

## **“SHIPOWNERS AND GOVERNMENTS: AN UNEASY PARTNERSHIP”**

Dr Helmut Sohmen, Chairman, BW Group Limited

### **Background to the Shipping Industry: Complexity Abounds**

It is a pleasure to be here in Hull to talk about shipping. Thank you for the invitation.

Except for those directly engaged in the business, shipping is a somewhat nebulous subject, surrounded by inaccurate generalizations, considerable misunderstandings, superficial analyses, catchwords and rumours. Laymen often have difficulty distinguishing shipowners from shippers, river and coastal shipping from deep-sea operations, and container ships from bulk carriers. I will not insult your intelligence by trying to explain the differences in this forum. My intention is to give you some general background to our business, discuss some of the issues that are foremost in the minds of shipowners today, and conclude with a few personal observations.

In the public mind, the industry is traditionally perceived in a negative sense, as the headline descriptions like “flags-of-convenience”, “exploited seafarers”, “marine pollution”, or “lax safety standards” readily suggest. Many children will know the names of ships involved in maritime disasters like the ‘Titanic’, the ‘Torrey Canyon’ or the ‘Exxon Valdez’. Few I suspect would be able to explain the background to names like ‘Ideal-X’, ‘Jahre Viking’, ‘Emma Maersk’, or ‘Savannah’.[1]

People also have problems with the way shipping is structured, and find the make-up of the business at least confusing and at worst suspicious. This is not entirely surprising when one considers that a Russia-based investor might acquire a French-classed second-hand bulk carrier’s owning company incorporated in Cyprus, through a holding company in Bermuda, put the vessel under the Marshall Islands flag, appoint a Hong Kong-based ship management company as the operator, then charters the vessel to a Turkish trading firm through a London broker, and finances the ship partially through credit from a Norwegian bank. The vessel may have a Greek master and a Filipino crew but would most likely be entered in one of the existing P&I Clubs and have its hull and machinery insured by underwriter in London. The charterers may have preferences for the flag for reasons of their own. Or they may be happy with any choice the owner makes, as long as there is no trouble in loading and discharging ports, and reliability of safe and punctual transport services is assured.

In a large percentage of cases, and despite the obvious complications, it is all perfectly legal and operationally efficient. Bermuda is a financial investment location, Cyprus is known as a shipping service centre, the Marshall Islands are a recognized flag jurisdiction, ship managers in Hong Kong are experienced and have access to pools of qualified seafarers and technical superintendents from Asia, and the financing bank is happy with the credit and the security of the arrangements although – being Norwegian – the bank might just prefer to see Det Norske Veritas as the vessel’s classification society.

The ultimate investor could in fact face more administrative or fiscal difficulties if he went for what on the surface seems a more straightforward route: the purchase of a Russian-built vessel with the help of a Russian bank, to be operated under the Russian flag with Russian crews. He might not of course get employment as easily for his asset as in the other case, and therefore be reluctant to invest in shipping at all and thus deprive the industry of a potentially rising star!

The reality of arrangements made in shipping are reflective of a number of factors characteristic of our business which I believe are worth highlighting:

1. The industry, with the exception of self-contained local services, operates globally. This gives it a unique character. Even when vessels trade purely domestically they are touched by non-local relationships: be it through classification, safety standards, or banking and insurance cover arrangements.

As I tried to illustrate, shipping interests today have a wide choice in deciding on headquarters location, flag, manning, or financial and commercial dealings. There used to be restrictions on flagging in the past in what were then called the "traditional maritime nations". They had their origins in the naval background of these countries and the fact that the merchant marine was often seen as an integral part of their national economic interests and defence objectives. The consequences of this nationalistic approach were constraints on the choice of personnel (only citizen were allowed to serve as senior officers), the operating base had to be within the national territory, and access to shipbuilding and marine support facilities were made available and expected to be utilised at home.

Changes to this attitude since the Second World War have been profound, on legal, technical, administrative, and economic fronts alike. What is still left is the traditional freedom of the high seas, although the physical size of the high seas has also shrunk because of extended offshore areas now being claimed by coastal states.

2. Shipping by and large is composed of many relatively small participants although collectively the industry manages very large amounts of money measured in the hundreds of billions of US dollars, given investments in new vessels, operating costs, hire payments, bank credits. While there are always some true shipping giants in the industry (both private and public) operating large fleets, the vast majority of owners are small- to medium-sized companies operating from many different locations. This has two consequences: severe competitive pressures within the industry, and a lack or concentrated political clout in any one place.

3. Shipping is also a very segmented industry, one that operates in distinct and separate markets. There is quite a difference in the make-up of assets and of business practices, in technical expertise and in supporting infrastructure. Some part of shipping operates within the context of a chain of services, including land-based facilities like railroads, trucking, and terminals. Others operate more or less exclusively under instructions from the tonnage users, be it under a voyage-to-voyage or long-term charter models. Tonnage supply and demand in each sector depends on different factors, some macroeconomic, others within the decision-making ability of the individual enterprise. Their respective response to changing commercial circumstances or to changes in governmental policies must therefore differ. In one word: one should always clearly distinguish between, say, oil tankers and gas tankers, bulk carriers, container ships, supply boats and container ships, and offshore operations, and should use the generic term shipping carefully in order to avoid the lack of understanding and the sort of public confusion which still seem to inflict many a commentator, politician, and bureaucrat.

Such misunderstandings or inadequate information do not help the industry at large, or its individual players, when policy proposals are debated, government assistance is sought, or help in emergencies is required. [2]

4. The very competitive nature of shipping can produce curious if not actually negative results for the wider industry. Classic examples are the rapid expansion of shipyard capacity and the ongoing over-ordering of tonnage in the face of falling demand, which we are again witnessing at present. Although shipping transacts on the basis of comparatively high transparency, the entrepreneurial decision-making – whilst perhaps correct in the framework of an individual firm – is often illogical in the total

industry context. The result can add to high market volatility and to boom and bust scenarios with considerable value destruction and prolonged market downturns.

This competitive atmosphere has over the years also affected financing institutions operating in the shipping field, and led to an over-supply of credit and the temptation to engage in riskier investments. Short-term deal making considerations and the ambition "to keep up with the Joneses" often take precedence over long-term vision.

5. Shipping is an essential service for the world and even detractors of shipping acknowledge this fact. International shipping is a facilitator for world trade, a major contributor to the rise in global welfare, a large user of capital, a large employer and a large consumer. Shipping literally touches millions of lives around the world and yet is surprisingly invisible unless major accidents give rise to media headlines. Shipping interests are then often the immediate and only recipients of blame, with scant regard paid to the responsibility of other parties or to the inherent perils of the sea. This background also reduces shipping's effective lobbying or negotiating ability. We are not helped by limited success of some public relations efforts despite the existence of quite a number of representative organisations at national and international levels. The latter are at times themselves engaged in turf wars and not always able or willing to present a united front to the relevant authorities.

6. There can be (and often is) a disconnect between shipping interests and government objectives at national level, unless the shipping interests themselves are nationalized entities or subject to direct government control. The policies of flag and ownership states may be contradictory or at least sufficiently diverse to make agreement difficult. The formulation and adoption of rules uniformly governing the operation of ships is certainly always preferable to a multitude of conflicting local rules, and credit must be given to the International Maritime Organisation (IMO) for its valiant efforts to try and achieve this in many areas of concern both to its member states and to the industry at large.

## **The Layers of Government: a Multi-task Challenge for Shipping**

### *A. IMO*

As most of you will know, IMO is the United Nations agency established in 1958 and broadly charged with the promotion of maritime safety and the prevention of pollution from ships. It is an inter-governmental institution headed by a Secretary General and based in London. The body works through a number of Committees to progress its agenda, including the drafting of conventions, their adoption by its General Assembly, and the encouragement of the member states to ratify and eventually enforce them. Private shipping interests are not parties to the proceedings but are represented through their respective governments (both "shipowner governments" and flag states), plus accredited shipping bodies and service providers with advisory functions. IMO is a respected organization and considered effective, despite the political pressures and practical difficulties that surround its activities. IMO is a good example of cooperative government, in that in most instances it provides a rational forum where national aspirations and objectives can be subordinated to the principle that common rules are the best way to deal with societal concerns, bureaucratic shortcomings, and necessary remedial actions.

IMO can now look back at a body of work embracing some 60 legal instruments starting with the Safety of Life at Sea Convention (SOLAS) passed in 1960, and the various subsequent conventions and their many amendments, annexes, and protocols. They deal with diverse issues like loadlines, standards for the raining of seafarers, civil liability and compensation arrangements,

collision regulations, marine pollution, salvage, ballast water management, the carriage of hazardous and noxious materials, ship recycling, anti-fouling systems, the protection of seafarers, or wreck removal.

I will not spend the hours that would be necessary to delve into all these subjects in depth, and will simply concentrate a little later on some of those that are of recent origin, or are still being debated.[3]

A bottleneck in the adoption of the convention regimes is not normally shipowner opposition, but the slow speed of ratification processes by national legislatures. Five years or more between promulgation and effectiveness is not an unusual period of delay. Implementation of course is often associated with administrative costs requiring public funding efforts. Not every country feels the same urgency to act every time, especially when there are no local shipping communities or other vested interests pushing for adoption. This may be short-sighted, as examples of national legislation enacted unilaterally to fill perceived temporal or substantive gaps normally prove cumbersome and/or often become permanent: an example being the US Oil Pollution Act of 1990 which followed the serious pollution incident caused by the tanker 'Exxon Valdez' in Alaska.

In this connection the offshore industry will have to wait and see what national legislation will emerge from the 'Deepwater Horizon' oil spill this year in the Gulf of Mexico; it is fairly likely that liability limits will be substantially increased (and with them insurance costs), and new regulations will result in tougher safety oversight. Other countries with offshore activities will no doubt follow.

Drilling platforms by the way are not 'ships' in the legal sense and therefore not subject to IMO jurisdiction. Floating production storage and off-taking units (FPSOs) on the other hand are considered "ships", although given their mostly stationary roles in coastal areas the point could be argued. Owners of FPSOs are not members of the P&I Clubs but insure their units on fixed premium terms. My corporate holdings include a leading provider of FPSOs and the issues connected with this arm of the business are therefore of some personal interest.

## *B. National Governments: Concerns with Flags, Coasts, and Ports*

### *a. Flags*

All national governments, even those of land-locked countries, have to be interested in shipping, given their reliance on export and import of many essential commodities which by necessity have to be carried by ships. Some of our vessels carry iron ore from South Africa destined for Austrian steel mills; others transport chemicals to Latin America for end-users in Paraguay. To secure trade routes and to provide transport infrastructures are an essential part of governance even when a country has no coast, no local shipping register, or no resident ship owners.

Other countries can have a more intense relationship with shipping: perhaps because of a long history of seafaring, a long coastline, a strong naval tradition, or as a shipping service centre or manpower source.

Some governments have decided to see international shipping as a ready milk-cow for the generation of revenue. Fee income can be useful for the national budget and does not necessarily need to be spent on infrastructure or services dedicated to shipping – at least not in full. Sovereign countries (or, like Hong Kong, autonomous regions) thus go into the register business. No entry barriers really exist: it only takes a suitable legislative base and tax structure satisfying owners and their creditors, a few law

firms with cosmopolitan and multi-lingual staff, a register administration at least capable of technical and operational supervision and accident investigation. Should domestic expertise be in short supply, a number of functions can be delegated to the likes of classification societies or specialised corporate services bureaux; any required talent can be imported. Other professional services to shipping are happily offered on an international basis in any event.

The administration centre of a national register does not have to be located in the flag country itself. Where existing local laws make things inconvenient to intended customers, a second national register can be created, perhaps in some offshore islands, and set up to operate with the desired legal and fiscal platforms.

Some flag countries take their duties more seriously than others: and those concerned about their image as a flag state will probably remain in business longer. The 'revenue-only' approach is getting increasingly more difficult to maintain, as the international focus on quality and stricter standards means that closer scrutiny is being paid also as to how flag administrations perform. One should note that so far IMO and its members have not seen a need for regulating the regulators: there is no convention stipulating adherence to minimum standards by register states in the observance of their responsibilities for the fleets under their flags. Private organisations have tried to establish 'flag state performance indices' ranking the various registers, but clearly they have only critical but not enforcement value. However, when the public at large complains about shortcomings in the shipping industry, it might be opportune to remind the critics on occasion that the reluctance by governments of flag states to properly police themselves might also be a problem.

When things go wrong it is naturally much easier to put the blame on the shipowners and their agents. At the same time and in all fairness, it cannot be denied that the shipping industry appreciates flexibility and adaptability, an un-bureaucratic environment, and an understanding register regime. Conflicts between flag states and ship owners normally only arise when there are sudden changes, in particular to register fees or annual dues, or a flag country is found to provide unequal treatment to the users of its flag.

Flag states are in competition with each other and this guarantees a certain basis for the standard of services offered. And any regular rejection or detention of ships registered in one particular state for technical deficiencies during port inspections would attract attention and create the risk that potential customers and their financiers will look for other flag jurisdictions. Since the re-flagging of vessels is normally left as an option for the shipowners, the responsible flag states remain conscious of the need to maintain a good image. It is really a question of knowing how to be mutually supportive.

During recent decades, a few populous countries have found themselves prominent suppliers of seafaring manpower, particularly as land-based jobs in the developed world have gradually turned more attractive than service at sea. The obvious examples are India and the Philippines, but with many smaller nations in Asia and Africa also providing seafarer pools, while others – like China – being on the verge of joining the fray.

It is difficult to pinpoint the reasons why the inhabitants of some countries are more inclined to go to sea than others. Clearly the level of education, local economic conditions, geography, a naval background, the access to educational facilities ashore, and the self-promoting dynamism of a successful engagement in the profession must be part of the explanation. The benefits to the national economy from seafarers can be quite relevant over the long run, even when the initial attractions of going to sea consist mostly in free schooling and favourable tax treatment for the individual.

For governments in emerging countries a comprehensive effort to develop the potential of seafaring employment might well be a constructive way to lift populations out of existing poverty. For the industry, finding additional qualified labour to serve on ships is of paramount importance. The constant increase in the number of vessels trading, and their inevitably progressing technical complexity in effect means a constant shortage of manpower. Joint efforts in training would suggest that synergies can be created and maximized for both sides; a good cause perhaps to apply funding available from overseas aid programmes.. 2010 is the Year of the Seafarer: we should use the slogan to spread the word how much mariners are appreciated, and let us try to attract more newcomers to the profession!

Speaking of mariners, a very modern issue in shipping-government relations has become the so-called "criminalisation of seafarers". The trend has manifested itself in a number of ways, with governments not always emerging as the fair arbiters they should be. There have been various cases, widely publicized, of ship officers being arrested by local authorities following ship collisions or oil spills involving fatalities or marine pollution without the presumption of innocence. Occasionally officers have been kept in custody for prolonged periods for investigation, and some eventually convicted to prison terms. Due process under local laws must of course be applied. But quite a few such trials appear to have been motivated less by a sense of justice and fairness than by a political spirit of revenge in order to appease public anger.

Given that applicable conventions exist with clear provisions for procedures to be followed, that ships are insured for liability resulting from accidents, that security and bail arrangements can be made to ensure that testimony remains available, and that responsibility for casualties often have to be shared, the treatment and penalties meted out to seafarers in many of these cases can justifiably be condemned and governments held to account. Some organizations (e.g. the Comité Maritime International) are working on a Model Convention to produce more procedural fairness for seafarers. But no early results are expected. Criminalisation does of course not help to attract new seafaring talent.

What is even more worrying a trend is the misuse, by government officials in certain countries, of the policing powers over ships and complements whilst in their ports. Trumped-up charges (for example, for smuggling of drugs or other illegal materials, thefts of cargo, or document manipulation) have led to penalties and arrests of innocent seafarers who often simply become pawns in local extortion rackets. The difference between these acts of hostage-taking, and those of piracy or armed rebellion, is only that the former are more reprehensible: conducted as they are under the cloaks of authority and legitimacy. The widest-possible publicity given to such transgressions, and boycotts of the localities involved, might possibly help to reduce their occurrence. To expect them to be eradicated completely is likely wishful thinking.

#### b. Coasts

Littoral states by definition have an interest in shipping as the interaction between land and the sea adjacent to their shores is necessarily important and not always easy to manage. There is the right for ships to transit territorial waters on innocent passage as codified by the UN Convention on the Law of the Sea 1982 (UNCLOS), balanced against the sovereign right of coastal states to act in a self-protective manner. Many legal volumes have been published on the interface between the two, as well as about the rights accorded to nation states regarding national territory, economic exclusion zones, or the continental shelf. In most cases these issues are more relevant to military planners, or to those engaged in licensing processes for underwater drilling and offshore extraction of natural resources, than

they are to *bona fide* merchant shipping.

The exceptions to the foregoing statement apply when and where the shores of coastal states are used to orchestrate criminal acts against shipping, as is the case with piracy, civil unrest, or armed regional rebellion – the East Coast of Africa, Nigeria, or the South China Sea being of particular relevance today. These activities are not particularly new: piracy also flourished in the past in the Caribbean and along the North African shore, or among the many islands in the Far East. It is a simple fact that where there is an absence of shore-based control, or in fact official collusion, criminal activity directed against shipping can flourish. The attempted interdiction from facilities offshore other than during outright naval blockades are only temporarily effective; and blockades presuppose a state of war.

The shipping industry has noticed with considerable concern how ineffective anti-piracy efforts have by and large been, especially along the coast of East Africa, despite a significant deployment of naval assets in the area by a group of cooperating nations. Convoys can only provide some protection since the shelter they give depends on whether individual ships can join in time and place. Some attacks happen far away from the coast. Active naval intercession during pirate attacks requires that they are already in progress. And then what to do with pirates caught in the act? It seems only Kenya and the United States have been willing to put pirates on trial, with Kenya seemingly having second thoughts. Most pirates arrested simply have their weapons removed and are let go, no doubt to try again.

Tracking of suspected pirate movements, closer coordination between naval forces in place, and between international shipping bodies and governments, and more thorough efforts to trace the recipients of ransom monies might all contribute to an improvement in the situation. But the pirates are well equipped and appear to have access to good information. And the oceans are large. An often-suggested response to the threat, namely by arming merchant vessels or having armed riding squads onboard, do not in my view present workable alternatives. Apart from the potential of escalation of the violence, the defensive actions taken by a few ships simply means that the likelihood of attacks on others will multiply. Governments overall also appear loathe to encourage solutions beyond individual defensive measures ship-by-ship, and reliance on the possible deterrent effect of a naval presence.

The industry's worry is that the latter cannot be maintained for ever especially if the results remain unconvincing and out of proportion to the costs involved. The problem is likely to spread to other parts of the world. Over the longer term, economic and social solutions will have to be found to restore political stability and law and order to the littoral states in question. So far measures taken in that direction look half-hearted. We feel pretty much left on our own; especially when some governments seem to be suggesting that we should not give in to ransom demands and leave the crews to fend for themselves.

I must mention that local excesses of authority for illegal gain, piracy, or civil unrest, are of course not the only criminal activity with which we shipowners are confronted. There are justified fears that terrorists may see ships conveniently both as targets and as possible weapons of destruction. Economic hardship and dislocation caused by political strife normally mean an increase in illegal migrants, in stowaways, in smuggling, and in fraud. In this context, here again governments are often cracking down hard on shipowners and their employees, even in cases where the shipowner is the innocent party. Especially since 9/11 there have been moves afoot to improve seafarer identification. There are mandated measures to scan containers in ports [4], there are various government-sponsored initiatives to cause higher alertness and better reporting of suspicious activities onboard vessels, and new and

tighter controls are regularly introduced at loading and discharging terminals. Organisations like BIMCO have appointed dedicated senior corporate officers to deal with maritime security, and/or have produced programmes providing voyage risk assessments. These projects all help, but as is said in the information technology sector: as soon as operating-systems providers distribute a patch, the hackers find a new gap.

Littoral states as a group are relatively active contributors to the work of IMO. Many are sizeable countries with a lot of economic clout and with a long reach able to make a mark.[5] Policy debates will therefore present the full pros and cons of issues, and more balanced results and faster paths to ratification will emerge. On the other hand, countries with long coastlines are sometimes tempted to enforce cabotage rules: a well-known example being the US Merchant Marine Act 1920 ("Jones Act"). The country seems satisfied that it is worth shouldering the extra costs of supporting a domestic shipping presence; local vested interests naturally have no reason to complain.

Following accidents like the foundering of vessels or rigs near coastlines (e.g. 'Amoco Cadiz', 'Brear', 'Prestige', 'Erika', 'Hebei Spirit', 'Deepwater Horizon'), and particularly when there is pollution risk, the coastal authorities have a duty to intervene. A conflict with the shipping interests can develop quickly (about fault, method and cost of clean-up, insurance claims), with prolonged law suits on several fronts. A whole industry has over the years sprung up around these situations, frequently less keen to minimize the impact of actual pollution than to maximize claimable amounts. I used to be Chairman of the International Tanker Owners Pollution Federation Limited and became reasonably familiar with occasional local efforts at obstruction and obfuscation based on the stubborn belief that the available outside expertise was insufficient and that decision-making over clean-up activities had to be tightly maintained by the local administrations. Valuable time for action can get lost as a consequence.

### c. Ports

Ports are the *sine qua non* of shipping. The ports and their administrators ultimately have the most contact with ships, their complements, and their cargoes. With the advent of specialized vessels for particular cargoes, only smaller ports experience the ancient hustle and bustle of cargo activity in a harbour. Modern bulk ships and their cargoes frequently stay out of sight. Container shipping is more intimately related to specific ports than tramp shipping. Together with passenger vessels such as ferries and cruise ships, container ships with their footprint of giant loading cranes and stacked container boxes are the more visible part of our industry. The ships otherwise come and go largely without anyone but the harbour master, the cargo interests, and the port agents noticing.

Harbour administrations have multiple tasks, sometimes including the management of real estate that makes up or surrounds the harbour. Record keeping is a growing and demanding duty as well, as checklists proliferate to satisfy the demand of bureaucracies. Harbour administrations also have to look after vessel separation schemes, solve various logistics problems, do supervision of supply arrangements like luboils and bunkers in the port, and importantly proceed with the inspection of visiting vessels to check on compliance with safety, technical, and environmental standards. This is a policing function more formalized and more stringent in some regions and harbours than in others.[6]

The working relationship between responsible shipowners and port administrations is normally constructive and friendly. Both sides know how the job needs to be done and they rely on each other for best effect. After all, time is money, and when operational disputes do arise the professional



usually find solutions quickly. Port administrations are conscious of the economic benefits ships bring to the port and in turn to its local or national hinterland. In many countries ports are private or have been privatized; and their mindsets are entrepreneurial and competitive.

This is not to say that there cannot be serious difficulties from time to time. They usually revolve around wider political and/or economic issues affecting investments in property or infrastructure sought by those who control the port. Various interest groups can read economic prospects differently, and not infrequently there are competing claims for finite resources. The old NIMBY argument also often raises its ugly head. The challenges and the responses thereto are as varied as geographic differences and usually overlaid with questions of land reclamation, taxation, or subsidization. There can be disputes about harbour charges, or about the best ways to retain or attract new clients. Labour unions often flex their muscles in ports also.

Policy disputes between shipowners and port administrations have in the past centred on the provision of reception facilities for sludge removed from tankers to allow tank cleaning prior to drydockings. Another argument, still ongoing, is in connection with the concept of "ports of refuge" for stricken ships which many harbour administrations and local authorities have so far rejected. There have been the well-known examples of a fully laden tanker ("Castor") cruising around the Mediterranean for weeks with fractured deck-plating because she was not allowed into ports. There was the case of the stricken tanker "Prestige" sinking in a storm after being denied shelter near La Coruna in Spain. The Master of the ship was let go only after substantial bail was posted and he has lost his appeal recently in the European Court of Justice. Efforts to underpin a duty for granting refuge by a convention have not yet found widespread support. The responsibilities remain with the shipowners and their masters, both often not really knowing what to do in such situations.

My own organization has never really invested in port facilities, nor been involved in their planning or management, and I therefore can offer very little by way of analysis and advice on how to successfully approach this agenda. We rely on the "safe port" provisions in our charter parties and are not particularly worried that individual installations might not be suitable. If they turn out not to be, we would quickly communicate that fact to all concerned.

### *C. Shipping and Governments as Competitors*

The interface between national governments and/or regional authorities does not limit itself to operational, technical, and personnel issues concerning threats to public health, damage to property, or destruction of the natural environment. Shipping interests and governments can also spar on a commercial level.

Examples of this type are legal privileges granted to a particular group of industry participants. One may reflect on the traditional Liner Conferences or the Protection & Indemnity Clubs being given specific exemptions from anti-competition rules. I have mentioned protectionist policies earlier when referring to the cabotage system under the US Jones Act. In other instances, port charges are applied differently depending on the nationality of individual ships. Financing banks controlled by governments, such as the traditional export-import finance institutions in shipbuilding nations, frequently had terms tending to favour domestic credit applicants or dealings in the local currency. Some countries provide education facilities but only for their seafaring nationals, although the rationale here is more easily understood.

In recent years, the emergence or re-emergence of shipowning interests owned wholly, or in majority, by national or regional governments [7], or by entities ultimately controlled by the state (such as the proliferating sovereign investment funds), have given rise to concerns about tilted playing fields that can impact negatively on competition. Easy access to credit or to subsidised fuels, the provision of state guarantees, or lower prices for newbuilding vessels at domestic yards can all have significant consequences for operating costs, investment returns, and survival chances of shipowners, particularly in times of weak demand for tonnage.

I am reminded of the China Ship Fund connected to the Tianjin Municipal Government in the People's Republic. US\$ 3 billion has been invested in this shipping company so far; the entity commenced operations at the end of 2009. It currently has 47 tankers and bulkers in the fleet, but its current ambition is to control 200 vessels. Much of the fleet is chartered to mainland China state-owned enterprises like COFCO, the agriculture business firm.[8]

Government involvement in the industry can be indirectly responsible for more pronounced market swings, for example when shipbuilding activity is fostered for national economic growth reasons by governmental encouragement to local shipowners to continue placing further ship orders in the face of already existing over-capacity. In such situations, fears that at the end of the day governments might be forced to provide shelter for the national owners of surplus tonnage through cargo preference or other protectionist schemes are likely not misplaced.

We all know that governments have confiscatory or expropriation powers, sometimes employed for the common good. The phasing-out of single-hulled tankers, which for many of their owners meant an-earlier-than-scheduled inability to trade these ships for a full depreciation period, is a case in point.

In times of war it is usual that governments requisition merchant ships, or obtain control of any required tonnage through charter-in programmes. It is fairly rare for states to impose restrictions on merchant shipping in peace times unless there is evidence of criminal activity involving specific vessels. Even more unusual is the call to a universal commercial boycott of particular countries and their economic activities carried out by sea, like the measures sponsored by the United States and approved by the United Nations against Iran. [9] The commercial result of such prohibitions to trade can be widespread, affecting as they do contractual arrangements among many parties, the global marine insurance business, and financial interests. It is not clear to what extent affected participants in the shipping business can seek recourse for negative commercial or financial consequences. Presumably it is not intended that any compensation should be made available even when they are otherwise easily quantified. Few protesting voices are normally heard in these situations: in the short term everyone will be focussing on compliance to avoid threatened penalties. Certain nations are known to be particularly adept in using "long-arm statutes" to pursue their national goals.

Not only government policies can have financial or behavioural impacts. International standard-setting bodies can as well, for example through accounting rule changes. This is also an area where shipping interests seem to have limited input in policy-making, but end up facing the consequences like everyone else. And I must mention the International Labour Organisation (ILO) in Geneva which a few years ago promulgated the 2006 Maritime Labour Convention, which deals with living conditions for seafarers and has Guidelines (2008) for port state control officers. There is hope for ratification by 1 January 2011. The MLC updates some 65 existing convention documents. The International Safety Management Code 1998 was re-issued this year, with Guidelines (2010) for implementation under the Safety of Life at Sea Convention to the International Shipping Management Code.

## **Shipping, the Environment, and the State of Pollution Prevention**

One of the most controversial topics of modern times affecting the shipping industry through new regulation is environmental protection. In the old days there were relatively few vessels plying the high seas and ships and their cargoes consisted of perishable commodities, and so presented no great disposal problems. Matters changed with the rapid advent of steam, mass-produced steel ships, high-performance propulsion systems, more toxic cargoes and simply more ships trading, including in particular passenger vessels. Marine pollution from fuel leaks or oil spills following accidents became ever more prominent targets for global media attention.

IMO was soon charged with the task of dealing with the matter, and its deliberations resulted in the Marine Pollution Convention of 1973, amended by the Protocol of 1978 (normally quoted as MARPOL 73/78) which entered into force on 2 October 1983. It has seen many subsequent amendments. MARPOL is the main international agreement covering prevention of pollution of the marine environment by ships from operational or accidental causes and set the standard for similar conventions that followed.

Accompanying the framework to deal with the effects marine pollution became the Civil Liabilities Convention 1969 and Protocol of 1976 (now CLC 92), and the Fund Convention 1992 and its 2003 Protocol (Supplementary Fund). Strict liability was introduced on ships being found to have polluted the seas and the payment of compensation monies (contributed to by both shipowners and oil cargo receivers) was introduced. Over the years, and no doubt prompted by the Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990 which came into force in May 1995, oil spill response capability and clean-up techniques have steadily improved, as have contingency planning, vessel and equipment design, and manpower training. Oil spills have reduced both in the yearly number of incidents and in volume. [10]

From oil spills, work by IMO and by individual governments and regions have moved on to encompass other threats to the environment. A Convention on the Liability and Compensation in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) was finalised in 1996 and extended by a Protocol of 2010 to try and smooth the ratification process. It deals with chemical or other toxic spills and attendant compensation regimes. Provisions in Annex V of MARPOL deal with rubbish disposals from vessels and the provision of onshore reception facilities; to come into effect 2013.

A Convention for the Control of Ships' Ballast Water and Sediments still requires ratification but is intended to be in force from mid-2017, requiring vessels to provide treatment for ballast water to avoid the transfer of harmful organisms and bacteria from one part of the world to another. Various treatment systems are now being developed. This subject is a significant current operational and technical challenge for the marine industry.

A related instrument is the Convention on the Control of Harmful Anti-fouling Systems on Ships, which was adopted in 2001 and entered into force in September 2008. The convention prohibits the use of harmful organisms (such as tributyltin) in anti-fouling paints and encourages the use of silicone-or non-copper-based paints.

An even more recent IMO instrument has been the Convention for the Safe and Environmentally sound Recycling of Ships, 2009 (also called the Hong Kong Convention) which deals with major issues surrounding ships destined for scrapping which may contain environmentally hazardous substances. It also addresses concerns raised about working and environmental conditions at the world's recycling

yards. It is expected that ratification will take about six years. The idea of constructing new tonnage with environmentally friendly materials (so-called "green" ships) is taking hold in shipping, following similar approaches in the automotive and other manufacturing industries.

However, much more importance is attached these days to the question of emissions from ships into the atmosphere. I am aware that a previous speaker in your Series has devoted time to this subject and I do not want to be too repetitive. Let me just state that shipping is not taking the issue lightly [11] although one may argue that in terms of CO<sub>2</sub> emissions per tonne of cargo transported one mile, shipping can be considered as the most efficient mode of commercial transport. However, given the scale of the industry, shipping is nevertheless among the world's top ten emitters (CO<sub>2</sub> emissions from ships constituted 3% of the approximately 32 billion tonnes of global emissions per annum).

The British aid agency Oxfam was recently quoted as demanding that shipping raise US\$10 billion each year in carbon levies to meet the funding commitments made last year at the inconclusive Copenhagen summit (COP15) This provides a window on the sort of sums that might be in contention. Imposing a levy (for example by way of a tax on fuel purchases) to feed a fund for dealing with investments in abatement equipment is one idea being advanced; another is to institute a system of carbon trading certificates already employed in other industries. A third suggestion is the creation of emission compensation funds. The important question will always be as to who should be handling the monies being accumulated and deployed.

The expectation was that COP15 would leave regulatory responsibility for international marine bunker fuels with IMO, but no mention of shipping was made in the Accord. Failing agreement, work on the issue is carried on (by an Ad Hoc Working Group on Long-term Cooperative Action) under the terms of the Kyoto Protocol [12], which adheres to the principle of "common but differentiated capability" [13]. The Secretary General of IMO has expressed confidence that effective and uniform solutions can and will be found.

"Air pollution" is the popular but very general description of what is being talked about. Specifically, one has to distinguish between greenhouse gas emissions, and SO<sub>x</sub> (sulphur oxide) and NO<sub>x</sub> (nitrogen oxide) emissions derived from the propulsion fuels that are burned on ships. Abatement equipment, improvements in engine and hull designs, bigger ships, weather routing, or alternative fuels can produce significant reductions. Less so slow steaming for the bulk trades.

A reduction in the sulphur content in fuels is certainly achievable through improved fuel production technology, but comes at a cost. [14] If the shipping industry reduces the demand for high-sulphur fuels, the question arises as to whom the refineries will in future sell these residual fuels. NO<sub>x</sub> reductions are less dependent on fuel quality and have to be effected mostly through onboard systems or a possible switch to LNG.

In a number of marine areas the burning of low-sulphur is already made mandatory.[15] Criticism has been raised just recently in the European Parliament of IMO's approval (via Annex VI of MARPOL, in force since 1 July 2010) of the low-sulphur fuel requirements (namely 0.1%) in the Baltic, North Sea, and the English Channel by 2015. The arguments are about distorted competition within the European Union among short-sea operators in the North and the South, and about the increased costs and additional pollution of a shift from ships onto trucks. So it is not always the shipping industry that complains about the introduction of new standards!

The classification society Det Norske Veritas (DNV) is offering a new voluntary class notation (ECA SOX) that ensures that vessels can safely operate on marine distillate fuels in compliance with Annex VI. Other Societies will follow. And new guidelines and yardsticks are being developed for the industry such as ship efficiency management plans, energy efficiency design indices, or energy efficiency operational indicators.

Individual initiatives have begun also: the A.P. Moller group a few weeks ago announced that during port calls in Hong Kong its container ships would switch over to low sulphur fuel (which the vessels will carry onboard). Given the group's over 800 port calls a year, the impact on the pollution situation in the harbour is expected to be noticeable. Some owners have been experimenting with biodiesel mixes, others believe in the benefits of using LNG as propellant fuel trying to achieve 90% less NOX emissions, a reduction in carbon emissions by some 15%, and the elimination of particle emissions which latter are especially obnoxious in a public health context.

On top of necessary capital expenditures come additional charges for crew training and coping with new documentation. The question as to who will end up shouldering the extra costs of modification and quality improvements is wide open. Container shipping lines may be able to get shippers to agree to special surcharges. Tramp ship operators may not be so lucky.

### **Concluding Observations**

I have presented a general backdrop of shipping and its present working environment, with particular emphasis on relations with governments, perhaps in too much detail. What emerges as relevant?

As an international business in the forefront of globalisation, the shipping industry is inevitably connected to a myriad of jurisdictions, every one of which wishes to be taken seriously, and should be. Many are indeed keen to assist the business, since it is clearly in their own interest. However, there are competitive forces at work even among governments and NGOs that can lead to occasional regulatory overdrive. One of the complaints is that we have plenty of rules and regulations but face weak and inconsistent enforcement.

The shipping industry and its global scope and significance are insufficiently known. And memories are short. British shipping and shipbuilding and ancillary services were on top of the world until the end of the Second World War. While British universities and a few specialised colleges still do good work to educate seafarers and maritime managers, and London continues as a major hub for maritime services generally, public knowledge about our business is limited – unfortunately also in many other countries. We are sometimes unfavourably compared to the airline business, but with commentators forgetting that a large percentage of the world's population has personal experience of flying, but none or few have knowledge of sailing.

"There are no votes in shipping", proclaimed Fairplay in a headline on 26 August. This is largely true, despite the multitude of organisations meant to represent the industry. [16] We are globally distributed, without significant clusters of voters in any one spot. Most of us have a reputation of being conservative and slow in adapting to changing circumstances: in other words branded as reactionaries and not as good politicians. The truth is that shipping is often maligned. Progress is of course constantly made on all fronts, and with significant investment in capital and manpower. Unfortunately improvements are often so gradual or highly technical that they are hard to spot by the uninitiated.

Governments as policemen, governments as revenue gatherers, governments as players in the shipping business themselves, or governments as infrastructure providers: all have ample reason to exploit what shipping can offer – namely jobs for the bureaucracy, income from dues, benefits from cheap transport costs, in some countries employment for a part of the population not readily absorbed into other economic activities.

In the real world one should not expect the interests of governments and shipping always to coincide. I tried to illustrate some of the tension. But both sides have to work to a background of mutual dependence, if not symbiosis. Both sides have no choice but to keep on trying to resolve their differences. Normally of course that means additional expenditure for the shipowners.

Shipping has over long periods of time been left relatively lightly regulated and left alone to get on with its affairs. Other industries had their tyres kicked from time to time much earlier. The freedom of the high seas provided a lot of freedom from observation, and a relative lack of compliance. This made it that much more difficult to embrace the sudden avalanche of regulation during recent decades in parts going to the minutiae of personal behaviour amongst a background of general suspicion. In this context it has not helped that often first proposals were rejected, and that some of shipping's prominence has big egos. But not everyone in shipping goes around spoiling for a fight. By the same token, we must accept that governments and non-governmental organisation do not all have misguided agendas. We need leaders in shipping but not necessarily showmen, in the way we need policy-makers in governments with a sound knowledge of the industry and with long-term vision. The solution is, as I said at BIMCO's 100<sup>th</sup> anniversary General Meeting: dialogue, dialogue, and more dialogue. And all the time.

And last but not least: if shipping faces commercial or financial problems, we should not blame anyone else but ourselves. We ourselves determine market conditions by our actions. What we should rightly be arguing for with governments are first and foremost level playing fields, never bail-outs of the weak members of our fraternity or of the speculators.

Thank you again for having given me this opportunity to speak. And thank you all for your patience and attention.

## Footnotes

[1] 'Ideal-X' was a converted T2 tanker which in April 1956 became the world's first container ship and started a revolution in maritime transport and stimulated economic globalization. 'Jahre Viking' was the largest tanker ever built, with a length of 480m and a carrying capacity of 550,000DWT. 'Emma Maersk' is currently the world's largest container ship with a carrying capacity of 15,200 TEUs. 'Savannah' was an American nuclear-powered general cargo ship that traded between 1965 and 1971. Political opposition to nuclear power forced it into layup. The same fate happened to its Japanese counterpart 'Mutsu', which first sailed in 1974, was then overhauled a number of times and finally fully tested in 1991-92 before being decommissioned. The Japanese project cost some USD1.2 billion. A German nuclear experiment involved the ore carrier and passenger vessel 'Otto Hahn' which first sailed in 1964 and was deactivated in 1979. Navies around the world have no problems with nuclear-powered warships. Ongoing reduction in reactor size will likely mean a return of nuclear propulsion units also to the merchant marine. See DNV, "Nuclear Powered Ships-A Feasibility Study" (June 2010).

[2] There have been prolonged arguments about approaches to certain technical solutions, such as the double-hulling for tankers, the strengthening of bulk carriers, the efforts to tackle air pollution from ships, often also involving the classification societies. There are strong debates carried on at times within the International Group of the P&I clubs on the terms or extent of their cover, or about self-retention or reserve levels. Ship owners are well represented on individual Club Committees but the Club managers normally set the agenda.

[3] The work of IMO and its main Committees is widely reported and the Internet today provides extensive background material on IMO Conventions and the relevant Protocols and Annexes.

[4] See Sea Carrier Initiative Agreement; ISO/PAS 17712.

[5] Chile's navy, for example, is "present" in some 30 million square kilometers of the Pacific Ocean.

[6] See Paris Memorandum on Port State Inspections in EU ports, based on a new regime intended to inspect all vessel in the ports of the region, with a Ship Risk Profile template introduced to replace the previous target factors as from 1 January 2011. Richard Schiferli, BIMCO Bulletin 4, vol.105 (Aug.2010), pp.36-39.

[7] Dubai Ports, Dubai Docks, Singapore's Temasek involvement in shipping holdings.

[8] See report by Fairplay, PostTime2010-03-19, View:82.

[9] See UN Security Council SC/9948 of 9 June 2010 (6335<sup>th</sup> Meeting).

[10] Oil Spill Statistics, ITOPF Handbook 2010/11, pp.9-10.

[11] DNV Memorandum, "Pathways to Low Carbon Shipping", Oslo (9 June 2009).

[12] Officially known as the UN Framework Convention on Climate Change, 1992.

[13] The proposal that *developed* countries take responsibility of reducing their historic

greenhouse gas emissions while also providing funding for the costs of adaptation in *emerging* countries. This provides a challenge to IMO and its Marine Environmental Protection Committee; the emergence of regional regimes looks politically more likely.

[14] Low sulphur means that qualities like viscosity, lubricity, acidity, flashpoint, ignition and combustion, and the increase in catalytic fines need to be addressed, and appropriate equipment modifications must be made. Low-sulphur fuel is essentially gasoil whose use will require adjustments to today's marine engines, especially to the boilers. But the higher cost of low-sulphur fuels may be partially out-weighed by its higher calorific content.

[15] Called "Sulphur Emission Control Areas" or SECAs. See EU Directive 2005/33/EC; or the California Code of Regulation Title 13/17.

[16] Every sector is represented, e.g. BIMCO, Intertanko, Intercargo, International Shipping Federation, International Chamber of Shipping, FONASBA, HELMEPA, CMA, ITOPF; from national and regional shipping associations to shipbuilder associations, Classification Societies, Shippers Councils, the International Harbour Masters Association, the Cruise Lines International Association, the International Association of P+I Clubs, the Joint Hull Committee and national underwriters associations, or the International Bunker Industry Association, among others. They are often confronted by a plethora of government ministries (transport is often tied to trade, finance, customs, tourism, even housing), and by national coast guards and safety agencies.