

“Port State Control – with special emphasis on the Maldives”

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Introduction

Port State Control (PSC) is the inspection, by the officers of the authorized national maritime authority, of foreign vessels visiting the country's ports to ensure compliance with the international maritime safety and pollution prevention conventions and with any domestic legislative maritime safety requirements.¹ The underlying objective of the Port state control is the eradication of unsafe substandard ships from the trade routes of the world.²

Port state control reflects the right of sovereign states to control any activities within their borders, including those visiting ships.³ Port states have the right to board vessels of any flag entering their areas of jurisdiction and to carry out a review of the vessel's documentation and general condition.⁴ Where clear grounds exists for believing that that the ship, its crew or equipment do not substantially meet the requirements of the relevant international conventions the port state inspector is empowered to carry out a more detailed examination.⁵

Port state control is mandated to all states by the United Nations Convention on the Laws of the Sea 1982⁶ (UNCLOS).⁷ Port state control offers potentially the most effective weapon in the maintenance of standards across the world fleet⁸. Regional groupings are more effective than single port states for the obvious reason that ships move from country to country.⁹ There are currently a number of groupings of port states working towards establishing a harmonized and a uniform port state control system throughout the world by means of co-operation

¹ Ozcayir O, *Port State Control*, (2001) London, Lloyd's of London Press, p. 86.

² Hare J, 'Port State Control: Strong Medicine to Cure a Sick Industry', (1997) Vol. 26, No. 3, Georgia Journal of Int'l & Comp. Law, p. 68

³ Kasoulides G.C, *Port state control and jurisdiction: evolution of the port state regime*, (1993), Dordrecht, The Netherlands, Martinus Nijhoff at 160

⁴ See, Section 3.1 of the Paris MOU, Tokyo MOU, Indian Ocean MOU on Port State Control, *infra* note 111.

⁵ Ibid.

⁶ U.N. Doc. A/CONF.62/122, Dec. 10, 1982, reprinted at 21 I.L.M. 1261 (1982).

⁷ Basically the UNCLOS said nothing about port states except for the articles dealing with pollution, see Articles 218-220 where it was assumed that ports are subject to sovereignty of the coastal state as they are parts of the internal waters.

⁸ Ozcayir O, (2001) note 1 at 27

⁹ Ibid.

between all the regional groupings and the International Maritime Organization.¹⁰

The first part of this article provides an overview of the origin and development of the Port State Control. The second part examines in detail the international conventions dealing with port state control. The development of the Port State Control regional agreements are also examined. The paper then goes on to examine the port state control regime in the Maldives in detail. Finally the paper concludes that port state control itself is neither a cure nor does it absolve others from their responsibilities. The active participation and recognition of their responsibilities is needed from the ship operators, owners, charterers, underwriters, classification societies and the flag states if the eradications of the substandard shipping is to be achieved.

The problem of the sub-standard ship and the need for Port state control

All ships are required to be registered in a country which identifies its owners.¹¹ The country of registration is known as the 'Flag State'.¹² It is the duty of the flag state to ensure that a vessel entitled to fly its flag is safely constructed, equipped and subsequently properly maintained and manned as per relevant regulations based on international conventions.¹³ For this purpose the flag states are required to carry out surveys and inspections on the vessels under its registry for issue of various

¹⁰ Europe and the north Atlantic (Paris MOU); Asia and the Pacific (Tokyo MOU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MOU); West and Central Africa (Abuja MOU); the Black Sea region (Black Sea MOU); the Mediterranean (Mediterranean MOU); and the Indian Ocean (Indian Ocean MOU), see Annual Report – 2001 of the Indian Ocean Memorandum of Understanding on Port State Control, published by Indian Ocean MOU Secretariat, Goa, India, available online at <http://www.iomou.org>

¹¹ Article 94 of the UNCLOS; Article 4 (1) of the United Nations Convention on Conditions for Registration of Ships 1986;

¹² Article 2 of the United Nations Convention on Conditions for Registration of Ships 1986, available online at <http://www.admiraltylawguide.com/conven/registration1986.html>

¹³ Article 94 of the UNCLOS; Article 5 (3) of the United Nations Convention on Conditions for Registration of Ships 1986, available online at <http://www.admiraltylawguide.com/conven/registration1986.html>

statutory certificates.¹⁴ These certificates are mandatory for the vessels intended for trading. Many developed maritime nations have adequate maritime administrative infrastructure to undertake this task while many others who lack this capability for various reasons, delegate authority to recognized classification societies to carry out most of such surveys and issue certificates on their behalf.¹⁵

As a result of the emergence of open registries, more conveniently known as flags of convenience (FOC), too many ships sail under the flags of countries that cannot give any guarantee about safeguarding the correct implementation of the safety regulations.¹⁶ Because FOCs are often unwilling or unable to exercise effective control, many vessels registered in them are old and substandard. Hence they have been involved in many of the major maritime incidents of the past thirty years.¹⁷ For each of the years 1992, 1993 and 1994 there have been close on 100 ships lost at sea. In these and other casualties, over 1500 lives were lost. The economic loss of these vessels and their cargoes is inestimable¹⁸. The pollution arising from the grounding of EXXON VALDEZ, the most costly marine mistake to date, has generated claims amounting to about \$5 billion. And the loss of life is appalling as it is unnecessary and indefensible.¹⁹

And the system of delegating the control to recognized organizations is also failing. Without the controlling support of a strong flag state administration, the classification societies are now not only caught in a fierce commercial competition amongst themselves, but also they are subjected to strong commercial pressure from the not always "bona fide" ship owner.²⁰ If they make it too difficult for their clients – ship owners, then they risk

¹⁴ Critics have claimed that the port state control imposes a burden on port states which should be borne by the flag state. But the key question is how the international community can deal with vessels flying the flag of states not taking that responsibility.

¹⁵ Ozcayir O, (2001) note 1 at 34

¹⁶ Hare J, Flag, 'Coastal & Port State Control: Closing the Net on Unseaworthy Ships and their Unscrupulous Owners', (1994) *SEA CHANGES*, No. 16, p. 57, available online at <http://www.uct.ac.za/depts/shiplaw/portste.htm>

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ademuni-Odeke, 'Port State Control and UK Law', (1997) 28 *J. Mar. L. & Com.* 657

to see these such clients running off to societies that are implementing the regulations in a less stringent way. This results in all kinds of doubtful temporary, provisional and conditional IMO safety certificates being issued without informing the flag state about the problems on board the ship.²¹

Initially, strong lobbies in the traditional maritime nations helped FOCs weather opposition from trade unions and developing maritime nations. In the 1980s, however, the tide began to turn as pollution incidents resulting in substantial loss of life and extensive environmental damage became more frequent. As a result greater attention began to be paid to the subjects of maritime safety, training and working conditions, and the protection of marine environment.²²

Flag State Control

Flag state control is derived from the fundamental rule that, except in certain extraordinary situations, a merchant ship on the high seas is subject only to the jurisdiction of the flag state²³. Flag state jurisdiction which is a result of the rule that no state may validly subject any part of the high seas to its sovereignty, serves to avoid regulatory chaos.²⁴ In the event of a collision or other incident of navigation on the high seas, penal or disciplinary proceedings may be initiated against a crew member only before the flag state or the state to which the is a national.²⁵

Flag state jurisdiction was formally recognized in Article 1 of the 1952 Brussels Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collisions or Other Incidents of Navigation.²⁶ This provision effectively reversed the highly criticized judgment of the *Lotus Case*²⁷, which otherwise reaffirmed the basic principle that vessels on the high seas are

²¹ Ibid

²² Ademuni-Odeke, note 20 at 657

²³ O'Connell D.P, *International law*, Vol. II, 2nd ed (1970) 645; *Brownlie I, Principles of Public International Law*, 3rd Ed, (1979) 238-242; Churchill & Lowe, *The Law of the Sea*, 3rd Edition, Manchester University Press (U.K) , (1999), p. 215

²⁴ Verzijl J, *International Law in Historical Perspective*, (1970) 385

²⁵ See, *Nottebohm Case* (Liechtenstein v. Guatemala), 1955 I.C.J. 4

²⁶ 439 U.N.T.S. 233

²⁷ *S.S. Lotus* (France v. Turkey), 1927 P.C.I.J. (ser. A) No. 10.

subject to no authority except that of the state whose flag they fly. The substance of Article 1 is reiterated in Article 11 of the 1958 Geneva Convention on the High Seas²⁸ and in Article 97 (1) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS)²⁹.

As such, a merchant ship on the high seas normally can be stopped, boarded, or otherwise interfered with only by a public ship of the flag state.³⁰ There are, however, a number of exceptional situations in which a warship (or other duly authorized public ship or aircraft) may interfere with a foreign merchant vessel.

Apart from the rule that the coastal state is allowed to exercise its jurisdiction over a foreign vessel in its exclusive economic and contiguous zones if it is violating the coastal state's rights in these areas³¹, boarding a foreign ship on the high seas is justified if there are reasonable grounds for suspecting that: 1) it is engaged in piracy, slaving, or unauthorized broadcasting; 2) it is without nationality; or 3) it is of the same flag as the warship challenging it.³²

Other grounds include maritime safety and the protection of the marine environment.³³ In such cases the warship may proceed to exercise the so-called rights of "visit," "visit and search," and "approach" to verify the ship's right to fly its flag. A patrol boat can be sent to confront a ship and, if suspicion remains after its documents have been checked, it may be boarded for a more thorough examination. Other exceptions to the flag state's control include: hot pursuit³⁴, arrest of a foreign vessel on the basis of a reciprocal treaty, and intervention in case of a threat of pollution from a foreign shipping casualty.

²⁸ 450 U.N.T.S. 83

²⁹ U.N. Doc. A/CONF.62/122, Dec. 10, 1982, reprinted at 21 I.L.M. 1261 (1982).

³⁰ Article 94 of the UNCLOS

³¹ Article 92 of the UNCLOS

³² Article 110 of the UNCLOS ; See, Reuland R.C, 'Interference with Non-National Ships on the High Seas: Peacetime Exceptions to the Exclusivity Rule of Flag State Jurisdiction', (1990), 22 Vand. J. Transnat'l L. 1161.

³³ Article 218 of UNCLOS

³⁴ Article 110 of the UNCLOS

Because of the limited situations in which other states can interfere, international law imposes on the flag state the duty to ensure maritime safety and the protection of the marine environment.³⁵ Article 94(1) of UNCLOS expresses this duty by directing that "every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."

PORT STATE CONTROL

The nature and origins of port state control

As noted at the outset of this article, over the last 20 years there has been a shift of emphasis from flag state control to port state control. In large part, this development has come about due to a greater environmental consciousness and a sense that open registry countries are unable or unwilling to exercise effective flag state responsibilities.³⁶

Port state control is established based on the right of coastal states to exercise power over their internal waters. As a rule, these internal waters include ports, harbors, bays, and estuaries³⁷. Moreover, under Article 50 of UNCLOS an archipelagic state may draw closing lines for the delineation of internal waters.

Under customary international law the port state exercises full jurisdictional powers within its internal waters and its laws and regulations are fully enforceable.³⁸ The question whether there exists a general right of access of foreign ships to the ports of a coastal state is controversial³⁹. There is a presumption that ports traditionally designated for foreign trade are open to all ships and that the arbitrary closure of a port gives rise to a right of protest and, under certain circumstances, liability for damages.⁴⁰ The

³⁵ Article 217 of the UNCLOS

³⁶ Ozcayir O, (2001) note 1 at 27

³⁷ "Charterparty Laytime Definitions 1980", 12 *J. Mar. L. & Com.* 421

³⁸ Oppenheim L, *International law*, Vol. II, H. Lauterpacht ed., 8th ed. (1955) 582-594; see also, Smith G.P, 'The Politics of Lawmaking Problems in International Maritime Regulation – Innocent Passage vs Free Transit', (1976) 37 *University of Pittsburgh Law Review* 487, p. 515

³⁹ Kasoulides, (1993) note 3 at 5

⁴⁰ *Ibid* at 5

coastal state may prescribe conditions for access to its ports as well as for their exit.⁴¹ Numerous bilateral treaties (often designated as Treaties of Commerce, Friendship, and Navigation), as well as the 1923 Geneva Convention and Statute on the International Regime of Maritime Ports, provide reciprocal rights of port access to the contracting parties.⁴²

Foreign merchant ships in internal waters are, in principle, under the complete civil and criminal jurisdiction of the coastal state.⁴³ However, for reasons of comity and expediency, such a state normally asserts its jurisdiction only when: 1) an offense committed on board the foreign ship disturbs the peace and good order of the port; 2) its intervention is requested by the ship's master or the flag state's consul; 3) a person who is not a member of the ship's crew is involved; or 4) the coastal state's national interests require an assertion of jurisdiction.⁴⁴ Otherwise, affairs relating to the ship's internal economy are generally left to the jurisdiction of the flag state.⁴⁵

Although a distinction is commonly made between the Anglo-American approach (which follows the above summarized rules) and the French legal position (which holds that the coastal state is legally barred from exercising its jurisdiction over purely internal matters of foreign ships), the actual practice of both groups of states appears to be the same.⁴⁶ Thus, matters such as pollution, seaworthiness, sanitary regulations, and the like are considered to be within the jurisdiction of the coastal state.⁴⁷

While the issue is not entirely free from controversy, ships in distress are generally granted a certain degree of immunity. For

⁴¹ Ibid at 5

⁴² Lobach T, 'Port State Control of Foreign Fishing Vessels', *FAO Legal Papers Online*, May 2002, p.9 <http://www.fao.org/Legal/Prs-OL/lpo29.pdf>

⁴³ Articles 27 and 28 of UNCLOS; see also, McDougal M.S & Burke W.T., *The Public Order of the Oceans. A Contemporary International Law of the Sea*, (1962) Yale University Press, New Haven/London, pp 156-157

⁴⁴ Articles 27 and 28 of UNCLOS ; see also Jessup P.C., *The Law of the Territorial Waters and Maritime Jurisdiction*, (1927) E.A. Jennings Co. Inc., New York, p. 145

⁴⁵ McDougal & Burke, note 43 at 156-157

⁴⁶ Kasoulides, (1993) note 3 at 3-33

⁴⁷ Ibid.

example, the coastal state cannot exact from them payment of harbor or customs duties or make them liable to arrest.⁴⁸

It is well established under the customary international law that once a ship voluntarily enters port it becomes fully subject to the laws and regulations prescribed by the officials of that territory for events relating to such use and that all types of vessels, military and other, are in common expectation obliged to comply with the coastal regulations about proper procedures to be employed and permissible activities within internal waters.⁴⁹

But the practice of the majority of ports, at least until the last decade, was to give negligible inspection to calling vessels.⁵⁰ A pilot may well have checked whether the vessel was loaded below her marks, but even this was circumvented by the not uncommon but immensely dangerous practice of 'hogging' a ship to bend her load line above the water line.⁵¹ Maritime authorities were concerned almost exclusively with the affairs of their own ships. With the growth of flags of convenience, many of whose maritime authorities turned a blind eye to the condition of the vessels whose fees they so readily received, with the lack of interest by port authorities, and with the inadequacies of general coastal state policing of passing ships, the unseaworthy ship or the 'sub-standard' ship flourished.⁵² That this slide was hastened by the general decline in world trade in the late 1970's. In particular, the decline in trade for non-containerized break bulk cargo vessels, bulk carriers and tankers, cannot be denied. Surplus and superannuated tonnage long overdue for the scrap-yard can only be used to make meager profits in the hands of marginal and economically stressed ship-owners.⁵³

It was in relation to oil tankers (many of which were knocked together with undue haste in the oil boom of the early 1970's)

⁴⁸ Ibid.

⁴⁹ Lobach T, 'Port State Control of Foreign Fishing Vessels', *FAO Legal Papers Online*, May 2002, p.9 <http://www.fao.org/Legal/Prs-OL/lpo29.pdf>

⁵⁰ Ademuni-Odeke, note 20 at 657

⁵¹ Ibid.

⁵² Hare, (1994) note 16 at 57.

⁵³ Ibid.

that the international community first sat up and took notice that there was perhaps something untoward going on in the shipping industry.⁵⁴ The control and prevention of oil pollution has long occupied the minds of international maritime legislators.⁵⁵ The chapter of major oil tanker casualties, starting with the grounding of the *Torrey Canyon* in 1967, gave a very conspicuous public face to the vagaries of shipping and the tragedy of what can happen when things go wrong. Less conspicuous was the continuing appalling loss of non-tanker merchant ships, particularly bulk carriers, which remains one of the prime causes of concern of the shipping industry to this day.⁵⁶

Whilst oil pollution casualties may well have highlighted sub-standard shipping as a green issue, the continuing loss of seamen's lives is the whole nub of the issue and the catalyst that has given strength to the arms of the ILO, the IMO and the ITF in co-ordinating international reaction.⁵⁷

And it was not only in relation to oil pollution and load-lines that the maritime community addressed issues of safety at sea. As early as 1914, following a conference in London, the first SOLAS was concluded. The four subsequent SOLAS conventions have covered most areas of maritime safety and are continually updated under the auspices of the IMO.⁵⁸

Disaster gives rise to action and remedy. It took the loss of the *Amoco Cadiz* off the coast of Brittany in 1978, with a cargo of 227 000 tons on board, to focus the world's attention on the sea.⁵⁹ The *Amoco Cadiz* acted as a catalyst for the world to reassess the role of the port state control in combating the problem of unsafe shipping in the world.

⁵⁴ Ademuni-Odeke, note 20 at 657

⁵⁵ Hare J, 'Port State Control: Strong Medicine to Cure a Sick Industry', (1997) Vol. 26, No. 3, Georgia Journal of Int'l & Comp. Law, p. 68

⁵⁶ Ibid.

⁵⁷ Baird D, 'Effective Port State Control to maintain standards', a paper submitted to the Conference "ASEAN Shipping in the 21st Century", September 2000, Singapore, p. 4, available online at

<http://www.ssa.org.sg/Archive/Seminar%20Papers/1st%20Shipping%2021/David%20Baird.pdf>.

⁵⁸ Hare, (1997) note 2 at 68

⁵⁹ Annual Report 1997 of the Paris MOU, available online at <http://www.parismou.org/>

International conventions dealing with port state control

IMO conventions lays down standards enforceable by port states. The following is a brief survey of the relevant conventions. It is beyond the scope of this paper to examine all the international conventions which impact upon the safety of ships at sea. Suffice to state that collectively, as will be pointed out below, they provide the framework for port state control inspections, and without them, and the considerable labors that preceded their conclusion, port state control would have as little direction as it would have teeth.

a. International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (OILPOL)⁶⁰

OILPOL bans the intentional discharge of certain specified kinds and concentrations of oil mixtures in designated areas 50 miles from land.⁶¹ The amendment in 1969 replaced the "prohibited zones" concept with a general prohibition on all oil discharges in excess of specified rates and concentrations.⁶²

The 1954 OILPOL leaves enforcement in the hands of the flag state⁶³, subject only to the right of the contracting states to board the suspected vessels in their ports and notify the flag state of violations.⁶⁴ The flag state was obliged to conduct an investigation and, if the evidence was deemed sufficient by the flag state, to prosecute the owner or the master of the vessel.⁶⁵

In 1973, the International Convention for the Prevention of Pollution was adopted and its 1978 Protocol superseded the 1954 OILPOL for its contracting parties.⁶⁶

b. International Convention for the Prevention of Pollution from Ships, 1973, as incorporated in the Protocol of 1978 (MARPOL 73/78)⁶⁷

⁶⁰ available online at <http://sedac.ciesin.org/pidb/texts/pollution.of.sea.by.oil.1954.html>

⁶¹ Article III of OILPOL

⁶² Article III of OILPOL

⁶³ Article II of OILPOL

⁶⁴ Article IX (5) of OILPOL

⁶⁵ Article X of bOILPOL

⁶⁶ Kasoulides, (1993) note 3 at 50

The 1978 Protocol modifies various provisions of the 1973 London Convention, and in particular of its annex I. It also postpones the entry into force of annex II of the Convention for a period of at least three years.⁶⁸

Five annexes are appended to MARPOL 73/78. Annexes I and II are compulsory, i.e. on ratification states must accept these. Annex I relates to oil pollution and Annex II relates to the carriage of noxious liquid substances in bulk.⁶⁹ A chain of amendments keep the technical provisions of the convention updated to meet the demands of the shipping industry. The evidence gathered from inspections in different ports show that there is a high degree of compliance with its requirements by vessels.⁷⁰

Annex III contains regulations for the prevention of pollution from harmful substances carried by sea in packaged forms. Annex IV contains regulations for the prevention of pollution by sewage from ships and Annex V contains regulations for the prevention of pollution by garbage from ships.

The Convention contains a combination of flag and coastal state enforcement.⁷¹ It prohibits violations within the jurisdiction of a party and the coastal state is given the choice to choose between an action under its own law or reporting the infringement to the flag state administration.⁷² The enforcement powers given to the port states under this convention are limited. In order to verify compliance with construction and equipment standards flag states are obliged to issue certificates to all vessels as required by the convention.⁷³ And such certificates issued by the flag

⁶⁷ <http://sedac.ciesin.org/pidb/texts/pollution.from.ships.1973.html>

⁶⁸ Article II of 1978 Protocol; See also, Environmental Treaties and Resource Indicators (ENTRI), *UNEP Summary File*, <http://sedac.ciesin.org/entri/register/reg-072.rrr.html>

⁶⁹ 'MARPOL 25 Years', *FOCUS ON IMO*, October 1998, available online at IMO website, http://www.imo.org/includes/blastDataOnly.asp/data_id%3D721/MARPOL25.pdf

⁷⁰ Ibid.

⁷¹ Article 4 of MARPOL 73/78

⁷² Article 4 (2) of MARPOL 73/78

⁷³ Article 5 (1) of MARPOL 73/78

states must be accepted by other countries as having the same validity as a certificate issued by them.⁷⁴

The Convention also requires the parties to the Convention to co-operate in the detection of violations and the enforcement of the provisions of the present Convention, using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence.⁷⁵ The validity of the oil record book can be checked to monitor compliance with the requirements of the Convention.⁷⁶ With the introduction and widespread use of the Load on Top (LOT) and Crude Oil Washing (COW) systems it is possible to detect the credibility of the oil record book by physically inspecting the tanker equipped with LOT systems in the oil loading ports. This, however, requires a harmonious and constant co-operation amongst the ports of the world.⁷⁷

Although several states wanted an unlimited right to inspect ships in their ports, the convention only made the certificate as conclusive proof of compliance⁷⁸ and limited the right of inspection to instances where there were "clear grounds" to believe that the ship's equipment was inadequate.⁷⁹ The contracting parties may also conduct such an inspection if requested by another state party which submits sufficient evidence of illegal discharges. If they do so the action taken must be limited to finding evidence of unlawful discharge and the results are to be reported to the requesting party and the flag state is obliged to commence proceedings.⁸⁰ Ships unduly delayed by the exercise of these enforcement proceedings are entitled to compensation for any loss or damage suffered.⁸¹

⁷⁴ Ibid.

⁷⁵ Article 6 of MARPOL 73/78

⁷⁶ Regulation 8 of MARPOL 73/78

⁷⁷ Ibid.

⁷⁸ Article 5 (2) of MARPOL 73/78

⁷⁹ Art 6. If evidence of violation is obtained thereby it must be forwarded to the flag state which must take proceedings if "sufficient evidence" is thus made available and inform both IMO and the party reporting the violation of the action taken.

⁸⁰ Art 6.

⁸¹ Art 7.

The need for a thorough and coordinated effort for the control of ships and discharges was recognized at an early stage and the 10th Assembly of the IMO adopted procedures for the control of discharges under OILPOL as amended.⁸² An important feature of these procedures is the request to port states to provide information on any action taken in respect of ships found to be deficient in relation to these two annexes.⁸³ These guidelines are set out for port states and contain guidance on the gathering of evidence of violations of the discharge provisions; in-port inspections of COW operations; existence of a valid International Oil Pollution Prevention Certificate (IOPP); control measures for ships of non-parties to MARPOL 73/78; dissemination of information; and whether a ship is built, equipped and operating in compliance with the relevant provisions of MARPOL 73/78.⁸⁴

Article 5 (2) states that when there are clear grounds for believing that the condition 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 a valid certificate the Party 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 of harm to the marine environment. That party 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.

c. International Convention on Load Lines, 1966⁸⁵ (Load Lines 1966)

Article 3 of this convention states that no ship to which this Convention applies shall proceed to sea on an international voyage after the date on which this Convention comes into force unless it has been surveyed, marked and provided with an International Load Line Certificate (1966) or, where appropriate, an International Load Line Exemption Certificate in accordance with the provisions of this convention.

⁸² 'MARPOL 25 Years', *FOCUS ON IMO*, October 1998, available online at IMO website, http://www.imo.org/includes/blastDataOnly.asp/data_id%3D721/MARPOL25.pdf

⁸³ Kasoulides, (1993) note 3 at 50

⁸⁴ Ibid.

⁸⁵ Available online at, <http://www.austlii.edu.au/au/other/dfat/treaties/1968/23.html>

Annex I of this convention contains regulations for determining load lines and Annex II defines zones, area and seasonal periods. Its provisions relate to the ship loading limits and its purpose is to prevent overloading which would lead to casualties. A contracting state must accept as valid a certificate issued by another contracting state⁸⁶ and an inspection must be limited to determining that the ship is not loaded beyond the limits allowed by the certificate.⁸⁷ In case of an infringement the port state must "ensure that the ship shall not sail until it can proceed to sea without danger to the passengers or the crew."⁸⁸

d. International Convention for the Safety of Life at Sea, 1974 and its Protocol, 1978 (SOLAS 74)⁸⁹

The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster, the second in 1929, the third in 1948 and the fourth in 1960.

The 1960 Convention, which was adopted on 17 June 1960 and entered into force on 26 May 1965 was the first major task for IMO after the Organization's creation and it represented a considerable step forward in modernizing regulations and in keeping pace with technical developments in the shipping industry.

The intention was to keep the Convention up to date by periodic amendments but in practice the amendments procedure incorporated proved to be very slow. It became clear that it would be impossible to secure the entry into force of amendments within a reasonable period of time.

As a result, a completely new Convention was adopted in 1974 which included not only the amendments agreed up until that

⁸⁶ Article 20 of the Load Lines 1966

⁸⁷ Article 21 (1) (a) of the Load Lines 1966

⁸⁸ Article 21 (2) of the Load Lines 1966

⁸⁹ Available online at <http://www.austlii.edu.au/au/other/dfat/treaties/1960/1.html>

date but a new amendment procedure i.e. the tacit acceptance procedure which was designed to ensure that changes could be made within a specified and acceptably short period of time. As a result the 1974 Convention has been updated and amended on numerous occasions. The Convention in force today is sometimes referred to as SOLAS, 1974, as amended.

The primary purpose of the SOLAS Convention is the protection of life at sea, prescribing uniform rules on navigation, prevention of pollution, stability, machinery, electrical installations, fire prevention and other aspects of the construction of ships.

Port states can inspect vessels of other contracting members but only to verify the existence on board of the appropriate valid certificates required by the convention. Only if there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate can the inspector detain the ship until it can proceed without danger to passengers or crew.⁹⁰ Members of the 1978 Protocol must also apply the requirements of the convention on the ships of non-parties to the convention "as may be necessary to ensure that no more favourable treatment is given to such ships."⁹¹ Casualties must be investigated by the flag state concerned if it determines that such an enquiry may help towards desirable revision of regulations and the findings must be reported to IMO. However, IMO is prohibited from issuing reports or recommendations based upon such information, and from either revealing the nationality or identity of the vessel concerned or imputing responsibility for the accident.⁹²

e. Convention on the International Regulations for Preventing Collisions at Sea, 1972⁹³ (COLREG)

The SOLAS Convention embodies in Chapter 5 rules dealing with safety of navigation but the majority of the rules of navigation are to be found in the 1972 COLREG. This convention lays down the proper rules of the road. These apply to all vessels upon the

⁹⁰ Chapter 1, Reg. 19

⁹¹ Art. II (3)

⁹² Chapter I, reg. 21

⁹³ Available online at <http://www.austlii.edu.au/au/other/dfat/seldoc/1972/2108.html>

high seas and in all waters connected therewith that are navigable by sea-going vessels.⁹⁴

According to the Convention, IMO may adopt traffic separation schemes (TSSs) for the purpose of the convention.⁹⁵ The rules concern a vessel's conduct and movement in relation to other vessels at sea, particularly in poor visibility, and appropriate sound and night signals, including the necessary equipment and its positioning. In 1971 the IMO Assembly passed a resolution recommending that governments make it an offence for ships of their flag to contravene TSSs.

The COLREG are basically designated as a set of rules enforceable only by the flag state or the coastal state in its territorial sea.

f. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978⁹⁶ (STCW)

This convention was drafted with the close cooperation of IMO and ILO and it has incorporated protection of the environment as an objective additional to safety of life and property. It includes provisions covering deck, engine and radio operations, laying down basic standards of training, certification and watchkeeping for responsible officers in all departments aboard sea-going vessels. Regulations and recommendations on training of masters, officers and ratings of oil, chemical and liquefied gas tankers are included in chapter V.

Contracting states are permitted a measure of port state enforcement for the purpose of the verification of certificates. The certificates issued by another state shall be accepted unless there are clear grounds for believing that a certificate has been fraudulently obtained or that the holder of the certificate is not the person to whom that certificate was originally issued.⁹⁷ The inspecting official must, if he finds a violation, inform the master

⁹⁴ Rule 1 (a)

⁹⁵ Rule 1 (d)

⁹⁶ Available online at <http://www.austlii.edu.au/au/other/dfat/seldoc/1997/4506.html>

⁹⁷ Article X (1)

or the relevant consul so that he can take appropriate action.⁹⁸ The only two grounds for detaining a ship are, under Regulation I/4 and Article X (3), failure to correct deficiencies in proper certification or in proper watch arrangements and even then, it must pose a danger to persons, property or the environment. Undue delay or detention will give rise to a right of compensation.

g. The International Convention on Maritime Search and Rescue, 1979⁹⁹ (SAR)

The main purpose of this convention is to facilitate co-operation between search and rescue organizations and between those participating in SAR operations at sea by establishing the legal and technical basis for an international SAR plan. Parties to the convention are required to ensure that arrangements are made for the provision of adequate maritime SAR services off their coast.¹⁰⁰ SAR regions shall be established by agreement among the parties concerned. In order to facilitate agreement on the dimension of search and rescue regions, the convention stipulates that the delimitation of such regions is not related to and shall not prejudice the delimitation of any boundary between states.¹⁰¹ In addition to requiring the parties to coordinate their own search and rescue organization, they are also encouraged to coordinate SAR operations with those of the neighbouring states.¹⁰² Parties to the convention should also establish ship reporting systems where this is considered necessary and practicable to facilitate SAR operations.¹⁰³

h. International Convention on Civil Liability for Oil Pollution damage, 1969¹⁰⁴ (CLC)

Under the CLC it was agreed that all contracting states would require full insurance for all ships entering their ports and not

⁹⁸ Article x (2)

⁹⁹⁹⁹ Available online at <http://www.austlii.edu.au/au/other/dfat/seldoc/1979/2721.html>

¹⁰⁰ Chapter 2.1.1

¹⁰¹ Chapter 2.1.7

¹⁰² Chapter 3.1.1

¹⁰³ Chapter 4

¹⁰⁴ Available online at <http://sedac.ciesin.org/pidb/texts/civil.liability.oil.pollution.damage.1969.html>

just for ships from contracting states.¹⁰⁵ The 1969 CLC is supplemented by the 1971 Fund Convention.¹⁰⁶

Regional Initiatives for Port State Control

It is clear that the success of port state control operations very much depends on the sharing of information between jurisdictions in and out of which those ships trade, with respect to particular ships or their owners and operators.¹⁰⁷ The sharing of information becomes vital for two reasons. Firstly, one would not like unduly to cause inconvenience to ships by inspecting them at each and every port; and secondly, to give forewarning to maritime states of the delinquents in their midst.¹⁰⁸

The establishment of regional initiatives in which states are tied together in their port state control activities by memoranda of understanding have become a very significant tool and such regional arrangements encompass most of the world's oceans and ports.¹⁰⁹ With the ease of dissemination of information through the internet, it is also likely to become the norm that the various regional initiatives, set up for geographic convenience, will increasingly share each other's databases, thereby closing the net even more effectively on the unseaworthy ship, thus paving way for more cleaner and safer seas.¹¹⁰

The Paris Memorandum of Understanding

The first and perhaps most prominent of the regional groupings is the Paris Memorandum of Understanding on Port State Control (hereinafter "Paris MOU") which was signed in 1982¹¹¹. The Paris MOU was born from the Regional European Conference on Maritime Safety held in December 1980 which focused upon the need to increase maritime safety, the protection of the marine

¹⁰⁵ Article VII (11)

¹⁰⁶ Available online at <http://sedac.ciesin.org/pidb/texts/civil.liability.oil.pollution.damage.1969.html>

¹⁰⁷ Hare (1997) note 2 at 68; see also, *Annual Report 1997* of the Paris Memorandum of Understanding on Port State Control, available online at <http://www.parismou.org/>

¹⁰⁸ Ibid at 68

¹⁰⁹ *Annual Report 1997* of the Paris Memorandum of Understanding on Port State Control, available online at <http://www.parismou.org/>

¹¹⁰ Ibid

¹¹¹ 21 *ILM* 1982; also available online at < <http://www.parismou.org/>>

environment and the importance of improving living and working conditions aboard ship¹¹². Hence, it is interesting to note that the preambular paragraphs of the MOU which stated as follows¹¹³:

Mindful that the principle responsibility for the effective application of standards laid down in international instruments rests upon the authorities of the state whose flag a ship is entitled to fly;

Recognizing nevertheless that effective action by port states is required to prevent the operation of sub-standard ships;

Recognizing also the need to avoid distorting competition between ports;

Convinced of the necessity for these purposes of an improved and harmonized system of port state control and of strengthening co-operation and the exchange of information.

The Paris MOU which binds the 19 participating Maritime Authorities¹¹⁴ lays down the groundwork for effective international co-operation in the area of port state control. The key to the Paris MOU is a requirement that each contracting state will ensure through an effective system of port state control, that foreign merchant ships calling in its ports, comply with the international instruments listed in the MOU¹¹⁵.

The Paris MOU requires each contracting authority, within three years, to inspect an annual total of 25% of foreign merchant ships calling at its ports¹¹⁶. Authorities should "seek to avoid inspecting ships which have been inspected by any of the other

¹¹² Kasoulides G.C, 'Paris Memorandum of Understanding: A Regional Regime of Enforcement', (1990) *Special Issue of the International Journal of Estuarine and Coastal Law*, p. 180

¹¹³ 21 *ILM* 1982

¹¹⁴ The Maritime Authorities of Belgium, Canada, Croatia, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russian, Federation, Spain, United Kingdom of Great Britain and Northern Ireland, Sweden.

¹¹⁵ Sections 1.2 and 2.1 of the Paris MOU

¹¹⁶ Section 1.3 of the Paris MOU

authorities within the previous six months unless they have clear grounds for inspection."¹¹⁷ And each authority will 'consult, cooperate and exchange information' with other authorities'.¹¹⁸

The 1982 Paris MOU required that port state control would be conducted 'without discrimination as to flag'. It also required that each state will ensure that no more favorable treatment is given to ships flying the flag of a state not party to the memorandum.¹¹⁹

The Paris memorandum sets out detailed guidelines as to inspection procedures and detention.¹²⁰ Section 3.1 of the Paris MOU states that in fulfilling their commitments the Authorities will carry out inspections, which will consist of a visit on board a ship in order to check the certificates and documents stipulated in section 2 of Annex 1. Furthermore the Authorities will "satisfy themselves that the crew and the overall condition of the ship, including the engine room and accommodation and including hygienic conditions, meets generally accepted international rules and standards." In the absence of valid certificates or documents or if there are clear grounds for believing that the condition of a ship or of its equipment, or its crew does not substantially meet the requirements of a relevant instrument, a more detailed inspection will be carried out, as referred to in section 5 of Annex 1, or, as appropriate, an expanded inspection will be carried out as referred to in section 8 of Annex 1.

Section 3 of the Paris MOU states that the Authority may also detain a vessel in the case of deficiencies which are clearly hazardous to safety, health or the environment. In such cases the Authority will ensure that the hazard is removed before the ship is allowed to proceed to sea.¹²¹ It is clear that the primary purpose of detention is to ensure rectification of defects in the vessel. Thus, exceptions are allowed where a ship needs to proceed to a repair port.¹²² To prevent errant ship owners from

¹¹⁷ Section 1.3 of the Paris MOU

¹¹⁸ Section 1.4 of the Paris MOU

¹¹⁹ Section 2.4 and Annex, para. 1.3 of the Paris MOU

¹²⁰ Section 3 of the Paris MOU

¹²¹ Section 3.7.1 of the Paris MOU

¹²² Section 3.8 of the Paris MOU

running a detention, the Paris MOU stipulates that such ships will be refused access to any port within other party states, until the owner or operator has provided evidence of rectification of the defects.¹²³

One of the most important and effective provisions of the Paris MOU is the obligation imposed upon each authority to publish quarterly information about detentions under port state control procedures.¹²⁴ This information is required not only to contain the name of the ship, but also the name of her owner and operator, her flag state and her classification society. The reasons for the detention are also published.¹²⁵

Initially port states were reluctant to publish detention information, particularly where owners were identified¹²⁶. They feared a rash of damages suits by irate ship-owners. Indeed there have been a number of protests at the content of detention publications.¹²⁷ However, at present, publication has become the norm.¹²⁸

The Paris MOU is still generally recognized as the leading regional port state control agreement in terms of harmonized enforcement, selective targeting and transparency of information.¹²⁹ Over the past 20 years many of the procedures of the Paris MOU have been changed or expanded.¹³⁰ Identifying that the "human element" can be the weak link in the operational system on board, and following the disasters of the Herald of Free Enterprise, the Exxon Valdez, and the Scandinavian Star, the Paris MOU developed guidelines for the control of operational requirements on board.¹³¹ As such crew members could be required to demonstrate their proficiency with vital systems and

¹²³ Section 3.9.1 of the Paris MOU

¹²⁴ Section 3.14 of the Paris MOU

¹²⁵ Section 3.14 of the Paris MOU

¹²⁶ Kasoulides, (1993) note 3 at 160

¹²⁷ Hare, (1997) note 2 at 68

¹²⁸ *Annual Report 1997* of the Paris Memorandum of Understanding on Port State Control, available online at <http://www.parismou.org/>

¹²⁹ *Annual Report 2000* of the Paris Memorandum of Understanding on Port State Control, available online at <http://www.parismou.org/>

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

procedures. Recognizing the importance of operational control, the IMO has adopted these procedures, which now apply world wide.¹³²

Other Memoranda of Understanding

In 1991 the IMO recognized the European initiative when IMO Resolution A682 (17) Regional Co-operation in the Control of ships and discharges was adopted¹³³. In particular this resolution:

- acknowledged that in some cases it may be difficult for flag States to exercise full and continuous control over some of their ships;
- recognized the important contribution to maritime safety and pollution prevention made through regional cooperation under the Paris MOU in preventing the operation of substandard ships; and
- invited governments to consider concluding regional agreements on the application of PSC measures to further contribute to preventing the operation of substandard ships.

Following the lead of the Paris MOU and having been encouraged by the IMO seven other port state control organizations have been established covering most of the world's oceans: Europe and the north Atlantic (Paris MOU); Asia and the Pacific (Tokyo MOU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MOU); West and Central Africa (Abuja MOU); the Black Sea region (Black Sea MOU); the Mediterranean (Mediterranean MOU); and the Indian Ocean (Indian Ocean MOU).¹³⁴

Port State Control in Maldives

¹³² Ibid.

¹³³ Baird D, 'Ensuring Compliance: Port State Control in Australia', a paper presented to the National Shipping Industry Conference, Sydney 2001, available online at http://www.amsa.gov.au/amsa/APEC/amsa_db.pdf

¹³⁴ Annual Report – 2001 of the Indian Ocean Memorandum of Understanding on Port State Control, published by Indian Ocean MOU Secretariat, Goa, India, available online at <http://www.iomou.org>

It is in the concept of port state control that the maritime community worldwide has seen a possible solution to the problems caused by the substandard ships. Maldives being an archipelagic state is very conscious of protecting its delicate marine environment. Hence, it has an overriding interest to protect its seas, reefs and beaches from any form of pollution caused by substandard ships. This has prompted the Maritime authorities to take stern action to prevent maritime accidents in the internal waters of the country. The port state control programme conducted by the maritime authority of the Maldives is one of such efforts to protect the delicate marine environment of the country from unsafe substandard ships.

The Maldives port state control powers and obligations under UNCLOS

Article 25 of the UNCLOS¹³⁵ states that the coastal state may take the necessary steps in its territorial sea to prevent passage which is not innocent. Furthermore, it provides that in the case of ships proceeding to internal waters or call at a port facility outside internal waters, the coastal state has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject¹³⁶.

Article 218 of the UNCLOS states that when a vessel is voluntarily within a port or at an off-shore terminal of a state, that state may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel 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 organization or general diplomatic conference. The UNCLOS also provides that when a vessel is voluntarily within a port of a state, that state shall, as far as practicable, comply with the requests from another state for investigation of a discharge contrary to applicable international rules believed to have occurred in, caused or threatened damage

¹³⁵ U.N. Doc. A/CONF.62/122, Dec. 10, 1982, reprinted at 21 I.L.M. 1261 (1982).

¹³⁶ Article 25(2) of UNCLOS

to the internal waters, territorial sea or exclusive economic zone of the requesting state¹³⁷. The port state shall likewise as far as practicable, comply with requests from the flag state for investigation of such a violation, irrespective of where the violation has occurred.¹³⁸

The records of the investigations carried out by a port state pursuant to the provisions of the UNCLOS should be transmitted to the flag state or to the coastal state upon request¹³⁹. Any proceedings instituted by a port state on the basis of such an investigation may be suspended at the request of the coastal state when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. In that event the evidence and records of the case, together with together with any bond or other financial security posted with the authorities of the port state shall be transmitted to the coastal state.¹⁴⁰

Application of IMO Conventions to the Maldives Port State Control

Maldives conducts its port state control programme in a manner that complies with the port state control provisions of the IMO conventions. The following IMO conventions are ratified by the Maldives to-date.¹⁴¹ Maldives being a member of the Memorandum of Understanding on Port State Control for the Indian Ocean Region (hereinafter "Indian Ocean MOU) is also bound to give effect to and enforce the following conventions in conducting: (a) inspections, (b) the recognition of deficiencies of a ship, (c) its equipment, (d) or its crew, (e) and the application of control procedures.¹⁴²

The International Convention on Load Lines, 1996 (Load Lines 66)

¹³⁷ Article 218 (2) of UNCLOS

¹³⁸ Article 218 (3) of UNCLOS

¹³⁹ Article 218 (4) of UNCLOS

¹⁴⁰ Ibid.

¹⁴¹ <http://www.transport.gov.mv/maritime.htm>

¹⁴² Sections 1.2 and 2.1 of the Indian Ocean MOU.

The International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74)

The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, (STCW 78)

The Convention on the International Regulations for Preventing Collisions at Sea, 1972

The International Conventions on Tonnage Measurement of Ships, 1969 (Tonnage 69)

The Merchant Shipping (Minimum Standards) Conventions, 1976 (The International Labour Organization (ILO) No. 147)

Indian Ocean MOU and the Maldives

Initiative by the various Maritime Authorities around Indian Ocean region, to eradicate substandard shipping resulted in the formulation of the Indian Ocean Memorandum of Understanding on Port State Control. The finalization of the Indian Ocean MOU was achieved in Pretoria, South Africa in June 1998. By 31st May 2002, eleven Maritime administrations of the region have ratified the Indian Ocean MOU.¹⁴³

¹⁴³ The 11 Maritime Authorities who have ratified the Indian Ocean MOU by 31 May 2002 are: Australia, Eritrea, India, Iran, Kenya, Maldives, Mauritius, South Africa, Sri Lanka, Sudan and Tanzania.

The preamble of the Indian Ocean MOU (hereinafter "IOMOU") states that it is focused upon the need to increase maritime safety, the protection of the marine environment and the importance of improving living and working conditions aboard ships. It also recognizes the importance of the regional cooperation and effective action by port states to prevent the operation of substandard ships.

The IOMOU which binds the 11 Maritime Authorities of the region lays down the groundwork for effective international co-operation in the area of port state control in line with IMO Resolution A682(17), concerning Regional Co-operation in the Control of Ships and Discharge. One of the important features of the IOMOU is a requirement that each contracting state will ensure through an effective system of port state control, that foreign merchant ships calling in its ports, comply with the international instruments listed in the MOU (hereinafter "relevant instrument" or "Relevant instrument" as the case may be), without discrimination as to flag.¹⁴⁴

In the IOMOU each maritime authority has undertaken to achieve within a period of 3 years from the coming into effect of the MOU an annual total inspections corresponding at least 10% of the estimated number of individual foreign merchant ships, which entered the ports of its state during the previous calendar year.¹⁴⁵ The committee established pursuant to Section 7.1 of the IOMOU will monitor the overall inspection activity and its effectiveness throughout the region. The committee will also adjust the target inspection rate based on experience gained and progress made in the implementation of the IOMOU.¹⁴⁶ And each authority will 'consult, co-operate and exchange information' with other authorities' in order to further the aims of the IOMOU.¹⁴⁷

Each Authority will also apply those relevant instruments which are in force and to which its State is a Party. In the case of amendments to a relevant instrument, each Authority will apply those amendments which are in force and which its State has

¹⁴⁴ Sections 1.2 and 2.1 of IOMOU

¹⁴⁵ Section 1.3 of IOMOU

¹⁴⁶ Ibid

¹⁴⁷ Section 1.4 of IOMOU

accepted. An instrument so amended will then be deemed to be the relevant instrument for that Authority.¹⁴⁸ When inspecting a ship flying the flag of a State not party to a Convention or to a "relevant instrument" as amended for the purposes of port State control, the Authorities which are party to such Convention or "relevant instrument", as amended, shall ensure that the treatment given to such ship and its crew is not more favorable than that given to ships flying the flag of a State which is party to that Convention or "relevant instrument".¹⁴⁹ In the case of non-convention sized ships, the Authorities will apply those requirements of the relevant instruments which are applicable and will to the extent that a relevant instrument does not apply take such action as may be necessary to ensure that those ships are not clearly hazardous to safety, health or the environment, having regard, in particular to Section 5 of Annex 2 of IOMOU.¹⁵⁰

Inspection Procedures, Rectification and Detention under IOMOU

In implementing the IOMOU, the maritime authorities have agreed to carry out inspections which will consist of at least a visit on board a ship in order to check the validity of the certificates and documents and furthermore satisfy themselves that the crew and the overall condition of the ship, its equipment, machinery spaces and accommodation and hygienic condition on board, meet the provisions of the relevant instruments.¹⁵¹ When there are clear grounds for believing that the condition of a ship or its equipment or crew does not substantially meet the requirements of a relevant instrument a more detailed inspection will be carried out, including further checking of compliance with on-board operational requirements.¹⁵²

¹⁴⁸ Section 2.3 of IOMOU

¹⁴⁹ Section 2.4 of IOMOU

¹⁵⁰ Section 2.5 of IOMOU

¹⁵¹ Section 3.1 of IOMOU

¹⁵² Section 3.2.1 of IOMOU

What ships to be given priority for inspection?

In selecting ships for inspection, the Authorities shall give priority to the following ships:¹⁵³

(a) Ships visiting a port of a State, the authority of which is a signatory to the Memorandum, for the first time or after an absence of 12 months or more;

(b) Ships which have been permitted to leave the port of a State, the Authority of which is a signatory to the Memorandum, on the condition that the deficiencies noted must be rectified within a specified period, upon expiry of such period:

(c) Ships which have been reported by pilots or port authorities as having deficiencies which may prejudice their safe navigation;

(d) Ships whose statutory certificates on the ship's construction and equipment, have not been issued in accordance with the relevant instruments;

(e) Ships carrying dangerous or polluting goods, which have failed to report all relevant information concerning the ship's particulars, the ship's movements and concerning the dangerous or polluting goods being carried to the competent authority of the port and coastal State;

(f) Ships which have been suspended from their class for safety reasons in the course of the preceding six months.

The Authorities will seek to avoid inspecting ships, which have been inspected within the previous 6 months by other Authorities unless there are clear grounds for inspection¹⁵⁴.

Who will carry out inspection?

¹⁵³ Section 3.3 of IOMOU

¹⁵⁴ Section 3.4 of IOMOU

Inspections will be carried out only by a person, duly authorized by its Authority to carry out port State inspections and responsible to that Authority, who fulfils the requirements of paragraph 3.5.3 of the IOMOU and the qualification criteria specified in Annex 4 of the IOMOU.¹⁵⁵

Section 3.5.2 of the IOMOU states that the port state control officer carrying out Port State Control may be assisted by a person with the required expertise when such expertise cannot be provided by his Authority. The port state control officer carrying out Port State Control and the person assisting him must have no personal or commercial interest either in the port of inspection or in the ships inspected, nor shall the port state control officer be employed or undertake work on behalf of non-governmental organizations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships¹⁵⁶.

Each port state control officer shall carry a personal document in the form of an identity card issued by his authority indicating that the officer is authorized to carry out inspections.¹⁵⁷

On completion of an inspection the master of the ship shall be provided by the officer with a document in the form specified in Annex 6 of the IOMOU, giving the results of the inspection and details of any decision taken by the officer and of the corrective action to be taken by the master, owner or operator.¹⁵⁸

Section 3.6.2 of the IOMOU states that each authority will endeavor to ensure the rectification of all deficiencies detected. On the condition that all possible efforts have been made to rectify all deficiencies, other than those mentioned in section 3.6.3, the ship may be allowed to proceed to a port where any such deficiencies can be rectified.

¹⁵⁵ Section 3.5.1 of IOMOU

¹⁵⁶ Section 3.5.3 of IOMOU

¹⁵⁷ Section 3.5.4 of IOMOU

¹⁵⁸ Section 3.6.1 of IOMOU

Detention

In exceptional circumstances where, as a result of the initial control and a more detailed inspection, the overall condition of a ship and its equipment, also taking the crew and its living and working conditions into account, are found to be substandard, the Authority has the power to suspend inspection and detain the ship.¹⁵⁹ The suspension of an inspection may continue until the responsible parties have taken the steps necessary to ensure that the ship complies with the requirements of the relevant instruments. Prior to suspending an inspection, the authority must record detainable deficiencies in the areas set out in Appendix 1 of IMO Resolution A.787(19) and ILO Convention deficiencies as appropriate.¹⁶⁰

In cases where the ship is detained and an inspection is suspended, the Authority will, as soon as possible, notify all responsible parties.¹⁶¹ The notification will include information about the detention. Furthermore, it shall state the inspection is suspended until the Authority has been informed that the ship complies with all relevant requirements. In the case of deficiencies which are clearly hazardous to safety, health or the environment, the Authority will detain the ship or will stop the operation in relation to which the deficiencies have been revealed.¹⁶² The detention order or the stoppage of the operation shall not be lifted until the hazard is removed, except under the conditions provided for in 3.8.1 of the IOMOU.¹⁶³

Section 3.8.1 of the IOMOU states that Where deficiencies which caused a detention cannot be remedied in the port of inspection, the Authority may allow the ship concerned to proceed to the nearest appropriate repair yard available, as chosen by the master and agreed to by the Authority, provided that the conditions determined by the Authority and agreed by the competent Authority of the flag State are complied with. Such conditions will ensure that the ship can proceed without risk to

¹⁵⁹ Section 3.6.2 of IOMOU

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Section 3.6.3 of IOMOU

¹⁶³ Ibid.

the safety and health of the passengers and crew, or risk to other ships, or without being an unreasonable threat of harm to the marine environment. In such circumstances the Authority will notify the Authority of the ship's next port of call and any other authority as appropriate.¹⁶⁴ The authority receiving such notification will inform the notifying Authority of action taken.¹⁶⁵

When determining as to whether or not a ship should be detained, the port state control officer is to be guided by the criteria set out in Annex 2 of IOMOU.¹⁶⁶ In the event that a ship is detained, the Authority must immediately notify the flag State concerned and its Consul or, in his absence, its nearest diplomatic representative of the action taken.¹⁶⁷ Where relevant, the organization responsible for the issue of the certificate(s) shall also be informed.¹⁶⁸

If a ship so detained proceeds to sea without complying with the conditions agreed to by the authority of the port of inspection:¹⁶⁹

- 1 that Authority will immediately alert all other Authorities; and
- 2 the ship will be detained at any port of the Authorities which have accepted the IOMOU, until the master has provided evidence to the satisfaction of the Authority of the port State, that the ship fully complies with all reasonable requirements of the relevant instruments. If a ship is only allowed to travel to proceed to a repair port and where such ship does not proceed to the nominated repair port, then the Authority of the repair port will immediately alert port of inspection and it will inform IOMOU Secretariat to announce the other MOU's Secretariats.¹⁷⁰

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Section 3.6.4 of IOMOU

¹⁶⁷ Section 3.7 of IOMOU

¹⁶⁸ Ibid.

¹⁶⁹ Section 3.8.2 of IOMOU

¹⁷⁰ Ibid.

When exercising control under the Memorandum, the Authorities will make all possible efforts to avoid unduly detaining or delaying a ship.¹⁷¹

In case the master, owner or agent of the ship notifies the port State control Authorities prior to, upon arrival or whilst the vessel is in the port, of any damage, breakdown or deficiency to the ship, its machinery and equipment, which is intended to be repaired or rectified before the ship sails from that port, the detention should be issued only if deficiencies justifying detention are found after the master has given notification that the ship was ready for inspections.¹⁷² The same procedure applies when the port State control Authorities are notified that the ship is scheduled to be surveyed at the port with respect to flag, statutory or class requirements.¹⁷³

In exceptional circumstances, when a ship on its way to a specified repair yard needs to call at a port for temporary repairs for safety reasons, it may be allowed into that port.¹⁷⁴ All commercial operations are forbidden, except the unloading of its cargo or bunkers if required for safety reasons.¹⁷⁵ The ship may be allowed to proceed to the specified repair yard only if the flag State of the ship has issued statutory certificates to the ship restricting their validity to that specific voyage, and the Port State is satisfied that such ship shall not pose undue risk to safety of ship, or to the environment or cause undue hardship to the crew.¹⁷⁶ The owner or the operator of a ship will have the right of appeal against a detention to higher administrative Authority or to the Court of competent jurisdiction, according to the law in each country. However, an appeal shall not cause the detention to be suspended. Should an inspection reveal deficiencies warranting detention of a ship, all costs relating to inspections subsequent to the first shall be covered by the shipowner or the operator.¹⁷⁷ The detention shall not be lifted

¹⁷¹ Section 3.10 of IOMOU

¹⁷² Section 3.11 of IOMOU

¹⁷³ Ibid.

¹⁷⁴ Section 3.12 of IOMOU

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Section 3.13 of IOMOU

until full payment has been made or a sufficient guarantee has been given for the reimbursement of the costs.¹⁷⁸

Exchange of information

Under Section 4 of the IOMOU each Authority will report on its inspections under the MOU and their results, in accordance with the procedures specified in Annex 8. The Authorities will also supply the following information to the Secretariat:

- a) Number of PSCOs working on their behalf on port State inspections;
- b) Number of individual ships entering their ports during the calendar year.

The MOU also states that arrangements will be made for the exchange of inspection information with other regional organizations working under similar Memorandum of Understanding.

Conclusion

The development of port state control for the merchant fleet has increased the number of checks on international shipping and the standards have undoubtedly improved.¹⁷⁹ Effective port state control is designed to curb substandard shipping and serves to enhance marine safety and pollution prevention. At the same time it protects ships which are obligated to conform to international standards from unfair competition from substandard ships which economize by adhering to lower standards.

Though the economic resources of the Maldives to carryout port state control program is very limited, the program surely minimizes the risk of happening a maritime disaster within its internal waters. It is to be noted that the participation of the Maldives in the IOMOU has changed a lot in the area of port state control. As a result of its participation in IOMOU it is certain that Maldives will further improve their targeting and reporting systems.

¹⁷⁸ Section 3.13 of IOMOU

¹⁷⁹ *Annual Report 1997* of the Paris Memorandum of Understanding on Port State Control, available online at <http://www.parismou.org/>

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