

IMO's impact on insurance

Have IMO Conventions really improved maritime safety, and is there a way for insurers and IMO to work together effectively? By Heinz Gohlish

The International Maritime Organisation's (IMO) principal objective is to develop international standards for the safe operation of ships and crew. It also provides an international forum for all member states to participate in the promotion of maritime best practice.

Yet there is also a commercial dimension to the implementation and maintenance of effective minimum standards. In addition to IMO, marine insurers have long been instrumental in defining minimum operating and technical standards through their own networks of surveyors and through the use of premium ratings or non-availability of insurance to enforce compliance. This works reasonably well for most operators but there is no safety net to catch the operator outside the international insurance network or the insurer who may be less than diligent in evaluating acceptable standards. An all-embracing international system of standards is required and this task was taken on by IMO.

It is clear to see the commonality of interests between marine insurers and IMO and how the two bodies can help each other. Insurers gain a comprehensive set of standards by which to evaluate prospective clients and IMO has the commercial stick to enforce their standards around the world. But does it always work that way? Insurers have been notoriously reluctant to get involved in the policing of international standards and have limited their passive support to their own specific interests; IMO appears to feel more comfortable dealing with state officials rather than the business community.

The current IMO initiatives are far-reaching and potentially highly beneficial to the marine insurance industry. A natural synergy will no doubt develop, and this should be particularly noticeable in those areas of interest to tanker operators. These include SOLAS, the fitting of Automatic Identification Systems (AIS, effective for all tankers over 300 gt by July 1, 2003), provisions for inert gas systems, mandatory towing arrangements and segregated ballast tanks. The following are the current IMO initiatives that address tanker safety issues in some detail and closely overlap with the requirements of marine insurers.

The ISM Code

The implementation of the International Safety Management (ISM) Code is effected through Chapter 9 of the International Convention for the Safety of Life at Sea (SOLAS) 1974. The SOLAS convention and its amendments are brought into force by the national legislation of the individual flag states, thus making ISM compliance mandatory.

This code establishes an international standard for the safe management and operation of ships with the primary objective being maritime safety and pollution prevention. The means of achieving this objective is through a Safety Management System (SMS).

The SMS requires the Shipowner/operator to "develop and implement safety procedures to ensure that conditions, activities and tasks, both ashore and afloat, affecting safety and environmental protection are planned, organised, executed and checked in accordance with legislative and company requirements". The code is concerned only with the management of vessels at sea and does not address sanctions, compensations or liabilities.

The ISM Code already applies to all passenger vessels, oil and chemical tankers, gas carriers and bulk carriers over 500 gt. All other ships and mobile offshore drilling units over 500 gt will need to comply by July 1, 2002. Considerable forward planning

is required to attain accreditation with a typical minimum period being 6 months. It is expected that 70 per cent of the world's shipping will be subject to the code.

STCW

This current convention is an amendment to the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention). The '78 convention entered into force in 1984 and reflected the highest practicable standards which could be globally agreed at the time of its adoption. The original convention, however, remained vague on specific standards and relied on wording such as "to the satisfaction of the Administration". The resultant wide interpretation of standards required a further review to make the convention effective. In 1993 the IMO Maritime Safety Committee (MSC) gave this review a high priority. No changes were proposed to the actual articles of STCW 78; only the annex was amended. This allowed the 'tacit acceptance procedure' to be activated, i.e. parties to the '78 convention adopted the '95 amendments automatically unless they lodged an objection. The 1995 amendments replaced the entire annex to the convention. A key improvement was the increased emphasis on competence rather than knowledge. The convention annex addresses, inter alia, such topics as radiocommunications, special training requirements for personnel on certain types of ships, emergency procedures, survival functions and watchkeeping standards. Many marine training colleges therefore need to modify their standards and procedure to be consistent with the minimum STCW 95 requirements. A common shortfall, for example, is a lack of Global Maritime Distress and Safety System (GMDSS) and Automatic Radar Plotting (ARPA) training facilities.

STCW 95 has required full compliance since February 1, 2002, although an extension of six months has been granted during which period only a 'warning' may be issued. A crucial issue will be the policing of compliance. IMO will depend on Port State Control (PSC) to take on the day-to-day monitoring of STCW certification, duly backed by state legislation. Although there was a long introductory period, IMO placed pressure on institutions to comply soonest by publishing an early list of those states which fully comply: the so-called 'White List'.

MARPOL

The International Convention for the Prevention of Pollution by Ships (MARPOL 73/78) includes regulations regarding the subdivision and stability of tankers which are designed to ensure that the ship can survive after a collision or a grounding. One such provision is that ballast tanks (either empty or filled with water) are located within the vessel where the impact of a collision or grounding is likely to be greatest. MARPOL also bans the carriage of oil in the forepeak tanks. Pollution liability insurers will immediately benefit from these policies.

The IMO double-hull initiative is more controversial. All new tankers over 600 dwt contracted before July 6, 1993 were required to be built with double hulls. Older tankers were to be phased out gradually or converted within a time scale consistent with global shipyard capacity. The latest phase-out schedule was revised in April 2001 as laid down in Regulation 13G of the Amendments to Annex 1 to MARPOL 73/78. This will see all single-hull tankers eliminated by 2015, although flag states have some discretion in extending this to 2017 - subject to a Condition Assessment Scheme (CAS).

Further IMO initiatives can be expected in the handling of oil spills resulting from a recent forum on High Density Oil Spill Response. This will be taken up by the Marine Environment Protection Committee (MEPC) in their October 2002 session and will likely result in guidelines on the containment and recovery of high density oil.

Hazardous and Noxious Substances by Sea (HNS)

The IMO assembly adopted the 1996 HNS Convention in November 2001. This convention addresses substances such as chemicals and therefore covers areas not envisaged by MARPOL. In approach, it is similar to the Civil Liability and Fund Conventions in that it establishes a fund up to SDR 250 million (about \$365m) for both shipowners and cargo owners. One difficulty may be that the convention imposes a compulsory insurance requirement on the shipowner. Yet another document and another check will be required. Twelve states (including four with over 2 million gt of shipping each) are required for ratification. To date, eight states have signed the convention but only two have become party to the convention. Implementation will take some time yet.

Results

Have these conventions had the desired effect of raising safety standards at sea? For ISM we have now had almost four years of experience for some types of ships (phase 1), including all tankers, and are only a few months away from compliance for the remainder (phase 2). Opinions about the success of the Code, or otherwise, are mixed. Comments range from significant reductions in accidents to nothing more than an additional burden. The Swedish Club recently conducted a survey which suggests that shipowners expect a 30 per cent reduction in claims.

It will come as no surprise that a shipowner's attitude toward ISM may strongly influence its usefulness. There is also the perception that small shipowners find it more difficult to comply with the increased administrative and procedural standards than larger shipowners or managers.

Certainly, the Code has raised the awareness of safety procedures for ship operators and has forced the issue into the front line of management best practice. In addition, it stipulates a more precise set of standards for PSC authorities. On balance, the impact must be positive, but perhaps not to the extent that was initially hoped.

The effectiveness of STCW can be measured by the 'White List' of compliant countries. The first list was published in December 2000 and included 72 countries, all of whose training institutions were reviewed by IMO. A further 10 applicants were initially rejected but 23 countries were then added to the list in June 2001. There was considerable pressure on IMO to include major seafarer producing nations such as the Philippines, Indonesia and India.

But have standards increased? Again, the answer appears to be a qualified yes. IMO invested a great deal of time and resources in assisting marginal countries in achieving the required standards and obtaining the minimum level of equipment. In general, training institutes (if not always their own governments) were highly conscious of the new standards and there was a heightened awareness of minimum requirements for certifying seamen. Nevertheless, if everyone will be included, what has been achieved?

Continuing work

And so IMO initiatives need to continue - convention, ratification, compliance, policing and amendment. Whether it is ISM, STCW, MARPOL or HNS, the final effectiveness depends not only on the convention itself but also on the willingness and ability of IMO, national governments and commercial institutions to enforce standards around the world on a continuing basis.

IMO states as a matter of policy that the support and work of insurers is important. A number of insurance bodies representing various interests such as IUMI, IG of P&I Clubs and CMI, have consultative status at IMO. They can attend meetings and participate as observers.

And finally, what of the marine insurers? With the market hardening and premiums increasing after a long period of freefall, will underwriters finally confer tangible benefits on those operators who demonstrate a strict compliance with IMO

initiatives? One hopes that they do not fall back on the evasive 'wait for the record to improve' in an attempt to avoid the issue. Further, it is reasonable to expect insurers to ITALICS actively ITALICS enforce minimum standards, that is on acceptance of the risk and not merely post hoc to avoid paying a claim.

IMO deserves the direct support of the commercial insurance market in its efforts to raise the operating and technical standards of ship operators. The benefits are self-evident and the good operators will be more likely to see a level playing field.