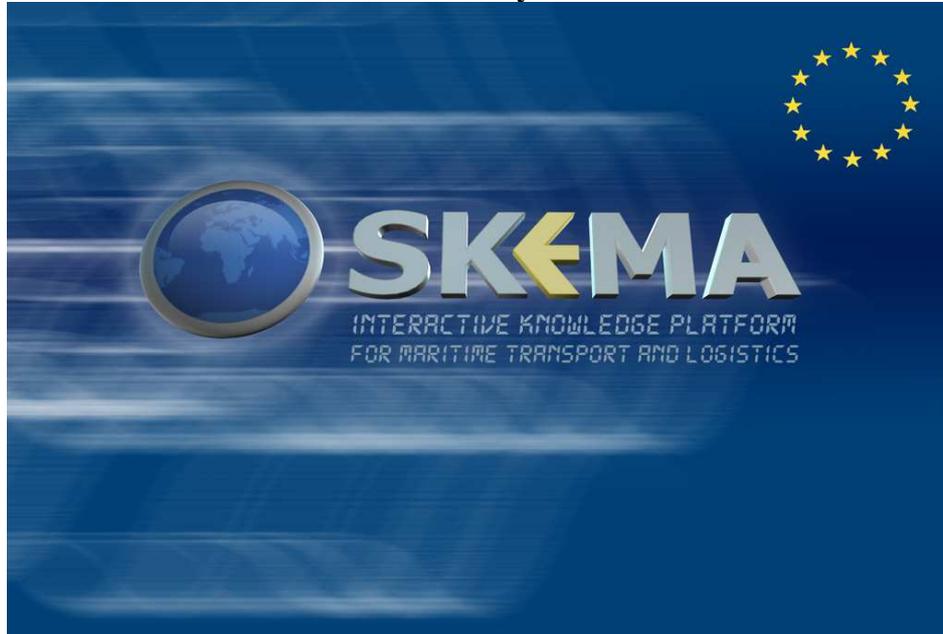


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1 Introduction

Industry Governance may be defined as the 'active participation of the industry in shaping and enhancing policies, regulation and standards with the aim to improve innovation, competitiveness, consumer satisfaction and the achievement of commercial business objectives.' (Industry Governance Institute)¹

Industry governance encompasses the framework of rules, relationships, systems and processes within, and by which fiduciary authority is exercised between the industry and the regulator. There are a number of factors which shape industry regulation and governance. These include:

- The regulators themselves
- The markets in which the industry operates
- Globalisation
- Competitiveness
- Technology
- Safety and security
- Industry associations

Maritime governance derives from an institutional framework with jurisdictions at international, national, regional and local level. Its global reach dictates the need for an international perspective, but at the same time policies have to be effectively applied at a variety of lower jurisdictions.

At the international level, the International Maritime Organisation (IMO) focuses on safety, the environment and security, and the International Labour Organisation (ILO) on issues affecting maritime labour. Regional policy-making is influenced and affected by the European Union (EU), the North American Free Trade Agreement (NAFTA) and the Association of South East Asian Nations (ASEAN). These regional bodies are often engaged in the interpretation of higher international regulations and refining them for application to their own member states. At times this can create conflict between regional and national interests.

This study focuses on governance issue for the maritime industry. It begins with a discussion of regulation and the regulators (Sections 2 and 3) before considering the difficulties posed by ownership and registration (Section 4). Section 5 explores the challenges for governance and policy making and Section 6 analyses port governance. Conclusions are drawn in Section 7.

2 Regulation

Merchant shipping is one of the most heavily regulated industries and was amongst the first to adopt international safety standards. Because shipping is inherently international, it is vital that shipping is subject to uniform regulations on matters such as construction standards, navigational rules and standards of crew competence. The last generation has further seen growing concern to preservation of the environment. The regulations are wide ranging and take a number of forms such as laws, codes of practice, rules, and agreements at international, regional and national level. The regulators themselves are numerous including the International Maritime Organisation (IMO), The European Union (EU), International Labour Organisation (ILO), Classification Societies, the Banking and insurance Community, Unions, and pressure groups.

It was the industrial revolution of the 18th and 19th centuries and the growth in international commerce which followed that resulted in the adoption of a number of international treaties related to shipping. By the end of the 19th century suggestions had even been made for the creation of a permanent international maritime body to deal with these and future measures. The plan was not put into effect, but international co-operation continued in the 20th century, with the adoption of still more internationally developed treaties. Co-operation at this stage was fairly simple as the number of major players was small.

By the time 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 (see 2.2.1 below).

3 The Regulators

3.1 IMO

IMO is a specialised agency of the United Nations with 169 Member States and three Associate Members, based in the United Kingdom with around 300 international staff. Its committees and sub-committees are the focus for the technical work to update existing legislation or develop and adopt new regulations. Meetings are attended by maritime experts from Member Governments, together with those from interested intergovernmental and non-governmental organizations. The Organization consists of an Assembly, a Council and five main Committees: the Maritime Safety Committee; the Marine Environment Protection Committee; the Legal Committee; the Technical Co-operation Committee and the

Facilitation Committee and a number of Sub-Committees support the work of the main technical committees.

IMO was established in response to the complexities of jurisdiction which operate in the shipping industry. Of necessity, vessels move between different jurisdictions, and the country of ownership and flag registration are often separated (see Section 3 below).

IMO's raison d'être is to develop and maintain a comprehensive regulatory framework for shipping with a remit including safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. The result is a comprehensive body of international conventions, supported by hundreds of recommendations. Major conventions include:

- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). This covers accidental and operational oil pollution and pollution by chemicals, goods in packaged form, sewage, garbage and air pollution.
- International Safety Management (ISM) Code July 1998.
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) revised in 1995. These have greatly improved seafarer standards and, for the first time, give IMO itself powers to check Government actions with Parties required to submit information to IMO regarding their compliance with the Convention.
- International Ship and Port Facility Security (ISPS) Code, made mandatory under amendments to SOLAS and adopted in 2002. This is a comprehensive security regime for international shipping.

It is important to note that IMO was established to adopt legislation and that governments are responsible for its implementation. When a Government accepts an IMO Convention it agrees to make it part of its own national law and to enforce it just like any other law.

Port State Control also plays an important role in monitoring and compliance. The important IMO conventions contain provisions for Governments to inspect foreign ships that visit their ports to ensure that they meet IMO standards. If they do not they can be detained until repairs are carried out. Experience has shown that system is enhanced by regional collaboration and co-operation. Agreements or Memoranda of Understanding (MoUs) have been signed covering Europe and the north Atlantic (Paris MoU); Asia and the Pacific (Tokyo MoU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MoU); West and Central Africa (Abuja MoU); the Black Sea region (Black Sea MOU); the Mediterranean (Mediterranean MOU); the Indian Ocean (Indian Ocean MOU) and the Arab States of the Gulf (GCC MoU (Riyadh MoU)).

IMO has also adopted the Voluntary IMO Member State Audit Scheme. The Audit Scheme is designed to help promote maritime safety and environmental protection by assessing how

effectively Member States implement and enforce relevant IMO Convention standards, and by providing them with feedback and advice on their current performance.

3.2 ILO

The main focus of ILO's maritime programme concerns the promotion of the maritime labour standards which has resulted in the adoption of codes of practice, guidelines and reports which address seafarers' issues. The Joint Maritime Commission advises the Governing Body on maritime issues and special Maritime Sessions of the International Labour Conference (ILC) focus solely on the preparation and adoption of Maritime Labour Standards. The 94th Maritime Session of the International Labour Conference adopted the Maritime Labour Convention, 2006, which sets out the conditions for decent work in the increasingly globalized maritime sector.

The new Convention consolidates and updates 68 existing ILO maritime Conventions and Recommendations adopted since 1920. Countries that do not ratify the new Convention will remain bound by the previous Conventions that they have ratified, although those instruments will be closed to further ratification. The Convention sets minimum requirements for seafarers to work on a ship and contains provisions on conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection. Compliance and enforcement are secured through onboard and onshore complaint procedures for seafarers, and through provisions regarding shipowners' and shipmasters' supervision of conditions on their ships, flag States' jurisdiction and control over their ships, and port state inspection of foreign ships. The Convention also provides for a maritime labour certificate, which can be issued to ships once the flag State has verified that labour conditions on board a ship comply with national laws and regulations implementing the Convention.

Among the novel features of the Convention are its form and structure, which includes legally binding standards accompanied by non-mandatory guidelines. It departs significantly from that of traditional ILO Conventions. Parts of the Convention relating to technical and detailed implementation of obligations can be updated under an accelerated amendment procedure. The Convention is expected to become what has been called the "fourth pillar" of the international regulatory regime for shipping, complementing the key Conventions of the International Maritime Organization.

The Joint Maritime Commission's Subcommittee on Wages of Seafarers also updates the ILO minimum basic wage for able seafarers which should be applied in accordance with the Seafarers' Wages, Hours of Work and the Manning of Ships

Recommendation, 1996 (No. 187) as well as the Guideline B2.2.4 of the Maritime Labour Convention, 2006.

In addition to providing information and assistance to member States on ILO maritime standards and the preparation of related national laws and regulations, the ILO cooperates with other United Nations system agencies with an interest in the maritime field, such as the International Maritime Organization (IMO) in London and the World Health Organization (WHO) in Geneva. There is close contact with the United Nations Development Program (UNDP) and with regional UN offices.

3.3 The European Commission

The European Commission is the executive arm of the European Union, responsible for initiating legislation and the day-to-day running of the EU. The Commission operates as a cabinet government, with 27 Commissioners for different areas of policy, one from each member state, though Commissioners are bound to represent the interests of the EU as a whole rather than their home state.

The member states of the EU retain all powers not explicitly handed to the Union, as in most federations. However in some areas the EU does not have exclusive competence, it only plays a supporting role. In such middle ground member states may enact legislation only where the EU has not, or they may elaborate the laws of the EU. Different competencies may also be used in different ways. The distribution of competences in various policy areas between Member States and the Union is divided in the following three categories:

Exclusive competence - The Union has exclusive competence to make directives and conclude international agreements when provided for in a Union legislative act.

Shared Competence - Member States cannot exercise competence in areas where the Union has done so.

Supporting Competence - The Union can carry out actions to support, coordinate or supplement Member States' actions.

Transport falls into the shared competence category.

In 2007, the Commission began a strategic review of the EU's integrated maritime policy, examining the challenges European and international maritime transport will face in the next ten years. Maritime transport for the EU was seen as important because:

- The EU is surrounded by five seas and two oceans which cross administrative borders. Any transport or security problems should therefore be tackled at EU level.
- Many policies which impact on sea activities have already been incorporated into EU Treaties in recent years.
- Environmental protection s cannot be tackled by Member States individually, since fish, eco-systems and pollution cross administrative borders.
- Maritime transport is a vital to trade. Some 90% of EU external trade and close to 40% of EU internal trade is seaborne.
- Considerable resources are needed to develop marine science and research as well as new technologies for improved sustainable uses of the seas. Synergies can be achieved by tackling these issues at an EU level.

The Commission has recently updated its strategic goals and recommendations for the EU Maritime Transport Policy until 2018. Governance is seen as key to the achievement of these goals. To this end, 'Guidelines for an Integrated Approach to Maritime Policy: Towards best practice in integrated maritime governance and stakeholder consultation' [COM\(2008\)395](#), 26.06.08 have been produced.

The Communication recognises that the full potential for optimised policy-making will not be reaped unless the integrated approach permeates every level of government, all players involved, research and policy advice and stakeholders' activities. This depends on cooperation between policy-makers and coordination of action taken at different levels of government.

The guidelines are not meant to call on Member States to adopt any single system of maritime governance. They are designed to encourage them to design their own national integrated maritime policies, in close collaboration with their maritime stakeholders, and to enhance and facilitate cooperation at all levels of maritime governance.

It is recognised that each government will have its own specific priorities for its maritime policy. These national integrated maritime policies will differ from each other, depending on their different constitutional, geophysical, economic, social, cultural and environmental contexts, but should take into account the European vision for the oceans and seas endorsed by the European Council in December 2007. Integrated national policies should also be guided by the principles of subsidiarity, competitiveness and economic development, the ecosystem approach and the principle of stakeholder participation.

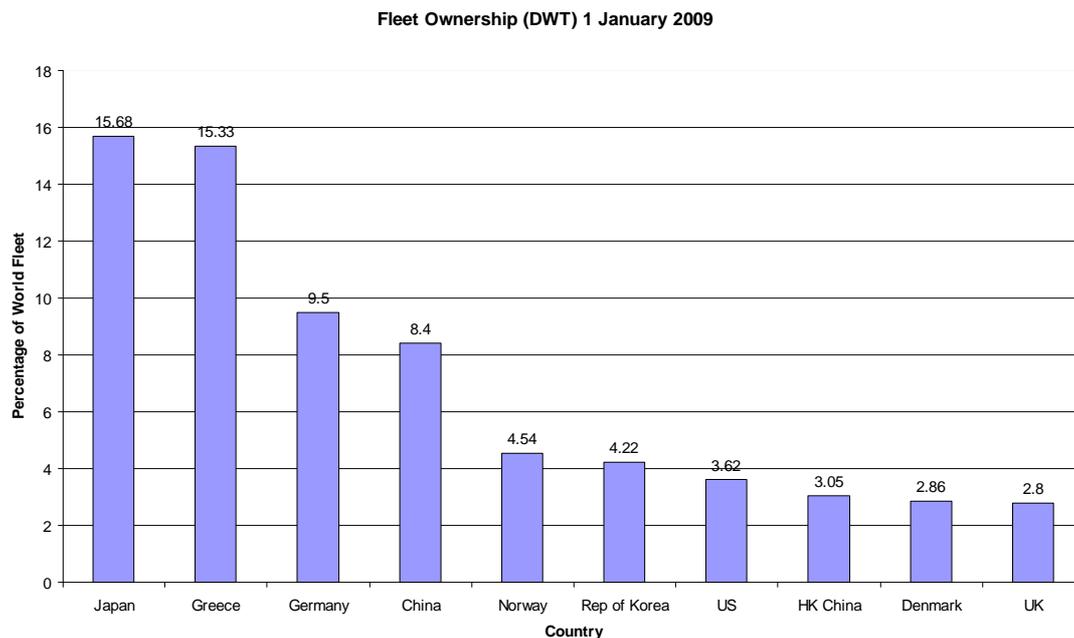
The basic governance framework should provide political guidance at the highest level to construct dialogue between sectoral interests. The task of ensuring that decisions are implemented should be the responsibility of a senior public administrator with a considerable level of authority. Active participation by maritime stakeholders in integrated national, regional or local maritime policies is highly recommended.

For integrated governance of maritime affairs in Europe to work fully, it is crucial to develop a degree of coordination across borders, allowing exchanges of best practice and closer cooperation between states in critical areas, such as those relating to protection of the marine environment, to the safety, security and surveillance of Europe's vast maritime areas and to marine and maritime research. In order to promote steps towards integrated maritime policy-making at different levels of governance, the Commission will provide information about action in this direction at global, European, Member State and regional levels, and provide guidance to stakeholders looking for models of best practice.

4 Issues of Ownership and Accountability

Shipping governance is complicated by the common separation of ownership and flag state. Figure 1 shows the top 10 shipping nations in terms of ownership as at 1 January 2009. Japan with nearly 15.7% of the World Fleet has recently overtaken Greece (at 15.3%) as the largest owning nation. However, the fleet is regulated by the flag state not the country of ownership. The Flag State imposes law and regulation on their seafaring community. Such regulations have a serious influence on the living and working conditions at sea - recruitment issues, conditions of employment, and health and social security.

Figure 1: Ownership of the World Fleet



Source: UNCTAD Review of Maritime Transport 2009

Research on ownership as a proxy for governance suggests a link between governance and performance (Lambertides and Louca 2008)². This study compares the financial and ownership structure characteristics of 266 firm-year observations during the period 2002–2004. The results suggest that firms with more foreign shareholders and greater participation in the firms’ shares from investment companies have higher operating performance. Furthermore, there is no evidence of a relationship between operating performance and employee commitment in the form of employee held shares, nor a relationship between operating performance and government held shares.

It is emphasised that the association between ownership structure and operating performance exists, without references to causality. This is because the possibility exists that both ownership structure and operating performance are associated with a third, unobserved factor (e.g. management quality), leading to a spurious relationship between ownership structure and operating performance.

The results of this study are potentially useful to managers and shareholders, with important implications for European maritime firms. The suggestion is that self-monitoring via active foreign and local shareholders is an important vehicle towards enhancing the ability of the firms to achieve high levels of operating performance. The results are also useful to policy makers such as stock exchange regulators because they reinforce recent efforts to ensure the monitoring role of institutional

investors and the proper functioning of corporate boards in publicly traded maritime firms.

Examining the world fleet in terms of flag registration presents an altogether different picture.

Figure 2: Flag Registration of the World Fleet



The largest flag states or registers are Panama, Liberia and the Marshall Islands. These are all examples of open registers. Open registers can be defined as any flag state which does not require a substantial fleet for its own commercial purposes, but offers a legal base in return for fees from non-nationals to register tonnage which they own or control. There is the additional inducement of limiting the level of nationalised regulation, both fiscal and operational, particularly the terms and conditions of employment of non-national seafarers. A UK enquiry³ into shipping suggested a definition consisting of a number of elements, which can be summarised as follows:

1. The country of registry allows owners and those controlling merchant vessels to be non citizens;
2. Access to the registry and transfer from it is easy;
3. Tax on the income from ships was not levied locally or were low;

4. The country of registry was a small power with no foreseeable national economy for all ships registered;
5. Manning on the ships by non-nationals is freely permitted
6. The country of registry has no power or administrative machinery to effectively impose any government of international regulations and no wish or power to control the companies themselves.

As can be seen from the above criteria, the *raison d'être* of open registers is the creation of what has been termed 'regimes of immunity' as compared to traditional flags. The Maritime Committee of the OECD commented that:

"The concept of the open register is the complete antithesis of the completely state-controlled transport of nationally generated cargo, and as such is philosophically very close the basic approach of Western countries. Unfortunately, the idea of the 'free flag' was for a considerable period associated with an abdication of the obligation that a 'state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag' (OECD Maritime Transport, 1981, p.119).⁴

The original modern open register began in Panama following the First World War but the phenomenon was of little significance until after the Second World War, when Panama began to accrue vessels from traditional registers. The early development of the register was due to the unique relationship between Panama and the United States which resulted in owners from that country transferring their tonnage to this new open register. In the latter half of the century, Greek ownership was also significant. While there had been a gradual expansion of numbers to 1970, the number and tonnage increased rapidly following the oil crisis of 1973. This growth was particularly vigorous over the last decade. Over the three decades, the numbers of vessels on the register have increased sixfold, but the tonnage has expanded to sixteen times the 1970s level over the same period. This illustrates a trend towards larger vessels joining the register.

The attraction of open registers is that they afford considerable benefits to shipowners and operators, which result in a reduction in their costs. Any company irrespective of nationality may enter tonnage on the Panamanian Register. Assuming the vessel possess valid certification, there is no requirement for a survey prior to entry, the only exception being vessels over 20 years of age, which require an authorised inspection. Non-resident owners pay no taxation and there has been a commitment by the authorities that fees will remain stable. Discounts are also offered for substantial tonnage commitments. Dual registry facilities are also available. Under this system, a foreign vessel bare boat chartered for a period of

two years can be registered for the same period without losing its previous registration, assuming that the original register gives appropriate authorisation.

Most of the open registers specialise in certain countries of ownership. Panama is predominantly used by vessel owners of Japan who account for around half of the registry's tonnage. 74% of Japanese owned tonnage uses the Panama flag. Liberia is used mostly by owners from Greece and Germany. It has been observed that:

'Owners from high income countries are more likely to choose a foreign flag than owners from countries with a lower GDP per capita or with low human development indicators, such as low literacy rate or life expectancy. These indicators are correlated with higher wages and using a foreign flag allows the employment of seafarers from developing countries with lower wages.' (UNCTAD Review of Maritime Transport 2009, p.57).

The true nationality of 3 major open registers is shown in Table 1.

Table 1 : True Nationality of 3 major open registers

| | Panama | Liberia | Marshall Islands |
|-------------------|--------|---------|------------------|
| Japan | 53.3 | 6 | 3.7 |
| Greece | 8.1 | 19.9 | 26.7 |
| Germany | 3.1 | 3.4 | 17.4 |
| China | 9.5 | 0.3 | 1.3 |
| Norway | 1.9 | 1.9 | 10.3 |
| Republic of Korea | 8 | 0.1 | 1.8 |
| US | 1.3 | 3.2 | 19.6 |
| HK China | 2 | 3.2 | 0.5 |
| Denmark | 0.4 | 0.2 | 0.9 |
| UK | 0.5 | 1.2 | 1.3 |

Source: UNCTAD Review of Maritime Transport 2009

These open registers have caused some problems in terms of governance. According to the International Transport Workers' Federation (ITF), vessels on these open registers have a disproportionately high percentage of casualties and Port State Control detentions because they do not adequately exercise their responsibilities as

flag states with regard to International Labour Organisation (ILO) or International Maritime Organisation (IMO) conventions and recommendations.

The ITF campaign against 'flags of convenience' combines the political and industrial. The political side is aimed at establishing agreement from governments on the need to demonstrate a 'genuine link' between the flag a ship flies and the nationality or residence of its owners, managers and seafarers. In so doing the flag of convenience system would be eliminated. The industrial side is designed to ensure that seafarers who serve on flag of convenience ships, whatever their nationality, are protected from any exploitation by shipowners.

Thus far the political campaign has not succeeded in stemming the proliferation in FOC registered ships. However, the industrial campaign has enforced decent minimum wages and conditions on board some 5,000 ships. It continues to fight for mistreated seafarers, irrespective of nationality or trade union membership, throughout the world. Every year millions of dollars are recovered by the ITF and its affiliated unions in 'back pay' and in compensation for death or injury on behalf of seafarers.

This has been achieved by establish minimum acceptable standards applicable to seafarers serving on FOC vessels. Such policies form the basis of an ITF Standard Collective Agreement which sets the wages and working conditions for all crew on Flag of Convenience vessels irrespective of nationality. All FOC vessels covered by an ITF-acceptable agreement are issued an ITF Blue Certificate by the ITF Secretariat, which signifies the ITF's acceptance of the wages and working conditions on board. About a quarter of all FOC vessels are currently covered by ITF agreements, thus giving direct protection to over 123,000 seafarers.⁵

Compliance with ITF-recognised agreements is monitored by a network of over 130 ITF inspectors in ports throughout the world. ITF Inspectors are union officials who are either full time or part time working directly with the ITF. By inspecting FOC ships they monitor the payment of wages and other social and employment conditions and if necessary take action to enforce ITF policy. In recent years the number of inspectors has doubled and they are now to be found in ports in every region of the world.

It would appear that in terms of financial governance, ownership is the important factor but that operations and procedures fall under the auspices of the auspices of the flag state regulated by the various international and regional bodies. The complexities in terms of jurisdiction continue to create governance issues particularly when it comes to monitoring and compliance where there is considerable reliance on Port State Control.

5 Challenging Traditional Maritime Governance

It could be argued that traditional governance frameworks rely on a state centric set of rules, regulations, conventions and institutions which is no longer adequate with the increased globalization of the maritime sector. Roe (2009)⁶ suggests the adoption of polycentric and multi-level governance approaches for effective policy making. He maintains that the problem does not lie primarily with the policing of the shipping industry, but with the mechanisms that underlie maritime policy-making. In particular he points to the failure to understand the relationships between the different jurisdictional levels and the inadequate incorporation of stakeholder interests into the process.⁷

A multi-level governance approach is characterised by the jurisdictional framework but focuses more on multi-negotiated policies between all jurisdictional levels and also encouraging the active involvement of a full range of stakeholders—interest groups, the private sector, politicians, the media and individuals. Polycentric governance is a more complex policy-making framework encompassing a variety of policy-generating origins across all types of institution— private and public; government and non-government; interest group; individual and constituency based; political parties and commercial companies, etc. Policies emerge from all types of institution, from combinations of interests across all jurisdictions reflecting the complexity of the maritime sector.

Whilst polycentric governance systems seem complex, they are sensitive to the complexities of the maritime industry and its associated political structure. In particular, they focus on the role of the stakeholder in designing their application and measuring their success. Adopting this approach for the generation of shipping policies and in the process of analysing the needs and priorities of those with an interest in its outcome has considerable potential for the improvement of maritime governance.

6 Port Governance

The world's ports generally function in a similar way to a public utility. Ports and terminals represent an essential interface in the domestic and international transport chain facilitating both freight and passenger flows.⁸ Port activity cannot be viewed as an end in itself or indeed a separate entity. On the contrary ports are becoming increasingly integrated into the entire system of distribution and movements of commodities in a country's domestic and external trade. Hinterland access is at the core of radical changes in the industry and is directly related to commodity and mode of transport. Containerised cargo access involves a vast number of destination and two-way flows, inwards and outwards. This has created a vast hinterland, converting ports from merely transshipment centres into a position

where they have a vital function as part of logistics system. As a result their success has an impact on a very wide range of other businesses and industries.

The models of port structure and ownership are a reflection of the way in which ports are perceived in particular countries and regions. Four basic models of port administration can be identified, ranging from a pure public sector to a pure private sector model. Most adopt a mixed approach with the majority maintaining regulatory control in the public sector. These models are illustrated in Table 2.

Table 2: Four basic models of Port Administration

| | Models | Land Ownership | Port Functions | |
|---|--------------------|----------------|----------------|----------------|
| | | | Regulation | Cargo Handling |
| 1 | Pure Private | Private | Private | Private |
| 2 | Private/ Public | Private | Public | Private |
| 3 | Public/ Private | Public | Public | Private |
| 4 | Pure Public | Public | Public | Public |

Source: Baird 1995

Many ports around the world broadly fit into Models 2 and 3 where regulation and or land ownership is in State hands as described by Baird 1995⁹ but cargo handling services have been privatised. The UK in terms of its major ports is the only jurisdiction which operates the fully privatised Model 4 in which market forces are allowed to determine the operations.

A brief survey of port governance reform in European seaports (Verhoeven 2009) confirms that, with the exception of the larger UK ports, the public sector continues to dominate port management in the EU, mostly through a separate port authority. The 'Hanseatic' tradition of municipal port management can still be found in many countries along the Baltic Sea and the North Sea, the 'Latin' model of centralised port management exists in France and many south European countries, and the 'Anglo-Saxon' tradition of independent port authorities, both in the form of public trusts and private companies is prevalent in the UK. However, the distinction is becoming more blurred as many port authorities have assumed a corporatised form whereby the cargo handling utility function has or is being privatized, and landowner

and regulatory functions remain in public hands, although not always performed by the same public entity.

Private involvement in ports has been increasing on a global scale. According to Drewry Terminal Operators Report 2007, state throughput in 2006 was only 19% compared to 42% in 1993. The increase in private participation has been a conscious decision in an effort to increase efficiency and lower costs. This greater level of privatization has been achieved largely by offering 'concessions' or leases to terminal operators. These global terminal operators now account for some 33% of total port throughput (see Table 3). In 2008, PSA International was the market leader with almost a 10% share of the market. Despite the growth of these terminal operators, the global port industry does remain highly fragmented. The Herfindahl Hirschmann Index (HHI) indicator of market concentration is only 219 (1,000 would indicate a concentrated and 1,800 highly concentrated industry).

Table 3: Global Terminal Operators – equity share of world container throughput (%)

| | 2006 | 2007 | 2008 | HHI |
|--|-----------|-----------|-----------|--------------|
| PSA International | 8 | 10 | 10 | 98.9 |
| HPH | 9 | 7 | 7 | 46.1 |
| APM Terminals | 6 | 6 | 7 | 45.0 |
| DP World | 6 | 5 | 5 | 29.9 |
| Cosco Pacific | | 2 | 2 | |
| Eurogate | | 2 | 2 | |
| SSA Marine | | 1 | 1 | |
| Total share of world throughput | 29 | 33 | 33 | 219.8 |
| World throughput in millions of TEU | 434.3 | 487.1 | 506.9 | |

Source UNCTAD Review of Maritime Transport 2009

Brooks and Pallis (2008)¹⁰ observe that extensive port reforms around the world have challenged the conventional models of port organisation. A number of governments in both developed and developing countries have devolved port operational responsibility and, in some cases, port assets to local public or

decentralized entities or to private and/or commercially driven port entities. In such cases the public sector plays only a supervisory and monitoring role.

These institutional changes lead to discussions on alternate governance approaches.

Brooks and Cullinane (2007) provided evidence of a full spectrum of models that range from fully publicly- to fully privately-managed port activities. Based on a survey of 42 ports, they found 34 different combinations of governance along the private-public continuum, with only four ports operating under a fully public model, and only one port being fully private. Even the UK ports presented an array of “mixed” governance models in the management of port activities.¹¹

Notteboom and Rodrigue (2005)¹² argue that hinterland regionalisation of the sector should be the driver for new approaches to port governance. They suggest that the geographical scope of port governance needs to be changed to incorporate the wider logistics chains. Broader regional networks are necessary in order to transfer knowledge. The role of port authorities in governing the regionalisation phase will depend on the port structure. In the regionalisation phase, port authorities can play an important role in shaping regional load centre networks and logistics poles. They can for example promote an efficient intermodal system in order to secure cargo under conditions of intense competition and develop strategic relationships with other transport modes.

Wang and Slack (2002) suggest a broader concept of port governance which allows for greater weight of social and cultural variables. Their port governance model included three axes, comprising spatial-jurisdictional scales, stakeholder community, and logistical capabilities. They argue that these variables direct governments towards a cluster approach to port governance.¹³

Baltazar and Brooks (2007) endorse a corporate governance approach to port governance.¹⁴ They suggest that the port governance model is defined by the configuration of three inputs: (a) the strategy of the port, as developed by the port authority; (b) the structure, which is implemented as a result of government regulations and policies, and the strategy chosen by the port authority, and (c) the environment in which a port operates.

Verhoeven (2009)¹⁵ addresses the impact of EU law and EU policy on port governance models. The discussion inevitably focuses on the role of the port authorities and whether they should be restricted to enforcing regulation or play a more active role in the market.

He identifies the 3 main governance challenges as:

1. Sustainable port development

2. Logistics Integration
3. Strategies of market players

Sustainable port development calls for long term investment. Given the scarcity of public funding, this increasingly has to come from the private sector. Port authorities must therefore have sufficient financial, commercial and managerial autonomy in order to pursue an effective investment and development policy. In addition, ports must deal with increasing environmental and societal pressures and compliance with regulations in these areas.

Ports are also becoming more involved in inland freight distribution. Here there are opportunities for port authorities to act as facilitators and catalysts in the logistics chain. This would involve the creation of adequate facilities such as logistic parks, developing strategic relationships with other transport nodes and creating networks with other ports.

The emergence of global terminal operator groups present challenges to governance since there may be conflicts of interest between them and the local port communities. Applicable governance schemes which will determine to what extent port authorities are able to match and control these developments. An effective strategy would be to allow them to control concession agreements and set certain conditions and criteria so that actions are in the interest of the port.

Concessions can also be used to promote sustainable development by introducing criteria related to modal shift, terminal equipment emissions and the optimal use of scarce land. He warns that the port authorities may be too weak to impose such conditions and criteria. The already strong bargaining power of terminal groups is in many ports reinforced by political pressure, making it very difficult for port authorities to pursue an independent policy.

Verhoeven (2010)¹⁶ discusses the typical functions of port authorities as that of landlord, regulator and operator. However, to that could be added community manager in bringing together or facilitating communications between stakeholders. He introduces the concept of a 'renaissance port authority' i.e. a port authority which takes on a multitude of facilitating and entrepreneurial responsibilities that also reach beyond the port perimeter. The Commission's recent ports policy communication (COM/2007 616)¹⁷ supports financially autonomous port authorities which take responsibility for the strategic development of their ports, stimulate dialogue between all possible stakeholders and pro actively intervene in market processes to safeguard the general interest of the port.

7 Conclusions

Maritime governance has increased in complexity to embrace issues of safety, security, environmental protection, competition and technological development which have implications on a global scale. The global nature of the industry calls for global responses and indeed much of the regulation is drafted by international organisations such as IMO and ILO. Application and compliance, however, takes place on a regional and national level. This can cause problems of both of implementation and of conflict between the international and local issues. At the EU level, the Commission has set out governance guidelines which recognise the need for different approaches for the different member states whilst stressing the importance of cross border co-ordination and sharing of best practice.

On the shipping side, governance is further complicated by the separation between ownership and flag registration. The Flag State establishes the regulatory framework for ship operations and certain terms and conditions of employment which are then monitored by Port States through inspection procedures. Governance at the corporate level is however, becoming increasingly important with investors demanding a certain level of accountability both in terms of financial performance and social responsibility.

Port governance is also responding to developments in this sector. Increasing privatisation of terminal operations has created a need to manage any potential conflict of interests and is expanding the role of port authorities from landlord, regulator and operator to that of community manager bringing together and facilitating communication between stakeholders.

A central theme in the discussion of governance is the wider participation and active involvement of stakeholders. This polycentric approach ensures that stakeholders buy into the process through its design and measurement and that their needs and priorities are properly considered.

References

- ¹ Industry Governance Institute www.industrygovernance.net
- ² Lambertides, N and Louca, C (2008) 'Ownership structure and operating performance: evidence from the European maritime industry', *Maritime Policy & Management*, 35: 4, 395 — 409.
- ³ 'Committee of Inquiry into Shipping Report, Chairman Lord Rochdale', London, May 1970, page 51.
- ⁴ OECD Maritime Transport 1981.
- ⁵ ITF Handbook, 13:1
- ⁶ Roe, M (2009) Multi-level and polycentric governance: effective policymaking for shipping, *Maritime Policy and Management*, 36(1), 39-56.
- ⁷ Roe, M., (2008), Safety, security, the environment and shipping—the problem of making effective policies. *WMU Journal of Maritime Affairs*, 7(1), 263–279.
- ⁸ For detailed definition see Chapter 10, McConville J, *Economics of Maritime Transport, Theory and Practice*, Witherby, London, 1999.
- ⁹ Baird A (1995) Privatisation of Trust Ports in the United Kingdom: review and analysis of the first sales, *Transport Policy*, 2(2), 135-143.
- ¹⁰ Brooks, M R. and Pallis, A A.(2008) 'Assessing port governance models: process and performance components', *Maritime Policy & Management*, 35: 4, 411 — 432.
- ¹¹ Brooks, M. R. And Cullinane, K., 2007, *Governance Models Defined*. In: *Devolution, Port Governance And Port Performance*, Edited By M. R. Brooks, K. Cullinane (London: Elsevier), Pp. 417–448.
- ¹² Notteboom, T E. And Rodrigue, J P (2005) 'Port Regionalization: Towards A New Phase In Port Development', *Maritime Policy & Management*, 32: 3, 297 — 313.
- ¹³ Wang, J. J. And Slack, B., 2002, *Port Governance In China: A Case Study Of Shanghai*. Occasional Paper Series, Paper No. 9 (Hong Kong: The Centre For China Urban And Regional Studies).
- ¹⁴ Baltazar, R. And Brooks, M. R., 2007, *Port Governance, Devolution, And The Matching Framework: A Configuration Theory Approach*. In: *Devolution, Port Governance And Port Performance*, Edited By M. R. Brooks, K. Cullinane (London: Elsevier), Pp. 379–403.

¹⁵ Verhoeven, P., (2009) 'European Ports Policy: Meeting Contemporary Governance Challenges', *Maritime Policy & Management*, 36: 1, 79 — 101.

¹⁶ Verhoeven, P.,(2010) 'A review of port authority functions: towards a renaissance?', *Maritime Policy & Management*, 37: 3, 247 — 270.

¹⁷ Commission of the European Communities, 2007, *Communication on a European Ports Policy*, Com (2007) 616, Brussels.