

The Future of Regulations in Shipping Panel Talk – May 7, 2021

• PRESENTATION BY DAN CARR

○ BIMCO PERSPECTIVE

- Brief introduction of BIMCO
- BIMCO's role in international shipping regulation
 - An active player in the development of international rules and regulations
 - The leading “translator” of rules and regulations into commercial contracts and clauses
- Looking ahead – the future perspective
 - Focus for BIMCO continues to be on international rules and standard contracts and clauses
 - Key areas: environment, digitisation and autonomous shipping
 - Main challenges: Unilateral rules and regulations, lack of ratification and enforcement

○ INDUSTRY PERSPECTIVE

- What has worked well?
 - International measures that required the industry to improve onboard operational standards – International Safety Management Code (ISM)
 - International measures that required use of proven safer equipment (lifeboat fall preventers/on-load release hooks, Electronic Chart Display and Information System (ECDIS))
- What has worked well, but brings some negative consequences:
 - Improvement measures that introduce new problems and safety risks:
 - Double hull: big reduction in spills, but at cost of higher carbon footprint (higher energy efficiency operation indicator (EEOI)), more steel consumed, more cracks in new structures
 - Vetting regime: improved quality of ships generally by more inspections, but a lack of standardization in customer acceptance increased costs beyond what a standardized process should have brought; there are now 25+ different tanker customer vetting standards

- Energy Efficiency Design Index (EEDI): improves enviro footprint but produces low-power ship which cannot manoeuvre adequately in critical situations
- Ballast Water Treatment Systems (BWTS): Lower deballasting speed drives workarounds in operational routines
- Standards of Training, Certification and Watchkeeping for Seafarers (STCW): Improved training standards in general, but certain critical features (risk assessments) were not sufficiently developed, so full potential was not realized
- What concerns us:
 - “Aspirational” regulations introduced before the technology is available, leading to costly failures and corrective problems (BWTS, Oily Water Separators (OWS) some years ago)
 - Differing regulatory regimes with differing standards:
 - EU vs IMO standards/requirements for ship recycling or decarbonisation
 - US vs IMO standards for BWTS
 - Private initiatives that run parallel to regulatory standards, but differ in approach or measurement (Sea Cargo Charter, Rightship)
 - Fragmentation of standards between IMO / regions / countries / ports / customers (compare PSC in Australia vs China) confuses owners/crews and adds cost
 - Measures that place all the compliance risk on the shipowner vs other parties in transport chain (fuel suppliers escape risks in low-sulphur fuel switch)
 - Measures introduced with insufficient time to react in a financially sustainable way considering length of commercial deals (Energy Efficiency Existing Ship Index (EEXI) in 2023)
- **PRESENTATION BY ADMIRAL KENNEY**
 - The need for consistent, global regulation
 - The IMO is the global standard-setting authority the safety, security and environmental performance of international shipping.
 - Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted, and universally implemented.
 - A brief history of the regulatory process at IMO

- The treaty-making and regulatory process
 - Step 1: Development of a proposal
 - Step 2: Placement on the work programme
 - Step 3: Substantive consideration by committees / subcommittees
 - Step 4: Drafting the instrument
 - Step 5: Approval by the committee
 - Step 6: Circulation
 - Step 7: Adoption by the Committee / Assembly / Diplomatic Conference
 - Step 8: Ratification / Acceptance (tacit or explicit)
 - Step 9: Entry into force
 - Step 10: Implementation / Review / Amendment
- Introduction of tacit acceptance
 - History, Rationale, Use
 - Process
 - Objections
 - Example: MSC 365(93) accepted 1 July 2015, no objections
- Consensus-based decision making
- Charting the future: The IMO Member State Audit Scheme and its results
 - The benefits of IMO's regulatory framework can only be fully achieved when all Member States carry out their obligations as required by the instruments to which they are Parties.
 - Member States have the primary responsibility to establish and maintain an adequate and effective system to discharge their obligations as flag, port and/or coastal states emanating from applicable international law.
 - The IMO Member State Audit Scheme (IMSAS) commenced as a voluntary Scheme in 2006 and became a treaty obligation in January 2016. It aims to promote the consistent and effective implementation of applicable IMO instruments and to assist Member States to improve their capabilities, while contributing to the enhancement of global and individual Member State's overall performance in compliance with the requirements of the instruments to which it is a Party.
 - Lessons learned from audits, based on the analysis in anonymous consolidated summary reports (CASR), are reviewed by the relevant

Subcommittee and fed back into the regulatory process of IMO to help make measurable improvements in the effectiveness of the international regulatory framework for shipping.

- Defining the balance between regulatory development and regulatory implementation

- **PRESENTATION BY GARY VOGEL**

- Introduction – Eagle views global regulations as not only necessary, but a welcome part of the global shipping landscape
 - Increased regulation is good for:
 - The Industry (safety related) as it provides for a healthier/safer work environment for the 1.2+ million seafarers
 - The Environment (emissions related) as it drives an outcome, but also acts as a catalyst to fleet renewal
 - Larger Companies that are able to effectively deal with the inevitable complexities
- Keys to “successful” regulation:
 - Goal oriented and effective in achieving that outcome
 - Defined and Transparent in requirements
 - Effectively immutable with reasonable implementation timelines
 - Equal application
- Looking back - Case studies
 - International Convention for the Safety of Life at Sea (SOLAS)
 - Oil Pollution Act of 1990 (OPA90)
 - International Convention for the Control and Management of Ships’ Ballast Water and Sediments (BWTS)
 - IMO 2020
- Looking ahead
 - Decarbonization
 - Short term vs. Long term
 - Global vs. Local
 - Industry initiatives; Poseidon Principles, Getting to Zero, Sea Cargo Charter

- Potential unintended consequences
 - Other
- **PRESENTATION BY FOTINI IOANNIDOU**
 - See separate outline entitled, “Regulating shipping in EU: how to render global regulation of shipping seaworthy”