

THE IMO. THE BROKEN DREAM

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Following and, as a direct consequence of the Titanic sinking and subsequent inquiry, The International Convention of the Safety of Life at Sea (SOLAS) was signed in London on the 20th January 1914. Remarkably, this was achieved in a period of several months, probably because the signatories were only the major European powers of the time.

From this the IMO developed into what it is today. It moved to its present headquarters in London in 1982 and has an administrative staff of around 300 made up of representatives from the member states. It is governed by the Assembly which meets every two years and consists of delegates from all the member states. The assembly elects the Secretary General and the council. The council is the executive organ of IMO and is responsible, under the assembly, for supervising the work of the organization.

The Flag State

Now alongside this and often forgotten, is the United Nations Convention of the Law of the Sea (UNCLOS). While mostly dealing with coastal areas of responsibility and the high seas, it does have one very important article of particular concern to those at sea and this is Article 94.

This article defines the duties of the flag state and amongst those duties are those in 94.2.(b). which states;

'Assume jurisdiction under it's international law over each ship flying it's flag and its master ,officers and crew in respect of administrative, technical and social matters concerning that ship.'

This now firmly requires the Flag State to assume jurisdiction not only over it's registered ships, but also over the Master, officers and crew of such ships. It can also be argued, *a fortiori*, that this article also applies to all persons on board a ship whether legally as is the case with passengers or illegally such as stowaways.

Very few flag states acknowledge or comply with this.

As we all know, there is no point to any law unless it is enforced and both the Division of Ocean Affairs at the UN (remember UNCLOS is a UN convention) and the IMO, which is a body of the UN, refuse to accept any responsibility for the enforcement of UNCLOS. While this incredible situation continues, the flag states are able to continue to ignore this most important article and many do.

The sovereign right of Flag States to sail ships on the high seas and their decision to grant their nationality to ships is guaranteed under article 90 of the 1982 convention however, this right is not absolute and is qualified in article 5 of UNCLOS 1958 by the following;

"There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical, and social matters over the ship flying its flag."

In 1999, the International Tribunal of the Sea (ITLOS), delivered the judgement in the M.V Saiga No 2 case (St Vincent and the Grenadines v Guinea) and it was therein reaffirmed that the 'genuine link'

was to be viewed in the context of the effective exercise of jurisdiction and control, and not for determining whether a state is apt to allow ships to fly its flag.

That certainly if applied, would severely reduce quite a number of Flag States registries but again, nothing said or done by the IMO.

Finally, the IMO has a resolution A912 (22) Annex 1 which states that;

'A Flag State should provide for the enforcement of its national laws including the associated investigative and penalty processes,' and 'ensure the availability of sufficient personnel with maritime and technical expertise to carry out it's flag state responsibilities.'

Both of these are flagrantly ignored by the majority of flag states, all of which is known to the IMO which, under its concept of no power of enforcement, does and says nothing.

Consequently, these breaches place those on board ships registered in these states without any protection UNCLOS article 94 was formulated to support.

From the 1st of January 2016, The IMO began a Flag State audit, but who has chosen the auditors? I certainly do not remember seeing any advert for candidates for these auditors and for good reason as they were 'selected' by the marine authorities of the flag states. It would be good to read the conclusions of these audits but again, as if part of a select club, the flag states can choose to keep them confidential from the public. Possibly not surprising, as there is no way that any proper audit could find some island flag states able to comply with UNCLOS article 94 or IMO resolution 912. But the IMO know the results of these audits, and again says nothing.

What then is the point of an audit of Flag States done by auditors selected by the flag states and with the results confidential? I suggest that an audit of the IMO as a whole is far more urgent.

What is especially disgraceful is the imprisonment and detention of seafarers around the world, many without any lawful proceedings and that this imprisonment is done by those states with delegates sitting in the IMO and with the leadership, council or other delegates to this organisation making no condemnation.

Safety

This is what the organisation was formed for, the safety of those at sea, yet in recent years this is being more and more overtaken by pollution and environmental concerns and a lack of commitment to these principles.

Safety is in the hands of the safety committee, which consists of delegates from the Council. Inquiries as to how many of the members of the committee have any seagoing background resulted in being advised that this is impossible to ascertain, which of course is nonsense, leading to the conclusion that very few of them have any experience or understanding of many of the matters they are discussing, especially as there is no requirement that any such experience is required for membership of the committee.

Most of the delegates are merely spokespersons for their governments, including our own delegate, who by the way, has no seagoing experience, with very few if any speaking out on their own initiative. Once again we see that another convention being ignored. This is the 1969 Vienna convention on the law of treaties and in particular Article 100 which states;

'in all international organisations the international civil servant is bound by the wording of article 100 on the UN charter that requires he or she may not take orders from the home state or other authority external to the organisation'.

There is no doubt of the influence of a number of the Non Governmental organisations who have observer status and who represent ship owning interests in opposing safety initiatives and of those interests influence on the flag state governments. The credentials of such NGO's who are acting against the interests of safety could be removed but this has never been done, after all, this would break the gravy train and be opposed by the delegates and marine administrations who benefit from what we call 'the approval' of such NGO's.

Consider the following;

One island flag state has over 1000 ships registered with over 80 cruise ships. The following is an extract of the 2015 Human rights report by the USA state department.

'The law provides criminal penalties for corruption by officials; however, the government didn't implement the law effectively and officials engage in corrupt practices with impunity. There were frequent reports of government corruption during the year.'

Apart from the fact that all human rights of those seamen on their registered ships are completely ignored, this kind of behaviour may possibly explain the situation seafarers face today. Out-dated and safety equipment not fit for purpose, a lack of legislation regarding training and new equipment, unreliable and unsafe quick release lifeboat systems, inadequate manning legislation leaving ships unable to comply with international watch keeping requirements, Hours of work legislation but no requirements for ports or owners to provide for layby berths or downtime. The list grows and becomes worse each year and it now must be said that seafarers are injured and dying because of the failure of the IMO to act.

The IMO does state however, that their legislation can be enhanced by any flag state provided that enhancement complies with the initial legislation. This is reasonable and would seem to allow any flag state to improve the basic safety equipment, training and manning. However, we now have another problem and that is that many government marine administrations, including the UK MCA, have two responsibilities, one to the seafarers and the other to the Government. The government wants the national flag fleet increased and this takes priority over safety on the basis that any additional requirements over and above that required by IMO legislation would interfere with the attractiveness of the Flag registration. So, as with the majority of flag states, no enhancement is done and we are all back to basics.

Responsibility.

Finally, should things go wrong, who is responsible?

Consider this, in 1914, when SOLAS was first conceived, in 1914, lifeboat capacity was based on an average weight of 165 lb per person. Over 100 years later that remains unchanged, whereas today the average North American weight, which is the main cruise customer, is assessed at 178lb which is a 14% rise. In theory, this means that all the current lifeboats are assessed at holding 14% more than their capacity.

Now let us say that there is a sinking of one of the very large cruise ships at night in medium weather conditions. First is the well acknowledged fact of the impossibility of abandoning the ship in the stipulated time, bearing in mind that a good proportion of the passengers are inebriated, with many elderly or infirm, and that no real exercise has ever been held in such circumstances to allow any appreciation of the problems involved. In any subsequent inquiry, there would be considerable questions as to why the passengers would not all fit into the lifeboats as well as a number of them being found with broken necks from using SOLAS approved lifejackets without crotch straps and trying to jump from heights over 4.5 meters for which the lifejackets are not approved.

As these facts are well known to all the IMO delegates including our own, none of whom have raised the slightest question as to why these circumstances exist, you would think that as a result of such inquiry, a considerable number of them might find themselves facing very serious charges for their inaction.

Not so, as they all have diplomatic immunity, again including our own delegate. Possible this explains their casual attitude towards safety.

That leaves the seamen to blame. Shades of Costa Concordia perhaps? And just like the Costa Concordia, after a flurry of activity, all will settle back down and the gravy train will continue.

We deserve better than this. This is not what those who founded the IMO all those years ago intended. It is certainly not what the hundreds of thousands of passengers on our ships deserve from our profession or the industry as a whole.

Many in the industry know the faults of the IMO but accept them on the basis of we need the IMO and there is nothing else. I suggest there comes a time when regardless of the size or power of an organisation, it needs a complete overhaul to re-establish itself and deal with the many inconsistencies that have crept in over the years of leadership and administrative neglect. Even a new organisation dealing just with safety at sea would be better than this.

One is left with the inescapable conclusion that it is a house of cards, with poor leadership, ineffective management and more interested in the perpetuation of the lifestyle and salaries of those inside rather than the safety of the seafarers outside.

From the seafarers view, it is a broken organisation with little left of the dream of those who formed it. The seafarer, who is supposed to be at the heart of care of the IMO, is now all but forgotten, except where it comes to the blame. Perhaps the statue of the seafarer outside the IMO building should now be removed as it has very little relevance to those inside or their deliberations.