

Information Paper

International Shipping

INTRODUCTION

Despite a proliferation of Conventions, Treaties, Regulations and Standards, coupled with the growth of various ship inspection systems introduced in recent years, the menace posed by sub-standard shipping is still very much alive. In 1998, Lloyd's Casualty Report shows 175 ships were lost around the world and 507 seafarers perished. The average annual losses (actual and constructive), according to Lloyds, for the six years 1993 - 1998 are 226 ships and 628 seafarers. The reasons for this are largely two-fold.

Firstly, the cost savings gained from not complying with IMO standards are a sufficient incentive for some owners/managers to continue to operate vessels in a sub-standard manner.

Secondly, there has been inadequate interest in the creation of an effective international mechanism to ensure observance of or compliance with existing safety and environmental protection requirements.

Opponents of such proposals have cited them as "infringements of national sovereignty" or "breaches of the freedom of navigation".

There is now, however, a widespread conviction in the community of nations that such traditional principles are no longer overriding in the interest of safety of navigation and the protection of the marine environment.

COMMERCIAL ENVIRONMENT

In the international market place the world fleet continues to grow at a faster rate than demand so exacerbating the existing over capacity of the industry. The fleet is also aging. According to the ITF, about 30% of the world's fleet is aged 20 years or over, with the average age increasing from approximately 13 years in 1980 to 19 years in 1998. Lloyds World Fleet Statistics for 1995 give the average fleet age as 18 years and by 1998 this had increased to 19 years.

Ample shipbuilding capacity is available throughout the world, much of it at subsidised rates, and finance is readily available to purchase ships.

The low rates of return on shipping investments has contributed to a fragmenting of industry ownership patterns, with many new owners uncommitted to meeting required international safety and environmental standards.

In this commercial environment, many ship-owners, both old and new, have flagged out their vessels in an attempt to reduce costs and better compete with less scrupulous operators or have left the industry.

These factors have combined to produce an unhealthy environment and, given such circumstances, it is not surprising that a significant segment of sub-standard shipping continues to flourish within the world's merchant fleet.

REGULATORY

Consistently observed and effectively applied there already exists sufficient marine safety and environmental standards to eliminate most sub-standard shipping and its associated sub-standard practices.

Again, if consistently applied, there are also adequate inspection resources within classification societies, insurance companies, governments, and charterers to effectively identify the sub-standard ships and their practices.

Consistent application is the integral element in these statements, and it is the lack of consistency that is one of the roots of the problem.

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS)

In order to combat sub-standard shipping, the international community has adopted extensive rules and standards, mainly within the framework of UNCLOS and various Conventions adopted by the International Maritime Organization (IMO) and the International Labour Organization (ILO). These rules and standards relate to (a) the seaworthiness of ships, (b) the standards for crews, and (c) the protection of the marine environment.

- a. UNCLOS requires that every flag State take measures necessary to ensure safety at sea with regard to such matters as the construction, equipment and seaworthiness of ships, as well as the maintenance of communications and the prevention of collisions. The flag State must ensure that its ships be surveyed regularly by qualified surveyors, and have on board appropriate charts, and navigational equipment and instruments.
- b. UNCLOS also provides for obligation of flag States with regard to the manning of ships, labour conditions and the training of crews, requiring them to ensure that each ship is in the charge of qualified master, officers and crew.

The International Convention for the Safety of Life at Sea 1974 (SOLAS 74) together with the 1978 Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78) gives some concrete rules. Further provisions are contained in the relevant ILO Conventions, in particular Merchant Shipping (Minimum Standards) Convention 1976 No 147 (ILO147).

- c) For the purpose of protecting the marine environment, UNCLOS obliges the flag States to ensure compliance by vessels flying their flag with international rules and standards. In particular, they must ensure that their vessels are prohibited from sailing until they comply with such rules and standards, including requirements in respect of design, construction equipment and manning. UNCLOS also requires the State in whose port a vessel in violation of international rules and standards relating to seaworthiness enters to take measures to prevent it from sailing until it removes the causes of the violation.

The detailed international rules and standards are contained in such Conventions as The International Convention for the Prevention of Pollution from Ships 1973 (MARPOL 73/78) and SOLAS.74.

INTERNATIONAL LABOUR ORGANIZATION (ILO)

Perhaps the most significant of the ILO's maritime Conventions is Convention 147. States ratifying ILO 147 have an obligation to ensure that their vessels comply with a cross-section of important ILO Conventions, including those dealing with crew accommodation, food and catering, health, accident prevention and minimum age of employment.

The IMO Conventions have inherent elements that trigger universal application of their technical annexes and amendments to all Parties once a certain percentage of the Parties have ratified. In the case of ILO Conventions, the only means by which an ILO Convention can come into force for any State is for such State to individually ratify, there being no provision for a majority ratification to trigger universal application.

A majority of flag States has yet to ratify ILO 147 for various reasons, including politics, variations in economic development and far ranging cultural differences.

In addition, among the non-Parties there exists a hard-core group of States who have no intention of ratifying, as they have no wish to force owners within their registries to assume the extra costs associated with the provision of acceptable living and working conditions.

The results of non-ratification of ILO 147 are far ranging, non-Parties having no obligation to ensure that acceptable living and working conditions exist, either on vessels flying their flags or on foreign vessels visiting their ports.

As a consequence, many hundreds of crewmembers are underpaid, suffer regular abuse and are forced to exist in inhuman living conditions.

More often than not, when both owners and administrations are prepared to treat personnel in this manner, the same attitude is likely to prevail with regard to compliance with safety and environmental standards. In this context it is of interest to note that, out of the 23 States listed on the Paris MOU's 1998 "Black List", only five have ratified ILO 147.

INTERNATIONAL MARITIME ORGANIZATION (IMO)

Since its first meeting in 1959 the IMO has developed excellent standards for ship construction, maintenance and operation.

However the failure to provide the Organization with the means of achieving observation of its standards or ensuring compliance with its requirements has created an Achilles' heel for the IMO.

Many IMO member States strongly support the highest standards including the possible provision of a means of ensuring compliance with IMO standards.

There has been some slight movement in this direction, with the STCW Convention and ISM Code both requiring a more active role by the Organization.

However, there are other member States who regularly attempt to dilute any new proposals, and to delay their implementation.

This latter group consists mainly of two elements. Those who are ignoring many of the IMO's current requirements and have little interest in any new measures that will add to the cost of ship operations and those lacking the necessary resources to effectively implement many of the proposals already developed.

Combined, these two groups form a very influential bloc, even though they include many with extremely poor flag State safety records.

Because the IMO works on a consensus basis, the support of all member States or at least non-objection is required for a change in focus.

FLAG STATES

As required by UNCLOS and various IMO instruments, the application of safety and environmental standards is the prime responsibility of any State for all vessels flying its flag.

However, there is wide variation in the manner in which established safety and environmental standards are implemented amongst the scores of registries that exist worldwide.

Some marine administrations are inadequate due mainly to a lack of resources, while others clearly make little or no effort to introduce any meaningful expertise into their organizations, paying mere lip service to mandatory requirements such as SOLAS 74, MARPOL 73/78, STCW 78 and the ISM Code.

It has been argued that in many cases national flag registries have been established solely as businesses, not regulatory authorities and that they act accordingly.

CLASSIFICATION SOCIETIES

In addition to their basic role of creating and revising rules for the structure, strength and essential engineering systems of ships, some Classification Societies serve the important function also of assisting some flag state administrations to ensure that their vessels comply with mandatory structural and environmental standards.

In these circumstances objectivity and impartiality is always hard to achieve.

The dilemma for the Class societies is that as businesses they must compete against each other in the very industry in which they are often the *de facto* regulators.

It appears that in the past many vessels that today would be considered questionable received classification.

To address these matters the International Association of Classification Societies (IACS) has introduced some new and bold initiatives.

However, there still remains a large backlog to clear up before all vessels classed by IACS members can attain desirable levels of safety.

Even when IACS has resolved its problems, there will still remain Classification Societies operating outside the aegis of IACS, some of which are prepared to cut significant corners in order to attract business.

Steps being taken by the EU that would permit only ships certificated by EU approved Classification Societies to trade within its area of jurisdiction, should have a beneficial impact on the business environment.

PORT STATE CONTROL (PSC)

The right of a port State to inspect and if justified, detain a sub-standard ship in its ports is the last line of defense for that State against risk of damage to its port facilities and marine environment.

It was not intended to be a substitute for a flag State's exercise of its responsibilities.

The standard of performance of PSC authorities and PSC groupings varies across the globe. This variability has a negative impact on the effectiveness and credibility of the PSC program.

An examination of the latest report of the Paris MOU raises concerns about the credibility of some PSC administrations. These concerns were highlighted by the recommendations made by Ministers at the 1998 Joint Paris-Tokyo MOU Ministerial Conference on Port State Control in Vancouver.

The meeting recommended that administrations should refrain from implementing PSC measures until such time as they had first introduced effective flag State procedures.

The inevitable consequence of the establishment of sub-standard PSC regimes is the undermining of the credibility of the concept of PSC inspections.

Given the available options, PSC if properly implemented, has the potential to become an effective mechanism capable of enforcing agreed marine safety and environmental standards.

OTHER FACTORS

The problem is not limited to the world's trading fleet, fishing vessels and their crews are subject to some of the worst abuses. Again, the fleet is old, in 1998 the average age of fishing vessels over 100 GT was 20 years.

There is an increasing number of fishing vessels found to be sub-standard with evidence of flag hopping, crew abuse and maltreatment, unqualified and incompetent fishers, structural defects, pollution and involvement in illegal fishing activities.

The issues for fishing vessels are exacerbated by the lack of any form of effective regulatory regime for either the ships or their activities, apart from some general rules under UNCLOS.

OUTCOME

Public information shows that the door is thus still very much open for those wishing to operate and profit from sub-standard ships. Unscrupulous owners encounter little difficulty in registering with a questionable register, obtaining coverage with a "Second Class" Classification Society, and trading only to those parts of the world with token Port State Control regimes.

The reward, according to the OECD, is a cost saving of 15% when compared to the costs of a more reputable competitor and this even after taking PSC detentions into account.

LIABILITY INSPECTION

Increasing concern about possible liability exposure and a lack of confidence in the quality of commercial inspections has led to a multiplicity of ship inspection procedures.

States now carrying out ship inspections include charterers and insurance interests.

As most ships are already liable to inspection by port States, flag States and Classification Societies the potential for duplication and overlap is considerable.

There is certainly an argument for some harmonization and electronic recording of the various inspection procedures that could possibly result in freeing up valuable resources, an improvement in ship handling procedures and a restoration of confidence among industry parties.

THE RESPONSIBILITY CHAIN

The responsibilities of flag and port States, together with Class, have already been highlighted. However, there are other parties, all integral links in the system, who should rightly form part of "the Responsibility Chain" but who, all too often, choose to avoid their obligations.

It is commonplace for charterers to consider only the freight rate and to ignore the condition of the vessel being chartered, the level of crew competency, the treatment and accommodation of crew.

The same attitude appears to prevail in circumstances where insurance is being written or funds being advanced by banks for vessel purchases.

These *laissez faire* attitudes play into the hands of unscrupulous operators and may only be addressed by full public accountability and transparency in respect of the activities of the parties involved.

PUBLIC ACCOUNTABILITY AND TRANSPARENCY

Just eight years ago the initial publication of details of PSC detentions was stridently opposed by some shipping interests as a massive invasion of commercial privacy, a defamatory act likely to lead to commercial disasters in the shipping industry.

The demand now is for full disclosure of information on beneficial owners, class transfers, charterers and cargo owners to create a better-informed market and to strip away the cover of sub-standard ships, sub-standard operators and their customers.

Mr William O'Neill, the Secretary - General of the IMO highlighted the need to rid the industry of its obsession with secrecy in the speech delivered on his behalf to MARE Forum in Amsterdam last June:

...the culture of secrecy which has characterised shipping for centuries needs to be consigned to history -it should be left here, in the Second Millennium, as we prepare to embark upon the Third. In its place we should foster a culture of safety and environmental conscience which makes sure that nothing is introduced into shipping until we are certain that it is safe and environmentally sound.

THE FUTURE

Unless corrective action is taken both by the industry and governments then the future looks bleak.

For how long will it be a case of too many ships that are over aged and under maintained chasing too little freight for too low a rate of return creating further pressure to cut crew costs and avoid maintenance.

Marine environmental disasters involving ships will continue to occur.

In the absence of any meaningful method of ensuring compliance or systematic international enforcement, knee jerk defense measures will increasingly be introduced on either a single State or regional basis.

Such actions can only undermine the effectiveness and credibility of the IMO and the established international safety and regulatory framework.

In addition, as fleets increase and investment returns remain marginal, finding sufficient competent personnel will continue to be a problem.

For thousands of seafarers it will mean a continuation of exploitation, abuse, denial of wages, essential medical care and contact with families.

As life at sea becomes increasingly unattractive the shortage of competent officers and ratings will accelerate so closing the circle.

What are some of the issues to be examined?

- How can the activities of sub-standard shipping be made transparent and accountable?
- Is the establishment of an international enforcement mechanism feasible? If so, how might it work?
- How can the financial and welfare interests of crew be more effectively protected?
- Can IACS play a more effective role?
- Should the commercial incentive be removed from Class? If so how ?
- Would business-related solutions that may involve all parties in a system of rewards for good performance be effective? If so how should it function?
- Can the provisions of UNCLOS, as well as IMO and ILO Conventions be more effectively implemented? If so how?
- Is it time to look at means of ensuring compliance with IMO standards other than more regulations and more rules ? If so, what are they?
- How can the effectiveness of existing IMO standards be measured?
- Can the IMO play a more active role in international safety regulation? If so how?
- How can the disinterested elements of "the Responsibility Chain" be persuaded to assume accountability?
- Can a "Reward System" for responsible operators work?
- Port State Control – how to maintain its credibility?
- How can sub-standard registries and sub-standard classification societies be identified and effectively isolated?
- 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?

- How can flag States be assisted to implement the minimum standards required to operate a viable flag registry?

The one certain element in the overall picture is that there are no easy and universally acceptable solutions, and if sub-standard shipping is ever to be eliminated it will require an innovative and determined approach from the international industry.

One can also rest assured that, whatever proposals are made for change; those whose best interests are served by maintaining the status quo will vigorously oppose all such initiatives.

Participation in the work of the Commission is voluntary. Already there has been an encouraging and supportive response from industry organizations and Government maritime agencies across the world.

Whilst the costs of the Commission are being met mainly by the International Transport Workers Federation, a number of Maritime Agencies are contributing "in kind" by assistance with venues and local facilities. These will be clearly acknowledged in due course.

The Commission comprises:

The Hon. Peter Morris Chairman.

Mr James Bell

Prof. Moritaka Hayashi

Capt. Barry McKay

The Commission's program of public consultative meetings is:

Asia Pacific	Americas	Europe
24 July - 10 August 2000	First half of September 2000	First half of November 2000

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The Commission has complete independence in the determination of its work program, performance of its tasks, its decisions and the preparation of its report.