

MOORE STEPHENS SEMINAR – Singapore

Peter Hinchliffe, ICS Secretary General, considers recent regulatory pressures on the shipping industry and the political background that has exacerbated the industry's problems. He will make proposals on how regulatory development can be improved and suggest that the time to make these improvements is now.

Thank you very much for the opportunity to say a few words at your famous annual event.

My experience is that most people in the shipping industry in its broadest sense have at least heard of the International Chamber of Shipping and have a vision of what we do that reflects their own professional interest – through press reports or through our wide range of industry standard publications. That is of course very good! However perhaps the most important element is what underpins the ability of the ICS secretariat to serve its membership of 37 national shipowner associations around the world. The model of the Singapore Shipowners' Association is reflected in all of the key shipowning nations and almost all of those are ICS members. With a membership core that represents more than 80% of the world fleet engaged in international trade we have an enormous amount of experience at our finger tips. It is that and the hard work and dedication of the small secretariat staff that gives ICS the authoritative voice that I believe it has. What is really important is the deployment of that voice at each and every UN specialised agency – primarily but not exclusively the IMO and ILO – to ensure that the considered views of global shipowners are presented effectively and in a coherent and positive manner.

So with that introduction let me turn to the subject of the next few minutes – perhaps I can paraphrase the title – “Why are we in the current regulatory mess and how can the industry and its regulators do better?”

It would be easy to stand here and identify the practical implementation problems of the Ballast Water Convention, of the Fuel switch in 2020, of the recycling convention and our progress toward future regulation of CO2 emissions but that is to rather miss the point. I am not in any way belittling the massive problems both financial and practical that these requirements are causing to owners and operators – but we need to understand how we got here to prevent it ever happening again – and I believe that we can do just that. I am sure that owners believe that there is no interest or understanding on the part of the regulator or of government ministries of these difficulties and there is more than a grain of truth in that belief.

We can trace the genesis of regulation like the Ballast Water Convention and of the latest iteration of Marpol Annex VI on air emissions to the late 1990s and early 2000s. It was a time of massive growth in environmental awareness and for entirely reasonable reasons shipping was caught up in that. There was a general feeling that shipping needed to green its image and take responsibility for its impact on the environment – an entirely laudable endeavour. The market situation was good and in the interest of the much quoted “level playing field” owners were content to go along with the developments. National and international shipowner associations were generally well funded but there was a steady decline in practical engagement by owners in the technical work that underpins association work.

At the same time, government delegations to UN agencies were facing a need to cut costs, government representatives to environment discussions were from environment departments and transport departments tended not to attend. Cost cutting also reduced the size of transport departments and representatives in debating fora were drawn less and less from amongst ex-seafarers in favour of career diplomats with no sea or industry experience at all. You can see exactly

where this led – decisions were taken without a true understanding of the implications on shipping and on world trade. I believe that international associations generally did a very good job in an environment that was increasingly hostile to attempts to inject practicality into government visions. It would have been a whole magnitude worse without our interventions. ICS always takes a long hard look at the intent of emerging regulation and tries to find alternative more practical routes to achieve the desired objective but to smooth both impact and implementation.

You may be interested to know that ICS did considerable work in the late 1990s to promote the use of shore treatment facilities for ballast water instead of mandating that every ship should be a ballast water treatment factory. The same is true of the low sulphur requirement – how much better would it be to regulate the supply and not the use of low sulphur fuel? These proposals were defeated because it transferred the cost ashore and governments were not prepared to fund the means to the end. Perhaps also because the voice of the oil majors and of domestic ballast water treatment manufacturers was stronger than the voice of shipping. Certainly these domestic economic considerations perversely carry more votes than shipping.

Regulators, particularly proposing governments, tend to look at the desired end point and to give almost no consideration to the transition between the situation that pertains at the moment and the end game. ICS and other international associations did very considerable work to have a transition mechanism built into the text of the ballast water convention – the text is still there today – a clever transition that mandated the carriage of equipment in ships with small ballast water capacity first and then faded it in across other sizes and types of ships. That this implementation schedule ultimately failed is the result of the next problem that I identify.

It is an interesting thing to witness the end of the diplomatic conference that gives life to a new international Convention. On the closing day, the text is finalised and grand congratulatory statements are made and finally the head of every government delegation present in the room walks to the front to sign the agreed text on behalf of his Country.

The next stage in the life of a Convention is for governments to give parliamentary time to adopting the text into national regulation and this is where the wavering starts and leads to unacceptable delays in final ratification. ICS believes strongly that once the new regulatory text has been adopted encouragement should be given for the fastest possible ratification and entry into force. The costs are going to fall onto the industry sooner or later and the most important thing is to provide certainty of the requirement to both manufacturers and owners alike – to provide stability in the market.

Perhaps worth underlining at this stage that the text of a convention cannot be changed by international agreement in this limbo period between adoption and entry into force. ICS has a continuous campaign to promote the earliest possible ratification of every new convention. In the case of the Ballast Water Convention we began promoting ratification in 2004, although we knew it was deeply flawed, because we felt that the staged implementation would enable us to highlight the problems and to change the Convention as the requirements rolled out. But as the first implementation date in 2009 approached we realised that we were heading for an impossible situation and changed our tactics to hold back entry into force. We managed to persuade IMO to start to reflect some of the problems in stand-alone resolutions and in guidelines that addressed the implementation schedule and the weak type approval system. These were firefighting measures but they have done

much to improve the situation and will influence changes to the Convention that can be made once it enters into force in September this year.

There is another reason that governments fail to ratify international conventions – that is due to nationalism and regionalism. There are two serious cases here – the USA which does not have a track record of joining international conventions is unlikely ever to ratify the Ballast Water Convention having already applied its own national law. My goodness, this has really muddied the waters for owners who whilst they may have a better idea of what will be compliant for trade in US waters, it is far from clear that the US type approved systems are yet available on a truly commercial scale or that they are suitable for every type of globally trading ship that needs a system now.

There is a different problem in Europe – that of regionalism – fortunately it does not directly affect implementation of the ballast water convention but it does effect it tangentially. Europe has a tendency to adopt into EU wide law a parallel requirement to the international convention - think Marpol Annex VI and air emissions. In the European countries there is then a legal obligation to comply with EU law which from a regional perspective makes it less important to ratify the international requirement. Europe, a leading advocate of environmental regulation, has a poor track record of ratification. Perversely whilst the regulation is thus applied in Europe the application on a global level is actually slowed down. This is to the benefit of nobody.

To digress for a moment, the political trend across the world is one of increasing attention to national issues and to isolationism – getting global agreement on anything has become much harder as it is given less priority. What has happened to

shipping was in my view an early symptom of the same phenomena. If you look back at the history of the world the switch between isolationism and international cooperation has been cyclical – it will swing back but who knows how long it will take.

Perhaps there is just one more issue that is worth exploring briefly. A failure to be certain of the impact of a new regulation also leads to unforeseen and unintended consequences. Simplistically, the market problems of today follow the economic crash of 2008 but they are prolonged by the fact that there are simply too many ships. Primarily this was driven by the boom years up to 2008 and the opportunity to buy new ships at good prices – I know I am being overly simplistic but it is to make a point. I argue that the swathe of new environmental regulation brought an unintended consequence of encouraging owners to buy new ships as it was more cost effective and likely more competitive than trying to upgrade existing ships.

Enough of the problems - I could give more but I am sure that you have got the message – now let's look at how to improve the situation - to try to avoid the same situation happening again or indeed worsening the current situation.

Firstly the industry can help itself by ensuring that national associations are fully supported in both financial and technical terms. It is a struggle in a dire market to provide either people or money but national associations are the first line of defence to ensure that waterfront issues are known and advertised in the right quarters. I have been very struck by the loyalty that national associations have shown to ICS by sticking with us in a time of financial stringency and we have tried to help them by reducing membership fees over the last few years. But fundamentally the loyalty is driven by the recognition that we can only sort these problems out at an international

level. Companies that do not support their national association are riding on the back of those that do see the way to shape the future.

At the regulatory level there are obvious issues to address. There must be some subtle changes to the way that regulation is developed. New proposals need much greater scrutiny at IMO – IMO should establish and take ownership of an impact assessment, a cost benefit analysis and a cross check with regulation that is already in place. ICS has kick started progress toward this goal in joint submissions with IACS to the IMO Council.

Finally – there has to be something wrong with a regulatory system that adopts an international text and leaves it to sit on the statute book for 13 years (as is the case with the Ballast Water Convention) before it achieves its ratification criteria and enters into force. 13 years of uncertainty and confusion for equipment manufacturers and the shipping industry alike. 13 years of opportunity for national and regional regulation to be imposed that if not contrary to the international standards is at best divergent from them.

I think that there is now a general recognition that such a long period of uncertainty is indicative of badly framed legislation. In my view, there should be a maximum period for which a Convention can remain unratified – perhaps five years – after that period it should be removed. If there is a need for the regulation after that, then the process should start again recognising that the flaws need to be ironed out before it is offered again for adoption. Perhaps such a rule might focus the mind of governments at the developmental stage.

We have a lot to do to improve the situation but by working together through the existing structures we can do much to prevent a repetition of today's dire problems.

Thank you for listening, I hope that my views have awakened some thoughts in your minds.