

Flags - policing the policemen

The regime governing the performance of flag states is the weakest of any of all the sets of controls covering the key stakeholders in maritime safety. Steps are being taken to plug this loophole, but are they adequate? Mike Corkhill reviews the situation

The role of a flag state administration in maintaining agreed standards of maritime safety would appear to be as straightforward as it is important - to ensure that the ships flying its flag comply with the provisions of the conventions to which it is a signatory.

Notwithstanding the practical difficulties attendant on proper implementation and enforcement of the applicable rules, the obligations placed upon a flag state would appear to leave little open to interpretation.

In the egalitarian world of global shipping, with all flag states members of the International Maritime Organisation, the operation of all ship registers should be based on the same level playing field.

However, as most participants in international shipping are only too well aware, the reality is far from this ideal. Performance standards amongst ship registers vary widely.

With ship registration seen as a relatively trouble-free source of quick revenues, many emerging nations without a maritime tradition have established the facade of a flag administration with little more than a receipt book, a very competitive fee structure and contracts with a string of responsible organisations, themselves sometimes of questionable credentials.

Bad flags exposed

The weaknesses of the less-committed flags have been highlighted in port state detention results for the last 10 years and a number of recent ship casualties.

Furthermore, the maritime sector's strengthening name and shame culture is, at last, beginning to exert some pressure on substandard registers.

However, a major problem remains - the lack of any effective sanctions against the poor flag state performers.

Even responsible flag administrations sometimes find their role compromised. With the general populace increasingly showing zero tolerance for maritime accidents involving pollution and/or loss of life, administrators can find their agendas usurped by politicians anxious to be seen to be doing something but not properly aware of the best way to proceed.

The owner's role

Flag state fallibilities highlight the role of the shipowner as the ultimate arbiter of ship safety.

On the grounds that if an owner is able to assess the merit of an organisation as a responsible flag state, a so-called "round table" of international shipowner associations, comprising the International Association of Independent Tanker Owners (INTERTANKO), the International Chamber of Shipping (ICS), the International Shipping Federation (ITF), the International Association of Dry Cargo Shipowners (INTERCARGO) and the Baltic and International Maritime Council (BIMCO), published guidelines on flag state performance in December 2003.

The publication provides criteria designed to help shipping companies determine whether the flag states they are using take their responsibilities seriously, especially as regards the presence of adequate infrastructure; the ratification and implementation of relevant maritime treaties; the proper supervision of surveys; and

whether arrangements to ensure that seafarers can be repatriated to their home countries in cases of need are in place.

The report can be downloaded from www.marisec.org/flag-performance.

Weak spots

When the International Commission on Shipping (ICONS) published its landmark report on maritime safety in March 2001, the findings, based on 126 written submissions and interviews with 400 industry leaders worldwide, confirmed some home truths of which the shipping industry already had a vague perception.

The ICONS report found that some 85-90 per cent of the international shipping industry operates on a quality basis and in compliance with the relevant standards. Furthermore, those remaining companies, which make up the substandard shipping community, can gain a cost advantage of up to 15 per cent by avoiding compliance with international maritime safety standards.

The ICONS results have helped focus attention on the need for initiatives aimed at closing remaining loopholes in the safety regime. The lack of accountability and the variable performance of flag states have been identified as key weak spots.

Auditing flags

IMO is currently working to develop a voluntary IMO Model Audit Scheme to help assess how effectively member states implement and enforce relevant IMO conventions, and to provide them with feedback and advice on their current performance.

In a parallel effort IMO is drafting a code to help ensure complete and uniform implementation of IMO instruments worldwide. Originally earmarked for flag states only, the scope of the proposed Implementation Code has been extended to encompass all government stakeholders, i.e. flag, port and coastal states. It has also been agreed that the proposed code should be compatible with the proposed Model Audit Scheme.

Responsible ship registers, in general, agree that the concepts of the Audit Scheme and Implementation Code are good. However, many also believe that the intended voluntary nature of the schemes offers too many escape routes for the less-committed administrations and that the initiative will become just another paper exercise.

IMO parting shot

In a farewell speech in November 2003, at the end of his 14-year tenure in office, IMO secretary-general William O'Neil said that the powers of IMO need to be extended if the goal of 100 per cent implementation of existing maritime conventions is to be achieved.

This would not only weed out the corner-cutters but also help minimise the need for further legislation.

The voluntary Audit Scheme under discussion is a step in the right direction but what I envisage goes beyond that," he stated. "It will be necessary to establish a more formalised way, a method for verifying that what people say is being done, or what they agree to do, is actually being done.

Such a measure would necessitate introducing the principle of sanctions, as has been done with the Standards of Certification Training and Watchkeeping Convention.

"This, in turn, would entail similar changes to the structure of other IMO conventions. Such an initiative would mean that IMO could use the Audit Scheme not simply to verify the performance of flag states but also to introduce punitive measures for those failing to meet their obligations.

Responsible flag administrations back the former IMO secretary-general, pointing out that implementation codes and audit schemes need to be backed by performance-based standards against which performance can be measured. If such codes and schemes are merely documents without a measurement standard or consequences, then no concrete headway can be made.

Criteria for a quality flag, as defined by the BIMCO, Intercargo, ICS, ISF, Intertanko round table:

Flag states should have ratified SOLAS, MARPOL, Load Lines, STCW, ILO 147, CLC/Fund 92.

Flag states should have appropriate controls over organisations such as class societies nominated to conduct ship surveys on their behalf (eg only flag ships which have IACS class societies).

These controls, the report says, "should include determining that the organisation has adequate resources for the task assigned" (not specifically, checking that it has actually performed a fair assessment).

Flag states should specify instructions with actions to be followed in the event the ship is not found fit to proceed to sea.

Flag states should implement the requirements of ISM code about auditing safety management systems. They should have procedures for issue of withdrawal of Safety Management Certificates.

Flag states should have procedures to ensure foreign certificate issuing countries for seafarer certificates comply with STCW training and certification standards.

They should maintain databases of their own seafarer certificates issued and STCW endorsements given to foreign officers and respond to requests from companies seeking confirmation of the validity of any certificate or flag state endorsement.

Flag states should investigate any serious casualty as soon as practicable.

When accepting a ship from another flag state, flag states should check they are in compliance.

Flag states should be able to repatriate seafarers in the event of their shipping company going bankrupt

Flag states should attend MSC, MEP, IMO legal committee and IMO assembly meetings.

Following these criteria, particularly negative performance indicators were recorded for Albania, Belize, Bolivia, Cambodia, Costa Rica, Democratic Republic of Congo, Honduras, Jordan, Madagascar, Sao Tome & Principe, Suriname and Syrian Arab Republic.

The only completely clear flags are Netherlands, Denmark, Norway and the Isle of Man.