

**INTERNATIONAL CHAMBER OF SHIPPING (ICS)  
INTERNATIONAL SHIPPING FEDERATION (ISF)**

**TOWARDS A FUTURE MARITIME POLICY FOR THE UNION:  
A EUROPEAN VISION FOR CLEANER SEAS AND CLEARER OCEANS**

**PRELIMINARY COMMENTS ON EUROPEAN COMMISSION 'GREEN PAPER'  
(COM(2006)275 FINAL, 7 JUNE 2007)**

**INTRODUCTION**

These comments are made on behalf of the **International Chamber of Shipping (ICS)** and the **International Shipping Federation (ISF)**. ICS is the principal international trade association for the shipping industry, and ISF is the leading international employer's organisation for shipowners.

The following represents a consensus of our members' views, following extensive consultation. It is possible that the views of some individual associations may differ very slightly on one or two of the many detailed issues that are covered by the Green Paper. This caveat notwithstanding, however, the following represents the considered views of the international shipping industry.

ICS and ISF represent all sectors and trades, and about 70% of the world's merchant tonnage. ICS and ISF membership comprises national shipowners' associations from some 40 countries, including members of the **European Community Shipowners' Associations (ECSA)**, with whom ICS and ISF work closely on a day-to-day basis.

ICS and ISF attach great importance to the Green Paper (**Com(2006)275 Final, dated 7 June**) which, in addition to having much significance for the European shipping industry, could have major implications for the shipping industry worldwide.

The following detailed comments are an attempt to provide an international perspective on the large number of issues covered by the Green Paper which are of direct relevance to the global shipping industry. These remarks should be viewed as a complement to comments submitted by ECSA and European national shipowners' associations, which will also cover issues of exclusive relevance to European stakeholders.

## SUMMARY REMARKS

ICS and ISF represent the global industry, but are fully aware that developments in Europe can have a significant impact worldwide; we have already seen, for instance, how ideas emanating from Europe - such as 'tonnage taxes' and the promotion of short sea shipping - are being emulated internationally. EU Member States have also played a leading and very influential role in the development of international shipping legislation.

ICS and ISF acknowledge the high profile which the Commission Review accords to the importance of the shipping industry, and to possible means of further improving the competitiveness of European shipping in accordance with the EU's 'Lisbon Agenda' strategy. However, shipping is a global industry competing in a global market, and international rather than regional solutions are the best means of helping the functioning of EU shipping in what is a very competitive global market place.

In particular, ICS and ISF welcome the Green Paper's recognition of the importance of international regulation and the crucial need to work through the International Maritime Organization (IMO) and the International Labour Organization (ILO). The importance of global regulation for a global industry cannot be over emphasised.

However, as we made clear in our submission in July 2005, prior to publication of the Green Paper, ICS and ISF do have some concerns about proposals by the Commission to increase the co-ordination of Member States' positions adopted at IMO and ILO. The shipping industry's concern relates to the implications this might have for the quality of future decision making by these bodies that are so critical to the safe and efficient regulation of shipping and its operations. Ironically, we believe that such a move at IMO might actually be detrimental to the significant influence which EU maritime administrations currently enjoy in this important multilateral institution.

ICS and ISF members also have deep concerns about some of the Commission's possible proposals to seek changes to the United Nations Convention on the Law of the Sea (UNCLOS). The international shipping industry has a particular interest in preserving the right, inter alia, of 'freedom of navigation' within the Economic Exclusion Zone (EEZ) beyond territorial waters.

We believe the EU should think very carefully before proposing an adjustment of flag states' rights: other coastal states around the world could use any new entitlement to override 'freedom of navigation' for less benign motives. Potentially this could have serious consequences for maritime trade in some of the world's major strategic waterways, especially where evolving geo-political circumstances may lead to a different perspective.

ICS and ISF sound a note of caution about the proposed 'Common European Maritime Space', especially the Green Paper's comment that *'this would have implications for cabotage within international trade negotiations'*. If the concept is simply to promote the efficiency of intra-EU trade and short sea shipping through improved customs and facilitation procedures, it is possible that this might be supported by the global industry. However, it will be very important for the EU to demonstrate that the development of any such concept will not be used as a means of protecting intra-EU trades between Member States (which are currently classified as international voyages) from fair competition from third country ship operators that adhere fully to international standards of safety, environmental performance and social protection.

ICS and ISF have comments on, inter alia, the Commission's thoughts on the regulation of shipping's environmental performance, training and social issues, and the Commission's suggestions for contributing to the improvement of flag state performance generally.

With regard to the environment, we wish to stress particularly that the international industry takes its responsibilities very seriously and is committed to the various discussions at IMO to bring about further improvements, not least with regard to air emissions. However, we suggest that the Green Paper gives insufficient emphasis to the very sound environmental performance of shipping in comparison to other commercial transport modes and the extent to which shipping is part of the solution rather the problem with regard to concerns about global warming.

We elaborate on these concerns, and other issues, in our responses to those specific questions raised by the Green Paper on which it seems appropriate for ICS and ISF to comment. However, there are a number of issues, not directly related to commercial shipping, on which we have only made passing comment (or no comment at all).

ICS and ISF have not commented on the questions concerning the possible resurrection of the idea of a European ship register, or the development of an EU coastguard, but suggest that these are likely to be controversial amongst national maritime administrations and European stakeholders.

ICS and ISF look forward to making further contributions throughout the remainder of the consultation exercise. In the meantime, ICS and ISF hope that the following detailed remarks are also helpful to EU Member States and Members of the European Parliament, in addition to the various Directorates within the European Commission that are involved in this important review.

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**RESPONSES TO SPECIFIC QUESTIONS**

*For convenience we have repeated the Green Paper's headings, numbering and questions where answered (shown in **bold**), but have excluded those questions on which we have chosen not to comment.*

**1. INTRODUCTION**

**Should the EU have an integrated maritime policy?**

In principle, to the extent that the EU decides it is necessary to be involved in maritime affairs at EU level, it clearly makes sense to promote 'joined up' governance, and to ensure that the objectives of regulations and policies emanating from different parts of the Commission are consistent and compatible, both at the political and technical level. In particular, ICS agrees that a key challenge of maritime policy is '*economic expansion in a sustainable manner*' (as stated on page 11 of the Green Paper) and welcomes the exploration of means of reconciling economic, environmental and social objectives in maritime affairs.

The above notwithstanding, ICS recognises that the EU Maritime Review, and the manner in which this major exercise is to be conducted, is something of an experiment in the context of EU policy development. The Review involves policy areas traditionally covered by a number of Directorates and Parliamentary Committees, as well as touching on certain matters that are currently within the competence of Member States. Member States, in particular, may have strong views on these matters.

**How can the EU add value to the many national, local and private initiatives which already exist in the maritime field?**

The EU can add value by encouraging the ratification, implementation and enforcement, both by Member States and third countries, of relevant international regulations, especially those adopted by IMO and ILO. This means ensuring that regulations adopted by the EU are consistent in every respect with international rules.

However, this does not mean that ICS and ISF necessarily support the transfer of international maritime Conventions and regulations into EU Directives and

Regulations. We contend that this can actually create an unnecessary layer of legislation and additional bureaucracy, repeating requirements set out in international maritime law and complicating the implementation by Member States of any subsequent changes that may be agreed internationally. The incorporation of international maritime law into EU law also has implications for the competence of EU Member States at IMO and ILO, a matter which is controversial amongst many EU States, as well as third countries, and is an issue on which we elaborate elsewhere.

In the context of shipping regulation, ICS and ISF firmly subscribe to the view stated on page 7 of the Green Paper that the regulation of maritime activities in the interest of sustainable worldwide development necessitates universally applicable rules. However, we do not share the view that there is an *'apparent contradiction'* between *'the need for universally applicable rules'* and the fact that *'each part of the oceans and sea is different and may require its own more specific rules and administration'*. What is important is that any such specific rules are agreed within a global regulatory framework, as has been possible at IMO with regard to the acceptance, for example, of concepts such as Particularly Sensitive Sea Areas (PSSAs) and Sulphur Emission Control Areas (SECAs). We remark on these further below.

## **2. RETAINING EUROPE'S LEADERSHIP IN SUSTAINABLE MARITIME DEVELOPMENT**

### **2.1 A Competitive Maritime Industry**

European stakeholders should be in the best position to answer the specific questions concerning means of making the European shipping industry more efficient and competitive. However, ICS and ISF emphasise the importance of these issues, and acknowledge the interest being shown by the European institutions in these matters on which the future of the European industry depends.

We would remark that the omission of EU cargo shipping from the list of sectors for potential growth (page 7) seems to be an oversight.

The comments on the shipbuilding sector perhaps underplay the dominant position of China, Korea and Japan in the construction of large deep sea cargo ships that now comprise the larger part of the world's tonnage. The drive for improved efficiency suggests that the size of the largest ships will continue to increase.

## **2.2 The Importance of the Marine Environment for the Sustainable Use of our Maritime Resources**

The specific questions posed by the Green Paper require answers of complexity and detail which we are unable to provide in general comments such as these. However, we refer to our answers to the questions in Section 1 (Introduction) – see above.

We would also remark that some of the cited examples of EU efforts to improve safety have been controversial.

The accelerated phase-out of single hull tankers was actually achieved as a result of changes agreed internationally to the IMO MARPOL Convention (about 70% of the international tanker fleet now has double hulls) although it is true that the unfortunate pre-empting of the IMO debate by EU regional action had a big influence on the outcome of IMO's decision, which generated much ill-feeling amongst third countries at IMO. Furthermore, as outlined in a study undertaken by EMSA, there may be unanticipated technical problems with double hull tanker designs, yet to be fully addressed.

The impact on safety of increased liability for shipowners is also highly questionable. ICS and ISF do not accept that the imposition of criminal liability and increased civil liability for accidental marine pollution will enhance maritime safety. The Directive on Criminal Sanctions for Ship Source Pollution appears to be in conflict with the MARPOL Convention, and is currently the subject of a legal challenge which has been referred to the European Court of Justice (ECJ). The status of the related 'Framework Decision' to harmonise criminal penalties for marine pollution offences is also unclear following the Commission's request for the ECJ to annul it. We note the Commission's comments on page 12 about the importance of risk assessment and feedback from ships. However, we contend that the criminalisation of accidental pollution will inhibit the quality of feedback derived from accident investigations, reducing the opportunity to learn from mistakes.

ICS and ISF agree that the IMO Anti Fouling Systems (AFS) and Ballast Water Management (BWM) Conventions should be ratified by governments as soon as possible. However there are other IMO instruments on which levels of ratification by EU Member States could be better, including MARPOL Annex VI (prevention of atmospheric pollution), the Limitation of Liability for Maritime Claims Convention (LLMC) and the Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) Convention. However, as stated above in Section 1 (Introduction), this does not mean that the industry necessarily supports the incorporation of these international instruments into EU law.

### **2.3 Remaining at the Cutting Edge of Knowledge and Technology**

ICS and ISF are impressed by the maritime research activity being encouraged by the European Commission, including the Waterborne forum, and note that the results of this research may also be of benefit to the global industry as a whole.

However, European stakeholders would seem best placed to comment in detail on this section.

### **2.4 Innovation Under Changing Circumstances**

#### **What further steps should the EU take to mitigate and adapt to climate change in the marine environment?**

The sound and continuously improving environmental performance of shipping might be given greater prominence by the EU when developing its overall strategy to prevent and mitigate climate change.

With regard to addressing the contribution of shipping to greenhouse gas emissions, it is important for EU Member States to participate fully in the current discussions at IMO. The current review of MARPOL Annex VI is considering more stringent global controls on emissions of Nitrogen Oxide, while separate discussions are taking place at IMO with regard to CO<sub>2</sub> emissions in the context of meeting the targets agreed under the Kyoto Protocol.

The shipping industry is committed to the revision of MARPOL Annex VI (which, while not directly relevant to climate change, should also lead to further reductions of emissions of sulphur, volatile organic compounds, and particulate matter). Indeed, the industry actively encouraged the early ratification by governments of MARPOL Annex VI in the full knowledge that once it entered into force, as it finally did in 2005, it would be re-opened for amendment.

However, the IMO review could have a major impact on fuel costs, engine design, and even the long term commercial viability of many ships. As the review progresses, it will be helpful if EU States can help to ensure that any new IMO requirements are justified through scientific study of environmental need. In co-operation with oil suppliers, we also suggest that European IMO members must satisfy themselves that any new fuels required will be available globally, and that the solutions adopted employ technology that has actually been developed and demonstrated to be reliable, and available commercially within the timescale agreed.

We would remark that the comments (on page 16) to the effect that total CO<sub>2</sub> emissions from shipping are greater than aviation must be seen in the context of shipping carrying 90% of the EU's external trade by volume whereas aviation carries but a fraction of the total. However, in terms of grammes of CO<sub>2</sub> emitted per tonne mile, it is shipping's performance that is far more impressive (ships' emissions being less by a factor of perhaps 20 or 30) compared with figures for commercial cargo aircraft. Moreover, our understanding is that greenhouse gas

emissions at high altitudes have a far greater direct impact on climate change, perhaps 2 to 4 times as much as equivalent emissions at 'ground' level.

It must also be understood that, although further reductions in CO<sub>2</sub> emissions by shipping are possible and are actively supported by industry, their impact will be of little consequence unless equivalent reductions are achieved in shore-based activities which are by far the greatest contributor to global warming.

The purpose of these remarks is to illustrate the need for more data about the contribution to climate change made by different industry sectors, and the care needed when interpreting such data. ICS and ISF believe that the EU has a significant role to play in the collection, analysis and dissemination of relevant data in order to inform future decisions.

The shipping industry fully accepts that it must contribute to further emission reductions, and is committed to finding solutions at IMO.

## **2.5 Developing Europe's Maritime Skills and Expanding Sustainable Maritime Employment**

### **How can the decline in the number of Europeans entering certain maritime professions be reversed and the safety and attractiveness of jobs ensured?**

ICS and ISF are neutral on the question of encouraging the employment of particular nationalities of seafarer, our principal concern being that there is an adequate supply of global seafarers, with the required training and competence to operate the world fleet safely and efficiently. That said, our EU members clearly have an interest in maintaining the technical expertise - both at sea and ashore - which they need to remain competitive, especially with regard to recruiting those seafarers needed to progress to senior positions on board and to those shore-based positions that require seagoing experience.

With regard to officers, many seafarers of EU nationality find employment on board third country ships: European seafarers are part of a global market for which there continues to be a high demand for European officers due to their generally high standards of competence. However, it is important to recognise that although EU officers enjoy a good reputation, many nationalities from developing nations are also highly regarded and enjoy a good reputation for competence and professionalism, as is reflected in the high wages which they also command.

As a matter of principle we must remark that the reference to '*flags of convenience*' (page 20) is unhelpful. This is a pejorative term promoted by the International Transport Workers' Federation (ITF) which it applies to several EU ship registers in addition to many quality non-EU ship registers, as a part of its 50 year long industrial relations campaign. The use of the term is not recognised by

IMO, ILO or European maritime administrations and, contrary to what the Green Paper implies, is not relevant to the enforcement of IMO, ILO or national safety regulations. The use of the term 'FOC' by the Green Paper is certainly an unfair description of the situation pertaining to quality open registers such as Bahamas, Liberia or the Marshall Islands, or to those quality EU flags which are also designated as 'FOC' by ITF on a unilateral basis.

One form of assistance which EU States can provide is to maintain an environment in which the employment of European seafarers is attractive to employers. Consistent with the EU State Aid Guidelines, a number of EU States have taken measures to help make employment of their own nationals competitive, such as special arrangements with regard to social security payments, and it is important that such measures continue to be permitted and are encouraged as widely as possible within the EU. ECSA, no doubt, will provide detailed advice on what European ship operators may require.

With regard to the EU Directive on Criminal Sanctions for Ship Source Pollution (see our comments on Section 2.2), we believe that the criminalisation of seafarers for accidental pollution will reduce the attraction of maritime careers, particularly amongst officers already serving at sea. We contend that this an example of not *'joining the dots'* as referred to on page 11 of the Green Paper and of *'legislation developed for the needs and objectives of one policy [having] unintended and contradictory impacts on other goals'* as mentioned on page 22 of the Green Paper.

The safety of seafaring jobs can be ensured by the proper implementation of IMO and ILO standards (not least the new ILO Maritime Labour Convention) and the maintenance of the industry's impressive employment standards.

Whilst there is always room for improvement, ICS and ISF contend that the industry already offers very attractive employment (see [www.careers-at-sea.org](http://www.careers-at-sea.org)) and we concur with the statement of ETF (page 18) that there is *'no evidence to substantiate that young EU nationals do not wish to seek a maritime career'*. Instead we would suggest that to some extent, and only in some countries, there has perhaps been a failure to market careers adequately, to target them at the right audience, or to correct the perception (20 years out of date) that few vacancies exist for new European recruits.

There are no doubt refinements that could be made to the way in which maritime training courses are structured and funded in relation to generic national qualifications for tertiary education, and the extent to which such courses prepare seafarers for long term maritime careers (or indeed careers outside the industry) in addition to seagoing employment. But this may prove complex given the different systems that prevail in different EU Member States according to the nature of their national higher education systems.

Thought might also be given to increasing the flexibility allowed by Member States for the on board training component required to qualify as an officer to be conducted on a ship registered in a different country (including third countries) to that where the shore based training takes place and the STCW certificate will be issued. This might help to overcome the shortage of training berths that exists in some EU Member States. ISF has produced international On Board Training Record Books (which meet IMO STCW requirements) to help facilitate this, and which have been approved by many EU States and third countries.

We also question the Green Paper's reference to the '*poor image*' of the industry (page 20), a generalisation that does not apply within every EU Member State. Indeed, talk of a poor image can have a self fulfilling effect. Instead we would suggest that the industry rather suffers from a lack of a profile amongst many potential recruits, in comparison to careers offered by more visible industries, which is a global problem.

A minor remark but, important as developments such as the ILO Maritime Labour Convention may be (ISF was responsible for negotiating it on behalf of employers at ILO), it would perhaps be misleading to think – as the Green Paper suggests - that this will have a significant impact on the attractiveness of careers amongst Europeans. EU seafarers already broadly enjoy the standards of employment required by the new ILO Convention.

The international industry supports the ratification of ILO Convention 185 (which ISF was also responsible for negotiating on behalf of employers as part of the ILO Tripartite Process). In particular, we support the implementation of those parts of the ILO Convention which will facilitate the taking of shore leave by seafarers, including flexibility with regard to visa requirements. We would remark that difficulties in the provision of visas and shore leave may have an impact on retention rates by making life at sea less attractive and encouraging existing seafarers to seek shore based employment.

### **How can better wages and working conditions be combined with sectoral competitiveness?**

Of special importance is that EU Member States ratify and enforce the ILO Maritime Labour Convention, 2006 (ILO MLC) in order to ensure that European ship operators and seafarers continue to enjoy the good employment standards and working conditions that will soon be applicable internationally. However, this particular Green Paper question incorrectly implies that wages and working conditions may currently be inadequate, or somehow be directly connected with the perceived shortage in the number of European seafarers.

Wages are ultimately determined by supply and demand in what is a global labour market, and European seafarers will only be able to achieve comparatively higher wage rates in comparison to other nationalities so long as

they provide added value. In practice, this usually means that most new European seafarers must have the aptitude, technical knowledge and competence required to progress to senior management levels on board (and ultimately to shore based management).

Despite the continuing demand for European senior officers amongst global ship operators, one of the challenges faced by shipping companies is that the costs of employing junior European officers, who will become the senior officers of the future, is initially very expensive in comparison to third country nationals with equal qualifications and competence. This is an issue which EU States may wish to address.

Whilst the industry supports employment standards consistent with those required by ILO (and IMO) Conventions, it has always been accepted that in the context of ILO regulations, including the new ILO Maritime Labour Convention, seafarers' wage rates may relate to the economic conditions in a seafarer's country of residence.

The industry is well aware of the discussions within Europe concerning whether seafarers from one EU State serving on a ship registered with another should be paid at the same rate as seafarers resident in the flag state. If the Commission was to insist on this interpretation of EU employment law then we contend it is very likely that this would result in changes to the nationality of seafarers employed on such ships, principally to the detriment of seafarers from recent accession countries. Furthermore, it may increase pressure on shipowners to consider flagging out of the EU completely.

### **How can the quality of education, training and certification be assured?**

ECSA may wish to comment in detail on how the organisation and delivery of training in Europe might be improved.

From an international perspective, it is vital that the training and certification of EU seafarers continues to be compatible, and conducted in accordance, with the IMO STCW Convention. The IMO is about to conduct a review of the STCW Convention, a process in which the industry will be taking an active part, and it is our expectation that most national maritime administrations will do likewise.

Another minor comment: we certainly agree that EU seafarers must comply with IMO STCW standards. However, contrary to the reference (on page 19) to standards '*such as*' STCW, it is important to stress that STCW standards are the **only** internationally recognised competence standards.

## **2.6 Clustering**

This section is probably best addressed by relevant European interests.

## **2.7 The Regulatory Framework**

*This section of the Green Paper is of particular importance to the international industry including European ship operators.*

### **How could the regulatory framework for the maritime economy be improved to avoid unintended and contradictory impacts on maritime goals?**

We reiterate the critical importance of ensuring that EU regulations are consistent with international rules, but suggest that European stakeholders are better placed to answer this particular question.

For the record, as is well documented, we do not agree with the Commission's conclusion that liner conferences have a negative impact on competition. Whilst we recognise the recent decision by the Competition Council to prohibit liner conferences in Europe, we continue to support their preservation in jurisdictions throughout the rest of the world where they are still permitted.

### **Which exclusions of the maritime sector from some EU social legislation are still justified? Should further specific legal instruments on employment conditions be encouraged?**

European stakeholders may wish to answer in more detail, but from the international perspective what is important is that EU legislation, as it applies to seafarers, is consistent with the requirements of the new ILO Maritime Labour Convention 2006. The exclusion that is currently in place concerning the Working Time Directive appears to remain justified, since working patterns that apply in shipping remain completely different to shore based industry, as re-established by the work hour requirements in the new ILO Convention.

As mentioned above, if the Commission were to insist on the interpretation of EU employment law whereby seafarers from one EU Member State, working on a ship registered with another, must be paid at the wage rates relevant to the flag state, then we believe this could be to the detriment of the employment of seafarers from accession countries and may increase pressure on shipowners to consider registering their ships in third countries.

### **How can EU safety regulation be simplified while maintaining higher level standards?**

The simple answer is to ensure, so far as possible, that Member States' maritime safety rules, in so far as they apply to merchant ships, are fully consistent with the requirements of international safety rules, particularly those adopted by IMO.

While the various EU rules affecting shipping might be consolidated in the interests of better understanding by regulators and lawyers, and perhaps to make any future regulatory changes easier to facilitate, in practice it is important to understand that the first point of reference for shipping companies and seafarers will normally be the applicable international regulations, such as SOLAS and MARPOL, rather than those local regulations that may bring these international rules into effect.

However, this does not necessarily mean that we support the automatic incorporation of international maritime rules into European law, as explained in our comment on Section 1 (Introduction).

### **To what extent can economic incentives, self regulation and corporate social responsibility complement government regulation?**

Self regulation is a critically important complement to government regulation and is one of the principles underlying the IMO International Safety Management (ISM) Code whereby shipping companies have a legal commitment to the identification and correction of deficiencies, and the promotion of continuous improvement that must be documented and audited.

ICS, in particular, has a strong commitment to self regulation through the promotion of best practice provided by its comprehensive range of technical publications (see [www.marisec.org/pubs](http://www.marisec.org/pubs)). It is especially important that the industry retains control of vehicles, such as the *ICS Bridge Procedures Guide* or the *ICS/OCIMF/IAPH International Safety Guide for Oil Tankers and Terminals*, for the promotion of best practice, since the industry is in a better position to make changes to recommendations that might be identified as result of experience and which do not always lend themselves to prescriptive regulation. Although regulations are vital and necessary, and a culture of compliance is important, a true safety culture involves everyone thinking about safety continuously, and how it might be improved, because it is a question of enlightened self interest and not just a matter of obeying rules.

The shipping industry has a long commitment to corporate social responsibility, in the broad sense of the term, as demonstrated by the stringent safety, environmental and social standards to which it adheres, whether promulgated by mandatory regulation or industry codes of practice. The shipping industry is perhaps unique in that it already has international codes of industry best practice, that are widely applied by the global industry. In addition to the publications referred to above there is the *ICS/ISF Guidelines on the Application of the IMO Safety Management Code*, the *ICS Code of Practice on Shipping and the Environment*, and the *ISF Guidelines on Good Employment Practice*. So far as we are aware, the scope and international nature of the latter is unique to the shipping industry.

With regard to the Green Paper comment (page 23) that mandatory insurance cover should be implemented, we refer to the ICS/ECSA comments on the Commission's Proposal for a Directive on Civil Liability and Financial Security of Shipowners (**attached**). The industry emphasises that insurance/financial security should be evidenced by a certificate of entry in a P&I Club, but not a certificate issued by an EU Member State. The latter would create a cumbersome bureaucracy and could amount to a technical barrier to trade in insurance services, contravening the spirit of the General Agreement on Goods and Services (GATS), with negative implications for the current WTO negotiations.

**What further EU action is needed [to] deal with the inadequacies of sub-standard flags and to provide incentives to register under European flags?**

Measures to improve the performance of flag states (both within the EU and third countries) have already been proposed by DG TREN in the form of proposed new Directives on Flag State Compliance and Port State Control. ICS and ECSA have jointly prepared detailed comments on these proposals, copies of which are **attached** for convenience.

The proposals on Port State Control have generally been welcomed by the industry, especially the proposals to target resources on ships most likely to be sub-standard, while creating incentives for quality operators in the form of less frequent inspections. With regard to the proposals on Flag State Compliance, however, while welcoming the objective of wishing to ensure that Member States meet their obligations under international Conventions, ICS and ECSA believe that the manner in which the Commission proposes that this should be undertaken has implications for the competence of EU maritime administrations and the quality of technical decision making at IMO. See also our comments on Section 5 (Maritime Governance).

The Commission may also wish to note the industry's own guidance concerning the use of responsible flags by shipping companies – the *Shipping Industry Guidelines on Flag State Performance*, see [www.marisec.org/flag-performance](http://www.marisec.org/flag-performance) .

**Should an optional EU register be made available? What conditions and incentives should be contemplated by such a register?**

This is largely a European question on which ICS and ISF have no detailed comments. However, we would remark that any suggestion of reviving plans for a European register is likely to be controversial amongst EU Member States and European stakeholders. Any incentives for shipowners to use any ship register should be consistent with free trade principles, and maritime regulations applicable in the EU must avoid flag discrimination.

### **3. MAXIMISING QUALITY OF LIFE IN COASTAL REGIONS**

ICS and ISF have no detailed responses to the questions at the end of this section. However, mention of *piracy* in the context of EU coastal risks is perhaps slightly emotive and inaccurate, although the issue is certainly a serious one in other parts of the world and we believe it is an issue which European governments and institutions should make intensive efforts to address.

The section on security and safety seems to give undue emphasis to the former rather than the latter (although this is covered elsewhere in the Green Paper). While we welcome the need to ensure EU States' legislation is in harmony with the IMO ISPS Code, it is also important to ensure that it will be compatible with supply chain security requirements being adopted by the World Customs Organization.

With regard to the proposal to designate appropriate places of refuge for ships in distress, this has been greatly welcomed by the shipping industry. However, one mechanism which ICS and ISF are keen to promote is the designation of independent representatives to co-ordinate the response to serious maritime incidents, free from short term political interference, along the lines of the Secretary of State's Representative (SOSREP) appointed in the UK.

While, as stated by the paper, it might be best that solutions to coastal and maritime issues across the land-sea interface are developed at local level, this is of course with the proviso that such measures are consistent with international law.

The reference to the need to reconcile the development of maritime law with environmental legislation is also well noted, the Birds and Habitats Directive being a case in point given that we understand it is being interpreted by some Member States in a manner which could prohibit ballast water exchange at sea, which is currently the only means by which most ships can comply with the new IMO Ballast Water Management Convention to control the importation of alien marine organisms.

### **4. PROVIDING THE TOOLS TO MANAGE RELATIONS WITH THE OCEANS**

#### **4.1 Data at the Service of Multiple Activities**

**Should a comprehensive network of existing and future tracking systems be developed for the coastal waters of the EU? What data sources should it use, how would these be integrated, and to whom would it deliver its services?**

As observed on page 33 of the Green Paper, IMO is in the process of establishing a global tracking mechanism known as Long Range Identification and Tracking (LRIT), and ICS has been leading industry representation in the IMO discussions. It is anticipated that the formal requirement for ships to facilitate tracking will be adopted by the IMO Maritime Safety Committee in December 2006. The onus now is on governments to set up national or regional databases and exchanges to permit the flow of tracking data from ships to authorised governments who will have paid to receive the data.

ICS and ISF encourage EU Member States to co-operate to establish a regional tracking centre (or centres) and to make full use of the tracking data that will be provided for security, safety and environmental purposes.

IMO has already mandated the carriage of Automatic Identification Systems (AIS) Class A in ships engaged in international trade and this system is the perfect complement to the LRIT system. LRIT provides identification and tracking of ships on a global basis. When ships are operating closer to the shore, AIS provides a wealth of data which will be a suitable supplement to government departments. The industry can identify no need for any additional tracking equipment in ships.

ICS and ISF think it is very important that governments recognise the value of the tracking data in strategic and commercial terms. IMO has made strict rules on the uses to which LRIT data may be put and, importantly, on the permissible users of the data. ICS and ISF urge that tracking data on ships should be afforded protection in accordance with its strategic worth.

We also refer the Commission to the ICS/ECSA comments (**attached**) on the Proposal for a Directive Amending 2002/59 Establishing a Community Vessel Traffic Monitoring and Information Traffic System, including our comments about the proposed requirement for AIS on fishing vessels.

## **4.2 Spatial Planning for a Growing Maritime Economy**

### **What are the principles and mechanisms that should underpin maritime spatial planning systems?**

We may choose to comment further on this important question later on during the consultation exercise.

### **How can systems for planning on land and sea be made compatible?**

ICS and ISF note the Commission's remark that the EU and its Member States should support the evolution of multilateral rules to reconcile the right of innocent passage with offshore spatial planning. If this is intended to suggest that the UN Convention on the Law of the Sea should be amended, such a suggestion is

likely to be met with firm opposition by industry and from many governments worldwide. We elaborate on this issue in our comments on Section 5 (Maritime Governance).

### **4.3 Making the Most of Financial Support of Coastal Regions**

ICS and ISF have no comments on this section.

## **5. MARITIME GOVERNANCE**

### **5.1 Policy Making within the EU**

ICS and ISF have no comments on this section but we refer to our response to the questions in Section 1 (Introduction), see above.

### **5.2 The Offshore Activities of Governments**

ICS and ISF have no comments on the first two questions posed by this section, though we note that plans to develop an EU coastguard are likely to be controversial amongst EU Member States and European stakeholders.

#### **For what other activities should a “Common European Maritime Space” be developed?**

ICS and ISF wish to sound a note of caution about the proposed ‘Common European Maritime Space’, especially the Green Paper’s comment that *‘this would have implications for cabotage within international trade negotiations’*.

Recent public statements by Commission officials since the publication of the Green Paper have created some uncertainty as to what exactly is meant by the concept of a ‘Common European Maritime Space’. At the moment, this makes it difficult to comment from an international perspective, although we may do so at a later stage during the consultation period. We suggest it will be important for the Commission to correct any misconceptions.

If the concept is simply to promote the efficiency of intra-EU trade and short sea shipping through improved customs and facilitation procedures, it is possible that these objectives will be supported by the global industry. However, we have insufficient information about the detailed means suggested to comment further. In any event, it will be very important for the EU to establish that the development of any such concept will be consistent with free trade principles. It should not be used as means of denying market access to intra-EU trades between Member States (which are international voyages) to fair competition from third country ship operators that adhere fully to international standards of safety, environmental protection and social protection.

We would remark that the same rules on safety, security and environmental protection already broadly apply in Member States' waters due to the implementation of IMO/ILO requirements by EU Member States. Moreover, while there may sometimes be differences in the way in which detailed requirements are applied, this is usually compatible with the deliberate flexibility which is incorporated into some IMO/ILO requirements and recommendations in order to accommodate the way in which individual national maritime administrations are structured and operate, which differs from country to country.

### **5.3 International Rules for Global Activity**

*This section of the Green Paper is of particular importance to the international industry, which is why we have answered most of the specific questions at length.*

#### **How can the EU best bring its weight to bear in international fora?**

##### *IMO and ILO*

The Commission proposes that the status of the EU within international maritime regulatory fora should be reviewed, and that full EU membership of IMO should be pursued in accord with the Commission recommendation of 2002.

The longstanding 'gentleman's agreement' between the Commission and Member States has acknowledged the advantages of allowing Member States to pursue independent positions at IMO. In the interest of maintaining the quality of technical decision making at IMO, ICS does not believe that increasing the status of the EU will actually contribute to the improvement of this institution or its impact on issues such as safety and environmental protection.

The 25 EU Member States already enjoy substantial influence in the various international maritime fora, especially at IMO, since the majority of EU states are traditional maritime countries with considerable expertise within their maritime administrations, which they are able to utilise and communicate articulately during international regulatory discussions.

Bodies such as IMO have complex specialist committee structures which normally seek to develop consensus across the international community rather than resorting to votes or imposing the will of the majority. The spectrum of technical expertise available to the 25 EU IMO Members means that the different emphasis they can bring to particular issues means that they are actually far more influential in contributing to an international consensus than would be the case if they were to speak with a single EU voice.

ICS and ISF fear that excessive co-ordination of EU Member States' views at bodies such as IMO - even falling short of full EU membership - would be to 'politicise' discussions on complex safety and environmental issues which are best decided on the basis of informed technical and scientific arguments.

When the EU decides to co-ordinate the votes of EU Member States, the result can be to undermine the well known 'IMO spirit' of consensus. Many third countries, including those with large fleets, might then feel they no longer have strong 'ownership' of what is decided at IMO, with the result that international agreements may be less likely to be ratified after adoption or implemented on a global basis.

At a practical level, the relative speed with which IMO is able to develop and amend new regulations and recommendations requires the imposition of strict deadlines for the submission of comments on proposals made by other IMO Members. This can mean that governments may only have a month or so on which to comment on complex technical issues. If there is a requirement for EU States to have comments co-ordinated and approved in Brussels before they are submitted to IMO, this is likely to mean that IMO discussions may be deprived of valuable input from EU States, which may have a negative impact on the quality of the debate in committee. At a different level, the same problem would apply with regard to the contributions of EU States in working groups established during IMO Committee meetings and in specialist intersessional Correspondence Groups that are established between IMO meetings on particular issues.

Whilst there is always room for improvement, IMO has actually proved to be a model of efficiency compared to similar inter-governmental regulatory organisations, and the vast majority of the regulations which it adopts are applied on a genuinely global basis with the full support of governments and industry. The Commission and Member States should think very carefully about the pursuit of objectives which could do very serious damage to the long term authority and effectiveness of IMO, which is so vital for maintaining a safe and efficient shipping industry.

### *UNCLOS*

ICS notes the Commission's comment that the UNCLOS regime for EEZs and international straits makes it hard to exercise jurisdiction over transiting ships.

The industry believes that the Commission might wish to think carefully about whether other coastal states round the world might use any new entitlement to interfere with freedom of navigation within the EEZ for less benign motives. This could potentially have serious consequences for the security of maritime trade in some of the world's major strategic waterways, especially in geo-political circumstances different to those prevailing at present and which cannot be predicted with any certainty.

The industry would be similarly concerned by any attempt to alter the status of international straits, and ICS has opposed the recent introduction, by Australia and New Guinea, of compulsory pilotage in the Torres Strait, which has no legal basis in UNCLOS. We make this point to emphasise the global character of the issue.

That said, UNCLOS permits coastal states to protect their marine environments through the development, under the auspices of IMO, of measures such as vessel traffic monitoring, reporting requirements to coastal states and designation of 'areas to be avoided'.

ICS and ISF acknowledge the sensitivities that relate to the Danish coast and believe that scope exists for finding practical solutions at IMO to address concerns about environmental protection in international straits that are compatible with the principles of UNCLOS, without any need to change UNCLOS itself. Such a practical solution was developed at IMO with regard to the Torres Strait, which is why ICS/ISF and many States, including a number of EU States, are disappointed that Australia has chosen to introduce compulsory pilotage in a manner contrary to the spirit of an agreement recently achieved at IMO (as referred to above).

ICS and ISF note with interest the suggestion that more cases might be referred to the International Tribunal of the Law of the Sea by a reference to this mechanism in agreements with third countries. ICS and ISF would support greater use of this UN institution when the compatibility of actions by flag states or coastal states with UNCLOS is in dispute.

### *Ship recycling*

ICS leads the broadly based inter-industry working group on ship recycling, which prepares the industry's position at IMO on the development of a mandatory Convention on this important issue.

ICS and ISF agree with the apparent Commission position that support should be given to international initiatives to achieve binding mechanisms on ship recycling - provided that IMO is recognised as the lead organisation. The industry fully supports the development of a new IMO Convention on ship recycling, which has already commenced, and the Convention is expected to be adopted in 2008.

ICS fully agrees that many areas of the existing IMO Code on ship recycling, which was largely based on guidelines developed by the shipping industry, should be made mandatory - for example, gas freeing of compartments prior to delivery at recycling yards and the maintenance of inventories of materials that need treating with care. However, not every part of the IMO Code lends itself to mandatory application. Moreover, what will be most important is the

establishment of a system of approved recycling yards, demonstrating which facilities meet acceptable safety standards, to which reference can be made when negotiating the disposal of ships.

It is also important to acknowledge that the Basel Convention governing the export of hazardous waste was never drafted with ships in mind. Moreover, other considerations aside, there is no indication that Europe in particular would be either willing or able to develop the recycling capacity needed if the movement of old ships was restricted, especially given the accelerated phase-out of single hull tankers now in progress, which involves the early dismantling of hundreds of ships containing millions of tons of redundant steel.

Europe's most effective contribution to this debate would be to encourage the governments in countries with ship recycling facilities, such as India, Pakistan and Bangladesh, to bring them up to internationally acceptable standards.

### **Should the European Community become a member of more multilateral maritime fora?**

For the *practical* reasons set out above, ICS and ISF have serious doubts about the benefits of the EU pursuing full membership of IMO. The same applies to membership of ILO.

Moreover, the Commission will be fully familiar with the various legal arguments associated with any proposal for the EU to become a full member of bodies such as IMO and ILO, which might make such ambitions problematic.

Referring to the Green Paper, ICS and ISF also await the outcome of the study requested by the UN General Assembly into the question of the meaning of the so called 'genuine link' between ships and flag states. However, we expect the study to confirm that, in the context of merchant ships, the meaning is clearly defined by the existing IMO and ILO Conventions.

ICS and ISF note the reference to EU Member States concluding bilateral agreements about the boarding of other nations' ships in the context of fighting serious crime. In the context of waters beyond the territorial sea, EU Member States should be encouraged to ratify the SUA Protocols (the 2005 Protocols to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and its Protocol relating to Fixed Platforms) which would obviate the need for bilateral agreements with nations that are parties to the Protocols.

### **What action should the EU undertake to strengthen international efforts to eliminate IUU fisheries?**

ICS and ISF have no comment.

**How can EU external policy be used to promote a level playing field for the global maritime economy and the adoption of sustainable maritime policies and practices by third countries?**

In the context of the WTO negotiations on maritime services (assuming that they will be resumed), the EU should continue to support the use of the Model Maritime Schedule as the basis for negotiations.

More generally, the EU should continue to support the work of IMO (and ILO) and in the context of IMO it is hoped that EU Member States will continue to support IMO technical co-operation programmes with third countries.

More generally, the EU could strive to improve maritime competence and infrastructure in less developed third countries, and thus compliance with international standards, through aid and technical assistance programmes, including those promoted by IMO.

**5.4 Taking Account of Geographical Realities**

ICS and ISF have no immediate comments.

**6. RECLAIMING EUROPE'S MARITIME HERITAGE AND RECLAIMING EUROPE'S MARITIME IDENTITY**

European stakeholders would seem best placed to comment on this section.

ICS and ISF hope that our attempt to answer some of the specific questions highlighted by the Commission in the Green Paper is helpful. We reiterate that the international shipping industry regards this major policy review as a most important exercise.

We would be happy to supplement any of our answers with further information on request, and look forward to participating further throughout the remainder of the consultation process.

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