deadweight navigating in Puget Sound on environmental grounds. Although the US Supreme Court overturned this legislation the ban on these large ships has been reimposed by the Coast Guard(12).

There will be increasing pressure to find ways to keep particular classes of ships out of territorial waters and out of ports.

## 9. Shipowners Liability

In a paper titled "Limitation of Liability at Sea and in the Air" (13) W.R. McGilchrist gives as one of the probable factors behind the greater protection (i.e. less liability) enjoyed by the maritime industry, the less severe political pressures on our industry in comparison to that of the air industry. He states, "At least as far as liability towards third parties is concerned, most marine disasters are, in a sense, internal to the industry. Those who suffer loss be they owners of jetties or operators of other ships are all part of the overall

With these schemes it is possible for a country to be compensated up to an amount of \$72m in the case of severe pollution. The fact that liability for oil pollution damage is a matter for separate treatment is now recognised in the 1976 IMCO Convention on Limitation of Liability for Maritime Claims.

It seems likely that the huge increases in carriers liability towards third parties which have occurred in the oil pollution field over the last decade will be reflected to at least some degree in the other claim areas of the shipping industry over the next decade.

The concept of a marine adventure with low liability so that a shipowner will not be bankrupted by the action of a single ship is increasingly unacceptable. Liability limits are likely to rise sharply, and these will in turn result in increased freight rates.

#### 10. Carriers Liability

A widely accepted convention covering the liability of carriers for the cargo they are moving is an important ingredient for international trading to flourish.

The Hague Rules have served the international sea transport scene over the last 50 years. While no one would claim they are, or ever were, ideal, they have provided a reasonably consistent basis for the settlement of claims. As the Hague limits became increasingly inappropriate and 'packages' became more and more the shape of an ISO container, there was a need to alter the convention and this was done in part by the 1968 Visby Protocol.

Meanwhile UNCITRAL was developing a carriers liability convention for the sea mode, and this was finalised in 1978 at a conference held in Hamburg. The proponents of the Hamburg Rules claim that the rules do not suffer through being conceived by shipowner countries (as were the Hague Rules). The Hamburg Rules have the support of the developing countries because, at least on the surface of it, they increase the shipowners liability in several respects. I do not intend entering the debate over the pros and cons of the Hamburg and Hague Visby Rules, although I would commend Tetley's article on these Rules.(14).

The New Zealand Branch of this Association held a seminar on the subject and we came to the conclusion that we could improve on both sets of rules! Unfortunately neither Australia nor New Zealand nor any other country will be able to take the best of both rules and ignore the least satisfactory aspects. We must choose between the two. The decision will be influenced by what our trading partners are doing and, I believe, by what happens in Geneva later this year.

Both men laughed heartily at this great joke and made their way back to the Room. (15).

I suggest that another "impossible" they could have added to their list would have been "Aye, and one day a body largely representing the rest of the world will take a hold of Lloyds policy and change the wording of the clauses".

Like the other 'impossibles', that is now happening and again it is UNCTAD that is suggesting that change could be appropriate. A committee of UNCTAD is engaged in the task of revising the standard policy and educating the developing countries on the subject of insurance with the objective of spreading more insurance in their own countries.

Indications are that the next decade is likely to see less centralisation of marine insurance activities in the traditional market as well as attempts to modernise the standard policy. This is also an area where governments, particularly those of developing countries, are likely to legislate for the purpose of retaining some cover within their own countries.

## 12. Facilitating Cargo Movement

### (a) Port Facilities

Throughout the world there has been a trend away from private or autonomous port authorities free to spend what they like on whatever developments they alone feel are necessary.

The investment that has gone into container ports in this country over the last decade is approximately \$120m. I am not aware of the figure for Australian container ports but with some knowledge of the scale of the Botany Bay development I have no doubt that this would be even higher.

It makes no sense to have the expensive specialised ships which serve our liner routes waiting for berths, and equally it makes no sense to have high cost facilities which are not utilised.

The New Zealand Government has set up a National Ports Authority for the purpose of planning port requirements on a nationwide basis. The authority examines all applications for expenditure on port works over a particular level. As recently as last year the authority's control was extended to ensure that it has jurisdiction whatever the source of funds.

The next decade should prove to be less expensive in terms of port development in this country. Be that as it may I see no indications that there will be any reversal from the existing trend which is to fit all port developments into a national planning framework and seek fairly watertight guarantees before large scale port developments are approved.

## THE ROLE OF GOVERNMENTS IN THE 1980s

### CONCLUSION

In the preceding sections of this paper I have pointed to trends and likely developments in the maritime transport of goods over the next decade. I have purposely cast the net wide and brought in a large number of matters many of which you may question the relevance of in a paper such as this. The reason for the wide cast was to demonstrate the nature and complexity of governmental involvement.

In broad terms the government of the day is charged with the economic well-being of the country and increasingly it is also expected to safeguard the environment.

Under the umbrella of economic well-being we can fit matters such as -

- maintenance of existing trades;
- development of new trades;
- providing an orderly frame work for the conduct of trading;
- adequacy and efficiency of shipping services;
- protection of shippers;
- facilitating the movement of goods;
- promoting and implementing the concept of transport as an entity.

The interdependence of trade and shipping is axiomatic. (It is not by accident that so much of UNCTAD's time and efforts are concentrated in the shipping field - despite its title which refers only to 'trade and development').

Under the other broad governmental responsibility heading of environment we think in terms of: standards; safeguards; checks; detention and prohibitions.

The trends that have occurred in these areas have been identified and almost without exception these point to additional involvement of the government in all aspects of merchant shipping and the carriage of goods by sea during the 1980s.

In the past the majority of world trading countries have tended to rely on competitive forces for the supply of shipping. Governments have tended to take a watching role and have not found it necessary to become actively involved in ensuring that services were adequate. This has changed in the ways and for the reasons that have been identified. But will these trends continue?

### CONCLUSION 3

In pointing to what is happening in international shipping I have been careful to avoid expressing an opinion as to whether the trend towards increased regulation is desirable.

Whether we like it or not the sea carriage of goods in the 1980s will be undertaken in ships which are increasingly regulated and to that extent decreasingly 'free'. These regulations will be imposed by governments in various forms with varying degrees of consistency and compatibility one with the other. The role of governments through the legislative, administrative, operational and policy making processes will be one of increasing involvement.

A particular country can choose to ignore this trend, or some aspects of it, but I suggest that such action, or lack of it, would be likely to place that country at a disadvantage vis-a-vis its trading partners and competitors.

What will the increased governmental involvement mean?

One could take a purely Maritime Law Association view and say: "The potential for further work is enormous!"

Or a shipowners point of view and say "The further involvement of the bureaucrats in shipping will be a disaster".

I suggest that the point of view we should all adopt is along the following lines -

If this is to be the trend, it is up to us all to consult, to pass on the relevant information, to keep ourselves informed so that decisions are not being made by one narrow sector but rather by all parties in the industry for the benefit of our countries.

It seems to me that the Maritime Law Association has, itself, a very important role to play in this process.

APPENDIX B

WORLD FLEET BY TYPE OF VESSEL AND REGIONAL DISTRIBUTION, MID-1978

TYPE OF VESSEL	TOTAL TONNAGE MILLION G.R.T.	PER CENT INCREASE/ DECREASE MID-1977/ MID-1978	PERCENTAGE OF TYPE REGISTERED IN			
			OECD COUNTRIES (5)	FLAG OF CONVENIENCE COUNTRIES(6)	USSR/EASTERN EUROPE (7)	REST OF THE WORLD
Oil tankers	175.04	+ 0.5	54.1	34.0	3.5	8.4
Combination carriers	26.37	+ 1.1	58.7	32.5	1.3	7.5
Ore and dry bulk carriers	80.17	+ 7.1	57.2	27.9	4.5	10.4
General Cargo ships (1)	79.67	+ 3.4	44.2	20.3	13.3	22.2
Container ships (2)	8.67	+ 15.0	84.0	8.4	1.3	6.3
Liquefied gas carriers	5.53	+ 25.4	60.2	30.9	1.1	7.8
Chemical carriers	1.93	+ 9.9	73.0	16.1	-	10.9
Ferries and passenger vessels	6.86	- 3.2	73.8	7.1	10.1	9.0
Other cargo ships (3)	2.38	+ 34.1	66.8	28.1	1.3	3.8
Fishing and fish handling vessels	12.37	+ 1.7	28.7	1.5	59.4	10.4
Other non-trading types (4)	7.0	+ 2.8	51.5	10.4	16.8	21.3
All types	406.0	+ 3.1	53.5	27.4	7.4	11.7

(1) Single and multideck; including passenger/cargo ships.

(2) Fully cellular.

(3) Lighter, vehicle and livestock carriers and sundry tankers.

(4) Including supply ships, tugs, dredgers, icebreakers, research ships and other miscellaneous types.

(5) Including Great Lakes and United States Reserve Fleet.

(6) Cyprus, Lebanon, Liberia, Panama, Singapore, Bahamas and Oman.

(7) Albania, Bulgaria, Czechoslovakia, Germany (Democratic Republic), Hungary, Poland, Romania and USSR.

SOURCE: Lloyd's Register of Shipping: Statistical Tables.

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