

# Annual Review 2011



ICS is the principal international trade association for shipowners, concerned with all regulatory, operational and legal issues.

ISF is the international employers' organisation for shipowners, concerned with labour affairs and training issues.

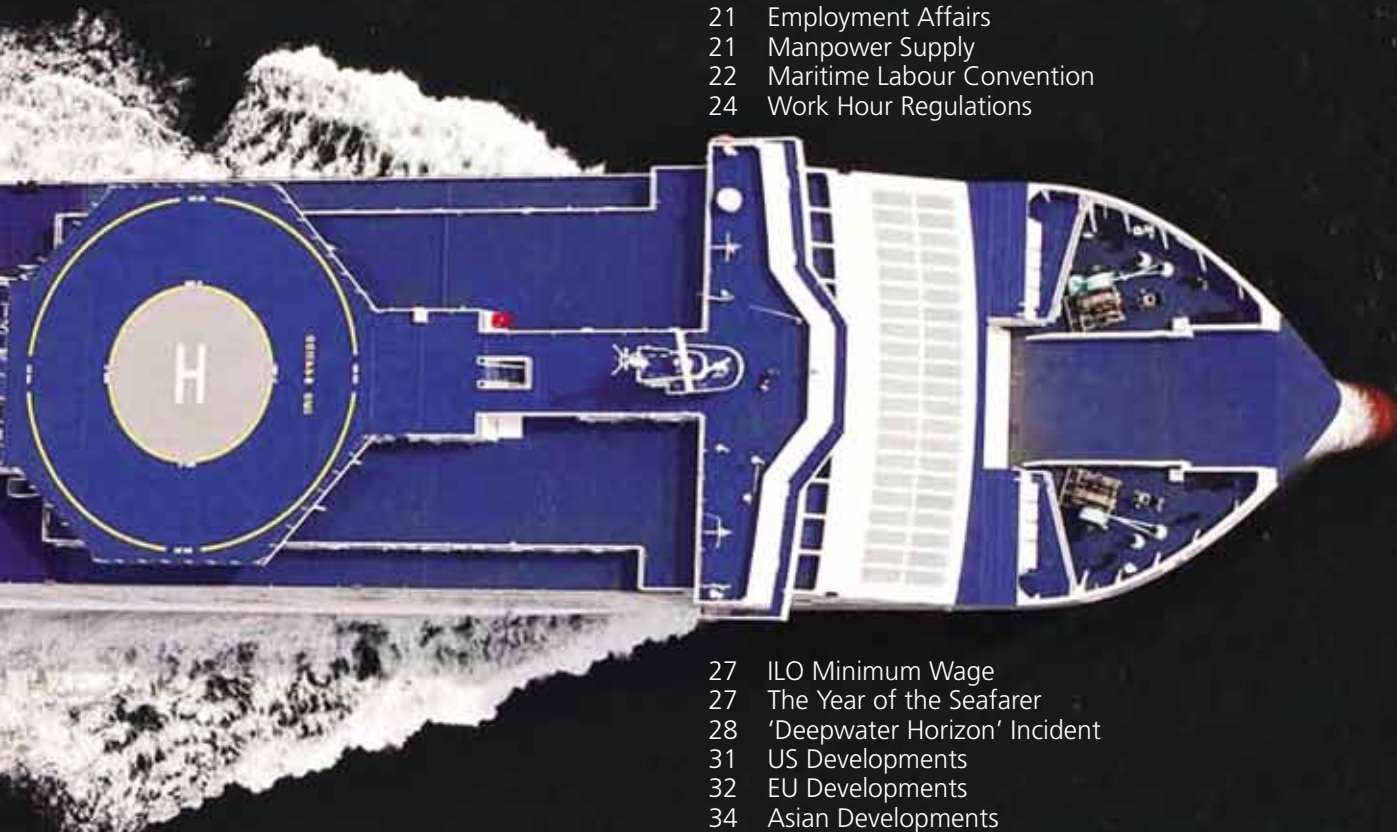
The membership of ICS and ISF comprises national shipowners' associations representing all sectors and trades from 36 countries, covering more than 80% of the world merchant fleet.





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**ICS Chairman and ISF President  
Mr Spyros M Polemis  
Greece**



# Introduction

4 AS I WRITE, ABOUT 600 SEAFARERS are being held hostage by pirates in Somalia, thousands more having already endured months of captivity in the most appalling conditions.

What is almost as shocking is that the international community seems unable to act, in effect ceding control of the northwest Indian Ocean to armed criminal gangs. Politicians and policy makers seem completely ignorant about the large proportion of world trade that must pass through the pirate danger area. Even more disturbing, many politicians seem oblivious to the immense human cost.

If we consider the families of those that have so far been held hostage, tens of thousands of people have already been affected. But when taking account of the families of all those seafarers who, in fear for their lives, courageously keep world trade moving, the numbers directly touched by the crisis are enormous. Sadly, one can only conclude that the victims of piracy are the 'wrong' nationality. If 3,000 Europeans or Americans had been kidnapped during the last three years, it can safely be assumed that the response of the world's major powers would have been very different.

As this Annual Review explains, while no short term solutions appear to be in sight, piracy is by far the most important issue in which ICS and ISF

are currently engaged on behalf of the global industry. However, life must somehow go on, and ships must continue their vital business of transporting world trade.

In last year's Annual Review, I remarked that it was necessary for any prudent ship operator to continue to anticipate the unexpected. A year later we are trying to digest the enormous implications of the devastating earthquake and tsunami in Japan and their tragic consequences. We are also in the midst of dramatic political upheavals in the Middle East, and what the future holds in relation to these seems far from clear. Moreover, while many had assumed that the worst was over following the 2008 banking crisis, the health of the global economy is still very fragile.

Shipping, of course, is the servant of world trade and is very sensitive to developments beyond its control. However, our external challenges are compounded by the truly massive quantity of new tonnage that is due to be delivered in the next few years. Many of these new ships are being ordered from China, which is aggressively expanding its shipbuilding capacity. We must be mindful of not repeating the mistakes of 30 years ago when speculative over ordering led to far too many ships chasing too few cargoes, causing rates to plunge to unsustainable levels.

More optimistically, one of the important issues over which the industry can have some influence is our collective effort to reduce carbon emissions. ICS is working hard to help ensure that shipping's CO<sub>2</sub> emissions are regulated on a global basis by the International Maritime Organization (IMO). This will be vital if we are to avoid serious market distortions, and it will also be the best means of delivering genuine and meaningful emission reductions. These can only be achieved if the new rules are applied to the entire world fleet, and not just ships registered with developed countries. It is therefore of the utmost importance that governments agree to a package of new technical measures to reduce carbon emissions from ships, at a critical meeting of the IMO Marine Environment Protection Committee this July.

2011 will be the last of an impressive eight years in office for the current IMO Secretary-General, Efthimios Mitropoulos. As well as being a highly knowledgeable and diligent regulator, he has always displayed great empathy for the shipping industry and the seafarers whom it employs. His achievements in office are legion. One in particular that must not go unremarked was his steering through of the establishment of the IMO Member State Audit Scheme. As a result of his efforts to negotiate around sensitive sovereignty issues, the performance

## ICS/ISF Office Bearers 2010/11

### ICS Vice Chairmen



Mr Frank  
Leonhardt  
*Germany*



Mr Trygve Seglem  
*Norway*

### ISF Vice Presidents



Captain Dirk Fry  
*Cyprus*



Mr Carlos Salinas  
*Philippines*

of maritime administrations with respect to their enforcement of IMO rules will now be subject to far more thorough scrutiny. This will greatly help towards our ultimate goal of zero accidents and zero pollution – a fitting legacy indeed. I look forward to working with Mr Mitropoulos' successor, who will be elected by governments in June.

At their Annual Meetings in Hamburg, in May 2011, ICS and ISF will finalise their important decision to integrate the two associations so that they will operate under a single Board of Directors. The new organisation will continue under the name of the International Chamber of Shipping, and will also maintain the separate identity of the International Shipping Federation. However, this does mean that this is the last Annual Review when I will have occasion to thank the ISF Vice Presidents and ISF Council for their valuable support during the previous year, in addition to my ICS Vice Chairmen and my colleagues on the ICS Executive Committee.

Notwithstanding the challenges of piracy, and political and economic uncertainty, I look forward to continuing to serve our great industry for another year as ICS Chairman.

Spyros M Polemis

## Secretariat

### Mr Peter Hinchliffe *Secretary General*

Mr Simon Bennett  
*Director External Relations*

Ms Linda Howlett  
*Director Legal Affairs\**

Mr Alistair Hull  
*Technical Manager*

Ms Kiran Khosla  
*Director Legal Affairs\**

Mr James Langley  
*Senior Adviser*

Mrs Susan Gray  
*Director Finance and Administration*

Mrs Kathryn Hall  
*Personal Assistant to Secretary General*

Mrs Catherine Howlett  
*Administrator Publications*

Mr John Murray  
*Director Marine*

Miss Emily Rowley  
*Adviser*

Mrs Natalie Shaw  
*Director Employment Affairs*

Mr John Stawpert  
*Senior Adviser*

Mr David Tongue  
*Director Regulatory Affairs*

Mrs Shantel Ryan  
*Publications Manager*

Mrs Anita Pow  
*Administrator Shipping Policy*

Miss Julie Rogers  
*Administrator Marine Department*

*\*position held jointly*



# Piracy Crisis in the Indian Ocean



SINCE THE BEGINNING OF 2011, the piracy crisis in Somalia has continued to spiral out of control. At the time of writing, about 30 ships and around 600 seafarers are being held hostage for ransom in Somalia, with attacks taking place on a more or less daily basis throughout the larger part of the northern Indian Ocean, sometimes as far out as the coast of India and south into the Mozambique Channel.

While the number of attacks has increased dramatically since the incidence of piracy in the region started to escalate in 2008, the level

of ransom payments has also risen, in one case reportedly approaching US\$ 9.5 million. The pirates are seemingly better equipped and are increasingly using captured vessels as 'motherships'. It is also feared that because of the very high financial stakes, serious violence against hostages is far more likely, as disturbingly evinced in early 2011 by the murder of captives at sea, apparently in response to attempts at military intervention.

Frustratingly, governments in those nations with the largest military navies in the region show little willingness to increase resources to the extent that would be necessary to have a decisive impact on the problem. In short, they have ceded control to the extent that few ships transiting the Indian Ocean are now safe from attack. At a time when both financial and military resources are extremely stretched, Western governments, at least, appear to have concluded that this unacceptable situation can somehow be tolerated. Moreover, the dramatic recent political developments in the Middle East, including the decision of the UN Security Council to support military intervention in Libya, have further diverted the attention of policy makers from the urgent need to address the piracy crisis. This seemingly rather complacent assessment has probably been supported by the fact that relatively few nationals from Western nations have so far been taken hostage, or been amongst those 30 crew members so far understood to have lost their lives due to illness in captivity. Counter piracy efforts have also been discredited by the lack of appropriate domestic legislation in many nations, including any offence of 'intent to commit piracy', which has led to a continuation of the absurd situation that pirates who are captured by navies are often released back to Somalia.



The degree of co-operation between military navies in the region is certainly unprecedented in modern times, with EU and NATO forces working closely with independent navies from countries including China, Russia, India, South Korea and Japan, among others. To be fair to the navies, to a large extent they have been a victim of their own success in preventing attacks against ships in the Gulf of Aden through the efficient and effective use of an internationally recognised transit corridor. The pirates have responded by expanding their attacks throughout a large part of the Indian Ocean, an enormous sea area of about two and half million square miles, which the navies claim can only be policed effectively with an additional 85 warships equipped with helicopters. At any given time there are currently around 30 warships in the region on counter-piracy duties, but only a proportion of these are actually available to protect merchant ships on any given day. As a result, when attacked by pirates many ships may be hundreds of miles away from the nearest military vessel.

One important development in 2011 is the increasing use of private armed security guards by shipping companies, many having concluded that arming ships is a necessary alternative to avoiding the Indian Ocean completely. The consensus view amongst most ICS national associations remains that, in normal circumstances, private armed guards are not recommended, and are a clear second best to military personnel on board. However, ICS has had to acknowledge that the decision to engage armed guards, whether military or private, is a decision to be made by the ship operator after due consideration of all of the risks, and subject to the approval of the vessel's flag state and insurers.

In view of the current crisis, ship operators must be able to retain all possible options available to deter attacks and defend their crews against piracy. But there is clearly a need for guidance to be developed for companies that elect to deploy armed guards, and navies have expressed the wish to be free to communicate with private guards employed on

board ships and to co-ordinate their activity with them. Following the acknowledgment by ICS of the use of armed guards, IMO is now considering the development of such guidance, perhaps in parallel to the widely disseminated Best Management Practices to prevent piracy, developed by industry associations including ICS, in co-operation with the military (the latest version - BMP 3 - was published in 2010). However, ICS has been keen to stress that armed guards should not be seen as a substitute for military protection by governments, and that the same logic applies to proposals by insurance interests for some kind of private convoy escort programme.

It must be emphasised that strict adherence to the Best Management Practices remains the single most effective means of passive defence. ICS continues to urge all companies and ships to comply with the guidance in BMP 3, with particular emphasis on registration with the military prior to every passage.

At the operational level, ICS continues to liaise with the military, including the commanders of EUNAVFOR and NATO navies, about the best use of resources and any need for further refinement of the industry Best Management Practices. ICS also continues to participate in the regular meetings of the UN Contact Group on piracy, held in New York and London, as well as relevant meetings at IMO which has made orchestrating a response to piracy its 'theme' for 2011. This was launched at a special ceremony in London, in February, attended by the United Nations Secretary General, Mr Ban Ki-moon.

This activity notwithstanding, it remains a concern that little real progress is being made towards developing any radical new strategy that will deliver immediate results. While everyone recognises that the long term solution will have to be found within Somalia itself, supported by practical measures such as the establishment of a local coast guard, the industry seems to be faced with the utter frustration of an ever increasing number of attacks for the foreseeable future. Seafarers' unions

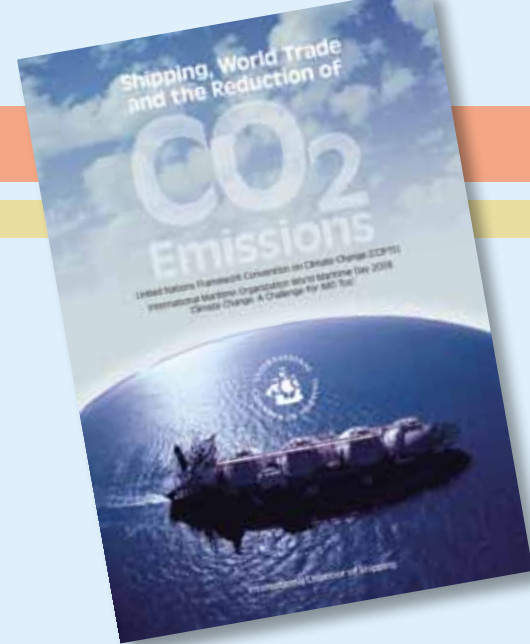
understandably share this frustration, and have suggested that they might even propose a boycott of the danger area - or that governments in major labour supply countries, such as the Philippines, might be encouraged to do the same.

Following recent meetings amongst international shipping organisations, including seafarers' unions represented by ITF, it has been agreed that the wider industry should develop a new strategy to increase the political will to combat piracy. The 'Save Our Seafarers' campaign has so far included the placing of advertisements in major international journals and using every opportunity to keep the issue alive, via national shipowners' associations, in mainstream national media. These efforts build on the inter-industry petition against piracy, that impressively raised almost a million e-signatures from amongst the global shipping industry, and which the ICS Chairman helped to present to the IMO Secretary-General on World Maritime Day in September 2010.

The international community depends on ships to transport trade and keep the world economy moving, and the eradication of piracy is the responsibility of governments, as stipulated by the UN Law of the Sea. However, in the face of their seeming impotence, the shipping industry will be forced look at all possible options, including alternative routes, which could have a very dramatic effect on transport costs and delivery times.

Piracy is already estimated to cost the global economy US\$12 billion a year. If increasing numbers of ships decide to divert around the Cape of Good Hope, this will almost certainly have a major impact on inventories and costs throughout the whole supply chain. It could also greatly damage the economies of Africa and the Middle East at this very politically delicate time. But the principal concern of ship operators is humanitarian. It is simply unacceptable that seafarers have been killed, while hundreds more are being held captive in appalling conditions, in fear for their lives.

# Reducing CO<sub>2</sub> Emissions



8 TACKLING CLIMATE CHANGE is the challenge of our age, and the complex debate about how best to reduce shipping's emissions continues. ICS therefore remains closely involved in the discussions on CO<sub>2</sub> at IMO, as well as the parallel discussions at UNFCCC, including the latest United Nations Conference on Climate Change held in Cancun, Mexico, in December 2010 (see box).

Through a combination of technical and operational measures delivering improved fuel efficiency, shipping can probably reduce its CO<sub>2</sub> emissions per tonne-kilometre by as much as 20% by 2020. However, delivering absolute emission reductions for the sector as whole will be much more difficult if the world economy, and thus the demand for shipping services, continues to expand.

Shipping is a major industry and, with shipping's emissions reportedly equivalent to the economy of Germany, the industry fully recognises the need to play its part in reducing them. However, while the practical challenge is huge, the biggest immediate obstacle is political and concerns the principle of 'Common but Differentiated Responsibility'. This is the approach, adopted by governments at the high level UNFCCC negotiations, whereby developing nations are meant to be subject to less onerous commitments for CO<sub>2</sub> reductions than richer countries. But the delivery of significant emissions reductions by shipping will require that any measures adopted are applied on a uniform and global basis, in order to avoid 'carbon leakage' (as well as serious market distortions). Only about 35% of the world fleet is registered with developed Kyoto Protocol 'Annex I' nations, and most shipping companies have the freedom to decide to register their ships

with the nations of their choice. In summary, meaningful global emission reductions by maritime transport will be far more likely to be achieved if adopted by governments at IMO, so that they can be applied to the entire world fleet.

ICS continues to lead industry representation at meetings of the IMO Marine Environment Protection Committee (MEPC) which, in October 2010, agreed a draft package of technical and operational measures to reduce shipping's CO<sub>2</sub> emissions. These include the Energy Efficiency Design Index (EEDI) for tankers, bulk carriers and containerships, and the use by companies of bespoke Ship Energy Efficiency Management Plans (SEEMP). The latter will allow shipping companies to monitor and improve their performance with regard to the various factors that may contribute to the reduction of CO<sub>2</sub> emissions (such as improved voyage planning, speed management, weather routing, optimising hull efficiency and engine power, and the use of different fuel types). Indeed, to promote use of the SEEMP, which was originally developed by ICS, reference to it has already been included in the latest edition of the widely used ICS/ISF Guidelines on the Application of the IMO International Safety Management (ISM) Code.

This IMO package of technical and operational measures will be considered for formal adoption by governments at the IMO MEPC meeting in July 2011, as amendments to MARPOL Annex VI which governs atmospheric pollution. Using the IMO 'tacit amendment' procedure these amendments could then enter into force relatively quickly, possibly 18 months after their adoption.

However, consistent with their support for Common but Differentiated

Responsibility, nations such as China, India and Saudi Arabia continue to lead opposition to mandatory IMO CO<sub>2</sub> measures being applied uniformly to shipping. ICS remains confident that IMO will indeed deliver a package of technical measures at the MEPC meeting in July. In reality, however, this cannot be taken for granted, especially if some nations actively encourage opposition.

Agreement at IMO in July 2011 will be most important to ensure that IMO retains control of the maritime CO<sub>2</sub> issue, which otherwise could still be dealt with in detail by UNFCCC as part of any replacement to the Kyoto Protocol. UNFCCC hopes to make progress on a new agreement at the next major UN Conference, in Durban in December 2011, with the attendant risk that, in accordance with UNFCCC principles, ships from 'Annex I' nations (i.e. most, but not all developed countries) could be treated differently to the majority of ships that are registered with developing countries. Adoption of a package by IMO will also be necessary to discourage the EU (and other nations) from pressing ahead with regional measures affecting shipping, the EU having set IMO a deadline to deliver a global agreement on CO<sub>2</sub> before the end of 2011.

While less advanced than the discussions about technical measures, IMO is also still committed to developing a Market Based Measure (MBM) that can be applied to shipping. ICS has participated in an IMO Expert Group which in 2010 produced a report on the pros and cons of the various MBMs that have so far been proposed by governments, including emission trading schemes, fuel levies and measures linked to the use of the Energy Efficiency Design Index.

Originally, the main argument from governments in support of MBMs



## UNFCCC Climate Change Conference in Cancun

ICS attended the UN Climate Change Conference (COP 16) in Mexico in December 2010, having the honour of representing the shipping industry at a special event at the start of the Conference for delegates, organised jointly by IMO and the International Civil Aviation Organization (ICAO).

Disappointingly, though not surprisingly, the UN Conference was unable to provide IMO with a stronger mandate about how it should reconcile the UNFCCC principle of CBDR with the need for global shipping rules. In fairness, however, this was largely due to the determination of the Mexican hosts to avoid controversial issues, the objective being to maintain the dialogue so that talks can continue in South Africa in December 2011, before the expiry of the current Kyoto Protocol in 2012.

However, throughout the discussions, and notwithstanding the positions of nations like China and India on the importance of CBDR being taken into account by IMO, there appeared to be a general recognition amongst governments that IMO is the appropriate forum to develop measures for shipping.

was that they would somehow 'incentivize' shipping companies to reduce their emissions. Increasingly, however, MBMs are becoming viewed by some governments as a means by which money can be raised from shipping in support of UNFCCC discussions about a 'Green Fund' to help developing nations, in return for their support for a new global agreement on climate change.

ICS's position has been to comment as an 'honest broker' on the various MBMs proposed at IMO, not least with regard to the extent that they might deliver genuine environmental improvements. To date this neutral position has probably served the industry well, but in the year ahead ICS anticipates increasing pressure from governments to 'step down from the fence' and express a clear preference for one form of MBM over another. However, the high cost of fuel means that ship operators already have every incentive to reduce consumption, and many in the industry simply view proposed MBMs as a tax being promoted for political reasons, and believe that the adoption of IMO rules on technical and operational issues should be given the higher priority by far.

The issues are very complicated, since the discussions at IMO and UNFCCC are also linked to debates about the treatment of shipping

within the European Union and the United States (see section of this review on regional developments). In an attempt to explain the issues to policy makers and to the public at large, ICS has established a website - [www.shippingandco2.org](http://www.shippingandco2.org) - which now includes a short film, also available as a DVD.

However, the immediate challenge for ICS and all of its member national shipowners' associations is to persuade as many governments as possible to support the adoption of amendments to MARPOL Annex VI concerning technical and operational measures, which will bring about meaningful CO<sub>2</sub> emission reductions by ships on a global basis.

## UNFCCC Green Fund

Perhaps one of the more important general developments at the UN Conference in Cancun was that the concept of a 'Green Fund' was endorsed by UNFCCC (having first been proposed by the developed nations at the Copenhagen Conference in 2009). The intention is to mobilize funds of US\$ 100 billion per annum by 2020 to help developing countries confront climate change (in exchange for their support for a new UNFCCC agreement).

In November 2010, in advance of the Cancun Conference, the United Nations High Level Advisory Group on Climate Change Financing (AGF)

published its report about how money for a 'Green Fund' might be raised. ICS sought to influence the treatment of shipping in the report through a detailed submission to the Group.

ICS has welcomed those parts of the UN report which - as ICS had sought - acknowledged that the principle of CBDR must be reconciled with the need for any Market Based Measures to apply equally to all ships globally, and that the best forum for achieving this would be IMO. However, the UN report does seem to imply that the price for IMO retaining responsibility for developing an MBM for shipping would be that any funds raised would have to be contributed to the Green Fund. While it is difficult to know how the link between the Green Fund and any IMO MBM might be established, it will be particularly important to avoid 'double taxation' of shipping by UNFCCC and IMO - a point which has been taken up by the IMO Secretary-General.

Although parts of the UN report on climate change financing lack consistency, it appears to suggest that international shipping might be expected to contribute about US\$ 7 billion per year to a Green Fund (curiously about twice the sum from international aviation). To put \$US 7 billion per year in context, this actually equates to about \$25 per tonne of fuel (assuming mid-range IMO estimates of total consumption by shipping of about 300 million tonnes a year). However, other sections of the UN report suggest, for reasons not entirely clear, that only a proportion of the money collected would go to the Green Fund, which implies that shipping might actually be expected to pay a much larger figure.

The IMO Secretary-General has helpfully argued that shipping should pay no more than \$2.7 billion per year, on the basis that this would be commensurate with shipping's reported share of total global emissions (2.7%). However, it remains to be seen whether UNFCCC will prove more concerned with the maximum that the shipping industry might be forced to pay as opposed to how much it might fairly be expected to contribute.

# The 'Manila Amendments' to the STCW Convention

10 ISF CONTINUES to lead the representation of maritime employers at IMO. In June 2010, in Manila, this included representation of shipowners at an IMO Diplomatic Conference which adopted a wide ranging set of amendments to the IMO Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). This was the culmination of a comprehensive review by governments lasting several years, to which ISF (and ICS) provided significant input.

The competence of seafarers is a most critical factor in the safe and efficient operation of ships, and has a direct impact on the safety of life at sea and the protection of the marine environment. The STCW Convention constitutes a comprehensive set of regulations intended to maintain the highest standards of competence globally. In particular, the STCW Convention places important responsibilities on maritime employers, obligations with which they must fully comply.

Numerous amendments were adopted to take account of recent technical developments requiring new shipboard skills, such as the use of Electronic Chart Display and Information Systems (ECDIS) or the need to give more emphasis to environmental management. But the changes also cover such matters as new training requirements for leadership and teamwork, enhanced refresher training for qualified seafarers, and the introduction of standards of competence for the new grade of Able Seafarer in both the deck and engine departments. There are also new competence tables and training requirements for personnel on oil and chemical tankers and gas carriers. Importantly, the 2010 amendments

also introduce major changes to IMO regulations concerning seafarers' minimum rest hours, which are intended to prevent fatigue.

The 2010 Manila amendments will enter into force in January 2012 when companies will be required to comply with the new minimum rest hour provisions for seafarers. Some governments, on a national basis, may also begin to apply new STCW requirements, such as enhanced 5 yearly refresher training, or the mandatory use of training record books for new rating trainees. From January 2013, new seafarers commencing training will be required to do so in accordance with the new training and competence standards. However, until 2017 governments may continue to renew and revalidate existing certificates in accordance with current STCW provisions which applied immediately prior to 1 January 2012.

Although not a direct responsibility of companies, the industry will wish to ensure that as many governments as possible comply with the revised requirements to report to IMO the actions that have been taken to implement the new STCW standards. This will be necessary, by July 2013, if governments wish to maintain a place on the IMO 'white list' of nations that have demonstrated continuing adherence to STCW standards, so as to avoid port state control difficulties for their ships, or flag state recognition problems for seafarers working on foreign ships to whom they have issued STCW certificates.

ISF also anticipates there may be a need to clarify the interpretation of how some of the new standards are to be applied, for example with regard to how new refresher training should be

implemented, delivered and assessed or when the new security training requirements enter into force.

The overriding objective of ISF, and its member national shipowners' associations, is that the standards required by the STCW Convention, as amended in 2010, are put into effect as soon as possible, and that the highest standards of seafarer competence will continue to be maintained worldwide. In March 2011, ISF published a new edition of its Guidelines on the IMO STCW Convention to advise shipping companies and shipboard personnel of their fundamental obligations as required by the 'Manila amendments'. As well as providing advice on compliance, the Guidelines give background information on the philosophy underlying the 'competence-based' approach to training which the STCW Convention seeks to promote. For the rest of 2011, ISF has an ambitious programme of revising its widely used on board training record books to take account of the Manila amendments, starting with training books for the new grade of Able Seafarer (deck and engine) and followed by training record books for deck and engine officer trainees.

Employers should now generally have far greater confidence in the validity of seafarers' certificates, regardless of the country of issue. This is not to say that questions about the quality of training in many training institutes have been eradicated completely. However, there is now a clearer sense that all seafarers working internationally are part of the same global profession, in which the paramount importance of safety of life at sea and the protection of the marine environment is far more widely recognised.







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# The Year in Review

## **IMO Maritime Safety Developments**

*The following are just a few examples of some of the many critical safety issues in which ICS is currently involved, through participation in the detailed technical work of IMO and its numerous committees, and the development and updating of industry best practices.*

### **Lifeboat Safety**

It is an undisputed fact that in recent years many seafarers have been killed or seriously injured during lifeboat drills. There are thought to be in excess of 70 different release hook/mechanisms, many being of poor and excessively complex design, constructed of materials unsuited for work at sea and having unrealistic maintenance requirements. ICS has therefore been very active in efforts to improve lifeboat safety, co-ordinating the work of a dedicated Industry Lifeboat Group comprising a wide range of industry organisations. The Group has been successful in challenging the belief that poor maintenance is the primary cause of recent accidents and has persuaded IMO to develop proposals to specify criteria for safe release hook mechanisms, and to amend the International Life-Saving Appliance (LSA) Code accordingly.

In response to industry concerns, IMO organised a special meeting on lifeboat safety which met in October 2010, and the Industry Life Boat Group commissioned a detailed report that identified deficiencies with draft IMO Guidelines and proposed various amendments. For example, ICS and the industry identified the need for hooks to be assessed as being stable

in the closed position, so that in the event of a failure of the control release or other components, the hook mechanism would remain in the closed position until positive action is taken on the water to cause it to open. Pleasingly, in direct response to concern expressed by ICS and others, the IMO Maritime Safety Committee, in December 2010, concluded that draft IMO Guidelines on this issue were not yet fit for purpose and that subject to further discussion final adoption should be deferred until the next MSC meeting in May 2011.

### **ISM Code**

It is probably no coincidence that the implementation and enforcement of the IMO International Safety Management (ISM) Code has coincided with a dramatic improvement in the safety record and environmental performance of the shipping industry (see graphs overleaf), which is all the more impressive given the subsequent growth in the size of the world fleet since its adoption. However, the essential purpose of the ISM Code is to encourage a commitment to continuous improvement and the eradication of behavioural complacency.

In July 2010, the latest amendments to the ISM Code entered into force. Anticipating these changes, and in order to take account of other experience gained since the ISM Code first became mandatory, ICS and ISF published a new edition of their definitive Guidelines on the Application of the ISM Code.

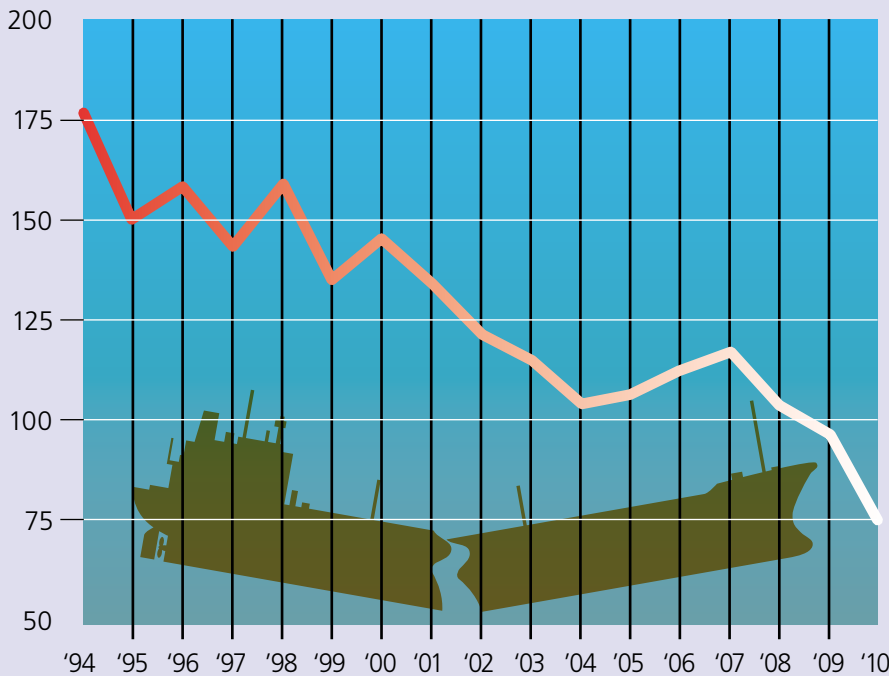
The first edition of the ICS/ISF Guidelines, published in the 1990s, played its part in the successful delivery of a more systematic approach



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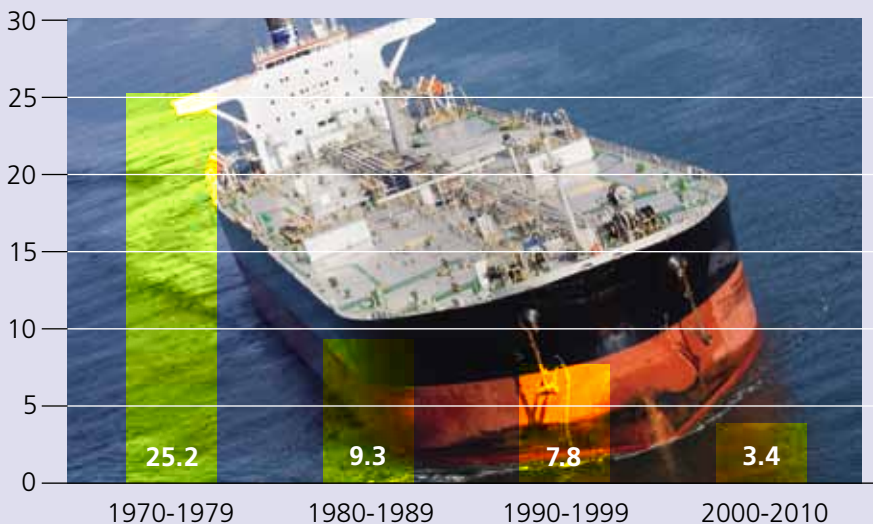
**Total Losses 1994-2010 by number of vessels (over 500 GT)**

Source: IUMI



**Average number of major oil spills per year (over 700 tonnes)**

Source: ITOPF



to safety management and pollution prevention, which is now applied throughout the industry. The 2010 edition contains expanded advice on risk management and on the operation of a genuine 'safety culture', in order that companies can fulfil the spirit as well as the letter of the ISM Code's requirements.

The underlying principle of ISM is to help achieve the ultimate goal of zero accidents and zero pollution. It is greatly hoped that the new edition of the ICS/ISF Guidelines - thousands of copies of which are already being used - will contribute to the fulfilment of this vital objective.

**Tanker Safety**

ICS remains engaged in continuing discussions on the extension of the practice of 'inerting' cargo tank atmospheres. ICS fully supports proposals to amend SOLAS to provide for the application of inert gas (IG) to new oil tankers of less than 20,000 dwt and to new chemical tankers. It should be noted, however, that IMO has decided that the possible extension of new measures to existing oil tankers of less than 20,000 dwt and to existing chemical tankers will only be considered in light of experience gained following introduction of IG on new ships. In conjunction with the International Parcel Tankers' Association (IPTA), ICS has highlighted the environmental impact of operating IG equipment, and has indicated that a carriage requirement for sub 5,000 dwt chemical tankers could be problematic.

IMO is expected to finalise the amended regulations in 2012, in time for the issue to be addressed in





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16 the next edition of the ICS Chemical Tanker Safety Guide, which is being revised in parallel.

### Shipbuilding Standards

A major preoccupation for ICS is the maintenance of high standards of ship construction. In May 2010, the IMO Maritime Safety Committee adopted important amendments to the SOLAS Convention for the implementation of new 'Goal-based Standards' (GBS) for the construction of bulk carriers and oil tankers of 150m or over in length. This was the culmination of several years of negotiations in which ICS has been closely involved. As a consequence, it is expected that shipbuilding standards will have been taken forward so that with an appropriate level of maintenance, and adequate margins for corrosion, future ships will be constructed so that they remain 'fit for purpose' throughout their typical 25 year life spans. The philosophy underlying Goal-based Standards is also expected to have implications for the future development of other IMO standards, such as those for shipboard equipment.

Some important questions still need to be resolved, such as who should pay for the proposed GBS verification process. Decisions also need to be taken with regard to achieving an appropriate balance between the availability of technical information that can be accessed on board a vessel, and the legitimate protection of intellectual property rights of shipyards and classification societies.

In Tokyo, in October 2010, the Chairman led an ICS delegation to the latest round of 'Tripartite' discussions about shipbuilding standards with representative organisations of

shipowners, classification societies and shipyards. Topics considered included measures to reduce CO<sub>2</sub> emissions, implementation of the IMO Ballast Water Management and Ship Recycling Conventions, crew accommodation requirements under the ILO Maritime Labour Convention, and the review being undertaken by the International Association of Classification Societies (IACS) of its Common Structural Rules (CSRs) - which are closely related to IMO Goal-based Standards.

ICS is now participating in a cross industry initiative, co-ordinated by IACS, to provide guidance on the harmonisation and amendment of the CSRs for bulk carriers and tankers. The intention is to provide a single set of rules on common aspects of hull structure design, supplemented by dedicated sections on the specific requirements for these two major ship types.

### Safe Navigation

While welcoming the potential of e-navigation for improving navigational safety, ICS continues to emphasise the need for a 'user focused' approach, so that e-navigation is not driven solely by ideas from equipment manufacturers or the availability of new technology. In particular, ICS is currently engaged in detailed discussions at IMO about the implementation of its e-navigation strategy, including user needs and services, and the technical specifications of various shipboard devices.

In discussions with the International Association of Marine Aids to Navigation and Light House Authorities (IALA), ICS is seeking to ensure that national authorities will

not regard Virtual Aids to Navigation as a cheaper means of providing statutory services. 'V AtoN' must be treated as a complement rather than a replacement to physical aids to navigation.

Another important issue concerns arrangements for the introduction by July 2012 of the new mandatory IMO requirements for ECDIS (Electronic Chart Display Information Systems), which ICS has long supported provided that the industry's definition of "sufficient Electronic Navigation Chart (ENC) availability" can be met before the phased-in carriage requirement becomes effective. ICS is closely monitoring progress at the International Hydrographic Organization (IHO) towards meeting the ENC coverage necessary to make the mandatory carriage of ECDIS viable. ICS is also participating in IHO workgroups that are considering technical concerns relating to practical ECDIS operation and the need for effective training.

### Stability Issues

There are a number of complex stability issues which continue to necessitate detailed ICS participation at IMO. These include: a proposed new generation of intact stability standards addressing dynamic failure modes such as surf riding and broaching; the development of guidance for the initial approval of tanker damage stability data and operational verification of compliance with IMO damage stability requirements. ICS is also engaged in ongoing work on revisions to the stability regulations in SOLAS, and continuing discussions related to the treatment of water on deck when assessing the stability of ro-ro passenger vessels.



## Overloading of Containers

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ICS and the World Shipping Council (WSC) have developed Safe Transport of Containers by Sea, Guidelines on Industry Best Practices, with a view to minimising the dangers to containerships and their crews. The Guidelines have been highly regarded and, in 2010, IMO recommended that flag states should make them a carriage requirement. To date, however, the Guidelines have so far had little discernible effect on reducing the incidence of shippers providing incorrect container weights, or on ensuring that marine terminals verify the weight of loaded containers against the manifest.

In the absence of a legal requirement that marine terminal operators perform a weighing function for all loaded containers before vessel loading, it seems likely that a substantial number of containers will continue to go unweighed and that overweight containers will continue to pose a risk to safe ship operations, to ships' crew, and to other personnel in the transport chain.

In December 2010, ICS and WSC proposed, in a statement to the IMO Maritime Safety Committee, that IMO should establish a universal international regulatory requirement that export cargo containers must be weighed by the marine terminal upon receipt and before vessel loading, and that the actual container weights be made available to the vessel operator and used for vessel stowage planning. It is hoped that detailed proposals will be progressed in 2011.





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low sulphur fuels. At the time, ICS welcomed the IMO agreement as an acceptable compromise, although this was in the context of the even more draconian proposals that were then being proposed by many governments and, most importantly, the public threat by the European Union to impose an immediate regional solution if IMO was unable to deliver a global agreement. But the implementation of the new requirements will be far from easy, and ICS remains in close dialogue with oil industry analysts about the progress that is being made to ensure that the demand from shipping for distillate fuel can be met.

Perhaps the most controversial requirement in MARPOL Annex VI concerns the need for ships operating in Emission Control Areas (ECAs) to burn fuel with no more than 0.1% sulphur as from 2015. At present, the Baltic, the North Sea, and the entire west and east coasts of the US and Canada have been designated as ECAs by IMO, at the request of the governments concerned. The considerable task facing the oil refiners, which must expand the production of low sulphur fuel to meet the new demand, is complicated by the fact it is not yet fully known which additional areas may be designated as ECAs. It is still unknown if or when EU nations will submit applications for ECAs covering the Atlantic coast or the Mediterranean/Black Sea, or whether other coastal states in major population centres have plans to follow suit before 2015.

Recent studies suggest that the modal shift to land transport that will probably result from the application of the 0.1% limit in the Baltic ECA could greatly damage local short sea shipping while being detrimental to

the environment. Together with the European Community Shipowners' Associations (ECSA), ICS has therefore endorsed a major study developed by consultants (the ENTEC study) commissioned by north west European national associations, which explains the impact of the implementation of MARPOL Annex VI in the Baltic and the North Sea and the environmental consequences of the predicted modal shift. ICS has submitted this report to the IMO Marine Environment Protection Committee for information.

At the IMO MEPC meeting in September 2010, governments agreed with an ICS proposal that early consideration should be given to a review of the availability of low sulphur marine fuels. While there is a formal mechanism in the IMO agreement to complete a review by 2018 of progress made towards meeting the demand for 0.5% sulphur fuel that is meant to be used outside of ECAs by 2020, ICS has been pressing IMO to start work now on developing a methodology that can consider all of the major changes required by the new regime. Encouragingly, IMO has established a correspondence group for this purpose, which is being led by the United States and which will report to the MEPC in July 2011. ICS has suggested to the Group that IMO should look at the availability of 0.1% sulphur fuel within ECAs, in order to verify the methodology for the 2018 review of 0.5% fuel that is required by MARPOL.

### Ballast Water Management

Following an increase in the number of ratifications by governments of the IMO Ballast Water Management Convention it is possible that it will at last enter into force during 2011. However, there are still

### Pollution Prevention

*Apart from important work addressing CO<sub>2</sub> and other atmospheric emissions, a wide range of major environmental issues remain on ICS's agenda, and a large proportion of resources is dedicated to participating in the ongoing work of numerous IMO Committees and working groups which are constantly updating IMO regulations and technical codes.*

### Transition to Low Sulphur Fuel

In 2008, IMO adopted radical amendments to MARPOL Annex VI governing atmospheric pollution, which for most ships will ultimately require the use of more expensive





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genuine concerns about availability of equipment, retrofitting on existing ships, and the present limited possibilities for treatment systems for larger ships. That said, some progress is being made to approve various ballast water treatment systems as an alternative to ballast water exchange at sea, in order to prevent the unwanted transfer of marine micro-organisms which can damage local ecosystems.

Completion of this work is long overdue given that new ships are already meant to be constructed with these expensive new treatment systems. ICS has contributed to this work and continues to provide a consultant to the GESAMP (Joint Group of Experts on the Scientific Aspects of Marine Environment Protection) Ballast Water Working Group that has been conducting much of the detailed assessment of the new equipment. Meanwhile, ICS continues to encourage full co-operation with local ballast water exchange requirements wherever it is safe for ships to do so.

Disappointingly, the United States Congress, and individual US States, are still considering the application of a 'kill standard' for removing unwanted organisms from ballast water that is 100 times higher than that established by IMO, for which the treatment systems required simply do not exist.

### Garbage

ICS is fully engaged in discussions to amend MARPOL Annex V concerning garbage, including suggestions that the disposal of any garbage at sea should be prohibited.

The current ban on, for example, the

disposal of plastics is fully supported, and recent evidence suggests that the proportion of litter that originates from ships has reduced significantly. However, the retention of other wastes on board, such as food, has to be balanced against health issues and the practicalities of storing and removing such wastes ashore given they cause little, if any, environmental harm when disposed of at sea.

More generally with regard to port reception facilities, which are still felt by the industry to be inadequate in terms of number, accessibility and cost, discussions are taking place at IMO about the possibility of these being provided on a regional basis.

### Ship Recycling

ICS continues to promote the early ratification of the IMO Convention for the Safe and Environmentally Sound Recycling of Ships, through the inter-industry Guidelines on Transitional Measures for Shipowners Selling Ships for Recycling. In 2010, thousands of copies of the Guidelines were distributed, which are specifically intended to help improve safety and environmental conditions in recycling yards in advance of the entry into force of the new Convention.

The shipping industry Guidelines reflect the new 'cradle to grave' responsibilities of shipowners from the time of a ship's construction to its final demolition, and explain the various actions that will be required, and which should be approved by flag states and authorities in ship recycling nations. In particular, the Guidelines encourage the preparation and maintenance of inventories of hazardous materials. They also recommend, in advance of the

Convention coming into force, that shipowners endeavour to sell their redundant ships only to those recycling facilities that meet the new IMO standards. It is very much hoped that adherence by shipowners to the 'Transitional Measures' will be taken as a sign of good faith on the part of the shipping industry.

ICS has been co-operating in an ambitious IMO programme to promote the new Convention, as well as the industry Guidelines. The IMO Convention represents agreement between those nations seeking the highest possible standards and those developing countries in which most of the recycling yards are located. Regrettably, the Convention is still not fully supported by some environmental organisations which seem to believe that developing nations do not have the ability to remove hazardous materials safely from redundant ships, notwithstanding the fact that a large number of new ships are now constructed in such nations.

### Other Environmental Issues

ICS is responding to other new issues on the IMO work programme. This includes consideration of measures to reduce 'biofouling', whereby unwanted organisms are transported around the world on ship's hulls in 'niche' areas. Also on IMO's agenda is the development of measures to protect whales from collision with ships, and the theoretical effects of radiated noise into the ocean. It has been identified that the major component of such noise is cavitation (bubbles forming on propeller blade surfaces) and it would seem appropriate for IMO to develop guidance on its reduction, which would also help improve the efficiency of ships.



## Employment Affairs

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Under the separate identity of the International Shipping Federation (ISF), ICS is also the leading international employers' organisation for ship operators concerned with labour affairs, manning and training issues.

## Manpower Supply

As the industry emerges from the economic downturn, ISF has been keen to emphasise the importance of shipping companies continuing to train sufficient numbers of new ships' officers for the future. At the end of 2010, in co-operation with BIMCO, ISF published the results of the latest and most comprehensive study to date of the worldwide supply and demand for seafarers, which has been conducted as a service to the industry, at five year intervals, since 1990.

The worldwide supply of seafarers in 2010 was estimated to be 624,000 officers and 747,000 ratings and reflects significant increases in seafarer supply in some countries, notably in China, India and the Philippines, as well as in several European nations.

While the evidence suggests that the supply and demand for ratings are more or less balanced, there is still a modest shortage of officers overall (about 2%). This is particularly felt for specialist ship types such as tankers and offshore support vessels. Encouragingly, however, notwithstanding the challenging trading conditions, levels of training of new entrants seem to have been maintained or increased in many countries.

The aggregate supply/demand balance is perhaps not surprising given the

### Supply Demand Gap for Officers

Demand and Supply are shown as Indices: Supply in 2010 = 100





sharp contraction in the demand for sea transport in 2009 combined with significant growth in total seafarer numbers. However, while the data suggests there is currently not a serious shortage problem for officers in aggregate, this does not of course mean that individual shipping companies are not experiencing serious recruitment problems. There is particular concern over the current and future availability of senior management level officers, especially engineers, from the Far East and the Indian Sub-Continent. Generally, however, there are few supply difficulties reported for ratings.

The 2010 Update presents various global supply/demand balance scenarios for the next decade. The "benchmark" scenario assumes a modest increase in the number of ships in the world fleet of 2.3% per annum (very similar to the average growth rate of the past decade). Manning levels are assumed to decline slightly on average, and back up ratios are cautiously assumed to be stable. On the supply side, it is assumed that recruitment rates will continue at roughly the same rate as during the previous decade, but wastage rates (i.e. net loss rates from the industry) will be higher by around 1% per annum. Despite these quite conservative assumptions, the current moderate officer shortage is expected to persist, unless maritime training is further increased, and/or measures are taken to reduce wastage rates. However, if general economic conditions continue to improve, there could be quite severe problems.

The latest update produced by ISF and BIMCO seeks to highlight that the industry is likely to face a challenging future for crewing. There are many

uncertainties, but the results indicate that the industry will most probably face a continuing tight labour market, with recurrent shortages for some officers, particularly if shipping markets recover.

Unless measures are taken to ensure a continued rapid growth in qualified seafarer numbers, especially for officers, and/or to reduce wastage from the industry, existing shortages are likely to intensify over the next decade. Supply appears likely to increase in many countries, but the positive trend that has been established for training and recruitment over the past few years must continue to ensure a suitable future pool of qualified seafarers.

It is important to stress that the industry requires well qualified and high calibre seafarers capable of adapting to change and handling the wide range of tasks now required of them. But any training programmes provided must ensure quality is not compromised in the quest for increasing quantity.

### Maritime Labour Convention

The Geneva based International Labour Organization (ILO) adopted the ILO Maritime Labour Convention (MLC) in 2006. The wide range of matters covered includes seafarers' contractual arrangements, responsibilities of manning agencies, working hours, health and safety, crew accommodation, and medical and catering standards. The ILO MLC will be subject to Port State Control as well as flag state inspection. Following ratification by a growing number of flag states, including the major open registers, the MLC is expected to enter into force globally within the next









24 couple of years (the required tonnage threshold has already been achieved). Companies therefore need to prepare to ensure full implementation and compliance.

As an official ILO social partner, under the ILO tripartite process, ISF was responsible for negotiating the text of the Convention on behalf of maritime employers with governments, and with seafarers' trade unions represented by the International Transport Workers' Federation (ITF). ISF therefore has a special obligation to help to ensure the Convention's smooth implementation.

An important aspect of the Convention's enforcement will be the issuance by flag administrations of Maritime Labour Certificates, usually following inspection by a recognised organisation such as a classification society, and a separate requirement for ships to maintain a Declaration of Maritime Labour Compliance. However, concern has arisen over the way in which some classification societies are choosing to interpret the requirements, including those concerning crew accommodation, in a manner going beyond the ILO Convention. ISF is therefore currently addressing these issues with class societies in conjunction with IACS.

In September 2010, in Geneva, ISF members represented employers, alongside unions and governments, at a special Preparatory Tripartite Committee on the MLC, which addressed outstanding questions on implementation in advance of the Convention entering in force, and procedures for agreeing future amendments. The latter should be important given the agreement reached in 2009 for ILO to develop some additional binding international

### Summary of New STCW Rest Hour Requirements

The 2010 amendments to STCW introduce stricter rest hour requirements than those which currently apply. In particular:

- The minimum rest in any 7 day period is 77 hours rather than 70 hours;
- The flexibility permitted by the '2 day derogation' rule under STCW 95 has been removed, i.e. seafarers must always have 10 hours rest in any 24 hour period with no exceptions (except during an emergency);
- Maintenance of individual records of seafarers' rest hours is mandatory;
- The rest hour limits apply to most seafarers on board, including masters, and not just watchkeepers.

regulations, at some point in the future. These will address the possibility of crew abandonment for the small number of cases when normal arrangements for repatriation fail, for example following a bankruptcy, and to require financial security from shipowners for crew claims arising from fatality or personal injury. During the course of 2011, ISF intends to publish a revised edition of its Guide to the ILO Maritime Labour Convention, which was initially published shortly after the Convention was first adopted. As well as taking account of the ILO Guidelines on enforcement adopted in 2009, the new edition of the ISF Guide will also highlight the overlap between the enforcement of existing ISM Code requirements and those of the ILO MLC. It is expected that some Administrations may use the existence of a valid Safety Management Certificate issued under the ISM Code as evidence of compliance with several of those items which are required by the ILO MLC. Nevertheless, many other ILO MLC requirements are not covered by ISM, and will therefore necessitate a separate inspection of the ship, although it is strongly hoped that some flag states, or classification societies acting on their behalf, will permit shipboard ISM and ILO MLC inspections to be conducted in parallel.

### Work Hour Regulations

As part of the negotiations preceding the adoption of amendments to the IMO STCW Convention, finalised in Manila in June 2010, ISF was deeply involved in discussions at IMO on how to harmonise seafarers' minimum rest hour requirements contained in Chapter VIII of STCW with the work hour requirements adopted by the International Labour Organization

(ILO). These limits are currently enforced as ILO Convention 180, but will form part of the new ILO Maritime Labour Convention regime once it enters into force.

The regimes adopted by IMO and ILO were developed for very different purposes. STCW prescribes minimum rest hours from the safety perspective, while the ILO Conventions also take account of social issues, such as the point at which additional payments for overtime should normally be made and the extent to which work hours may be subject to agreement between employers and unions in collective bargaining agreements - issues outside the remit of IMO.

ISF is satisfied that changes to minimum rest hours agreed by IMO are fully compatible with the ILO requirements, although in practice they are somewhat stricter. In reality, given that the STCW amendments will be enforced more quickly, they are likely to become the default regime for Port State Control inspectors. The revised STCW Convention takes full account of a vital aspect of the current IMO and ILO regimes, both of which permit occasional deviation from the normal minimum rest hours stipulated, provided that sufficient safeguards are in place and that compensatory rest is provided - something which is crucial to safe and efficient ship operations. In particular, the Manila amendments acknowledge the practical aspects of ship operations - including short sea shipping - especially when ships are undergoing peak work operations, and preserve some flexibility for the seafarers, ships and employers. However (with the exception of emergencies) from 2012 seafarers will be prohibited from ever being on duty for more than 14 hours within any 24









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hour period.

Meanwhile, a large number of companies are now ensuring that they are maintaining accurate records of the hours of work and rest on board ship by using the ISF Watchkeeper software, which, as well as producing individual seafarer's records in the format recommended by ILO and IMO, allows companies and crews to ensure that they comply fully with both the ILO and IMO limits. An upgraded Watchkeeper Version 3.0, which allows account to be taken of the new IMO STCW rest hour limits, was launched in the Autumn of 2010.

### **ILO Minimum Wage**

The shipping industry is probably unique in that it has a mechanism for recommending minimum acceptable international wage rates. ISF is the co-ordinator of the Employers' Group of the ILO Joint Maritime Commission (JMC) which is responsible for agreeing changes to the ILO Minimum Wage for Able Seafarers. The International Transport Worker's Federation (ITF) co-ordinates the seafarers' union representatives. Unlike other ILO institutions, the JMC is bipartite and does not involve governments.

At the time of writing, the Joint Maritime Committee is meeting in Geneva in order to review the recommended ILO minimum which in 2011 stands at US\$ 545 a month basic wage for an Able Seafarer, a figure which came into effect in 2009 in line with a previous agreed schedule of increases.

In view of the continuing uncertainty created by the global economic crisis, ISF had previously explained to ITF that employers simply could

not agree to any immediate further increase to the ILO minimum. While many unions recognised the need to help safeguard employment for seafarers, some unions were clearly disappointed by this response. ISF has therefore agreed to the convening of a meeting of the ILO Joint Maritime Commission, in April 2011, in order to resume formal discussions.

ISF remains strongly committed to the principle of the ILO Minimum Wage recommendation which is now referenced in the new Maritime Labour Convention, although it has in fact existed for over 50 years. While it is only recommendatory, and not directly relevant to other seafarer grades, it has a strong moral authority and is particularly important for employers in developing countries. The ILO Minimum Wage also influences many collective bargaining agreements, including those enforced by ITF, and is sometimes referred to in legal rulings.

The ILO minimum wage is substantially higher than that paid for comparative work ashore in developing countries. Moreover, the actual minimum wage is significantly higher, typically perhaps 50% more, once overtime hours (fixed at a minimum of time and a quarter) and other mandatory requirements, such as payments for leave entitlements, are taken into account. It is also only a minimum - most ratings from developing countries receive significantly more, while officers receive substantially more, with differentials between officers from OECD and developing countries continuing to narrow.

### **The Year of the Seafarer**

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2010 was designated by IMO as the 'Year of the Seafarer'. As the principal international representative organisation of maritime employers, ISF had a special interest in using this welcome opportunity to highlight the importance of this unique and highly skilled profession, and encouraging due recognition of the critical work performed by the world's one and a third million seafarers. In conjunction with IMO World Maritime Day, in September 2010, ISF produced a special brochure which highlighted issues relevant to the employment of seafarers of which governments and shipping companies need to be made more fully aware.

The commitment and importance of good shore based management cannot be over stated. However, it is ships' crews who ultimately ensure that shipping is safe, clean and efficient, and that raw materials and finished goods are safely transported over tens of thousands of miles. It is, of course, a remarkably cosmopolitan profession and being a part of the shipping industry is akin to being a member of a special international club. That is not to say that a career at sea means a lifetime at sea, and many ships' officers elect to move to excellent opportunities in the shore based industry. Nor does it mean that there are no aspects of seafarers' employment which cannot be improved, which is why ISF is pressing for the ILO Maritime Labour Convention, governing seafarers' employment standards, to enter into force as soon as possible.

The Year of the Seafarer provided an especially helpful platform on which IMO could develop its 'Go to Sea!' campaign, giving greater impetus to



the promotion of maritime careers. As a contribution to the campaign, and with IMO support for foreign language translation, ISF produced a short DVD film - 'Careers in International Shipping'. Thousands of copies of the film were distributed by ISF worldwide, free of charge, to help bring the benefits and attractions of a career at sea to the attention of young people, especially at schools and careers events. The film can also be seen on YouTube.

A career at sea is rewarding, and has features that are hard to appreciate by those who have only ever worked ashore. It is also generally well rewarded financially. However, as a profession it is not without its challenges. The sea will always be an environment involving a degree of physical risk. While these risks are carefully managed, and the safety record of the industry has improved dramatically in the last few decades, dangerous situations can occasionally still occur. ISF has therefore been most honoured to provide one of the judges to IMO's Bravery at Sea awards. Regrettably, seafaring as a profession can entail other unwelcome challenges, such as the trend in some countries towards the unwarranted criminalisation of seafarers following unintentional pollution, a matter elaborated upon elsewhere in this Review.

The IMO Year of the Seafarer was certainly well timed. In June 2010, at a Diplomatic Conference in the Philippines, IMO adopted substantial amendments to the STCW Convention governing seafarers' training standards. ISF is confident that the changes agreed by governments will further enhance the seafaring profession and, most importantly, contribute to making it even safer. Another

outcome of the STCW Conference was that 25 June (the day on which the 'Manila amendments' were adopted) will henceforth be designated as the IMO Day of the Seafarer, which will be celebrated for the first time in 2011.

### **'Deepwater Horizon' Incident**

Although not directly connected to shipping, one of the defining maritime events of 2010 was the explosion on the 'Deepwater Horizon' offshore drilling rig in April which, as well as causing loss of life, resulted in major pollution in the Gulf of Mexico and significant attendant damage to the local economy. The truly serious consequences of the spill grew ever worse as the owner of the well, the oil company, BP, had to resort to several attempts and new methodologies to cap the flow, which continued through several months. In the run up to the mid-term Congressional elections, the disaster became a high level political issue, dominating the US mainstream media throughout much of the summer, in a press frenzy that sometimes bordered on the xenophobic.

Various unwelcome legislative proposals were considered by Congress in the immediate aftermath of the incident, and ICS had to make an important submission to the US Congress expressing serious concern about proposals to amend the US Oil Pollution Act (OPA 90). These would have dramatically increased pollution liabilities for all types of ship, or even removed limitation of liability completely, potentially making it impossible for responsible ship operators to trade to the United States since they would have been unable to obtain insurance.

In close co-operation, among others, with the Chamber of Shipping of America, the World Shipping Council, and the Cruise Lines International Association, ICS participated in a wide ranging industry coalition which made numerous submissions to both Houses of Congress on issues relating to liability for pollution and personal injury, with potentially huge financial implications for shipowners. In particular, there was also great industry concern about proposals to amend the Death on the High Seas Act, to allow damage awards for non-pecuniary losses and permit claims to be adjudicated before a jury.

While acknowledging the need for a political response to the disaster in the US Gulf, ICS emphasised that OPA 90 has worked extremely well in ensuring that victims of any pollution caused by ships have been adequately and promptly compensated, and that shipping is an entirely different industry to oil production. The arguments by the industry which, with ICS encouragement, were also supported by the Consultative Shipping Group of governments - were acknowledged within Congress, and the latest legislation being considered maintains the concept of limitation for shipping.

ICS also made its own interventions expressing concern about the protectionist agenda apparently underlying proposals for the 'Americanization' of the US offshore support vessel industry, although for the moment at least these appear to have been withdrawn.

In the event, Congress was unable to complete its work on these files before a fresh Congress was convened to reflect the outcome of the elections







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in November. By this time, however, the oil well had been successfully capped, removing much of the political pressure that had existed in the immediate aftermath of the catastrophe.

In summary, the current structure for vessel liability for oil pollution damage is now expected to be retained, although present liability limits may well be increased. However, the crucial distinction between offshore oil exploration and maritime oil transportation now appears to be generally recognised by US policy makers.



## US Developments

Greater focus continues to be given within the

United States to environmental rules that will impact on shipping, while there has been little relaxation in the propensity of individual US States to adopt local maritime rules at variance to both Federal and IMO requirements.

Most important is the decision by the US Environmental Protection Agency (EPA) to designate the area within 200 nautical miles of both the west and east US Coasts as an Emission Control Area under the terms of MARPOL Annex VI. The effect of this will be that by 2015 most ships trading to the United States (and Canada) will have to burn distillate fuel with a sulphur content of 0.1%. A 1.0% sulphur limit is expected to be enforced during 2012. It remains to be seen whether oil refiners will be able to meet the demand for new bunker fuels from domestic US shipping, let alone international trade. However, the decision by the EPA, which has been approved by IMO, does at least mean that the refining industry now

has the clear signal required to begin expanding distillate production.

One significant consequence of the 'Deepwater Horizon' pollution incident (see above) is that the immediate adoption of Federal 'cap and trade' legislation to reduce carbon emissions now seems much less likely. This was initially problematic because the *quid pro quo* for Republican support for a new energy bill was the President's acceptance of increased offshore drilling, which was quickly rescinded in the aftermath of the pollution disaster. However, the Democrats' loss of control of the House of Representatives, following the November 2010 elections, means that progress on 'cap and trade' is probably stalled for at least another two years.

While the State Department is leading US representation in the international negotiations on CO<sub>2</sub> emissions, the EPA has the primary role in domestic US policy. Notwithstanding the difficulties that the Administration may now have in steering a climate change bill through Congress, the EPA has officially determined that CO<sub>2</sub> is a pollutant, so that regardless of what happens in Congress it has the authority to regulate on CO<sub>2</sub> emissions, including those produced by international shipping.

More routinely, ICS has continued to highlight its opposition to US ballast water legislation, with the proposed US 'kill standard' still being many times higher than that stipulated by the IMO BWM Convention (while that required by individual States such as New York is many times higher still). Other important matters requiring careful monitoring have included the unilateral sulphur emission rules in California and measures to protect whales from the risk of collision.

A particular example of unwelcome regulations adopted by an individual US State is that adopted by Massachusetts. This stipulates that visiting tankers that do not elect to comply with certain additional requirements will be subject to financial liabilities in excess of those set out in Federal law in the event of a pollution incident. The issue for ICS has been one of principle, due to the encouragement that this coercive law might give to other US States to take their own unilateral actions, which will result in conflicting regulations. In co-operation with other industry associations, ICS therefore joined a legal challenge in 2010. The intention of the action was to make the US Coast Guard defend its own regulations. Disappointingly, however, the Coast Guard has so far shown little interest in doing this for what are principally assumed to be political reasons.

It must be recorded that the United States caused outrage amongst the shipping industry with its unhelpful Presidential Order of April 2010 on security in Somalia. This suggested that those involved in the payment of ransoms to pirates, to release ships' crews, could be subject to criminal sanctions and potential imprisonment. The US Order continues to prohibit transactions with certain Specially Designated Nationals including those with potential links to Somali pirates. State Department and Treasury officials have maintained that shipowners and their insurers should have little to fear with regard to criminal sanctions, provided that they contact the US authorities prior to ransom payments being made. However, they have refused to provide any specific guidance on the question of due diligence, advising only that each case will be considered on its individual facts and that all cases should be





32 referred to the Office of Foreign Assets Control (OFAC) which can apparently grant licenses against prosecution in individual cases.

When pressed, the US Administration has given informal assurances that ransom payments *per se* are not prohibited by the Order and it does not envisage a situation where shipowners would be prevented from making a payment to obtain the release of a ship and its crew. Of more immediate concern, however, is that the commercial insurance market has issued a clause to protect insurers against sanctionable activity. It remains uncertain how this clause might operate in practice if a shipowner has paid a premium for cover but is then denied recovery of the ransom payment.

A more positive development is that as a partial consequence of strong opposition from foreign governments and industry, including ICS, the deadline for implementation of the US 100% container scanning law has been delayed from 2012 to 2014. The 2007 law requires that every container exported to the US by sea should be individually scanned for potential weapons of mass destruction. The Department of Homeland Security is now conducting a major strategic review of supply chain security which could perhaps prepare the ground for this draconian law to be revisited. However, the political sensitivities surrounding security issues in the US could yet make this process difficult, and ICS will continue to encourage foreign governments to reiterate their opposition to the US law being fully implemented.

## EU Developments



From an international perspective, the European Union's regulatory agenda remains relatively quiet following the adoption of the EU Maritime Safety Package. Encouragingly, there appears to be increasing recognition within the EU institutions, not least within the European Commission (which initiates most new legislation) of the importance of allowing IMO to develop global rules in order to maintain a level 'playing field' in what is inherently a global industry.

With regard to the regulation of CO<sub>2</sub>, the official EU position has been that if IMO fails to adopt acceptable measures by the end of 2011 it will introduce a regional Market Based Measure (MBM), such as incorporation of shipping into the EU Emission Trading Scheme (ETS), by 2013. However, it is possible this stance might be softening. Although opinions within the various EU institutions vary - i.e. between governments, the Parliament and the relevant Directorates in the Commission - there seems to be a growing understanding about the difficulties of incorporating international shipping into the EU ETS (which was also greatly discredited, in early 2011, following the detection of widespread fraud resulting in the temporary closure of the EU carbon market). It is possible that if IMO can indeed adopt a global package of technical measures to reduce CO<sub>2</sub> emissions during 2011 this might in itself be sufficient to dissuade the European Union from immediately progressing ahead with a regional MBM for shipping. However, the EU can probably only be expected to slow down, rather than abandon, work on a regional MBM, and even then only if it can see that IMO is still making progress

on an international MBM for shipping.

Meanwhile, there is growing concern relating to proposals by the HELCOM group of Baltic coastal states to designate the Baltic Sea as a special area in the context of MARPOL Annex IV. The intention is to prevent the discharge of sewage (specifically from passenger ships) and also to push for the creation of a NO<sub>x</sub> Emissions Control Area (ECA) in both the Baltic and the North Sea. In response to these developments, ICS has now joined the HELCOM process by becoming a recognised observer at meetings of the HELCOM countries, and is co-operating with ECSA and the European Cruise Council to develop a co-ordinated industry response.

Another important issue, which also affects non EU operators, is the implementation from January 2011 of the EU's Advance Cargo Declaration System introduced to address security, which applies to bulk and break bulk cargoes as well as containerships. Shipping companies trading to or from the EU are now required to provide advance security information through electronic declarations prior to import or export. While a uniform set of EU risk criteria will be applied by EU Member States when carrying out customs controls, the IT systems themselves differ between Member States, and there have been severe delays in the implementation of these systems by Customs authorities. Some EU Member States have been flexible in their application of the new rules, in order for companies to implement and test systems that meet the new requirements. Unfortunately, no uniform grace period is being applied throughout the EU, despite the continuing uncertainty, with some customs officers reportedly being ignorant of the new requirements.







## 34 Asian Developments

It goes without saying that the most dramatic event in Asia was the terrible disaster inflicted upon Japan by the earthquake and tsunami in March 2011. It is still far too early to assess the implications of these events, not least because of the uncertainties surrounding the leakages from damaged nuclear plants. Perversely, in the longer term, the shipping industry may well benefit from the huge reconstruction that will be required, although Japanese exports might be expected to be affected in the immediate months ahead.

Meanwhile, the fortunes of international shipping very much depend on the policies of China, which has continued to sustain demand in many shipping trades. The possibility of a change in policy in China, and the negative impact this might have on shipping's recovery, cannot be overstated.

With respect to more routine developments, Asian governments are generally less inclined than others to adopt safety and environmental rules that impact on ships which are inconsistent with international rules adopted by IMO. The above notwithstanding, some questions remain about the implementation of regulations in China governing pollution prevention, which introduce new operational and liability requirements.

Asian nations have a pivotal role in determining when new international rules will enter into force, including - as mentioned elsewhere - the ILO Maritime Labour Convention, the IMO Hong Kong Ship Recycling Convention, the new IMO Protocol on HNS liability, and the UNICITRAL Rotterdam Rules on cargo liability. ICS therefore continues

to stress the importance of treaty ratification by Asian governments so that they are not brought into force solely through block decisions by EU States and a few large open registers, in order to avoid international rules becoming regional regimes in all but name.

ICS continues to take a close interest in safe navigation in the Malacca Straits, although it seems that a satisfactory mechanism has now been agreed with littoral states for the future funding of navigational aids in this important international waterway, in a manner which is fully consistent with the principles established by UNCLOS, so that individual ships are not charged. In October 2010, in Yogyakarta, Indonesia, ICS participated in an important meeting on safe navigation in the Malacca and Singapore Straits, organised by the littoral states, which *inter alia* approved proposals by ICS concerning the assessment of marine accident reports. A major project is now being established to collect information from ships which ICS is co-ordinating.

2010 witnessed much activity within the United Nations to enact sanctions designed to inhibit certain trades to and from Iran, in response to its nuclear ambitions. While exports of crude oil have not been affected, the US sanctions go further than those imposed at UN level and are aimed at squeezing Iran's refined fuel imports. The various sanctions have had particular consequences for marine insurance markets, which have added clauses in their policies permitting insurers to terminate or withdraw cover in the event of sanctionable activity.









## 36 Legal and Insurance Developments

*ICS continues to represent shipowners, in close co-operation with the International Group of P&I Clubs, at the IMO Legal Committee and at meetings of the International Oil Pollution Compensation Fund (IOPCF) ICS also liaises with the international hull insurance market.*

### HNS Liability

ICS has greatly welcomed the adoption of the Protocol to the 1996 Hazardous and Noxious Substances (HNS) Convention, following a Diplomatic Conference held under the auspices of IMO, in London, during April 2010.

ICS and its members have campaigned for many years for the ratification and entry into force of the 1996 HNS Convention, which will establish an international regime of liability and compensation for HNS damage, to the benefit of all stakeholders, including those suffering HNS damage, those undertaking clean-up measures - including governments - as well as shippers and carriers.

The new Protocol is intended to overcome impediments to the ratification of the original HNS Convention which has still not entered into force since its adoption 15 years ago. These obstacles to ratification relate primarily to the HNS Convention's 'second tier' of compensation (the HNS Fund) whereby cargo interests are meant to contribute to the costs of claims in the event that total claims following an HNS incident exceed the shipowner's limit of liability under the 'first tier' of the Convention.

ICS has worked hard to ensure that



the Protocol will not impact too much on shipowner's liability under the 'first tier', and that the cargo interests' 'second tier' will be preserved. But to achieve these aims, ICS had to agree that the shipowner's liability in incidents involving packaged dangerous goods will be increased as part of a compromise intended to achieve an equitable sharing of the costs of compensation between shipowners and cargo interests. Data compiled by the International Group of P&I Clubs demonstrated that claims in all cases involving packaged HNS cargoes had been comfortably within the previous limits.

The key consideration at the Diplomatic Conference was what might be regarded as 'acceptable' increases to shipowners' liability for incidents involving packaged goods. This had to take account of factors such as the removal of the obligation on importers to contribute to the 'second tier', and the agreement during the preparatory discussions within the International Oil Pollution Compensation Fund (IOPCF) and the IMO Legal Committee that shipowners should be willing to accept 'modest' increases as a necessary counter-balance to the potential increased exposure of bulk cargo interests under the 'second tier'. The IMO Member States finally agreed to increase the existing shipowners' limits by 15%. This is significantly lower than the amounts initially proposed and reflected an acceptance by governments that the claims statistics did not warrant a greater increase.

Following the recent entry into force of the IMO 'Bunkers' Convention, plus the adoption in 2007 of the Nairobi Wreck Removal Convention (albeit not yet in force), there is now a comprehensive framework of liability

Conventions in place addressing most sources of potential damage to the environment from ships, so that claimants, if necessary, can have rapid access to compensation without protracted legal arguments. The one significant remaining gap in coverage concerns liability and compensation for damage caused by hazardous and noxious substances. It is therefore very much hoped that the adoption of the Protocol represents an agreement which can be accepted on a broad international basis, and which will now pave the way for the early entry into force of the IMO HNS Convention.

### IG of P&I Clubs

In 2010, the Competition Directorate of the European Commission opened formal proceedings to investigate the activities of the International Group of P&I Clubs. The Commission apparently wishes to examine whether certain provisions of the IG Agreement and Pooling Agreement - notably the Group's claims-sharing and reinsurance arrangements - might somehow lessen competition between the Clubs or restrict the access of commercial insurers or other mutual P&I insurers to the relevant markets. The Commission has stated that, at this stage, it is simply conducting an investigation, and this does not imply that there is any proof of an infringement. The Commission also advises that it has opened the investigation on its own initiative and it has not received any formal complaints.

ICS and ECSA were invited to undertake bilateral discussions with the Commission as a contribution to the early steps of the investigation. At a meeting which took place in November 2010, ICS emphasised that the mutual insurance arrangements



provided by the P&I Clubs are efficient and cost effective. The Commission officials in turn stressed they were not intent on destroying the system but were interested in the quotation procedure, release calls, and the availability of commercial P&I insurance outside the International Group system.

Discussions between the IG Clubs and DG Comp are expected to continue throughout 2011. At the beginning of the year, the Commission sent out questionnaires to individual shipping companies seeking further information on the application of the IG Agreement, and also requested detailed documentation and information from the IG Clubs.

ICS will continue to reiterate that the current system serves the interests of ship operators, their customers, claimants and the general public extremely well. In particular, the mutual insurance arrangements

provided by the Clubs enable the provision of the very high levels of insurance required by international liability conventions, under which compensation to claimants is generally paid regardless of fault. It is vital that the European Commission understands this.

### **LLMC Review**

IMO has been considering an Australian proposal to increase the limits of liability under the Limitation of Liability for Maritime Claims Convention 1996 (LLMC) in response to the 'Pacific Adventurer' bunker oil spill in Queensland. Taking account of a submission from the P&I Clubs on the historic costs of bunker oil pollution damage claims when compared with the 1996 LLMC limits, the IMO Legal Committee, at its meeting in November 2010, has agreed to give consideration to amending the limits using the 'tacit amendment' procedure. While there

now seems to be consensus amongst governments on the need for an increase, changing the limits will affect other LLMC Convention claims unconnected with bunker oil spills, which could erode the careful balance in the limits between the different types of claims. In December, at the request of Australia and many other governments, IMO formally circulated proposed amendments.

Some nations continue to express doubt as to whether any increases to the limits are justified in view of the statistics compiled by the International Group of P&I Clubs which showed that 99% of all claims have so far been compensated fully under the present limits. While sharing this view, ICS has observed that the shipping industry is nevertheless open to the discussion of increases, but that this has to be based on the criteria specified in the tacit amendment procedure.

Despite the reservations expressed by some governments at the meeting of the IMO Legal Committee in November 2010, increases to the LLMC limits would appear to be inevitable given the large number of nations which have co-sponsored the formal proposal. Accordingly, further discussion is expected to focus on the amount of any increases. Australia has made clear that it is seeking the maximum amount possible via the tacit amendment procedure, namely 6% per year calculated on a compound basis from 1 October 1996. However, the wording of the formal proposal, to be considered further by IMO in 2011, suggests that not all of the 20 co-sponsoring nations are in favour of maximum increases.





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## Environmental Salvage

ICS continues to lead shipowner representation (with the P&I Clubs) on salvage issues, particularly in relation to the smooth operation of the Lloyd's Open Form and SCOPIC systems.

ICS is maintaining its firm opposition to proposals from the International Salvage Union (ISU) for a new separate award for 'environmental salvage' when salvors have carried out operations in respect of a ship or cargo which has threatened damage to the environment. ICS is sceptical of the proposal, believing that salvage services are already generously rewarded under the present system.

A working group established by the Lloyd's Salvage Group has reached a stalemate following the ISU's inability to demonstrate that its proposal would improve salvage response or deliver cost savings to those paying for services. However, the ISU has succeeded in persuading the Comité Maritime International (CMI), the international association of maritime lawyers, to give consideration to its proposal. In October 2010, ICS therefore found it necessary to repeat the opposition of ship operators at the CMI Conference in Buenos Aires.

## Cargo Liability

Another important issue is the promotion of the Rotterdam Rules which are intended to replace the existing cargo liability regimes such as the Hamburg and Hague/Visby Rules. Following a thorough and detailed analysis of the Rotterdam Rules, which were formally adopted in 2009 by the United Nations Commission on International Trade Law (UNCITRAL), ICS has decided that

the new regime must be promoted by the industry to avoid the risk of a proliferation of regional cargo liability regulations. Although the new rules may not be perfect, and are in some respects overly complex, ICS has concluded that maintenance of the status quo is not a realistic option. If the Rotterdam Rules do not take hold then the United States and the EU will almost certainly pursue their own regional regimes and the opportunity for global uniformity will be lost for another generation.

While those, such as ICS, who were deeply involved in the negotiations are clear about the need to encourage governments to ratify and implement the Rotterdam Rules, there appear to be reservations in some quarters, including in Asia, about the benefits of the new regime. An immediate priority for ICS, in co-operation with local national associations and bodies such as the Asian Shipowners' Forum, will be to explain to these interests why the Rotterdam Rules should be supported. However, early ratification of the Convention by major trading nations, such as the United States, will almost certainly give this process critical momentum.

## Criminalisation and Fair Treatment of Seafarers

Unwarranted criminalisation of seafarers is contrary to principles established by MARPOL and the United Nations Convention on the Law of the Sea. It is unacceptable that in the course of providing their important service to world trade, seafarers are exposed to the vagaries of different national laws, with some jurisdictions imposing criminal sanctions for pollution even when there is no intentional or wilful misconduct.





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Aside from the principles, there is still concern about the impact on serving officers, and retention rates within the profession, of cases where seafarers have been imprisoned or detained for lengthy periods following maritime incidents, sometimes without charge. Most importantly, the possibility of criminal sanctions also undermines the ability of the maritime authorities to conduct accident investigations to establish the root causes of incidents.

Seafarers deserve the security of uniformity and certainty as to how their conduct and actions will be determined by local courts, based on internationally agreed standards. Sadly, however, it seems that a change in the current political climate is required, which will be a long term process.

ICS and ISF continue to lead efforts to press for change where national laws permit unjustified criminalisation. While governments must be urged to recognise the supremacy of UNCLOS and MARPOL and bring national and regional laws into line with these internationally agreed standards, maritime administrations should also be encouraged to adopt the IMO Casualty Investigation Code into their national law and procedures. Meanwhile, the industry will remain vigilant and closely monitor proposed national and regional legislative changes that run contrary to international principles.

In September 2010, ICS and ISF expressed disappointment at the decision of the Grand Chamber of the European Court of Human Rights to the effect that there was no violation of human rights, in 2002, when bail was set at Euros 3 million for the release of the master of the tanker 'Prestige' following the oil pollution

caused by the break-up of the ship off the coast of Spain. The judgement was disappointing in that it confirms that even the Supreme Court of the European Court of Human Rights views this case as being about the consequences of environmental disasters, rather providing a proper analysis of whether there has been an unlawful violation of a seafarer's human rights.

A major problem the industry faces in the immediate aftermath of a serious pollution incident is that the factors at play locally are often political rather than legal. There is a perception amongst the public that the 'polluter' should be punished and foreign seafarers have no local political constituency. However, the industry will continue to explain that pollution will be cleaned up, and that the costs of any damage are covered, regardless of fault, by very efficient international liability regimes.

A separate but closely related issue is that concerning 'fair treatment', i.e. proper due legal process when seafarers come into contact with local authorities including the provision of access to legal advice and interpreter services, and the possibility of release on bail when a criminal investigation is underway.

The IMO/ILO Guidelines on the Fair Treatment of Seafarers in the Event of a Maritime Accident (which ISF negotiated with unions and governments in 2006) are not wholly satisfactory. But for the moment it has been concluded that adherence to the existing Guidelines must continue to be strongly promoted.

## Competition Regulation

Compliance with competition law is most important given that even 'technical' violations by shipping companies can result in penalties amounting to tens of millions of dollars.

In those parts of the world where they are still permitted, ICS policy is to defend the continued existence of liner conferences. The EU Competition Directorate, however, continues to argue vociferously that its foreign trading partners should follow its unilateral example of making shipping companies' participation in conferences illegal. Overshadowed by the massive contraction of demand for shipping services caused by the economic downturn, the jury is still out on what the long term effects of the abolition of liner conferences in trades to and from Europe might be. But the result is still thought likely to be an increase in market concentration, while the availability of services on north-south trades may be reduced by a greater extent than might otherwise have been the case.

ICS has therefore welcomed Singapore's announcement, in December 2010, that its block exemption from competition rules for liner shipping agreements will be extended for another 5 years until 2016. It is also understood that the authorities in China have similarly decided to maintain the status quo for shipping. A number of other Asian jurisdictions are reviewing the application of anti-trust law to shipping as part of their development of general competition law. But for the most part it is expected that the special needs of the industry will continue to be recognised. ICS is working closely with the Asian







42 Shipowners' Forum on these important files.

Under the auspices of the Asia Pacific Economic Co-operation forum (APEC) governments have been considering guidelines on maritime competition rules, specifically for co-operation agreements which do not involve rate setting, such as consortia. Although a far looser form of co-operation than conferences, consortia have also provided stability to markets, helping guarantee the maintenance of scheduled services to more remote destinations and permitting efficiencies such as slot sharing on containerships.

In October 2010, ICS and the World Shipping Council (WSC) made a joint presentation at an important workshop hosted by APEC economies, in Tokyo, to consider the proposed new Guidelines. In particular, ICS and WSC maintained their position that the details of filing requirements should be left to the discretion of individual governments, since filing requirements are often imposed by those governments which continue to allow a more flexible approach with regard to co-operation between shipping companies. However, the European Commission, also present at the APEC meeting, made clear its opposition to filing since it does not feature under the current EU rules on consortia. The APEC Guidelines are expected to be finalised by APEC transport ministers, in Brisbane, in June 2011.

In the United States, meanwhile, the Federal Maritime Commission (FMC) is proceeding with a comprehensive study of the impact on US trades resulting from the abolition of liner conferences in the EU. The FMC study will cover two years before and after

the EU repeal of its block exemption in 2008, and will include analysis of changes in carrier market structures, rates and surcharges that may have resulted.

Before the 'mid-term elections' in the United States in November 2010, a Bill was introduced to Congress that proposed removal of much of the anti-trust immunity which is still enjoyed by the international liner industry in US trades. Fortunately, this Bill is now dead, although it is anticipated that as a consequence of the FMC review there could be further pressure to modify the current regime embodied in the Ocean Shipping Reform Act (OSRA) of 1998.

### Shipping Policy and Free Trade

Shipping policy involves long term engagement by ICS and its member national associations in the largely unseen diplomatic activity necessary to help ensure the maintenance of the open markets which the shipping industry needs to operate competitively and efficiently. Shipping also requires a regulatory 'level playing field', and - in view of the great market volatility experienced during the recent economic downturn - the continuation of the certainty provided by the tonnage tax regimes that now apply to shipping companies in most countries. In May 2010, ICS made these important points as one of the leading industry participants at a major Conference of the world's transport ministers in Leipzig, organised by the OECD International Transport Forum, which has continued to focus on the implications for transport as it emerges from the economic downturn. ICS will again be representing the industry at the next OECD transport ministers' conference, in May 2011.

More routinely, ICS continues to place great importance on relations with the Consultative Shipping Group (CSG) of maritime governments, which is the guardian of free trade principles. In June 2011, ICS will be organising a seminar on trade policy for CSG governments at their next meeting in Brussels. ICS has also been able to give input, via national associations, on issues ranging from problems of market access to government interference in local markets. The CSG is also a useful conduit for the discussion of sensitive diplomatic issues, such as the treatment of piracy.

In addition to the broader role of the CSG as a forum for discussion of shipping policy and trade issues, it still maintains its original function as providing a means for the world's major shipping nations to communicate with the United States government, which historically has often been slightly detached from the mainstream of the international shipping community. ICS participated at the CSG dialogue meeting with the United States held in Washington DC in June 2010, which was dominated by the aftermath of the 'Deepwater Horizon' pollution disaster and the possibility, thankfully averted, of a protectionist backlash.

A major concern of ICS national shipowners' associations has been to discourage governments from responding to the current economic crisis with protectionist measures, which will only damage world trade further. More particular has been the need for governments to avoid measures that restrict fair and open access to shipping markets. Although of little immediate comfort to those individual companies that may still be struggling to survive, one consolation



is that governments so far appear to have made a determined effort to avoid the excessive use of protectionist measures. Moreover, although the global financial system has been seriously threatened by the crisis, with government support it has managed to survive and is still intact. This is not, by any means, an insignificant achievement, and it should not be forgotten just how close to the precipice the world economy came.

The recovery of the world economy is still far from certain, and it will remain important for ICS, and like minded governments, to remain vigilant. In particular, ICS remains committed to the inclusion of shipping in any new agreement on services that may be agreed by the World Trade Organization (WTO), in order to codify the liberal trading practices which already apply to most shipping markets. However, progress towards a new WTO deal on trade remains slow, largely due to significant differences between governments on issues such as agriculture.

Another source of disappointment was that, in December 2010, the OECD confirmed its decision to terminate negotiations on a new agreement to eliminate subsidies and market distorting mechanisms in the shipbuilding industry, which is dominated by China, Japan and Korea. This was primarily due to differences between the European Commission and Asian governments about the treatment of pricing of new ships in any new agreement, the latter wishing instead to concentrate on the elimination of subsidies - a position supported by ICS. The negotiations had been 'paused' for exactly the same reason in 2005, but throughout 2010 serious efforts had been made

to restart them. The OECD Working Party on Shipbuilding, however, will continue to meet, apparently to explore better understanding of what constitutes market distortion and means of achieving greater transparency of government support measures. The collapse of the negotiations is nevertheless disappointing, as Asian governments in particular continue to focus on maintaining or expanding market share with soft loans, encouraging the construction of ever more ships for which there may be no demand.

### **International Accounting Standards**

In response to issues that emerged as a consequence of the global banking crisis, the International Accounting Standards Board (IASB) has made proposals to overhaul international accounting rules which, inter alia, will affect the treatment of leases for all businesses and industries. However, there is serious concern amongst shipping companies about the lack of precision in the proposals with regard to the definition of leases. This could give rise to an interpretation that 'time charters' and other contracts governing operational arrangements utilised by ship operating companies fall within the definition.

ICS believes that such arrangements should not be treated as leases, and certainly not as financial leases for accounting purposes, since they are more in the nature of transportation service contracts. Furthermore, it is unlikely that third parties' understanding of the true financial position of shipping companies will be greatly enhanced by requiring 'time charters' and similar contractual arrangements for transportation

services, to appear on company balance sheets.

In December 2010, ICS made a submission to the IASB in order to explain these concerns. Most importantly, one of the possible consequences of requiring contractual arrangements such as 'time charters' to be recorded on company balance sheets is that some companies could suddenly become in breach of existing covenants with their financing institutions. Such covenants, in relation to capital gearing for example, have been entered into on the basis of current accounting rules, and there can be no presumption that financing institutions will be able to revise or renegotiate contracts. However, such technical breaches of covenants could potentially trigger defaults with unpredictable consequences for individual companies, the shipping industry as a whole, and the smooth flow of international trade. For other companies, the proposed rules may have a dramatic effect on the way in which they must conduct their business after the changes come into effect in about two years' time.

Although it had been understood that the prospects for persuading the IASB to modify its proposals were limited, there are now indications that IASB may now be more aware of the problems that might be created for shipping. ICS met with ISAB representatives in March 2011, prior to the expected publication of final proposals later this year.





## 44 Canal Issues

ICS was disappointed with the outcome of the Panama Canal Authority's (ACP) consultation process on the adjustment of Panama Canal tolls. In June 2010, toll rises of some 12-16% were announced and were implemented in January 2011. This was despite a number of industry meetings with the ACP, and strong comments submitted to the formal consultation process by ICS and others expressing the view that such steep increases would be damaging to the fragile recovery in the shipping sector.

The industry also argued that the uncertainty regarding future possible toll increases created by the proposal's short term validity (only increases for 2011 were announced) was a further unwelcome burden. Although the industry was unsuccessful in preventing the increases, this last point was in part taken on board by the ACP, which has invited ICS to participate in discussions for segment specific, long term pricing structures for Panama Canal tolls. ICS has responded positively to this invitation, and it is expected that discussions will begin during 2011. Meanwhile the Canal expansion programme is reported to be progressing well, and is still on schedule for completion in 2014, when the Canal celebrates the centenary of its historic opening.

Elsewhere, operations in the Suez Canal were faced with some uncertainty in early 2011, due to the political upheavals in Egypt. However, ship operators were relieved that, given its vital importance to world trade, the Canal continued to function more or less as normal, and without delays, throughout the period of unrest.





The Suez Canal Authority (SCA) announced in March that transit fees for 2011 would remain unchanged for the third consecutive year. The SCA advised that this decision was based on its assessment of the continuing uncertainty in shipping markets following the global financial crisis. However, piracy attacks in the Indian Ocean have had an impact on transits, and Suez Canal revenues could be seriously affected if the piracy crisis continues to escalate and large numbers of ships decide to use other routes.

### Industry Representation

In addition to interacting with individual governments during meetings at IMO in London and ILO in Geneva, ICS/ISF continue regular attendance at more general policy meetings held by the United Nations in New York, the World Trade Organization (WTO), the Organization for Economic Co-operation and Development (OECD), the Consultative Shipping Group (CSG), the United Nations Conference on Trade and Development (UNCTAD), the World Customs Organization (WCO), and, in so far as they are relevant to the employment of seafarers, bodies such as the World Health Organization (WHO). Given the importance of discussions about CO<sub>2</sub> emissions reduction, ICS has also taken up consultative status with the United Nations Framework Convention on Climate Change (UNFCCC).

ICS enjoys good relations with many other intergovernmental bodies that impact on shipping including the International Association of Marine Aids to Navigation and Light House Authorities (IALA), the International Hydrographic Organization (IHO) and

the World Meteorological Organization (WMO). ICS also has consultative status with the International Mobile Satellite Organization (IMSO), which is the body that oversees public safety and security communication services including the Global Maritime Distress and Safety System (GMDSS).

As an employers' organisation, and an official 'social partner' at the ILO, the opposite number of ISF is the International Transport Workers' Federation (ITF). In addition, ISF is a member of the International Committee on Seafarers' Welfare (ICSW) which embraces secular and religious seafarers' welfare organisations.

In view of the importance of ensuring global regulation for a global industry, ICS/ISF continue to work closely with the European Community Shipowners' Associations (ECSA) in communicating on issues with Europe that are relevant from an international perspective, and participate in consultations organised by the EU institutions. In the United States, ICS/ISF work with the various US agencies that impact on shipping in liaison with the Chamber of Shipping of America, which by agreement officially represents ICS and ISF in US discussions. Additionally, ICS enjoys good relations with the Asian Shipowners' Forum, whose members are also national shipowners' associations, and ICS is now developing a relationship with the Asia Pacific Economic Co-operation forum (APEC) which is becoming increasingly engaged with maritime transport matters.

ICS and ISF work closely with a diverse range of other industry organisations that are engaged generally on transport issues, including the International Chamber of Commerce

(ICC), the International Standards Organisation (ISO), the Business and Industry Advisory Committee to the OECD (BIAC), the International Organization of Employers (IOE) and the World Ocean Council (WOC).

Last but not least, ICS and ISF enjoy good relations with various specialist industry bodies such the International Association of Classification Societies (IACS), the International Group of P&I Clubs (IG), the International Union of Marine Insurance (IUMI), the International Association of Port and Harbors (IAPH), the International Maritime Pilots' Association (IMPA), the Nautical Institute (NI), and the Global Shippers' Forum (GSF).

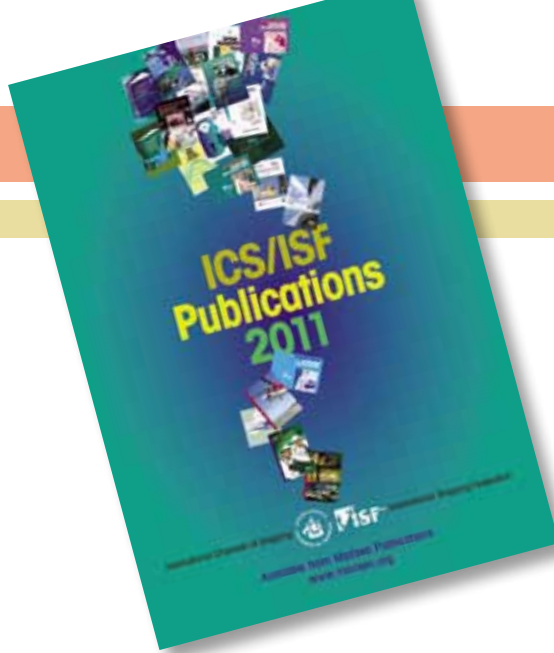
Most important, however, is the contact enjoyed between ICS and ISF and its member national shipowners' associations (see inside back page), who collectively develop the industry's global policy positions through a comprehensive structure of specialist committees (see page 48). Although efficient international shipping depends on a system of uniform global rules, we still live in a world of nation states, and the importance of national shipowners' associations remains as essential as ever.

### Publications

The production of publications, providing guidance on regulatory developments and promoting best practices, particularly with regard to safety, environmental protection and employment standards, continue to be a most important activity within ICS and ISF to which a large proportion of resources is devoted.

In March 2011, ISF published revised Guidelines on the IMO STCW





Convention to reflect the changes agreed to competence standards for seafarers at the Diplomatic Conference in Manila in June 2010. There is also an ambitious schedule for the updating of the various internationally recognised training record books that ISF provides for the industry, starting with books for the new grade of Able Seafarer (deck and engine).

In 2010, ICS and ISF published a new edition of their definitive Guidelines on the Application of the IMO International Safety Management (ISM) Code to coincide with the amendments which entered into force in July. As well as this, in co-operation with its partner IT Energy, ISF has updated its increasingly popular ISF Watchkeeper computer software which allows records to be maintained of seafarers' work hours in accordance with IMO and ILO regulatory requirements, including the changes made by the 2010 amendments to the STCW Convention.

ISF is also working on a revised edition of its Guide to the International Maritime Labour Convention to take account of guidelines on enforcement developed by ILO in advance of the ILO Convention coming into force. Meanwhile, ICS is developing new guidelines on engine room management to serve as a companion to the ICS Bridge Procedures Guide.

In addition to this, ICS has work in hand, with the Oil Companies International Marine Forum (OCIMF) and the Society of International Gas Tanker and Terminal Operators (SIGTTO) to produce a new consolidated edition of the Ship to Ship Transfer Guide that will cover petroleum, chemical and gas operations.

Most importantly, detailed work has commenced on the ICS Tanker Safety Guide (Chemicals). This is a major undertaking and will probably take about two years to complete.

Details of over 30 titles produced by ICS/ISF, which are sold under the banner of Marisec Publications, can be found in the latest publications catalogue - see [www.marisec.org](http://www.marisec.org)

### Administrative Matters

The current membership of ICS and ISF comprises national shipowners' associations from 36 countries (see inside back page), the latest welcome addition being the Bahamas Shipowners' Association. Sail Training International has also joined as an Associate Member.

The staff and Secretariat of ICS and ISF continue to be provided by Maritime International Secretariat Services Limited (Marisec), which is wholly owned by the two international trade associations. Marisec also provides services to the International Support Vessel Owners' Association (ISOA).

The 2010 Annual Meetings of ICS and ISF were hosted by the Singapore Shipping Association in April. Mr Spyros M Polemis (Greece) was re-elected as ICS Chairman and ISF President. The ICS Vice Presidents elected for 2010/2011 were Mr Trygve Seglem (Norway) and Mr Frank Leonhardt (Germany). Captain Dirk Fry (Cyprus) and Mr Carlos Salinas (Philippines) were re-elected as the ISF Vice Presidents.

In September 2010, Peter Hinchliffe was appointed Secretary General of ICS and ISF, as the successor to Tony Mason who stepped down from the helm after four years of service.



*Peter Hinchliffe, Secretary General*

The 2010 Annual Meetings took an important decision to integrate the ICS and ISF organisations so that they will operate under a single Board. The new organisation will continue to be called the International Chamber of Shipping, but will also maintain the separate identity of the International Shipping Federation when acting as an employers' association, for example at meetings of the International Labour Organization or when dealing with industrial relations questions.

The Committees of ICS and ISF are being combined into a single structure as shown overleaf. These changes will be fully effected after the next ICS and ISF Annual Meetings, which will be hosted by the German Shipowners' Association, in Hamburg, in May 2011.

# ICS Executive Committee and ISF Council 2010/11



## Sir Brian Shaw ICS Chairman 1987-1992

Sir Brian Shaw passed away in February 2011, at the age of 77, following a most distinguished career in shipping. His time at the helm of ICS was a demanding one as the industry had to respond to the 'Herald of Free Enterprise' tragedy, the 'Exxon Valdez' oil spill and the attacks on shipping during the latter part of the Iran/Iraq war.

A graduate of Cambridge University, Sir Brian joined the Pacific Steam Navigation Company in 1957 and served with other companies within the Furness Withy Group, ultimately as Chairman from 1979 to 1990. Directorships within the industry included Overseas Containers Limited, New Zealand Line, Walter Runciman and Andrew Weir.

As well as serving as Chairman of ICS, Sir Brian was Chairman of the Council of European and Japanese National Shipowners' Associations (which later merged with ICS), President of the General Council of British Shipping, and Chairman of the Port of London Authority.

## ICS Executive Committee

**Chairman** Mr Spyros M Polemis  
**Australia** Mr Noel Hart  
**Cyprus** Captain Dirk Fry  
**Denmark** Mr Carsten Mortensen  
**Finland** Mr Jan Hanses  
**France** Mr Christian Garin  
**Germany** Mr Frank Leonhardt  
**Greece** Mr Anastasios Papagiannopoulos  
**Hong Kong** Mr Robert Ho  
**Japan** Mr Hiroshi Hattori  
**Liberia** Mr Mark Martecchini  
**Mexico** Mr Luis Ocejo  
**Netherlands** Mrs Karin Orsel  
**Norway** Mr Trygve Seglem  
**Sweden** Mr Lars Höglund  
**United Kingdom** Mr Michael Parker  
**United States** Mr Joseph Cox (co-opted)

## ISF Council

**President** Mr Spyros M Polemis  
**Australia** Ms Teresa Hatch  
**Bahamas** Mr Chris Oliver  
**Belgium** Mr Nicolas Saverys  
**Brazil** Mr Paulo Sergio de Mello Cotta  
**Canada** Mr Bruce Bowie  
**Chile** Mr Erich Strelow  
**China** Mr Li Shanmin  
**Cyprus** Captain Dirk Fry  
**Denmark** Mr Leif Kristian Nielsen  
**Finland** Mr Olof Widen  
**France** Mr Christian Garin  
**Germany** Ms Uta Ordemann  
**Greece** Mr Anastasios Papagiannopoulos  
**Hong Kong** Mr Arthur Bowring  
**India** Mr Sabyasachi Hajara  
**Ireland** Captain Eddie Keane  
**Isle of Man** Mr David Oldfield  
**Italy** Mr Stefano Messina  
**Japan** Mr Mitsuo Nakamoto  
**Korea** Mr Young-Moo Kim  
**Kuwait** Captain Saad Al-Matouq  
**Liberia** Mr Joseph Ludwiczak  
**Mexico** Mr Luis Ocejo  
**Netherlands** Mrs Karin Orsel  
**Norway** Mr Trygve Seglem  
**Philippines** Mr Carlos Salinas  
**Spain** Mr Manuel Carlier  
**Sweden** Mr Per Cronér  
**Turkey** Mr Tamer Kiran  
**United Kingdom** Mr Mark Brownrigg  
**United States** Mr Joseph Cox



# ICS Organisational Structure (as from June 2011)

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