

MUA/ITF AUSTRALIA

SUBMISSION TO ICONS

Introduction

This paper should be read with conjunction with the documents attached:

- 1 ITF Submission to ICONS
- 2 Review of Australia Coasting Trade
3. MUA Submission on departmental review of Navigation Act 1912
4. MUA Submissions to inquiry into the Navigation Amendment (Employment of Seafarers) Bill 1998
5. ITF Australia Submission to Inquiry into AMSA 1996-97 Annual Report "Ship Safe"
6. MUA Submission to Inquiry into AMSA 1996-97 Annual Report "Ship Safe"

Since it came to power in 1996, the current Federal Government of Australia has consistently refused to accept and implement many of the recommendations which have come from Parliamentary Committees following Inquiries into Shipping and related issues. Particularly, where they involve the support of an approach of regulation or adoption of ILO principles. In fact, the Federal Government has done everything in its power to deregulate the local Shipping Industry. In relation to International shipping we have seen such "Thatcheresque" style acts as:

1. The denouncing of existing ILO Conventions
2. The introduction of policies that stipulate that ILO Conventions can only be ratified when compliance can be demonstrated with its provisions both in law and in practice. Such a policy has been rejected by a House of Representatives Standing Committee which was dominated by Coalition Government members (see "Ship Safe" Report).
3. Attacks on the Maritime Unions directly and indirectly

Background

There have been a number of worthwhile initiatives to promote quality shipping, which we have strongly supported. We believe that the term "quality" means more than mere compliance with international minimum requirements and requires meeting best practice standards. It being understood that best practice includes a culture which fosters continuous improvement in all aspects.

The Federal Government has relied heavily on the model that Port State Control is sufficient in itself. The Federal Government's approach is that port state control works. It does not. It merely mitigates the worst excesses of

unscrupulous sub-standard operators able to trade through the use of sub-standard flag states and the shortcomings of the self-regulated classification societies and we are grateful for that. In short port state control is the sticking plaster put in place as a result of the lack of political will at the international level to address the fundamental regulatory problems rather than merely seeking to treat the symptoms. As such port state control does not ensure the safety of seafarers.

Before turning to some positive ideas on how to ensure the safety of seafarers it would be helpful if we placed the failures of the current system and why we do not believe that port state control as presently constituted can provide that protection.

The failure of the current system of Port State Control

Port State Control is inherently prejudiced by the limited areas over which the port state can exercise control over a foreign flagged vessel by the various IMO Conventions. There is a presumption that flag state certificates should be accepted unless there are clear grounds to suggest otherwise. In a significant number of cases this rationale flies in the face of reality as it supposes that there exists a genuine flag state which has the wherewithal and the political will to exercise effective flag state control. It ignores the existence of the flag of convenience system (FOC) where the sole purpose of having a register is to earn revenue and in a growing number of instances the operation of the register, including the statutory functions, is franchised out to a commercial entity which is located outside the territory and jurisdiction of the flag state. In the most extreme cases it can even be bought and sold.

An OECD study on the *“competitive advantages obtained by some ship owners as a result of non-observance of applicable rules and standards”* clearly shows that there is a positive economic incentive in not complying with international minimum standards and the competitive advantage which the sub-standard operator gains are staggering. It therefore shows that the current port state control regime does not provide an adequate deterrent nor an economic disincentive to the operation of sub-standard ships.

While it is generally accepted that 80% of all maritime casualties are attributable to the human factor, or more loosely described as human error, insufficient attention is given to the reasons which lie behind such a statistic. All too often the underlying cause of human errors lies in poor design, absence of coherent training, to the employment policies on the part of employers and to the generally unsatisfactory situation found in the shipping industry where international standards tend to be established by the lowest common denominator and, even then, they are not uniformly enforced.

Indeed, the port state control systems have consistently been more comfortable addressing technical hardware aspects and less willing to address people centred deficiencies. We are all too aware of the very poor record the port state control system has in enforcing ILO Convention No. 147.

Port state control is dominated by maritime administrations which look toward the IMO and the instruments it has promulgated. They are much more comfortable with hardware requirements and less able to look at people aspects. If the human element is to be addressed it must be in a holistic manner and not just by addressing a few areas which fall within the competence of the IMO, for example training, ship management and fatigue. It is clear that the human factor and its implications for the safety of life at sea and the protection of the marine environment is multi-faceted and cuts across the competencies of the IMO and other United Nations organisations, for example the ILO.

Port state control is undertaken primarily through the establishment of regional systems.

Although the IMO invested a considerable amount of resources in endeavouring to putting in place a global port state control systems through extending the number of regional arrangements is it questionable whether such an endeavour is likely to be anything other than a paper exercise. How realistic is it to expect developing countries which do not have a functioning maritime infrastructure and which are struggling to feed their people, to provide health care and meet acceptable literacy levels to channel their scarce resources into the establishment of a port state control system? It also has to be said that some of the new port state control systems contain FOC countries which have deplorable flag state records.

Is it realistic to expect that a country which has repeatedly demonstrated a lack of capacity or political will to exercise effective flag state control over the vessels which fly its flag to be able to put in place a credible port state control system? Obviously, the answers to both questions is of course NO.

Therefore, effective port state control will for the foreseeable future be confined to a few regions and a few countries and, as such, it cannot protect seafarers employed within a truly globalised industry.

The culture of secrecy which still permeates the shipping industry prevents effective port state control as information which shows that a vessel is unseaworthy all too often remains confidential. The port state control officer therefore lacks the necessary background information.

The safety of seafarers can only be ensured if there is put in place an effective and functioning international regulatory system. It is unfortunate that there is still no such system in place. This framework can then be built upon by fostering a quality culture which seeks to adopt best practice. At the human element level, seafarers must be seen as being human beings and not as commodities whose services can be dispensed with when they are sick or injured or when some cheaper source of labour supply becomes available.

The severe competitive distortion and short term profit ethos which has been caused by the growth and proliferation of the FOC system has also had profound social implications and therefore far reaching consequences for the

future of the industry. The profession of seafarers has become casualised and cost cutting measures have worsened the conditions of employment and led to fatigue and stress among the ship's crew becoming a major problem.

The turn around times in ports have decreased to the point where many seafarers are not able to escape from the vessels and use the welfare facilities, if they exist at all, established for their benefit. At the same time manning levels on board ships have declined to the point where many vessels are operating with crew levels that are lower than designed for and which do not even provide sufficient personnel to permit adequate routine maintenance of items vital to ship safety.

The maritime industry holds more conferences than any other sector and there is a good deal of well meaning rhetoric expended.

However, this does not result in any action. The only thing which seems to change is the topicality of the issue, with the latest issues being quality shipping or the shortage of suitably qualified seafarers.

Quality shipping needs quality ships and quality crews. This will require the elimination of the mechanisms which permit substandard shipping to operate through the elimination of substandard flags. It will also require the abandonment of the short term ethos and short term cost savings which is too prevalent in some sectors of the shipping industry.

Quality shipping requires commitment from all those involved and the payment of adequate freight rates.

If we are to improve the competency of seafarers and ensure that there are an adequate number of suitably qualified seafarers the professionalism of seafarers needs to be restored.

Being a seafarer needs to be made an attractive option with long term career prospects and the elimination of the abuse and exploitation which is prevalent today.

In short, seafarers need to be treated as human beings and to be able to freely exercise their inherent human and trade union rights.

The industry needs to be regulated in a rational manner, which will promote quality shipping and ensure universal compliance with international minimum rules and standards. It should no longer be possible for any country to enter the registration business and, if it lacks a maritime administration, to franchise out it's so called flag state sovereignty.

The current practice whereby the owners select a classification society which is then empowered to act as a recognised organisation by the flag state and issue statutory functions has to end. It is clear that the self regulatory approach has not worked.

This is demonstrated by the continuing unacceptable loss of bulk carriers through catastrophic structural failure and the fact that in the 21st century tankers can break up while at sea.

This year we have seen the Maltese flagged ERIKA disaster, the sudden discovery of the problems with the ERIKA's sister ships and the loss of the Panamanian flagged LEADER L.

The safety of seafarers will only be ensured when all flag states meet their international obligations.

Article 94 of UNCLOS sets out the duties of a flag state and requires that every state shall effectively exercise its jurisdiction and control in administrative, technical, social and labour aspects over ships flying its flag. It is therefore clear that the FOC system itself is inherently flawed and cannot deliver compliance.

The safety of a ship is intrinsically linked to the working and living conditions on board. That will be the case for as long as ships are manned by human beings. Safety does not only depend on the owners maintaining their vessel in prime condition, but in the owners treating their crew fairly. Tired, poorly fed, mistreated, unhappy seafarers are detrimental to the safe operation of a ship. No matter how good the safety proceedings on board, as per ISM Code are, an unhappy crew would not adhere to them! For the ISM Code does not regulate the welfare and living conditions of seafarers at sea.

International law requires that there should exist a "genuine link" between the ship and the flag state. Although, the "genuine link" is not expressly defined there is an implicit requirement for at least an "economic link". This means that there should exist within the flag state a substantial entity which can be made responsible for the actions of the ship and on which penalties of adequate severity can be levied so as to discourage violations of applicable international minimum rules and standards, wherever they occur.

On this basis the FOC system as a whole is, after all, little more than an institutionalised system for the effective negation of the requirements expressly provided for in international law. The ability to flag hop, the inherent problems in enforcing administrative sanctions in a third world country and the difficulties in extradition make clear that the FOC system cannot deliver compliance. That is not to deny that there are also substandard national flags, the port state control detention statistics clearly indicate that these exist.

The informal and frequently corrupt system by which seafarers of many different nationalities are recruited by manning agents to work in international shipping is a disgrace and prejudicial to ensuring the safety of seafarers.

Contrary to ILO standards it is extremely common for seafarers to have to pay bribes to get jobs. Internationally the trend in respect of the engagement of seafarers is that that engagement is for the length of their current contract of employment. The length of that contract may vary from three to twelve months

and there are even documented instances of seafarers staying on vessels for much longer periods of time rather than go home and run the risk of not being paid wages owed or failing to obtain further contracts.

The seafarer has to rely on his relationship with a, or a number of, manning agents for his ongoing employment. This system in itself assists unscrupulous manning agents to charge exorbitant fees for the engagement, sometimes in excess of the first three months of a nine month contract. This practice alongside that of the deduction of a security bond from wages earned, highlights a portion of the lack of equality suffered by seafarers engaged in the FOC system as opposed to workers generally.

It is normal for such seafarers to be threatened with dismissal or even criminal sanctions for exercising basic human and trade union rights.

It is normal for them to be forced to sign loyalty letters or indemnity letters or to pay loyalty bonuses to the manning agent to be forfeited in cases of “bad behaviour” and normal for them to be blacklisted if they complain about their conditions or treatment on board.

It is normal for them to be forced to sign false wage accounts. In fact every day, far too many people connected with the shipping industry seem ready to tolerate a system in which lying, and cheating is a way of life and in which seafarers who are desperate for a job are too frightened to complain about anything – even practices which threaten the safety of their ship.

The ability to obtain original certificates (for both officers and ratings) without having to undertake the training. For example, in the Philippines it was enough to pay the fees for the course and then turn up to collect the certificate without any requirements to attend the lessons. When the system in the Philippines was tightened to try and curtail cheating the pass rate dropped from 80% to 10%! It appears that this particular problem has shifted from the Philippines to other countries such as Russia, Ukraine, Syria and Lebanon.

In India the way to obtain certificates without training is by enrolling as a “passport holder” onboard one of many FOC ships which take any worker as long as they come cheap. The placement of so called “passport holders” is done through manning agencies which charge exorbitant amounts of money. Once the person has served a certain period onboard they can apply for an FOC certificate through the Flag State of the vessel who generally has never seen the applicant, let alone tested their competence!

Certification in open countries can be easily investigated but it is much more difficult to find out the training and certification practices in the newer labour supply countries such as Burma, Vietnam, China and the Maldives all competing fiercely in the provision of cheap FOC crews.

As it is widely accepted that the human element is central to the safety of life at sea, seafarers need to be:

- protected from exploitative and corrupt employment systems;
- protected from blacklisting and double book keeping;
- allowed to exercise their inherent human and trade union rights;
- treated as valued employees;
- given decent pay and working conditions and reasonable working hours;
- given access to good recreation and welfare facilities at sea and in port;
and
- protected from being abandoned in foreign port.

Seafarers also need an international regulatory regime which works in practice and ensures that flag states meet their international obligations and that certificates issued by classification societies, either in their capacity as agents of the ship owner, or as a recognised organisation acting for the flag states do in practice reflect the actual condition of the ship.

It is therefore encouraging that the 1999 Singapore Quality Shipping Seminar adopted the following as one of its conclusions:

“Many of the key note speakers proposed that the promotion of quality shipping required a balance of the carrot and the stick. In the discussion on possible measures of accountability or penalty for sub-standard ships, it was suggested that there was a need for a new international instrument that laid down the minimum requirements and obligations of a flag State. Those who did not fulfil these minimum requirements could be black listed by others in the industry such as the class societies. Port States could also consider more inspections or even ban ships under blacklisted flag States from their ports.”

The system that has been allowed to evolve in which a growing number of flag states regard having a register solely as a method of earning revenue must be ended. The Secretary General of the International Maritime Organisation (IMO) stated in his 1994 World Maritime Day address that:

“We in IMO believe that the shipping community can no longer accept what in effect amounts to a double standard in implementing safety and anti-pollution measures. We believe that any country or company which wishes to operate in international shipping must obey the rules which this Organisation [IMO] has developed over the past three decades. If it is not prepared to do so then it should be prohibited from competing with those who are.”

In terms of port state control that means that it is time to be more proactive and to assert the inherent and sovereign rights of port states and to take more resolute political action without giving a disproportionate emphasis to flag state sovereignty.

In short it is time to complement the current system of port state control by port state denial for vessels which fly the flags of sub-standard flag states.

Approach of the current Federal Government

The current Federal Government has:

1. Introduced a policy of “compliance” before adoption which has resulted in the failure to adopt any new ILO Conventions since the Government came to power (see above);
2. Denounced existing conventions without ratifying any replacement ILO Conventions (15,21,57,76,93 and 109);
3. Attempted to remove the rights of seafarers under the guise of a “modernisation” programme by introducing the Navigation Amendment (Employment of Seafarers) Bill;
4. Attacked the Maritime Union of Australia and the Shipping Industry by removing subsidies to the local Shipping Industry and thereby attempting to destroy cabotage and increasing the use of Flag of Convenience vessels through the increase in the use of Single Voyage Permits;
5. Produced a flawed and poorly reasoned document on the Navigation Act which demonstrates a lack of understanding of issues vital to the Maritime Unions, their members and the Shipping Industry
6. Promoted the concept directly and indirectly that regulation is unnecessary;
7. Refused to follow central recommendations of Parliamentary Committees including those that promote a global approach to regulation of the Shipping Industry.

The Maritime Union of Australia and the ITF have addressed the approach of the Federal Government in the attached submissions.