OCEANS POLICY AS A SUSTAINABLE TOOL FOR THE REGULATION OF THE MARINE ENVIRONMENT

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ABSTRACT

The world's oceans provide the shipping industry with an unrivalled opportunity to bypass the clutches of regulators and thereby gain an economic advantage. The goal of maritime regulators is to close the net; as a result, in the past decades the regulatory regime has become a central factor in the economics of the shipping market. This report examines oceans policy as a sustainable tool for the regulation of the marine environment; employing a descriptive research methodology. The findings reveal that while the goals of a country's ocean policy may include the promotion of ecologically sustainable development and job creation as well as promotion of public awareness and understanding. The objective of any national oceans policy is to provide a strategic framework for the planning, management and ecologically sustainable development of a nation's fisheries, shipping, tourism, petroleum, and gas and seabed resources while ensuring the conservation of the marine environment. This report also submits that it is not the systems, but the way they are applied and enforced which needs constant improvement. This is because oceans policy has a role in balancing national interest and ensuring internationally that the nation does not lose more than it gains by new measures. Accordingly, the report substantially subscribed to the claims that the Australia's oceans policy demonstrates "world leadership by implementing a coherent, strategic planning and management framework for dealing with complex issues confronting the long-term future of the oceans of the world".

INTRODUCTION

Ship-owners, like most businessmen, find that regulation often conflicts with their efforts to earn a reasonable return on their investment. The same, sometimes legitimate, resistance to regulation is found in most industries, but the world's oceans provide the shipping industry with an unrivalled opportunity to bypass the clutches of regulators and thereby gain an economic advantage. The goal of maritime regulators is to close the net; as a result, in the past decades the regulatory regime has become a central factor in the economics of the shipping market. Stopford (2005) highlights that there are three different regulatory authorities: The classification societies; which make rules for ship construction and maintenance, and a 'class certification' to reflect compliance; 'The flag state', which is the state in which the ship is registered, and which is the primary legal authority governing the activities of merchant ships; and 'The coastal state', in that a ship is also subject to the laws of the 'coastal state' in whose waters it is trading. The extent of each state's territorial waters and the scope of regulation vary from one country to another. This report examines ocean policy as

a sustainable tool for the regulation of the marine environment by analysing whether or not the shipping industry is over or under regulated, given the economic bonus of flagging-out and the use of sub-standard ships in the industry by ship-owners. The study also identified and explained some relevant conventions, treaties and legislations dealing with these issues in the shipping market.

REGULATING THE SHIPPING INDUSTRY

Shipping can fairly claim to be the safest and most environmentally friendly form of transport. Perhaps uniquely amongst industries involving high risk, commitment to safety, if only as a form of self-preservation, has long pervaded shipping operations. Shipping was among the first industries to adopt widely implemented safety standards (SOLAS '74) and, given its international complexity, its overall record is good, particularly in comparison with the practices existing in many shore-based industries (ICS/ISF 2005). Notwithstanding the unquestionable existence of a small core of sub-standard operators in the industry, a range of different measures clearly indicate that the safety and environmental record of shipping has shown continuous improvement in recent years. This report submits that the stringent regulations in the shipping industry are meant to ensure a high standard of safety and improve environmental friendliness.

The International Commission on Shipping (ICONS), the International Chamber of Shipping (ICS) are the principal international trade association for the shipping industry. They are concerned with technical, operational and legal issues, representing the global shipping industry at the International Maritime Organization (IMO), and the International Shipping Federation (ISF). The ISF is the international employers' organisation for the shipping industry, concerned with labour affairs, manning and training and seafarer's welfare issues. In addition to representing maritime employers on relevant issues at IMO, ISF is responsible for coordinating the shipping industry's views at the International Labour Organisation (ILO). These statutory bodies have accepted the principle that shipping should be regulated at the international level and is also widely accepted by the entire maritime community, while the regulatory role of IMO is unanimously acknowledged (Mitropoulos 2006).

THE FLAG STATE REGISTERS

The open registry system certainly has its shortcomings, although this problem is that of the flag state system in general, rather than the open registers. Horrocks (2006) argues that the vast majority of operators using open or second registers are committed to complying with international requirements. Moreover, port state control detention records indicate that the safety performance of a number of national registers is no better than that of the poorer open registers, while open registers such as Liberia and Bahamas enjoy a safety record comparable to most traditional maritime flags (Horrocks, 2006). In view of the above cited authorities, flagging-out has little or nothing at all to do with the economic bonus of the shipping industry. This report consequently submits that the open registry system may now be a fact of life, and any

solution to current difficulties regarding flag state implementation of IMO rules needs to be developed with that in mind, by the regulatory authorities.

THE OPERATION OF SUB-STANDARD SHIPS

Horrocks (2006) also highlights that with regard to the accountability of sub-standard ship operators, the most effective means of achieving this must be through the enforcement of existing international regulations by flag states. Port state control is only an adjunct to flag state responsibility, and its ability to prevent sub-standard operators from trading in the shipping market is consequently limited. To identify sub-standard ship-owners who may hide behind the 'corporate veil', the effective implementation of the International Safety Management (ISM) Code should assist in identification of those ultimately responsible (and liable) for the safe operation of a particular ship.

In effect the ISM Code documentation represents a license to operate; establishing a legal link between the shore-based management individual ships, and the importance of the ISM Code must not be understated in this regard. The ISM Code implies an acceptance of a commitment to a safe operation by every shipping company and tightening of the net around those who would seek to avoid such responsibility. Although the ISM Code was never going to change the practice of cutting corners to avoid regulations overnight, in the opinion of this report, it is one of the most important developments in regulation of the shipping industry. Thus again, sub-standard shipping thrives due to ineffective enforcement of regulations and not because of economic bonus or over-regulation in the shipping market.

RELEVANT CONVENTIONS, TREATIES AND LEGISLATION

Although the International Association of Classification Societies (IACS) is one of the institutions that regulate shipping, and was granted 'consultative statuses by IMO in 1969 to enable it to carry out its role more effectively, despite their obvious importance, the classification societies have no legal authority (Stopford 2005). There is no legislation for a ship-owner to obtain classification, but classification is generally necessary to obtain insurance, and a ship would have little value without it.

As far as the state flag registration is concerned United Nation's Convention on the Law of the Sea (UNCLOS 82) endorses the right of any state to register ships, provided there is a 'genuine link' between the ship and the state. Since the flag state can define the nature of this link, in practice it can register any ship it chooses. Once registered, the ship becomes part of the state for legal purposes. The 'flag state' has primary legal responsibility for the ship in terms of regulating safety, labour laws and on commercial matters (Stopford 2005). However, since the 'coastal state' also has limited legal rights over any ship sailing in its water. The rights of the coastal states are defined by dividing the sea into zones. Although UNCLOS fixes the limit to the territorial sea at 12 nautical miles, many different limits are in use. Stopford (2005) also observes that because of the interdependence between legal regulation and ship operating economics, the choice of register has become a major issue for ship-owners,

as has the drive to extend and tighten the control imposed by maritime law on shipping operations through international conventions. There are also other Memorandum of Understandings (MOU's); in 1976 a maritime session of the International Labour Conference adopted the Merchant Shipping (Minimum Standards) Convention, more commonly known as the ILO Convention No.147. This convention aimed to inspect vessels that entered the ports of member states. This convention is said to be working successfully, according to ICS and ISF annual reports of 2005. There is also the International Convention for the Safety of Life at Sea (SOLAS 74); the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL 73/78), and the International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW '95).

These legislations, conventions and treaties are all aimed at strengthening the statutory shipping regulatory bodies in performing their roles efficiently and effectively, in order to curb the so-called economic of 'flagging-out' and tightened the net around those who would seek to operate sub-standard ships in the shipping market. In view of the above cited examinations of this literature, IMO's involvement in terms of developing international regulation is already very comprehensive, and the emphasis should now be on encouraging, enforcement, and the implementation of existing regulations. This report also submits that it is not the systems, but the way they are applied and enforced which needs constant improvement.

The regulatory framework of ocean policy

The oceans governance and the management of maritime affairs has been on a sectoral basis with each sector, such as shipping, fishing, tourism, and oil and gas, operating separately; although the preferred approach now is an integrated one that recognises the interdependent nature of the oceans interests and uses. Bateman and McCoy (2006) observe that Australia in recent years has developed a comprehensive national oceans policy which has since been overdue. The objective of any national oceans policy is to provide a strategic framework for the planning, management and ecologically sustainable development of a nation's fisheries, shipping, tourism, petroleum, and gas and seabed resources while ensuring the conservation of the marine environment.

A Good Example of a Maritime Nation Oceans Policy Trust (Australia)

At the core of the Australia's Oceans Policy is the development of Regional Marine Plans (RMP's), based on large marine ecosystems, which will be binding on all Commonwealth agencies. The promulgation of Australia's Oceans Policy in December 1998 makes Australia the first country in the world to develop a comprehensive, national plan to protect and manage the oceans. The main policy guidance for oceans planning and management that provide the basis for reporting and performance assessment in the implementation of Australia's Ocean Policy are summarised below: Maintenance of ecosystem integrity; integrated oceans planning and management for multiple ocean use; promotion of ecologically sustainable marine-based industries; oceans governance; management of uncertainty; application of the precautionary

principle; user-pays and other economic instruments; reporting, monitoring and assessment; duty of care and stewardships; interests and responsibilities of indigenous peoples; broader community participation; and but not the least, regional and global responsibilities (AMSA 2001).

THE ROLE OF A NATION'S OCEAN POLICY

Oceans policy has a role in balancing national interest and ensuring internationally that the nation does not lose more than it gains by new measures. Bergin and Haward (1999) observe that examples of potential conflicts of interest include, on the one hand, a nation's concern for the preservation and protection of the marine environment, and on the other, the country's interest in the freedom of navigation through the Exclusive Economic Zone (EEZ) and archipelagic waters of other countries, and the exploration and exploitation of offshore resources.

A focus on marine environmental protection is not necessarily at the expense of balanced exploitation uses of the sea. These two interests, according to Bergin and Haward (1999), are not mutually exclusive and there is a positive side to increased environmental concerns as far as the development of marine industry is concerned. This is both in terms of the general benefits of more effective management and legislation for ecologically sustainable development and in terms of some specific benefits which may result for industry. For example, seabed mining of sand and gravel may be preferable to utilisation of land quarries and beaches, and greater use could be made of coastal shipping because it is more energy efficient and with markedly less greenhouse gas emissions than road transport.

THE IMPORTANCE OF A NATION'S OCEAN POLICY

The goals of a country's ocean policy may include the promotion of ecologically sustainable development and job creation and promotion of public awareness and understanding. Bateman and McCoy (2006) argue that this could be said the policy represents the beginning of a new era of maritime awareness for a country, although realisation of this goal will depend on the commitment of the government to community awareness activities. The policy also provides guidance for the development of the nation's marine industries and resolution of disputes over different uses and interest in the oceans. The oceans policy acknowledges the potential environmental impacts of the shipping industry and the importance of appropriate environmental controls and marine safety in accordance to SOLAS 74 convention. In Australia for example, its oceans policy also expresses concern about trends with illegal movement into and out of Australia and the need for effective surveillance and enforcement capacity. The policy poses consideration of Australia's capacity to manage its maritime interest, whether it has sufficient skills and expertise and whether it will be able to maintain these in the future. It acknowledges that the people involved in managing its oceans and maritime interests come from a diverse range of backgrounds and disciplines. Accordingly, the Australia's oceans policy is also important because it purposes a leadership role for Australia in helping to ensure that international ocean management

regimes are effectively implemented in the three great oceans around Australia; that is, the Indian, Pacific and Southern Oceans respectively. In view of the above cited literature on the Australia's ocean policy framework, this report submits that the marine environmental protection is not at the expense of the exploitation of the uses of the sea, at least not in the Australia's territorial jurisdictional waters. The report also assumes that with the integrated and comprehensive oceans policy in place, the country is certainly finding a balance between the protection of the marine environment and the sustainable exploitation uses of the resources of the seas. In this wise, the report substantially subscribed to the claims that the Australia's Oceans Policy demonstrates "would leadership by implementing a coherent, strategic planning and management framework for dealing with complex issues confronting the long-term future of the oceans of the world".

CONCLUSION

The world's oceans provide the shipping industry with an unrivalled opportunity to bypass the clutches of regulators and thereby gain an economic advantage. The goal of maritime regulators is to close the net; as a result, in the past decades the regulatory regime has become a central factor in the economics of the shipping market. While the goals of a country's ocean policy may include the promotion of ecologically sustainable development and job creation and promotion of public awareness and understanding. The objective of any national oceans policy is to provide a strategic framework for the planning, management and ecologically sustainable development of a nation's fisheries, shipping, tourism, petroleum, and gas and seabed resources while ensuring the conservation of the marine environment.

International Maritime Organisation's (IMO) involvement in terms of developing international regulation is already very comprehensive, and the emphasis should now be on encouraging, enforcement, and the implementation of existing regulations. This report also submits that it is not the systems, but the way they are applied and enforced which needs constant improvement; this is because oceans policy has a role in balancing national interest and ensuring internationally that the nation does not lose more than it gains by new measures. The policy also provides guidance for regulation and the development of the nation's marine industries and resolution of disputes over different uses and interest in the oceans. Accordingly, this report submits that the marine environmental protection is not at the expense of the exploitation of the uses of the sea, at least not in the Australia's territorial jurisdictional waters.

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