

INTERNATIONAL COMMISSION ON SHIPPING

Submission by

THE NAUTICAL INSTITUTE

Summary

The purpose of this short paper is to examine the balance between risk and reward in the provision of shipping services and the relationship between responsibility and accountability for safety, employment and the environment.

The Nautical Institute is an international professional body for qualified mariners whose principal aim is to promote high standards of knowledge, competence and qualification amongst those in control of seagoing craft. The Institute is the publisher of the authoritative industry guide on Command.

It is from the two years preparatory work behind the Command publication that the Institute draws on underlying principles for the advancement of effective management structures within the industry.

Trade

Shipping transports over 90% of goods and commodities between continents and is an essential component of international trade. Trade is a public service carried out by private enterprise. By its nature, the transport of goods sight unseen presents risks. The risks are managed by contracts, insurance, procedures and an equitable process for settling claims

To sustain trade there is substantial public investment. This includes infrastructure, education, welfare, health, pensions and in the case of maritime trade, government departments, search and rescue facilities and other public services.

Shipping is a capital intensive industry and most companies are financed through debt finance, i.e. public funds lent through banks for profit, or they are financed through shares. Stakeholders in these shares and the shares of banks are likely to be individuals, investment funds on behalf of many individuals and/or pension funds.

Profitable shipping enterprise serves four purposes: to deliver goods on time and in good condition, to provide sustainable services with the potential to invest in more efficient transport, employment of personnel, and a good return to public stakeholders on their investments.

The public has a vested interest in lowering the cost of transport because this leads to cheaper merchandise. Examples of this in terms of legislation are the EU Competition directives.

The public has a vested interest in profitability because it provides a higher return on their investment or their pensions.

The public has an interest in ensuring that transport does not damage the environment or any activity outside the contractual agreement such as pollution of fish farms or the loss of passengers.

Trade is thus a balance between contradictory pressures and it is the contention of The Nautical Institute that it is this very complex relationship, which needs to be managed. Ultimately however, there must be in place internationally agreed safety standards.

Shipmasters, as well as operating their ships safely and efficiently find themselves in the unenviable position of being both public personae and also commercial managers. Decisions have to be tempered by good judgement often between conflicting demands.

How maritime influences have changed

Over the last fifty years there has been a considerable shift in the balance of maritime influences. Ships have become larger, more specialised and more integrated into transport networks. Ferry schedules for example are printed a season before they are applied. Any major incident potentially carries more consequence.

The littoral has become much more cost sensitive to pollution with tourism, fish farming and leisure pursuits raising the need for safety and clean seas, because the economic damage from a pollution incident is now considerably greater.

The media has become more mobile and probing so amplifying the impact of incidents and influencing public opinion against shipping. Generally, the public's knowledge of shipping and its value to society has reduced and is further diminished by negative press coverage.

Traditional Flags controlled the majority of the world fleet through national shipping legislation. Successively the IMO has tackled and succeeded in harmonising international standards through an expert range of conventions covering the principal governmental responsibilities for safety and clean seas.

All shipping nations are now invited to participate in the work of the IMO. Its conventions receive the force of law through the ratification procedures. Its resolutions receive the authority of Assembly approval and its notices are authorised by technical committees staffed by shipping professionals.

The impetus for international rule making has moved from individual government administrations to the IMO. In the same period responsibility for over 60% of the world tonnage has moved from traditional Flags to free Flags.

Free Flags have effectively eliminated taxation on shipping services so depriving governments of a practical means of offering incentives or the support for infrastructure costs without penalty to their non-shipping tax payers.

Free Flags have effectively removed controlling limits to employment so that employment in the global labour market is almost exclusively a contractual arrangement between employer and

employee. The employer is constrained by market forces and the employee can be subject to coercion. Company investment in secondary items like pensions, welfare and training is under pressure.

Free flags are less constrained by political influences within the flag State as few of their population has a direct interest in shipping, similarly the impact of accidents are most felt by coastal states and passengers who may have no representation on the government of the free Flag.

Sub-contracting, management, crewing and other services has become more widespread. The chain of command affecting the ability to manage safely is, in many cases adversely affected.

The Nautical Institute's view

The general feeling amongst Institute members is that shipping is over regulated and over surveyed so adding further penalties to companies which conscientiously observe the law in relation to those companies which avoid the costs of compliance.

It is felt by The Nautical Institute that to add more legislation will be counter productive. Instead it is necessary to revisit the underlying "authorisation" within the industry and find practical ways of penalising sub-standard operations whilst rewarding quality operations.

Authority has become unfashionable and the move in society generally is to focus on rights. However, in a global industry the need is for uniform standards. It would be untenable if for example one ship took unilateral action in deciding how to obey the collision regulations. It is only society which can bestow authority, the power of direction over other members of society, and it is necessary to revisit the source of authority with respect to shipping regulation.

At the deepest level, society, through the United Nations, has placed the obligation for ship safety and good order on the Flag State throughout the United Nations Law of the Sea Convention 1982. In particular Article 94 states:-

Duties of the flag State

1. *Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.*
2. *In particular every State shall:*
 - *maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and*
 - *assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.*
- 3) *Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:*

- *the construction, equipment and seaworthiness of ships;*
 - *the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;*
 - *the use of signals, the maintenance of communications and the prevention of collisions*
- 4) *Such measures shall include those necessary to ensure:*
- *that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;*
 - *that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;*
 - *that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international national regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution and the maintenance of communications by radio.*
- 5) *In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance*
- 6) *A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.*
- 7) *Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.*

Flag States can of course delegate authority to industry; classification societies, independent surveyors and others but they cannot absolve themselves of the responsibility of compliance with their obligations.

As demonstrated in The Nautical Institute's Memorandum on Maritime Safety published in 1987, Governments have the authority for safety. If they fail to discharge their duties effectively they add legitimacy to fraudulent acts for non-compliance with international conventions. However, no flag State is willingly going to give up its independence and immunity unless there is an incentive to do so.

Cost implications

Authority carries obligations and in the case of international shipping conventions the standards demanded of ships and shipping services have to be paid for. The way that standards are paid for is crucial to the pursuit of consistency in a global context.

Ultimately the public pays for all shipping services either through the cost of purchasing goods which have been transported or through taxation direct (income tax) or indirect (value added purchase taxes) so it is incumbent to consider the consequences when the public purchases goods at a reduced price because they were shipped in substandard ships.

What happens in practice is that a different section of the public suffers when one sector either knowingly or unknowingly pays less for goods carried by a sub-standard ship, because sub-standard ships pose a greater risk to the environment, the safety of crew and passengers and to the integrity of the trading system i.e. when goods are lost or damaged.

There is no practical way of recovering the differential between too low prices for services offered on the back of sub-standard operations because there is no contractual mechanism for doing so, but it must be emphasised that the practice by a few have consequences for the many.

The problem

Inevitably an unpopular and radical solution has to be found to redress the balance between the public interest for trade and the public interest for safety without further burdening the shipmaster.

The global solution

In this context it would be appropriate to establish and fund an international shipping commission under the aegis of the United Nations independent of the IMO with powers to investigate ships which do not comply with international convention standards and fine the flag State under a scale of fines as approved by an international maritime court. There are precedents for this kind of intervention such as the deployment of UN security forces or in the European context, the EU Financial Services Commission which regulates financial standards in the member states, with powers to investigate and fine governments for contravention of Directives.

With respect to incentives for good performance, this can be linked to port State benefits so that all ships operating in coastal waters, where the benefits are needed, to a proven high standard should receive a benefit in a rebate on port dues. There is a case for recommending that a level of rebate be provided by for example reducing the burden of corporate port tax, but such a scheme would benefit from being administered by an independent international organisation like the Green Award.

Although outside the scope of The Nautical Institute which is not constituted as a trade union or trade association, all seafarers should be entitled to a reasonable contract of employment which protects their interests with respect to emoluments, employment, accommodation, food, leave, recreation, hours of work, legal representation, personal injury, insurance and other provisions.

There should be an independent seafarers tribunal to resolve disputes and unfair dismissal claims funded by flag States on a per capita registered crew scale as a fixed cost in flag registration. The tribunal would have powers to compensate crews abandoned by their employers.

Conclusions:

Shipping is administered by and operated through a complex tapestry of interlinking regulatory activities some technical, some governmental and some commercial. International conventions now provide the framework for safe ship operations and pollution prevention.

The burden for compliance with international convention standards rests with the Authority responsible which is the Flag State.

Precedents concerning acceptable and not acceptable operating practices and factual performance data can best be built up by an independent commission funded by society through The United Nations.

Incentives for good performance should be provided by port States.

An independent tribunal for seafarers is now a necessity.

Recommendations:

The Nautical Institute recommends to the Commission on Shipping the following:

- Seek public acceptance for the United Nations to set up a permanent and independent Maritime Commission with powers to investigate and penalise flag States which do not meet their international convention obligations
- Encourage port States to provide financial incentives for quality shipping visiting their ports.
- Seek industry approval to set up an international labour tribunal funded on a compulsory per capita levy on flag States per crew registered, to establish decent employment practices, resolve disputes, and consider unfair dismissal claims.

References: 1. Memorandum on Maritime Safety, Nautical Institute 1987
2. The Nautical Institute on Command 2000