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‘ReflectionISM and PredictionISM – whatever next!’ Personal cogitations on ISM

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Introduction

In the final run up to the 1st July 1998 deadline of the Phase I implementation few believed that the verification and certification of the 12,000 or so Tankers, Passenger ships and Bulk Carriers would be completed in time. The IMO made it very clear there would be no extensions and Port State Control made loud and clear statements that they intended a Concentrated Inspection Campaign with zero tolerance for non-compliant ships. In the way only the shipping industry appears able to pull off – certification appeared to be miraculously completed by the due date and there were in fact very few detentions or serious problems with non-compliant ships.

Similar fears were expressed as the Phase II deadline loomed over the horizon, on 1st July 2002, when another 13,000 or so ships had to comply. Again, the event passed without major disruption to world trade.

Some believed that that the ISM Code was to be the Panacea – to cure the disease and illness of the shipping industry – an illness which manifested itself, in the immortal words of Sir Barry Sheen – in his findings following the enquiry into the capsizing of the Herald of Free Enterprise in 1987 –

There was “a vacuum at the centre”, he declared, and the directors had no comprehension of what their duties were: “From top to bottom, the body corporate was affected by the disease of sloppiness.”

This specific, penetrating, observation became more generally summed up in a diagnosis that the shipping industry had lost its ability to manage safety by itself – and the ISM Code was prescribed as the medicine.

For others, the ISM Code was perceived to be a ‘watershed’ event – where we would change direction and move away from the old approach of trying to manage safety through an ongoing process of developing more and more rules and regulations – amending them each time something else went wrong – or issuing a completely new, enlarged set, if something really big went wrong – to a management system approach by way of setting goals to achieve an end result and following a cycle of continual improvement to make progress towards those goals.

Over seven years have now passed since Phase One deadline and over three years since Phase Two deadline. I have been asked to reflect upon some of the

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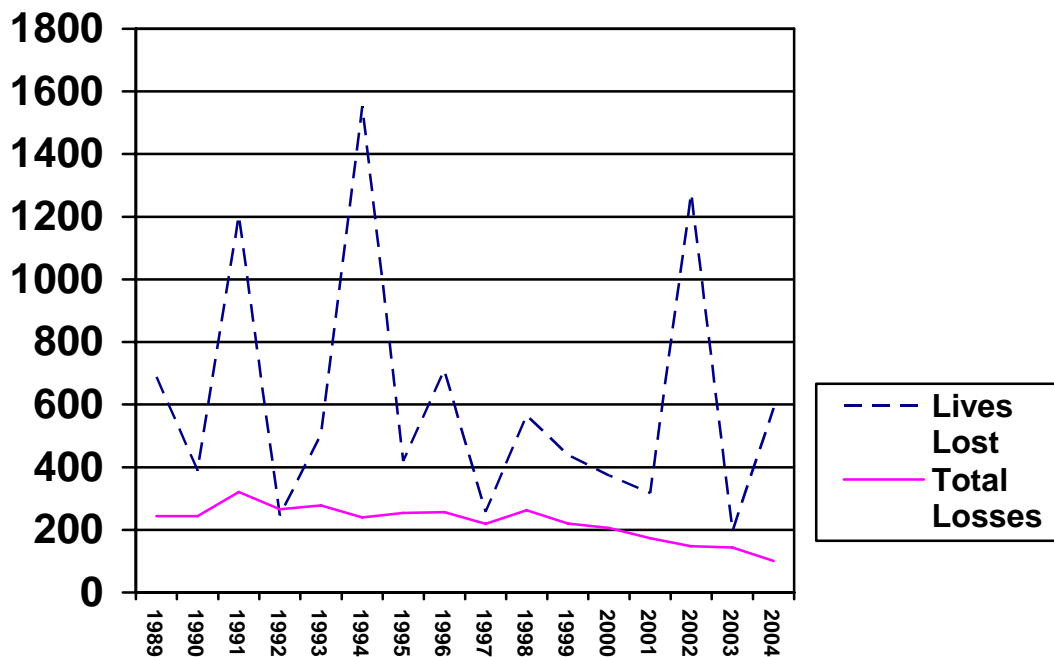
achievements and some of the disappointments of ISM implementation so far and to predict where the ISM Code might be going in the future.

In an article such as this I can but scrape the surface but I hope, through a series of articles during this forthcoming year, to expand upon some of these observations and reflections and explore the issues in more depth. I would also urge the interested reader to consult the second edition of 'The ISM Code – A Practical Guide to the Legal and Insurance Implications'² which was published in November 2005 in which I reflect upon a wide range of related issues.

Looking back over 2005 – and beyond

The 'big question' which will no doubt be on many readers minds as they start to read into this article would take the form of: *'Have the objectives of the ISM code been met? Are ships safer? Are sea's cleaner?'* Unfortunately I have worked with lawyers for far too long – for the answer I will give will be the classic lawyers answer: *on the one hand yes but, on the other hand no!*

What do I mean by that? Consider the graph below which has been derived from statistics posted on the IMO website www.imo.org covering 'very serious and serious casualties'. The graph shows a clear and steady decline in the number of total losses since ISM Phase One although it also evidences alarming numbers of people who are still being killed every year as a result of maritime accidents.



Statistics on total losses of ships of 100 GT and above and losses of lives as a consequence to the total losses.

It certainly seems to be the case that many maritime lawyers recognise that there is not so much legal work around – particularly on the collision and stranding side of the

² Anderson, P 'The ISM Code – A practical guide to the legal and insurance implications' Published by Informa (www.informalaw.com/ismcode) – 2005 – ISBN 1 84311 471 2

business. There have in fact been very few legal cases passing through the Courts where ISM issues were under consideration. Can we make a legitimate jump to a conclusion that this is good evidence that things have improved – and measurably so – since Phase One? We need to tread carefully! During the period under consideration there has been very little by way of statistical data coming out of the P&I liability insurers which might indicate a trend (with the exception of the Swedish Club shortly after implementation) but we have seen consistent and significant increases, year on year, in the premiums being charged. At least the value of claims is not on the way down. Similarly, Port State detentions do not appear to be dropping rapidly.

The reality is that we do not yet have meaningful statistics which demonstrate any clear global or industry wide trend in accidents or claims which could be directly attributable to ISM implementation. Although such results and trends can be seen very clearly in certain individual ship operating companies. However, in the wider, global context, we need to recognise and understand that the statistical data we are looking for, and more-so its interpretation, is complex and complicated. There have been many other factors having potential influences on the safe operation of ships in addition to the ISM Code, such as:

1. *Off the shelf – ready made Safety Management Systems.* Many ship operators seemed to have had difficulty making that watershed transition and seemed to still want other people to tell them what they should be doing, and how to do it – and they bought ready made systems. I have still to come across one of these ‘off the shelf systems’ which really works. Some ship operators still seem to throw lots of money at such systems each year – to maintain their Documents of Compliance and Safety Management Certificates – but without getting any real ‘payback’. These ready made systems seem to create large volumes of paperwork, lead to the development of a ‘ticking the box’ culture – which does not lend itself at all well to the development of a safety culture.
2. *ISPS and Security Management.* Following the terrorist attacks on New York on 11th September 2001 – security suddenly became ‘the’ major maritime issue and the ISPS Code was progressed through IMO at record speed. It appears in many companies, however, that the ISM Designated Person suddenly found himself / herself with a new role – as Company Safety Officers with a whole lot more manuals and procedures to prepare and put in place. The Master, officers and crew onboard ship found themselves with a whole lot more duties to undertake. Unfortunately, for a time at least, the ISM implementation had to be put on one side and neglected whilst the ISPS requirements were put in place in advance of the rapidly approaching deadline.
3. *STCW Code and Convention.* Whilst the ISM Code provides a structure for managing safety – much of the real detail of what is required by way of building blocks is contained within the STCW Code and Convention – and thus should not be underestimated. The full significance of STCW was starting to be felt and understood during this period under consideration.
4. *Charterers vetting inspections.* It is probably fair to say, if we were honest, that the charterers vetting inspector has had as great an influence, if not more, than ISM ‘inspectors’ in encouraging some ship operators to improve the

standards of their ships and their crews. If it is helping to achieve the correct goals – so be it!

5. *Boom time for shipping.* During the latter part of 2004 and into 2005 many sectors of the trading ships of the world encountered an unprecedented boom time of high charter and freight rates. Unfortunately, few ship operators appear to have ploughed much of this additional earning back into education, training, recruiting additional staff or maintenance. The ships were worked extremely hard when every hour an charter was worth a lot of money – there was no time for stopping for maintenance!
6. *Boom time for building.* We have also seem unprecedented new building orders placed in recent years. This has to be good news for the industry – provided there is not going to be surplus capacity as a consequence – and provided there will be qualified, experienced and competent crew, in sufficient numbers, to man the new ships. Quite serious alarm bells are sounding on the latter point!
7. *Criminalisation of seafarers.* A most worrying trend has been developing – which appears to be fully endorsed by certain leading democratic governments – of using seafarers, particularly the Master, as a political pawn – by holding them hostage until money is paid over. I fear that those politicians and burocrats have no comprehension of the potential damage they are doing – by their actions I am in little doubt that they are seriously raising the risk levels of making the ships unsafe and the seas unclean – because they are deterring the right people from commanding the ships both now and in the future.

Looking forward to 2006 – and beyond.

Let me now bring out my crystal ball and embark upon an exercise in prediction of future developments in ISM.

I am aware of some individuals and organisations who want to change the structure of the ISM Code. For example it appears that there are some who blame the ISM Code for producing too much paper work, a ‘tick box’ mentality, a removal of the need for professional seafarers. Such ideas demonstrate an utter lack of understanding of the nature and content of the ISM Code. What those individuals are probably referring to are very badly constructed Safety Management Systems. There are others who want to somehow ‘bolt on’ the ISPS Code as an Appendix to ISM. Again I fear that such ideas demonstrate a lack of understanding of the nature of management systems in general and the two Codes in particular. What occurs to me is that there is still a considerable amount of work to undertake, in a number of areas of the industry and related professions in education in the basics of management systems.

There is one aspect of the Code, in particular, which I do believe is worth developing and clarifying – that is to introduce Risk Assessment and Risk Management in a more formalised way as one of the standard proactive accident prevention tools. The Code has been interpreted by many, including myself, as implying the use of formalised risk assessment – but I concede that it is open to interpretation.

However, on the whole, my own belief is that we should not try to introduce any wholesale changes at this stage but, rather, try to make the Code work as it was originally set up to do. We should identify industry best practices amongst those Companies who are seeing the tangible and measurable benefits from a properly implemented SMS and share those lessons for the mutual benefit of all.

There are a number of major hazards which pose very serious threats to the safe operation of ships and which must be addressed if the ISM Code is to stand any chance of succeeding in fulfilling its objectives. This article will not attempt to explore the issues in detail but simply stated they are:

- Fatigue
- Safe manning levels
- Recruitment of seafarers for now and for the future.

There are of course many other important issues which need addressing but, in my view, if these three factors can be properly addressed then many of the other potential problems will be resolved as a consequence.

Although it may be nothing more than a question of language, I believe we need to move away from the use of the term 'no-blame culture'. This has led to some serious misunderstandings across the industry since a literal interpretation is naive and irresponsible. A seafarer is no different from any other citizen and should not expect any special privileges by way of exoneration from liability for their actions. They have a duty of care and must remain responsible for their own actions. If they knowingly and deliberately do something, or fail to do something, which causes injury, harm or damage then of course they must face the consequences of their actions. However, what must be recognised and understood is that there is nothing to be gained by inflicting or imposing unreasonable or unrealistic punishments on seafarers, or anyone else, if they happen to make a mistake which results, or might have resulted in injury, harm or damage to people, property or the environment. Rather, these should be identified as learning opportunities and the appropriate response is to analyse what happened and what steps need to be taken to prevent the incident being repeated. That may require additional training or experience for the individual, it may require amendment to operational procedures, it may require structural or technical changes to the design of a piece of equipment or the ergonomics of the working environment. That is the nature of ISM. A much more appropriate expression, in my view, is 'just culture' where 'justice' is the key factor rather than 'blame'.

I believe much more needs to be done by way of providing education and training to seafarers and shore staff alike in the basics of the 'systems' approach to management, goal setting and the correct use of a risk assessment techniques – which should significantly reduce the amount of paperwork many Companies seem to have created within their Safety Management Systems.

During 2005, the Secretary General of IMO, took the initiative to commission research into the effects of the ISM Code since implementation. This was an excellent and most timely initiative and Admiral Mitropoulos is to be applauded and congratulated for instigating such a project. A multi-disciplinary working group was

set up which brought together many interested stakeholders with relevant expertise. I was honoured to have had the opportunity of serving as a member of that working group. At the time of preparing this article the final draft of the findings and conclusions from that research are being considered by the Secretary General. It would therefore be inappropriate for me to comment on any specific aspect. However, I believe the momentum of that initiative must continue under the splendid leadership of the IMO. It must continue to bring Administrations, the shipping industry and related bodies, seafarers organisations, marine insurers and P&I Clubs and other stakeholders around the table – to work together – to share experiences for the common good of all involved in making ships safer and seas cleaner – by ensuring that the ISM Code continues to be better understood and implemented.

May I wish all in the Industry and safe and prosperous 2006.

Dr. Phil Anderson is widely regarded as an international expert on the ISM Code. He is a qualified Class One Master Mariner but spent 25 years working within P&I Clubs - not only handling a wide range of accidents and claims but also analysing and understanding why they occur and what can be done to prevent them. He now runs his own specialist ISM consultancy company 'ConsultISM Ltd.' www.consultism.co.uk He is also President of the international professional body for ships Captains and others in control of seagoing craft – The Nautical Institute.