

**VALEDICTORY ADDRESS AT THE IMLI GRADUATION CEREMONY 2004
BY ATTY. GILBERTO G.B. ASUQUE (PHILIPPINES)**

H.E. Dr. E. Fenech Adami, President of the Republic of Malta;
The Hon. Dr. Lawrence Gonzi, Prime Minister and Minister of Finance of the Republic of Malta;
The Hon. Minister of Transport of the Republic of Malta;
Secretary-General Emeritus of the International Maritime Organization and Chancellor of the IMLI's Governing Board William O'Neil;
IMO Secretary-General Ethimios Mitropoulos;
Chancellor of the University of Malta;
Professor David Attard, Director of the IMLI and Madam Attard;
Faculty and Staff of IMLI;
Batch of 2004;
Guests, ladies and friends.

On September of last year, 30 legal professionals from the public service and academic sectors flew into Valetta, Malta to begin a nine-month intensive study programme on the rule of law in the international maritime industry. We come from 22 countries - from Fiji to Ukraine with three great oceans in between – bringing our own individual and sometimes different understanding and experiences in maritime law. *The land divides but the sea unites*, quoting from a Norwegian proverb that referred to the fjord coastline, and certainly the International Maritime Law Institute has united these divergent experiences in maritime law through an understanding of the sea and its intimate relations with the shipping industry and the world economy. Today, this batch of 9 ladies and 21 gentlemen completed 29 academically packed-weeks in the new lecture hall of the IMLI with a coherent and purpose-filled mastery of maritime law and its relation to the world. Indeed, to quote a Croatian proverb, *put your finger in the sea and you touch the world*. All of us this Class have felt the world through the pulse of international maritime law. It is with this sentiment that, on this graduation day, I have the honour to deliver this address on behalf of the IMLI Class of 2004 who now join the other 274 IMLI Graduates from 95 States.

I come from the Republic of the Philippines, an archipelago that Ferdinand Magellan discovered for the Western World some 483 years ago. For all readers of maritime history, Magellan was a Portuguese navigator and the first circumnavigator of the globe in search of trade routes due west of Spain. History has recorded the Philippines, specifically the island of Mactan, as Magellan's last land fall and, fate had it, his last stand. But such great nautical feat and bravery had placed the South East Asian region in the maritime map as a key trading region of the world. The countries represented in this IMLI Class of 2004 have their respective landmarks in maritime history and in many ways have contributed to the evolution of maritime law within their regions or in the world.

This diversity in the background of the course participants have made our studies at IMLI all the more interesting and challenging for we saw the many facets of law as it relates to the policies and development plans of our respective governments. IMLI has certainly laid the

foundation of our understanding and appreciation of the value and importance of maritime law to the progress of our respective countries. The comparative analysis of the common law and civil law systems, which I consider as the strength of IMLI's teaching methodology, has given the members of Class 2004 the tools for critical analysis of maritime issues and the application to the rule of law to the kind of order which we individually hope to achieve in our maritime administrations, port authorities or policy offices. The IMLI academic strategy is vigorously implemented by a highly qualified and experienced faculty and staff, headed by Professor Attard, and a team of visiting lectures who we consider as among the movers and shakers in the shipping industry. Added to these, of course, are the insights gained from our dissertations, legislation drafting projects and finally, the difficult mid-term and final exams. The Class 2004 expresses its sincerest appreciation to IMLI for the legal knowledge and expertise we now proudly keep.

As we begin to ponder on our immediate future with an IMLI LL.M. degree in our CVs, allow me to share some thoughts on unique benchmarks for this batch of international maritime lawyers, more like bouys or beacons in the vast field of shipping and marine environmental law.

I find it highly significant that our series of lectures on international law began and ended with discussions on the role of customary international law on the behaviour and inter-relation of States. For many of us in the Class who are involved in the promotion of the bilateral and multilateral relations of our respective countries with the Member States and international organizations of the United Nations, Professor Attard's lectures on customary international have opened new challenges and opportunities for the further enhancement of the relations among governments and of governments with the various stakeholders in the maritime industry. IMLI has firmly impressed on its graduates that treaties or conventions are only the tip of the iceberg in the whole body of international law. International custom constitutes the biggest and perhaps unseen part of this large mass of international law, which maritime lawyers must be able to identify. I am sure the elements of consistency, uniformity and generality of practice and *opinio juris sive necessitatis*, which establish international custom, are still fresh in our minds. These elements will serve as the basepoints in our task of identifying the existence of an international custom that will guide us in charting the relations with governments and with the maritime industry.

We have looked at various aspects of public and private international law. They are different but complementary fields of law. And when we, as maritime lawyers, address issues in the realm of public international law, there will certainly be a corresponding effect on the private international law aspects concerning the society in which we live in or the enterprises that we work with. This is most certainly true in shipping, whether the issue is addressed both by public agencies and private entities. IMLI graduates would need to keep a wider view or a close lookout on the inter-action of these two fields of law, much like the keen eyes of the ship's officer on watch duty. This challenge will be better understood when we begin to see the effects in our respective merchant fleets and ports with the entry into force on 1 July 2004 of the International Ship and Port Facility Security or ISPS Code, a topic which has generated so much passion and interest for some of my colleagues in the Class. As a public law instrument, the ISPS Code raises key questions on private law matters such as on charterparties – how would it affect the Notice of Readiness of ships or the duty to provide a safe port. Is the ISPS Code relevant to General Average?

On seafarers issues, the proposed Consolidated Maritime Labour Convention, which will be submitted for adoption at a diplomatic conference next year in Geneva, presents new challenges and opportunities of many shipboard labour supplying nations such as the Philippines, China and Ukraine in ensuring that those who man the ships benefit from this global social safety net while at the same time making sure that there is a level playing field for the private recruiting agencies or third party ship managers. Similar questions are relevant in new IMO international law instruments such as the 1996 Protocol to the Convention on the Limitation of Liability for Maritime Claims, which entered into force yesterday following the accession of Malta; the Ballast Water Management Convention and in new proposals such as the draft second Protocol to the SUA Convention with its proposed measures for boarding on the high seas and the draft Wreck Removal Convention on the rights and obligations of States and shipowners in dealing with wrecks and drifting or sunken cargoes. This new batch of IMLI graduates would have to be keen or sensitive to the interaction of these two fields of international law. As maritime lawyers we have to straddle these two zones in international law.

As we begin to prepare for the real work back home, we constantly bear in mind that the practice of maritime law is always linked with the work of two major fora that constitute the international regulatory regime for the maritime industry - the IMO and ILO. The effectiveness of maritime law for the global shipping industry relies so much on the universality of the law such that the important role of the IMO and ILO, as the institutional venues for the balancing of the interests of States, must always be upheld. Maritime lawyers must work with or within these United Nations agencies with the knowledge that the ILO's goal for 2002 to 2005 is putting the decent work agenda into practice and that the IMO, in its strategic challenge for 2004 to 2010, shall be proactive in identifying trends and developments affecting shipping and adopt a comprehensive and inclusive approach to shipping matters.

I am not stressing this point because two Secretary-Generals of the IMO are with us this morning. That is certainly far from my thoughts. The Class of 2004 will certainly look at the IMO and ILO as institutions that will generate a progressive build up of expertise in maritime law, long after the members of this Class leave the portals or lecture hall of IMLI. The quality of our contributions to the efforts of our respective maritime administrations or port authorities or policy offices towards a "*Safe, secure and efficient shipping on clean oceans*" would depend on how much we interact with the IMO and ILO. In the nine-months of our study, we have appreciated the vital role of shipping in the global transport network and in the world economy, such that the universal character of this industry needs the unifying force in the IMO and ILO.

I mentioned earlier the IMLI portals. It was just a reminder that when we leave the IMLI academic cocoon, we should not be lead to assume that the world outside IMLI is perfect or that balance or equality exists. It is certainly not the case. For if the world and the things around us were perfect, it would not be fun fixing it! And perhaps there would be no need for maritime lawyers! But lawyers and maritime lawyers strive to achieve equity or to balance the scale, either the scale of justice or the scale for the viability of the shipping business. This could be the long-term challenge for the Class of 2004. And I dare say an exciting and exhilarating challenge for we saw within our lectures the circumstances or factors that beg the question on fairness or

equity. And in these lecture we also found the many opportunities for the maritime lawyers to level the so-called “playing field” through the strong advocacy of the rule of law in the shipping and maritime industry.

We can start in this task by reflecting on our legislation drafting projects, where we sought to translate the treaties into domestic policies and laws. And speaking of straddling the two fields in international law, the maritime lawyer can be effective in the drafting of domestic legislation if he or she also had a role in the preparation or had followed closely the development of the treaty or convention that will be the subject of the draft domestic law. Our master’s degree programme at IMLI gave us the knowledge and capabilities to assist in the making of treaty laws and their transformation into domestic law.

This is indeed a unique learning opportunity for practitioners of law from developing maritime countries for whom the IMLI LL.M. programme is being offered. Thus, the Class of 2004 expresses its sincerest appreciation to the IMO Technical Co-operation Programme, the Sasakawa Foundation and other governments or agencies that provide support for the IMLI and its course participants. Your support to this institution translates into helping countries build their internal capacity to develop or maintain an effective maritime or port administration thereby contribute to the global effort for a safe and secure shipping and for the protection and preservation of the marine environment.

After this graduation ceremony, the road leads back to our respective home countries where our IMLI degrees will gain their real value and significance. In the words of Prof. Frank Wiswall in his final lecture on Collisions, this is where the rubber meets the road. And when we roll up our shelves and get our hearts and mind into the task at hand, let us always remember that in this Mediterranean island is an institute that serves as a beacon for the formidable network of maritime lawyers serving the rule of international law. And working with international institutions such as IMO and ILO, we will be contributing to the effort of achieving universality in maritime law through its formation and its translation in our respective domestic laws, rules and regulations. It is when the interpretation or application of treaties and conventions into domestic laws or regulations that really touch the lives of our fellow nationals, that we can say international law has finally traveled a full circle.

For this is what the IMLI aims for – bringing international maritime law from its high pedestal in the global arena down to the work places of civil servants, private entrepreneurs, fishermen and farmers, into the homes of every family, helping their lives and livelihood while ensuring that the marine environment is protected and preserved for the future generation that will take their respective places in this vast living space.

Roscoe Pound, one of the great legal luminaries, who was Dean of the Harvard Law School, wrote: *“The law must be stable, but it must not stand still.”* Dean Pound’s philosophy of sociological jurisprudence speaks of law as a dynamic system that is influenced by social conditions and that, in turn, influences society. In its shipping context, the IMLI maritime lawyer is now seized with the opportunity of making the system of law that governs the industry, a dynamic force that will influence the society – its people and their enterprises.

The task of working within the legal system and making that system work for the society in which we live in, is certainly daunting especially when issues of big power politics begin to cloud our perception of the rule and universality of law. This could perhaps remind the Class of that heated discussions with Professor Attard on November 13 last year on the clash of power politics and the international legal system. That classroom discussion has printed in my mind the conclusion and advice of Professor Attard, which is, that “the international legal system may not be the best but it is the only one we have”. We need to understand the system and work within the system of the rule of law, for outside this system the only option is chaos. The IMLI graduates are therefore called upon to promote these principles on the universality and adherence to the rule of law in that one legal system that we have. Let us keep this in our hearts and mind strengthened with the words of Aristotle (384 BC - 322 BC), in his works on **Politics** that “*Law is order, and good law is good order.*”

In the study of maritime law, we also have to consider issues concerning the living resources of the sea – the fishes. I do not intend to go into a discussion on the species governed by the UNCLOS. I believe we had our fill of migratory, straddling, anadromous and catadromous fish stocks in the last weeks of our lectures capped by the final exam question concerning the protection and preservation of the marine environment. However, like the anadromous specie, after maturing in this academic institution in the Mediterranean seas, we must now return to our land of birth but not to end up flat and motionless in the upstream, but rather to spread and strengthen the principles of law we have studied carefully and closely in IMLI.

And as we sail back to our respective shores, I find it quite appropriate to recite a few lines in Walt Whitman’s poem “*O Captain! My Captain!*” He wrote:

*"O Captain! My Captain ! Our fearful trip is done, the ship has weathered every rock,
the prize we sought is won, the port is near, the bells I hear, the people all exulting."*

Yes, I take it that our respective governments and people should be exulting with the expectation of our contribution to improving maritime administration, port administration or in the development of maritime policies and laws that will improve the life of the community.

As we leave this sun-blessed islands, allow me on behalf of the Class to convey our deepest gratitude and appreciation to Professor Attard, his faculty and staff, for your patience in the academic and personal needs of your 30 member multinational crew. Finally, Prof. Attard’s proverbial IMLI curve is reaching the finish line.

Our thanks also to the IMO, represented here today by no less than Secretary-General Emeritus and Chairman of the IMLI Governing Board Mr.O’Neil and IMO Secretary-General Admiral Mitropoulos. Sirs, your presence has given the Class of 2004 such singular honour. And of course, our appreciation for the IMO Technical Co-operation Programme that has funded the study of some members of Class 2004, including myself.

Our special thanks also to the University of Malta, represented here by the Chancellor, and to the Government and People of Malta, whose presence here is closely felt with the President and the Prime Minister in our midst, for your warm, pleasant and memorable

hospitality in our 9-month sabbatical. Our stay is made more memorable with the opportunity of joining the People of Malta in the celebrations on their accession to the European Union last May 1 with a marvelous and stunning welcome program at the Grand Harbour in Valetta.

The Class of 2004 conveys its wholehearted congratulations and best wishes to the Government and People of Malta on this historic event, which brings tremendous economic significance. The expansion to 25 members makes the EU the world's biggest trading bloc with a population of 455 million. In its shipping context, the EU represents collectively either the third or the fourth largest fleet in the world, depending on whether you look at it on the basis of ownership or flag. But definitely, the significance of this feature is not left unnoticed by the IMLI Class of 2004. I am confident that Malta's membership in the EU and the enlarged EU itself will be incentives for those of us in government as well as in the private sector to contribute towards measures that will further enhance the relations of our respective nations with Malta and the EU.

Finally, from the husbands and wives in the Class, we thank our spouses, some of whom I see here with us today, for taking care of the family back home while their spouses pursue their personal academic career for nine months. (For the wives, we assure you that despite the pleasant and fair distractions of Malta, we behaved well.)

We return to our countries with the challenge to share our knowledge and to put them into good use. As we prepare to go safely in our own ways, may I close with this 1563 prayer from Barnabe Googe:

*"O Mighty God,
Grant Weather, Wind and Tide,
Till On My Country Coast
Our Anchor Fall."*

All the best and thank you.