

International Commission on Shipping

SUBMISSION BY THE INTERNATIONAL CHAMBER OF SHIPPING (ICS) AND THE INTERNATIONAL SHIPPING FEDERATION (ISF).

ICS is the principal international trade association for the shipping industry, concerned with technical, operational and legal issues, representing the global shipping industry at IMO.

ISF is the international employers' organisation for the shipping industry, concerned with labour affairs, manning and training and seafarers' welfare issues. In addition to representing maritime employers on relevant issues at IMO, ISF is responsible for coordinating the shipping industry's views at ILO.

The membership of ICS and ISF includes national shipowners' associations from 45 countries which together represent over half of the world's merchant tonnage.

These comments have been prepared on behalf of the two organisations. Although they attempt to reflect the views of the international shipping industry at large, it should not be inferred that they necessarily represent the opinion of every national shipowners' association with regard to every issue covered.

GENERAL COMMENTS

Shipping can fairly claim to be the safest and most environmentally friendly form of transport. Perhaps uniquely amongst industries involving high physical risk, commitment to safety, if only as a form of self-preservation, has long pervaded shipping operations. Shipping was amongst the first industries to adopt widely implemented safety standards and, given its international complexity, its overall record is good, particularly in comparison with the practices existing in many shore-based industries.

Notwithstanding the unquestioned existence of a small core of sub-standard operators in the industry, a range of different measures clearly indicates that the safety and environmental record of shipping has shown continuous improvement in recent years. Against that background, we would submit that the ICONS information paper contains a number of statements which together suggest an unjustifiably negative picture of the international shipping industry.

The thesis of the ICONS information paper appears to be that shipping is in crisis. There are certainly a number of issues which need to be addressed and examples of unacceptable practice, but the vast majority of shipping companies are committed to operating efficiently, safely and in an environmentally conscious manner, in full compliance with international regulations. Recognition of this fact is a necessary starting point for any objective analysis of where improvement may be needed.

ICONS INTRODUCTORY COMMENTS

We have chosen to prepare this paper by addressing the specific questions listed in the ICONS background note under the heading "What are some of the issues to be examined?" But first, some remarks on your introductory comments.

The statement by ICONS that "*there has been inadequate interest in the creation of an effective international mechanism to ensure observance...with existing safety and protection requirements*" is a very subjective view. The principle that shipping should be regulated at the international level is widely accepted by the entire maritime community, while the regulatory role of IMO is unanimously

acknowledged. In recent years there have been a number of initiatives designed to encourage full compliance with international regulations, about which we comment in more detail below. To talk dismissively about citing “infringements of national sovereignty” as spurious grounds for opposition to a supranational regime is to belittle the very real concern of some nations about the misuse of power by other, larger nations.

The background paper makes reference to the age of the world fleet. Our understanding is that the world fleet is in fact not now ageing, but that apart, we have consistently argued against the assumption of a direct connection between the age of a particular ship and the safety of its operation. A 25-year-old ship, well maintained and operated by a properly trained and qualified crew, may of course be far safer than a newer ship that has received inadequate maintenance and is poorly manned.

The recent “Erika” debate has given rise to proposals to phase out certain categories of tankers at specific ages. This may be politically necessary, but there remain grave misgivings about the wisdom and logic of arbitrary “drop dead” dates and ages. They inevitably remove incentives, in the form of increased longevity and resale value, for owners to invest in maintenance over and above the minimum required by law, and it must be anticipated that the condition of a ship approaching the end of a premature existence mandated by law will deteriorate. In addition, shipyards, whose approach to construction standards is increasingly being called into question, will have no inducement to design vessels for more than a standard life.

Reference is also made in the ICONS introduction to the existence of “*ample*” shipbuilding capacity, “*much of it at subsidised rates*”. While individual owners may have benefitted from low shipbuilding costs, the subsidising of shipbuilding, where it still exists, is roundly condemned by the international community. Overcapacity in the world’s shipyards, supported by government subsidy, has resulted in too many ships chasing too few cargoes. This has been a major factor contributing to the chronic low freight rates which much of the shipping industry has had to endure for around two decades, a factor which has certainly not helped the promotion of quality ship operations in excess of regulatory requirements. A major concern of the post-“Erika” discussions is that the accelerated phasing-out of single-hulled tankers should not encourage shipbuilding interests to believe that there will be a demand for increased shipyard capacity over the next decade.

Although there is an unquestioned minority of sub-standard owners, we see no evidence to support the statement in the ICONS introductory comments that many new owners are “*uncommitted to meeting required international safety and environmental standards*”. As mentioned above, the overall record of shipping in recent years would appear to contradict this.

In its introductory comments, ICONS lists “flagging out” as one of the factors “*which has combined to produce an unhealthy environment*”. We take this to be a criticism of the open registers, a sweeping generalisation beloved of popular commentators. The open registry system certainly has its shortcomings – failings which should more properly be directed at the flag state system in general rather than at open registers – but the vast majority of operators using open or second registers are committed to complying with international requirements. Moreover, port state control detention records indicate that the safety performance of a number of national registers is no better than that of the poorer open registers, while open registers such as Liberia and Bahamas enjoy a safety record comparable to most traditional maritime flags. The open registry system is now a fact of life, and any solutions to current difficulties regarding flag state implementation of IMO rules need to be developed with that in mind.

ICONS ISSUES TO BE EXAMINED

The following comments relate specifically to ICONS suggestions about “*Issues to be Examined*”:

HOW CAN THE ACTIVITIES OF SUB-STANDARD SHIPPING BE MADE TRANSPARENT AND ACCOUNTABLE?

ICS/ISF fully support maximum transparency with regard to safety-related information about individual ships, to the extent that this is compatible with the commercial confidentiality which even the most open and safety-conscious shipping companies need to maintain.

The widest possible dissemination of port state control (PSC) detention data is fully supported, and the efforts already being made in this area by the Paris MOU, the Tokyo MOU, the US Coast Guard and various national PSC authorities (which are now being augmented by inclusion of their data in Equasis) are welcomed by the industry. However, the usefulness of this information would be improved still further if there were greater harmonisation of the inspection and reporting criteria used by the various regional MOUs, something which ICS/ISF have been actively promoting.

PSC inspection data should be complemented by greater transparency with regard to results of flag state inspections/surveys and classification society surveys, issues which are discussed elsewhere in this paper.

The establishment of the Equasis scheme is an encouraging development, especially if it will indeed provide a single database of factual, safety-related information, and if it eventually becomes a comprehensive and accessible history of every individual ship in the world fleet. The hope must be that charterers, and others in the "chain of maritime responsibility", will ultimately use Equasis routinely in order to make better informed commercial decisions about the ships and the companies with which they are dealing.

The concept of Equasis is sound, but if it is to be a success, it must be viewed as accurate, reliable and credible by all sections of the industry. It has got off to a sticky start, partly because of the inaccuracy of too much of the basic data, and partly because of the misguided inclusion of non safety-related information, such as the possession of an ITF-approved collective agreement. This has alienated many potential users, who are questioning the "seriousness" of the venture. Furthermore, it has to be understood that Equasis is never likely to be sufficiently comprehensive to provide a committed charterer or insurer with more than superficial information about a ship, and that such interests will continue to need access to more commercially sensitive information. Nonetheless, Equasis is an encouraging development.

With regard to the accountability of sub-standard ship operators, the most effective means of achieving this must be through the enforcement of existing international regulations by flag states, about which more is said below. Port state control is only an adjunct to flag state responsibility and its ability to prevent sub-standard operators from trading completely is consequently limited.

On the more specific issue of how to identify sub-standard shipowners which may hide behind the "corporate veil", the effective implementation of the ISM Code should assist identification of those ultimately responsible (and liable) for the safe operation of a particular ship. In effect the ISM Code documentation represents a licence to operate, establishing a legal link between the shore based management and individual ships, and the importance of the ISM Code must not be understated.

It has become fashionable to belittle the significance of the Code, with anecdotes circulating about "rent-a-crew" teams joining ships immediately prior to audit, incompetent audit practices and the like. There may have been a few such incidents. But the ISM Code implies an acceptance of a commitment to safe operation by every shipping company and a tightening of the net around those who would seek to avoid

such responsibility. The ISM Code was never going to change the world overnight, but in our view it is the single most important development in the regulation of the shipping industry for many years.

In the context of transparency, discussions are in hand in Equasis to refine the information on management of a vessel by identifying the company responsible for its operation under the ISM Code. This is an important development.

IS THE ESTABLISHMENT OF AN INTERNATIONAL ENFORCEMENT MECHANISM FEASIBLE? IF SO, HOW MIGHT IT WORK?

To some extent, of course, an international enforcement mechanism already exists in that port states are entitled to apply internationally agreed safety standards to foreign flag ships trading in their waters. The problem is that there are weaknesses in the system.

Under the current global political system based on sovereign nation states, a genuinely supra-national enforcement system (e.g. a single UN ship register or ship inspection service) simply does not appear to be viable, even if it was thought desirable. This issue was thoroughly explored during the discussions at IMO leading to the revision of the STCW Convention, in the context of IMO inspecting and licensing training institutions, a concept which proved to be unacceptable to IMO member states. ICS/ISF therefore believe that it would be unproductive to plough this furrow any further, at least for the time being.

Improvements may well be needed, but any international enforcement mechanism can only be a modification of the status quo whereby nation states voluntarily agree to apply internationally agreed rules to their national fleets.

This system can of course be complemented by mechanisms for encouraging flag states to implement the rules agreed internationally, such as effective port state control targeting, "naming and shaming" flag states whose performance is poor, provision of IMO technical assistance programmes and the like.

However, even if an international enforcement regime is a non-starter, there is in our view a possibility of strengthening the oversight role of IMO in a manner still compatible with nation states' sovereignty, an issue touched on further below.

HOW CAN THE FINANCIAL AND WELFARE INTERESTS OF CREW BE MORE EFFECTIVELY PROTECTED?

A major focus of the work of ISF since the creation of ILO after the First World War has been its participation in the development by ILO of a body of labour standards for the maritime industry. It has been a matter of concern to ISF over the years that the ILO maritime Conventions, governing the social and working conditions of seafarers, are not as widely ratified as they might be.

There have been problems with the labour standard-setting process. Unlike many technical requirements adopted by IMO, ILO maritime employment standards can often contain detail which conflicts with national employment legislation covering shore based employees. Nonetheless, the extent to which ILO Conventions adopted during the last 20 years have been ratified by governments has been disappointing. In part this may be due to the way in which ILO labour standards are adopted.

ILO Maritime Conferences are tripartite, with seafarers' unions and national shipowners' associations having formal voting rights equal to those of governments, unlike IMO where employers and unions only

have observer status. The tripartite nature of ILO is something to which maritime employers and seafarers' unions are both firmly committed. However, because the texts of ILO Conventions are adopted as the result of majority voting, rather than by consensus as is generally the case at IMO, the contents of the adopted ILO instruments can sometimes be unacceptable to the major flag administrations. The result has often been that new ILO instruments are not sufficiently ratified (the ILO Repatriation of Seafarers' Convention, No 166, adopted in 1987, is a case in point).

The most successful ILO instrument, which is widely ratified and generally enforced worldwide, is the ILO Minimum Standards (Merchant Shipping) Convention ILO 147. This success is arguably due to the fact that it only requires governments to apply the general principles contained in other ILO maritime Conventions while allowing them the flexibility not to comply with details which have otherwise prevented ratification.

ISF is therefore embarking on what we believe to be a more pragmatic approach to standard-setting by ILO and the development of ILO instruments that we hope will be widely enforced internationally. The next cycle of the ILO work programme is just getting underway, and is expected to conclude with an ILO Maritime Conference during the next 5 years. ISF is proposing that rather than amending two or three existing ILO Conventions, a far more radical approach might be adopted, similar to that used in ILO 147. The general principles contained in a large number of other ILO Conventions which have not currently been widely ratified could be included in a single "framework" instrument. The technical detail, however, which would provide sufficient flexibility to make it acceptable to governments, could perhaps be contained in a separate code.

Early discussions suggest that this approach, which is consistent with new thinking in ILO, will also find favour with ITF, our industrial counterpart, and we are hopeful that this will in due course give rise to a body of internationally-accepted maritime labour standards designed to reflect the international nature of the maritime industry today.

Two specific issues that are currently receiving the attention of an IMO/ILO working group are the abandonment of seafarers, and crew claims in the event of the death or disability of seafarers. These are difficult issues. The abandonment of seafarers, which invariably arises in cases of company bankruptcy or national economic upheaval, reflects badly on the international shipping industry as a whole and also on flag states, who have been notoriously reluctant to accept the repatriation of seafarers in such cases as one of the obligations of accepting ships onto their register. The payment of crew claims proceeds without difficulty in many thousands of cases each year, but attracts attention when disputes arise or when claims get taken through the courts. The industry is looking for a practical outcome to the current IMO/ILO discussions which addresses the problems without upsetting the arrangements which work extremely well in the vast majority of cases.

In the meantime, ISF is about to launch its own Guidelines on Good Employment Practice, which will be available in the New Year.

CAN IACS PLAY A MORE EFFECTIVE ROLE?

The shipping industry and governments alike rely on strong and effective classification societies, the bodies with de facto responsibility for ensuring that the world's ships comply with international structural and technical standards. Their professionalism is a necessary complement to the owner's obligation to operate his ships safely and the flag state's duty to satisfy itself that its ships comply with national and international regulations.

However, serious questions are currently being asked about the role of the classification societies and their procedures for surveying and certifying ships. Always a topic of discussion, the debate has assumed a new intensity following the loss of the "Erika". ICS has been seeking to make constructive suggestions for possible improvements in the system, both in the context of international regulatory discussions, whether at IMO or within the European Union, and through frank and direct dialogue with the societies themselves, through the International Association of Classification Societies (IACS).

The majority of flag states, and not only the open registers, rely wholly or substantially on the societies to act on their behalf in surveying ships and issuing them with the necessary certificates. IACS members class about 90% of the world's ships by tonnage, and no other group of organisations can provide the equivalent expertise.

For the most part, the classification societies are entrusted to conduct their business with little supervision or checking by third parties. IACS members have collectively introduced major improvements in recent years to the way in which they operate. However, recognition of these efforts is seriously damaged every time a classification society's name is linked to a casualty.

Ironically, the "Erika" broke apart less than two weeks after the first meeting of a Partnership Forum was established, in a very welcome move, to provide for a direct exchange between the IACS Council and leading industry organisations including ICS. IACS had been anxious to reassure the industry about the effectiveness of its procedural requirements such as those covering the transfer, suspension and withdrawal of class.

ICS has put forward a number of suggestions to IACS as to how standards might be improved. In particular, the classification societies have been urged to make greater efforts to ensure uniformity in the application of regulatory and class standards. ICS has been encouraged by the classification societies' response to such suggestions, but serious doubts remain about the effectiveness of their self-regulation mechanism. Their position is greatly hampered by their apparent reluctance to adopt a more transparent approach, an attitude influenced by the strong commercial competition between the societies. Pressure is therefore growing within the industry for increased supervision and independent auditing of the societies, a development which, while the classification societies may not welcome it in principle, could in fact assist in strengthening their position. Possibly the time has come for IMO, traditionally reluctant to take a direct role, to consider the need for more precise regulations on the requirements to be met by classification societies. IMO should perhaps even consider taking on a supervisory role, providing a system of independent auditing of the classification societies and their performance (similar to that established by IMO to check implementation by governments of training standards under the STCW Convention).

Quite apart from the role of class in surveys and inspection is the need for an improved exchange of information gained from survey work, and more accountability for ship structure and design standards. Every effort should be made to encourage the societies to share their knowledge and expertise on the results of structural surveys. If evidence is obtained to show weaknesses in particular ship designs this surely will be of interest to the owners and operators of sister ships.

One outcome of the discussions on the "Erika" incident has been the proposal for a strengthened form of enhanced survey for tankers, perhaps involving surveyors from more than one classification society, or indeed, surveyors appointed from societies other than that responsible for classifying the ship. Such proposals are likely to be welcomed by the shipping industry as a means of forcing the individual societies to work more closely together at a practical, not just a theoretical level.

One particular anxiety given prominence by the “Erika” incident has been the relationship between class societies and shipbuilders. There is a very real concern that some ships may be constructed to minimum standards with the approval of the classification societies, while the shipyards fail to provide the purchaser and possible subsequent owners with the necessary guarantees or warnings. The shipping industry has a long way to go before owners and operators of ships get the “cradle to grave” service from their manufacturers which is a feature of the aviation industry.

Flag states have responsibilities under the SOLAS Convention to ensure that the recognised organisations they appoint – classification societies – meet the international standards contained in IMO resolution A.739(18). The shipping industry needs the classification societies. But the societies need to do more if they are to retain their responsible role and the continuing trust of the maritime community.

CAN THE PROVISIONS OF UNCLOS, AS WELL AS IMO AND ILO CONVENTIONS, BE MORE EFFECTIVELY IMPLEMENTED?

The provisions of UNCLOS, concerning flag state responsibility in the context of maritime safety and protection of the marine environment, can best be implemented through debates at IMO and implementation of IMO instruments. As the lead UN agency responsible for developing the various maritime conventions which, in effect, have been adopted to ensure that national maritime administrations comply with the provisions of UNCLOS, IMO is the most appropriate forum. With regard to the social and employment issues addressed by UNCLOS, the same applies to Maritime Industries Branch of ILO, as do the rest of the following comments.

There is no question that IMO remains the most effective forum for developing technical and administrative mechanisms necessary to protect safety of life at sea. Although the increasing “politicisation” of IMO has been a matter of concern in recent years, the organisation continues to be relatively free of considerations relating to geo-political and national economic interest.

Citing references to UNCLOS in the interests of improving implementation by flag states of international maritime standards can be a useful reminder of the wider obligations of governments. In practice, however, focusing on UNCLOS is unlikely to have a major impact on whether or not flag states choose to meet their responsibilities. Moreover, UNCLOS covers issues far wider than maritime safety and environmental protection which involve far more political and economic sensitivity. Government officials involved in UNCLOS debates are generally less likely to have the technical expertise suitable for dealing with the practical realities of regulating the safety of the international shipping industry, and are unlikely to be capable of doing so in a manner which is not prejudiced by wider political and economic interests to a far greater extent than they are at IMO.

In short, and in view of the limited resources available to the regulation of shipping, dedicating time to consideration of the enforcement of UNCLOS provisions will probably be far less productive, in the context of improving maritime safety and employment conditions, than focusing on the proper implementation of standards adopted by IMO and ILO.

IS IT TIME TO LOOK AT MEANS OF ENSURING COMPLIANCE WITH IMO STANDARDS OTHER THAN MORE REGULATIONS AND RULES. IF SO, WHAT ARE THEY?

It is already widely recognised, by IMO and the European Commission amongst others, that with the exception of the need for occasional minor adjustments there is already a comprehensive framework of IMO legislation in place. This is especially true given the recent adoption of the ISM Code and STCW 95, together with the existing provisions of SOLAS and MARPOL.

It seems to be universally agreed that the emphasis now should be on the implementation of existing regulations, a view which the industry shares. In recent years, the constant flood of new rules and amendments has arguably been counterproductive. Administrations, shipping companies and seafarers have all become increasingly overloaded. Even the traditional maritime nations, supposedly well equipped to adapt to regulatory changes, have cried "Halt". The industry has understandably taken exception to the imposition of new rules which effectively outlaw relatively modern ships built in full compliance with the then current regulations.

The mechanisms for ensuring compliance with existing regulations have been under close scrutiny in recent years, notably through the efforts of the IMO Sub-Committee on Flag State Implementation (FSI). It has to be said that the work of the Sub-Committee has only been partially successful. The reasons for this could be debated at great length. However, it is clear that one underlying factor is the tension that has developed between the historically dominant IMO member states, whose fleets have diminished over the years, and the newer maritime nations and open registers, who feel that their role and significance (and in many cases their large financial contributions to IMO) are not given due weight. It is hardly surprising, therefore, that attempts by the old traditional maritime nations to impose their concept of how things should be done on the IMO membership as a whole have been greeted with less than open arms.

At the same time, it is clear that the supervisory role of a number of flag states, even in these days when so many of their responsibilities are delegated to the classification societies, is inadequate. In some cases evident progress is being made. The preparedness of some states to complete the self-assessment analysis developed by the FSI is to be welcomed, and the industry continues to encourage all flag states to see this as a practical indication of their determination to fulfil their responsibilities seriously. While there may still be some way to go, all of the leading open registers are today active participants in IMO discussions and know what is expected of them, even if their ability to deliver in some cases leaves something to be desired.

There remains the problem, however, of those flag states, both national flags and open registers, which appear to play no active part in the discussion process and to have little awareness of the responsibilities of a maritime register. Port state control has helped to identify them, but publicising their poor performance seems so far to have done little to improve it. Constant upgrading of the targeting mechanisms by port state control is essential, but there is arguably also a responsibility on the industry to consider forms of self-regulation with respect to flag states.

This is a difficult issue, for there are many reasons why a shipping company chooses a particular flag for its ship. However, in these days of a wide choice of registers, there is a growing view within the shipping industry that selecting certain flags implies a wish to avoid unnecessary supervision, and that such operation creates unfair competition. Consideration is therefore being given to the development of criteria by which shipping companies might determine the acceptability of particular registers, as an adjunct to the regulatory systems and enforcement measures already in place.

HOW CAN THE EFFECTIVENESS OF EXISTING IMO STANDARDS BE MEASURED?

The straightforward answer is by examining the improvement in the shipping industry's safety and pollution prevention record. There are of course various sources such as the International Underwriting Association (ship losses), the P&I Clubs (third party liability claims) and ITOPF (pollution incidents). It is worth noting that, contrary to some perceptions, the industry's record in all of these areas has improved considerably in recent years.

With regard to the extent to which IMO standards have been implemented by different flag administrations, most of the same sources analyse the performance of different flags, as of course do the regional PSC MOU authorities.

CAN THE IMO PLAY A MORE ACTIVE ROLE IN INTERNATIONAL SAFETY REGULATION?

IMO's involvement in terms of developing international regulation is already very comprehensive (see above), and the emphasis now should be on encouraging the implementation of existing regulation.

HOW CAN THE DISINTERESTED ELEMENTS OF THE "RESPONSIBILITY CHAIN" BE PERSUADED TO ASSUME ACCOUNTABILITY?

The so-called chain of "maritime responsibility" is an attractive concept intended to reflect the fact that many parties have an influence on the standards of operation within the shipping industry. The concept has been given a great deal of air time over the past three or four years and the European Union has tried to give it some concrete effect with the development of its Maritime Industry Charter, with its emphasis on promoting selfregulation amongst all the maritime partners within a framework of properly enforced international regulation.

In reality, of course, not all the players identified in the "responsibility chain" have an equal part to play, and to suggest that each of the links in the chain is equally strong is misleading. There has, for instance, been some criticism of the commercial insurance industry for its failure to contribute substantially to the elimination of the sub-standard ship. Yet in practice, it is questionable what part the hull and machinery market can be expected to play. Their role is the assessment of risk, not the exercise of a policing role. Likewise the finance houses, whose role should surely be to make a considered judgement on their investment, with the promotion of quality being no more than an incidental by-product.

That said, the campaign to involve all parties in adopting a responsible attitude to the promotion of safe shipping operations is very welcome. It may not be reasonable to expect charterers to pay a premium for quality but they should know that they will be subjected to the harshest criticism if they make business choices which politicians and the general public regard as unacceptable. Insurers and banks should be encouraged to use all the information available in deciding on the acceptability of the risk they are assuming. The fact that all parties in the chain of responsibility are potentially subject to scrutiny can only be beneficial.

CAN A "REWARD SYSTEM" FOR RESPONSIBLE OPERATORS WORK?

The key question here is how a responsible operator is defined. Operators which can demonstrate consistent compliance with international regulations should certainly be rewarded by being subjected to less frequent inspections (see our separate comments about port state control). Similarly, operators which demonstrate that they have an effective safety management system might be rewarded with less onerous ISM Code audits.

In principle, the industry would also, of course, welcome the concept of premium rates to be paid for quality tonnage, and reductions in hull insurance and P&I club premiums which reflected (to a greater extent than currently) the safety record of the company insured. In practice, however, these are issues which will largely be determined by market conditions.

Schemes like the Rotterdam "Green Award" have attracted some attention and are appealing in the attempts they make to reward quality. They do, however, also generate debate in that they introduce

arbitrary criteria as to what qualifies a ship or company as a “quality” operator. Some would argue that they do little to encourage more typical, but otherwise satisfactory, operators to comply with minimum regulatory requirements

PORT STATE CONTROL – HOW TO MAINTAIN CREDIBILITY?

ICS has long believed that Port State Control (PSC) is a vital complement to flag state enforcement, helping to ensure compliance by the shipping industry with international regulations.

Effective PSC should ensure that genuinely sub-standard ships are prevented from trading internationally and, at the same time, create as little inconvenience as possible for responsible ship operators. The fact that sub-standard ships continue to operate, albeit in declining numbers, and that well run vessels sometimes feel they are unnecessarily subjected to PSC inspections, indicates that there is room for improvement.

Improving PSC targeting

ICS acknowledges that efforts are being made to refine PSC targeting methods so that the limited resources available are used as effectively as possible. However, one issue which ICS believes deserves particular and urgent consideration is the requirement applicable to some PSC authorities to inspect 25% of individual ships entering their ports.

The 25% target may have been a useful objective in the past. However, the continuation of this requirement arguably works against the detection of sub-standard ships, whilst causing ships operated by responsible companies to be subjected to unnecessary inspections. The 25% target serves no valid purpose if some Administrations are only able to meet it by selecting well-run ships which are inevitably easier and less time consuming to inspect. Whilst it is recognised that a certain random element may still need to be retained with regard to the selection of ships for inspection, it is suggested that inspections might otherwise be carried out in the following order of priority:

1. ships that have previously earned a poor PSC inspection record;
2. ships entering an MOU region for the *first time* which have a high target factor according to agreed criteria;
3. ships that have not been inspected within the previous 6 months but which have a satisfactory inspection record within the MOU region, targeted in accordance with the agreed inspection criteria.

It is also suggested that analysis might be conducted within the relevant MOU region to determine the number of inspections (and resources) that would be required to ensure that all ships within the first two categories above – and as many as possible within the 3rd category – are inspected, in comparison to the number of inspections (and resources) required to meet the current overall 25% target.

Frequency of inspections

ICS believes that if a ship that is subjected to an inspection is found to be entirely free of deficiencies, it should, as matter of principle, not be subjected to another inspection for as long as might reasonably be allowed. Such an approach would not only eliminate unnecessary routine inspections: it would also, most importantly, “reward” ships in good condition by positively discriminating in their favour.

The recently introduced “Qualship 21” scheme, developed by the US Coast Guard for inspection purposes in the United States, is a welcome step in this direction.

Detentions

A detention is a formal indication of a substantial failing in the structure, equipment, manning or operation of a ship. It is, in effect, a statement that a ship has “failed” its inspection, and its inclusion on detention lists attracts a certain notoriety. It is therefore important that:

- a) detentions should accurately reflect a major failing on the part of the ship; and
- b) detentions handed down for blatant cases of unseaworthiness should hurt the operator and act as an effective deterrent to further non-compliance with the rules.

We believe that on both counts detentions are not in some cases fulfilling these objectives. There is a clear disparity between ships detained for what might be termed procedural breaches of the regulations (e.g. certificate problems, justifying a formal response but not in themselves prejudicing the seaworthiness of the ship) and ships which are manifestly unseaworthy (e.g. having fundamental problems with their life saving appliances). Furthermore, the number of cases of repeat detentions suggests that the deterrent factor is less than the cost of long term remedial action and does not discourage ships from continued trading.

It follows that some distinction needs to be drawn between “procedural” and “unseaworthiness” detentions and that guidelines should be developed to grade the seriousness with which particular deficiencies should be viewed.

Improved co-operation between MOU regions

Shipping is an international industry and the results of a ship inspection in one port of the world undertaken by a credible PSC authority should be taken into account when a ship enters the port of another PSC authority. Closer co-operation between regional PSC regimes is accordingly urged with a view to harmonising inspection and targeting criteria and encouraging mutual recognition of inspections.

The long term goal should be to remove the necessity for any ship which has been inspected and found to be in compliance with applicable regulations by a credible PSC authority from being inspected within an agreed minimum period, so that the resources of all PSC regimes can be focussed more effectively on sub-standard shipping.

Charterers

The designation of the classification society in detention reports has been a contentious issue, but has certainly encouraged classification societies to take such records seriously. The charterer, on the other hand, has apparently always been thought too difficult to identify. The lack of accountability of the charterer, most notably in the dry bulk trades, has in ICS’s view been a major contributory factor to the continuing operation of a small proportion of ships which, by any objective criterion, are sub-standard. We are encouraged that discussion have been set in hand by the US Coast Guard on the practicability of identifying and naming the charterer in detention notices whenever it is possible to do so. We are hopeful that other PSC authorities will follow suit.

Tracing substandard vessels

On occasions, port state control officers inspect ships that are sub-standard to the extent that they should clearly not have been allowed to sail after visiting previous ports. This is particularly unacceptable when such previous ports may lie within the same MOU region. Regional MOUs should be encouraged to analyse whether PSC is working effectively by tracing the previous movements of certain vessels.

Conclusion

In order to help eliminate sub-standard ships and promote quality shipping, we recommend, as appropriate, further consideration of the following suggestions as a means of maintaining the credibility of PSC:

- revision, where relevant, of the 25% inspection target with greater emphasis on inspections being conducted in accordance with agreed priorities and targeting criteria;
- development of a means of making a distinction between “procedural” and “unseaworthiness” detentions;
- extension of the minimum period between inspections to 12 months for ships which are found to be free of deficiencies, and the development of guidelines setting out the standards to be met in order to qualify for such a “reward”;
- improved co-operation between regional PSC regimes with a view to harmonising inspection and targeting criteria, and encouraging mutual recognition of inspections;
- examination of the practicability of identifying and naming charterers in detention notices;
- analysis of previous movements of detained sub-standard vessels; and
- development of guidance for industry on how best to use published data on detentions.

HOW CAN SUB-STANDARD REGISTRIES AND CLASSIFICATION SOCIETIES BE IDENTIFIED AND EFFECTIVELY ISOLATED?

There are various sources of statistical information which can be used to assess the performance of flag states and class societies (casualty statistics, insurance claims analysis, deficiencies and detentions identified by PSC inspections etc), and refinements are being made regarding the way in which such information can be used, which, as mentioned above, is being augmented by Equasis. Meanwhile, the work of the IMO Sub Committee on Flag State Implementation (FSI) is contributing to the assessment of the effectiveness of flag states through its voluntary self-assessment programme.

The use of records on flag state performance for calculating the PSC targeting factors applicable to particular ships, and the wide dissemination of such information, means that the names of the poorest performing flag states are generally well known within the different sections of industry. As long as objective criteria are used for such statistical analyses it is difficult to question the result, and decisions can be taken accordingly.

As regards classification societies, there is widespread support for IACS and for the belief that IACS membership must be regarded as the determining factor in the acceptability or otherwise of a class society. Regardless of IACS's shortcomings, the shipping industry at large has taken the firm view that the accreditation of non-IACS classification societies by certain flag states for statutory survey work must be curtailed, at least for vessels in international trade.

That said, there are self-evidently differences of performance among the IACS members. The most effective means of identifying those which need to improve is PSC records, where the targeting process has now been refined to a point where the statistics stand up to scrutiny. The US Coast Guard has been particularly thorough in this regard, and distinguishes between classification societies for the purposes of selecting ships for inspection.

SHOULD A HOLISTIC APPROACH, WHICH EMBRACES CONSIDERATION OF ECONOMIC, ECOLOGICAL AND ENVIRONMENTAL ISSUES POSED BY SUB-STANDARD SHIPPING IN ADDITION TO HUMAN ISSUES, BE CONSIDERED? IF SO, HOW WOULD THIS BE DONE?

It is not entirely clear what this question is driving at. If it is asking whether the regulatory framework should be restructured to embrace elements from UNCLOS, SOLAS, MARPOL and ILO Conventions in a single package, then the answer must be that such a proposition is unworkable in practice.

However, if it is directed at the enforcement of the existing regulatory system, then it can surely be argued that PSC already attempts to embrace the technical (SOLAS etc.), environmental (MARPOL) and welfare (ILO 147) components in its inspection process.

HOW CAN FLAG STATES BE ASSISTED TO IMPLEMENT THE MINIMUM STANDARDS REQUIRED TO OPERATE A VIABLE FLAG REGISTRY?

This is a difficult question. The IMO Technical Co-operation programme exists in part to assist flag states, but the flag state has to ask for such assistance, whereas in some cases flag states seem unwilling, for whatever reason, to ask for support. Procedures such as those which have been developed as part of the FSI flag state self assessment programme are intended to encourage flag states to volunteer information about deficiencies within their organisations by linking them to the identification and development of technical assistance programmes.

However, it seems likely that some form of "coercion" is necessary if flag states in general are to take their responsibilities seriously. The STCW "white list" scheme, which obliges states to submit their training and certification arrangements to the scrutiny of IMO-appointed experts, seems likely to provide a pointer for the future. But it will take time. Flag states need to be persuaded that they will benefit from appearing on a "white list" rather than suffer from appearing to need guidance.

CONCLUSION

It is hoped that these comments are useful to the Commission. It is sometimes suggested that the regulation of shipping is somehow fatally flawed. We have never subscribed to that view, believing that it is not the systems, but the way they are applied and enforced, which needs constant improvement. We have tried to reflect that approach in the remarks above, and we shall be happy to elaborate on any of these points when we meet the Commission on 27 November.