

**World Maritime University**  
**The Maritime Commons: Digital Repository of the World**  
**Maritime University**

---

World Maritime University Dissertations

Dissertations

---

1999

# Recommendations for improved implementation of port state control in Nigeria

Akilu Wase Abdu  
*World Maritime University*

Follow this and additional works at: [http://commons.wmu.se/all\\_dissertations](http://commons.wmu.se/all_dissertations)

 Part of the [Admiralty Commons](#)

---

## Recommended Citation

Abdu, Akilu Wase, "Recommendations for improved implementation of port state control in Nigeria" (1999). *World Maritime University Dissertations*. 63.  
[http://commons.wmu.se/all\\_dissertations/63](http://commons.wmu.se/all_dissertations/63)

This Dissertation is brought to you courtesy of Maritime Commons. Open Access items may be downloaded for non-commercial, fair use academic purposes. No items may be hosted on another server or web site without express written permission from the World Maritime University. For more information, please contact [library@wmu.se](mailto:library@wmu.se).



**WORLD MARITIME UNIVERSITY**  
Malmö, Sweden

**RECOMMENDATIONS FOR IMPROVED  
IMPLEMENTATION OF PORT STATE  
CONTROL IN NIGERIA**

**By**

**ABDU, AKILU WASE**  
**Nigeria**

**A dissertation submitted to the World Maritime University in partial fulfilment of the  
requirements for the award of the degree of**

**MASTER OF SCIENCE**  
**IN**  
**Maritime Safety and Environment Protection -ADMINISTRATION**  
**(MSEP-A)**

**1999**

Copyright ABDU AKILU WASE, 1999

## **DECLARATION**

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views and are not necessarily endorsed by the University.

Abdu Akilu Wase

15 September, 1999-09-15

Supervised by:

Capt. Sven-Ake Wernhult  
Lecturer  
World Maritime University

Assessor:

Prof. Jan-Åke Jönsson  
Associate Professor  
World Maritime University

## **Acknowledgement**

I wish to express my sincere thanks to the Government of the Federal Republic of Nigeria and the National Maritime Authority in particular for sponsoring my studies at the World Maritime University Malmö, Sweden.

My special thanks go to the Director General and the entire Management and staff of the Authority for offering me the opportunity to attend this unique and High Profile University.

My best regards to the following important personalities and friends for their encouragement and moral support at all times, namely: Madam Harira Abdu Wase (My Late mother who passed away on September 7 1985). Others include, my father Mallam Abdu Moh'd Maáji Wase, My senior brother Mallam Sirajo Abdu Wase, Col. M. A. Wase (Late), L. B Rumah, S. A. Shobayo, A. H Wasagu, N. E. Abdulai (Mrs), M. K. Shehu, E.N.Gusah (Mrs.), M. A. Makarfi, A. Abdulkadir, W. Azuh, U. S. Gonto.

I am highly indebted to The Rector, The Vice-Rector Professor G. Zade, Professor P. K. Murlhaje my course Professor and the entire staff of the MSEP department for their useful counselling and guidance throughout the duration of the course.

I am also grateful to my Supervisor Capt. S. A. Wernhult, and the Assessor Professor J. A. Jönsson, who despite their tight and busy schedules took time to assess this study which has no doubt facilitated its successful completion.

The roles of my colleagues particularly those from Nigeria like H. A. Zailani, G. M. Ajaseini, T.N. Pinwa, S. M. N. Yitnoe, N. O. Okorie as well as other colleagues in general during this memorable seventeen months, is highly appreciated. Many thanks also to C Herbert (Liberia), G. J. Fumbuka (Tanzania), A. R. Santiago (Cuba), Simon, Tecele & Kibrom from Eritrea respectively who assisted me with the computer manipulations whenever I ran into difficulties during the compilation of this study

I have also immensely benefited from the exposure during my field training at Denmark, Germany, Norway, and Helsinburg. Sweden, Finland and the United Kingdom.

Finally, I acknowledge the efforts and full co-operation of the World Maritime University Library Staff: D. Moulder, S. Wangecki-Eklöw and C. Denre. Further, I am very grateful to all and sundry.

# Abstract

This dissertation is an appraisal of Port State Control as the concept and practice of maintaining the seaworthiness of ships calling at ports and focuses on the Nigerian as a Port State.

The role of the International Maritime Organisation (IMO) in the development of safety and pollution prevention regulations is highlighted. International legal instruments promulgated by the IMO and ILO, which regulates Port State Control practices, are enumerated and analysed.

The experiences of the Paris Memorandum of Understanding (MOU) and the US Coast Guard on Port State Control in Europe and America are discussed and documented. Differences and commonalties in Port State Control inspection procedures and enforcement practices in both regions are identified and noted.

Port State Control practices in West Africa are also analysed using Nigeria as a case study. To achieve this end, the composition of the Nigerian Maritime Administration (MARAD) is scrutinised, the inspection procedures and international legal instruments applied are reviewed and enforcement measures used in correcting deficiencies or detaining ships are appraised.

Problems of finance, planning, training, communication network and corruption which militates against an effective Port State Control programme in Nigeria are identified and isolated. Appropriate recommendations are advanced to address the problems and improve the implementation of Port State Control in Nigeria.

## TABLE OF CONTENTS

Declaration	ii
Acknowledgement	iii
Abstract	iv
Table of Contents	v
Lists of Tables	viii
List of Figures	viii
List of Abbreviations	ix
Introduction	1
International Instruments on Port State Control	
2.1 International Maritime Organisation(IMO)	17
2.2 Port State Control in the IMO Conventions	17
2.2.1 SOLAS 1974/78	17
2.2.2 LOAD LINES(LL) 1966	19
2.2.3 COLREG 1972	20
2.2.4 MARPOL 1973/78	21
2.2.5 TONNAGE 1969	22
2.2.6 THE ILO NO. 147 CONVENTION	24
2.2.7 STCW 1978	26
2.2.8 UNCLOS 1982	27
2.3. IMO Resolution A. 481(xii) “Principles of Safe Manning”	28
2.4. IMO Resolution A. 787 (19) “Procedures for Port State Control”	29
2.5. ISM CODE 1998 (Res. A. 741 (18) )	30
2.6. The Application of International Instruments on Port State Control	30
3. The Port State Control in Europe and the concepts of Paris MOU on Port State Control	
3.1. Why the Paris MOU?	31
3.1. The Scope and the Agreement of the Paris MOU	31
3.2. The Relevant Instruments of the Paris MOU	34
3.3. The “No More Favourable Treatment(NMFT) Clause	35
3.4. Who conducts Port State Control Inspection in European Countries?	35
3.5. Inspection Procedures, Rectification and Detention of sub-standard ships in Europe	36
3.6. Documentation and Port State Control Inspections Reporting system in Europe	40
3.7. The Aide Memoir for Surveyors	42
3.8. Operational Violations in European waters	42
4. Port State Control in the United States of America and the Role of Coast Guard on Safety Standard Vessel Boarding Program	
4.1. Introduction	44

4.2. Definitions used by the Coast Guards in the USA	44
4.3. The Objectives of the Program	46
4.4. Types of Boarding Systems in the USA	47
4.5. Qualifications of Marine Inspectors in the USA	47
4.6. Port State Control Enforcement on non-Convention ships	47
4.7. Carrying the Certificate of Financial Responsibility on board	49
5. Port State Control in West Africa	
5.1. Introduction	51
5.2. West and Central African States MOU	53
5.3. Port State Control Implementation and Enforcement in Nigeria	55
5.3.1. The Maritime Historical background of Nigeria	55
5.3.2. The Composition of the Nigerian MARADS	57
5.3.3. IMO Safety Conventions Ratified by Nigeria	62
5.3.4. Selecting ships for Inspection and the Inspection Procedures	64
5.3.5. Rectification and Detention of ships	66
5.3.6. Port State Control Inspections' Reporting System	67
5.3.7. Treatment of Non-Convention ships	67
5.4. Problems of Port State Control Implementation and Enforcement in Nigeria	
5.4.1. Inadequate finance	68
5.4.2. Inadequate Research and Planning	!!
5.4.3. Inadequate Educated and trained personnel	!!
5.4.4. Lack of Maritime Academics	!!
5.4.5. Poor PSC Inspection Reporting System	!!
5.4.6. Political Instability and Economic Uncertainty	!!
5.4.7. Problem of bribery and corruption in the Shipping sector	!!
5.4.8. Problem of Government intervention in the affairs of Nigerian MARADS	!!
5.4.9. External forces intervention in the Nigerian Shipping Industry's affairs	!!
5.4.10. The roles of Nigerian Shippers and the mass media in Nigerian shipping policy decisions	!!
6. Conclusion and Recommendations	73
Bibliography	86
Appendices	
Appendix 1 Map of Nigeria	90
Appendix 2 IMO, Resolution A. 481(ix) adopted on 19 November 1981 "Principles of Safe Manning"	91
Appendix 3 IMO, Resolution A. 787(19) adopted on 23 November 1995 "Procedures for Port State Control"	98

Appendix 4	“Meddelelse om tilbageholdelse af skib-DANMARK”-Format: Notice of Detention of a ship in Denmark	166
Appendix 5	Format: Report of inspection in accordance with Paris MOU on Port State Control (FORM A) Danish Maritime Authority	168
Appendix 6	Format: Report of inspection in accordance with Paris MOU on Port State Control (FORM B) Danish Maritime Authority	169
Appendix 7	Codes of Action taken on ships after Survey or Inspection	170



## LIST OF TABLES

Table 1	Mean fleet age for selected flags 1973-1980	12
Table 2	Mean fleet age for selected flags for 1984	11
Table 3	List of flag States with outstanding comments on Deficiency Reports as at 1987	16
Table 4	Changes in loss rate for each Member State pre/post 12 December 1982	38
Table 5	Ship Deficiencies from 1979-1988	38
Table 6	Loss rate for all Member States 1968-1986	39
Table 7	Status of Conventions (1-3)	70

## LIST OF FIGURES

Figure 1	Organisational structure of Paris MOU on Port State Control	43
Figure 2	Organisational chart: Nigerian Maritime Administration	57
Figure 3	Organisational chart: Nigerian MARAD-Policy and Operational principles	58
Figure 4	Organisational chart: National Maritime Authority	59
Figure 5	Organisational chart: Maritime Safety Department under NMA	63
Figure 6	Port State Control vicious circle chart	86

## LIST OF ABBREVIATIONS

CEMAC	The Communauté économique et monétaire de l'Afrique Centrale
COC	Certificate of Competency
COPO	Captain of the Port Office in USA
COTP	Coast Guard Captain of the Port in USA
DOC	Document of Compliance
ECA	Economic Commission for Africa
FFA	Fire Fighting Appliances
FOC	Flag of Convenience
FSI	Flag States Implementation Sub-Committee of the IMO
GIS	Government Inspectors of Shipping
GRT	Gross Tonnage
IACS	International Association of Classification Societies
ILO	International Labour Organisation
IMO	International Maritime Organisation
IOPP	International Oil Pollution Prevention Certificate
ISID	International Ship Information Database
ISM	International Safety Management Code
LSA	Life Saving Appliances
MARADS	Maritime Administration(s)
MID	Maritime Inspectorate Division
MINCOMAR	Ministerial Conference of West and Central African States on Maritime Transport
MOU	Memorandum of Understanding
MSA	Maritime Safety Administration
MSIS	Marine Safety Information System of the US
MSO	Marine Safety Office of the US
NMA	National Maritime Authority, Nigeria
NMFT	No More Favourable Treatment Clause
NPA	Nigerian Ports Authority, Plc
OECD	Organisation for Economic Co-operation and Development
PSC	Port State Control
PSCO	Port State Control Officer
PSCI	Port State Control Implementation
SAR	Search and Rescue
SMC	Safety Management Certificate
UNDP	United Nations Development Programme
VLCC	Very Large Crude Oil Carrier Vessel

# CHAPTER I

## Introduction

In the 1960s, and 1970s, world shipping underwent a period of near unlimited growth. New maritime nations emerged and existing ones grew. Tonnage shifted between hemispheres and when all this activity finally settled, a number of side effects were left. One of the most damaging side effects of this spur of activity in the shipping industry was that of marine pollution and marine casualties involving loss of life, numerous international conventions dictating the responsibilities of Flag States in maritime law applications were in force. However, these conventions has solved the problems of marine pollution and safety of life at sea as required, because some Maritime Administrations (MARADs) had not efficiently and effectively obliged their responsibilities in this regard.

The development of the concept of port state control occurred at the time when world shipping, particularly the oil transport trade, was at its lowest social regards. This study traces the historical development of port state control, identifies current applications and problems, and proposes the rationalisation of port state control enforcement under the auspices of the International Maritime Organisation (IMO) in addition to the legal basis of port state control and also port state control as a complementary part of flag state control.

Administrations are responsible for taking the necessary measures to ensure that ships flying their state flags comply with the relevant provisions of the safety conventions such as surveys and certification.

## **The Historical Development of Port State Control.**

In 1967, the world was shocked when the Torrey Canyon spilled 100,000 tons of oil into the sea. The world governments came together and two years later in 1969 signed the International Convention on Civil Liability for Oil Pollution Damage. This Convention only sought to make amends for disasters, not to correct them. Consequently, on March 17, 1978, the world was shocked again when the 123,680 dwt Amoco Cadiz spilled 230,000 tons of oil off the coast of Brittany, thereby polluting some 400 kilometres of coastline.

The total economic loss because of the Amoco Cadiz disaster was estimated at about 290 million US dollars in 1978. This amount is divided into several parts:

- (a) the loss of the vessel and cargo, loss of recreational amenities, legal and research costs, and damage to human health;
- (b) emergency response, clean-up and environmental restoration costs, loss of non-commercial bio-mass and seabirds, loss of income from the business industry, loss of personal property; and
- (c) Reduced income for local government, secondary effects of reduced outputs in various industries, and compensation paid by the national government to claimants for the costs and losses incurred. There is no doubt that such massive spills have an even greater impact on the entire world. Consequently, it is not surprising to see remedial actions taken by international bodies, such as the IMO, to avert subsequent occurrences in the future.

Another most damaging side effect of the flurry of activity in the shipping industry concerns loss of life at sea. This is quantified by the fact that governments ratified the International Convention on Safety of Life at Sea as far back as 1948. The problem of loss of the life or safety of life in general is not deeply rooted in the maritime tradition of all established maritime nations. It is a problem, which has always cut across flags, and consequently all maritime nations have to bear some responsibility for alleviating the problem. Nevertheless, in order to act, the scope of the problem must be first identified.

Substantive consideration of questions relating to the scope and nature of port state control in connection with IMO conventions was first undertaken in IMO in 1974, following the submission by the Organisation for Economic Co-operation and Development (OECD) of a document relating to control of flag-of-convenience ships. At the time, the Maritime Safety Committee noted that IMO concerns with the control of ships was primarily to prevent the operation of substandard ships, regardless of the Flag under which such ships might be sailing. As a first step, the Maritime Safety Committee developed recommended procedures for the control of ships under the International Convention for the Safety of Life at Sea, 1960 (SOLAS 1960) and the International Convention on Load Lines (LL1966). The Assembly adopted these procedures at its ninth regular session in 1975 by Resolution A.321 (IX) dated 16 December 1975.

These conventions in respect of combating the phenomenon of substandard ships gave the right of contracting parties to inspect all foreign flag ships calling at their ports and to take all measures necessary to eliminate any deficiency aboard posing a clear hazard to safety or health. The convention implies that this right also included ships, the flag states of which have not ratified the convention.

### **Definition of the Port State Control.**

The port state control is the law, which provides the port state with jurisdiction over foreign vessels in its internal waters. The specific port state power includes: -

1. The inspection of ships certificates,
2. Physical inspection of the ships
3. In addition, if warranted by evidence, detention of the ship.

The port state jurisdictions originated in the IMO convention and to a lesser extent, in the ILO treaties. In accordance with the principles of international law, territorial jurisdiction gives states the right to exercise control over foreign ships within their ports. This right is qualified both by the concurrent jurisdiction of the port state and by the obligations of the port state stemming from international law.

From the historical point of view, the idea of control by the port state over foreign flagged ships has been laid down in international conventions on maritime safety for a substantial number of years. The Load Line marks of ships became operational in this respect. In addition, the International Labour Organisation adopted in 1976 a convention which also contains a port state control clause: the Merchant Shipping (Minimum Standards) convention. J. Harninga(1976) said: "Port state control, as I see it, is a continuing story indeed which progresses even so slowly, impulses every now and then being given, as they unfortunately must, be spectacular disasters such as those of the Torrey Canyon and the Amoco Cadiz".

### **Legal Basis of Port State Control.**

The concept of Port State Control has been laid down in a number of conventions concerning safety of shipping and prevention of pollution for many years, including:

- The International Convention on Load Lines 1966(Article 21) (14),
- The International Convention for the Safety of life at Sea 1974 (SOLAS Chapter 1, Regulation 19) (5),
- The International Convention for the Prevention of Pollution from ships 1973, as modified by the Protocol 1978 relating thereto (Arts. 4, 5, 6 and 7) (6),
- The International Convention on Standards for Training, Certification and Watchkeeping for Seafarers STCW 1978 (Arts. X (7),
- The Convention Concerning Minimum Standards in Merchant ships 1976 regarded as The ILO Convention No 147 (Art. 4) 18.

In addition, IMO has developed resolutions that include provision of the conventions and guidelines of specific control procedures for port state control and in the case of the Resolution A.542 (13) "Procedures of the control and discharges under Annex 1 of the International Convention for the Prevention of Pollution from Ships 1973/78 These provisions and guidelines on specific procedures for port and coastal states control of foreign ships visiting their ports or offshore terminals are constituted by IMO Resolutions as follows:

Resolution A.466 (SII) adopted on 19 November 1981 "Procedures for the Control of Ships";

Resolution A.481 (XII) adopted on 19 November 1981 "Principles of Safe Manning";

Resolution A.542 (13) adopted on 17 November 1983 "Procedures for the Control of Ships and Discharges" under Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto.

Resolution A. 787 (19) adopted on 23 November 1995. " Principles of Port State Control" which amalgamates all the previous `Resolutions´. Most of the countries that have established their port state control have adopted these instruments.

In related developments, port state control stated in different IMO conventions for safety and Prevention of Pollution is consistent with the general principles of international law. The right of a nation to board and inspect ships in its internal waters is recognised. As F. L. Wiswall JR. 1986, "The essential implementation of all IMO Conventions is by Flag State Control. The reason for this is maritime international law that ship is held to be a veritable piece of the territory of the state whose flag she flies, in the sense, then each ship is an ambassador of the flag state, and when she is within foreign waters, the police powers of the port state with respect to her is limited by customary limitations with respect to ambassadors and public ministers of foreign states. Just as there are international legal rules of governance which authorise a host state to examine the credentials of foreign ambassadors and public ministers, IMO Conventional rules also authorise port states to validate and examine the credentials of foreign ships, and just as improper conduct or criminal conduct may forfeit the limited immunities of foreign dignitaries, also bad conduct on the part of a foreign ship may forfeit the limited immunities which the port state is otherwise obliged to extend to her.

Thus, a ship in a foreign port is still governed within herself by the laws of the flag state of the ship and in the absence of a direct, obvious and imminent. To other shipping or to the port itself, safety is also a matter comprehended within the vessel herself, and thus the controlling safety laws are those of the flag state of the ship and not those of various port or coastal states. However, the IMO conventions have made some changes to the extent that safety is no longer a matter entirely within the ship herself, but is now a partial responsibility of the port state. The execution of some safety conventions are the responsibility of the Flag States, the port state's role is limited to verification and to a limited degree, enforcement. That is why the issues of ship

nationality, jurisdictions of Flag State and Port State come into play in international safety conventions.

### **Port State Control as a complementary part of the Flag State Control**

A ship is traditionally seen and accepted as a part of the country in which she is registered otherwise as Flag State. Life is forged on board based on the sovereignty and the laws of that country. The ship also flies the Flag of the country of registry hence the word flag state. A flag state administration, therefore, is required to ensure that ships registered in its territory are seaworthy and properly manned for safety. One of the criticisms levelled against Flag of Convenience (FOC) is to maintain the standards of ships that are registered under them. This usually results in an unsatisfactory casualty record, posing danger to life and property in addition to the marine environment.

The efforts of IMO to eradicate sub-standard ships with a view to realising its objectives of “safer ships and cleaner oceans” have made the issues of port state control a subject of increasing significance. In other words, the state IMO objectives will not be only with an appropriate implementation and enforcement of all the obligations that a contracting government assumes as a flag state without the implementation and enforcement of the complementary part as a port state.

As Y. Sasamura (1994) said “Although it is the responsibility of Flag State to ensure that ships flying their flags always comply with the provisions of the conventions, it may sometimes be difficult for flag states to exercise full and continuous control over these ships. In order to supplement these functions of flag states, the SOLAS. Load Lines and MARPOL conventions provide for certain procedures the control of ships to be exercised by port states”. The enforcement provisions of conventions by contracting parties are, broadly speaking, divided into two categories, namely: -

- (1) Enforcement by Administration (i.e., the government of the Flag State) which includes surveys and certification of ships in respect of design, construction and equipment; and



(2) Enforcement by port states, which includes the control by port state control officers of the construction of ships and equipment and the surveillance and detention of discharges in contravention of the convention.

J. Courley (1981) said: "In consideration of arrangements for safety with pollution prevention and control, an administration will be concerned with: -

(a) Its own ships (i.e., acting as a Flag State); and

(b) Foreign ships visiting its ports (i.e., acting as a port state). In an ideal world, action as a port state would not be a major consideration as every flag would ensure that its ships are operated at uniformly with standards in accordance with agreed international contentions. However, the conventions dictate what line of action is necessary to take."

Consequently, a Flag State owes the world the primary duty to eradicate the number of sub-standard ships on our seas; port state control acts a safety net as a deterrent. Conventionally, port state control is an important element in achieving the eradication of sub-standard ships world-wide since the safety of shipping, and hence the prevention of accidents, is determined not just by establishing appropriate and adequate international rules but, above all, by effective implementation and enforcement of those rules. According to MARPOL and SOLAS, countries that are party to the convention reserve the right to inspect ship visiting their ports in order to ensure compliance to international standards. Base on the issues of "compliance", the port states have established regional co-operation amongst themselves where the exchange of information is carried out for enforcement of port state control.

### **Port State Enforcement of IMO Safety Conventions**

By becoming a party to a convention in force, the Ports State enters a contract with all flag state co-parties; this contract modifies the sovereign rights of the parties to it, enhancing some and curtailing others. In the IMO, safety and prevention of pollution conventions, the rights of the port states are enhanced because conventional international law now establishes a standard procedure whereby they may board and examine foreign merchant ships for safety and prevention of pollution defects, when

those ships call at a port or place within the jurisdiction of the state. However, the rights of a port state are also curtailed, because to comply with one conventional law, they must follow specified procedures such as for examinations like the ones specified in the following IMO conventions.

The convention for safety of life at sea - SOLAS 1974 emphasises “every ship holding a certificate issued under regulation 12 or regulation 13 or Chapter 1 is subject in the ports of the other contracting governments to control by officers duly authorised by such governments in so far as this control is directed towards verifying that there is an onboard valid certificates, and such certificates shall be accepted unless there are clear grounds for believing that the conditions of the ship or of its equipment do not correspond substantially with the particulars of that certificate. In this case, the officer carrying out the control shall take such steps as will ensure that the ship shall not sail until it can proceed to sea without danger to the passengers or the crew.

In the event of this control giving rise to an intervention of any kind, the officer carrying out the control shall inform the consul of the country in which the ship is registered in writing forthwith of all circumstances in which intervention was deemed to be necessary and the facts shall be reported to the organisation. Also, it is expressed in the International Convention for the Prevention of Pollution from ship 1973/1978 “A ship required to hold a certificate is subject while in the ports or off-shore terminals under the jurisdiction of a party to inspect the ship by officers duly authorised by the party (port state).”

Such inspection shall be limited to verifying that there is on board a valid certificate, unless there are clear grounds for believing that the conditions of the ship or its equipment does not correspond substantially with the particulars of that certificate. In that case, or if the ship does not carry valid a certificate, the port state carrying out the inspection shall take such steps as will ensure that the ship shall not sail until it can proceed to sea without presenting an unreasonable threat or harm to the marine environment. That party (port state) may, however, grant such a ship permission to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available.

The International Convention on Load Lines 1966 expresses that port state control shall be limited to the purpose of determining that the ship's load corresponds with the certificate and load line. In the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, STCW 1978, port state control is oriented towards verification that the proper certificates specified by the convention are on board, and "such certificates shall be accepted unless there are clear grounds for believing that certificate has been fraudulently obtained or that the holder of a certificate is not the person to whom that certificate was originally issued". It may be discovered during the exercise of port state control that a certificate is absent, expired or otherwise invalid, or that conditions do not accord with the particulars of the certificate. In any of these cases, the convention limit the measure which may be imposed by port states to those which ensure that the vessel obtains a valid certificate or most conditions are brought into at least substantial compliance with the particulars of the certificate. It is the exclusive responsibility of the Flag State of the ship to impose penalties for violations of IMO safety and prevention of pollution conventions. Thus it is clear that port states, which are parties to IMO safety and prevention of pollution conventions, have been granted and accepted a limited responsibility for enforcement.

### **The concept of Sub-Standard Ships**

Owner and operator maintain ships of varying ages and sizes according to different standards. Flag States national legislation often varies widely in terms of interpretation and enforcement of safety standards. In the last few years, much effort has been put into enforcing international regulations regarding construction equipment and manning standards in the fight against oil pollution damage and safety of life. The term "substandard ship" has been misunderstood and misinterpreted. It is easier to define a substandard ship solely by a list of qualifying defects.

In general, a ship is regarded as "substandard" if the accommodation, machinery or equipment such as life-saving appliances; radio communication and fire-fighting are below the standards required by relevant conventions such as SOLAS, Load Lines, COLREGS, ILO, etc. Furthermore reference is made to article 4 of the ILO convention NO. 147, Section 3.7 of the Memorandum of Understanding on Port State Control

1982, Section III of IMO Resolution A.321 (IX) dated 16 December 1975 and Section 3 of IMO Resolution A.466 (SII) dated 19 November 1987. A ship shall be deemed to be “substandard” if and when she has such deficiencies as are clearly hazardous to safety, health or the environment on assessment of the non-compliance with relevant technical, social or other safety standards applicable to the ship or her crew.

In another development, the failure of ships to meet required safety standards renders the ship substandard. Substandardness can sometimes be construed in terms of seaworthiness. In maritime law, seaworthiness has been defined as the “degree of fitness which an ordinary, careful and prudent owner would require his vessel to have as the commencement of her voyage, having regard to all the probable circumstances of it.” A ship must be in good repair, for example, hull, and machinery, sufficiently. Ballasted and manned by an efficient and competent crew. To achieve this end, several internationally recognised minimum standards have been developed and enforced by various maritime states through conventions and special agreements to achieve global uniformity. A ship is substandard if it fails to meet these minimum standards.

Consequently, the term “substandard ship” should not be confused with “open registry” or “flag of convenience” ship because the Flag does not make the ship. Some studies conducted on identifying potential polluters and criteria such as flag, age and size have been used in the analysis. Of the three, the most commonly connected criteria are that of the Flag. Unfortunately, the Flag is the variable factor in the interpretation of the statistical information derived. The reason is simple. Vessels do not necessarily remain in the same register throughout their service. If in any significant percentage of the cases, the culprit(s) can change flag, this might obstruct the accuracy of the information. The size of the vessel though a constant, can be misleading as well.

A poorly managed VLCC is probably just as likely to cause marine pollution as a poorly maintained feeder tanker. The difference lies in the potential extent of the pollution damage that could be caused. The age of a vessel, also a constant is by far the singularly most accurate measure of any likelihood of pollution. Old ships, like any old piece of machinery require constant and careful maintenance in order to perform properly. The older the vessel, the more accident-prone it is. However, this does not

cause pollution damage. Relatively new tankers have caused some of the major oil spills in recent years. This is usually due to human error. As indicated earlier, one of the criteria for seaworthiness is proper manning. A duly qualified crew is essential for the safe navigation of any vessel.

**Table 1**  
**Mean fleet age for Selected flags 1984**

Flag	Brazil	France	Norway	Denmark	West Germany	Sweden	Spain	Liberia	World
Mean age	9.0	9.3	7.4	8.0	6.4	8.1	9.3	9.8	12.1

(Source: Lloyd's Register Annual Casualty Statistical Returns, May 1987).

**Table 2**  
**Mean fleet age for selected flags from 1975-1980**

Year	Mean age	Year	Mean age
<b>1975</b>	<b>16.3</b>	<b>1981</b>	<b>18.6</b>
<b>1976</b>	<b>18.5</b>	<b>1982</b>	<b>18.5</b>
<b>1977</b>	<b>20.0</b>	<b>1983</b>	<b>18.4</b>
<b>1978</b>	<b>19.4</b>	<b>1984</b>	<b>18.3</b>
<b>1979</b>	<b>19.3</b>	<b>1985</b>	<b>18.4</b>
<b>1980</b>	<b>18.6</b>	<b>1986</b>	<b>N/A.</b>

*(Source: Lloyd's Annual Casualty Statistics Returns May 1987).*

In most maritime casualties reports human errors are solely responsible for accidents. If any of the crew cannot carry out his duties as required of the voyage, the ship can be regarded as substandard. However, if it cannot be concluded that a ship is made substandard by the wrong judgement of the master or crew. It must follow then, that in cases like that of Amoco Cadiz, Exxon Valdez, Khark V, Torry Canyon and Aragon, the issue is not that of substandard but variables of malfunction (**See Table 1**). Some maritime experts categorised substandard ships as follows:

- (i) The absence of equipment or arrangement required by the international conventions,
- (ii) Non-compliance of equipment or arrangement with relevant specifications of the conventions.

In any event, statistics have shown that there are thousands of vessels plying the high seas which are either substandard or have potentially serious deficiencies which would render the vessels substandard. The effort to eliminate substandard ships has taken several forms. There are individual remedial and punitive actions, as well as collective actions in the form of conventions and port state control co-operative efforts. These systems have been described in chapter VI of this thesis.

The elimination of substandard ships is a desirable goal for everyone, particularly in the shipping industry, but the enforcement of the minimum standards is not an easy task. Ordinarily, responsibility for enforcing the rules lies with the Flag States. However, it is often nearly impossible for the Flag State to fully ensure that all its vessels comply with the international standards. Open registries have often been singled out in this regard because most vessels flying the flag of these states rarely call at the home port. The more accurate explanation is that, most registries with large viable fleets have ships, that do not call at the home port. Thus, the problem with enforcement of standards does not lie in a lack of a “genuine link” or inadequate inspectorate; it lies in the ever-changing movement pattern of ships.

No inspectorate, however large and efficient, can fully enforce standards. This is evidenced by the loss ratio of the Paris Memorandum of Understanding member states, which was worse than the world’s average for 1986. This analysis is not meant to

defend open registries with less than admirable safety standards. It is an attempt to form the non-political, non-economic, non-antagonistic factors surrounding substandard ships, and the need to eliminate them.

In Europe, these pivotal groups, namely the shipowners, politicians and the electorate recognised the need to eliminate substandard ships from European ports. These groups recognised that a collective effort was needed in view of the above consideration and identified the following motivating factors for immediate implementation: -

- (a) Economic pressure on the European shipping community from more efficient or cheaper competitors;
- (b) Growing awareness of the detrimental economic and political effects of environmental pollution in industrialised countries of Europe;
- (c) Globalisation of commerce and industry which has intensified and thus forced politics to internationalise too (**See Tables 1-3**).

An independent assessment of the above factors leads to some rather interesting hypotheses regarding the lucid movements by the European Nations concerted effort to enforce international safety standards. The economic pressure on the European shipping community can be attributed to the competitive cost advantage of flagging out over tonnage and protectionism. The comparative advantage of flagging out lies in the lower crew costs and minimal or no taxation and minimum regulation.

The most attractive aspect of such crews lies in the strength of labour organisations. Labour unions in the west are more organised and can pool greater collective bargaining strength than their underdeveloped or developing country's counterparts. Flagging out gives the shipowner the opportunity to slash his operating cost and avoid confrontation with powerful unions at the same time. Similarly, by flagging out the owner can avoid high taxes and other operational costs.

The lack of serious competition for many years has led to complacency in European shipping. Suddenly, faced with a major crisis, the European shipowners, unlike the

market-oriented Americans, failed to see that shipping today is not so much about “cost-efficiency without sacrificing safety or quality” but rather “the ability to manage, market and finance” that will deter whether a company can survive that market.

Following numerous incidents of environmental pollution, both land and sea-based, Europe became increasingly aware of the detrimental economic and political effects of environmental pollution. Green organisations in 1985 launched impressive anti-pollution campaigns, states passed numerous anti-pollution legislation and the electorate preferred environmentally conscious candidates for political office. One of the industries hit hard by this new anti-pollution fervour was the shipping industry. Shipowners were forced by new safety regulations to employ expensive safety and anti-pollution measures that drove their operational costs higher. As indicated earlier, human error accounts for a majority of the large-scale marine pollution incidents. Here too, technical solutions were found to correct human error.

The third motivation for implementing port state control was the intensification of globalisation commerce and industry and the resulting internationalisation of politics. Here again, the European shipowner was ill prepared to tackle new rules of the trade. However, the European governments were first to recognised this new trend in 1982 and went ahead to forge new relationships. What was lacking was innovative ways to reconstruct national structure to effectively compete in the new global market. This was most evident in European-Far East relationships.

In Europe, the need to eliminate substandard ships was recognised with remarkable success. Although the need was clear and concerted action was necessary, the motivating factors, which eventually spurred this action, were misguided. The revival of shipping in Europe would not entirely rest on uniformity of rules or applications. European competitors need to reassess their relative position in the market and work towards improving their competitive edge. The application of technical requirements on shipowners is necessary in so far as the underlying reasons relate solely to the safety of life and property at sea and marine pollution prevention is not a commercial venture.

Substandard ships are still a major concern in the shipping global market because the potential horror of such ships nearly always has far-reaching consequences. The



efforts to eliminate them have taken the right direction in that national governments are taking the initiative, both collectively and unilaterally, to identify such steps and restrict their movements in port states within the scope of the relevant international conventions and IMO regulations. Thanks to IMO, ILO and the likes, in this regard for the innovations of safety culture in our oceans.

## **CHAPTER II**

### **International Instruments on Port State Control**

When talking about “PSC”, we often think that it is a new invention coming into being with an IMO Resolution A.466 (XII) “procedures for the control of ships”, now revoked by IMO Resolution A.787 (19) “Procedures for Port State Control”, and in Europe with the implementation of the “Memorandum of Understanding on port state control”. However, as we have had SOLAS Conventions for more than 50 years and since the “Chapter I” in principle in all the conventions is and has been the same, we can see that ships have been subject to port state control for many years. (See Regulation 19 in Chapter I of SOLAS 1974 as amended). In addition to SOLAS, there are many other instruments, which may be used in connection with port state control. These international instruments are for the promotion and improvement of maritime safety, prevention of pollution and seafarers social welfare, security. They are used as a framework when carrying out port state control.

#### **The 1974 SOLAS (Entered Into Force In Its Original Version 25 May, 1980)**

SOLAS (Convention for the Safety of Life at Sea) 1978 protocol and later, amendments to SOLAS 1974, laid down a comprehensive range of minimum standards for the safe construction of ships and for the basic safety equipment (e.g. fire protection, navigational, life-saving and radio) to be carried on board. The convention also contains operational instruments, particularly on emergency procedures, and provides for regular surveys and certificates of compliance.

#### **Application:**

It applies to the passenger ships irrespective of size and all cargo ships of a 500 gross tonnage and above engaged in international voyages. In everyday language these ships are called “convention ships”. However, the convention does not apply to:

1. Warships or troop ships,
2. Cargo ships with a gross tonnage less than 500.
3. Ships not propelled by mechanical means,
4. Wooden ships of primitive build,
5. Pleasure yachts not engaged in trade,
6. Fishing vessels

Chapters IV & V “Safety of Navigation”, however, apply to all ships, Chapter VI “carriage of cargoes” applies to all ships, and Chapter VII “carriage of dangerous goods” applies also to ships with a gross tonnage less than 500. Further, Chapter VIII “Nuclear Ships” applies to all nuclear ships.

### **The SOLAS port state control regulation**

Regulation 19 of Chapter I contains a right, but not an obligation, for Port State Control officers to verify that there are valid safety certificates on board ship. The certificates should be accepted unless there are clear grounds for believing that the condition of a ship or of its equipment does not correspond substantially with the particulars of the relevant certificate. A “No More Favourable Treatment Clause” (NMFT clause) is not contained in regulation 19, but it can be found in Article 11(3) of the 1978 Protocol.

In SOLAS, Chapter I, regulation 6(c) it is stated that an Administration nominating surveyors or recognising organisations to conduct inspections and surveys as stipulated in the SOLAS convention shall, as a minimum, empower them to require repairs to a ship and carry out inspections and surveys if requested by appropriate authorities of a port state. For many years there has been a dispute between administrations and organisations (classification societies) about how to act when a ship is detained in port or if a port state intervenes in some way or another. The author wishes to emphasise this in this paragraph because it contains the relevant instruments for administration and Classification Societies in connection with “Delegation”.

This means that if ones own administration nominates a classification society to carry out inspection on your behalf, it must give the authority to the organisation to require rectification. If a Port State notifies for instance the classification society for ship survey, this organisation must come on board immediately without waiting for

orders from the master or owner or even the Flag State. This is misinterpreted by many. Another regulation, which shall be mentioned here, is Regulation II, Chapter I of the SOLAS convention "Maintenance of condition after survey". In this regulation, it is stated that "the condition of the ship and its equipment shall be maintained to conform with the provisions of the present regulations to ensure that the ship in all respects will remain fit to proceed to sea without danger to the ship or persons on board". This means that the shipowner himself, or through the master, must ensure that the ship always complies with all regulations. It is also stated that whenever an accident occurs to a ship or a defect is discovered, the master or owner of the ship shall report at the earliest opportunity to the administration or the recognised organisation responsible for issuing the relevant certificate. It is unacceptable if a ship comes into a port and afterwards the ship is found to be unseaworthy, the certifying authority, often the classification society is reproached for not having fulfilled their obligation. In this connection, it must be emphasised that at first it is the shipowner, who is responsible for the ship's maintenance etc. Further, the owner is to ensure that the ship in all respects always complies with all the regulations and that it is always fit to proceed to sea without danger to the ship or persons on board.

Secondly, responsibility falls on the Flag State, but as Flag States can not control everything, such implementation are more or less only "pseudo responsible". The Flag States of course, are responsible for the certification, which have been issued, especially just after inspection. It is the inspection body who must see to it that the shipowner has ensured that everything is in order. If during the inspection, the inspection body does not observe a deficiency then it can be blamed for not having seen it but the owner is responsible if something is wrong. It is therefore, in the author's opinion, when talking about Port State Control very important that any party involved is fully aware of what the regulations are supposed to cover.

### **The International Convention on Load Lines (ILC) 1966 (entered into force 21 July 1968)**

The ILC 1966 Annex I "Regulations for determining Load Lines" established uniform principles and rules with respect to the limits to which ships or international voyages may be loaded. Concerning, the structural strength of the ship Annex I regulation 1 refers to the requirements of the classification societies. A similar reference entered into force in the SOLAS Convention on 1st July 1998.

## **Application:**

The convention applies to all ships except:

- a) Ships of war,
- b) New ships less than 24 meters in length,
- c) Existing ships of a gross tonnage less than 150,
- d) Pleasure yachts not engaged in trade, and
- e) Fishing vessels.

## **COLREG 1972/1981 (entered into force 15 July 1983).**

Convention on the International Regulations for Preventing Collisions at Sea, 1972, and the 1981 amendments (COLREG 1972/1981). In everyday language, COLREG lays down the basic “Rules of the Road” governing traffic at sea, including rights of way, safe speeds, action to avoid collision, procedures to be observed in narrow channels and in restricted visibility, and signals to be used to warn of manoeuvres. In the annex to COLREG, requirements are laid down for:

- positioning and technical details of lights and shapes,
- additional signals for fishing vessels, fishing in close proximity,
- technical details of sound signal appliances, and
- distress signals.

## **Application**

The Rules apply to all vessels on the high seas and in all waters navigable by sea-going vessels. As regards the COLREG control regulation, there are no articles or regulations on control in COLREG. However, the carriage requirements are checked within the framework of SOLAS (see SOLAS regulations 1/7 and 8).

**International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) and the 1978 Protocol related thereto- (MARPOL 73/78).**

The convention covers all the technical aspects of pollution from ships, except disposal of land generated wastes into the sea by dumping. This is covered by a separate convention. It applies to ships of all types including High Speed Craft, and submersible, floating craft and fixed or floating platforms operating in the marine environments.

The convention consists of six Annexes (Annex Six is yet to enter into force as at September 1999), two protocols dealing respectively with reports on incidents involving harmful substances and arbitration. These Annexes include:

Annex I: Regulations for the prevention of Pollution by Oil. (Entered into force 2 October 1983).

Annex II: Regulations for the control of Pollution by Noxious liquid substances in bulk (Entered into force 6 April 1987).

Annex III: Regulations for the Prevention of Pollution by Harmful substances carried by sea in Packaged forms, or in Freight containers, Portable tanks or Road and Rail Tank Wagons. (Entered into force 1 July 1992).

Annex IV: Regulations for the Prevention of Pollution of Sewage from ships.

Note: The countries around the Baltic Sea put this Annex into force since 3 May 1990, at Helsinki, Finland (Helcom Agreement).

Annex V: Regulations for the Prevention of Pollution by Garbage from ships. (Entered into force 31 December 1988).

Annex VI: Regulations for the control of air pollution. (Yet to enter into force).

**Application:**

The MARPOL Convention applies to all ships with the following modifications: The convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a state and used, for the time being, only on government non-commercial service. However, each party shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it that such ships act in a manner consistent, so far as is reasonable and practicable, with the present convention. (External from Article 3 in the MARPOL 1973 convention).

### **The MARPOL control regulation.**

Article 5 of the Convention authorises port states to verify that there are valid certificates and other relevant Documents on board ships in ports or offshore terminals. The “No More Favourable Treatment (NMFT)” can be found in Article 5(4) in the MARPOL Convention).

### **The International Convention on Tonnage Measurement of Ships, 1969 (Tonnage '69) (entered into force 18 July 1982 for new ships and 18 July 1994 for existing ships).**

The text of the Annex of the Convention establishes a universal system of tonnage measurement for ships particularly Articles 4 & 6 respectively. Tonnage '69 includes:

- a) Regulations for determining Gross and Net Tonnage of ships.
- b) International Tonnage Certificate.

#### **Application:**

It applies to ships engaged on International voyages except for:

- a) War ships, and
- b) Ships of less than 24 meters (79 feet ) in length,

For more detailed description of the application and the exceptions, Articles 3 & 4 of the Convention are explicit enough for that purpose.

### **The Tonnage Control Regulation**

This section is intended as additional information only. The “inspection” article is in Article 12. However, it must be remembered that this convention is not a “Safety Convention”, and TONNAGE'69 is seldom mentioned and used in connection with Port State Control. However, that the transitional period of 12 years for the application of the convention on existing ships expired on 18 July 1994.

As ship gross tonnage is the key for the surveyor to establish which requirements are applicable to the ship, logically it is one of the first certificates, requested in connection with the Port State Control inspection. In the period, just after 18 July 1994, many ships encountered problems in the ports, especially those built before

1982 and those built after 1982, which have been measured in accordance to the principles laid down in IMO resolution A.494 (XII). Ships continue to run into problems (March 1999) around the world due to lack of proper information (training). In this resolution, it has been possible to continue to measure ships in accordance to the existing or old rules. It means that ships built before 18 July, 1994 continue, if they are of a gross tonnage less than 1600, to be equipped and built in accordance with the regulations applicable to a ship of that particular size under the old tonnage rules. It will often be the ships with a gross tonnage of 499 and 1599, in the so-called paragraph ships, which give problems. It is therefore, very important in connection with Port State Control that inspectors use their common sense and solve the problems in a pragmatic way.

Of course, no one must accept a certificate issued fraudulently. If this is the case, the issuing authority must be informed immediately that the port state will not accept the certificate and the reason why the certificate is not accepted. Note that a ship, which has been measured in accordance to the 'older' rules, must have the following text written on the ship's entire "safety and pollution prevention" certificate: "The above Gross Tonnage is according to the measurement system previously in force in the International convention of Ships, 1969". (For further clarification read the remark column of the Valid International Tonnage Certificate (1969).

Furthermore, the new tonnage certificate should have the following text written under the heading "Remarks". The ship is re-measured according to article 3(2)(d) of the 1969 Tonnage convention. The Gross Tonnage according to the measurement system previously in force is 24 GRT (CF IMO Resolution A.758 (18), if the ship is built before 18 July 1982. The ship is additionally measured according to resolution A.494 (XII). However, Article 6 says, "the determination of gross and net tonnage shall be carried out by the Administration which may entrust such determination either to persons or organisation recognised by it". In any case, the Administration concerned shall accept full responsibility for the determination of gross and net tonnage.

**The International Labour Organisation (ILO) 147 Convention (Merchant Shipping Minimum Standards Entered Into Force 28 November 1981).**



ILO 147 Convention required administrations to have effective legislation on safe manning standards, hours of work, seafarers' competency, and social security in addition to employment standards equivalent to those contained in a range of ILO instruments. For example, the minimum age, accident prevention, crew accommodation, repatriation, social security, training. The convention is primarily a Flag State instrument but it also includes Port States responsibilities.

### **Application:**

The convention applies to every sea-going ship, whether publicly or privately owned which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purposes. However, National laws or regulations shall determine when ships are to be regarded as sea-going ships for the purpose of this convention. The convention applies to sea-going tugs, but does not apply to:

- a) Ships primarily propelled by sail, whether or not they are filled with auxiliary engines,
- b) Ships engaged in fishing or in whaling or in similar pursuits, and
- c) Small vessels and vessels such as oil rigs and drilling platforms when not engaged in navigation. The decision as to which vessels are covered by this sub-paragraph to be taken by the competent authority in each country in consultation with representative organisations of shipowners and seafarers.

In everyday language, it is said that the convention applies to merchant ships.

### **The ILO 147 control regulation:**

The control regulation is in Article 4.states:

Generally it can be said that it allows an administration to apply its provisions (including the power of detention) to any ship which calls at its ports, whether or not the ships Flag State has ratified the convention. This is in view of the application of No More Favourable Treatment to non-Convention ships.

The appendices to ILO 147 include the following:

1. Conventions relevant for the inspection on board (the “hard ware” conventions).
  - a) The minimum age convention, 1975 (no. 138), or  
The minimum age (*Sean*) convention (revised), 1936 No. 58, or  
The minimum age (*Sean*) convention 1920 (no. 7).
  - b) The Medical Examination (seafarers) convention, 1946 (no. 73).
  - c) The Prevention of Accidents (seafarers) convention, 1970 (no. 134)  
(Articles 4 and 7).
  - d) The Accommodation of crews convention (revised), 1949 (no. 92);
  - e) The food and catering (ship crews) convention, 1946 (no. 68) (Article 5);
  - f) The officers competency certificates convention, 1936 (no. 53) (Articles 3  
and 4).
  
2. Conventions relevant in the framework of the provisions for PSC. (the “soft  
ware”):
  - a) The seamen’s article of agreement convention, 1926 No.22;
  - b) The repatriation of seamen convention, 1926 (no.23);
  - c) The shipowner’s liability (sick and injured seamen) convention, 1936  
(no.53); or the medical care and sickness benefits convention, 1960 (no.  
130);
  - d) The freedom of association and protection of the right to organise  
convention, 1948 (no. 87);
  - e) The right to organise and collective bargaining convention, 1949 (no. 98).

As the merchant Shipping (minimum standards) Convention primarily is a Flag State instrument only those conventions mentioned under No. 1 above, will be applied on board in connection with Port State Control. However, those mentioned under No.2, will be used in the framework of the provisions of a PSC complaint report received from the Flag State, which is supposed to investigate such matters.

## **The STCW 1978 Convention (Entered Into Force 28 April 1984) & (The 1995 Amendments Entered Into Force 1 February 1997)**

STCW (Convention on Standards of Training and Watchkeeping for Seafarers) 1978, lays down extensive certification and qualifications requirements (including syllabuses and sea time) for senior officers; all officers in charge of watches in the deck, engine and radio departments and ratings forming part of a watch. All seafarers will be required to have a certificate endorsed in a uniform manner. It also specifies basic principles to be observed in keeping deck and engine watches and special qualification requirements for personnel on oil, chemical and liquefied gas tankers.

The 1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978 entered into force on 1 February 1997. One of the major features of the amendments is the adoption of a new STCW Code, to which many technical regulations have been transferred. Part A of the Code is mandatory while part B is recommended. Dividing the regulations up in this way makes administrations easier and it will also make the task of revising and updating them more simple. For procedural and legal reasons there is no need to call a full conference to make changes to the code(s).

One important amendment adopted by the 1995 conference concerns chapter 1 (General provisions). It includes enhanced procedures concerning the exercise of Port State Control, which have been developed to allow intervention in the case of deficiencies deemed to pose a danger to persons, property or the environment. Measures have also been introduced for watchkeeping personnel to prevent fatigue. Until 1 February 2002, however, parties may continue to issue, recognise and endorse certificates, which applied before date in respect of seafarers that began training or seagoing service before 1 August 1998.

### **Application**

The convention applies to seafarers serving on board seagoing ships entitled to fly the flag of a party except to those serving on board:

- a) Warships, etc.,

- b) Fishing vessels,
- c) Pleasure yachts not engaged in trade, or
- d) Wooden ships of primitive built.

### **The STCW Control Regulation:**

The control regulation is in Article X, and the “NMFT clause” is in the same Article. Note: that parties to the convention will be required to submit proved detailed information to IMO concerning administrative measures taken to ensure compliance with the convention.

The Maritime Safety Committee (MSC), IMO's Senior Technical Body, will use this information, to identify parties that are able to demonstrate that they can give full and complete effect to the convention. Other parties will then be able to accept that certificates issued by these parties are in compliance with the convention. This regulation is regarded as particularly important because it means that governments will have to establish that they have the administrative, training and certification resources necessary to implement the convention.

### **The United Nations Convention on the Law of the Sea (UNCLOS´ 82)**

On 10 December 1982 the United Nations Convention on the Law of the Sea was opened for signature at Montego Bay, Jamaica. More than 150 countries representing all regions of the world participated. These countries convened for the purpose of establishing a comprehensive regime “dealing with all matters relating to the Law of the sea bearing in mind that the problem of ocean space are closely interrelated and need to be considered as a whole”.

The convention is multi-faceted and represents a monument to international co-operation in the treaty making process. The need to elaborate a new and comprehensive regime for the law of the sea was perceived and the international community expressed its collective will to co-operate in this effort on a scale the magnitude of which was unprecedented in treaty history. The law comprises 320 articles and nine annexes, governing all aspects of ocean space delimitation to environmental control, scientific research, economic and commercial activities, technology and the settlement of disputes relating to ocean matters.

Article 218 “Enforcement by Port States” allows a state to undertake investigations on any vessel within its port or at an off-shore terminal, where the evidence so warrants, institute proceedings in respect of any discharge from the vessels outside the internal waters, territorial sea or exclusive economic zone of that state in violation of applicable international rules and standards established through the competent international organisations or general diplomatic conferences.

Article 226- “Investigation of Foreign Vessels.

States should not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be limited to an examination to such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying, further physical inspection of the vessel may be undertaken only after such an examination and only when:

- (a) There are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;
- (b) the contents of such documents are not sufficient to confirm or verify a suspected violation; or
- (c) The vessel is not carrying valid certificates and records.
- (d) If investigation indicates a violation of applicable laws and regulations or international rules/standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.

**The IMO Resolution A.481 (XII): “Principles of Safe Manning”:**

Safe manning is a function of the number of qualified or experienced seafarers necessary for the safety of the ship, crew, passengers, cargo and property and for the protection of the marine environment. In other words, and according to ILO 109, Art. 21 and SOLAS Chapter V states that: “Every ship. Must be sufficiently, efficiently and safely manned”. However, IMO Resolution A.481 (XII) was adopted on 19 November 1981 and contains two annexes.

Annex 1. Contents of Minimum Safe Manning Document.

Annex 2. Guidelines for the application of principles of Safe Manning, in particular a catalogue of certain capabilities necessary for keeping an orderly navigational or engine room watch.

The resolution calls upon member governments to ensure that every ship to which the 1978 STCW convention applies, will carry on board at all times a Minimum Safe Manning Document, issued by the Flag State Administration specifying the minimum safe manning required for the ship concerned. Furthermore, member governments are urged, when exercising port state control functions in respect of foreign flagships, to consider conforming of the actual circumstances aboard with the information given in the Ship's Minimum Safety Manning Documents as evidence that the ship is safely manned.

**The IMO Resolution A.787 (19) "Procedures for Port State Control" adopted on 23 November 1995**

This resolution provides basic guidance on the conduct of port state control inspections and affords consistency in the conduct of these inspections, the recognition of deficiencies of a ship, its equipment, or its crew, and the application of control procedures. These procedures apply to ships which come under the provisions of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74), the International Convention on Load Lines, 1966 (Load Lines 1966), the International Convention for the Regulation of Pollution from ships, 1973 as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 78), and the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69). Ships of non-parties or below convention size shall be given no more favourable treatment as stated earlier.

In exercising Port State Control, parties will only apply those provisions of the conventions which are in force and which they have accepted. If a Port State exercises port state control based on the International Labour Organisation (ILO) No. 147, "Merchant Shipping (Minimum Standards) Convention, 1976", guidance on the conduct of such control inspections is given in ILO publication, "Inspection of Labour Conditions on Board Ships: Guidelines for Procedures". Under the

provisions of the applicable conventions noted above, the Administration (Flag State) is responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give the applicable conventions full and complete effect so as to ensure that, from the point of view of safety of life and pollution prevention, a ship is fit for the service for which it is intended and seafarers are qualified and fit for their duties.

In some cases it may be difficult for the administration to exercise full and continuous control over some ships entitled to fly the flag of its state, for instance those ships which do not regularly call at a port of the Flag State. The problem can be, and has been, partly overcome by appointing inspectors at foreign ports and/or authorising recognised organisations to act on behalf of the flag state administration. These control procedures should be regarded as complementary to national measures taken by administrations of flag states in their countries and abroad and are intended to provide assistance to Flag State administrations in securing compliance with convention provisions in safeguarding the safety of crew, passengers and ships, and ensuring the prevention of pollution. In other words, flag state control must be self-sustainable here. The authorities of port states should make attentive use of adequate provisions for the purpose of identifying deficiencies, if any, in such ships which may render them substandard by ensuring that remedial measures are taken (See Appendix 3: IMO Resolution A. 787 (19)-Section 4.1 for more details).

### **Application of International Instruments**

Elaboration has been done on a number of international conventions, which are used in connection with PSC. It is obvious that PSC, with reference to a certain convention, is only possible if the Port State itself is party to it and has fully implemented the conventions in related thereto. However, it is relevant to recall that international conventions are only binding on member states which ratify them, and which by national legislation give effect to such conventions. Nevertheless, there has been a tendency to consider that multilateral treaties have a higher legal validity than bilateral treaties. Multilateral Treaties sometimes are regarded as “law-making”.

There is of course also a certain psychological pressure on States, if they are amongst only a few, who have not ratified a certain convention. Often ships flying

the flag of a state that is not a party to a certain convention comply with the requirements in the convention in any case in order to avoid trouble in the ports of member states where the “NMFT clause” is put into force.

Ship owners of ships flying “non-party flag” often make a request to a classification society with the purpose of getting a document issued which states that the ship complies with certain requirements; let us say MARPOL for example. Such a document is called a “letter of compliance”. However, as the conventions become more and more global the above example will be rare in the future. There is a trend that in the future such “letters of compliance” will not be accepted irrespective of the matter is dealt with in chapter 1.5 of IMO Resolution A.787 (19) “Procedures for Port State Control”. Even if we all agree upon the importance of what is covered in the expression: Safer ships and Cleaner oceans, we have to admit (if we are objective) that the previous mentioned pressures do produce what can be called a Creeping Jurisdiction.

This means that after a maritime convention has entered into force, then, even if it is not a requirement from a ship’s Flag State, almost all ship owners try to implement the requirements in question so as to avoid trouble due to the “NMFT clauses”. A “No More Favourable Treatment Clause” (NMFT Clause) has sometimes been subject of discussion, as to whether the clause is in accordance with the principles of “International Law”. The author’s opinion is that, if a port state makes use of or makes reference to the “NMFT clause”, then, such a state should have legislation, which explicitly permits the relevant steps to be taken. A “NMFT clause” should never be used if it is implemented within the framework of a technical standard by secondary legislation only.



## **CHAPTER III**

### **The Port State Control in Europe and the Paris Memorandum of Understanding on Port State Control.**

#### **The Agreement of the Memorandum of Understanding**

In Western Europe on January 26, 1982 after the sad fact of the founded AMACO CADIZ in March 1978, more stringent commitments on Port State Control were felt to be necessary over the first step to a co-ordinated and harmonised Port State Control, resulting in the MOU of 1978 with respect to the Memorandum of Understanding on Port State Control in Europe. The new Memorandum had to cover these main themes.

- Safety at sea
- Prevention of pollution by Ships
- Living and co-ordination on board.

It is said: "The main underlying reason for the MOU's birth was of course that we cannot afford substandard shipping threatens our ports and the environment." Therefore, on this date of January 26 1982, the maritime countries of 14 European nations reached in understanding which came into effect in July 1982 that each would maintain an effective system of Port State Control with a view to flag, foreign merchant ships visiting the ports of its state comply with instruments laid down in various international conventions.

As Iain Sproat(1982) said "The Paris Memorandum, signed by fourteen European Maritime Authorities established with effect from 01 July 1982, a harmonised and co-ordinated system

for inspection of 25% of foreign ships calling at European ports, in short, discrimination as to flag, for the purpose of detecting which fail to meet standards laid down in international conventions on safety, manning and pollution prevention, securing the verifications of deficiencies one discouraging the operation of sub-standard vessels". The charter of the Memorandum of Understanding is the agreement on a number of commitments and procedures that are directly related to the internationally adopted instruments.

What has been laid down in International Convention as a right for Port State Control is, namely, to inspect foreign flagships on the basis of the convention which has been taken up as a commitment, but is to be applied in a harmonised way. An effective information system must take care of information on inspections made by each authority in order to avoid repetition. As A. J. Cowley puts it "The Memorandum of Understanding on Port States, which has concluded in Paris in January 1982, is a followship to the earlier discussions on harmonised Port State Control, which stated in 1976. The authorities concerned decided to accept stronger and clearly defined commitments on the number of inspections of Foreign Flag Ships by each of the participating maritime authorities and to pay much greater attention to the mutual exchange of information on inspected ships in order to avoid duplication of inspections. Furthermore, the authorities decided to apply only those conventions which have been ratified by the Port State Control involved and which have entered into force".

Because the information system about inspections is important in the Port State Control under the MOU, the ship receives a Port State inspection report after inspection. If there is no obvious inspections in the region, there could be duplications on inspections. This shows the importance of the Port State information system in MOU in which results of inspections are stored without delay, and in which ships' names are deleted after a six month period until another inspection of the ship is made. The MOU stated "each authority will consult, cooperate and exchange information with the other authorities in order to further the aims of the Memorandum". The aim of the MOU was initially to achieve an annual inspection rate of 25% of the individual ships entering a country.

According to the text of MOU the partners should have each achieved, by 01 July 1985, an annual total of inspections corresponding to 20% of the estimated number of individual

foreign merchant ships which entered their ports in a year. The ship that has been inspected in another Port State Control partner's port according to the text of the MOU, should in principle, be left alone for six months. The MOU stated "the Authorities will seek to avoid inspecting ships which have been inspected by any of the other Authorities within the previous six MOUs, unless they have clear ground for another inspection". Taken into consideration that most of the ships in the region enter more than one port and more than one regional state within the size MOU's period, most of the ships visiting the region will be inspected by a Port State Control at least once a year.

### **Relevant Instruments of Memorandum of Understanding**

In order to maintain an effective system of Port State Control with a view to ensuring that, without discrimination of flag, foreign merchant ships visiting the ports of its state comply with instruments laid down in the various international conventions; that was why the 14 European nations signed the MOU. Those instruments are as follows:

- The International Convention on Load Lined, 1966
- The International Convention for the Safety of Life at Sea, 1974
- The Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974;
- The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;
- The International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978;
- The Convention on the International Regulations for Preventing Collisions at Sea, 1972;
- The Merchant Shipping (Minimum Standard) Convention, 1976 (ILO Convention 147).

It was also stated in the Memorandum that each authority would apply those relevant instruments which are in force and which its state has accepted. An instrument so amended would then be considered to be the "relevant instrument" for that authority.

As J. Cowley (1985) said "It is important to note that the Memorandum is thus in no way contradictory to the contents of internationally agreed maritime conventions in IMO and ILO. The authorities only implement the standards and procedures of those Conventions in a

harmonised way. It is believed that such harmonisation is important not only for the shipping of the region states but also for the International Shipping Community".

### **The “No More Favourable Treatment (NMFT) Clause**

It is stated in the relevant instruments SOLAS Protocol (article II-3), MARPOL 1973/78 (article 5-(4)), and STCW 1978 (article 5), the clause of no more favourable treatment. In the STCW Convention it is stated that “No More Favourable Treatment” shall be given to ships entitled to fly the flag of a non-party than is given to ships entitled to fly the flag is a Party”. In a MARPOL 1973/78 it is stated that “with respect to the ships of non-parties to the convention, Parties shall apply the requirements of the MARPOL 1973/78 Convention as may be necessary to ensure that no more favourable treatment is given in such ships”.

In the Memorandum of Understanding this clause is also stated and it has agreed that “In applying a relevant instrument for the purpose of Port State Control, the authorities will ensure that no more favourable treatment is given to ships entitled to fly the flag of the state which is no Party to that instrument”. In this respect, J. Cowley emphasised that “the no more favourable treatment clause is like wise based upon the internationally agreed instruments. The committee it unanimously of the opinion that the “no more favourable treatment clause” should only apply with respect to those instruments which themselves contain such provision, notably in and only in SOLAS and its Protocol 1978, MARPOL 1973/78 and STCW 1978. It is a condition that these instruments are in force and have been ratified by the Port State exercising the inspection. But, the ships of non-parties to the relevant international conventions would thus be treated no differently nor more severely than by any other individual party to the convention”.

### **Who conducts Port State Control Inspection in the European Countries?**

The Port State Control inspection “in European countries is conducted by the same persons who conduct national inspections that constitute part of the national shipping inspection service in their country. So apart from conducting inspections on their national ships, they

also conduct Port State inspections, which by definition is only done on foreign ships”. The MOU states that “Inspections will be carried out by properly qualified persons authorised for that purpose by the authority concerned and acting under its responsibility”. Port State Control surveys must have no direct commercial interest vested in either the ports, or the ships where inspections in accordance to the IMO instruments are carried out. The IMO Resolution A.787 (19), chapter 2.5 deals with these requirements.

### ***Inspections Procedures, Rectification and Detention***

In selecting the ships for inspection, the surveyor is assisted by the daily list of incoming ships (issued by the port authorities) and the MOU list of ships which have been inspected during the previous six months. This is made by means of an online terminal from the district to the MOU computer centre in France in due time. After comparison of these two lists the choice of ships to be inspected is regardless of flag or owner. As indicated in the MOU, special attention is also paid to ships, which may present a special hazard, for instance oil tankers and gas and chemical carriers; and also ships that have had several records of deficiencies.

When conditioning an inspection under the terminal of the MOU, the surveyors first check the ship’s documentation. If the ship’s certificates are invited or incomplete, or if the surveyor has clear grounds for believing the conditions of the ship and its equipment do not correspond substantially with the particulars on the certificate, he will use his professional judgement in deciding whether, clear grounds assist to conduct a more detailed inspection.

The Memorandum of Understanding stated as “clear grounds” inter alias the following:

- a report or notification by another authority;
- a report or complaint by the master, a crew member, or any person or organisation of the ship, shipboard living and making conditions or the prevention of pollution, unless the authority concerned deems the report or complaint to manifestly impounded;
- Other indications of serious deficiencies”.

If after the detailed inspection it is discovered that the ship does not comply with the appropriate international standards, steps are taken to rectify the deficiencies. In the case of

serious deficiencies, which are clearly hazardous to safety, health or environment, the ships may be delayed or detained until they are corrected. The MOU stated further that “in the case of deficiencies which are clearly hazardous to safety, health or environment, the authority will ensure that the hazard is removed before the ship is allowed to proceed to sea and for this purpose will take appropriate action, which may include detention. The Authority will, as soon as possible, notify the Flag State through its consul or, in his absence, its nearest diplomatic representative or its maritime authority of the action taken”.

After the inspection, a report is always left on board as information to the master and as proof that the ship has been inspected, also in the case of deficiencies that led to the detainment of the ship. The details of every inspection are directly sent to the computer in France by telex, in order that the MOU has the inspection list as up to date as possible. This computerised regional information system for the rapid exchange of information and for statistical purposes considerably reduces the chances of duplication of inspections.

The Memorandum also established that where deficiencies cannot be remedied in the port of inspection, the authority may allow the ship to proceed to another port, subject to any appropriate conditions determined by the authority with a view to ensuring that ships can so proceed without an unreasonable danger to safety, health or environment. In such circumstances the authority will notify the competent authority of the Region State where the next port of call of the ship is situated, the parties mentioned in 3.7 of the MOU, and any other authority as appropriate.

The Memorandum stated that “when exercising control under the Memorandum, the authorities will make all possible efforts to avoid unduly detaining or delaying a ship”, and also stated that nothing in the Memorandum affects rights created by provisions of relevant instruments relating to compensation for under detention or delay”.

**Table 4:  
Changes in loss rate for each Member State  
Pre/Post December 12, 1982**

Member State	Loss rate 1968-1982	Loss rate 1983-1986	Absolute Change	Relative Change (%)
B	0.04	0.00	-0.04	-100
DK	0.16	0.03	-0.13	-81
SF	0.19	0.06	-0.13	-68
F	0.10	0.03	-0.07	-70
D	0.12	0.06	-0.06	-50
GR	0.98	1.11	+0.13	+13
IRL	0.17	0.01	-0.16	-94
I	0.30	0.11	-0.19	-63
NL	0.21	0.05	-0.16	-76
N	0.14	0.21	+0.07	+50
P	0.28	0.02	-0.26	-93
E	0.46	1.12	-0.66	+143
S	0.10	0.01	-0.09	-90
GB	0.11	0.27	+0.16	+145

(Source: *Lloyd's Register Annual Returns for the years 1968-1985, Monthly Shipping Statistics, May 1987 for the year 1986 [51]*).

**Table 5  
DEFICIENCIES FROM 1979 TO 1988**

PERIOD	NO. OF REPORTS	PARIS MEMBERS	OUTSTANDING REPORTS
Nov. 1978-Mar. 1979	43	28	6
Apr. 1979- Dec. 1979	84	58	1
July 1980-Sept. 1980	18	10	9
Oct.1980-Oct. 1981	194	170	9
Oct. 1981-Dec. 1982	438	413	37
Jan. 1983-Oct. 1983	281	236	40
July 1984-June 1985	186	157	18
Sept. 1985-Nov. 1986	179	163	—
<b>TOTAL</b>	<b>1610</b>	<b>1375</b>	<b>129</b>

(Source: *IMO, MSC Annual Report 1987.London: IMO*).

Note that the information provided in this table shows that the 14 European State Members of the Paris Memorandum of Understanding (PARIS MOU) are working towards the enforcement of marine pollution prevention conventions at that time.

**Table 6****Loss rates for all Member States 1968-1986**

<b>Year</b>	<b>GRT Lost ('000)</b>	<b>GRT Registered ('000)</b>	<b>GRT Lost + 100 over GRT Registered</b>
<b>1968</b>	<b>263.391</b>	<b>86 943</b>	<b>0.30</b>
1969	<b>382.044</b>	<b>92 311</b>	<b>0.41</b>
<b>1970</b>	<b>213.831</b>	<b>98 123</b>	<b>0.22</b>
<b>1971</b>	<b>429.279</b>	<b>107 231</b>	<b>0.40</b>
<b>1972</b>	<b>201.145</b>	<b>114 357</b>	<b>0.18</b>
<b>1973</b>	<b>246.780</b>	<b>121 765</b>	<b>0.20</b>
<b>1974</b>	<b>314.969</b>	<b>129 617</b>	<b>0.24</b>
<b>1975</b>	<b>300.002</b>	<b>139 098</b>	<b>0.22</b>
<b>1976</b>	<b>229.644</b>	<b>147 373</b>	<b>0.16</b>
<b>1977</b>	<b>307.659</b>	<b>151 655</b>	<b>0.20</b>
<b>1978</b>	<b>905.175</b>	<b>154 965</b>	<b>0.58</b>
<b>1979</b>	<b>696.932</b>	<b>149 237</b>	<b>0.47</b>
<b>1980</b>	<b>667.356</b>	<b>149 147</b>	<b>0.45</b>
<b>1981</b>	<b>521.176</b>	<b>147 593</b>	<b>0.35</b>
<b>1982</b>	<b>450.801</b>	<b>142 070</b>	<b>0.32</b>
<b>1983</b>	<b>608.720</b>	<b>129 815</b>	<b>0.47</b>
<b>1984</b>	<b>677.153</b>	<b>115 447</b>	<b>0.59</b>
<b>1985</b>	<b>375.159</b>	<b>98 010</b>	<b>0.38</b>
<b>1986</b>	<b>416.100</b>	<b>90 717</b>	<b>0.46</b>

*(Source: Lloyd's Register Annual Casualty Reports for the years 1968-1985, Monthly Shipping Statistics, May 1987 for the year 1986).*

Note that, the years 1968-1973 and 1976-1980 respectively, no data were available for IRL. Therefore, GRT lost and GRT registered for these years are exclusive of IRL.



## **Application of the MOU to ships below 500 gross tonnage**

It was agreed in the Memorandum of understanding (MOU) about the application for ships below 500 gross tonnage that in the case of these kinds of ships “the authorities will apply those requirements of the relevant instruments which are applicable and will to the extent that a relevant instruments does not apply, taken such actions as may be necessary to ensure that those ships are not clearly hazardous to safety, health or environment. Furthermore, as a result of recent agreements between MOU partners, a List of items to which surveyors should pay special attention when inspecting small ships below the size covered by MARPOL 73/78, has been included in Annex 1 of the original Memorandum of Understanding. Also measures have been agreed for situations in which a ship’s equipment for the protection of the marine environment is in operative.

## **Why Memorandum of Understanding?**

After the international convention for the Prevention of Pollution from ships, 1973 as modified by the Protocol of 1978 relating thereto, MARPOL 73/78 entered into force on 02 October 1983. The IMO procedures for the control of ships and discharges under Annex I of MARPOL 73/78 by the IMO Assembly (Resolution A.542 (13) and (32)) have been included in Annex I of the MOU (Guidelines for Surveyors). After the International Convention on Standards of Training, Certification and Watchkeeping for seafarers, 1978(STCW) entered into force on 28 April 1984, the procedures for control of manning and certification, that had been laid down in the Annex I of the Memorandum of Understanding have been up dated in order to cover the new situation after STCW entered into force.

Letters of Warning- Also the Nations partners of the MOU have decided to issue letters of warning to the master of ships from states that are not party to the MARPOL 73/78 and which do not comply with MARPOL 73/78 standards. In this letter of warning the master is informed that during future calls of ports in the 14 port state countries that signed the MOU, his ship may be subject to extensive inspections and/or denial of port entry unless one of the following documentation of his ship can be shown:

- A wide IOPP certificate in case the Flag State of his ship has become a Party to MARPOL 73/78, or
- A declaration of Compliance, stating that the ship has been surveyed and that the survey should that the structure, equipment, systems, fittings, arrangements and material of the ship and the conditions thereof more in all respects satisfactory and that the ship complied with the applicable requirements of Annex I to MARPOL 73/78; or
- A declaration showing that an application for IOPP certificate or Declaration of compliance has been filled, and that the survey and inspections necessary for the issue of the said documents will take place as soon as possible. It states thus: “It is also decided that the ships that do not comply with MARPOL requirements will receive a letter of warning and may be denied entry into ports in the Memorandum of Understanding region. All MOU partners will be informed through their computerised information system of the action taken”.

In addition, the master of the ship is informed that, the Port State Control officer carrying out inspections on ships, may take such steps as will ensure that the ship shall not sail until it can proceed to sea without presenting an unreasonable threat or harmful to the marine environment. These steps may include the ship being obliged to discharge all its oily wastes to port reception facilities before permission is granted to leave the port.

### **Documents established and used for the purpose of the Paris MOU on Port State Control**

The Memorandum of Understanding on Port State Control in its annexes has established different documents for use for the purpose of Port State Control, such as the following:

- Telex form, in case of deficiencies not fully verified or only provisionally repaired. This telex shall be sent to the competent authority of the region state where the next port of call of the ship is situated;
- Report form on inspection in accordance with the Memorandum of Understanding on Port State Control;
- Information system on inspections;

- Information system on inspections; and
- Telex form for ships inspected.

Also the letter of warning is established for the masters of the ships from states that are not party to MARPOL 73/78 and which do not comply with MARPOL 73/78 standards.

### **The Aide Memoir for Surveyors**

To assist surveyors in keeping track of all provisions and amendments thereto of the relevant conventions a so-called “Aide-Memoir” was issued to them. It contains, inter alia, reference to convention provisions, sections and articles of the MOU and codes for the information system.

### **Operational Violations**

Regarding the operational violations, the entry into force of MARPOL 73/78 has caused the Port State Control partners to decide that this section should be further developed. The section 5 of the Memorandum of Understanding stated that the authorities will upon the request of other authorities endeavour to secure evidence relating to suspected violations of the requirements on operational matters of rule 10 of the International Regulations for Preventing Collisions of Sea, 1972(COLREG) and the International Convention for the Prevention of Pollution at sea, 1973, as modified by the Protocol of 1978, (MARPOL 73/78) relating thereto. In case of “suspected violations involving the discharge of harmful substances, the authority will, upon the request of another Authority, visit in port the ships suspected of such a violation in order to obtain information and where appropriate to take a sample of any alleged pollutant”. In this respect, the partners of the MOU will establish a network of liaison officers in the 14 countries to be contacted should violations of discharge provisions be carried out. Furthermore, the partners are examining whether telexes and forms used for investigation and reporting purposes should be further harmonised.

However, the Paris Memorandum of Understanding (Paris-MOU) on Port State Control is an initiation between European Maritime Authorities and Canada. It consists of Agreements and a number of Annexes including guidelines for surveyors in Annex I, which now serve as a yardstick for international Port State Control inspection globally (See Tables iv-vi).

## CHAPTER IV

### **The Port State Control in Europe and the MEMORANDUM of understanding on Port State Control.**

#### *The Agreement of the Memorandum of Understanding*

In Western Europe on January 26, 1982 after the sad fact of the founded AMAKOCADIZ in March 1978, more stringent commitments on Port State Control were felt to be necessary over the first step to a co-ordinated and harmonised Port State Control, resulted in the MOU of 1978 with respect to the Memorandum of understanding on Port State Control in Europe. The new Memorandum had to cover these main themes.

- Safety at sea
- Prevention of pollution by Ships
- Living and co-ordination on board.
- And also it is said, "The main underlying reason for the MOU's birth was of course that we cannot afford that substandard shipping threatens our ports and the environment

Thus, on this date of January 26, 1982 the maritime countries of 14 European nations reached in understanding which came into effect in July 1982 that each would maintain an effective system of Port State Control with a view to flag, foreign merchant ships insisting the ports of its state comply with instruments laid down in various international conventions.

As Iain Sproat said "The Paris Memorandum, signed by fourteen European Maritime Authorities established with effect from 01 July 1982, a harmonised and co-ordinated system for inspection of 25% of foreign ships calling at European ports, in short, discrimination as to flag, for the purpose of detecting which fail to meet standards laid down in international conventions on safety, manning and pollution prevention, securing the verifications of deficiencies one discouraging the operation of sub-standard vessels". The charter of the Memorandum of understanding is the agreement on a number of commitments and procedures that are directly related to the internationally adopted instruments.

What has been laid down in International Convention as a right for Port State Control, namely, to inspect Foreign Flagships on the basis of the convention in question has been taken up as a commitment, towards each other to do so in practice in a harmonised way? Besides, ships should only be inspected in one of the region ports once every six months in order to avoid unnecessary inspections. An effective information system must take care of information on inspections made by each authority in order to avoid duplication of the work. As A.J. Cowley said "The Memorandum of understanding on Port State Control, which has

concluded in Paris in January 1982, is a followship to the earlier discussions on harmonised Port State Control, which started in 1976. The authorities concerned decided to accept stronger and clearly defined commitments on the number of inspections of Foreign Flag Ships by each of the participating maritime authorities and to pay much greater attention to the mutual exchange of information on inspected ships in order to avoid duplication of inspections. Furthermore, the authorities decided to apply only those conventions which have been ratified by the Port State Control involved and which have entered into force".

Because the information system about inspections is important in the Port State Control under the MOU, the ship receives a Port State inspection report after inspection. If there is no obvious inspections in the region, there could be duplications on inspections. This shows the importance of Port State information system in MOU in which results of inspections are stored without delay, and in which ships names are deleted after a six months period until another inspection of the ship is made. The MOU stated "each authority will consult, cooperate and exchange information with the other authorities in order to further the aims of the Memorandum". The aim of the MOU was initially to achieve an annual inspection rate of 25% of the individual ships entering a country.

According to the text of MOU the partners should have each achieved, by 01 July 1985, an annual total of inspections corresponding to 20% of the estimated number of individual foreign merchant ships which entered their ports in a year. The ship that has been inspected in another Port State Control partner's port according to the text of the MOU should in principle be left alone for six months. The MOU stated "the Authorities will seek to avoid inspecting ships which have been inspected by any of the other Authorities within the previous six MOUs, unless they have clear ground for another inspection". Taken into consideration that most of the ships in the region enter more than one port and more than one regional state within the size MOU's period, most of the ships visiting the region will be inspected by a Port State Control at least once a year.

#### *4.2. Relevant Instruments of Memorandum of understanding*

In order to maintain an effective system of Port State Control with a view to ensuring that, without discrimination of flag, foreign merchant ships visiting the ports of its state comply with instruments laid down in the various international conventions; that was why the 14 European nations signed the MOU. Those instruments are as follows:

- "The International convention on Load Lined, 1966
- The International convention for the Safety of Life at Sea, 1974

The Protocol of 1978 relating to the international Convention for the Safety of Life at Sea, 1974;

- The International Convention for the Prevention of Pollution from ships, 1973, as modified by the Protocol of 1978 relating thereto;
- The International Convention on Standards of Training, certification and Watch-keeping for seafarers, 1978;
- The Convention on the International Regulations for Preventing Collisions at Sea, 1972;
- The Merchant Shipping (Minimum Standard) Convention, 1976 (ILO Convention 147).

It was also stated in the Memorandum that each authority would apply those relevant instruments which are in force and which its state has accepted. An instrument so amended would then be considered to be the "relevant instrument" for that authority.

As J. Cowley said "It is important to note that the Memorandum is thus in no way contradictory to the contents of internationally agreed maritime conventions in IMO and ILO. The authorities only implement the standards and procedures of those Conventions in a harmonised way. It is believed that such harmonisation is important not only for the shipping of the region states but also for the International Shipping Community".

*The "No More Favourable Treatment Clause (NMFT Clause)*

It is stated in the relevant instruments SOLAS Protocol (article II-3), MARPOL 1973/78 (article 5-(4)), and STCW 1978 (article 5), the clause of no more favourable treatment. In the STCW Convention it is stated that "No More Favourable Treatment" shall be given to ships entitled to fly the flag of a non-party than is given to ships entitled to fly the flag of a Party". In a MARPOL 1973/78 it is stated that "with respect to the ships of non-parties to the convention, Parties shall apply the requirements of the MARPOL 1973/78 Convention as may be necessary to ensure that no more favourable treatment is given in such ships".

In the Memorandum of Understanding this clause also is stated and it has agreed that "In applying a relevant instrument for the purpose of Port State Control, the authorities will ensure that no more favourable treatment is given to ships entitled to fly the flag of the state which is no Party to that instrument". In this respect J. Cowley said "the no more favourable treatment clause is likewise based upon the internationally agreed instruments. The committee is unanimously of the opinion that the "no more favourable treatment clause" should only apply with respect to those instruments which themselves contain such provision, notably in and only in SOLAS Protocol 1978, MARPOL 1973/78 and STCW 1978. It is a condition that these instruments are in force and have been ratified by the Port State

exercising the inspection. But, the ships of non-parties to the relevant international conventions would thus be treated no differently nor more severely than by any other individual party to the convention”.

*Who conducts the inspection for Port State Control in European Countries?*

The Port State Control inspection “in European countries are conducted by the same persons who conduct national inspections. They form part of the national shipping inspection service in their country. So apart from conducting inspections on their national ships, they also conduct Port State inspections, which by definition is only done on foreign ships”. The MOU stated that “Inspections will be carried out by properly qualified persons authorised for that purpose by the authority concerned and acting under its responsibility”. Port State Control surveys must have no direct commercial interest vested in either the ports, or the ships where inspections in accordance to the IMO instruments are carried out. The IMO Resolution A.787 (19), chapter 2.5 deals with these requirements.

*Inspections Procedures, Rectification and Detention*

In selecting the ships for inspection, the surveyor is assisted by the daily list of incoming ships (issued by the port authorities) and the MOU list of ships which have been inspected during the previous six months. This is made by means of an online terminal from the district to the MOU computer centre in France in due time. After comparison of these two lists the choice of ships to be inspected is regardless of flag or owner. As indicated in the MOU, special attention is also paid to ships, which may present a special hazard, for instance oil tankers and gas and chemical carriers; and also ships, which have had several recent deficiencies.

When conditioning an inspection under the terminal of the MOU, the surveyors first check the ship’s documentation. If the ship’s certificates are invited or incomplete, or if the surveyor has clear grounds for believing the conditions of the ship and its equipment do not correspond substantially with the particulars on the certificate, he will use his professional judgement in deciding whether, clear grounds exist to conduct a more detailed inspection.

The Memorandum of understanding stated as “clear grounds” inter alia the following:

- “a report or notification by another authority;
- a report or complaint by the master, a crew member, or any person or organisation of the ship, shipboard living and working conditions or the prevention of pollution, unless the authority concerned deems the report or complaint to manifestly be unfounded;
- Other indications of serious deficiencies”.

If after the detailed inspection it is discovered that the ship does not comply with the appropriate international standards, steps are taken to rectify the deficiencies. In the case of

Serious deficiencies, which are clearly hazardous to safety, health or environment, the ships may be delayed or detained until they are corrected. The MOU stated further that “in the case of deficiencies which are clearly hazardous to safety, health or environment, the authority will ensure that the hazard is removed before the ship is allowed to proceed to sea and for this purpose will take appropriate action, which may include detention. The Authority will, as soon as possible, notify the Flag State through its consul or, in his absence, its nearest diplomatic representative or its maritime authority of the action taken”.

After the inspection, a report is always left on board as information to the master and as a proof that the ship has been inspected, also in the case of deficiencies which led to the detainment of the ship. The details of every inspection are directly sent to the computer in France by telex, in order that the MOU has the inspection list as up to date as possible. This computerised regional information system for the rapid exchange of information and for statistical purposes considerably reduces the chances of duplication of inspections. The Memorandum also established that where deficiencies cannot be remedied in the port of inspection, the authority may allow the ship to proceed to another port, subject to any appropriate conditions determined by the authority with a view to ensuring that ships can so proceed without an unreasonable danger to safety, health or environment. In such circumstances the authority will notify the competent authority of the Region State where the next port of call of the ship is situated, the parties mentioned in 3.7 of the MOU, and any other authority as appropriate.

The Memorandum stated that “when exercising control under the Memorandum, the authorities will make all possible efforts to avoid unduly detaining or delaying a ship”, and also stated that nothing in the Memorandum affects rights created by provisions of relevant instruments relating to compensation for under detention or delay”.

#### *Application of the MOU to ships below 500 gross tonnage*

It was agreed in the Memorandum of understanding (MOU) about the application for ships below 500 gross tonnage that in the case of these kinds of ships “the authorities will apply those requirements of the relevant instruments which are applicable and will to the extent that a relevant instruments does not apply, taken such actions as may be necessary to ensure that those ships are not clearly hazardous to safety, health or environment. Furthermore, as a result of recent agreements between MOU partners, a List of items to which surveyors should pay special attention when inspecting small ships below the size covered by MARPOL 73/78, has been included in Annex 1 of the original Memorandum of Understanding. Also measures have been agreed for situations in which a ship’s equipment for the protection of the marine environment is in operative.



## Inclusions in the Memorandum of Understanding

After the international convention for the Prevention of Pollution from ships, 1973 as modified by the Protocol of 1978 relating thereto MARPOL 73/78 entered into force on 02 October 1983. The IMO procedures for the control of ships and discharges under Annex I of MARPOL 73/78 by the IMO Assembly (Resolution A.542 (13) and (32)) has been included into Annex I of the MOU (Guidelines for Surveyors). Also after the International Convention on Standards of Training, Certification and Watchkeeping for seafarers, 1978(STCW) entered into force on 28 April 1984. The procedures for control of manning and certification, that had been laid down in the Annex I of the Memorandum of Understanding have been up to date in order to cover the new situation after STCW entered into force.

Letters of Warning- Also the Nations partners of the MOU have decided to issue letters of warning to the master of ships from states that are not party to the MARPOL 73/78 and which do not comply with MARPOL 73/78 standards.

In this letter of warning the master is informed that during future calls of ports in the 14 port state countries that signed the MOU, his ship may be subject to extensive inspections and/or denial of port entry unless one of the following documentation of his ship can be shown:

- A wide IOPP certificate in case the Flag State of his ship has become a Party to MARPOL 73/78, or
- A declaration of Compliance, stating that the ship has been surveyed and that the survey should that the structure, equipment, systems, fittings, arrangements and material of the ship and the conditions thereof more in all respects satisfactory and that the ship complied with the applicable requirements of Annex I to MARPOL 73/78; or
- A declaration showing that an application for IOPP certificate or Declaration of compliance has been filled, and that the survey and inspections necessary for the issue of the said documents will take place as soon as possible.

It is said, "it is also decided that the ships that do not comply with MARPOL requirements will receive a letter of warning and may be denied entry into ports in the Memorandum of Understanding region. All MOU partners will be informed through their computerised information system of the action taken".

In addition, the master of the ship is informed that the Port State carrying out inspections on his ship may take such steps as will ensure that the ship shall not said

until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment. These steps may include the ship being obliged to discharge all its oily wastes to port reception facilities before permission is granted to leave the port.

*Documents established and used for the purpose of the MOU Port State Control*

The Memorandum of Understanding in Port State Control in its annexes has established different documents for use for the purpose of Port State Control, such as the following:

- Telex form, in case of deficiencies not fully verified or only provisionally repaired. This telex shall be sent to the competent authority of the region state where the next port of call of the ship is situated (see appendix)
- Report form on inspection in accordance with the Memorandum of Understanding on Port State Control (appendix?)
- Information system on inspections (appendix?)
- Information system on inspections (Appendix?)
- Telex form for ships inspected (Appendix?)

Also the letter of warning is established for the masters of the ships from states that are not party to MARPOL 73/78 and which do not comply with MARPOL 73/78 standards (appendix?)

*The Aide Memoire for Surveyors*

To assist surveyors in keeping track of all provisions and amendments thereto of the relevant conventions a so-called "Aide-Memoire" was issued to them. It contains, inter alia, referenced to convention provisions, sections and articles of the MOU and codes for the information system. The codes for the information system and the report of inspections are shown in appendixes. ? A report on inspections filed with references and codes are shown in appendix?

*Operational Violations*

Regarding the operational violations, the entry into force of MARPOL 73/78 has caused the Port State Control partners to decide that this section should be further elaborated. The section 5 of the Memorandum of Understanding stated that the authorities will upon request of another authorities endeavour to secure evidence relating to suspected violations of the requirements on operational matter of rule 10 of the International Regulations for Preventing Collisions of Sea, 1972(COLREG) and the International Convention for the Prevention of Pollution at sea, 1973, as modified by the Protocol of 1978, (MARPOL 73/78) relating thereto. In case of suspected violations involving the discharge of harmful substances, the authority will, upon request of another Authority, visit in port the ships suspected of such a

violation in order to obtain information and where appropriate to take a sample of any alleged (alleged) pollutant". In this respect, the partners of the MOU will establish a network of Liaison officers in the 14 countries to be contacted should violations of discharge provisions be carried out. Furthermore, the partners are examining whether telexes and forms used for investigation and reporting purposes should be further harmonised.

However, we have to note that, Paris MOU on Port State Control is an initiative between European Maritime Authorities and Canada. It consists of Agreements and a number of Annexes including guidelines for surveyors in Annex I, which now serve as a yardstick for international Port State Control inspecting globally (See Tables iv-vi).

## **CHAPTER V**

### **Port State Control in West Africa**

A number of states, especially Australia, Canada, Japan and the United States of America which have a strict Port State Control system in their own ports followed the footsteps of the Paris MOU closely. In 1984, Japan announced the establishment of its own port state control regime along the same lines as the Paris MOU. In April 1987, the first official co-operation of the MOU was established with the Canadian Coast Guard. This basically serves as general guidelines of co-operation between MOU members and non-member Maritime Administrations. The co-operation agreement includes the mutual exchange of information and guidelines on Port State Control inspection reports in addition to participation in seminars, workshops, conferences and other maritime meetings. Observers also attend the annual seminars of surveyors from Japan and the United States. This co-operation serves as a forum, and should be encouraged for effective Port State Control implementation and enforcement at the international and regional levels. The forum should also offer the opportunity for exchanging information and training needs. The shipping industry, particularly the charterers and insurance companies have also expressed a keen interest in establishing formal arrangements for such co-operation by requesting member States to identify the ships which are repeatedly categorised as SUBSTANDARD.

The Paris MOU Committee on Port State Control had already established a formal agreement with the International Association of Classification Societies (IACS), which may lead to the creation of a Code of Conduct practices that will enable the exchange of confidential information on “Unrepentant” vessels in the “BLACK LIST”. Although the statistics data released by the Secretariat does not indicate whether

the introduction of the Paris MOU has had any effect on substandard shipping, officials in a number of ports are convinced that the conditions of vessels have improved; but it has been a very slow process. No doubt that the MOU Members have continued their efforts on improving inspection performances in respect of quantity and quality; but much is needed to be done in the fields of safety regulations by improving the living conditions of the vessels and also pollution prevention mechanisms through international and regional co-operations, be it governmental or non-governmental.

The relevant Administrations consider the Paris MOU as a formal co-operation regime to enforce the issues, but not as an international regime creating new legal rights and obligations for its members. However, the Paris MOU on Port State Control is only a “Memorandum of Understanding” and not an International Convention or Treaty. In principle, the Paris MOU as the basis of port state control in the world is regarded as an international instrument to be applied by Flag States that wish to enforce and implement port state control in their territorial waters.

Even though the Paris MOU is an informal international instrument, it has, nevertheless, considerable effect. It allows the maritime authorities to concentrate their efforts on technical, operational and managerial topics with a realistic approach to the problem, particularly on Port and Flag States responsibilities in their territorial waters. Since it is not a convention, it does not require any ratification and adoption of national legislation, but it can be speeded up through incorporation by regional co-operation. However, the method of processing the information at such a low cost gives an incentive to administrations with a tight budget and a demand on high return to join in the co-operation.

The Port State Control Committee and the Ministers concerned should consider expansion of the Port State Control and Paris MOU regime in other fields such as increase in reception facilities at ports and strengthening discharge standards established in International Maritime Conventions. However, the Paris MOU on Port State Control is a system of harmonised inspection procedures designed to target substandard ships with the main objective being their eventual elimination.

The States should also continue to achieve the MOU aims and objectives based on the IMO Regulations and Guidelines by encouraging other regional groups in co-operating and co-ordinating port state control in their own national waters if the desired international standards are to be realised globally. It is clearly understood that the responsibility for ensuring that ships comply with the provisions of the relevant instruments lies upon the owners, Masters and the Flag States Administrations respectively.

Unfortunately, certain flag states, for various reasons, fail to fulfil their commitments contained in the agreed international legal instruments and subsequently, some ships are sailing in the worlds seas in an unsafe condition, threatening the lives of all those on board as well as the marine environment; visa a vis the role of the ship involved, the crew, the owner and others possibly involved. That is what exactly port state control is trying to prevent, control and possibly minimise its occurrence in our international waters.

### **West and Central African States MOU**

All countries have the right to inspect ships visiting their ports to ensure they meet IMO requirements regarding safety and marine pollution prevention standards, and experience has shown that port state control works best when it is organised on a regional basis. The first such regional port state control agreement, covering Europe and the North Atlantic, was signed in 1982; and is known as the Paris Memorandum of Understanding (Paris MOU). The Latin-American Agreement (Acuerdo de Vina Del Mar) was signed in 1992; the Tokyo Memorandum of Understanding /Tokyo MOU), covering Asia and the Pacific, was signed in 1993; the Caribbean Memorandum of Understanding (Caribbean MOU) was signed in 1996 and the Meditterean Memorandum of understanding (Mediterranean MOU) was signed in 1997.

Like the other agreements, the Indian Ocean MOU was also signed in South Africa on 5 June 1998. This Indian Ocean MOU requires each maritime authority which is

a signatory to the agreement to establish and maintain an effective system of port state control and also sets out an annual required total number of inspections of at least 10% of the estimated total of the foreign merchant ships entering the ports during the year. The MOU encourages exchange of information so that ships which have been inspected by one port state and found to be complying with safety and marine pollution prevention rules are not subject to too frequent inspections, while ships presenting a hazard and those ships which have deficiencies which need to be rectified will be targeted.

In another development, delegations from several West and Central African countries discussed establishing a Port State Control Agreement for the region during the 18<sup>th</sup> IMO Assembly in 1993. It was agreed that the Ministerial Conference of West and Central African States on Maritime Transport (MINCOMAR) would act as co-ordination body for the Implementation of any such agreement, while Guinea offered to convene the establishment of the basis for port state control in the region and related training needs. Nigeria has also expressed interest in actively participating in setting up the regional Port State Control regime. Discussions between MINCOMAR and IMO are currently under way (1999) with a view to preparing a first preparatory meeting.

External support is seen as crucial to establishing a Port State Control agreement in the region and IMO has sought donations to help promote port state control and to provide backing for convening the meetings. At the same time, competent Port State Control is dependent on the efficient Maritime Administration being in place, and IMO is involved in organising technical co-operation to help those countries, which require it to build up their Maritime Administrations. Based on above preparatory stages, eighteen West and Central African States have now agreed to a draft MOU on Port State Control (PSC), at a meeting in Conakry-Guinea that ended on 22 January 1999. The meeting was jointly organised by the Guinean Government and IMO and was supported by the Ministerial Conference of West and Central African States on Maritime Transport (MINCOMAR). The aim is to hold a further meeting to adopt the MOU in Nigeria during October 1999.

The Conakry meeting was also attended by representatives of IMO, the United Nations Development Programme (UNDP), the Economic Commission for Africa (ECA), MINCOMAR, the Communauté économique et monétaire de l'Afrique Centrale (CEMAC) and other regional organisations. Funding for the meeting was provided by the Guinean and Nigerian Governments respectively. Participants continued work on developing a set of training measures to improve the maritime Administration infrastructure and human resource capability of the participating states. The aim is to develop a regional training programme for the West and Central African region. Further, the meeting agreed, in principle, that the Regional Secretariat would be established in Nigeria while a regional Information Centre would be set up at MINCOMAR Head Office in Côte d'Ivoire.

The draft MOU that was agreed in Conakry is similar to other regional PSC agreements already established around the world regarding Safety and Marine Pollution Prevention standards. However, the West and Central African MOU will also be expected to cover PSC inspections on smaller ships (below 500 gross tonnage) which are not generally covered by most IMO regulations. These ships tend to trade inter-regionally. Furthermore, establishing PSC agreements in the remaining areas of the world not already covered requires support and co-operation within the region. In each region, participating countries (and in particular the focal point or lead country) are dependent on the developed maritime countries for provision of the necessary budget to ensure such establishment for the day to day running of the PSC Agreement. From outside the region, support is required in terms of technical expertise and databases, as well as financial assistance from donor countries. IMO is also involved through its Technical Co-operation Programme.

### **Port State Control Inspections in Nigeria**

Nigeria got her independence on 1 October 1960. Located in West Africa, bordering the Gulf of Guinea, between Benin, Cameroon, Niger and Chad republics respectively. It has an area of 923,773 square kilometres with an approximate total



population of 121.8 million people (1998 estimate). In the area of merchant marine sector, Nigeria has a total of 29 ships of 1000 GRT and above. These ships include:

Bulk carrier	3
Cargo	2
Chemical tankers	3
Oil tankers	20
Roll-on/roll-off cargo	1

**(Source: Nigerian Ports Authority Annual Report 1997 Estimate).**

Nigeria has two major ports otherwise known as cargo interface and feeder ports and four other transit ports in addition to the newly established Inland Waterways at Lokoja that serves for local or domestic ports. The ports are as follows: -

- 1.APAPA-WHARF PORT, APAPA, LAGOS; \*
- 2.TIN-CAN ISLAND PORT (TCIP), LAGOS; \*
- 3.DELTA PORT IN WARRI;
- 4.PORT HARCOURT PORT IN P/HARCOURT;
- 5.FED. LIGHTER TERMINAL PORT IN ONNE;
- 6.HUB PORT, CALABAR (EPZ); and
- 7 INLAND WATERWAYS, LOKOJA.

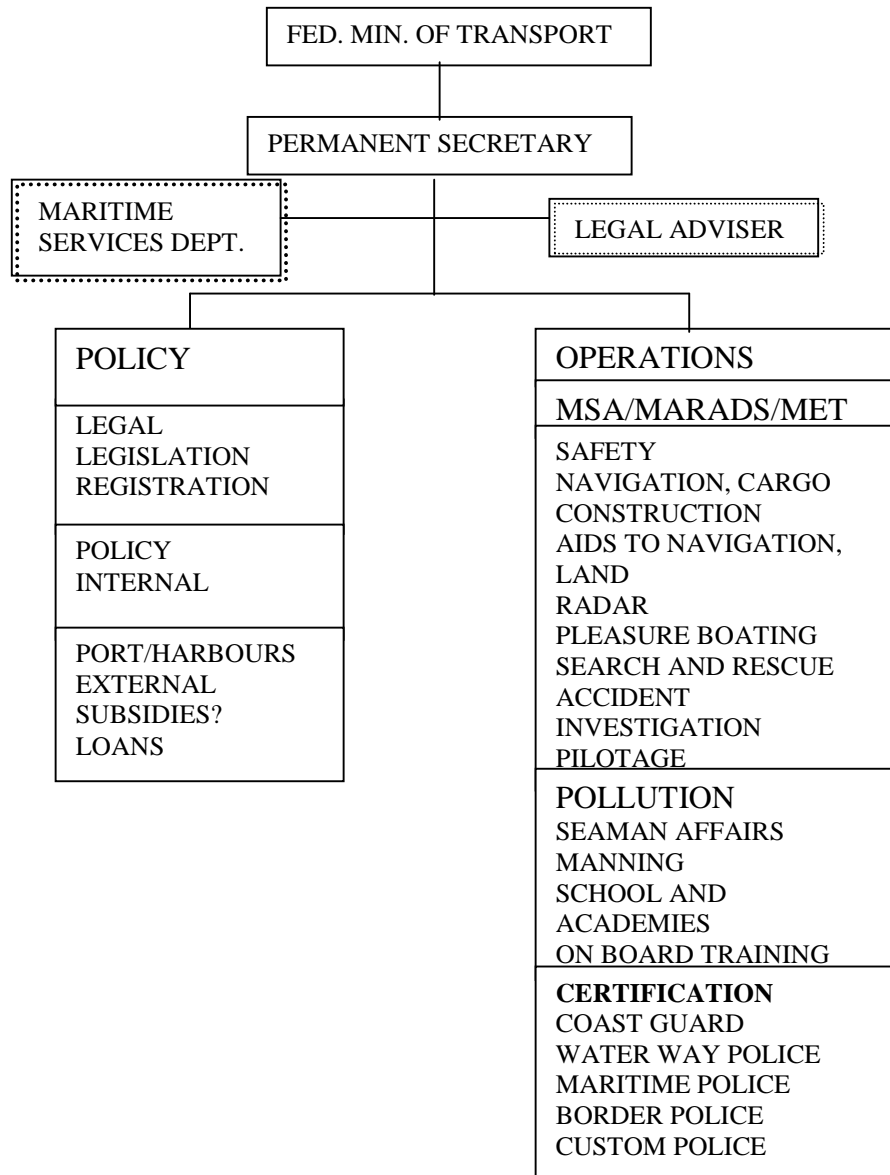
(Those with asterisks, are the major ports in the country).

(Source: Nigerian Ports Authority Annual Report, 1998).

Nigeria depends mainly on sea transport for her major exports and imports in addition to air and road transport systems.

Figure 3

**ORGANISATIONAL CHART: NIGERIAN MARAD POLICY AND OPERATIONS PRINCIPLES.**



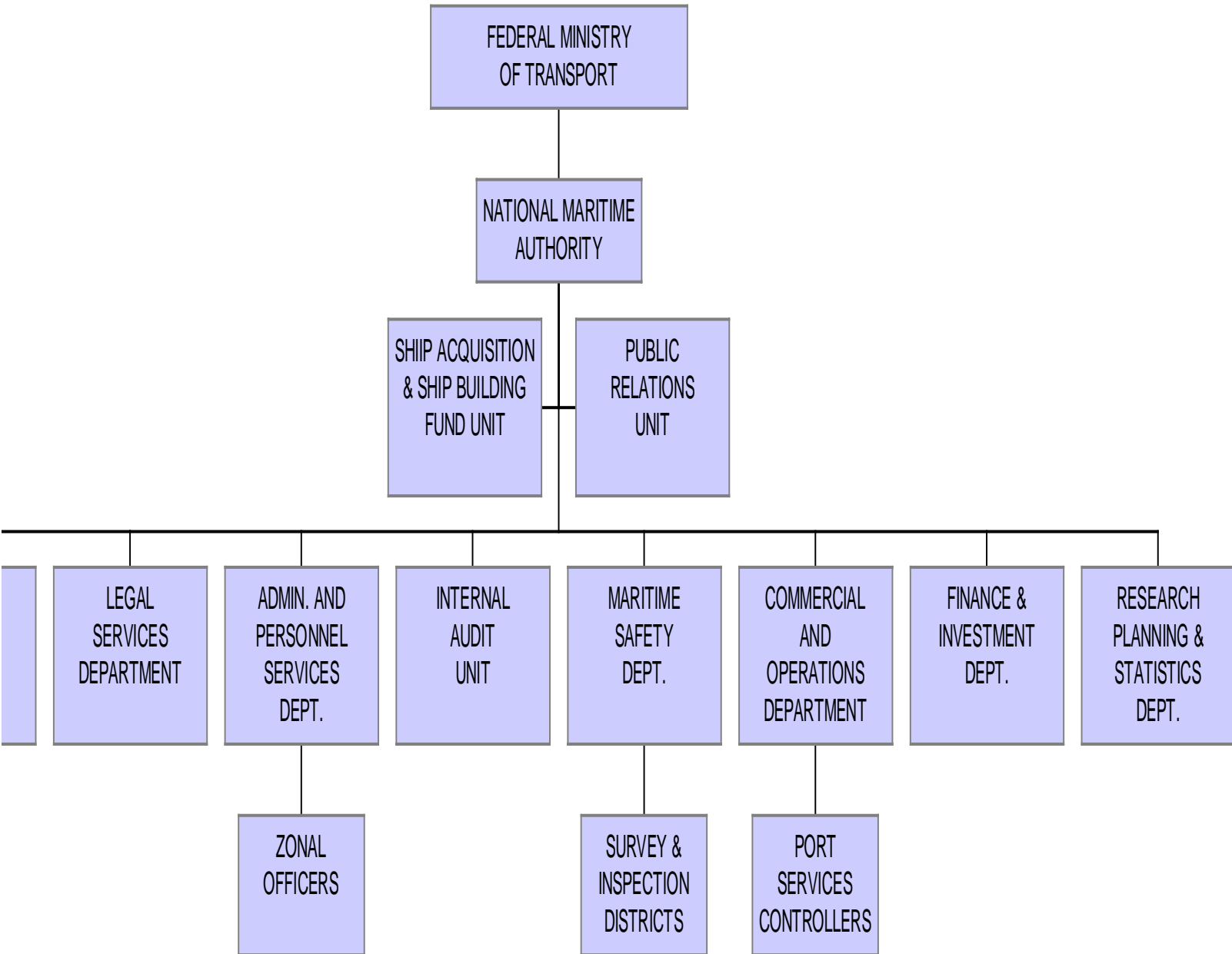
**KEY:**

MSA: Maritime Safety Administration

MARADS: Maritime Administration

MET: Maritime Education & Training

**Figure 4**  
**ORGANISATIONAL CHART: NMA**



(Source: National Maritime Authority, Nigeria, Organisational Chart 1997)

Nigeria is a contracting Party to some of the IMO and ILO Conventions and therefore, exercises effectively the basic objectives of a "Port State" as given in these conventions and also to ensure that no preferential treatment is given to non-convention ships that are substandard in its territorial waters. Administration of maritime conventions relating to documentation and detention of ships in Nigeria is the responsibility of the National Maritime Authority (NMA). The former Maritime Inspectorate Division (MID) and the Government Inspectors of ships (GIS) initially carried out such responsibilities respectively.

The aim of the National Maritime Authority (NMA), is to assist in the economic integration of shipping activities of the West African sub-region by offering protection to Nigerian vessels flying the nation's flag in another Flag State's seaports; in addition to achieving a systematic control of the merchant mechanisms of sea transport and promotion of seafarers training in the Nigerian maritime transport technology. It is the Authority that co-ordinates the implementation of the "National Policy on Shipping" as is being formulated from time to time by the Federal Government of Nigeria (source: National Shipping Policy Decree No. 10 of 30 April 1987).

However, the NMA is not a fully autonomous body, because its activities are being monitored and supervised by the Federal Ministry of Transport as its parent Ministry. In other words, the National Maritime Authority is one of the parastatals under the Ministry of Transport in Nigeria (See figure 3 on pp 52). The NMA undertakes inspection of national and foreign flag vessels on behalf of the Ministry and the Federal Government of Nigeria, to ensure that ships visiting the Nigerian ports comply with the standards laid down in the relevant national and international instruments, without discrimination. Further, the ships of non-parties to the relevant International Conventions will be treated neither differently nor more severely by any other individual that is a party to the convention.

In another development, and in order to compete at sea, Nigeria has to meet the Safety Standards as required by the International instruments. The Safety of a ship as we are aware of, is expensive, but this is what we call 'affordable safety'.

Without keeping certain standards, we cannot have a good Flag State. A national coast guard regiment is being constituted for search and rescue (SAR) operations as well as for anti piracy action in the country's territorial waters.

These days, marine pollution and other environmental issues are included in the concept of 'seaworthiness'. But, complying with International Eco-Standards is an expensive tool for commerce. The EU might say that the emission levels for exhaust should be set at such and such a number. If they push hard enough, they will push through a convention that fits their own environment. Whenever you talk of safety you are talking cost and developing countries often cannot afford that level of safety; but if it pays, we have to go right ahead. The laws and regulations concerning Port State Control in Nigeria are as follows:

- (i) Federal Government of Nigeria National Shipping Decree No. 10 of 1987 as National Legislation. (This is subject to review from time to time);
- (ii) The Federal Ministry of Transport Administrative Directives on Maritime Safety Policies such as implementation and enforcement;
- (iii) The National Maritime Authority Policy Guidelines on Regional Agreements and other Treaties on Maritime Safety;
- (iv) The Nigerian Ports Authority (NPA) Rules and Regulations for seaports.

Furthermore, there is the implementation and enforcement of the International Instruments such as ratified namely, SOLAS, MARPOL, LOAD LINE, TONNAGE, COLREG, STCW, ILO, (see table vii for more details) in order to ensure full compliance to International Standard requirements in the country. The Nigerian Maritime Administration also derives its international jurisdictional power and control from these conventions in addition to those from the National Legislation.

The competent maritime Administration may, at any time, control and inspect Nigerian vessels, wherever they are, and foreign vessels in Nigerian ports. The competent maritime authority in co-ordination with other ministries such as ministry of Petroleum and Mineral Resources, and that of Environment, that controls and inspects the oil pollution hazards. in conjunction with Nigerian Coast Guards which

comprises of Naval Police, Nigerian Navy and Custom Border Patrol Team for ships Safety and Marine Pollution Prevention.

**Nigeria has ratified the following Conventions, namely:**

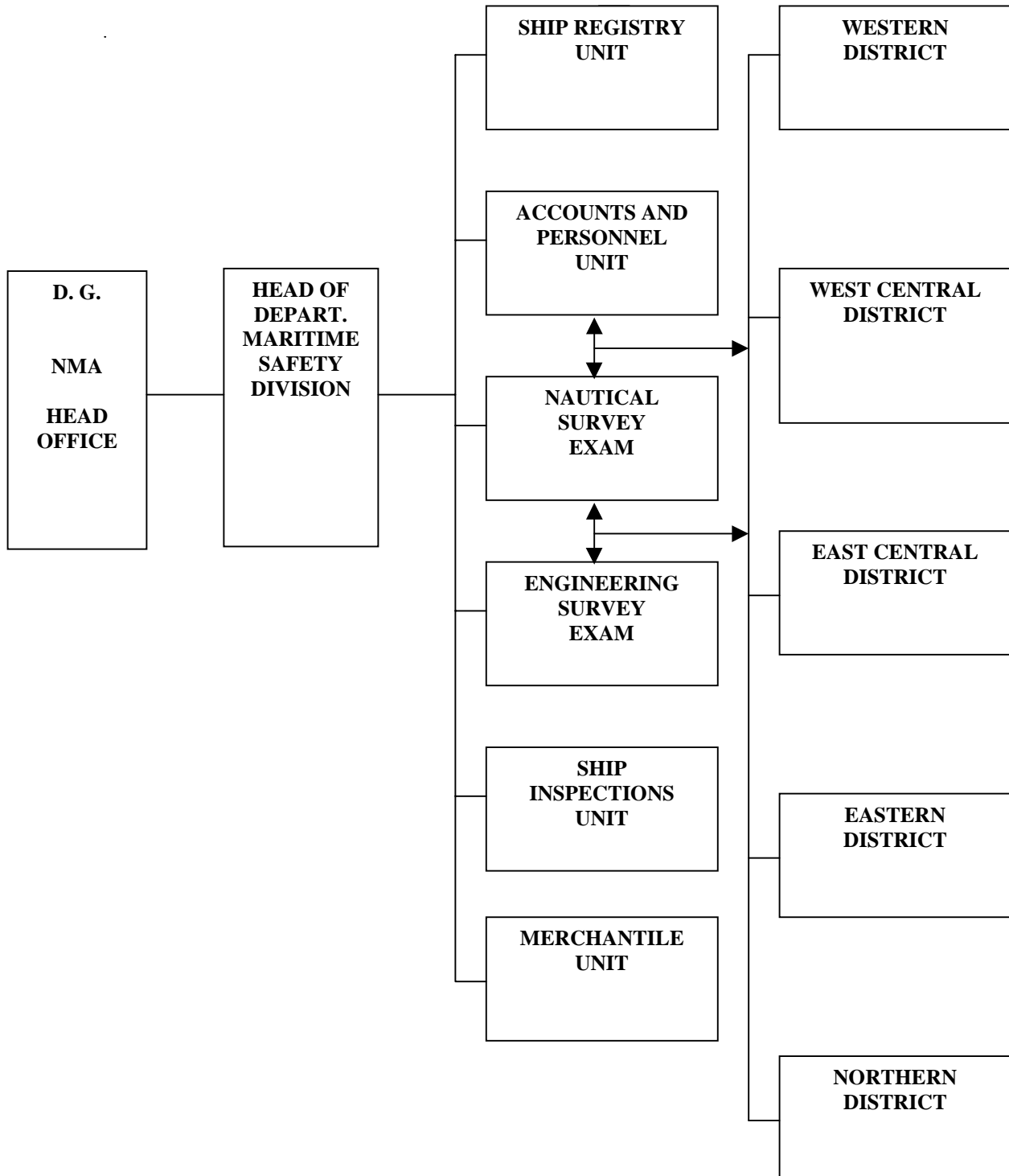
- (a) IMO Conventions No. 48 and 93
- (b) SOLAS Convention 1974, 1978 and amended 1988
- (c) Load Lines Convention of 1966
- (d) Tonnage Convention of 1969
- (e) STCW Convention of 1978 and 1979
- (f) INMARSAT Convention '76 and QA 76
- (g) Facilitation Convention of 1965
- (h) MARPOL Convention of 1973 and 1978
- (i) London Convention (LDC) of 1972
- (j) Salvage Convention of 1989
- (k) ILO Convention No. 147
- (L) UNCLOS- COLREGS of 1972

(Source: -[Http://www IMO Webster](http://www.imo.org), 1998).

Although, the Nigerian Government has ratified many conventions, bureaucratic hurdles have resulted in their inadequate implementation (See Tables 7 (a), (b) and (c) respectively).

Figure 5

ORGANISATION CHART: MARITIME SAFETY DEPARTMENT



## Selecting ships for Inspection

In selecting ships for inspection, the " surveyor" is assisted by daily list of incoming ships, sensibly concentrating on those registers especially on owners known to be unreliable, and on older vessels. Special attention is paid to ships, which may present a special hazard, for instance oil tankers, gas and or chemical carries; and also ships, which have had several deficiency records. However, international instruments such as principles and procedures on Port State Control, especially those related to the selecting of ships for inspections from other MOU sectors, are applied.

Below, are the types of ships calling at most of the Nigerian ports. Bulk carriers, Tankers such as Oil, gas, Chemicals, Containers, Ro-Ro, etc.

### NUMBER OF GRT. OF VESSELS ENTERED AT NIGERIAN PORTS & CRUDE OIL TERMINAL 1988-1997

YEAR	NO. OF VESSELS	G. R. T.
1988	2,369	69,850,312
1992	3,995	83,933,086
1993	3,943	87,082,533
1994	3,073	79,347,649
1995	3,023	78,838,624
1996	3,124	79,963,926
1997	3,985	91,521,669
1998	5,291	91,743,048
1999	-	-

(Source: Nigerian Ports Authority Annual Report, 1998).

The VOLUME of Traffic in most of the major ports has continued to increase from 1997-1983. It went down in 1985-1988. From 1992, it rises as shown in the below table particularly the Tankers and the Container Carriers.



## **Inspection Procedures**

In compliance with the recommendations contained in IMO Resolution A. 466 (xii), it is preferred for the right to board and inspect ships for the purpose of control to be implemented by Government Inspectors. On boarding a vessel and conducting an inspection, the surveyor must first check the ships DOCUMENTATION CERTIFICATES, and from these documented information regarding dates of issue, initial survey, expiry, annual survey, and other related issues alike can be extracted and equally detected by the Surveyor on whether the Vessel is in compliance with the international requirements or not. However, IMO Resolution A.787 (19) “ Procedures for port state control” and IMO Resolution A. 481 (xii) “ Principles of Safe Manning” respectively, have explained in detail on how Port State Control Inspection should be carried out.

Certificates and other relevant Documents that must be checked during ship inspection as applicable, are as follows:

International Tonnage Certificate (1969).

Passenger ship Safety Certificate; which must include the following:

Cargo ship safety construction certificate,

Cargo ship safety Equipment certificate,

Cargo ship Radiotelegraphy certificate,

Cargo ship Radiotelephony certificate,

Cargo ship Radio safety certificate,

Exemption certificate,

Cargo ship safety certificate.

International Certificate of Fitness for carriage of Liquefied Gases in Bulk,

Certificate of Fitness for the carriage of Liquefied Gases in Bulk.

International Certificate of Fitness for the carriage of Dangerous Chemicals in Bulk,

Certificate of Fitness for the carriage of Dangerous Chemical in Bulk.

International Oil Pollution Prevention Certificate

International Pollution Prevention Certificate for the carriage of Noxious Liquid Substances in Bulk.

International Load Lines Certificate (1966),  
International Load Line Exemption Certificate.  
Oil Record Book, part 1 and 11.  
Cargo Record Book.  
Minimum Safe Manning Document,  
Certificate of Competency (COC).  
Medical Certificate (see ILO Convention No. 73 Concerning Medical Examination of Seafarers).  
Stability Information. Copy of Document of Compliance (DOC) and Safety Management Certificate (SMC) issued in accordance with the International Management Code for the Safety Operation of Ships and for Pollution Prevention (SOLAS Chapter IX).  
Certificates as to the ship's Hull Strength and Machinery installations issued by the Classification Society in question (only to be required if the ship maintains its Class with a Classification Society).  
Documents of Compliance with the special requirements for ships carrying Dangerous Goods.  
High Speed Craft Safety Certificate and Permit to operate High Speed Craft.  
Dangerous goods special LIST or manifest, or detailed stowage plan.  
Ships logbooks with respect to the records of tests and drills; and the log for records of inspections; and for maintenance of Life saving appliances and arrangements.  
Special Purpose Ship Safety Certificate.  
Mobile Offshore Drilling Unit Safety Certificate.  
For oil tankers, the record of oil discharge monitoring and control system for the last Ballast voyage must be shown and presented.  
The Muster List, Fire control plan, and for passenger ships, a damage control plan.  
Shipboard Oil Pollution Emergency Plan.  
Survey Reports Files (in case of bulk carriers or oil tankers).  
Report of Previous Port State control inspection  
For Ro-Ro passenger ships, information on the A/A- max. Ratio.  
Document of Authorisation for the carriage of grains.  
Cargo Securing Manual.

CLC-Certificate (applies for ships, which carry more than 2000 tonnes of oil in bulk. It is a reason for detention or suspending the cargo operation if the ship can not present the certificate).

If there are clear grounds for believing that the condition of a ship or its equipment, or even its crew, does not *SUBSTANTIALLY* meet the applicable requirements of a convention, a more detailed inspection shall be carried out using `professional judgement. ` The procedures to be followed can be found in IMO Resolution A. 787 (19), chapter 2.5 (See Appendix viii).

The Surveyor, on carrying out a more detailed inspection, should be accompanied by a responsible officer on board. To aid him in this tour-inspection of the vessel, a previous report used could be of great help and assistance, and this report can double as an “ aide-memoir”. Items to particularly note are the condition of deck structure and openings (Load Line items), “good housekeeping” with regards to Safety. Others include reception facilities for disposing wastes/rubbish, fire fighting equipment and an inspection of the bridge and relevant navigational equipment.

It is expected and required, that during this tour the surveyor will examine records required to be maintained on the vessel such as log books, records of musters and drills, maintenance of LSA and FFA, oil record book, compass deviations for the intended voyage in addition to other navigational equipment as required by SOLAS, are fitted and functioning effectively as required.

### **Rectification and Detention of ships**

On completion of the inspection of a vessel, a report is filled in, and the surveyor has to make remarks regarding deficiencies on the report. It is said that: “If any deficiency is observed on any vessel, it then means that, the ISM CODE system has not been applied as required.” I quite agree with this statement. If during the inspection, it is discovered that the ship does not comply with the appropriate International Standards, steps are taken to rectify the deficiencies, which are clearly

hazardous to safety, health or the environment. The ship may be delayed or detained in accordance to the Nigerian Maritime Law and implementing decisions or regulations of the law will prevail until these deficiencies are corrected or rectified to international standard levels.

The Master will be requested to acknowledge by signature the completed report of which a copy of the report must be retained by him on board for the information of the owners, and of course, for the inspectorates at subsequent ports of call. The Authority must ensure that the hazard is removed before the ship is allowed to proceed to sail at sea. For this purpose, appropriate action must be taken to ensure that No More Favourable Treatment is given to substandard ships.

A copy of such a report must also be sent to IMO through a Flag State Implementation (FSI) meeting. The written report shall include when, where and why the ship is either delayed or detained with attached photographs, audio and videotapes where necessary. Any Surveyor or Port State Control Inspector who fails to write and submit an “ inspection report”, is considered as *NOT* a good Flag State representative in the Eyes of IMO. However, the Authority will make all possible efforts to avoid the unduly detaining or delaying of the ship. Compensation will be required to be paid to the owners for such acts when it is established that, detention and delay were deliberate.

### **Problems of Port State Control Inspections in Nigeria**

There are numerous problems facing the full implementation and enforcement of port state control in Nigeria to the required standards. Despite the inadequate funding of the shipping sector by the Federal Government, educated and trained personnel to implement and enforce PSC is lacking, in addition to inadequate planning. Others include political instability and economic uncertainty. Corruption is also very eminent. The non-challant attitudes of Nigerian shippers and the mass media in Nigerian shipping policy decisions also constitute another set backs. The PSCO’s Inspection Reports are not adequate to global requirements. Further, there is no effective method of communication between surveyors and inspectors in

most of the Nigerian ports at present (1999). Experience has shown that, vessels are sometimes selected for inspection in different Nigerian ports within a short period of time particularly in the major ports of the country, example; in Apapa and Tin Can Island ports respectively without adequate information being recorded in any database system. The only evidence of survey is the inspection report held on board by the master. In order to apply an effective method of communication such as a computerised system used in countries that are Party to the Paris MOU, a database must be created and installed for the proper and adequate record keeping of all surveys and inspections carried out on a vessel including the vessels particulars. Such a database network system is essential in harmonising port state control activities, particularly within a region.

Precisely, most of the PSC Inspectors do not have the pre-requisite qualifications as prescribed in IMO Res. A. 787 (19), Chapters 2.4 & 2.5 respectively. The emphasis here is, there the problem of lack of experience and knowledge of nautical and marine engineering background in addition to incompetence and skills. Furthermore, inspectors have either no sea training background and experience or attend any reputable maritime training institution to qualify them as PSCOs'. Problem of wrong applications of PSC rules and regulations that creates rooms for PSCOs' to have vested commercial interests either in the port of inspections or in the ships inspected. Additional problems include inappropriate criteria for employing PSCIs in the country.

All these problems create and equally give opportunities for the sub-standard vessels to operate smoothly and freely in the Nigerian coastlines, thereby causing hazards and pollution in our ports and get away with it.

On completion of reports in another development, surveyors under Paris MOU Parties must forward such reports to the different ports of National Maritime Authorities Head offices. It is then the Authority's responsibility to forward the received reports to all other port offices in and within the region, so that such offices will be aware of such moves. Telex and telexfax, which is considered fast and more economically reasonable, are also used, in sending inspection reports in addition to

telephone and e-mail routes. With such reports at hand, surveyors and inspectors can create a database and take appropriate action when necessary with ships calling at their ports in the short term. The installation of a computerised system can create good grounds for an effective and efficient communications network not only for Nigerian ports but also for the entire West and Central African regional ports. Although the equipment is capital intensive, its operation is more reliable, sustainable, safer and faster.

In the Nigerian context, port state control reports are usually not carried out. Where it is being carried out, it is not up to date and comprehensive enough to one understanding. Furthermore, the reports are not being sent to the appropriate quarters for necessary action; rather the Inspection officer will write the report and keep. One of the Inspectors (Name withheld), reliably told me that, it even useless to write a report since the officer that is going to read the report, will not read or even “blame you” for inability to perform. Therefore, “why bothering yourself with PSC inspection reports since it is not going to be read and also of valueless”.

One can see the kind of problems Nigerian PSC processes of implementation are facing. No doubt, that, one has to conclude that, something is wrong somewhere and that thing requires attention and ratification if progress has to be made. The stumbling blocks that are led on the path of PSC implementation in Nigeria, have to be cleared, otherwise, if allowed to continue and persist, the long term effect is going to be disastrous to the detriment of the majority of the population, and consequently a set back in the economic and political development of the entire country. There is the need for the entire political system of the nation to be overhauled if policies that are formulated are to be achieved.

## **CHAPTER VI**

### **CONCLUSION AND RECOMMENDATIONS**

#### **CONCLUSION**

While flag states are responsible for the enforcement of IMO conventions, PSC is seen as fulfilling a caretaker role as regards supervising the application of such conventions. Experience from PSC can have a beneficial influence on flag state control. World wide application of PSC through the global proliferation of regional agreements will emphasise the administrative character of Port State Control, while exchange of information between regions will increase the effectiveness of control, and regional reports on deficiencies reported and ships detained will provide IMO with valuable statistical data.

However, the development of PSC raises some questions. Is the traditional role of the Flag State, which has the ultimate responsibility for safety, being eroded? Are we promoting yet one more set of already numerous on board inspections? Is there a danger that some participating countries may use port state control as a trade barrier or as a retaliatory tool? Can the introduction of the International Safety Management (ISM) Code for operational requirements be considered too subjective for disciplined control? Could port state control be abused by unscrupulous Port Authorities? Will the whole process cause a global delay in shipping movements? These are questions that need to be addressed on matters related to the port state control evolution.

IMO has addressed these matters through its Flag State Implementation sub-committee, which was held in its sixth session in June 1998. It is to be hoped that the need for global economic development (and shipping trade is essential for this purpose) can be balanced with today's imperatives of safety and the protection of the environment. However, some of the above questions remained unanswered.

The IMO sub-committee on Flag State Implementation also has a forum for interaction between flag states and port states, where discussions on Port State Control requirements as well as difficulties experienced in the control process are being debated for the IMO Assembly's consideration. It is particularly important that the sub-committee is used in this way; since without proper consultation between flag states and port states, there is a danger that an individual state, or group of states, may choose to go down the path of unilateral action; thereby imposing local requirements which can go beyond those contained in the agreed international conventions. But, Port State Control is recognised to be the safety net; the main responsibility for compliance still rests on the Flag State.

Port State Control "The inspection of foreign flag vessels visiting national ports" has been invented for efficient and effective implementation and enforcement of maritime safety rules and regulations globally. In an ideal world, Port State Control (PSC) would not exist, but when ship owners, classification societies, insurers or flag state administrators have, in one way or another failed to do their job, port state control comes on to the scene.

Today, almost all statutory surveys are carried out by classification societies, and only a very small percentage of the surveys are carried out by the Flag States themselves or nominated surveyors. The number of ships with deficiencies that are clearly hazardous to safety, human health or the environment has not decreased since 1980 /1981, when the " mandatory annual survey scheme" was introduced. Ships are seen with "fresh and clean" certificates, which should give a ship certain privileges, but often-port states find deficiencies where the only appropriate action is "Detention of the Ship." For the purpose of improving the situation, Port State Control Officers only take photos of the worst areas of the ship. The photos are



usually accompanied by a brief description of the relevant particulars of the detained vessel, which are attached to the Port State Control Reports. Copies of such reports have to be sent to IMO, ILO and the Flag State of the detained vessel.

These reports cannot be ignored, and the flag states that are the responsible bodies for the execution of the statutory surveys have to realise that monitoring by quality auditing or checking is necessary. Any flag state has to act if a ship flying its flag is detained. If the detention is justified, both the ship owner and the master are to be prosecuted. However, if the detention is not justified, the Flag State should inform the port state that the detention in the opinion of the Flag State is unjustified. Such matters “in between” will be treated as adhoc.

ILO-RULES: Except for “cargo gear”, which is covered by ILO convention 152, “Convention Concerning Occupational Safety and Health in Dock Work”, ILO-requirements in general are not controlled within an international survey certification scheme. However, convention No. 178 of 1996, “Labour Inspection- Seafarers”, covers a flag state’s obligation internationally. Flag states should therefore ensure that the relevant ILO instruments are complied with by establishing a survey/certification scheme especially in these areas. Today, only few flag states have such systems. However, the current (up to 1999) ILO No.147 convention has come to rescue the situation of crew members as regards their health, working conditions and other related matters, particularly on board ship.

### **Operational Control:**

In an emergency, the best equipment in the world is only effective if the crew is adequately trained to use it. The importance of reining in the use of marine safety equipment cannot be over emphasised and until designers and manufacturers can come up with equipment that is foolproof; the efficiency of the training will largely determine the effectiveness of safety equipment. The problem with trying to train for emergencies is that it is very difficult to get any degree of realism into the training. Realism can be achieved by creating an emergency, which means creating a risk.

It is no wonder that with this sort of training, crews are ready to abandon ship in a real emergency. They have no real knowledge of just how harsh conditions on board a life raft or lifeboat can be. Training does not have to involve risk, but can still have a strong element of realism if money is spent. Cost, perhaps, is the limiting factor in bringing realism to safety training. For example, training in lifeboat and life raft launching and operation would be much better if it were done from a ship in moderate sea conditions with the ship rolling. This sort of experience is much more likely to make a lasting impression than the game-like atmosphere that now pervades lifeboat training. Realistic training does not seem to be forthcoming except in the rather exceptional circumstances of some training vessels.

Fire fighting is one area where realism can be and is brought into training. On some training courses, crews have to enter burning compartments in order to give them a very healthy respect for fire and confidence in using the equipment. Compare this with the attitude towards life rafts. Many crewmembers have never seen a life raft opened out. They do not know what is inside and what to do to get the best out of the life raft. A measure of realism, however, can be brought into training by using films.

Instead of reassuring passengers that ships are safe, ship owners should send "signals" that there is a minor risk (if anything goes wrong) by going to sea. By doing so, the public is prepared, or better prepared mentally if the impossible should happen anyway. The input into the development of safety equipment from those who would have to use it is small. Fire fighting is perhaps an exception, but much of the equipment is similar to that used on shore. Training in safety is so important that it must be considered along side the development of new equipment. In connection with Port State Control, it has become essential to control the crews' ability to handle the various emergency situations. Until recently, Port State Control has emphasised the "technical aspects" and only very little has been done on the "operational aspects". In the future, both flag states and port states have to look into the operational aspects of how the crew and the ship function together. The

operational aspects are the results of co-operation between the “technical element” and the “human element”.

In November 1991, the IMO Assembly adopted IMO Resolution A. 681 (17) “Procedures for the Control of Operational Requirements Related to the Safety of Ships and Pollution Prevention”. This Resolution was revoked by another Resolution A. 742 (18) “ Procedures for the Operational Requirements related to the Safety of Ships and Pollution Prevention”. At the 19<sup>th</sup> assembly, A.742 (18) was amalgamated with the other Port State Control Resolutions into A. 787 (19) “ Procedures for Port State Control”, where all the operational requirements are included.

International law has always recognised the sovereign jurisdiction of Coastal or Port States over their territorial sea and internal waters. Hence, the inclusion of the “No More Favourable Treatment” clause in Maritime Safety and Pollution Prevention Conventions, beginning in MARPOL 73/78 and SOLAS 74/78, were the most convenient means to enable Port States to exercise control. However, this control is not absolute. The conventions clearly state the extent to which control may be exercised over foreign flag vessels, and, with the exception of ILO 147 Convention, such control may not extend to the internal management of the ship’s affairs. In addition, MARPOL 73/78, SOLAS 74 and the Protocol of 1978, and the STCW ‘78, provide for compensation to be paid for undue delay or detention. The UNCLOS also provides for this compensation by calling for a “right of recourse” in the courts of the Port State exercising this control.

However, Port State Control is very effective tool that a State can use to enforce national and international rules, and also to protect its coastal area from pollution so that ships may operate and navigate safely in the territorial and EEZ waters towards ensuring that, sub-standard ships will not be given easy access to their ports and other ports in the region. With regional co-operation, education and training in addition to seminars and workshops participation, nationals will be able to implement the laws governing the conduct of Port State Control on foreign ships visiting their ports.

## **RECOMMENDATIONS**

When establishing of co-operation and support in each region, participating countries (and in particular the focal point or lead country) are dependent on the countries concerned for providing of the necessary budget to ensure the establishment of day-to-day running of the port state control agreement. From outside the region, support is required in terms of technical expertise and databases, as well as financial help from donor countries. IMO is also involved through its Technical Co-operation Programme. Thank God and IMO, in October 1999, the West and Central African MOU will be signed in Abuja, Nigeria. The advantage of this regional MOU on PSC is to promote co-operation through effective sharing of information by harmonising the entire implementation globally. Further, the excessive and unfair competition among regional ports will be avoided to some extent.

A review of the region's maritime safety infrastructure, with particular regard for surveys and inspection requirements as set out in IMO conventions should also be established and evaluated regularly. The convening of one or more regional meetings of experts (legal and technical) to discuss a preliminary draft of a Port State Control agreement of co-operation with the participation of relevant maritime Administration has to be given priority. The agreements should be based on the special characteristics of the regional consensus as to the establishment of the Secretariat and the location of the required Information Centre.

Furthermore, a regional meeting of Heads of Maritime Administrations and Government officers to consider and sign the agreement for co-operation (MOU-on-PSC), and a plan of action for the training of Port State Control officers (PSCO`S), has to be pursued vigorously. The preparation of a strategy and a plan of action for future training are equally important and should NOT be undermined. Nigerian Port State Control Officers must change their attitudes towards realising safety culture in her territorial waters. IMO has played a vital and important roles in the signing of Agreements globally.

The task of reinforcing maritime infrastructure and the human resources capability of the individual regional schemes to effectively meet their objectives according to international standards has to be strictly adhered to. In addition, putting in place an electronic information network for sharing information and tracing suspected vessels, needs to be installed across the regions if the desired goals of Port State Control surveys and inspections are to be realised. The idea is to enable the regions to transmit relevant data to IMO for input into a world database (such as International Ship Information Database (ISID)) system equivalent to that of the Paris MOU (IRIS project on the exchange of inspection records), so that all Governments can have access to it with the aim of improving safety and protection of the environment. However, in the near future, and with the development of regional PSC Agreements across the world, maritime databases around the globe could be connected internationally.

The questions here are that: Will the traditional role of Flag State be eroded or is PSC another set of surveys and inspections? Will PSC not be used as trade barriers or retaliatory tool? Don't you think PSC will be too subjective to control in the near future? Will unscrupulous authorities not abuse it if allowed to be implemented? Will PSC not delay global shipping movements in the next millennium? How am I sure that, PSC will finally eradicate substandard ships in our international waters? However, whether Port State Control will become institutionalised and whether, a single global Port State Control (PSC) regime could be established in the future. Assuming political will and the commitment of the countries concerned to eradicate substandard ships, it seems that, the regional approach has clear advantages:

- i. The special characteristics of the region are taken in to account;
- ii. There is more effective sharing of information;
- iii. There is extended control of the ships whilst they are plying the regional waters;
- iv. Better cost/benefit returns are achieved;
- v. A harmonised system of surveys and inspections is easier to achieve;
- vi. There is a harmonised system for training and qualifications of Port State Control officers;

- vii. Unfair competition between ports in the region is avoided;
- viii. The deterrent effect for preventing substandard ships operating elsewhere in the world is increased; and
- ix. Inter-regional co-operation will become global co-operation through the interface between regional Secretariats.

Port States should have a legitimate interest in the safety of passengers and crew on board foreign ships calling at their ports. It is necessary for them to include control of compliance with on board operational requirements in their country. Article 2 of ILO Convention No. 147 convention, requires member States to have laws or regulations laying down safety standards, including standards of competency, hours of work and manning social security measures in addition to other living conditions. That is why it is advisable to set up a Safety Committee among the crew on board. In exceptional cases where the overall condition of a ship is obviously substandard, the competent Authority may suspend the inspection of that ship until the response parties have taken the steps necessary to ensure that it complies with the relevant standard requirements. This possibility has already been inserted in the Paris MOU and is now a generally accepted procedure.

The Flag State's responsibility is implementation by establishing legislation (primary or secondary) on Port State Control and Flag State Implementation, which will instruct surveyors and inspectors on what is expected of them. With respect to the ships of non-parties to the convention, Parties shall apply the requirements of the present convention as may be necessary to ensure that "No More Favourable Treatment" is given to such ships (MARPOL 73/78 ART. 5 (4)). Further, Flag States must verify (by inspection or other means) that their ships comply with national laws and regulations which apply the standards prescribed by the convention. This is because national legislation has to be "substantially equivalent" with the International Minimum Standard requirements.

In case of any deficiency, legislation must exist which will instruct the master or operators to rectify such deficiencies immediately, or else the ship may be detained or delayed when there are "clear grounds" to do so or if "professional judgement"

deems it necessary. Furthermore, complaints from crew, passengers, masters or any other person on board are to be listened to and action has to be taken appropriately, because ships must be "sufficiently and efficiently manned". Therefore, a Port State Control officer on inspection has to ensure always that every ship has not only a "Safe Manning Document" on board but also has "Certificates of Competency" of the seafarers employed. The officer can also simulate in order to check how the crew reacts to emergency events. The muster list must always be checked in case of any misrepresentation in it.

Many things could be said about how the ship owner, operator and Captain can manage Port State inspection at its best. However, if the following items are *NOT IN ORDER*, a Port State Control survey will usually be a matter of routine. Thus:

- i. The ship should be provided with one (or may be more) "Certificate ring binder" where all certificates and other kinds of documentation can be filed properly.
- ii. Port State Control reports from previous inspections must be retained on board for a period of TWO years and must also be available for consultation by Port State Control Officer at all times.
- iii. The ship should be provided with a "Record of Approved Safety Equipment" from which it can be seen what the Flag State requirements are, and which rules the ship shall comply with.
- iv. The ship's officers should be acquainted with IMO Resolution A. 787 (19) "Procedures for Port State Control".
- v. Each ship's (Captain/Company) must have some kind of contingency plan on "How to handle a situation where the Port State Control survey/inspection causes difficulties" (For example; the ship is required to comply with international standard regulations or the ship is detained).

The ship has to be in a reasonable condition and comply with all statutory regulations, the gangway properly rigged (remember the net), the alleyways clean and the papers neatly at hand. (This, together with the Captain's and Crews positive attitude, helps the Port State Control Surveyor or Inspector to run the inspection smoothly without unreasonable delay, detention or cost for the ship owner).

Port State Control is recognised as being a step in the direction towards the eradication of sub-standard ships, when it is carried out in accordance with IMO Assembly resolutions and recommendations. Many of IMO's technical conventions contain regulations enabling Governments to inspect ships visiting their ports to make sure that they meet IMO standards. Therefore, and based on the findings on page 68, I would like to make the following recommendations:

A number of PSCOs' employed with inadequate qualifications in addition to lack of experience, need to be reviewed. PSCOs' require to be educated and trained in accordance with the stipulated and prescribed guidelines, example, IMO Res. A. 787 (19) or as envisaged in the West and Central African MOU. Also, the establishment and implementation of the West and Central MOU needs to be expedited. Of course the wage structure of the entire PSC Inspectors has to be reviewed if commercial interests vested on ships inspected or on ports where the ships are to be inspected, are to be avoided.

The Maritime Academy of Nigeria, Oron (MAN ORON) as the only maritime institution in the country, should develop a model training course for training of PSCOs' taking in to account the technical advise and assistance from the IMO Technical Co-operation Committee for international standards requirements to be met. There is the need for regular review of PSCOs' activities by the Director General of the NMA in order to assess and ascertain the quality of performances. Furthermore, in addition to competency in carrying out PSC responsibilities as required, the methodology adopted in appointing PSCOs' and the allies Officers need to be reviewed based on credibility, integrity, passed-experience and appropriate qualifications of individual applying for the post or seeking promotion to such position.

In another development, the Maritime Safety Dept. should establish an inter and intra Districts Links that will serve as an effective means of communication not only between PSCOs', but also between PSCOs' and the other agencies in the ports in case of high traffic. Such agencies include. The Ports Authority, the Customs, the Immigrations, Navy, etc.



For efficiency and effectiveness, PSCOs' should be provided with the necessary tools related to PSC Inspections. Such tools include, a car, chauffeur or boat, mobile radio or telephone, helmet, hand-gloves, rain-boot, raincoat, writing materials and other necessities required of PSC implementation.

For sustainable and effective implementation of PSC in the region, the newly established West and Central African MOU needs funding on continuous incremental approach if the regional agreement is to survive.

With regard to the need for harmonisation and training, it is clear that the establishment of the various regional Port State Control regimes, essential as it is, is only the beginning. Problems already identified within the European MOU, which, is composed of quite similar maritime Administrations, will be accentuated in other regions where European conformity and affinity do not exist. Some of the problems are related to the peculiarities of the regions and their different stages of development which dictate different patterns of control, as regards the methodology of inspection, targets to be achieved, different training and experience among the control officers, and possibilities of abuse. However, solutions to these problems have to be found by whatever means.

Of course, we are not unaware of the problems facing developing countries from political instability to economic uncertainty in addition to socio-cultural and religious diversities. However, if such countries are interested in developing maritime and shipping activities in their regional domains, such differences and barriers need to be resolved. The flag and port states respectively have to prioritise the maritime sector in order to enable the developed maritime nations to give both financial and technical aid where applicable.

It is therefore, imperative to continue working towards the harmonisation of basic procedures and qualifications and experience of control officers as the way ahead. The IMO sub-committee on Flag State Implementation has agreed on a global strategy for port state control and has also the authority to deal with the training and

qualification of Port State Control officers as a matter of urgency in co-operation with the Standards of Training and Watchkeeping (STW) sub-committee. A code of conduct for Port State Control officers has also been developed in this regard.

There is an arduous task ahead. While regional Port State Control has now been operating for 15 years, there is still room for improvement and need for review of the agreements and minor adjustments. IMO's work will depend on the success of the organization's efforts to improve flag state performances, which is the top priority of the organization at present. However, the best way forward seems to be to continue the process already started by increased control in the various regions and to strive for better and more efficient implementation by the states (acting as Flag States) on their own ships rather than as a port state acting on foreign flag ships.

But Port State Control is here to stay, and this means effective regional agreements, common criteria for inspections, harmonised inspections and detention procedures, internationally approved qualifications of Port State Control officers, an internationally applied Code of Conduct and transparency through increased information within the regions themselves and the inter-regions respectively.

**In summary, the emphasis has to be on “Enhanced International Co-operation”!**

**Final Remarks:**

Instead of being an excellent tool to eliminate the operation of substandard ships, Port State Control Regional Agreements might well develop into a monster of bureaucracy. Port State Control officers must put any reference in their inspection report if they are not sure of its applicability. They must also never detain or delay any ship unnecessarily or without any justification. Conventions are regarded as the best medicine for curing ship deficiencies if the qualified personnel properly prescribe it. However, and in recognition of the importance of our oceans, the PSC officers must intensify their efforts towards effective implementation and

enforcement of PSC in Nigeria in order to achieve the maritime safety culture in the next millennium.

Port State Control is a right and not an obligation. Safety culture must be imbedded between ship owners and seafarers vis-à-vis the Administrations. Nigerian MARADS needs dialogue with the industry in order to establish a safety culture towards avoiding conflicts of interests in our Port State Control implementation and enforcement. Nigeria must devise means of overcoming all available pressures on PSC- Inspections from ship owners, seafarers, Administrations or any union/pressure groups. A Port State Control officer needs to be aware of the “missing links” in case of any deficiencies identified. Port State Control inspection is not auditing. According to an ancient Greek Philosopher: “ The measure of success is not what you were unable to achieve, it is what you are not able to loose”.

Therefore, Port State inspectors must be watchful and vigilant in carrying out Port State Control survey or inspection particularly on board ships. However, they can not work miracles! But should ensure that ships have priority. Progress can only be made gradually and along the developmental axis of the desired objectives. Excessive bureaucracy decays infrastructure. Port State Control officers must be honest and what they can offer for safety of our ships, crews, passengers and the protection of the environment. Safety is EXPENSIVE, but accidents are DANGEROUS. As long as our shipping activities are across the international territorial boundaries, ship owners and their operators must be held responsible for non-compliance of shipping rules and regulations as required by the International standards.

**According to Winston Churchill, “ It is wise to look ahead but difficult to look further than you can see”. Therefore, be careful.**

## Bibliography

- Abiodun, F O (1998). *Port State Control and Flag State responsibilities on Maritime Safety improvement in Nigeria*. Presentation. National Maritime Authority Abuja, Nigeria.
- Alderton, P M (1995). *Sea Transport Operation and Economics*. London. Thomas Reed.
- Beatrice, V M (1998). *The Barriers to effective Port State Control in Ghana: An analysis*. MSc dissertation. Malmö, Sweden: World Maritime University.
- Bello, G B (1994). *Maritime Developments in Nigeria: Problems and Prospects-A case study of National Maritime Authority*. HND Project. Yaba, Lagos, Nigeria: College of Science and Technology.
- Bereiweriso, L F (1996). *Training and Manpower Development of Seafarers for the Nigerian Maritime Industry*. Presentation. Nigerian Ports Authority, Abuja, Nigeria.
- BIMCO (1989). *Practical Aspects of Safety Enforcement in Shipping*. BIMCO maritime Conference, Hamburg, 23-28 May 1989. Hamburg: BIMCO.
- Carlisle, R (1981). *Sovereignty for Sale*. Annapolis: Naval Institute press.
- Chorley and Giles (1987). *Shipping Law*. (8<sup>th</sup> Ed.) London: London Pitman.
- General Aspects of Foreign Vessels Examination: Marine Safety Manual Act 1992* (chap. 19), USA, Coast Guard.
- Gwandu, B I (1997). *Low Traffic in Nigerian Seaports: The way Forward*. Presentation. National Maritime Authority, Lagos, Nigeria.
- IACS (1996). *Ships Survey and the Problem of Nigerian Shipping Lines by IACS and OGA consultants during 1993-1995*. (IACS research Report No 2, 177). Oslo: DNV
- ILO (1981). *Convention concerning Minimum Standards in Merchant Ships*. ILO No 147, ILO. Geneva: ILO
- Ibrahim, Y A (1996). 'The ship in your pocket and the Surveyors Requirements'. *Essential for Port State Control procedures*. Presentation. Maritime Academy of Nigeria, Oron, Nigeria.
- IMAS (1992). *Quality Shipping in the year 2000*. IMAS Shipping courses, Nicosia, Cyprus, 21-25 April 1992. Cyprus: IMAS
- IMO (1966). *International Convention on Load Lines*. LL 1966, IMO. London: IMO.

IMO (1969). *International Convention on Tonnage Measurement of Ships*. Tonnage 1969, IMO. London: IMO.

IMO (1972). *Convention on International Regulations for Preventing Collisions at Sea*. COLREG 1972, IMO. London: IMO.

IMO (1973/78). *International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978 Related thereto*, MARPOL 73/78, IMO. London: IMO.

IMO (1974/78). *International Convention for Safety of Life at Sea, 1974 and the 1978 Protocol*. SOLAS 74/78, IMO. London: IMO.

IMO (1978). *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978*. STCW 1978, IMO. London: IMO.

IMO (1981). *Procedures for the Control of Ships*. Resolution A. 466 (xxii), IMO. London: IMO.

IMO (1983). *Implementation of Instruments and Related Matters*. Maritime Safety Committee, MSc 48/22/6, IMO. London: IMO.

IMO (1985). *Principle of Safe Manning*. Resolution A. 481 (xii). IMO. London: IMO.

IMO (1994). 'Model Course on Port State Control'. *Maritime Policy and management Systems*, vol. 18, No 3.09, pp 18-29.

IMO (1995). *Procedures for Port State Control*. Resolution A. 787 (19), IMO. London: IMO.

IMO (1997). *IMO NEWS* No 4, pp 1-40, IMO. London: IMO

Ibid. (1997). No 3, pp 21-24

Ibid. (1999). No 1, pp2-3, & pp21-28

IMO (1998). *International Safety Management Code*. ISM CODE, IMO. London: IMO.

INTERTANKO (1983). *Implementation of Port State Control in the Netherlands*. INTERTANKO Shipping Seminars, Montecarlo, 21-24 April 1983. Montecarlo: INTERTANKO.

Johannah, R H (1997). 'Shipping Policies and Rate of Maritime Activities Growth in the African Economy'. *A Challenge for Maritime Operators*, vol. 3, No 5, pp 9-27.

Johansson, J A (1998). 'Port State Control Procedures and the Safety Standards'. *Port on State Control Procedures Sub-standards ships*. Lecture notes. World Maritime University, Malmö, Sweden.

- Juhani, T (1999). 'Port State Control in Action'. *Finnish Maritime Administration-Field study trip*. Presentation. Port of Kotka. Kotka, Finland.
- Kasoulides, G C (1988). *Laws of the Sea and Control of Vessels in Foreign Ports*. Lecture notes. Nigerian Institute of Fisheries and Marine Environment, Lagos, Nigeria.
- Liang, M H (1985). 'Hong Kong Shipowners: Past, Present and Future. Money and Ships in the City'. *Seatrade Conference* (March 20-23, 1985: Barbican Centre). Barbican Centre, Hong Kong.
- Lloyd's Register (1982). *The Paris Memorandum of Understanding and the New Agreement on Ship safety in European Ports by Lloyd's during 19-21 January 1980*. (Lloyd's Report). London: Lloyd's.
- Magnus, L (1994). 'Swedish Club and the Challenges of Port State Control'. *The Biggest Oil Spill Ever*, vol. 5, No 8, pp7-14.
- Maier, S (1985). 'Port State Control: Does it work? Money and Ships in the City'. *Seatrade Conference* (March 20-24, 1985, Barbican Centre). Barbican Centre, Hong Kong.
- Matrixis, B N (1985). *Flag of Convenience*. Hants. London: Gower Com.
- Mottram, D (1998). 'Principles of Strategic Management'. *Shipping Project Management*. Lecture notes. World Maritime University, Malmö, Sweden.
- Murkhajee, P K (1998). 'Flag State, Port State and Coastal State Responsibilities in our Oceans'. *International Territorial Waters Control from Pollution*. Lecture notes. World Maritime University, Malmö, Sweden.
- Mustapha, A (1998). 'Maritime Industry and the Global Economy'. *Nigerian Shipping Policy and the Role of Shippers*, vol. 13, No 7, pp 15-27.
- National Shipping Policy Decree 1987* (No 10), Nigeria, FGN
- Olusola, O A editor (1995). *Nigerian Export Promotion Channels*. Abuja: African Economic Crisis and Solutions Project.
- Owolabi, R (1998). *Maritime Casualties and the Lessons to be learned*. MSc dissertation. Malmö, Sweden: World Maritime University.
- Sishta, R K (1998). *Safety of Navigation in Pilotage Waters: A human approach*. MSc dissertation. Malmö, Sweden: World Maritime University.
- Sorenson, K M (1986). 'The Seafarers and ILO 147 Convention'. *International Conference on Seafarers responsibility on board safety* (April 2-5 1986: New York). Centre for Seafarers Rights New York, United States.

- Sproat, I (1983). *Implementation of IMO Conventions: Principles of Port State Control*. London: Business Books.
- Stig, K (1999). 'Shipping Industry Today'. *Swedish Shippers Council Challenges*. Lecture notes. World Maritime University, Malmö, Sweden.
- Stubbered, G (1984). 'Legal Aspects of Marine Pollution and Control'. *The New Law of the Seas*. Lecture notes. World Maritime University, Malmö, Sweden.
- Ulstrup, A (1998). 'Port State Control Principles and Procedures'. *The role of Surveyors and Inspectors on Port State Control*. Lecture notes. World Maritime University, Malmö, Sweden.
- United Nations Conference on Trade and Development (1993). *Shipping Services and the Context of Development process*. Geneva: UNCTAD.
- United States Coast Guard (1983). *MSO Standard Vessel Boarding Program*. COMDTINST 5010.8 USA: Coast Guard.
- Wiswall, F L (1986). 'Port State Control: What it is! How it works! And Where it is going': Presentation. *International Conference on Port State Control* (April 2-4 1986: New York). Centre for Seafarers Rights, New York, United States.
- Yahaya, M S (1997). 'The Administrator'. *Leadership Style and Policy Implementation*, vol. 2, No 2 pp 11-17.