

ICS, IMO & REGULATION

P B Hinchliffe (Marine Director, International Chamber of Shipping)

This paper reviews the part played by the International Chamber of Shipping in the process of legislative development at the International Maritime Organisation using examples from current legislative developments.

The International Chamber of Shipping (ICS for short) is an association of associations; its members are 37 national shipowner associations. It is very pleasing that the Indian National Shipowners' Association is a member of ICS. These associations in turn offer membership to shipowners operating in the country. This worldwide ICS membership of the main ship owning nations qualifies representation of around 75% of the world's shipping tonnage and grants the ability to speak with authority on the views of all sectors of the shipping industry and to look beyond sectoral needs

ICS exists to develop an international consensus on issues of concern to shipowners worldwide and to represent those views in debate at the International Maritime Organization and on other platforms.

IMO is the specialised agency of the United Nations dealing with international maritime issues. Physically it is a secretariat of around 350 people based in London. The job of the secretariat is to facilitate meetings between the member governments, to draft the supporting documentation and to be the receptacle for information related to the conventions adopted by the member States. Conceptually IMO is no more than the collective political will of its 164 member Governments. It is for this reasons that allegations that IMO is slow to respond are inappropriate. If member States acted with alacrity in backing up their proposals and if Governments gave the parliamentary time to the ratification of conventions which had already been adopted then the whole maritime industry would be the better for it.

Industry does not condone conventions lying in limbo between the adoption of the text and the entry-into-force. In fact the reverse is true; this

situation only leads to confusion within the industry; accusations of inefficiency against IMO and accusations that the industry is somehow lagging the political agenda. These are inappropriate charges.

Industry, through ICS and other representative bodies, plays an active role in the development of international regulation. It contributes technical details to the debate and works to ensure that regulations that are ultimately adopted are workable and can be implemented with the least possible pain – either practical or financial – but that nevertheless the objectives of the regulation are met.

Against that background, the following is a regulatory update in terms of shipping and the environment.

Rules to control the entire life cycle of the ship – from drawing board, through construction and operation to ultimate disposal are contained in two basic conventions – SOLAS – concerned with the safety of life at sea – and MARPOL on the protection of the environment from the operation of ships; and a number of single subject dedicated conventions.

It should be noted that any legislation that controls the safe operation of ships engaged in international trade not only safeguards the lives of the mariners on board but also protects the environment.

When dealing with a unique industry that operates worldwide and carries around 90% of the world's raw materials and trading products an internationally agreed and level platform is needed on which to base sound operations. It is very difficult indeed to operate ships safely and efficiently when the rules applicable in one port are markedly different from

those applicable in the next port. There is a growing trend for national and regional legislation that is not only beginning to effect the safe operation of ships but also the very design and construction. This is simply not efficient either for ship operators or for the protection of the environment.

It is self evident that shipping is quite simply the most environmentally friendly transport mechanism available, not in absolute terms but in terms of cargo carried per tonne mile. How else can 90% of the world's trade be transported for an environmental cost of around 2% of the world's CO2 emissions? Ultimately it is for the consumer to judge how to set that balance either by paying more for goods or by ceasing to buy them.

ICS is actively working toward a situation where shipping will approach zero impact on the environment – but to be totally practical and realistic this is going to take time. It requires the active input of all stakeholders in the industry – not just the ship owners and operators but the designers, the builders, the insurance market, the classification societies, the regulators, the charterers, the governments of the trading nations and the consumers.

International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS), 2001

The Anti-fouling Convention has been caught between the adoption of the text and ratification for 6 years but it is pleasing to report that it achieved its ratification criteria and entered into force in September 2008.

It should be recalled that retrospective application can be expected from some port State control authorities and that therefore no ship should have applied a TBT based anti-fouling coating after 1 January 2003 and that any TBT coating must be removed or sealed in from 1 January 2008. Effectively the industry has been self-regulating on TBT since the convention text was adopted and I would be surprised if many ships will be caught with TBT on the hull now that the convention has

entered into force. Here is a clear case of the industry being ahead of the regulation.

Hull Bio-fouling

There is a new IMO work item on hull bio-fouling which is the problem of marine growth in areas of low flow on the hull such as inside gratings over hull openings, the rudder stock and so on. In these areas of course, with the prohibition of TBT, the efficiency of traditional coatings is greatly reduced. This is a problem that if it has not been created by the TBT ban it has certainly been exacerbated by it. The problem of the transfer of aquatic nuisance species in these so called 'niche areas' was identified as a problem in Australia and brought to the attention of IMO. Australia has now implemented domestic legislation and IMO has agreed to establish a new work item for a Sub-Committee to address this.

International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004

The text of the BWM Convention was adopted in February 2004, it has an entry into force criteria of 30 member States representing at least 35% of the world tonnage total. Currently the Convention has been ratified by [10] States representing [3.42%] of world tonnage.

It is not going to become effective in the very near future but this in itself raises very serious concerns for shipowners. Like the Anti-fouling Convention it has fixed dates and in this case a number of dates that are likely to be passed long before the Convention enters into force. The operative date of most concern is 1 January 2009 after which ships of less than 5000 cum ballast water capacity must be constructed with ballast water treatment equipment. There is still a lack of commercially available type approved treatment equipment available and even IMO, advised by the Ballast Water GESAMP group, agreed that it is was unlikely to be available in commercial quantities by the end of 2008. Accordingly, the IMO Assembly adopted a Resolution calling on States not to apply this

particular date after entry-into-force. The resolution seeks the agreement of parties to the convention to not apply this particular regulation effective date until a later time – most likely a delay of two years – but industry of course would prefer a date relative to the actual entry into force of the convention.

This is a case where an attempt was made through legislation to inspire scientists and equipment manufacturers to develop equipment that did not exist at the time that the convention text was adopted; it was called (at the time of adoption) – an aspirational convention. There was little confidence in the shipping industry that such equipment could be developed so quickly, not because concepts for the cleaning of ballast water did not exist but because it was not widely understood in the scientific community that vast quantities of water had to be treated relatively quickly to preserve the safety of the ship's stability and using techniques that should not threaten the health and indeed the lives of the seafarers onboard. Hopefully the lessons learned through experience with the anti-fouling convention and the ballast water convention will prevent the use of fixed dates in future conventions. Furthermore such a move will encourage member States to ratify as quickly as possible all adopted conventions in order to give the shipping industry the regulatory stability that it not only deserves but also depends upon.

There is an unusually large number of guidelines associated with the Ballast Water Convention and demonstrably and understandably this has been an impediment to States' ratification.

MARPOL ANNEX VI

Annex VI of the MARPOL Convention concerns air pollution from ships and has undergone a very detailed review in the expectation that fairly major changes would be incorporated. This Annex was adopted in 1997 and it took over nine years for sufficient States to ratify to bring it into force. It should be no surprise to anybody that the provisions it contained fell into disrepute over those nine years. They had fallen behind technology and political expectation. This was a situation where the lethargy

of States in failing to ratify the annex expediently brought the IMO and industry into disrepute. Furthermore this situation stifled innovation on the reduction of air emissions from a legislative point of view and caused a number of nations to begin to develop and apply national legislation that varied from the international standard. If only this energy had been applied toward ratification of annex VI in the years immediately after 1997, the world would literally have been a better place.

Annex VI has now been ratified by [44] States representing [74%] of world tonnage.

RECYCLING CONVENTION

Work to develop an international convention on ship recycling is well in hand and it is expected that a diplomatic conference to adopt the text will be convened in May this year. The focus of the convention should be on standards of working practice, health and safety and environmental protection in the re-cycling States which was its original purpose. Inevitably there will be impacts on the way ships are built, the recording of material used in construction and the commercial procedure of selling ships for recycling at the end of their economic life. The industry is not concerned at these changes and is working with Governments to ensure that the final text represents a realistic procedure. The industry, led by ICS, produced recycling guidelines in the late 1990s and has recently published interim guidance for shipowners indicating how to comply as closely as possible with the emerging requirements of the draft convention prior to its entry into force. This convention will only have any value for its original concept if it is ratified by the recycling states themselves and that is something that IMO member States should give very careful thought to.

GHG Reduction

Against this legislative background the IMO is now starting to make inroads into the problem of shipping's contribution to global warming. The issue of carbon emission appears to be on most political agendas with the most vehement stand

being taken by the European Commission but with other States around the world to a greater or lesser degree making policy decisions on emission controls on industry and on domestic issues.

The environmentally efficient nature of shipping cannot be denied; 90% of world trade in raw materials and finished goods carried at an environmental cost of around 2-4% of the total world CO2 emission and this is undoubtedly a good balance. But this balance could be changing; the global effort to reduce carbon emissions will leave any industry that falls behind the general reduction level exposed and open to legislation and in the case of shipping, should shipping be so exposed, this could either be global or regional legislation.

The quest for greater fuel efficiency has always been a driver for shipowners and operators and today's fuel prices are forcing the adoption of efficiency measures as never before. But the question that must be asked - and that we must answer is - what reduction improvement in fuel efficiency can be achieved and is this to be measured on a per ship basis or across the world fleet? It needs to be noted that growth in shipping capacity is directed related to growth in world trade and with trade growing at around 3% per annum some increase in shipping capacity is not only expected but also essential. Shipping is a service industry that responds to trading requirements not a vehicle for limiting world trade. This seems to say something about the way that shipping's efficiency should be legislated - it is certainly important to ensure that improving shipping's carbon footprint does not in itself limit world trade.

It is becoming clear after the initial rounds of discussion and negotiation that we are likely to see some practical efficiency measures incorporated into MARPOL Annex VI. Two complementary mechanisms are being considered; a new ship design index and some voluntary efficiency measures including an in-house operational index. The concept is that the new ship design index will result in new ships over time becoming more energy efficient from the design and construction point of view. IMO experience over the last few years with

operational indices found that the inherent variability in values achieved even between sister ships made the index an unsuitable vehicle for legislation. The index is however a very good instrument for companies to monitor an individual ship's performance over time and this is why the operational index has been incorporated into a set of operational efficiency guidelines that owners and operators will be invited to apply.

The measures described so far are fine and they will result in efficiency gains on an individual ship basis. But these gains are most unlikely to meet the aspirations of those governments in the forefront of the carbon reduction debate. In Europe for example there is a general expectation that shipping should be looking at a 20% reduction against a 1990 baseline in 2020. This level of real reduction is not likely to be achieved across the entire world fleet and this suggests that the industry must be prepared for some form of market based instrument to bridge the gap between practical reduction measures and political demands. Such an instrument should in some way buy carbon reduction from other industries through a carbon trading market or result in investment in off-setting systems such as reforestation.

There are clear messages from Europe and from Australia & New Zealand that shipping can expect to be included in their emission trading schemes and rather more than whispers that the same may be true in the United States and in Japan.

Within the industry the jury is still out on market based instruments in general and we are certainly not ready to make a choice between a fuel levy and carbon trading. ICS is however looking in considerable detail at these measures to see which if any can be made to work on an international basis and most importantly which if any will deliver real carbon reduction figures.

The sands of time are running out and if a solution cannot be brokered in good time inside IMO then regional measures appear to be inevitable. This is something that shipowners and operators need to think about very carefully in the coming months.

CONCLUSION

Shipping has an enviable reputation as the most environmentally friendly transport mode but it probably does too little to promote this. In terms of the number of ships at sea and the commodities carried often in truly demanding oceanic weather conditions the number of accidents is quite remarkably low but such accidents do attract considerable press attention and can give the incorrect impression of a poorly regulated industry with a poor safety record. We must act quickly to counter this and focus on the vast quantity of cargoes carried to time and in complete safety that

otherwise would attract no media interest whatsoever.

The legislation adopted by IMO provides the framework within which this vast industry conducts its successful business. The intent of the adopted regulation is therefore entirely helpful and supportive of the shipping industry. However a lack of political will amongst IMO member States to take the necessary action to ratify the IMO instruments in a timely manner and to bring them into force provides a background of uncertainty and tarnishes the image of the industry. This thought brings me back full-circle to my opening remarks and it is this that we must work to address.