

## Flags of convenience: Is it time to redress the balance?

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Flags of Convenience have been the ultimate embodiment of deregulatory principles in international shipping since they came into vogue in the last 30 years. With more than half the world's fleets operating under FOCs, however, has laissez-faire gone too far? Professor Tony Lane, Director of Seafarers International Research Centre, Cardiff University, provides a cogent critique of flagging-out.

History is a useful thing. You can know better where you are for knowing where you came from and there is nothing quite like a good bout of uncertainty for encouraging a backward look. The deeper uncertainties currently pervasive in world shipping are rooted in the calculated but unconsidered flight from the elaborate regulatory regimes of the traditional maritime nations which had been built up in the period 1850 to 1970. Having gone through a period of deregulation and not much liking the consequences, the industry is now embarked upon a new phase of regulation, this time on a global basis. A better understanding of how the past was constructed might just speed up the process.

'To regulate or not to regulate' has never been far off the agenda of industrial societies. The fevered enthusiasm for unfettered free markets that hit the industrialised and industrialising world for twenty years from the mid-1970s has predictably been modified by the resurgence of a view with a longer pedigree and larger constituency. Namely, that regulated markets can suppress or modify excessive uncertainties. Only right wing libertarian tract pedlars and piratical entrepreneurs trying to break into established markets are genuinely dedicated to the rhetoric of unrestrained free markets. Large firms with large market shares, sophisticated organisations and powerful institutional shareholders need to take longer views and iron out some of the chaos that goes with unregulation. We might also notice that once the pirate has broken in, he joins the choir, sings in tune and leaves the busking on the street to the tractarian.

It is an extraordinary thing that in Britain in the second half of the nineteenth century when the rhetoric of laissez-faire was dominant and few were louder in its defence than shipowners, the state initiated an unprecedented sequence of enquiries into the shipping industry and enacted many of the recommendations without significant opposition. Minimum standards concerned with safety, certification, contracts of employment and shipboard living conditions came to be supervised by a special section within a department of state (the Marine Department of the Board of Trade), a permanent corps of examiners, surveyors and shipping masters, a national registry holding records on ships and seamen, the publication of statistics and the creation of special courts to investigate casualties and publish findings.

Seafarer training and education also progressively came within the ambit of the state through direct or indirect subsidies to technical colleges and pre-sea training institutions for boy entrants. Other nations with emergent shipping industries acted similarly and by the end of the First World War all significant maritime nations had regulatory regimes which in content and practice were effectively interchangeable. All of this, it is worth emphasising, had been put in place without any substantial direct input from organised labour.

One hundred years later, in what is commonly celebrated as the 'information age', the state-based regulatory systems of the traditional maritime nations have in many respects become like silent, rusting laid-up ships with caretakers. Meanwhile, the 'new maritime nations', which are better and more appositely known as flag of convenience states and account for about half of the world's fleet, have never had comparable regulatory regimes. After all, their *raison d'être* was precisely to provide a means of avoiding them. And anyway, since the FOC states never provided their own nationals as crews, they saw no need to concern themselves with subsidising training and certification, supervising employment contracts and shipboard living conditions, keeping seafarer records or publishing statistics.

### **Current ignorance**

So here we are at the end of the twentieth century where the means and the speed of processing, storing and transmitting information are almost incredible. Isn't it amazing, then, that one hundred years ago, in the pre-fountain pen era when armies of clerks copied data from individual documents into aggregating ledgers, it was possible to know far more about seafarers than it is in the age of micro-computers exchanging information through cables and satellites in fractions of seconds. This is not, of course, a slighting comment on the ambiguities and limitations of communications technology. It just graphically underlines the fact that our current ignorance of just about everything about shipping's labour force is a direct consequence of flags of convenience.

The industry's flight to FOCs has done a good deal more than undermine the system of effective state regulation established in the nineteenth century. Between the end of the First World War and the mid-1970s, regulation had gradually assumed a far more extensive reach. This was due entirely to the introduction of universal suffrage and the concomitant emergence of the democratic state. The new state form admitting the working classes into the processes of governance required far more elaborate political arrangements and practices than were necessary when states were run by the ruling and middle classes. By the 1950s this new type of state had become the West's trump card in the stand-off with the world's various Communist nations and no one seriously questioned the need to make it work. Industry inevitably provided the most testing terrain for the democratic states and so it was here that the most elaborate systems of governance appeared. Good working examples of these could be found in the nationally-based shipping industries of the traditional maritime nations.

## **Seeking consensus**

Effective democratic systems have to encourage the creation of consensus-seeking 'arenas' in all significant areas of social and economic activity. These arenas typically consist of sets of specialised forums created by the various parties and often with overlapping memberships. Their function is twofold. Firstly, to maximise agreement and minimise conflict by creating formal organisations to make rules and establish custom and practice as a means of regularising relations between the various interest groups. Secondly, and as appropriate, to persuade parliaments to create or modify legal codes and associated state agencies. The final ensemble of law, rule, custom and political practice which embraces parliaments, legal systems, state agencies and arenas of interest groups, forms a regulatory system.

At their peak in the early 1970s, the traditional maritime nations provided almost textbook examples of the regulatory systems of modern democracies. Here an established and substantially acceptable body of law provided continuity and possibilities of change through a linking together of national welfare organisations, technical training and liberal education institutions, national collective bargaining bodies with permanent secretariats and industry-run employment exchanges. Overlapping memberships of nominees and representatives from voluntary organisations, shipowners, trade unions, the industry's infrastructure (classification societies, P&I, education etc.) and state agencies provided a model instance of what political theorists now call social democracy. The changing fortunes of world trade from the mid-1970s, however, quickly unmade the carefully constructed systems of regulation. In the new economic climate the quick-fix survival strategy adopted by shipowners entailed the adoption of flags of convenience which guaranteed the absence of regulation, especially that relating to employment. But no regulation entailed excluding seafarers from participation in the politics of employment.

## **A regulatory void**

The undermining of regulatory systems by the flight to FOC 'disenfranchised' seafarers from the traditional maritime nations, left seafarers from the new labour supply countries unenfranchised and led to the rapid development of a formally unregulated global labour market. The regulatory void in this turbulent and inherently unstable market is a major problem for everyone in the industry. Crew managers are driven into a restless search for new sources of cheaper crews. Seafarers from everywhere have no incentive to stay at sea so long as cost pressures on their employers lead to excessive working hours at key moments in the voyage cycle and a generally unacceptable quality of shipboard social life due to ever-smaller crews.

Seafarers from Eastern Europe and the poorer nations of Asia, discouraged by such conditions, see their US dollar-paying jobs as a means of capital accumulation; their governments see them as a near cost-free means of earning foreign exchange. Owners and managers, alarmed at the full costs of training new entrants through to readiness for senior rank and additionally

apprehensive as to how long they can hold them, also wonder where the next generation of career-minded seafarers are going to come from. All of this is deeply unsatisfactory, but the major stumbling block to getting any real and lasting progress in the labour market is the flag of convenience. The desperately needed re-regulation of the labour market will never be sufficiently secured for as long as any one shipowner can secure economic advantage by escaping into the regulation-free zone of the flag of convenience.

The world of shipping has been awash with attempts to plug the holes in sensible regulation brought about by the flag of convenience system. The United Nations Convention on Law of the Sea (UNCLOS) arguably makes FOCs illegal in international law where it can be shown that there is no genuine link between the flag of the ship and the nationality of its beneficial owner - yet flags of convenience have prospered mightily since the adoption of this convention. The IMO's first STCW convention on crew competence proved utterly ineffective and the new convention already shows signs of dilution because the principal labour supply - countries are unable to deliver consistent and reliable standards of training, and the world's largest flag states, Panama et al, have no interest in training their crews.

The latest IMO attempt at regulation, the new ISM code designed to pin responsibility truly where it initially lies - on the shipowner - will surely suffer the same fate as STCW and prove another sticking plaster with short-life adhesion. Port State Control is everyone's favourite solution, but only because it provides what the IMO itself cannot provide, a credible inspectorate. Unfortunately, Port State Control (PSC) is mainly in the hands of a loose consortia of nation states and is bound to vary in quality and intensity as between states. We could have grounds for hope if everyone was as rigorous as the Australians but this is rather unlikely except in the very long-term. PSC also ironically depends upon being able to attract into its ranks the very same highly-trained and experienced senior officers the industry desperately needs to hang on to. One might say, therefore, that other things being equal, the quality of shipmasters and chief engineers will vary inversely with the quality of PSC inspectors.

### **Gilbert and Sullivan**

Having said all this, however, global and inter-state regulation is unquestionably the way forward. But we do have to recognise that this form of regulation at this stage of world political development cannot hope to quickly become as effective as the lapsed state-based systems. The IMO is the only possible global forum for launching the necessary root-and-branch regulation but not as it is currently constituted, as it is heavily dependent for its finances on the countries providing its headaches. A pity that Gilbert and Sullivan are not still alive. The IMO would surely have been a wonderful target for their savage comic-opera talents.

In the short to medium term, the best strategy perhaps is the one often proposed by the IMO's General Secretary, who must have one of the world's

most frustrating jobs. Flag State Control is his view of the best way forward and he is probably right.

A full-blooded approach to this could begin by taking the traditional maritime nations' regimes circa 1970 as benchmark 'best practice', and seek to impose them on all flag states. The following might then be required of all regulatory regimes:

- 1) Each flag state to organise on its own territory training and educational institutions able to supply sufficient seafarers compliant with STCW 95 to crew its fleet or contribute to training and education institutions in other territories on a scale commensurate with the same level of seafarer throughput.
- 2) Flag states to have an administrative regime which routinely collects and publishes information on its seafarers and on all matters conducive to their operational, personal and social welfare. The records to be publicly available.
- 3) Flag states to publish annual 'accounts' listing all ships with defects reported by psc agencies.
- 4) Flag states to maintain a consular corps or equivalent service in all major ports. The personnel to be trained in receiving and hearing questions concerned with seafarers welfare as defined in the state's maritime code.
- 5) Flag states to codify in law the responsibilities of the state in relation to seafarers employed on its ships; the legal acts to specify in what ways non-nationals of the state have recourse to the state's political system.

In Voltaire's famous political and theological satire the young Candide is on the one hand constantly disturbed by the unending series of disasters befalling humanity and on the other perplexed by the constant apologetic incantation from his mentor, Dr Pangloss, that 'all is for the best in the best of all possible worlds'. At the emergence of the twenty-first century, world shipping's Candidates are not so innocent and the Pangloss's not generally so apologetic. It is understandable that FOC administrators and their retinues tend toward the purer versions of Panglossian doctrine. Other conservatives, like their nineteenth-century forebearers, know very well that substantial changes are necessary and are far from averse to good and effective regulation.

The problem for the conservatives is not so much their outlook as their habits and experience of political practice. The newer generations of senior executives in the larger firms and consortia often have little experience or feel for the arts of building and sustaining alliances among parties not driven by commercial considerations, for example, state regulatory agencies, trade unions and voluntary organisations. Many of today's shipping people reached their positions of power and influence in an epoch which eschewed social democracy. But if they are to play their crucial part in stabilising the labour market and building a thoroughly professional corps of seafarers of all ranks, they will need to relearn the skills of their predecessors, albeit in a much more demanding global arena where the rules of the game are still being made.

\* For a fully detailed account of nineteenth-century regulatory developments in the UK, see P G Parkhurst: *Ships of Peace*, New Malden, 1962.