



Center for Maritime Leadership, Inc.

Clean Water • Abundant Resources • Our Responsibility • Our Future

May 23, 2000

The Honorable Peter Morris
Chairman
International Commission on Shipping
PO Box 162 Civic Square
Canberra Act
Australia 2614

Dear Mr. Chairman:

I appreciate the opportunity to comment and commend you for carrying out this project.

IMO has Safer Seas and Cleaner Oceans as its theme. Additionally the focus of IMO and the Secretary General is implementing IMO instruments. The trick is how to get there. It is a voyage and it has been long and it continues. It cannot be done with a sole focus on governments. There has to be a large focus by governments and they have to be seen as the leaders but all in the marine community have to be actively engaged.

Programs such as yours will do much to help gain the attention of all of the players and to help define the roles of each.

It is generally agreed that more and more requirements that are not met or that are not uniformly enforced are not going to help reach the goal. New requirements will be needed to meet changing circumstances but it is recognized that rigorous and uniform global enforcement of existing requirements would go along way toward reaching the marine safety goal.

I submit that the flag State does not hold the primary responsibility for marine safety. A big responsibility, yes, a critical one, yes, but not the predominate one.

Ways need to be found to increase the recognition of the owners, mariners, underwriters, charterers and class societies that they must be active and serious partners if marine safety improvements are to be achieved. The first step is to convince them continued improvement is in their financial interest.

In a perfect world it would be the responsibility of the owner, in partnership with the crew he provides to the ship, to assure that ships are seaworthy and operated properly. And in this enlightened era, impose no harm on the environment.

When one considers a "Responsibility Hierarchy for Marine Safety and Pollution Prevention", I suggest this order:

- Owner
- Mariner
- Insurance Underwriters
- Charterer
- Class Society
- Flag State
- Port State

I don't say this to lessen the flag State role or to provide them an escape route. Indeed it is an awesome responsibility they have and it is compounded by the variety of ship types and sizes, the vast array of owners, non-uniformity of the performance of sister flag States, and the global nature of shipping.

All in the hierarchy are critical, and they need to work in partnership. In this complex world, marine safety and environmental protection cannot be achieved if these interests work separately.

This is the way it was until the 1800's when insurance underwriters and national governments began to take a more active role in public safety.

It wasn't until 1838 that the US Government enacted laws, the Steam Inspection Act, to begin to address passenger vessel safety in response to boiler explosions, which were not being adequately controlled by vessel owners and crew.

It is noted that concern then was for the passengers, it did not stem from a perceived need to protect the crew. For this view to obtain, another 100 years had to elapse.

These laws are now embodied in the US comprehensive shipbuilding, operation, and manning laws known as Titles 33 and 46 US Code , which are implemented in the US Code of Federal Regulations.

The laws the flag States develop usually are as a result of where the owners and the marine community have not done enough to control the risk to the public or the environment. The first SOLAS Conference shortly after the *Titanic* disaster and OPA-90 after the *EXXON VALDEZ* incident are good examples. The outcome, treaties and laws, setting the minimums that owners and crewmembers must meet.

Governments stepped in, but they placed responsibility for compliance, with the owners and the crew. The flag State and the port State have a responsibility to assure compliance. The flag State by treaty has a primary responsibility to assure that ships that fly its flag comply. But actual compliance has to be by the owner and the ship crew. All flag States have not given the same level of due diligence to meeting their solemn obligation to assure compliance.

There was a time, the 60-80's, where it became popular to believe the first responsibly is that of the flag State and their inspectors, whether government or from a Class Society acting on behalf of the flag State. Unfortunately, this became the view of some inspectors and surveyors as well as some in the industry.

Often it became a game for some or a way of doing business. If the flag States or class surveyors did not catch it, then it was not required. This in large measure fostered the development of substandard vessels and substandard owners. They began to see compliance as a matter for the flag State.

The flag States can be faulted for letting the situation evolve and for not, as a group, holding themselves to a uniform standard of performance. This is now beginning with the concept of flag State self-assessment.

We have heard of substandard ships, substandard owners, sub-standard charterers, sub-standard insurers, and of substandard flag States. Its fair to say that substandard flag States foster substandard ships, substandard owners, substandard charterers, and substandard insurers.

Everyone has had a go at defining the first four but how do you measure a flag State. The same way - by performance - performance of its fleet and how it implements its treaty obligations.

I see two primary reasons why a flag State is "substandard". First, the flag State intends to, but is unable to meet its responsibility as a flag State because it lacks the necessary resources, skills, laws, etc. Second, the flag State, whether it is able to or not, simply does not choose to meet its responsibilities. A shorter version of these two reasons is to call it a "will or skill" problem.

What IMO has focused on in the past, and for the most part, what the FSI Sub-Committee and its work with Flag State Self-Assessment have focused on is addressing the "skill" side of the equation. In other words, what can be done to help flag State's obtain and use the necessary tools (i.e. laws, regulations, personnel, etc.) to be effective flag States. Self-assessment, if used by these flag States, will do much to improve that process. As those that were dealing with a "skill" problem overcome it and come up in standards, it will become easier to identify those flag States with the "will" problem and take action, internationally" to deal with them.

Over the past 10 years there have been a number of initiatives that are aimed at improving implementation of international instruments. The significant one being formation of the IMO Flag State Implementation Sub-committee (FSI). It just concluded it's 8th session in January of this year. But is it doing enough? Does it have the right focus?

It set about developing guidance for use by flag States in carrying out their obligations, with the most recent development being the Flag State Self Assessment Resolution. FSI also provided guidance on Port State Control since this was a major effort which had resulted in large measure because some flag States were not assuring uniform or often adequate compliance.

The Resolution A.847 (20) - *Guidelines to assist flag States in the implementation of IMO instruments* and the most recent one, Resolution A.881 (21) *Self-Assessment of Flag State Performance* adopted at the IMO 21st Assembly last November are key steps to help flag States to get their houses in order.

Flag State Self Assessment is a natural progression from the IMO development of the ISM Code, the Assembly guidance on Recognized Organizations, guidelines to assist flag States in the implementation and on port State control, and STCW 95. Much needed attention is being directed to flag States.

Care needs to be taken to assure that while flag States are getting much needed attention, those with the prime responsibility for safe operation of ships and clean seas not think that this will ease the pressure on their performance.

Indeed the opposite should be true, as flag States improve, compliance expected of their ship owners and operators will increase. It won't be a case of shifting emphasis from ships to governments, rather a broadening of both.

For flag States there needs to be more uniform enforcement so their ships will be expected to operate in compliance with the international instruments.

More attention needs to be given to ships' operating performance by flag States.

All, flag States and the others in the "Responsibility Hierarchy for Marine Safety and Pollution Prevention", must come to understand ships must comply at all times with maritime safety and pollution prevention standards laid down in relevant international instruments and flag States must have in place an adequate and effective system to exercise control over ships entitled to fly their flag and the ability to take steps to ensure ships flying their flag comply with relevant international rules and regulations.

Flag States must understand that they must:

- implement them fully and effectively;
- enforce them rigorously; and
- report to the Organization, as required.

The Assembly has urged Governments to assess their own performance and to use the IMO Self Assessment Guidance, in conjunction with resolution A.847 (20), and to bear in mind the relevant provisions of the various IMO instruments to which they are Party, when assessing their performance as a flag State in the context of these instruments. All need to be encouraged to complete this exercise.

Some specific comments follow:

SOLAS, MARPOL, and STWC 95 have very rigorous requirements but the degree to which compliance is achieved varies widely.

In large measure there are more than adequate requirements on the book, compliance by operators and mariners and follow up uniform enforcement by flag States and ports States is what needs to be stressed. And the first order of attention should be given to achieving compliance by operators and mariners. These two players in the safety equation have the prime responsibility.

The question is how. Incentives need to be devised. It would be good if they could be positive incentives but negatives ones work.

The lists published by the various Port State Control Organizations have done much to highlight who are the "bad actors". Owners work to not appear on those lists and they result in negative economic consequences -- ships get held up longer if on the list as compared to ships of owners not on list. Perhaps more can be added to the information, for example, charterers.

Greater linkage between STCW 95 and the IMS Code during enforcement seems to be the best route, in the short term.

STCW 95 has some very detailed training record keeping requirements concerning the responsibility for the owners to verify and know of the mariners capabilities and training before allowing them to serve on board their ships. Read literally, the requirements set out are very onerous. As the application is unfolding, it does not seem that the full intent of the detailed requirements are recognized, even by the flag States. The owner verification and record keeping requirements are a change from past practice but it seems most are continuing, "underway as before". Opportunity for improvement lies in this direction.

These increased requirements are management issues not ship board issues and should be carried into the owners' IMS Code shipboard and office management documents. Procedures should be added to address how the company is meeting its new STCW 95 verification and record keeping duties.

By linking STCW 95 and the IMS Code, port State control officers will have a stronger hand in addressing ship board personnel problems when they conduct drills and find the mariners unaware or not able to carry out their duties. Management can be required to fix the problem. The ISM linkage would give them an increased ability to hold up the ship, as then it would be an IMS Code in violation, not just a mariner drill problem. A basic management practice could be called into question using Reg 19. Changing the focus will have a greater affect in getting ship operators' attention.

It is recommended that the Commission review the question of enforcement by factoring in the IMS Code as th trigger mechanism that give force and effect to the many requirements SOLAS MARPOL and STCW 95.

One change in SOLAS that little notice has been given to is the requirement in Chapter I for new ships to meet the requirements of the class societies as a condition of being in compliance with SOLAS.

Much of SOLAS is silent on the machinery, structural integrity, electrical installations, and operational equipment. Traditionally, it was assumed that vessels were in "class". But since the "class" requirements were not a part of SOLAS, port States inspectors could not use Reg 19 to fix problems that were solely based on class requirements. So port States could do little, or choose to do little, for failures noted that had only a basis in class requirements.

This SOLAS amendment ended that for new ships. The intent was to give port State control inspectors the right to look at all of the ship and if problems were found, use Reg 19 to effect correction, even for items of class. This took away the ability for an owner to hide and say it is a class concern and not a port State control issue.

It also lets the port State control officers put more pressure on the class societies and the owners for the condition of the whole ship.

This new requirement may not be widely understood and applied.

Ways need to be found to make all of the players in the "chain of responsibility" understand that each is critical in assuring that ships meet the requirements of international treaties. It is not solely a flag State responsibility.

Requiring Classification Societies to be bonded for their surveys and the "inspections/surveys" that they do on behalf of flag States would force the class societies to take a great deal more responsibility for the actions of their surveyors and technical plan reviewers.

Flag States need to be held accountable for carrying out those duties that they have as the flag state and that are prescribed in the various international treaties, starting with UNCLOS and the IMO Treaty.

A good first step is the evolving Flag State Self Assessment Program. A way needs to be developed to collate this information and to monitor the progress of the various flag States. While initially it is voluntary, with time all need to participate and the results known and public.

The assessment tool is straight forward and can be used by entities other than the flag States to make an assessment. The information can be obtained and entered on the assessment forms to give a rough assessment of each flag State

Thanks for inviting me to comment. I applaud your efforts to improve marine safety.

Sincerely,
Signed

Norman W. Lemley PE
President