SPOTLIGHT on SAFETY; why accidents are often not accidental

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INTRODUCTION (1)
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SPOTLIGHT ON SAFETY
Why Accidents Are Often Not Accidental

The Regulatory Regime Exists.
The ISM Code requires safety issues be reported. However, report them and you may be fired.
IT'S A REGULATORY CATCH-22

"Time and time again we are shocked by a new disaster... We say we will never forget, then we forget, and it happens again."

Bouchard Barge Explosion

"It is the master's decision whether to sail. It is the owner's decision who is the master."

Deepwater Horizon Explosion

"The deaths were completely senseless... a result of systemic and individual failures."

"The El Faro disaster points to the need for a strong and enduring commitment from all elements of the safety framework."

"In competitive markets, whatever is possible becomes necessary."

SAFETY - The Flag State is responsible for ensuring regulatory compliance and promoting safety.
INTRODUCTION (2)
Background Paper – Spotlight on Safety

SPOTLIGHT ON SAFETY:
WHY ACCIDENTS ARE OFTEN NOT ACCIDENTAL

International Organization of Masters, Mates & Pilots (MM&P)

Captain John Loftus
Retired Ship Master and MM&P Member

Captain George Quick
Vice President – Pilot Membership Group

Captain Don Marcus
International President

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An Educational Paper by the
International Organization of
Masters, Mates & Pilots and
Dalhousie University

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MARITIME INCIDENTS (1)
Were these preventable?

BULK CARRIER LOSSES

- Leros Strength – Norway, 1997 – all hands
MARITIME INCIDENTS (2)
Were these preventable?

INTERNATIONAL INCIDENTS

- Tanker Prestige – off the coast of Spain, 2002, over 60,000 tons of oil spilled into the sea.
- Ferry Sewol, Korea, 2014, 304 lives lost (mostly school children).
MARITIME INCIDENTS (3)
Were these preventable?

U.S. FLAG INCIDENTS

- Marine Electric, bulk carrier, lost off Chesapeake Bay, 1983, 34 lives lost, 3 survivors. “Marine Electric: The Wreck that Changed the Coast Guard Forever” ??

- EL Faro, 2015, lost with all hands off the Bahamas in hurricane ‘Joaquin’, 33 lives lost.

- California dive boat ‘Conception’, Sept 2, 2019, fire, 34 lives lost. Could the loss of life have been reduced?
MARITIME INCIDENTS (4)
What are the Common Factors?

Safety issues were, or should have been, known before the incident

- Known to the ship’s crew (and thus by implication, under the ISM Code, to the ship’s management).
- Subject to survey / inspection requirements by the regulatory organizations (Class, Flag State).

If the Safety Issues were evident, why were they not acted upon?
COMMERCIAL PRESSURES versus SAFETY (1)

On the Shipping Company

• On the shipping company to minimize costs, maintain shipping schedules, minimize downtime.

• On shoreside management to minimize downtime, minimize costs.

• On the Ship’s Master to maintain schedules, minimize downtime, minimize costs
  • and by implication, to refrain from reporting many safety issues.
On the Flag State & Classification Society

- ‘Flag of convenience’ (FOC) system dominates international shipping.
- ‘Recognized Organizations’ (RO) (Classification Societies) inspect / survey and enforce regulations on behalf of Flag State.
- Shipowner in most cases free to choose FOC and RO.
  - FOC’s and RO’s compete for business.
  - Commercial pressures cause shipowners to compete for a competitive advantage.
- Commercial & political pressures may impact on national shipping.
COMMERCIAL PRESSURES versus SAFETY (3)

“And in competitive markets, whatever is possible becomes necessary.”

(Nicholas Shaxson, Treasure Islands; Tax Havens & the Men who Stole the World, p.130)

Regulatory Capture

“Regulatory capture is an economic theory that says regulatory agencies may come to be dominated by the industries or interests they are charged with regulating. The result is that the agency, which is charged with acting in the public's interest, instead acts in ways that benefit the industry it is supposed to be regulating.”

(Investopedia)
SHIPPING SAFETY REGIME

• The International Maritime Organization (IMO) has established a set of minimum safety, pollution and emission standards,
  • however, IMO has no enforcement power.

• The Flag State is ultimately responsible for Ensuring Regulatory Compliance & Promoting Safety

• Port State Control (PSC) is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.
SAFETY COMPLIANCE
The Best Set of Eyes and Ears

• The best set of eyes and ears to ensure safety and regulatory compliance for any ship is its crew.
• Unfortunately, the seamen are often underutilized in keeping a ship within regulatory compliance.
• Indeed, in some cases they are pressured to keep quiet and keep the ship moving.
• Polish Register’s comments after Leader L sinking: the minor 'initiating' defect may not necessarily be identified by periodic Class surveys, and the importance of continuous monitoring by the crew:
  “This requires the close co-operation of class, shipowner and crew (to record noticed damages and defects) which is not always the case".
The purpose of the International Safety Management (ISM) Code is to provide an international standard for the safe management and operation of ships and for pollution prevention.

The ISM Code requires that companies have a Safety Management System (SMS) that sets out their safety and pollution prevention policies and complies with all mandatory international and national regulations and maritime industry standards and guidance.

The SMS should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the company (in principle through the Designated Person Ashore (DPA) who has access to the highest level of Management).
"where the ISM Code is embraced as a positive step toward efficiency through a safety culture, tangible positive benefits are evident;".  
(IMO study, 2005)

The intent is to make shoreside management directly responsible and liable for the safe condition and operation of the ship and for documenting the actions taken in this regard.

This has major implications, as it undermines the ability of the company to limit its liability based on a lack of knowledge of the unsafe conditions. It also calls for creation of a documented record of deficiencies that could prove a case of negligence on the part of the company.
The Underlying Problem

• In some cases, the reporting of deficiencies may be looked upon as a problem rather than as an opportunity to improve safety.

• A master who brings safety management problems to the company is himself a problem and risks being replaced.

• This can have a chilling effect on other masters who then become reluctant to bring their own safety concerns to management.

• The underlying problem with maritime safety is that the regulatory system is subject to commercial pressure from the top down.
RETALIATION (1)
Whistleblowing Ship Master Wins Case
‘Seaman’s Protection Act’ (SPA) a Powerful Tool to Require Ship Owners to Maintain Safe Ships

• The (US) shipping industry’s pervasive culture of retaliation against seamen who report safety hazards to outside enforcement agencies
• Despite Capt. John Loftus’ 20-year unblemished record as a Captain, in June 2013 he was abruptly removed as Master due to his reporting of safety violations to the U.S. Coast Guard and its delegated inspection agency, the American Bureau of Shipping.
• The purpose of the SPA is to augment the Coast Guard’s limited enforcement resources by encouraging seamen to report possible violations of safety regulations. It does so by prohibiting retaliation against seamen who report possible regulatory violations to the USCG or ABS.
Judge Calianos found “Captain Loftus was the most safety conscientious Master in the entire Horizon Lines fleet” with “an unusually strong commitment to the safety of his vessel and crew.”

But Captain Loftus’s insistence on calling Horizon’s attention to serious safety hazards was met with indifference and inaction.

“Loftus resorted to reporting safety concerns to the regulatory agencies because of Horizon’s consistent failure to correct hazardous conditions aboard the Trader.

Loftus was clearly a thorn in Horizon’s side.”
RETALIATION (3)
Whistleblowing Ship Master Wins Case
‘Seaman’s Protection Act’ a Powerful Tool to Require Ship Owners to Maintain Safe Ships

• In removing Loftus as Master, the Judge found “Horizon’s conduct was reprehensible” because it engaged in “machinations,” “smoke and mirrors,” and “fabrication” to mask “the real reasons” for its removal of Loftus as Master, “namely to discipline Loftus for his protected activity.”

• “Seamen need to be able to stand up and report deficiencies,” Captain Loftus said. “It is the first line of defense in preventing major accidents”.

• Deliberate Disregard of SPA (Seaman’s Protection Act) Cannot Be Encouraged

• Chilling Effect Must Be Remedied
RETALIATION (4)
Falsification of Safety Records and Misleading Coast Guard Inspectors

• Captain Jeff Hagopian - abruptly terminated from his job as captain of Noble Drilling’s Noble Danny Adkins after filing a report of safety violations.

• He reported two violations to the (alternate) DPA:
  • a false “red entry” in the logbook which claimed the crew had performed the quarterly launching and maneuvering of the lifeboats (when it had not);
  • an attempt to mislead USCG inspectors during the vessel’s annual Certificate of Compliance Inspection about the defective condition of the gravity davit that deploys the fast rescue craft.

• His employment was terminated shortly afterwards.

• “Safety regulations should be enforced more vigorously to help support anyone who is trying to protect their crew and vessel without fear of retaliation.”
  
  (Capt. Hagopian)
Rear Admiral Paul F. Thomas said it best in the Spring (2016) Issue of USCG Proceedings (p 4) in discussing Safety Management Systems and the ISM Code:

• “There is nothing more dangerous than the false sense of security that comes with a safety management system that exists on paper only”.

• “An effective SMS must not only be very well developed in terms of process and procedures; it must also be deployed from the boardroom to the boiler room. There shouldn’t be any disconnect between the auditors and the surveyors, or between the CEO and the seaman. We all must work together to discover and eliminate such disconnects.”
Joint Accident Investigation Report

- Figure 3.13 Positions of the upper extension of the collision bulkhead complying with the SOLAS 1974 rules and 1981 Amendments.

- Chapter 18.2 - It is the opinion of the Commission that an extended collision bulkhead, built in compliance with either SOLAS 1974 or the 1981 Amendments, would have increased the Estonia's chances of surviving the loss of the visor.
“This tragic story points to the need for a strong and enduring commitment at all elements of the safety framework. First and foremost, the company must commit to safety culture by embracing their responsibilities under the ISM Code. Secondly, Recognized Organizations (ROs) must fully and effectively perform their duties and responsibilities. Finally, the Coast Guard must, and will, provide the final safety net with sustainable policy, oversight, and accountability” (Commandant Admiral Zukunft, 2017).
“Specifically, inspections should not be limited only to compliance with the rules. We believe there is an intent behind those rules, and that intent is to keep crew members and passengers safe, by recognizing and addressing unsafe practices and conditions not necessarily proscribed by regulations.”

(Chairman of Canadian Transportation Safety Board, comments on True North II investigation)
CONCLUSION (1)
Improving Safety, Reducing ‘Accidents’

• Effective implementation of the ISM Code and Safety Management System:
  • “An effective SMS must not only be very well developed in terms of process and procedures; it must also be deployed from the boardroom to the boiler room. There shouldn’t be any disconnect between the auditors and the surveyors, or between the CEO and the seaman. We all must work together to discover and eliminate such disconnects.” (R. Adm. Thomas)

• The right and obligation of ship’s officers to raise “Corrective Action Reports” (CAR’s) and have them addressed in a timely manner.

• Classification society inspectors, or Flag State/Port State control personnel, should be ‘required’ to review the CAR file ‘every’ time they board a vessel. There should be accountability to ensure compliance with the system as intended.
CONCLUSION (2)
Improving Safety, Reducing ‘Accidents’

• Ensure the company’s operational team includes management personnel with extensive seagoing experience who can review policy and be available for consultation with the ship’s senior officers

• Protection of crew and other personnel by a legal framework, such as the American “Seaman’s Protection Act” (SPA), and by enforcement of the rights established under the Maritime Labour Convention of 2006.

• Modifying the Alternate Compliance Program / Delegation to ensure effective oversight by the Flag Administration.

• Legal (criminal) accountability, such as the Canadian “Westray Bill”, for officers and directors of an organization, including Regulatory Organizations, where their action, or lack of action, results in injury or death.
CONCLUSION (3)  
Reference web links

MM&P website:
• [https://bridgedeck.org/latest/mmp-sponsors-study-on-responsibility-for-shipboard-safety/](https://bridgedeck.org/latest/mmp-sponsors-study-on-responsibility-for-shipboard-safety/)
• [https://bridgedeck.org/actionnetwork/Spotlight-MMP-WMRC-Final071619.pdf](https://bridgedeck.org/actionnetwork/Spotlight-MMP-WMRC-Final071619.pdf)

Maritime Executive

gCaptain
• [https://gcaptain.com/spotlight-on-safety-paper-looks-at-maritime-calamities-that-should-have-never-happened/](https://gcaptain.com/spotlight-on-safety-paper-looks-at-maritime-calamities-that-should-have-never-happened/)
THANK YOU FOR YOUR ATTENTION

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