The Effects of the Recent Introduction of the ISM Code

BY

A Cubbin

(Director Of Marine Safety and Pollution Prevention, Maritime and Coastguard Agency UK)

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Thank you for inviting me to speak on the effects of the recent introduction of the International Safety Management Code. I shall use the opportunity to review the immediate outcome of the international campaign for implementation, and look at means to enforce ISM Code compliance to deliver improvements in standards of marine safety and pollution prevention. This includes exploring the potential of the marine insurance sector to influence safety standards in the shipping industry.

The ISM Code

Firstly, a few words about the objectives of the Code. The ISM Code was introduced in recognition of the key role of the “human element” in the safe operation of ships. It is widely accepted that 80 to 90% of accidents are attributable to human error, and that the “human element” plays a part in probably all incidents.

The task for operators is to minimise the scope for poor decisions or actions which directly or indirectly contribute to a casualty or pollution incident. The ISM Code helps operators to do this by the implementation of sound safety management practice. It sets out -

- safety management objectives,
- the principles on which a safety management system may be built,
- and its functional requirements.
- As a new chapter in the convention for the Safety of Life at Sea it also sets an international standard which passenger ships, bulk carriers and gas, oil and chemical tankers of at least 500gt were required to meet from 1 July 1998. For other cargo ships the deadline for compliance is 1 July 2002.

Compliance is confirmed by a Document of Compliance in respect of the Company and a Safety Management Certificate for each ship in their fleet issued by the flag State or organisation acting on their behalf.

Central to the development of a safety culture is the need for senior management to take responsibility for safe operational management within the company. Again the Code provides the means. It requires the company to link the master and crew of the ship to the company through a named contact ashore - the “designated person”. This person must have direct access to the highest level of management.
The arrangement doesn’t detract from the master’s responsibility for operations on board, which are clearly set out in the Code. But it does allow managers and owners to be held to account for their actions or omissions in relation to safety management. It is also possible, in the future, that the legal consequences of ignorance by senior management of serious defects on board ship will be as severe as the consequences of being informed and failing to act.

**Implementation**

The ISM Code provides a means of changing the culture in managing safety, but it can only succeed in doing so to the extent and standard of implementation.

When the 1 July deadline arrived an estimated 87% of the 12,700 vessels subject to the Code had gained compliance based on the results of an IMO survey of flag State implementation. The outcome of round one of implementation was therefore successful beyond the limits of earlier predictions in terms of actual numbers of ships complying. In making the announcement the Secretary-General of IMO gave credit widely to shipowners, managers, classification societies, insurers and regulators.

If successful implementation was a team game, responsibility for implementation lay squarely with shipowners and operators. Not only was the Code directed at their safety management responsibilities, but in our view it is the owner who is directly responsible for compliance with international conventions. So what does the success mean in terms of standards of operation by shipowners? An assessment in the leader column in Lloyd’s List of 1 July is probably a fairly good guide. It referred to “.. the large number of ships and owners whose need of the code is largely academic.” The companies have operated to high standards for many years and needed only fine tuning of operational procedures and collation of documents to gain ISM Code certification.

Then there are “.. owners [who] are far from substandard but tend to fly by the seat of their pants. They will clearly benefit from the compulsory orderliness of the code and the disciplines of its procedures. They will complain, but most will adapt, and the maritime world will be a safer place.”

It is our view that it is on this sector that the international campaign to persuade owners of the benefits of ISM Code implementation has had the most effect - backed up by a message of strong regional enforcement for the more reluctant. “Lastly there is the substandard and marginal sector, operating in markets and geographical areas where there is little regulatory supervision. It is this sector that ... will lead to the most detentions, and will, from today, be an even more legitimate target.”
Ships in this sector are likely to have escaped the first line of enforcement - the flag State. They pose a threat to health, safety and the environment, and at the same time their operations undermine the competitive position of responsible owners who have invested in compliance.

**Flag State responsibility**

It is the responsibility of the flag State to ensure that ships on their register comply with international standards on safety and pollution prevention. This is done by survey, and in the case of the ISM Code audit of the company and their ships, and the issue of certificates. Many flag States meet their responsibilities effectively. Others lack the expertise or delegate to a less than competent organisation. And some see the register simply as a means of generating income. They attract tonnage on to their registers by the double incentive of spending little on enforcement and charging lower fees.

**Wider enforcement**

Effective enforcement therefore goes beyond the immediate action of port States to force visiting substandard ships to comply with convention requirements. There is a need to put international public pressure on flag States unwilling to take on their responsibilities, coupled with technical assistance for those with the will but limited by lack of expertise. There is also an important role for the service sector of the shipping industry - insurers, brokers and charterers - who are in a position to exert commercial pressure on owners of substandard ships in order to marginalise their activities.

**Port State control**

Looking firstly at port State control - port State inspection is the most direct means of enforcing compliance where the flag State has failed to do so. It is the defence of a responsible flag State to the threat posed by substandard ships to its coastline and shipping industry. Or, as expressed in a leader in Lloyd’s List -

“.. a counsel of desperation that has been brought about by the inability of flag States to fulfill their convention obligations.”

The UK Port State Control regulations require detention of a ship subject to the ISM Code without a Document of Compliance and Safety Management Certificate on board. If there are no other detainable deficiencies the ship may be released in order to avoid port congestion, but it is then barred entry to European ports until the detaining authority is satisfied that it complies.
For example whether senior officers can identify the company responsible for the operation of the ship and the “designated person”, whether safety management system documents are in a working language or one understood by the crew, whether emergency drills and exercises are programmed, and whether the ship has a maintenance routine and records are available. The results of the 3 month campaign were issued in a press release at the beginning of this month. They show that 81 ships were detained with major non conformities in the safety management system, giving an average detention rate MOU wide of 5.1%. Further analysis confirms that bulk carriers have the highest rate of detention at 8%. This was perhaps predictable given their detention history and reported levels of compliance before 1 July. Apart from certification problems, failure of senior officers to identify the “designated person”, and lack of ship maintenance routines and records, are among the main areas of weakness in existing safety management systems.

Of flags with more than 10 ships inspected during the campaign, Turkey (16.4%), St Vincent & Grenadines (12.1%) and Russia (10.3%) had detention rates well above the average. A similar comparison of classification societies showed that ships accredited by Bureau Veritas (11.3%), Hellenic Register of Shipping (10.5%), China Classification Society (9.5%), Russian Maritime Register of Shipping (9.4%) and Lloyd’s Register (9.3%) all had above average detention rates. Clearly, there is no room for complacency. In the UK 6 ships were detained with ISM Code defects in the first 3 months of enforcement. All but one were bulk carriers, and all were audited by a reputable classification society. For example the Maltese ship “KYRENIA” was inspected and detained in South Wales in September. The DOC and SMC were valid until 2003, however there was a clear lack of maintenance of the ship structure and equipment. Ballast tank coatings were severely broken down, tank frames were wasted, and shell plating was so thin that it could be holed with a hammer.
Due to the number of safety equipment deficiencies a fire and boat drill were carried out during which a lifeboat gunwhale cracked and its engine was shown to be inoperative. A later drill requested by the class auditor was equally ineffective due to lack of control and communication, and it was only at the third attempt that a satisfactory drill was witnessed. When other deficiencies had been remedied the vessel was allowed to make a single conditional voyage to a repair yard in the MOU, with an inflatable rescue boat and additional liferaft in place of the damaged lifeboat. The vessel was to be redetained on arrival and banned if the terms of release were broken.

In another case a Liberian bulk carrier detained with ISM Code deficiencies in July was reaudited by the classification society and subsequently committed to further audit in another 2 months, due to the nature of non conformities found. Our latest information is that the Safety Management Certificate has been withdrawn, the company and its ships are under scrutiny, and that the intention is to scrap the vessel. This illustrates the potential of the ISM Code, properly enforced, as a tool to weed out substandard ships.

While it is still too early to draw any firm conclusions the impression is that the message of strong enforcement has been effective, initially at least, in driving away non compliant ships. Whether they attempt to resume trading to MOU ports remains to be seen. However rigorous port State enforcement of ISM Code compliance has not ended with the campaign in September. Non certificated ships that do creep back will be detained and if necessary banned, and certificated ships will be checked for compliance with ISM Code requirements as a routine part of port State inspection.

**Insurers**

In terms of putting pressure on shipowners to promote quality shipping and to marginalise the operation of substandard ships, the insurance sector of the shipping industry is probably uniquely placed. Ships will trade without insurance in only extreme economic circumstances. The majority of owners are open to influence by adjustment of the conditions of insurance cover - by requiring a higher premium or higher excess payment, or by a refusal to accept the risk at all.

Assessment of the risk will usually take account of the owner’s claim record as well as particulars of the ship and area of operation. Depending on the type of cover the underwriter will also be interested in the “human element” in ship management. While this may be more difficult to assess, ISM Code compliance is an obvious starting point and it is encouraging that a few underwriters as well as mutual insurers require ISM Code certification as a condition of compliance.
Ideally, the conditions imposed by insurers will reflect as closely as possible the actual risk. In practice, it is recognised that insurers and reinsurers operate in a sophisticated, regulated and above all highly competitive market in which an individually held tough line could result in loss of business to a competitor. It is also accepted that some players will have a greater ability than others to influence practice and management within the industry, depending to some extent on whether or not there is direct contact with the shipowner. Cargo owners and reinsurers may have little if any direct contact with the owner. At the other end of the spectrum Protection and Indemnity Clubs will have a direct interest since owner members are both the insured and the insurer. This is reflected in the lead they have taken on issues which directly influence safety standards - requiring ISM Code certification as already mentioned, and advising members of the need to take reasonable steps to avoid “Year 2000” date recognition problems in electronic systems.

Insurers are also in a position to influence decisions made by other sectors of the industry. To quote Lord Donaldson’s report “Safer ships, Cleaner Seas” - “Insurance represents not one lever but several.”

While it is accepted that shipowners, insurers, shipbrokers and financiers are in the business of commerce not regulation, nevertheless, there is a shared interest in removing substandard ships and their operators from the markets - both to improve safety and to provide a level playing field for responsible owners. This common interest has been the basis of joint UK and European Commission meetings with the industry in London and Lisbon on cooperation to promote “quality shipping”. The discussion will continue at a further meeting in London on 14 December 1998 hosted by the Minister Glenda Jackson.

For their part, regulators within the Paris MOU have recognised the need of industry for access to reliable, up to date information in order to inform their decisions on who they do business with. The questions that will need to be addressed to deliver this - legal liability in relation to commercial information, technical barriers, and terms of access or exchange of data are currently being examined by a task force within the Paris MOU. The task force is expected to report in the first half of 1999.
Summary

Finally, to sum up the main points of this talk -

• the first round of implementation of the ISM Code has been successfully completed, even to the extent of being called an “anticlimax” in the press.

• some questions remain over a proportion of ships that have escaped compliance, or failed to implement to the standard required by the Code. Competent port State authorities, and the Paris MOU region in particular, will continue to provide strong enforcement and put pressure on ships registered with flags unwilling, or too incompetent, to enforce compliance.

• The UK will work with responsible sectors of the shipping industry to promote quality shipping and remove substandard ships and their owners from the market. Both to provide a level playing field for responsible operators, and to support the objective of gaining lasting improvements in standards of safety and pollution prevention.