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Chair

**International Commission on Shipping
(ICONS)**

Speech Notes

**MARITIME LAW ASSOCIATION
AUSTRALIA & NEW ZEALAND**

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Thank you for the opportunity to participate in this 28th Annual Conference of the MLAANZ.

The theme of the Conference ‘Shipping: the New Generation’ embraces a wide range of matters that are critical to the future performance and safety of the international shipping industry.

This morning I want first to tell you something about:

- the International Commission on Shipping its origin and its composition
- the nature of the information we gathered
- the thrust of our recommendations
- the nature of the responses to our report
- and then to address what I see as emerging issues for the *classification* societies.

ICONS as we have become known, was initiated by the International Transport Workers Federation in 1999. It has funded most of the cash costs of the Commission. We received a cash contribution from the Maritime and Port Authority of Singapore and in the course of our work around the world we received considerable ‘in kind’ support from a wide range of government maritime agencies.

The Commission has complete independence.

It comprised myself as Chairman, Mr. James Bell the former Permanent Secretary of the International Association of Classification Societies [IACS]; Professor Moritaka Hayashi of the School of Law, Waseda University Tokyo who has considerable expertise in the Law of the Sea Convention and Fisheries following his many years of service at the United Nations and Captain Barry McKay formerly Chief of the Shipping Inspectorate division of Transport Canada.

Our task was to conduct an inquiry into ways in which universal standards can be better implemented to ensure that all international merchant shipping is safe and environmentally responsible.

We set out to identify problems associated with the safe operation of international shipping, to examine allegations of abuse, exploitation and ill treatment of seafarers and their families, then to develop practical solutions.

The Commission received 126 written submissions, almost all are displayed on our website www.icons.org

In the course of our visits to Asia/Pacific, the United States, Canada, Europe and South Africa during July to November last year, we met with more than 400 people.

People we met included ship owners and their organisations, ship managers, class, port State control authorities, trade unions, blacklisted seafarers and their organisation, representatives of seafarers’ families, seafarers welfare organisations, Protection and Indemnity Club managements, Ministers responsible for Shipping, and departmental representatives.

We met quality ship operators who treated their crews well, operated good ships, ran quality businesses and wanted to see substandard shipping eradicated. This group accounts for some 85 to 90 per cent of all international shipping.

On the other side, extensive information was provided to the Commission on the cheating of seafarers, their blacklisting, manipulation of family allotment remittances, reduced contractual compensation entitlements linked to 'quit' claims and general releases and placement fees for jobs.

The worst features related to denial of adequate food and accommodation, denial of medical treatment and rest time, physical and psychological abuses, sexual assault, abandonment and delayed or non payment of wages. Such practices are in clear breach of ILO conventions and most port State laws.

The major source of this information was the seafarers welfare organisations worldwide supplemented by organisations representing seafarers and their families.

There was remarkable consistency in what we were told, despite the differences in language, location and culture. The most frequent issues raised both in submissions and discussions were:

- criticism of the performance of classification societies and the failure of flag States to carry out their responsibilities
- ill treatment and underpayment of crew, lack of crew competency and crew availability, and the use of fraudulent certificates,
- the failure of the International Maritime Organisation (IMO) member states to support the Organisation in the performance of its duties,
- an almost unanimous call for full transparency of information in the industry
- criticism of the Convention on Standards of Training Certification and Watch Keeping - STCW - and the white list process
- the failure of governments, politicians, the general public and the media to recognise the vital role played by quality international shipping in the carriage of world trade, most of which is transported efficiently, safely and reliability by quality operators.

We sought to base our recommendations on practicality. We assumed rightly or wrongly, that there would be preparedness by quality operators, industry organisations and quality administrations to commit to and support action to eliminate substandard shipping and its customers from the market place.

The recommendations are in two main groups:

- those that address the human aspects of shipping. The treatment, welfare, competency, availability and training of crew members.
- Port State control activities

There are recommendations directed for action by flag States, coastal states, Shippers Councils, Classification Societies, the US government, the European Commission, IMO, ILO, P&I clubs, international shipping organisations and owners.

Full details of findings and recommendations of our investigations can be found in our report “*Ships, Slaves and Competition*”.

Emerging Issues for Classification Societies

Turning to Class, the ICONS enquiry established without doubt that Class is at the centre of safety and quality in shipping.

Almost without exception, submissions agreed that class was essential, had a vast technical capability and competence and unequalled information about most of the 55,000 cargo carrying merchant ships trading worldwide.

But, almost everyone agreed that class should and indeed must do better. Comments were also received that they were inept, inconsistent, inflexible, incompetent, and involved in conflicts of interest; that they concentrated on market share to the exclusion of their responsibilities, that some surveyors lacked qualifications and that class ought to carry greater liability for their actions.

Before we consider these issues, let us look at why the long held and mainly undisputed high reputation of class came to be so severely damaged?

One of the main reasons was the spate of bulk carrier losses in 1990/91 when it became clear that the ships were not up to the job and their condition was often poor to the point of being dangerous.

IACS, IMO, Intercargo, Bimco action combined with effective measures from some port State control authorities all contributed to a considerable improvement in this situation and a decrease in bulker casualties and loss of life. But expectations had grown and the ready acceptance that the class societies were always doing a proper job was tarnished.

At the same time the technical expertise within shipping companies declined as excessive competition squeezed freight rates and margins and in house technical superintendence and indeed maintenance suffered. The ownership pattern also fragmented.

Class was increasingly expected to provide the technical expertise. One class insider complained that dealing with (many) shipping companies had moved from co-operation to compliance to evasion.

With the increasing share of tonnage registered with Flags of Convenience, class also became increasingly involved in acting as “delegated agents” for flag States but was still paid by the shipowner, opening the door to claims of conflict of interest.

Then came the ISM Code for which class also sought delegation by flag States.

So, effectively, class became dominant in the oversight of regulations for merchant shipping but at the same time maintaining the public position (which is technically quite correct) that it is the shipowners responsibility to maintain the ship and that class surveyors only infrequently visit the ship and their reports are ‘a snapshot in time’.

Then came the ‘Erika’ loss off the French coast on the 12th December 1999 and the public and governmental ire over spilt oil on Brittany beaches. This brought to a head, in the way the Exxon Valdez had in the USA, the impotence of the IMO. That organisation has done a fine job reacting to various casualty trends by creating regulations and hopefully getting their 158 members to pass them into force.

But IMO does not have the power to enforce those regulations, which are left to the flag States who largely rely on class or on the emerging and ever stronger port State Control regimes. In fact as the need for action by IMO increased, its member states have determinedly denied it the power to enable it to act effectively.

The operations of the flag State Implementation Committee over the past nine years are a prime example of the neutering of the IMO.

‘Erika’ was one of several serious casualties which indicated that some class societies were not doing an adequate job in their primary responsibility to ensure that ships classed by them were, in respect of strength, structure and essential engineering systems, compliant with their own regulations or ‘Rules’ as they are known. This raised further doubts.

The European Union through the European Commission responded to public and political pressure and, in effect, demanded that the IMO pass further regulations to improve the routine inspection and survey of tankers (by class). This is an important ‘milestone’ in maritime regulation. The effective power is passing to regional groupings with the power to implement through their PSC network and their ‘consumer power’ requiring ships to trade to their shores. The United States has long practised unilateralism in port State control matters. The outbreak of similar unilateralism in Europe was to be expected and is likely to spread elsewhere.

This is all very well, but the emerging challenge and threat to class is the industry's lack of confidence in their oversight of quality. Class only has its integrity and reputation to sell and if these elements are doubtful those with the power to impact on quality and safety will question the independence of class societies and their almost total lack of external oversight – and begin to call for control of class.

To a degree such oversight exists with the better flag States as far as statutory regulation is concerned and also, to a lesser degree, to some forms of industry involvement in class management direction and strategy.

Class is recognised as being vital to the well being of the quality and safety of merchant ships but they are uncontrolled, independent, and do not work very well together for their industry segment's benefit

Yet class is vital and there is no other effective means of auditing the condition of ships – so class has to do an even better job. This is difficult when more and more regulations are being conceived, while the number, size and sophistication of ships continues to increase as the availability of trained competent, honest marine surveyors decreases.

The ICONS report recommendations recognised these facts and proposed some important actions by class:

- *The major class societies, through IACS, should pursue tougher policies by
 - *Adopting an unbending approach towards owners on conditions, subjects and extensions of class*
 - *Dealing with quality lapses by IACS members without regard to size*
 - *Objectively identifying sub-standard flag States and providing technical assistance to aid their development and to remedy their procedures, practices, policies and performance, failing which, delegated authority would be cancelled by all IACS members.**
- *The European Commission should establish a permanent classification society Oversight Committee to assess the performance of classification societies with representation from other States and industry groups.*
- *Classification societies should declare the design life of ships 'as built' with this designation to be maintained throughout the life of the ship or until major life extension work and surveys are undertaken.*
- *Flag States should rigorously apply the IMO Assembly Resolutions A. 739(18) and A.789 (19) concerning the monitoring of their Recognised Organisations (class societies)*
- *Flag States, where they do not have their own arrangements should delegate to their Recognised Organisations the task of checking the application of national laws concerning crew working conditions and labour contracts.*

If these measures were applied there would be a very rapid impact on the 10% to 15% of the world fleet, which is considered to be substandard – and on the conditions for the crew working on those ships.

Only Governments can pressure class to do these things and it remains to be seen whether they will.

Class needs to ask themselves what are governments most likely to do when the next Erika strikes and each day that passes brings us one day closer to that event. What will class do? Is their contingency plan ready? Or will they have so improved their collective performance that the next Erika will have been pushed well off into the future?

If class is unwilling to work more closely together (without fighting over market shares) and is unable to regain its reputation for integrity and is unwilling to break with the past and in effect become the defacto ‘policemen of the seas’ by taking on further (e.g. labour related) responsibilities, it seems likely that certain governments and regional groupings will impose control on class societies.

This would be a retrograde step as class would lose their independence and become inspectors dancing to the dictate of non-professional bureaucrats.

This, it seems, is a real danger and it is in the hands of class whether it happens or not. It also seems highly unlikely that the situation would be improved by governmental control of this nature - but, it's up to class.

Ship owners and their organisations were critical of the performance of class. However ship owners could be seen to have a level of responsibility for any lack of performance by some class societies. In reality numbers of ship owners sit on the boards or committees of class and are potentially in a position to influence the decision and practices of the class of which they are part.

In this regard ICONS has recommended [No 16] that shipowners, through their memberships of classification societies boards and committees, influence these organisations to cease to act as Recognised Organisations for consistently under-performing flag States.

I have not mentioned the subject of class society liability, which is certainly a matter of interest and concern to the Law Association. However, it seems some progress is being made by IACS and no doubt if there is not agreement a legal ruling will, eventually, impose a solution.

ICONS found that class was at the centre of quality at sea, that there are many challenges ahead for the societies and that for the good of the industry and those sailing on tens of thousands of ships, these challenges must be met and successfully achieved.

Let me conclude. The Commission having completed its task of inquiry and report has been reduced to two persons, namely James Bell and myself and its life extended until June 2002.

Our tasks now are to explain, brief, promote and publicise our report, monitor and encourage the implementation of its recommendations.

During the seven months since our report '*Ships, Slaves and Competition*' was presented we have been encouraged by the positive responses to the report.

Of course there have been a few who find little fault with the infamous practices in sub standard international shipping, people who regard the abuse and suffering of seafarers with its consequential impact on families and work performance as peripheral. In fact one organisation advised its members "in a global industry employing 1.5 million seafarers there will no doubt be isolated cases of abuse".

I have sought to give some you understanding of the work of the Commission and what I see as emerging issues for class.

The key words in eradicating sub standard shipping are **class and leadership**. By that I mean leadership from the quality class societies, the quality ship owners, their organisations, operators, cargo owners and charterers.

Finally I invite members of MLAANZ particularly maritime members, to utilise your relationships within Australasia and internationally to give leadership in the elimination of sub standard shipping.

