



MV Betelgeuse, the oil tanker that exploded at Whiddy Island in Bantry Bay on January 8th, 1979 killing 50 people

Photo Ian Vickery Snr

Safety will not stand still for Ireland

Michael Kingston

Ireland is a wonderful and mystical country of abounding beauty. When travelling through Ireland W.H Bartlett wrote in 1841:

'In what other country under heaven will you meet with such magnificent scenery as that which presents itself along the extensive line of coast lying between Cork harbour and the mouth of the Shannon? There, nature has placed her everlasting barriers of rock to oppose the rage of the Atlantic, whose mountain billows vainly lash the huge and jutting headlands that shelter within their Titan arms noble bays and lovely creeks.'

Travelling the world working on international

regulatory matters, I have visited many places and thus far have never come across anywhere that is more beautiful than my homeland — all 32 counties and the islands.

But within that astounding beauty, many tragedies have occurred — some big, some small — each death in each tragedy as significantly devastating to the families and communities involved. And we have experienced tragedy within our rescue services, none more devastating in recent times than the loss of Rescue 116.

The beauty of our land is tainted by such tragedy, compounded by the fact that many of the incidents could have been avoided if successive Governments had been pro-active in promoting best practice standards in industry

sooner, and had assisted in the implementation of international regulation that has been sitting on Government shelves gathering dust in the corridors of Dáil Éireann.

REGULATORY REVIEWS

To put this in context, time and again international maritime disasters tell us that best practice is not always adhered to. For many reasons, too often it is cost driven and not until regulation comes into play following a disaster does industry adhere to best practice to prevent a re-occurrence.

The importance of being pro-active in Government cannot be underestimated. Unfortunately, very often in the slow regulatory process, it takes another disaster to implement previously

suggested regulation where industry continues to ignore recommendations.

In the meantime, those who do employ best practice in the same industry suffer the consequences. That has been the realistic pattern in the development of international regulation. History is littered with examples:

In 1980, the Alexander Kielland platform capsized in Norwegian waters; 123 people died, resulting in a high-level regulatory review and Norway's leading regulatory regime today.

In 1988, the Piper Alpha platform in the North Sea caught fire and exploded, killing 167 and resulting in a high-level regulatory review in the UK overseen by Lord Cullen who recommended a 'safety case approach' and the de-coupling of the Health

and Safety Executive from the Department of Energy due to a 'conflict of interest', and was implemented by the UK Government.

And of course the 2010 Deepwater Horizon disaster in the Gulf of Mexico when 11 people died resulting in a high-level regulatory review in the US and worldwide.

The US reviews came to the same conclusion as Lord Cullen: that a 'safety case' approach should be implemented and that the Health and Safety Executive should be de-coupled from the Department of Energy.

The US had not learnt from the Piper Alpha Disaster even though a US company was at the centre of the disaster.

Apart from atrocious and unnecessary loss of life, these disasters all have in common a lack of best

practice at the time and correct regulation.

In January 2011, the US National Commission Report into Deepwater Horizon stated:

'This disaster was almost the inevitable result of years of industry and government complacency and lack of attention to safety.'

The same could be said of all these disasters and many more.

IRELAND'S FAILURE TO ACT

In Irish jurisdiction, MV Betelgeuse exploded at Whiddy Island, Bantry Bay in 1979, resulting in the actual ratification of the modern IMO Safety of life at Sea Convention, SOLAS 1974.

Simple inert gas systems that had already been suggested but were not used on board the Betelgeuse became mandatory. Fifty people lost their lives.

Ireland had failed to ratify the Convention but did so immediately after the disaster. Had Ireland ratified SOLAS 1974, the disaster might not have occurred.

As well as the seven local men who lost their lives, including my father, 42 French nationals never returned home. Bantry Bay is forever the resting place for 23 of their bodies that were never recovered.

And no full regulatory review was carried out — unlike the urgent reviews mentioned in Norway, the UK and the USA — representing a failure to learn from such a huge disaster in our jurisdiction.

The failure to ratify SOLAS 1974 was compounded by

the terrible safety regime that resulted in all personnel waiting for almost 30 minutes to die with no fire equipment and no safety boat present.

Complacency or inability at Government level to get the job done, and the lack of drive, is sometimes quite staggering. I put it down to a lack of understating to the importance of these issues and of the very important work carried out by international expert delegations, including Ireland, at the International Maritime Organisation, and by diligent Irish civil servants responsible when preparing draft regulation to be enacted by Dáil Éireann. Ireland has also failed to ratify the Torremolinos International Convention for the Safety of Fishing Vessels* — lying on Government shelves since 1977 — and only ratified by the Netherlands, Norway, Iceland, and South Africa, and the Convention for pollution from fixed structures, also adopted in 1977 but et to be ratified

In the meantime, thousands of lives have been lost in the fishing industry worldwide. By not ratifying the Torremolinos Convention, Ireland has not fulfilled her international duty to seafarers and we have no international regulation surrounding pollution incidents from fixed structures such as the Deepwater Horizon disaster.

As I write, Ireland's exclusive economic zone is being exploited for energy resources. What regime is

governing those activities? Has Ireland looked at Lord Cullen's recommendations and implemented them all?

Ireland has also failed thus far to ratify the 2007 Nairobi International Convention on the Removal of Wrecks.

While it is true that Ireland is a country of limited public finance and resources, the issues I speak of are of such importance to the safety of seafarers in Irish jurisdiction and consequently our rescue services, there should be no question whatsoever over enacting international regulation as a matter of urgency.

It is not just our legal duty to our citizens and rescue services and those who enter Irish jurisdiction, but a moral duty of the highest level to their welfare and our society. There is no excuse for complacency.

It is also important to ask now, had Ireland assisted in the ratification of the Torremolinos Convention for Fishing Boat Safety, would Rescue 116 have had to respond to the minor injury incident on a fishing vessel in international waters to the west of Ireland?

Accordingly, Ireland must carry out a regulatory review of all safety procedures in maritime and energy operations in its jurisdiction.

We do not want more tragedy, and have to repeat what the United States stated following the Deepwater Horizon tragedy:

It is also time for a dedicated Minister for the Marine to address these issues, as well as focusing

on the incredible potential of Ireland's maritime and energy sector.

Let us show leadership by adopting the 'prevention is better than cure' approach while discharging our legal and moral duties in shaping

international regulation for the safety of our seafaring world:

'Always together we can make a difference.'

That way, W.H Bartlett's impression of our land will be true.



Michael Kingston, an Irish lawyer from Goleen, Co Cork, was awarded the 2014 - 2015 Lloyd's List Global Maritime Lawyer of the Year for his contribution to safety of life at sea, and in July 2015 received the US Coastguard Challenge Coin for his efforts to promote maritime safety by raising awareness about the IMO Polar Code.

Michael carried out the legal reviews on Lloyd's of London's 2011 Drilling in Extreme Environments report following the Deep-Water Horizon Disaster; their report, Arctic Opening: Opportunity and Risk in the North Sea and their 2013 Removal of Wreck report following the sinking of Costa Concordia.

Michael has also represented the international Union of Marine Insurance at the IMO, and has worked on international regulation with several Governments.

Michael has been included in Lloyd's List's top 100 most influential people in the Shipping world, and in the 2015, 2016, and 2017 top most influential people in the tanker industry by Tanker Shipping and Trade.

* Inshore Ireland: asked the Department of Transport, Tourism and Sport to confirm the status of Ireland's ratification of the Torremolinos International Convention for the Safety of Fishing Vessels 1977, following the Cape Town Agreement (2012) on the implementation of the Provisions of the 1993 Protocol relating to the Convention:

DTTAS RESPONSE:

'Ireland has not yet ratified the Cape Town Agreement of 2012 (which has not yet entered into force) but has ratified the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977 (in January 2001). The fishing vessels covered by the Convention (those >24m in length) were the subject of an EU Directive in 1997 (Council Directive 97/70/EC as amended) which was transposed into domestic Irish legislation via S.I.s 417 and 418 of 2002 (respectively, the European Communities (Safety of Fishing Vessels) Regulations 2002 and the Fishing Vessels (Safety Provisions) Regulations 2002).

'A provision in Irish primary legislation is required before Ireland can ratify the Cape Town Agreement and preparatory work has commenced to that end. The Cape Town Agreement is one of a number of maritime conventions that is expected to be included in a forthcoming Merchant Shipping (International Conventions) Bill. The approach to be taken has been the subject of a Regulatory Impact Assessment published in January of this year (available on this Department's website here).

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