

The Implications Of Shipping Laws And Practices Upon Onboard Operations - An Aspect Of Life-Long Learning For Seafarers

RUAN Wei and KONG Fan Cun
Shanghai Maritime University
Box 1054, 1550# Pu Dong Da Dao, 200135, Shanghai, China
weiruan@mmc.shmtu.edu.cn, fckong@mmc.shmtu.edu.cn

ABSTRACT

The maritime education and training system generally educates and trains seafarers in respect of maritime safety and pollution prevention conventions, seamanship practices, and navigational instrument operations, etc. However, many maritime disputes arise due to seafarers' insufficient knowledge and experience in observing shipping laws and practices. From the point-of-view of a shipowner, they are the equivalent of "an accident".

It should be realized that the performance of various shipping contracts and the observance of merchant shipping conventions, laws, and rules, and practices binding the carriers relies greatly on the seafarers onboard, particularly the shipmaster. Thus it can be expected that gaining this body of knowledge will become an aspect of life-long learning for seafarers as required by quality shipping.

This essay discusses some key points in shipping laws and practices based on maritime insurance, salvage, chartering, etc., and their influences upon practical onboard operations, briefing the roles of ship crewmembers in the shipping business, and attempting to illuminate another way of safety management and pollution prevention.

Introduction

Today, the maritime industry makes many efforts to achieve better safety and pollution prevention by means of better technologies and higher safety standards and requirements. Those technologies, higher standards and requirements are transferred to the crewmembers onboard by various management systems. However, efforts could be made for other ways of transference, i.e., affecting the activities of shipowners and carriers by shipping laws and practices, who will affect shipboard operations based on their labor relationship with crewmembers. On the other hand, in view of the position and roles of crewmembers in fulfilling the responsibilities of their employers, they should be familiar with key points of those shipping laws and practices.

1. The significance of maritime insurance upon shipboard operations

The reasons why the significance of maritime insurance upon shipboard operations should be emphasized are: firstly, because the control of the subject matter and the performance of the insurance contracts rely greatly on the crewmembers onboard. Ships always sail away from their homeland and their owners. Only when the crewmembers know of the key points of maritime insurance can they perform their duties well onboard, protect the interests of their owners, and minimize damages and losses at sea finally. Secondly, because the objective of maritime insurance is to deal with risks at sea, which is also dealt with by the risk management currently being actively introduced into maritime circles. Although there are differences between these two.

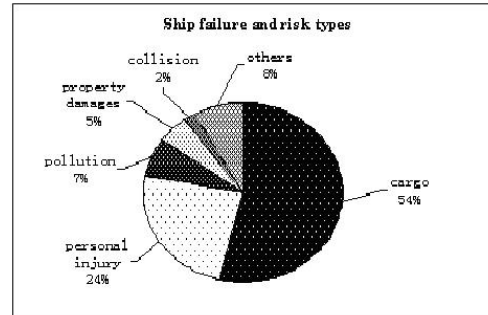
The former prevents maritime accidents by means of permitting ships to be operated within acceptable risks and the scheme of indemnity and compensation, while the latter uses risk management techniques such as risk management analysis and risk decision-making to handle risks. Thirdly, in mutual insurance, P&I clubs themselves are involved directly in safety management onboard through activities like ship visits, issuing various loss prevention reports, publishing operational guidance and booklets, etc.

1.1 Direct involvement in safety management

The P&I clubs are very experienced in handling maritime disputes and claims. Benefiting from their good communication network, their professional experience enables them to provide shipowners with good recommendations and technical guidance on safety management, emergency-handling, and legal assistance, etc. For instance, one of the largest clubs, the UK P&I club, has 7 offices and 13 representatives in Asia and more than 400 correspondents worldwide. It owns a strong professional team, keeping watch 24 hours a day to handle various emergencies in which its shipowners may be involved.

The P&I clubs pay more attention than hull underwriters to the daily operations of the ships entered, and thus conduct many activities such as executing ship visits, publishing loss prevention bulletins and videos (shipboard emergency plans, hatch cover maintenance, human factor analysis, ship survey reports, etc.), making seafarers' health reports, and providing statistics on the emergencies and accidents that involved its members. For instance, the UK P&I Club generated statistics for all damages and losses which were suffered by its members' ships of different sizes, tonnages, ages and flags. All this information is valuable for better safety management onboard (see table-1 as follows for the typical statistics).

Table-1 Ship failure and risk types



Source: UK P&I Club, 1999

Currently, the most important activity affecting shipboard operations is the ship visit, for which the ship and crewmembers should provide full co-operation. P&I UK launched the program in 1989/1990 with the aim to maintain high quality of the ships entered, to target sub-standard ships, to inspect the operations of ships entered, and to encourage the adoption of higher standards, etc.. More than 6000 visits have been executed since its first introduction. Meanwhile, more than 500 ship visits are taking place each year, enabling the club to effectively monitor the condition and performance of the ships entered.

Ship visits can normally be carried out in three steps:

- Education: let crewmembers know the roles of the club, causes of maritime accidents and usual ways to handle them;
- Loss prevention: discuss and analyze claims in the past and at present, reduce and prevent future claims by means of providing recommendations;
- Inspection: independent surveyors will inspect the ships and assess the cargo-worthiness, safe manning, services and maintenance, safety standards (particularly the crewmembers' safety experiences), pollution prevention measures, and operational performance of the ship.

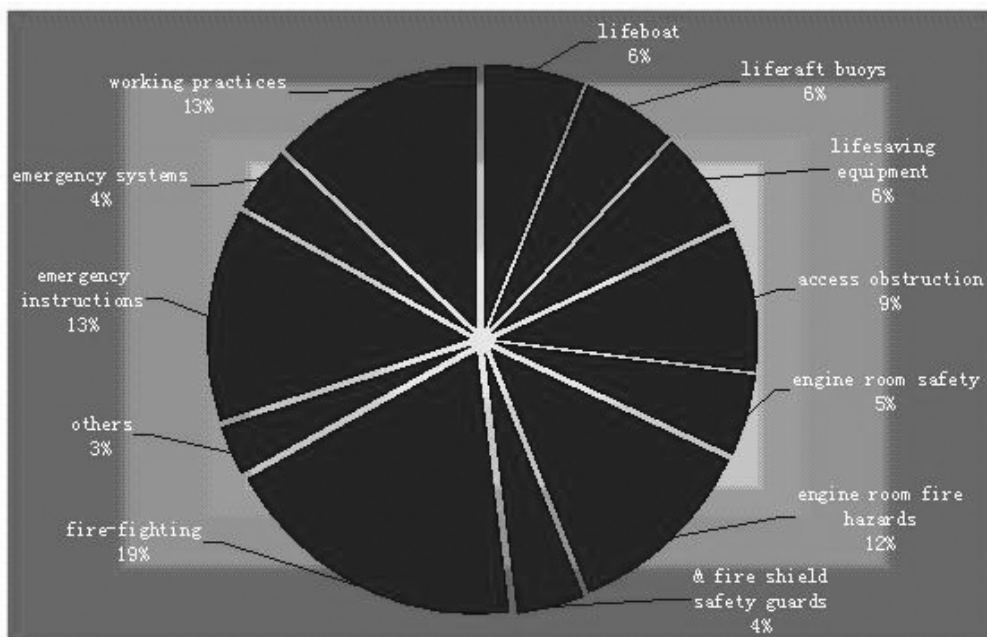
Through such activities, individual shipowners can make comparisons with other members in respect of safety levels. The observations, recommendations and assessments following

up the survey are divided into major items and minor items. The former gives rise to the attention of all members in the club while the latter deals only with crewmembers. A final report of such a survey is made showing the outcomes as Table-2 and circulated to members to raise their attention. Usually, the visit takes about 4 hours. But in case the surveyor thinks it necessary to conduct a more detailed inspection for the ship in question, the club could decide on a sound condition survey. Additionally, the port state control inspector and the surveyors engaging in routine cargo inspections could initiate such a visit as well.

duty of disclosure, description and warranty, etc. The former two are relatively simple - simply disclose all information to the insurer that the assured know or should know. But it is worthwhile to discuss the warranty, which relates closely to shipboard operations.

Warranty of seaworthiness is one of the most important warranties, and should be observed through the whole period of insurance. In the 1906 English Marine Insurance Act, seaworthiness should be warranted implicitly for voyage insurance. In case of time insurance, it should be kept at the time when she is insured.

Table-2 Shortcomings in safety standards and equipment



Source: Ship survey report, 1995, UK P&I Club

1.2 The impacts of key principles of maritime insurance

There are some important principles defined by the influential 1906 English Marine Insurance Act. One of them is the Utmost Good Faith principle. It requires each party involved in the maritime insurance contract to perform most faithfully in the whole period starting from the first stage of entering into the contract to its completion. In detail, it includes

As to the details of seaworthiness, the 1924 Hague rule illustrates: "...b). Properly man, equip and supply the ship; c). Make the hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation – 1924, Hague rule, article 3".

The shipmasters' responsibility in keeping seaworthiness is incorporated into some

national maritime laws, such as the article 513 of the Maritime Code of Germany. *The rules of Chinese Seafarers* to be issued also attempts to cover such a responsibility. In practice, shipmasters and officers should realize the importance of seaworthiness, know of the type of insurance (voyage or time), be familiar with the detailed requirements of seaworthiness, and record all measures taken for the maintenance of seaworthiness as stipulated by the SMS onboard.

For shipboard operations, another important warranty is the warranty of a ship's class. Ship's class indicates technical conditions, furthermore the capability of a ship coping with risks at sea, which the hull insurers and clubs stress as critical. All crewmembers, including the master, shall perform correctly such warranty. The case "*The Caribbean Sea*" (*Lloyd's Rep.338, 1980*) indicates the importance of observing such warranty. Vessel "*Caribbean Sea*" (classed by BV, the French classification society) grounded slightly during her voyage from port A to B, and then sank several days after leaving port B. According to the BV regulations, she was deemed to have lost her class at the moment of grounding even though it was just a slight touching, but she was allowed to maintain her class until arriving at port B. To maintain her as classed by the society and covered by the insurer in and after port B, the shipmaster in this case should invite surveyors of the society to inspect the ship and obtain a seaworthiness certificate. Luckily the master of the "*Caribbean Sea*" did so.

The problem is that many masters and senior officers pay little attention in reality to their society regulations, even those relating to the suspension, termination, or withdrawal of the ship's class. This may cause them to be unable to respond properly to accidents, and correspondingly may impose on their owners great risks of failure to be compensated for damages and losses sustained. A further question is that they may be unwilling sometimes to take the above-mentioned remedies even when they know

the regulations, when they call at small ports where classification society surveyors are not easily available and the damages to the ship are very small.

1.3 The impacts of stipulations on on-scene accident handling

The aforesaid are the efforts made by the insurers (including clubs) to prevent maritime accidents. Additionally, certain maritime insurance clauses stipulate the responsibilities of the insured in respect of accident handling, which are meaningful to shipboard operations. It could be summed up based on the above that the insured usually owe duties to the insurers and the clubs the duty of notification when risks increase, the duty of notification when dangers are incurred, and the duty of sue and labor. Although there are no express regulations requiring crewmembers onboard be held directly responsible, the performance of those duties rely greatly on those crewmembers staying onboard in the same risks with the ship and cargoes. Additionally, the correct performance of the above is essential for P & I Clubs to make professional and instant decisions as to the handling of emergencies. The safety of ships can thus be secured. Therefore, it is very important for crewmembers to bear in mind those duties and perform them properly.

1.4 The impacts of stipulations relating to the handling of claims after an accident

For instance, the "tendering" clause requires the shipmasters and their crewmembers to behave diligently like "uninsured owner" during the whole ship-repairing period. Also the "obligation of claim" clause, the hull underwriters or P & I clubs may make further claims at a later stage after they have compensated the owner if a third party is liable for the accident. To enable this to be done successfully, the owner should provide assistance to the underwriters or clubs. He should at all times promptly notify these parties of any information, documents or reports in his or his agents' possession, any knowledge

relevant to such casualty, event or matter.... He shall copy at the request of those parties all the relevant documents, and he shall facilitate the interviews conducted by those parties with all relevant personnel as well.

In a word, the underwriters and clubs have the right to use all the evidences collected by the owner. However, this relies on the crewmembers particularly the master and senior officers onboard. Theoretically, they have many advantages over other investigators such as the court and MSA officers to collect evidences properly, especially before and after the accident, because they are at the scene of the accident. This enables them to collect all kinds of evidence thoroughly in a professional and timely manner, as understood by the Nautical Institute "the master and senior officers onboard can play independent and decisive roles in collecting evidences." Furthermore, the process of handling a claim is usually very complicated. The formality relating most closely to shipboard operations is simple but important, i.e., the survey of the ship. It aims to ascertain the damages to or losses of the ship and cargo onboard. In detail, it includes the investigation of the extent of damages and/or losses, causes of the accident, salvage, sue and labor, collection of evidences, generating the survey report, etc.. All of these may affect the determination of the share of losses and responsibilities that each party shall take. Usually such a survey is carried out by the insurers or the club soon after receiving the notification from the owner, but in case of an accident occurring abroad, by the agent of insurer. The crewmembers shall cooperate in these efforts. However, due to the complexity of the international maritime legal and contractual relationship, the parties involved in an accident could be very complicated. For inspection purposes, many surveyors and investigators may present on behalf of different interests, such as salvage association surveyors, P&I surveyor, MSA officers, classification society surveyors, etc.. It is difficult in many cases for crewmembers onboard to identify who is who. This undoubtedly leads to difficulties and misunderstandings in claim

handling. Well, in such cases the P&I Clubs are reliable for crewmembers in these cases since the clubs themselves are gathered by the owners voluntarily, and all decisions made are for the owners' benefits.

2. Chartering

The crewmembers are not involved in the negotiation and signing of C/P. But it is very important for them to know the details thereof since there are always many disputes in the chartering business and many clauses affect the shipboard operations. The following disputes arise frequently:

- Seaworthiness of the ship;
- Quality of fuel oil and the consumption thereof, and the speed;
- Safe port or safe berth;
- The rendering of Notice of Readiness (NOR);
- Reasonable deviation;
- The relationship between C/P and local practices in a particular port, etc.

One case well illustrates the importance of the shipmaster's knowledge in the chartering business. Before arriving at the port, the shipmaster compared carefully the clauses in the C/P and local practices as to the time for rendering the Notice of Readiness (NOR). He found a non-conformity there - the C/P stipulates that the NOR shall be rendered until the ship arrives at the pilot station, while the local practice says it could be tendered once she passes the boundary of the port. The competent master informed the shipowner of this non-conformity immediately. No disputes arose in that case.

It is really difficult to discuss fully the chartering business in relation to shipboard operations. But for the shipmaster and crewmember, it should always be kept in mind:

- Knowing of the C/P, at least those main parts;
- Clarify quickly any doubts and non-conformity with owners, agents, and ship management companies;

- Keep details and evidences of the operations.

3. Salvage and General Average

The obligation of salvage for shipmasters is defined in international conventions and national legislation. The problem is whether all masters can make correct decisions in contracting salvage services, particularly in case of emergency. One of the shipmasters of a large shipping company in China made a wrong decision when his vessel slightly grounded in the fairway of Port ROTTERDAM. He signed a salvage contract with a local towing company. But actually, the sea and the weather were then calm, and the fairway was clear. The right action would have been to employ a tug for refloating.

There are many cases like this. In 1978, Feb. vessel ABC sailed from Bremen to Said. A bearing of the cranked shaft of the main engine crashed. The ship thus lost propulsion. But the sea was then calm. So the master did not send a distress message and asked his agent to arrange a tug. The tug insisted on and requested to sign a "No-cure, No-pay" contract, but the master insisted on signing a contract based on employment. After negotiation, the owner paid a lump sum of 70,000 USD as a payment instead of salvage reward.

And also in 1978 Jan. vessel CDF dragged anchor in an Italian port due to heavy wind. The master requested pilot and tug as is customary to shift berth. After this, the tug company requested the master to sign a salvage contract. The excuse for this was the rough weather. The master signed without full consideration. Then the tug company resorted to the court for salvage on the basis of this contract.

Since salvage rewards are normally contributed by different parties, the rationality is the most important concern and is very often questioned by interested parties. In this regard, attention must be paid by the shipmaster onboard:

- The criteria of a "salvage";
- The authority of a shipmaster in prohibiting salvage and signing a contract;

- The necessity of signing a salvage contract or the type of contract that should be signed;
- The actions to be taken after signing the contract, etc.

The general average is very much alike the above. The following doctrines must be observed: *"There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure."* - *York-Antwerp Rules, 1974*". Otherwise, the owner will have to face various defenses.

Additionally, shipmasters are authorized by international conventions and SMS documents of the company to use overriding authorities to handle emergencies. However, it's difficult to decide the exact time to use those authorities. --- If the authority is used in an emergent case and there is no damage, the master may be questioned by the owner or other relevant parties of the necessity of taking such emergency measures, or vice versa, if he does not use the authority and there are some damages or even big losses, then he will be questioned as well. Therefore, for shipmasters, it is very important to inform the owner or other interest parties beforehand when he decides to use such authority if time permits, and to keep all the records when making decisions or taking actions.

4. Cargo transportation and the B/L

The fulfillment of the responsibility borne by the carrier relies on the shipboard operations as previously stated. The shipmaster and crewmembers should pay great attention to the following aspects:

- The inspection and compliance of seaworthiness. The requirements of seaworthiness should be fully understood, and special attention should be paid to problems such as hatch covers, refrigerating rooms, crew-

- manning, and readiness of the hatches for cargo transportation;
- The receipt, caring and management of cargoes during cargo transportation, seeing to the transportation of those cargoes with special requirements. If there is any doubt, inquiries should be made to the P&I club, owner or his agent;
 - Issuance of B/L. The shipmaster should verify each item entered, particularly in case of the issuance of B/L under C/P, which requires careful comparisons between the two documents. A report should be sent to the owner in case of any non-conformity;
 - The deviation. The master shall know adequately the clauses related to deviation;
 - The settlement of non-conformities between C/P, B/L and local practices. The master can inquire of his P&I club, owner or his agent if he has any doubts.

5. Summarisation

The above describes the impacts of major aspects of shipping laws and practices on shipboard operations. The key point is that any mistake made in those aspects, even very slightly, will cause damages or losses or result in huge compensations. This could be as severe as the consequences of a collision or grounding. For shipboard personnel, another kind of pressure other than those coming from maritime safety legislation is based

on the instructions or the considerations of shipowners, charterer, ship management company, etc., who require them to behave simultaneously for safety and economical profits. Therefore, and as required by higher quality shipping, shipboard personnel must realize the importance of understanding and observing those relevant shipping laws and practices. They shall put them in a central position linking various shipping parties and being responsible for them. Technically, the personnel onboard should keep close communication with shipowners and keep various evidences of operations.

Not all maritime education and training programs cover the above. But by investigation and analysis, the above contents are evidenced as very important for practical shipboard operations. So the training for the above should be recommended as one of the aspects of the seafarers' life-long study.

Yet, like the education and training on other subjects, some details should be taken in account when exercising such philosophy. For instance, the level and standards of such education and training should be determined, which may vary from masters to officers, or from a wide coverage to a very narrow topic. But the most important issue for this matter is that the education and training should focus on the fundamental parts of merchant shipping knowledge, particularly those elements closely related to shipboard operations.

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BIOGRAPHY**RUAN Wei**

Mr. Ruan Wei graduated from the Merchant Marine College of Shanghai Maritime University (SMMC), China in the year 1994. He sailed at sea for about one year and in 1998, he started his two-year postgraduate study in Maritime Education and Training Course in World Maritime University (WMU).

He works for the SMMC, giving lectures now for maritime students and trainees in respect of maritime safety management. But he is also actively involved in academic researches, such as "The strategies for the further development of Chinese MET", which was contracted with the Ministry of Communications of China, "Researches on the enhancement of Chinese crew-manning services in world market" entrusted by the Shanghai Municipal government, "Re-designing the maritime curriculum", and other research projects.

He can be reached with following address:

Ruan Wei
Assistant principal
Merchant Marine College
Shanghai Maritime University
Pu Dong Da Dao 1550#, 200135
Shanghai, P.R.China
Email: weiruan@etang.com, weiruan@mmc.shmtu.edu.cn
Fax: + 86 21 5885 3909
Tel: + 86 21 5038 6021 (H), +86 21 133 1168 0333 (M)