

Potential problems and solutions for implementing international and national regulations and rules to comply with the objectives of a Maritime Safety Management System

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ABSTRACT

After an international convention coming into force, the most important thing that the contracting party is going to do is the implementation of the international conventions. Due to the various reasons, sometimes some international and national regulations could not be implemented properly, as a result, it is not possible to achieve the original objectives of the conventions. Therefore, how to implement the related conventions is the key issue in the maritime community. This paper is going to analysis the potential problems existing in the implementation of the international convention and national regulations, and points out the solutions.

The potential problems include the following aspects:

- @ Inadequate financial support
- @ Lack of public awareness
- @ Insufficient enforcement by the Administration
- @ Consideration the interests of the country

The solutions will focus on the following areas

- @ The Flag State Responsibility
- @ The Port State Responsibility
- @ The Classification Society Responsibility
- @ The Training Institutions Responsibility

This paper will also highlight the Port State Control(PSC) regime in the implementation of the conventions, which includes the positive and negative impacts of the PSC, the inter-relationship between Flag State Control and PSC, and the future development of the PSC in the implementation of the international and national regulations.

1. Introduction

Since the foundation of the International Maritime Organisation(IMO), there have been a number of international conventions and regulations being drafted and finally being ratified by sufficient contracting parties. However, the marine disasters have not decreased as expected. Obviously there are many reasons, one of the reasons is the improper implementation of the international conventions and national regulations. Therefore, it is quite necessary to find a way to overcome the problems for the implementation of the international and national regulations and rules.

2. problems for the implementation of the international and national regulations and rules.

2.1 inadequate financial support

inadequate financial support is the common problem for the implementation of the international and national regulations and rules in the world, particularly in the developing countries. Maritime industry needs quite large investment. If the economy of a country is slump, it is not possible to invest a lot of money in the maritime sector, as a result, the international and national regulations and rules unable to be implemented properly. For instance, the major problem of Annex II of MORPOL73/78 concerned reception facilities, the provisions of which was crucial to the effective implementation of the regulations. Reception facilities for chemicals are more expensive and complicated than those designed for the reception of oily wastes, since the wastes they are required to deal with are much more varied. There is also little opportunity for recycling them. As a result, governments and port authorities were reluctant to provide such facilities.

Another example is the lack of training facilities for marine officers. With the development of the technology of marine simulators, more and more training institutions are using the marine simulators to train the trainees in accordance with the requirements of the STCW78/95. Some marine colleges, particularly in developing countries, could not purchase such kinds of marine simulators due to short of money, therefore the STCW78/95 Convention is unable to be implemented properly.

2.2 Lack of public awareness

Sometimes the publicity did not pay close attention to the international and national regulations and rules due to lack of awareness, particularly to the marine environmental issue. in that case, it is not easy to fully implemented the regulations. This is another problem. So the fact that MARPOL measures have essentially been disaster-led is not necessarily a bad thing. The impact of the public outcry over oil slicks or tar balls on beaches has been to ensure that oil majors who transport crude oil around the world are willing to invest in safety and pollution prevention features-because an accident, apart from its costs in human life or physical terms-could cost them dearly in bad publicity.

2.3 Insufficient enforcement by the Maritime Administration

Some Administration did not take sufficient measures for the enforcement of the implementation of the international and national regulations and rules due to lack of inadequate infrastructure, as regards organisation and personnel for ensuring proper standards of maritime safety on board ships and prevention of pollution from ships. Sometimes the national legislation could not be updated.

2.4 Consideration the interests of the country

Due to the historical reasons, the average age of the national merchant fleet is very old, which makes some of their vessels very difficult to comply with the present international and national regulations and rules. However, the national government is unwilling to eradicate such kinds of substandard vessels for the consideration of the protection of its national maritime industry. Under such kind of circumstance, the international and national regulations and rules could not be implemented properly.

3. The solutions for the problems for the implementation of international and national regulations and rules

How to tackle the foresaid problems is the key issue for the improvement of the implementation of the international and national regulations and rules. The solutions will focus on the following areas:

3.1 Flag States Responsibility

The UN Convention on the Law of the Sea(UNCLOS)establishes the fundamental principles and thereby makes it clear that having a shipping register is not an unfettered right of a sovereign state but one which is qualified as a result of the obligations imposed on the state, especially with regard to ensuring compliance with international minimum safety , pollution prevention and social standards.

The duties and responsibilities of flag states are firmly established in international law and provisions are binding all states. All flag states should abide by their international obligations and take the necessary enforcement measures so as to secure the implementation of the international conventions by vessels flying their flag.

The efforts of Flag States are of primary importance in ensuring that ships conform to international safety standards such as the ISM Code. That is why the Maritime Safety Committee of IMO is currently looking into improving Flag State implementation of the main IMO safety conventions through its FSI Sub-Committee, as well as focusing on streamlining the rights and obligations of port states.

The Flag State must be responsible for the following aspects in respect of the implementation of the international conventions and national regulations efficiently and sufficiently.

3.1.1 Establishing the necessary national legislation to guide proper implementation of the international conventions

it is the obligation of the Flag State to draft the national legislation for the implementation of the relevant international maritime conventions. No IMO Conventions pertaining to maritime safety or marine environment protection, except the International Regulations for Preventing Collisions at Sea, is capable of being properly implemented without detailed regulations or rules. From a mere legal point of view it may seem adequate if there is a piece of legislation declaring an IMO Convention as national law. A number of developing countries did in this way.

3.1.2 Establishing control mechanism to ensure the international conventions being properly implemented

a large number of Administration have delegated fully or in part their statutory work to Classification Societies. Even if an Administration decided to delegate their full work to the Classification Societies, the necessary legislation must be developed and adopted and some guidance must be given by the Administration to the Societies. The Administration must establish some control mechanism to be able to monitor the work being carried out on their behalf. Each Administration must be aware that the responsibility can never be delegated to other parties such as the Classification Societies. It is always the first responsibility of the Flag State to ensure ships flying its flag to implement the international conventions.

3.1.3 Taking measures for enforcement of the implementation of the international conventions

Flag States should also consider taking additional measures such as bringing proceedings against substandard vessels flying their flag, and imposing penalties of adequate severity to discourage such violations of international minimum rules and standards. The Flag State must be aware that Port State Control can never substitute the Flag State though sometimes the Port State can find the substandard vessels and force them to take appropriate corrective measures to meet the requirements of the relevant conventions.

3.1.4 invest in the maritime sector

due to the foresaid reasons, one of the problems in the implementation of the international and national regulations is the lack of money, so it is the Flag State's obligation to seek money for the investment in the maritime field in order to fully implement the relevant international and national regulations and rules.

3.2 Port State Responsibility

Port State Control(PSC) which means the inspection of foreign flag vessel visiting national ports has been defined as the last safety net in maritime safety. PSC is recognized as being a step in the right direction towards the eradication of substandard ships, when it is carried out in accordance with IMO Assembly resolutions and recommendations.

Port State Control is described as a secondary tier of enforcement, the first responsibility for compliance with international convention standards remains with the Flag State. Port States are not obligated to inspect foreign ships, but do so in the interests of safety and pollution prevention. While Flag States are responsible for the enforcement of IMO Convention, PSC is seen as fulfilling a caretaker role in terms of supervising the application of Conventions. Port State Control aims at eliminating the operation of substandard ships but it is not a substitute for the Flag State's responsibilities. The increasing failure on the part of some Flag States to effectively implement and enforce international standards for safety and pollution prevention has led to the increased strengthening of the role of the Port State as a policing mechanism for the shipping industry and a "safety net" for the Flag State.

In recent years, Port State Control has become a key element in singling out unscrupulous operators and eventually eliminating substandard vessels. It is now commonly acknowledged that Port State Control will play an important role in determining whether the implementation of the international conventions on board ship is as effective as desired. For instance, the Port State Control Officers (PSCO) will verify the Certificates of the ISM Code such as the Document of Compliance (DOC) and the Safety Management Certificate(SMC) on board the ships which have to comply. If the PSCO has clear grounds for believing that the master and crew are not familiar with essential shipboard safety procedures, the operational drills and demonstrations may be required. If the operational proficiency of the crew is not of an acceptable level, the ship may be detained. This decision will be based on the opinion of the PSCO.

3.3 Classification Societies Responsibility

the greatest contribution to improve maritime safety can only come from higher conformance by the world fleet to recognised IMO Conventions and international standards. As the author mentioned before, much of the work of the Administration have been delegated to the Classification Society. So the Classification Societies must do their work in accordance with the relevant international and national regulations. For instance, many Flag Administrations have delegated the International Association of Classification Society(IACS) to issue the Safety Management Certificate(SMC) for ships due to lack of resources, and some Flag Administrations also delegated the IACS societies to issue the Document of Compliance(DOC) for a shipping company. Therefore, the IACS must control the ISM Code certification delivery and ensure that the ISM Code certification services are under the responsibility and authority of the IACS member society and not of any of its subsidiary bodies or sub-contractors.

3.4 Training personnel

it is very important to improve the personnel awareness for the international and national regulations through training. Human factor is the one of the most important factors in the process of the implementation of the international and national regulations, particular for the seafarers. When reading reports on investigations into maritime casualties over the decades it becomes clear that most casualties have come about as a result of human failures. The statistical analyses suggest that around 80 per cent of all shipping accidents are caused by human error. The underlying truth is that the act or omission of human being plays some part in virtually every accident, including those where structural or equipment failure may be the immediate cause. It is the training institution's obligations to train the seafarers and let them better understanding the all relevant international and national regulations. For instance, the international convention on the Regulations for Preventing Collisions at Sea,1972 is the one of the most important conventions for the marine officers, firstly, they have to understand the exact meaning of each provision of the convention, then they could know why they should do so or why they should not do so during the navigation.

4. Conclusion

The Flag States, the Port States, the Classification Societies, Shipping Companies and Training Institutions shall work together for the fully implementation of the international and national regulations and rules. Of course, the first responsibility for the implementation of the conventions still remains in the Flag States.

Reference

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