

SHIPPING REGULATIONS The Role of International Industry Organizations, Ship Classes, Flags, and Registries

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Those of us the shipping industry may be feeling buried under by a wave of acronymic alphabet soup: ISM, ISO, ISPS, IACS PSCI, OPA, FOC, SOX (and I don't mean Sarbanes-Oxley), NOX, HELMEPA - to name a few. Each one has been imposed by yet another set of regulations that is being fed to us by politicians, lawyers, bureaucrats, and people whom, had we heeded Shakespeare's advice, would have been long been dead! Having ignored his advice, however, we are now without choice but to work together with them... A couple of generations ago, the industry was not nearly as regulated, and life for ship owners, both respectable and rogue, was indeed much simpler. The operator who violated the regulations was easy to spot: for example, with the fore and aft draft marks and the Plimsol Mark amidships it was easy for even the untrained eye to spot an overloaded ship. Shipowners of today may even be inclined to believe that each wave of implemented regulations is intended to make it more difficult to do business. Bar none, however, each new regulation has actually been instituted after some major catastrophe. The purpose of this article is not to assign blame; I will not delve into specific incidents, except to illustrate a point. It is easy, for instance, to see how after each disastrous tanker accident and resulting oil spill, the IMO, the US Government, and more recently the EU responded by legislating limitations on tankers to the point of imposing phase-out dates for single hull oil tankers. Similarly, following the attacks of September 11, 2001, the US felt that ships and port facilities presented security risks and, thus, spearheaded the imposition of the ISPS Code through the IMO. As the number of oceangoing vessels proliferates and their average ages increase, one can undoubtedly expect even more regulations in the future. The old ore carrier that broke in two has prompted the classification societies to limit the alternate hold loading provision. I will venture to say that the recent loss of a container ship off the coast of the UK earlier this year, along with the ever increasing container ship size, will eventually lead to increased scrutiny of these ships and future imposition of new regulations. While for the ship owner and the investor this impinges slightly on the bottom line, one must nevertheless keep in mind that for the seafarer this may be a matter of life and death and that for the world at large this will mean cleaner seas and air. Let me emphatically state here, that ships are neither the sole nor the major pollution culprit. They are, however, unfortunately easy targets for politicians worldwide that prefer to attack those who are not their constituents. Understandably, a politician seeking greener credentials may be less inclined to close a local factory, which employs many constituents because it would be political suicide; attacking ships owned by "some rich foreigner," on the other hand, could in fact be the key to reelection. Others like me may recall that almost three decades ago swimming in the Aegean was actually hazardous; one could easily be stung by a jellyfish that had been dumped with the ballast, or possibly having to spend hours cleaning oneself from oil stains after a dip in the sea. The Greek ship owners and seafarers took the initiative in 1982 and formed HELMEPA (Hellenic Marine Environment Protection Association) to coordinate ways of improving water quality. Now, many beaches fly the "blue flag" which signifies that they are free of pollution. At around the same time, all the countries of the Mediterranean Sea held a conference to discuss and implement ways to improve the sea's marine life. What was noteworthy is that they not only succeeded in their goals, but that the conference was attended by isolationist Albania and even brought together traditional enemies such as Israel and the Arab states. When people are proactive there is no need for additional regulations. We can see, therefore, how the international bodies and the regulations they impose do offer benefits. Furthermore, as these regulations are mandatory and imposed on all ships in international trade, no one fleet can benefit over others. The rogues that try to bypass the regulations are invariably relegated to less profitable trades. One may see substandard ships plying the waters around Africa or the South China Sea; however should these ships call in Europe, Japan or North America they will likely be detained. Such detentions can prove costly in both expenditures and loss of income. I know of a ship that was detained in Canada for five months and then had to be dry-docked before the detention was lifted. I do not expect any public ship owning companies to be of that nature, and therefore for them the regulations can only prove beneficial by effectively eliminating other cut-rate style ship owners. While the IMO generally implements the regulations, it does not take part in policing these. Rather, this task is handled by the Flag States, the Classification Societies, and Port State Control (PSC). Port State Control inspections are usually

performed by the local Coast Guard. Neighboring countries have banded together to share information, by forming Memoranda of Understanding, MOU. The most effective and most meticulous of these are the Paris MOU which encompasses the North Atlantic Ocean including most of Europe, and the Tokyo MOU which encompasses most of the Far East Pacific Ocean. Canada is a party to both, while the USCG remains independent but closely follows their actions. Each entity has its own criteria for inspections in the form of a matrix, and the criteria of the matrixes are generally similar in nature; they assign points to each ship depending on the flag, class, vessel history and management history. The main purpose of the PSC inspections is not to make operations more expensive but rather to ensure the protection of the seafarers, the environment, the cargo and the ship. Depending on the severity of the deficiency, the inspectors can detain the ship until the deficiency is rectified and the flag state or classification society is satisfied of the results. By requiring these repairs to be done prior to departure they ensure the repairs are made. For the owner, however, effecting repairs at more costly ports and/or having to place a ship off-hire can diminish any savings made by improperly maintaining the ship - savings that had been accumulated at the expense of others. The port state has no authority on the proper execution of the corrective measures, so they require the flag state and/or the classification society to sign off before lifting the detention and allowing the ship to sail. One might say that they find the problem and then pass the buck, yet this would not have been necessary if the ship owners, the crew, the flag state, and the classification societies were doing their job properly. On the other hand, the USCG for example has instituted the Qualship 21 programme, wherein ships with a clean record are boarded every two years instead of on an annual basis. This brings us to the flag state. Ship owners have numerous choices of flag states. A natural option is the flag of the nation of the owner's domicile. This reflects a level of national pride, however it is often counterbalanced by taxation and crewing considerations. One can easily track the ups and downs of Greek-flagged tonnage as correlating almost directly with the level of taxation and minimum number of Greek crewmembers required aboard. At one time it was easy to secure adequate, well trained, and reasonably paid Greek crews. Yet, as the country became more prosperous, more of the country's young men have decided to forgo the life of the seaman to stay ashore. In doing so, ship owners were faced with the choice of paying more for Greek crews or to switch to another flag. Naturally, Greek-flagged tonnage fell, and in response the government introduced measures easing the tax burden, and today requires only that only 20% of the crew must be Greek nationals in order to fly the Greek flag. In the US, the strong labor unions and labor laws, coupled with a tax code that does not differentiate between offshore shipping income and local income, have made American-flagged shipping extremely prohibitive for most ship owners. Many countries with similar problems have created secondary flag schemes. The Scandinavian countries have set up such international registries as the NIS (Norwegian), DIS (Danish), and Swedish (SIS) to cope with the problem, while the French set one up at the Kerguelen Islands. Many other countries have set up registries, which charge fees and expenses only, and any tonnage tax is based on the size of the ship rather than her earnings. Registers such as those of Belize, Cyprus, Liberia, Malta, the Marshall Islands and Panama usually come to mind, but lesser known registers include those of Cambodia, North Korea, Mongolia, and Sierra Leone. From the start, the ITF (International Transport Workers Federation) termed those ships where the beneficial ownership and control was found to lie elsewhere than the country of the flag the vessel was flying, as sailing under a Flag of Convenience (FOC). The union then campaigned further to ensure that seafarers who serve on FOC ships, whatever their nationality, were protected from exploitation by ship owners, and over the past 50 years they have developed a set of policies which seek to establish minimum acceptable standards for the seafarers on those ships.

With so many options of flags to choose from, what are the important considerations in making the selection? The mortgagees want to know that the title is protected immediately, regardless of the time of day, through satellite offices where the ship can be registered. Even more than that, the mortgagee will want to know that the laws governing the registry have been tested and will protect their claim. For the ship owner, another major consideration is the network of worldwide offices the registry has and the quality of authorized surveyors they have on hand to assist in the case of an emergency. As previously stated, often times a ship

may be detained and the detaining authority will want the ship attended by a flag surveyor; thus, a well-placed network of surveyors may significantly minimize the time delay and travel costs. Naturally the fees and expenses imposed by the flag state will matter to the ship owner. They must also weigh the cost savings as compared to the quality of the flag, and whether using the particular flag may be targeted (attract more stringent inspections) by the PSC or action by the ITF. A prudent flag state, through their network of surveyors, offers an additional level of protection to ensure that the vessel is operated in a prudent manner. A further consideration when choosing a flag to fly is to look at the detention records of the particular flag's ships. For example, the USCG will assign points to a ship and depending on the number of points will take appropriate action. Any ship with 17 points is considered Priority I and will automatically be inspected before it is allowed entry into US waters, while ships with 7-16 points will be boarded before port operations begin. At present, ships sailing under the flags of Cambodia, Honduras, and St. Vincent and the Grenadines will be assigned 7 points (Priority II) by virtue of their flag. On the flip side, the USCG will consider ships of only

eleven flags as eligible for Qualship 21. Since any surveyor can find some fault with any ship, even those built less than one year earlier, the benefit of longer intervals between inspections is obvious and so the choice of flag must be considered wisely. In most instances the flag states have delegated the responsibility for the statutory inspections to classification societies. These technical organizations are responsible to review and approval all constructions plans, attend the construction and any modifications, inspect repairs, and in general, ensure that the ships are seaworthy in every physical respect for their intended use. For the flag states they will also check safety and security measures and issue relevant certificates. The major Classification societies have formed the International Association of Classification Societies (IACS) with common rules. There are ten members and one associate member in IACS, though the main criterion to become a member is the number of ships in the register. Thus, even among IACS members, the Russian Registry will receive three points on the USCG Targeting matrix, whereas the other members will receive zero points. There are some non-IACS societies that are deemed Priority I and whose ships will automatically be boarded. In most instances the classification society is chosen when the ship is constructed and usually will not change without compelling reason. As the ships become older and change ownership they may eventually move to a Priority I register, especially when not trading with the US, Europe, Japan, and Australia. Once again, when a ship is detained she will need to be inspected by the classification society to verify that all detention deficiencies were dealt with satisfactorily. Thus using a class with a large network of exclusive surveyors will offer the ship owner a better chance of having an inspector attend without delay. As recently as the later part of the last century, it was fairly easy to influence the decision of a class surveyor, especially by a ship owner with a large fleet. Class societies charge fees and though they are not run for profit, they are aware that a ship owner may reclass a ship with another society. With the proliferation of regulations and the resulting increase in inspections, not to mention the eagerness of various litigators to assign fault wherever possible, the head offices have significantly limited this practice. Earlier in this article I stated that all these inspections were primarily for the safety of the seafarers and the ship. Yet more needs to be done to protect them from political do-gooders. In the US it is a crime to lie to a PSC Inspector, yet when the inspector boards, the Master seldom is able to give him his undivided attention. Upon arrival the agent boards with a list of port requirements and instructions for the Master; the immigration and health officers also board at that time and they require the Master's time; additional visitors and inspectors include stevedores, cargo hold or tank inspectors, suppliers, all demanding the Master's time. While all are subordinate to the PSCI, the Master has to attend to all to avoid any unnecessary loss of time. All this is done in a language that is seldom the Master's native language, and mistakes do sometimes happen. Many companies have started adding another crewman, usually a Chief Officer ready to achieve the rank of Master, to sail on board the vessels as a Documentation Officer to ensure the required paperwork is in order and to assist the Master with these inspectors. In a fleet of 50 ships this could easily cost a total of over \$4 million. Yet if this extra person saves a total three ship days delay per year, this cost is more than covered. Ultimately all these regulations are beneficial to the ship owners as a whole in that they force the owners to behave prudently; for the investors who know nothing about the business of running a ship it gives them a measure by which they can qualify these investments. It is noteworthy to state here that since 2000, the number of merchant ships that have been lost has more than halved as reported in early March by Tradewinds, despite the increasing number of older tonnage trading. In concluding I would like to reiterate that it is incumbent on the ship owners, the crews, and the classification societies to ensure their ships and the industry are run safely, efficiently and properly. When they fail in these duties, it is only inevitable that more regulations will be imposed upon them. Could Shakespeare have been wrong? CTT Shipping was established in 1993 to offer services of diverse interests in the Maritime Industry. Having evolved from a family enterprise with over 180 years in the industry, it has been built upon two important business philosophies: building on past reputation, and offering excellent services with integrity when dealing with its clients. CTT's range of services include in depth market analyses for specific industry sectors, sale and purchase ship broking, vessel inspections and record reviews, and claims assistance. Headquartered in New York, CTT Shipping works with an international network of partners and associates to offer optimal and timely assistance for the benefit of its clients. In the US, the strong labor unions and labor laws, coupled with a tax code that does not differentiate between offshore shipping income and local income, have made American-flagged shipping extremely prohibitive for most ship owners.