

FINAL REPORT

27th July 2005

Review of responses to Ships, Slaves and Competition

INTRODUCTION

Since the ICONS report **Ships, Slaves and Competition** was launched in March 2001, the world has seen a substantial change in the way shipping is viewed. The tragic events of September 11 2001 in New York have focused attention on global terrorism and the vulnerability of shipping and maritime infrastructure to terrorist threats.

In response, the IMO member states introduced amendments to SOLAS requiring ships and ports to implement heightened security precautions and response planning.

This congruence of interests to make shipping more secure was unprecedented since governments gathered to consider responses to the loss of RMS Titanic. Ship security is the critical issue in the post 9/11 era; a secure maritime environment rests on 4 pillars:

- 1 **Transparency**—Knowing who really controls and who benefits from a ship – there has to be open accountability of ship operators and beneficiaries—how else do we follow the real path to secure shipping?
- 2 **Authenticity** - of identity of crew and qualifications.
- 3 **Control** - Identification, licensing and regulation of labour suppliers.
- 4 **Supervision** - Effective flag state supervision of compliance with international conventions that now include ISPS.

Whilst the amendments to SOLAS, particularly involving ports, can be seen as positive, helping to stabilize the regular flow of goods across the world, their impact on seafarers has reduced the status of the seafaring profession even further.

Seafarers now find increasing restrictions on their employment with increasingly stringent (and sometimes questionable) visa requirements, the reduction in their ability to transit certain countries to and from their ships and major impediments to their access to shore leave and family communications, notwithstanding the development of the new ILO Convention 185 and IMO MSC circulars which sought to prevent the denial of shore leave.

A worrying trend in this is the growing misuse of the ISPS Code provisions for setting security levels on board ships to deny access to welfare personnel.

Owners are faced with substantially increased demands for ship security, often with no basis other than race or culture; with the result that seafarers from certain countries now face unemployment simply because they have non-Christian names or they come from countries with an Islamic culture.

The worldwide demand for greater transparency of shipping operators and in shipping operations created opportunities to eradicate sub standard shipping and eliminate rogue-manning agencies.

Although ILO Convention 185 provides a basic and balanced approach to confirming the identity of a seafarer and verifying that the person concerned is a seafarer, it was anticipated that these moves would lead to the elimination of falsification of qualifications and identities and help bring an end to the abuse and exploitation of seafarers, particularly those from developing countries.

However, there is no link to qualifications as ILO 185 is issued by the States of nationality and any flag State endorsements (as required for officers certificates) would have made the exercise questionable.

Therefore, for most abused seafarers it is business as usual and in fact for some, conditions have worsened. Four years later, with the ISPS Code entered into force (**1 July 2004**), the initial security measures have been watered down to protect the continuing secrecy covering the control and beneficiaries of international shipping.

There has been considerable work on ownership and transparency; the OECD Maritime Transport Committee (MTC) issued a number of reports on ownership and control and there are United Nations General Assembly Resolutions addressing the "genuine link". All to no avail; in fact, in spite of its careful, considered and objective work in this area, the OECD MTC committee appears to have been moth-balled with its direct funding withdrawn. The industry cannot afford to lose research capability of the quality provided by the MTC.

There is a clear link between transparency and security. Ports and their surrounding populations cannot expect secure and safe shipping without transparency – they go hand in hand.

Additionally, there appears to be a growing tendency to criminalize seafarers. The disgraceful detention of the Karachi Eight in Pakistan; the gross abuse of human rights suffered by Captain Mangouras of the Prestige; the destruction of the career of the Master of the Erika, all as a consequence of anonymous and unaccountable management decisions serve to illustrate the damage a misguided political response can do to the industry.

The absence of any meaningful actions by the flag States involved, such as actions to seek the prompt release of the crew in the International Tribunal on the Law of the Sea (ITLOS), as provided by Article 292 of UNCLOS? Why did they not exercise their rights as Flag States to appeal to ITLOS under Article 292?

The SOLAS Convention clearly spells out the responsibilities of masters and the obligations of companies to allow Masters to exercise their professional judgement. However, the Convention is silent on the responsibilities of the anonymous managers ashore who make decisions beyond the control of the Master and who then walk away, leaving the Master to face humiliation, vilification and gaol as a consequence

. In the ICONS inquiry, a comment was made by one participant that a sub-standard ship is the result of a conscious decision by management to avoid compliance.

Often, the consequences of such decisions do not have immediate effects; there is a latency period with the result that a master may find himself having to deal with a situation whose roots are in a decision made several voyages earlier. The absence of any meaningful requirement for Flag states to conduct proper root cause analysis of incidents and the propensity of public officials to seek scapegoats to deflect attention from their own policy shortcomings only serves to compound the problem.

The abandonment of the principles of MARPOL by the European Transport Ministers show that, in terms of seafarer welfare or respect for the profession, little has changed. A bright spot here is the recognition by the IMO Council of the issue and its potential impact; the Council will now, following an initiative by India, consider means to ensure the fair treatment of seafarers.

It is also heartening to note the combined responses of the various industry sectors, labour and employers, in addressing this issue; all that is now needed is for the regulators to address the matter in an informed and pragmatic way, replacing poor policy and ill-informed reaction with a careful, technically effective response to incident management.

In this sense, the system for incident control adopted by the UK following the Sea Empress oil spill in Milford Haven may prove an effective model.

The majority of the world's trade is carried by sea, and the safe, secure, efficient and effective operation of maritime transport is critical to global prosperity. Most of this cargo is carried safely and efficiently in high quality ships crewed by well-qualified professionals and managed in compliance with the international conventions.

Yet, as a consequence of the actions of the relatively few who choose to avoid their responsibilities, those who crew the ships and move the cargoes are often viewed with suspicion and contempt. These attitudes severely impact on the industry's ability to attract and retain personnel. Its workforce is regularly vilified, criminalised and portrayed as socially irresponsible.

Not surprisingly the industry has little attraction for job seekers. This, coupled with the growing threat of piracy and armed robbery attacks, is leading to a crisis for the retention of skills and the stability of long-term labour supply; given the long lead-time to qualify a senior officer.

The seafarer is an easy target, a person with no political or economic status, a ready scapegoat. A fully transparent system would enable responsibility to be sheeted home to the real culprits, the owners and operators who wilfully decide to run sub-standard ships and avoid their responsibilities.

The current system provides fertile ground for rogue manning agents, owners, operators and some administrations that are corrupt and exploitative. More worrying is that such a system is not only open to abuses of personnel; it presents almost endless opportunities for lawlessness and terrorism.

Many things have changed for the better; the involvement of Ports in the security system, closer scrutiny of charterers, better controls over certification, easier access to information on Flag State performance and moves to enhance construction standards are all positive moves to improve conditions.

The ICONS report made a number of recommendations to address these issues, this final report reviews those recommendations and considers the progress that has been made.

1. PROGRESS IN IMPLEMENTATION OF THE ICONS RECOMMENDATIONS

Crewing, certification and employment practices

The recommendations in this group focused on issues related to the employment of the seafarer, the abolition of fraudulent certification and achieving a better understanding of the nature, extent, location and duration of work related injuries, illnesses and deaths through improved statistical information on injuries and fatalities.

The impact of multiple inspections on crew workloads and the social and economic effects of non-payment of wages and abandonment were also addressed.

- The issue of injury/fatality statistics remains intractable; P&I Clubs keep some data, but in a differing range of formats. The function is essentially a Flag State responsibility and the failure to ensure accountability enables many ship managers to conceal exploitation of sick and injured seafarers.
- It also denies management and government agencies the opportunity to measure the occupational health and safety performance of industry and company sectors.
- This is clearly a task for the IMO Flag State Implementation Sub-committee to require effective accident reporting to be included as one of the measures of Flag State performance. This would require agreement on the nature of the data to be collected and reported. Alignment with the ILO data on occupational injuries would enable comparisons of performance against a range of industries and established benchmarks.
- In its assessment of Flag State Performance, the ICS/ISF could add an indicator on occupational health and safety performance to their performance criteria. Some data is immeasurably better than no data and the process could be advanced over time. The new shipping roundtable website (www.shippingfacts.com) has a section on safety performance that is a small initial step, comprising selected tables from a P&I club on claims performance.
- One issue worthy of further investigation is the practice, by some companies, of downplaying the severity of incidents and accidents so as not to produce an impact on their lost time injury data. Oil majors in particular require this information on safety performance and companies with perceived bad records find it difficult to get contracts.
- The consequence is not improved safety as intended, but concealment and masking of the seriousness of incidents. Clearly, this is an area that cannot be left to the market. It is obvious that this requirement by some charterers has

had the reverse effect and by linking safety performance to commercial advantage, encourages falsification of records.

- The practice also militates against accident prevention by preventing access by others to the details of an event; a company that has effectively denied an incident has taken place is not likely to pass details of it on to either other elements of their fleet or to the administration. The absence, in most administrations, of no-blame incident reporting (or indeed any reporting at all) and effective incident investigation, contributes greatly to this practice.
- In a related sphere is the apparent practice of under-reporting the magnitude of an incident (or breaking it into a series of smaller ones) in order to bring it under the P&I deductible. This suggests strongly that industry OH&S performance is much worse than the available data indicate. It also opens the door to abuse of seafarers in that in the absence of effective reporting and investigation, an injured seafarer may not be properly treated medically or repatriated following an injury.
- Intertanko, in its Annual Report 2003, has recognised the need for better data, stating:

INTERTANKO is, however, still concerned that there is not better information on shipping incidents .It would benefit the industry if incidents were more systematically reported and better analysed to find their root cause. Having achieved such an impressive tanker safety record, a more methodical approach and a wider understanding of the background to those incidents that do still occur is necessary to improve that record even further.
(Intertanko, Annual Report 2003; State of the Industry)
- The IMO has, through its STW Sub-committee (STW 33, 34, 35), established a data exchange system, providing contacts for administrations to query and verify seafarer's certification. The IMO reports (STW 35/5) that the number of certificate verification queries using the system averaged 574 per month in 2002/3, indicating both the growing usage of the system and the magnitude of the problem of fraudulent or bogus qualifications.
- In addition to the new ILO Recruitment and Placement of Seafarers Convention, 1996 (No. 179) that addresses legislation concerning manning agents, work is also being done through APEC to compile a database of manning agents and employers in five APEC economies; China, Hong Kong China, Indonesia, Philippines and Singapore. Details of the study can be found at the following website: <http://www.sma-accreditation.org/index.html> . The study will also examine means by which manning agencies can be accredited.
- The ISF, through its Guidelines on Good Employment Practice explicitly support the rights of seafarers to join a local union of their choice (in accordance with ILO Freedom of Association Convention 1948 (No187), and

the principle that unions should be able to affiliate without interference. There has been no move on the part of Governments to take up the recommendation on licensing of manning agents and blacklisting, although the APEC study mentioned above may address this in its proposals for accreditation and Service Charters.

- The issue of manning agents and their recruitment and crew welfare practices is a major one, the ICONS report highlighted the great need to reform and regulate this area; the need is still there and just as great. Added to this is the impact on security of a plethora of unregulated, unaudited and unaccountable providers of marine labour – who are they? What is the money flow? Who pays whom for jobs? Who sets labour rates? What grievance mechanisms are available? How do maltreated, victimised and defrauded seafarers obtain redress? How are the perpetrators to be brought to account?
- From a maritime security perspective, a critical element is to be able to establish a seafarer's bona fides; this clearly extends to the others in the labour supply chain. The new ILO Convention 185 does this and balances security against human rights. However, it is dangerous to focus solely on the seafarer; the manning agent should be subject to at least the same level of scrutiny.
- Labour relations are also still a considerable problem, particularly access to dispute resolution and grievance systems. Although this issue is covered by the ISF Guidelines on Good Employment Practice, and instruments such as those provided in Philippines POEA contracts exist, grievance mechanisms are a rarity.
- Some employers adopt laissez-faire procedures whereby seafarers with disputes or grievances are ignored and allowed to complete their current contract (without access to advice and assistance) and are never re-employed.

By this means, claims for unfair dismissal are avoided, repatriation and replacement costs are not incurred and the employer can demonstrate that the seafarer has received all due entitlements, making complaints hard to sustain.

- Perhaps it is time that employers, seafarer's organisations and unions established a means of warning job seekers of the questionable quality and integrity of some manning agents and employers. .
- Progress has been made; through the ILO Joint Maritime Commission which initiated work on a new ILO Convention on Seafarers –the work was done by a High Level Tripartite Working Group comprising labour, business and Government.

This new Convention was discussed at the September 2004 meeting of the ILO Preparatory Technical Maritime Conference with a view to obtaining a final version of the new Convention for adoption at the 94th Session (Maritime) of the International Labour Conference in the spring of 2006. Details of the new Convention can be found at:

<http://www.ilo.org/public/english/standards/relm/maritime/index.htm>

- The problem of multiple inspections does not appear to have been addressed in any meaningful way; indeed it is arguable that, with the implementation of the ISPS Code, another element has been added. The continuing overburden of multiple inspections on senior ships' officers remains a potential hazard to maritime safety.

However, it is to be noted that Singapore has announced a review of its safe manning system with a view to taking into account the increased workloads imposed by, inter alia, the ISPS Code. But in practice and despite the ISPS requirements and the revised principles of safe manning – there are few instances of the crew complement being increased to perform the additional work and where it has happened it is the company rather than the flag State that has taken the initiative.

- The Nautical Institute is also considering the manning issue. Given the tight margins and high commercial pressures in shipping, it is surprising that on efficiency grounds alone, there has not been a more concerted effort to address this issue. From a security perspective, a multiplicity of inspections means a large number of inspectors, all of whom must be accredited, identified and granted access to facilities at varying levels; not conducive to effective control.
- It may be that the importance of this issue was overstated in submissions to the ICONS Inquiry.
- The Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers has had (in 2001) the following resolutions adopted by the IMO:

Resolution A.930 (22) on Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers

Resolution A.931 (22) Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers

Implementation discussions on these two resolutions are on going. It is curious to note that many coastal states require proof of insurance for pollution, but not for seafarer welfare.

There is also evidence that they are not being implemented and that, in the Philippines, the P+I Clubs still use quit claims (with all the associated abuses of seafarer's rights they entail) rather than the model release form annexed to Resolution A.991 (22).

Fishing and Cruise Shipping

The next group of recommendations addressed the human issues arising from employment in the fishing and cruise shipping sectors of the maritime industry.

- Sadly, in the case of cruise ships, no progress has been made in this area; indeed the lot of crews serving on USA based cruise ships has been made harder following '9/11' due to variations in visa requirements for entry to, and transit of, the USA. These variations, specifically the abolition of the crew list visa (despite sustained, rational and logical arguments to the contrary) impose severe hardships on crew members and open the door to further exploitation through sharp practices in recruitment and documentation.

These actions are seen by many in the industry as irrational and serving no purpose. They cause hardship and distress to seafarers and create fertile grounds for resentment and dissent.

- Recent reports indicate that recruitment scams in the cruise shipping industry are as prevalent as ever and little has been done to improve the standards of work on board cruise ships. The ITF issued a warning in May concerning a scam in Uganda; a search of the World Wide Web reveals a large number of sites that fraudulently offer employment on cruise shipping. Fairplay Magazine recently published an extensive investigation into cruise ship recruitment fraud.
- Cruise shipping represents a soft target for maritime security as the tragic incident of the Achille Lauro illustrates. Given the large numbers of personnel employed aboard cruise ships, it is apparent that the issues of recruitment, illegal immigration and ship security are substantial and in strong need of resolution.

It has to be said that, in this context, the sometimes primitive living and working conditions experienced by seafarers on cruise ships are not conducive to a safe and secure cruise environment. Little appears to have been done to address the living and working conditions of cruise ship crews or the infamous practices of some manning agencies.

- IMO has taken an active stance in addressing the lack of acceptance of the Torremolinos Convention and STCW-F. A series of regional seminars has been approved and is currently underway, with seminars in South Korea, Africa and Eastern Europe completed and more planned for other areas (MSC 77/20/1). In its June 2004 Council meeting, the IMO agreed to take this matter further, continuing its efforts to gain acceptance and to investigate the ratification mechanisms for the Torremolinos Convention and protocols.
- Additionally, work is being done within IMO to revise the Fishing Vessel Safety Code and Voluntary Guidelines to bring them into alignment with the Torremolinos Protocol. This work was completed in September 2004.
- It is disappointing that generally people are told much more about the loss of fishing stocks than they are told about the suffering of the fishermen on board the boats. In the case of illegal, unregulated and reported fishing [I U U] the oppressed fishermen usually from developing countries are portrayed often as the villains rather than the victims while the beneficiaries hide behind a rented offshore flag. The OECD, in its new report on IUU fishing (Fish Piracy: Combatting Illegal, Unreported and Unregulated Fishing) notes:

There are important social costs associated with IUU fishing as it affects the livelihoods of fishing communities, particularly in developing countries, and because many of the crew on IUU fishing vessels are from poor and undeveloped parts of the world and often working under poor social and safety conditions. (OECD, September 2004)

The report also calls for greater transparency of ownership and involvement by flag states in the regulation of fishing.

- In a further development, the ILO, at its 92nd Conference in June 2004, released a new report (V2) on the development of new instruments to revise the existing labour standards for the fishing industry:

The new standards would provide broad coverage for all those working in the fishing sector, including the self-employed and those paid on the basis of the share of the catch; have the flexibility to ensure wide-scale ratification and implementation; and include new provisions on safety and health to reduce the high rate of accidents and fatalities highlighted in earlier ILO reports. The standards would also include new provisions on compliance and enforcement of the standards, strengthening the role of both flag States and port States. (ILO Press release Tuesday 15 June 2004 (ILO/04/30))

- The ILO process seems to be bogged down with little progress since the press release.

- IUU fishing also represents a substantial security threat; in addition to its impact on fish stocks, conservation and the marine environment, there are matters of crew recruitment, training and welfare that seem to have slipped through the net.
- Fishing boats are excluded from the IMO ID number scheme, raising issues of transparency of ownership and operation. Without a properly constituted regulatory regime, little can be done to prevent pollution, over fishing, crew abuse, accidents and injury. Fishing has an appalling safety record.
- Fishing also presents security risks. Without regulation, surveillance is difficult, opening the door to a range of activities such as smuggling (fishing boats are often used for people smuggling), of drugs, arms and other contraband.
- Curiously, fishing boats are not among those regulated in the new SOLAS Chapter XI-2 or the ISPS Code; another missed opportunity to bring them into the international regime.
- The entry into force of STCW-F, Torremolinos and the adoption of the new ILO labour standards would provide a regulatory framework for fishing that, in conjunction with the enforcement of fishing conservancy agreements and controls on market access for the catch, could lead to a well-regulated industry.

Owners

The recommendations concerning owners called on them to promote ethical practices and quality standards in employment and operations

- and to take a tougher attitude towards identifying sub-standard ships, particularly through their influence with Classification Societies.
- The increasing availability of information through EQUASIS is encouraging and IACS members are providing more information.
- The Round Table of shipping industry organisations, the ICS, ISF, BIMCO, Intercargo and Intertanko has also taken steps to further the spread of information through publication of Flag State performance data on the ICS/ISF website: www.marisec.org/flag-performance. Unfortunately, the data at the time of writing were not current; the last posting appeared to be June 2004, which detracts somewhat from its usefulness. Additionally, the criteria are very narrow and IMO based, in contrast to the UN compendium of flag State obligations, as set out by the General Assembly (A/59/63).

- The data are also limited in that they do not offer operational performance information (casualties, OH&S, PSC and similar statistical information) that would provide a more complete picture.
- Shipowners are sensitive to cost pressures and, notwithstanding the upturn in rates of the last 12 months or so, indications are that the implementation costs of ISPS Code compliance by ports will be passed on to shipping, (a recent Australian study has shown this to be over \$1 billion) forcing owners to further reduce costs.
- Given the current high oil prices, this means that there may be a renewed push to drive down crew costs which can only be achieved by seeking cheaper crews or reductions in numbers of crew. This would contrast unfavourably with the record profits and new building as shipowners continue to make big returns in the current economic climate – see OECD consultants report to the OECD Workshop on Maritime Transport, November 2004.
- These constant cost pressures conflict with the critical need for competent, committed crews to ensure ship security. In the most buoyant shipping markets for decades, if ever there was a time to eliminate exploitation of crews, this is it.

Flag States

The recommendations on flag States addressed the issues of the monitoring of Recognised Organisations and the tasks associated with the application of national labour laws to crew contracts.

- The United Nations has addressed the issue:

In its resolution A/58/240 on oceans and the law of the sea, the General Assembly requested the Secretary-General, in cooperation and consultation with relevant agencies, organizations and programmes of the United Nations system, to prepare and disseminate to States a comprehensive elaboration of the duties and obligations of flag States, including the potential consequences for non-compliance prescribed in the relevant international instruments. (UN A/59/63)

The resolution, *inter alia*, contains the following:

38. *Once again urges* flag States without an effective maritime administration and appropriate legal frameworks to establish or enhance the necessary infrastructure, legislative and enforcement capabilities to ensure effective compliance with, and implementation and enforcement of, their responsibilities under international law and, until such action is undertaken, to consider declining the granting of the right to fly their flag to new vessels, suspending their registry or not opening a registry;

39. *Welcomes* the report of the Consultative Group on Flag State Implementation, and invites all concerned organizations to disseminate it widely;

40. *Also welcomes* the progress made by the International Maritime Organization on the establishment and further development of a voluntary International Maritime Organization member State audit scheme, in such a manner as not to exclude the possibility in the future of it becoming mandatory;

41. *Requests* that the Secretary-General report on the study undertaken by the International Maritime Organization in cooperation with other competent international organizations following the invitation extended to it in resolutions 58/240 and 58/14 of 24 November 2003 to examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over ships flying their flag, including fishing vessels, and the potential consequences of non-compliance with duties and obligations of flag States described in relevant international instruments, to the sixty-first session of the General Assembly;

42. *Encourages* relevant international organizations to further develop ideas to devise means of discouraging owners and operators from non-compliance with the requirements imposed by flag States in carrying out their duties and obligations under relevant international instruments;

43. *Welcomes* the progress by the International Labour Organization on the preparation of a consolidated maritime labour convention;

- The IMO has established its Member State voluntary audit scheme. It may be a useful beginning but as it is voluntary and there are no mechanisms to deal with non-compliance or avoidance, its value is questionable.
- Tonga dropped its international registry following security and other concerns as a result of public pressure, rather than any international regulatory sanctions. Not all States are as responsive to public opinion as Tonga. Others, undeterred by, or insensitive to these pressures, have entered the ship registration business.
- Without teeth, the voluntary audit scheme is just another instance of a system operated by those who least need it and ignored by those who need it most.
- It is also to be noted that the introduction by a number of states of new taxation regimes (such as tonnage tax) has seen a return of some shipping to national flags, but the benefits to be obtained from avoidance still outweigh the penalties. The excellent work of the OECD Marine Transport Committee in identifying the costs and profits of non-compliance should be acknowledged in this context.
- Tonnage tax regimes in themselves will not reduce the usage of non-domestic flags; to do this work must be done on the financial structure of the industry. This means looking at capital flows, ship financing and the ease of access to finance, returns on investment, construction costs; depreciation, taxation, the role of insurance, and so on. From a risk management perspective, it is difficult to see the logic, economic or otherwise, in operating a capital expensive asset with the cheapest possible labour and with no commitment to the maintenance of that asset other than meeting a minimum standard.

- Offshore registries exist because domestic conditions drive owners to avoid taxes and maximise margins through non-compliance with the Conventions and by cutting the costs of labour and maintenance. The march off-shore then leads to the bizarre situation whereby the largest contributors to the IMO budget are, for the most part, developing countries and a nation's shipping interests are represented by officers of a commercial organization domiciled in yet another country.
- In this context, it may be fruitful for Governments to work towards creating conditions favourable for their domestic flags, so eliminating the incentive to move offshore.
- Most developing countries do not have adequate systems of labour laws, occupational health and safety regimes or the ability to adequately investigate and police incidents within the country, let alone off-shore, leaving seafarers sailing under these flags unprotected and without adequate recourse to legal remedies for maltreatment – on the high seas it is the flag State that has exclusive jurisdiction; even developed States cannot exercise extra territorial jurisdiction. Recognised organizations play a role with respect to the IMO Conventions, but the human issues are neglected.
- Just as there are international mechanisms for arbitration on trade and legal issues, perhaps a similar mechanism, under the auspices of a joint IMO/ILO body could be set up to deal with seafarer's rights and grievances. There may be a greater role to be played in this area by, for example, the International Tribunal of the Law of the Sea, although this is arguable.
- Monitoring of recognised organizations has, with the introduction of the ISPS Code, become even more important. Many of them, responsible by delegation for ship quality, are also deeply involved in security assessment, which begs the question, without an adequate flag State oversight, who watches the watchers?

Classification Societies

The group of recommendations concerning Classification Societies called for better and closer compliance with Class Rules, the quality performance of IACS members, external oversight of Class performance and the design life of ships.

- The fallout from the 'Erika' and 'Prestige' casualties has led to greater disciplines within IACS. Technical assistance programmes have been offered and implemented for sub-standard Flag State administrations.

- With the establishment of the European Maritime Safety Agency, the European Commission adopted a much tougher attitude toward Classification Societies. Policy is still evolving in this agency, but it has a section whose mission is to conduct assessments of the performance of Classification Societies recognised by the EU (Directive EC 94/57) as well as the quality of work of other related inspection bodies. Details can be found at:

<http://www.emsa.eu.int/end173d008.html#>

- While the adoption of the design life recommendation has not been achieved, common Rules for structures are a welcome development.
- IMO member states have also commenced a dialogue with IACS on the development of goal-based standards for ship construction. A paper to the IMO Maritime Safety Committee (MSC 78/6/2) by the Bahamas, Greece and IACS outlines the concepts. Essentially, the standards will consider three tiers or desired elements; structural safety objectives (Tier I), functional requirements (Tier II) and verification of compliance criteria (Tier III). Non-prescriptive in nature, goal based standards may provide a more flexible, but equally rigorous approach to ship construction.
- With the adoption of goal based standards, there will be much more pressure on Class to perform.
- A further issue was raised in the previous section, that of the role of Class as Recognized Security Organizations and the need for flag States to undertake security vetting of Class Societies and their employees.

Port States

The recommendations in this group addressed issues of the level of inspection coverage, reward for quality performance, and the use of the IMO Self Assessment forms and the adoption of meaningful penalties for non-compliance.

- In its new policy directions, the Paris MOU is now moving toward a more targeted approach to ship inspections. In its meeting of 17 May 2004, the MoU announced a review of its current 25% inspection policy, stating:

Changes under consideration include a move towards full coverage of ships entering the region rather than the current commitment of each member to inspect 25%. Periods between inspections would depend on the risk profile of an individual vessel. The review will also consider extending the current provisions for banning tankers, bulk carriers and passenger ships to general cargo ships which independent research has shown to present a disproportionate risk, particularly to their crews.

- The Paris MoU now also monitors the performance of Class and annually publishes performance data in its Blue Book, the statistical analysis of the MoU operations. The Tokyo MoU publishes similar data on Class performance in its annual reports.
- In addition to its work on the development of a reward system for ships that meet their quality criteria, (PMOU Annual Report, 2002) the Paris MoU has also recently announced an initiative to address quality-shipping issues through a “partnership” scheme with the various elements of the industry (Class, P&I, financiers and others) Details are expected to be discussed at a meeting in the Hague in early October 2005.
- Severe penalties for non-compliance have been applied unilaterally by some states affected by oil pollution of their shores resulting from maritime casualties. It is of concern that such unilateral action will undermine the principles enshrined in MARPOL and the other Conventions and further entrench the trend towards criminalising the seafarer. A particularly nasty aspect of this is the trend towards imprisoning crews to obtain financial gain or leverage in insurance payouts.
- These actions do not reflect the intent of the recommendations, which were to penalise the owner/operator; the persons who make the decisions that lead to substandard ships and performance. Criminalisation of the mariner is both counter-productive and ineffective in this regard. Indeed, it could be argued that it provides a further layer of protection to the substandard operator as the focus is shifted from the ultimate decision maker to persons who often have no input to, or control of decisions made concerning the maintenance and employment of the ship. Many states are aggressively pursuing deliberate ; polluters; seeking to penalise the seafarer who is often placed under overwhelming pressure to follow instructions (while it is no excuse it is an explanation) – while ignoring the role of the owners/operators and charterers.
- This issue again raises matters of transparency; if, in the case of the EC, the owners were EC citizens hiding behind an offshore flag then it would seem more appropriate for the EC to concentrate its resources toward piercing the corporate veil to identify and prosecute its citizens who are the real perpetrators.
- Curiously, the recommendation to stop cargo operations attracted lukewarm responses from the Paris MoU and the ISF, notwithstanding that some Administrations already carry out such practices. However the ISPS Code amendments to SOLAS contain a provision to stop cargo operations for perceived breaches in security preparedness, including the absence of the original International Ship Security Certificate. It is therefore difficult to justify the non-cessation of cargo operations on safety grounds if a ship is, by the fact of non-compliance with SOLAS, found to be unseaworthy.

- The recommendations on inspections and reporting compliance with the welfare provisions of ILO 147 have been adopted by the major MoU's. In its 2002 Blue Book, the Paris MoU reports that 8.11 % of detentions were for ILO 147 deficiencies. The Tokyo MoU also publishes ILO147 related detention data in its annual report.

The data however, need to be approached with some caution, as some States, whose citizens are major users of FOC, do not inspect for ILO 147 issues. The adoption of the new ILO Convention may lead to better PSC practices with regard to seafarer living and working conditions..

- Much progress has been made in the area of enforcing ISM compliance with the major MoU's conducting campaigns to draw attention to the need for effective operation of the Code.
- In May 2004, the Australian Transportation Safety Bureau (ATSB) commenced operation of a Confidential Marine Reporting Scheme, designed to improve the flow of information on ship safety. Details of the scheme can be found at:
<http://www.atsb.gov.au/marine/cmrs/index.cfm>
- The Canadian Transportation Safety Board also has a confidential reporting system:
<http://www.tsb.gc.ca/en/securitas/index.asp>
- These sites and schemes appear to be the exception rather than the rule. The Nautical Institute operates the MARS scheme for reporting incidents and accidents, but there has been very little progress in developing confidential condition reporting. A number of organisations have expressed a desire to do so (most notably the UK MAIB in 2001) but little seems to have eventuated.
- A confidential reporting scheme, supported by no-blame incident investigation legislation is critical in addressing ship safety and the prevention of accidents. It is ludicrous that it is possible for the crew of the Bow Mariner to refuse to provide information for fear of prosecution – they have a human right to avoid self incrimination and the absence of any recognition of that right, such as no-blame legislation effectively trivialises accident investigations.
- If there are serious design or operation problems that lead to the loss of life and the ship; then it is imperative that these be discovered and disseminated in order to prevent further incidents. If flag States are unwilling or unable to enact suitable legislation (and enforce it) then perhaps it should be the subject of an amendment to SOLAS or a new Convention.

However, given the existing blame culture and the propensity to use maritime accident material in criminal prosecutions seafarers may be right not to co-operate for fear of self incrimination, especially as they are unlikely to be familiar with the laws of the coastal State and the evidence is that the flag State is either unwilling or unable to intervene.

- The recommendation calling for assistance with the costs of providing welfare services to seafarers appears to have attracted little attention. Indeed, since the advent of the enhanced security measures following 9/11, the issue of welfare support for seafarers has been seriously neglected. It is possible that this recommendation was misunderstood; the intention was for the port authorities and port states. In the context of the increasing trend to confine seafarers to their ships and to limit or prevent access to ships by welfare staff; the implementation of this recommendation takes on a new urgency.
- Treating seafarers as prisoners on their ships, preventing them from engaging in even a limited way, with society at large on what can only be construed as spurious grounds, further degrades the profession. There is a substantial logical inconsistency in preventing a mariner on a tanker, for example, from access to shore leave on security grounds whilst at the same time engaging in operations with highly dangerous cargo using the same personnel.

Cargo Interests

The recommendation concerned the adoption of Codes of Conduct and encouragement for selection of quality ships.

- There appears to be little effort expended in this field, indeed the issues of ship selection practices does not seem to have any significance to the industry. The Intercargo website does not list it as one of their leading issues, the Institute of Chartered Shipbrokers similarly does not feature the selection of quality ships in their list of current issues.
- It is of interest to compare attitudes in shipping with the trend in other transport sectors (most noticeably road transport) for chain of responsibility legislation and the concept of industrial manslaughter.

IMO

The group of recommendations on IMO covered flag State obligations and performance and the strengthening of ISM.

- IMO have indeed made considerable efforts on this front – but with no great success there being at this stage, no sanction upon the Flag states involved.

- The IMO Assembly has endorsed a Resolution [A.946 (23)] that sets out a framework for a Member State Voluntary Audit Scheme, final details of which were to be developed by the IMO Council at its 92nd meeting in June 2005.
- This represents an effort by the IMO member states to address the problem of delinquent flag States by a program of capacity building and performance enhancement; it would be of benefit to see a timetable toward the introduction of mandatory audits and sanctions for non-compliance, matters that must be addressed to make the scheme fully effective.
- The UN General Assembly has recognized these efforts and exhorted the IMO, through resolution (A/RES/58/240) as follows:

Encourages the acceleration of the work of the International Maritime Organization in developing a voluntary model audit scheme and urges the Organization to strengthen its draft implementation code.

- The IMO Assembly resolution on guidelines for the implementation of ISM (A788 (19)) was superseded by a new resolution A 913(22) revised and updated to take into account amendments to the Code and SOLAS. Whilst this amendment, which entered into force in July 2002, tightened up some of the provisions, it did not increase the frequency of shipboard audits.

ILO

The ILO recommendations covered revision of the ILO guidance for ship inspections and the updating of all seafarer related conventions. Progress on these matters, especially the conventions issue, has been heartening; a full discussion of the current state of affairs can be found under the section on labour and employment practices.

- However, the work will be wasted if the new Convention is not adopted and, if adopted, not enforced. Flag States must be encouraged to give full and complete effect to the new Convention and it should provide for Port State Control detention, giving it the same status as SOLAS and MARPOL. It is of interest to note that the proposed new Convention has run into some difficulties over the refusal of some flag states to take responsibility for social security issues for seafarers on their ships and the provision of meaningful, workable and effective mechanisms for seafarers to have complaints addressed. One sticking point is reported to be opposition to providing seafarers with individual cabins. It is hard to imagine the thinking behind such a position; apart from the social abuses that this enforced lack of privacy entails, the diminution of living conditions is a safety and security risk and militates against productivity and efficiency.

- The ILO has a valuable role to play in addressing seafarer issues. It has expertise in data gathering, reporting and analysis and the use of ILO data on workplace and occupational safety performance is critical in any assessment of ship safety. The issue is to improve the scope of the data, the frequency with which it is reported and its accuracy. It is not possible to make objective decisions on safety issues without good data and this must be a priority for administrations in the future.

Environment

The recommendation in this group called for designated ports of refuge for ships in distress. The issues surrounding this are complex, contentious and subject to extreme manifestations of the NIMBY (not in my backyard) syndrome, where each State agrees something must be done, but not in its ports or waters.

- In its Assembly resolution A.949 (23) that entered into force on 5 December 2003, the IMO established guidelines for littoral States to establish Ports of Refuge. The European Commission has been vigorous in pursuing this matter for E.U. States (Directive EC 202/59). A number of countries have declared policies on Ports of Refuge, but the issue is still contentious and, as a consequence of the over use (or misapplication) of the processes for the declaration of Specially Sensitive Areas (SSA) for environmental safeguarding, is likely to remain so.
- Principally this arises from the reactions of Coastal States in blaming ships crews to divert attention from their own inability to resolve the Port of Refuge issue. The problem is how to arrive at a process that de-politicises the decisions required in dealing with an incident such as Prestige or Erika whilst taking into account the legitimate concerns of the residents of the littoral states.

Transparency

The final group of recommendations concentrated on issues of transparency and access to information on ownership (of both ships and cargoes), making it available on the relevant industry databases such as EQUASIS.

- The development of the ISPS Code and the new Chapter XI-2 of SOLAS brought these matters into sharp focus; there was an opportunity at the IMO to put into place an extensive range of systems to achieve transparency, but the opportunity was passed over by the adoption of a lesser standard; that required by the ISM Code. The report of the 84th session of the IMO Legal Committee, which was requested to examine the issue, in summarising the discussion said:

...After considerable discussion the Committee decided that an examination of beneficial ownership and piercing of the corporate veil was not necessary for the purpose of responding to the request ...

- It is not as if it were impossible; following 9/11 NATO members were able to identify several Al Qaeda owned/operated ships. The fact that this terrorist organisation was using ships, either for funding, money laundering or arms transport, should be ringing alarm bells loud and clear with all administrations. Obscurity of ownership presents an opportunity for terrorists, providing them with the means to operate internationally. As long as Governments pussyfoot on this issue, the risks and dangers remain.
- It is obvious that better security awareness must extend to the issues of ownership and operational decision-making; this can only be achieved by transparency. Transparency means better intelligence, better investigation of ships and cargoes and better linkages between safety and security agencies.
- Again, there is a logical inconsistency between the requirement to provide the location of a ship [through A I S] and the refusal by the maritime establishment to provide the means to ascertain ownership of the ship and its cargo.
- 29 organisations have become signatories to the Quality Charter in EQUASIS; however the European base of EQUASIS seems to have restricted its acceptance to European organisations, notwithstanding the global nature of the information it provides.
- The data in EQUASIS are still limited, the name of the DPA is not available, nor are the beneficial owner's details and given the reluctance of the industry regulators to address this issue, it would appear unlikely that these data will be available any time soon.
- The number of administrations publishing the name of the cargo owner and or charterer when a ship is detained is still small, and the arguments against publication are still unconvincing.

Conclusion

It is clear that in the time since the ICONS report, much has been done to address matters of ship safety, security and seafarer welfare. Equally, much remains to be done; abuses and exploitation still exist and shady owners still hide behind layers of secrecy.

Seafarers are still treated as scapegoats and there is a worrying trend toward the criminalisation of mariners as a soft option for States that cannot or refuse to accept their responsibilities under the Conventions.

Unscrupulous manning agents and rogue employers still exist and the evidence seems to be that their methods of exploitation are becoming more sophisticated and better concealed. From both the safety and security perspectives, this is an area that requires urgent global attention.

Seafarer's welfare remains in focus with a disturbing number of State and Port administrations seizing on the drive to increase security as a mechanism to further degrade the quality of life at sea by denial of shore leave and access to fundamental amenities. This issue also requires urgent resolution.

The introduction of amendments to the Suppression of Unlawful Acts at Sea (SUA) Convention and new agreements between certain States allowing for interdiction and boarding on the high seas also erode the rights of seafarers. The possibility of a flag State waiving jurisdiction could have a considerable impact on the seafarers, who may find themselves in the jurisdiction and/or courts of another State, without the niceties of extradition and no representation or concern for their welfare.

On the positive side, the moves to better identify seafarers as part of the improvements in maritime security may have far reaching effects in addressing issues such as the proliferation of fraudulent certification, questionable training establishments and dubious manning agents.

The opportunity exists to bring these more completely into the system, to set proper standards for performance and introduce effective licensing of those supplying these services to the industry.

Hon Peter Morris Chairman 27th July 2005. James D Bell Commissioner

ICONS Recommendations

Rec. 1: The E.C. request from the International Group of P&I Clubs consolidated statistics on loss of life and injury of crewmembers on ships entered into the Groups Members' clubs, and place this on the EQUASIS database.

Rec.2 Fraudulent Certificates: The IMO develop a database of all seafarer certificates for open electronic access to assist the elimination of fraudulent certificates of qualification.

Rec 3. Governments and major labour supply countries review maritime training and labour supply arrangements to ensure compliance with relevant IMO and ILO Conventions.

Rec. 4: Governments of major labour supply nations introduce legislation to licence manning agents, address wages, hours of work, allotments, repatriation, and job finding fees, transportation charges and black listing.

Rec.5: Governments of major labour supplying nations prohibit the practice of blacklisting of seafarers, and prosecute and publicly name those companies and organisations found to be involved in blacklisting.

Rec.6: Governments of major labour supply countries urgently establish independent seafarer grievance agencies to provide speedy and accessible means of resolving seafarer claims relating to employment.

Rec.7: The ITF, national maritime unions and relevant governments of flag and labour supplying states work co-operatively to implement appropriate working conditions for seafarers based on international conventions.

Rec.8: The ICS, in consultation with bodies such as the Salvage Association and the Scandinavian Underwriter's Association, develop a common inspection program to minimise multiple on board commercial inspections, which are burdensome to ship's management teams. The common inspection program should satisfy the individual on board survey requirements of, inter alia: CIMF, oil companies, CDI, charterers, P&I Clubs, insurance, the Green Award and cargo interests.

Rec9: The International Group of P&I Clubs implement a ship specific (non-mutual) bond system to cover crew repatriation and up to two months salary in the event of the ship's abandonment. The P&I Clubs act as trustees of this ship-specific fund and act on behalf of the crew in the event of abandonment.

Rec.10: Port State authorities require ships to provide prior to port entry, evidence of a P&I guarantee that covers two months' wages and cost of repatriation in the event

of abandonment. Such coverage should extend for at least 30 days after the date of entry.

Rec. 11 The United States Government:

- (i) acknowledge the extensive exploitation of seafarers serving on US port-based cruise ships and ensure that minimum standards of decent work as contained in the ILO Convention No.147 are applied; and
- (ii) ensure that representatives from seafarers' missions, welfare organisations and unions have free access to crew members.

Rec.12: The IMO and the ILO, in consultation with fishing industry representatives investigate why the Torremolinos Convention and Protocol and STCW-F Convention have not been adopted and draft a new and binding instrument for fishing vessel construction and manning, covering both safety and working conditions.

Rec.13: The IMO, the ILO and the Food and Agriculture Organisation (FA): establish a joint working group to develop voluntary guidelines for port State control of fishing vessels covering both safety and work conditions.

Rec.14: Responsible owners promote industry best practice by informed directed and widespread advocacy of quality shipping.

Rec. 15: Quality owners support maximum exposure of relevant information on their ships to assist the identification of sub-standard ships, so enabling port State control targeting to be more effective.

Rec. 16: Shipowners, through their membership of classification society boards and committees, influence these organisations to cease to act as Recognised Organisations for consistently under-performing flag States.

Rec. 17: Flag States rigorously apply the IMO Assembly Resolutions A.739 (18) and A.789 (18) concerning the monitoring of their recognised Organisations.

Rec. 18: Flag States, where they do not have their own arrangements, delegate to their Recognised Organisations the task of checking the application of national laws concerning crew working conditions and labour contracts.

Rec 19: The major classification societies, through IACS, pursue tougher policies by:

- ✧ Adopting an unbending approach towards owners on conditions, subjects and extensions of class;
- ✧ Dealing with quality lapses by the 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 performances, failing which, delegated authority would be cancelled by all the IACS members.

Rec 20: The European Commission establish a permanent Classification Society Oversight Committee to assess the performance of class, with representation from other States and Industry Groups.

Rec 21. Class 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.

Rec. 22: The Paris MOU adopt the US Coast Guard targeting matrix for port State control. The two port State control regimes harmonise their inspection procedures and accept each other's survey outcomes.

Rec.23: Port States control regimes, led by Paris MOU, implement reward systems for quality systems similar to US Coast Guard 'Qualship 21'.

Rec. 24: Port States authorities, include as a factor in the targeting of ships whether or not flag States have satisfactorily submitted and made public the IMO Self Assessment Form on Flag State Performance.

Rec. 25: Port States authorities introduce penalties, to be applied when vessels are detained for serious safety, environmental or labour deficiencies, which will result in a substantial financial impact on the shipowner.

Rec. 26: Port State exclude for two years any ship flying the flag of a State with an above average rolling detention rate of the relevant MOU, where that ship has been detained twice within the preceding 24 months.

Rec. 27: Port State authorities, led by US Coast Guard, Paris & Tokyo MOU, develop system of severe penalties for charterers & major shippers using vessels detained for serious safety, environmental & labour related deficiencies.

Rec.28: When a vessel is detained, wherever practicable, PSC authorities stop cargo operations until deficiencies are rectified.

Rec. 29: Port State control authorities, led by US Coast Guard, Paris & Tokyo MOU, include crew welfare elements under ILO 147 or equivalent, & publish details of deficiencies / detentions for breaches.

Rec.30: PSC increase their efforts to ensure full compliance with the ISM Code.

Rec.31: Port State control authorities establish toll free telephone services to enable ships' crews & others to confidentially alert PSC to safety deficiencies & crew related problems.

Rec.32: PSC establish standing consultation arrangements with pilots, port authorities, unions & seafarers missions who could be expected to become aware at an early stage of the arrival of sub-standard ships.

Rec. 33: Port States & port authorities introduce measures to provide a significant proportion of the costs of seafarer's missions' support services for international seafarers.

Rec. 34: Shippers' Councils develop best practice "Codes of Conduct" and actively encourage their members to adopt the Codes in the selection of ships.

Rec. 35: The IMO vigorously pursue the Flag State Self Assessment Form initiative with the eventual aim of making its completion and return mandatory.

Rec. 36: The IMO initiate concerted action for the adoption of comprehensive binding quality criteria for flag State administrations and ship registers.

Rec 37: IMO maintain and strengthen the momentum of the ISM Code and remove one of its weak points by amending Assembly Resolutions A. 741 (18) and A.788 (19) to increase the frequency of shipboard audits for Safety Management Certificate issuance to an annual basis.

Rec. 39: The ILO expedite the update and consolidation of all seafarer-related conventions, including effective monitoring and authority for port State control.

Rec 40: Coastal States designate ports of refuge for ships in distress.

Rec 41 Support and promote transparency by full disclosure of relevant information to publicly accessible databases.

Rec: 42: Port State control authorities publish information on ship charterers and major cargo owners, where a ship has been detained, and this information should be included in the EQUASIS database.

Rec 43: Wherever possible, EQUASIS managers include in the data base details of the history of the ship flag changes; beneficial owners; details of the ship manager; and the name of the designated person on the Safety Management Certificate under the ISM Code.