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IMO at 60 years of law making

I am honored to be here today to give a lecture on IMO. I have been the Head of delegation from Denmark at meetings in the IMO Legal Committee since 1996 and have also attended meetings at MSC as part of the Danish delegation.

The IMO mandate

The Convention establishing the International Maritime Organization (IMO) was adopted in Geneva in 1948. The IMO convention entered into force 10 years after and in 1958 the first IMO meeting took place. From that day a continuous sequence of meetings was a reality. The organization of the work has been developed with 4 main Committees and the IMO Council taking the lead on strategic planning of the Organization.

IMO's main task has been to develop and maintain a comprehensive harmonized regulatory framework for shipping and its remit today also includes maritime security regulation with instruments such as the ISPS code and SUA convention and Protocols and current issues such as greenhouse gas emissions and piracy.

How has IMO used its mandate?

Shipping has always been international by nature and a facilitator of trade. The growing commercial trade called for new initiatives also for ensuring safety at sea. Even before the establishment of IMO the need for international rules was accepted and acted upon.

With the establishment of IMO came a further recognition of the need to ensure not only international rules but harmonised standards with a global application.

When IMO came into existence in 1958, several important international conventions had already been developed, including the International Convention for the Safety of Life at Sea of 1948, the International Convention for the Prevention of Pollution of the Sea by Oil of 1954 and treaties dealing with load lines and the prevention of collisions at sea.

IMO was made responsible for ensuring that the majority of these conventions were kept up to date. It was also given the task of developing new conventions as and when the need arose.

Today IMO is responsible for nearly 50 international conventions and agreements and has adopted numerous protocols and amendments.

The backbone of the present regulations was built during the sixties and seventies where new ideas formed a basis for the present core conventions. Focus was directed not only on construction of ships but also on the facilitation of trade, seafarer's competences and the human factor and on liability.

In this area we find the Facilitation Convention from 1965, the CLC convention, 1969, and the Fund Convention, 1971, the Marpol convention on the prevention of maritime pollution, 1973/78, the SOLAS convention on safety at sea, 1974, and the STCW convention from 1976. Today these conventions form the backbone of international law.

What is unique about IMO?

Let me underline some of the elements that are fundamental to the success of IMO seen from a Member State

Addressing current maritime issues

IMO is a unique forum and over the years it has been able to maintain focus on current problems. IMO legislation focuses on the need of its constituents and the contracting governments. However, it is not enough to set standards at an international level if these standards are not applied or implemented by states.

Active participation

The success of IMO also stems from the active participation of governments and from governments that are willing to use their expertise in ensuring relevant international regulations where the drafting is competent and well qualified.

The working methods ensure that the IMO legislation is supported and implemented afterwards. The work of the IMO secretariat is neither to be underestimated nor the tremendous efforts of the General Secretary, Mr. Mitropoulos, who engages himself on issues which are important for the industry, safety or the environment. By the end

of the day the success of the IMO lies with the active participation of its Member States.

The quality of the regulation

Some states may implement IMO texts *ad verbertum*. It is paramount that the quality of the text then needs to be very high as many states either will use the text directly or choose not to have special national rules in order to be internationally competitive or to allow classification societies to take over some of the Flag State surveys. The more “easy and self-explanatory” the text is the faster it may be implemented.

Active participation

Most IMO initiatives are initiated by Member States which also will take the lead on the drafting of new standards. The rate of success can be measured in the number of contracting parties. SOLAS has 158 contracting states, MARPOL Annex I/II, 113 CLC, 1992, 121 contracting states.

In general there is widespread support to IMO instruments. Few instruments have not entered into force yet.

The IMO spirit

The vast number of ratifications is not only the result of the famous IMO spirit or the fact that most of the regulations are adopted by consensus and with a widespread and substantial support both from Flag States and Coastal States and the industry.

IMO has – more than any other UN bodies - been able to produce conventions and other instruments which ensure a real harmonized international legislation with high standards and a level playing field for the shipping industry.

It is also unique that industry organizations or others with a relevant interest in IMO activities may play an active role by contributing to the process by offering their expertise in the formulation of the need or in finding solutions for technical problems.

Innovative solutions ensure “Up to date legislation”, global protection and a level playing field for shipping

Over the years IMO has invented innovative legislative solutions to ensure a global application of conventions to all ships regardless of which flag they may fly. The principle of *no more favorable treatment* mandates a Coastal state to apply the

convention standards to ships entering its ports regardless of whether these ships are registered in contracting parties to the convention. Such a principle is on the other hand often applied or accepted in combination with high thresholds for the entering into force of a convention.

Another innovative solution is the provision in IMO conventions on updating technical standards or limits of liability - the so-called *tacit amendment procedure*. This procedure ensures a rapid adjustment of the legislation without going through the more time consuming method of drafting a new convention, holding a diplomatic conference and then the time-consuming process at national level which will be required for a ratification.

To ensure some flexibility as for the choice of method without lowering the safety level the SOLAS convention in some areas allows for substantial equivalence.

The International Labor Organization, ILO, has not had the same success as IMO in attracting widespread ratifications to its maritime instruments. As a consequence the new consolidated Maritime Labor Convention – MLC - from 2006 duplicates some of these ideas from IMO such as substantial equivalence, the tacit procedure and the no more favorable treatment. The success of IMO and IMO instruments may be measured by noting that the MLC is seen to be the fourth pillar in international rulemaking supplementing MARPOL, SOLAS and STCW.

What are the challenges – will IMO be able to continue to be a focal point of international rulemaking in the next 60 years?

Unilateral or regional legislation

Today it is apparent that IMO's role as a focal point of international rule setting from time to time is being challenged by regional organizations such as the European Community. It may be illustrated by the latest draft communication from the European Commission on strategic options for European Shipping and the European maritime transport system in the horizon 2008-2018, where it is stated: "*To the extent that this is possible, all objectives of the EU maritime safety and security policies should be effectively reached by means of instruments agreed through IMO.*"

However the EU and its Member States have to continue efforts in consolidating a global fair level playing field

The answers to these challenges have to be agreed at IMO level in the form of appropriate regulatory measures, to be timely adopted and above all, properly enforced. Failure to do so would inevitably give rise to regional rules by the different parts in the world, to the disadvantage of the international system.”

Harmonized and globally applied international standards have also from time to time been challenged by states taking a unilateral action e.g. on pollution or liability. The increased awareness of the need to protect the environment will call for new and timely IMO measures. If IMO does not continue to act promptly on current issues such as reducing emissions from ships it will become extremely difficult to ensure the necessary support for global rules and regional or national rules will prevail.

Just in time and timely ratifications

The “just in time principle” is a principle which is often referred to in maritime transport services. It reflects the timely delivery of the goods. The need to meet contractual obligations or the timely delivery is obviously a principle whereby also other types of delivery are judged by.

IMO was established to ensure harmonized international rules to safety broadly speaking. It is evident that there is a demand for quick responses by IMO to urgent needs for legislation and to act when areas of the world have been threatened by terrorism or maritime originated pollution or where maritime safety standards need to be increased. The time span in which to react with an adequate response is very limited.

Government officials like me also see this demand at national level, but for an organization with more than 160 constituents it is obviously quite a different and more difficult task to ensure consensus on legislation, which will burden the industry or consumers with extra costs. It will be more important to remind States that IMO was established to meet such needs and will have to react promptly.

Another difficult question will be whether there is a need to adjust the entry into force provision. In a number of technical conventions a vast number of states are needed as well as a high percentage of tonnage. This means on the one hand an assurance of a global acceptance – on the other hand it sometimes forms a barrier for a more speedy entry into force.

Loss of IMO spirit

It is paramount that already today there are differences of opinion between more traditional shipping registers and other registers and differences between the interest of Coastal States and Flag states. With the demand for safer ships and more environmentally friendly shipping, better qualified crews, more liability on ship owners and higher compensation amounts it will continue to become more difficult to ensure a mutual understanding for the need for new regulations.

The legislation will also have to solve more complex issues, issues which are both technically complicated and with strong differences of a more political nature as to the need and whether IMO is the right forum. Examples of this are the SUA protocol on the criminalization of transport of dual use products and nuclear materials as well as the recent debate on the proposal to regulate green house gas emissions where the IMO mandate has been questioned.

Widespread ratifications

The support to the IMO legislation is demonstrated by the number of ratifications. It is not a reassuring sign that some conventions such as Ballast Water Management Convention has not entered into force and other conventions such as the 1996 LLMC protocols have only been ratified by less than one third of IMO's constituents.

Will all Flag state and states live up to their responsibilities?

The success of international legislation is not based on the number of instruments adopted but on their implementation in national legislation and practices. Here it is important that all states live up to their responsibilities.

The IMO Membership has over the years been growing and since 1948 a number of new shipping registers have been established. The variety of IMO legislation and the need to ensure that all ships are safe and all ship owners comply with their responsibilities call for further initiatives.

The IMO Flag State Code and the Flag State Audit Scheme send a clear signal that today the state needs to demonstrate its commitment beyond the delivery of its instrument of ratification. A state also needs to prove its willingness to comply with its international obligations by giving a more solid proof of compliance if it is to be accepted as a reliable Flag State. Procedures have to be in place in the national administration and the necessary resources have to be devoted to the tasks. These

processes are today non-mandatory, but will that also be the case in the future? Will reliable states continue to accept that only ships can be targeted by Port state control or should other mechanisms be put in place for ships from Flag states not living up to their responsibilities? Some MOU's on Port State control already includes elements of whether the ship is under control of a state on the White List or on the Black List of Flag States.

Experiences with the IOPC Funds show that there may be a need to look closer on the way states fulfill their Treaty obligations and the States which fully comply with their Treaty obligations have little or no patience with contracting Parties that do not comply.

As a consequence the Supplementary Fund Convention now has stipulations on the loss of the right to seek compensation for states which have not fulfilled their obligation to report on contributing cargo¹.

States have emphasized that one of the barriers for their own ratification of the HNS convention have been that other states neglect their reporting obligation on contributing cargo to the HNS Fund. This is one of the reasons why the HNS Convention from 1996 is under review without the Convention having entered into force.

Some of the IOPC fund cases also show the there may be a lack of uniform application of the conventions and that states have no sanctuary under the international system. The two cases are quite of a principal nature and not in the same category whereby a state may directly contribute to the damages by e.g. not keeping the navigational systems available to ships in proper order.

One of the pending more principal cases is whether the Fund should take recourse action for against a contracting party for not ensuring that a ship was insured under the CLC convention².

The *Slops* – a Greek registered converted tanker used as a waste oil facility suffered a fire and explosion whilst at anchor in Greece. The *Slops* did not have CLC insurance and claims for compensation were brought to the IOPC Fund. The ship owner has no

¹ Supplementary Fund Protocol art. 15, par. 2:

² *Slops*, 92FUND/EXC. A 41/4

assets. The Executive Committee decided in 2000 that Slops was not considered a ship within the meaning of the 1992 CLC Convention, but the Greek Supreme Court decided in 2008 that Slops should be considered as a ship. The IOPC Fund Executive Committee has not yet taken a decision on whether the Fund should take recourse actions towards the Greek state for the loss incurred by the Fund and the director is studying that possibility.

A similar recourse action may result in a case where it has been questioned whether a contracting party has implemented the increase of the 1992 CLC limits, which entered into force in November 2000³.

The Russian registered tanker *Volganeft 139* broke in two in the strait of Kerch under a storm in 2007 and caused major oil pollution. The ship owner is bankrupt and the Russian Court has accepted the letter of guarantee and a limitation amounts which is lower than the limitation amounts from 2003 which increased the 1992 CLC limitation amounts. The Committee has not taken a decision on recourse.

Conclusion

IMO and its constituents have good reason to celebrate the 60 year Anniversary and to be proud of the achievements in ensuring safer and more environmentally friendly shipping. It is difficult to predict the status and destiny of IMO over the next 60 years. Much will depend upon how whether IMO will continue to meet the challenges and providing a prompt response to demanding and challenging problems with standards that are high enough to satisfy the need without losing the global support – as the International Maritime Organization with Innovative Maritime Solutions for quality shipping.

³ Volganeft 139, 92FUND/EXC.42/10