ICHCA International Limited

INTERNATIONAL SAFETY PANEL BRIEFING PAMPHLET NO 18

PORT STATE CONTROL

By Capt. Peter Heathcote

ICHCA International Limited

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ICHCA International Limited - INTERNATIONAL SAFETY PANEL

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PORT STATE CONTROL **Page**

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Port State Control

1 A DEFINITION

1.1 Port State Control (PSC) is the inspection of foreign ships in national ports for the purpose of verifying that the condition of the ship and its equipment comply with the requirements of certain international maritime conventions and that the ship is manned and operated in compliance with applicable national laws.

2 HISTORY

2.1 For many years it has been recognised that States have jurisdiction over ships flying their flag when on the high seas. This is known as Flag State jurisdiction. When a ship is within the jurisdiction of another State, that State may also have jurisdiction. In accordance with customary international maritime law, as well as the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), a State has the right to exercise some degree of control over foreign-flag ships within its jurisdiction. However, under UNCLOS, coastal states are only authorised to intervene with a ship's operation where it has, or is likely to have, an effect on the protection and preservation of the marine environment. Any such intervention is to be conducted with due regard to the rights and duties of other states. In addition to territorial jurisdiction, a number of International Maritime Organization (IMO) and International Labour Organization (ILO) conventions provide states with the ability to conduct PSC inspections of foreign ships within their ports.

2.2 The primary responsibility for maintaining law and order, on-board discipline, proper navigation and seamanship, the safety of ships and persons on board and the prevention of marine pollution lies with the Flag State, where the ship is registered and whose flag it flies. The responsibility for ensuring that a ship is equipped, operated, maintained and manned in accordance with international maritime conventions also belongs to the Flag State. In a perfect world, that would be the end of the matter. However, the world of shipping is far from perfect and some Flag States are either unable or unwilling to carry out their international responsibilities. PSC inspections of foreign-flag ships ensure that the Flag State is maintaining its obligations with respect to a number of IMO and ILO conventions. By combining with other countries to form regional PSC agreements, the effectiveness of these inspection programmes has increased, while the cost to the Port States and the inconvenience to the shipowner have both decreased.

2.3 The grounds for PSC are found in the traditional principles of international law. It is universally recognised that foreign merchant ships are subject to the jurisdiction of the Coastal State when in territorial waters, and more so when in a port within that State. States have used two arguments to justify the exercise of PSC:

- The right to self-protection for its own citizens and the marine environment against dangers presented by substandard ships; and
- International enforcement of conventions dealing with safety at sea, by preventing unseaworthy ships from proceeding to sea.

2.4 In spite of these justifications, UNCLOS has tried to limit the extent of PSC towards foreign ships and set down some very precise procedures for exercising such powers. The powers initially granted to Port States under

UNCLOS were limited to the protection of the marine environment, not general safety regulations, which are found in individual IMO and ILO conventions.

2.5 Initially, PSC was limited to mainly ensuring compliance with the technical aspects of IMO conventions. However, recent changes in SOLAS '74 make it possible for PSC officers to check on operational requirements "when there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the safety of the ship." Similar changes have been made to MARPOL 73/78 and STCW 1978, as amended in 1995. Now, PSC inspections are conducted to ensure that foreign ships are seaworthy; do not pose a pollution risk; provide a healthy and safe working environment for the crew and others that are required to work on the ship; and comply with the relevant International Convention. In most conventions there is a caveat that the inspection should not unduly delay the ship. Furthermore, vessels chosen for inspections should not be selected in a discriminatory manner and standards should be evenly applied.

3 RATIONALE

3.1 As mentioned earlier, the primary responsibility for ensuring that a ship maintains a standard that is at least equivalent to that specified in international conventions rests with the Flag State. If all Flag States performed their duties satisfactorily there would be no need for PSC. Unfortunately, this is not the case, as evidenced by the many marine accidents around the world.

3.2 In March 1978 the "Amoco Cadiz", a VLCC laden with 230,000 tons of crude oil cargo, grounded off the coast of Brittany, France, after a steering gear failure, causing one of the world's worst oil pollution disasters. Almost fifteen years later in January 1993, the Liberian tanker "Braer", laden with approximately 84,000 tonnes of North Sea crude oil, suffered a machinery failure in severe weather conditions south of the Shetland Islands and grounded on the coast. This resulted in the ship breaking up and almost all the cargo and bunkers escaping into the sea. Claims for damage to marine resources caused by this incident were enormous. The 169,044 tonne deadweight bulk carrier "Derbyshire", which sank in 1980 with 44 lives lost, was a mystery that took almost 20 years to resolve. There are thousands of other incidents involving loss of life, loss of property and damage to the environment that have occurred in the last 40 years, some of which are well known, and others which have been largely un-noticed by the press and the public. One example is the overloaded Filipino ferry "Donna Paz", which collided with a tanker and approximately 4,000 persons perished in the ensuing inferno.

3.3 Many maritime accidents and incidents made headlines. These include the "Exxon Valdez", which ran on to a shoal in the pristine waters of Alaska; the "Erika", which broke in two off the coast of Brittany in heavy seas and polluted the coast of France; the "Prestige" which broke in two and sank of the North-West coast of Spain causing pollution to the Spanish coast and threatening pollution to the Portuguese coast, the "Herald of Free Enterprise", which foundered in the English Channel with a tragic loss of life; the "Scandinavian Star", which caught fire; and the "Estonia", which went to the bottom in a storm in the Baltic Sea. Each of these incidents has resulted in changes in international maritime conventions. The "Herald of Free Enterprise" resulted

in massive changes in the design and construction of Ro-Ro vessels, as did the “Estonia” about the construction and maintenance of bow doors. The “Exxon Valdez” led to the unilateral adoption by the United States of the Oil Pollution Act, 1990 (OPA 90) and the demand for the phasing out of single-hulled tankers. Similar calls echoed through Europe after the loss of the “Erika”. The loss of the “Derbyshire” as well as numerous other bulk carriers, have led to measures to improve bulk carrier safety. However, the recent disappearance of the bulk carrier “Leader L” with the loss of all 18 aboard shows that even these measures may have not been enough. Nevertheless, subsequent investigations into many, if not most, of these disasters have shown that almost all could have been prevented. In many cases it has been found that the ship or its crew did not comply with national and international regulations.

3.4 Although the provisions of the IMO and ILO conventions do not specifically address issues of concern to shore-based workers carrying out cargo operations in ports, many of the provisions of the conventions have an indirect bearing on port and cargo operations. For example under SOLAS not only the ship’s hull, but also all its equipment shall be in a safe condition, and this can include, hatches, hatch coamings, water-tight access-hatches and access-ladders in holds, derricks, cranes, guard rails. Under SOLAS, areas of concern to port workers include potential failure of machinery, including electrical installations, as well the failure of emergency generator(s), lighting, batteries and switches. Also of concern to shore personnel aboard ship would be the absence, non-compliance or substantial deterioration of fire detection system, fire alarms, firefighting equipment, fixed fire extinguishing installation, ventilation valves, fire dampers, quick closing devices.

3.5 Under the Load Lines Convention issues of concern include significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull effecting seaworthiness or strength to take local loads; insufficient stability; and/or absence of sufficient and reliable information, which enables the master to arrange for the loading and ballasting of the ship in such a way that a safe margin of stability is maintained at all times and that the creation of any unacceptable stresses in the ship's structure are avoided.

3.6 Port State Control Officers (PSCO) have to seek proof of the ship’s crew’s professional proficiency for the duties assigned to them for the safety of the ship and the prevention of pollution and any ignorance or lack of familiarisation of the operation of the ship’s equipment could adversely affect shore personnel aboard ship. Furthermore, a PSCO may determine if ship's personnel assigned specific duties related to the cargo and cargo equipment are familiar with those duties, any dangers posed by the cargo and with the measures to be taken in such a context.

3.7 ILO Conventions deal with such areas as excessively unsanitary conditions on board or instances where excessive garbage, blockage by equipment or cargo renders unsafe passageways/accommodations.

4 FLAG STATE RESPONSIBILITY vs PORT STATE CONTROL

4.1 UNCLOS requires every State to effectively exercise its jurisdiction and control of administrative, technical and social matters over ships flying its flag. This includes the construction, equipment and seaworthiness of ships; the

manning, labour conditions and training of crews; and the use of signals, maintenance of communications and the prevention of collisions.

4.2 Flag States are required to ensure that vessels flying their flag comply with applicable international rules and standards, as well as with their own domestic laws and regulations, for the prevention, reduction and control of pollution in the marine environment from vessels. Flag States are required to provide effective enforcement of those rules, irrespective of where a violation occurs.

4.3 Maritime law recognises the concepts of Coastal State and Port State jurisdiction; both based on one form or another of the principles of national sovereignty. The former indicates the jurisdiction of the State in respect of the territorial waters and the exclusive economic zone, while the latter denotes the State's jurisdiction over ships in its ports, usually, but not always, in inland waterways

4.4 With respect to pollution from vessels, UNCLOS imposes obligations on both Flag States and Coastal States. Coastal States may, in the exercise of their sovereign rights within their territorial waters, adopt laws and regulations for the prevention, reduction and control of marine pollution from all vessels, including foreign vessels.

4.5 States that become parties to a convention accept certain obligations, but also acquire certain rights and privileges vis-à-vis other States that are Parties. The Flag State agrees to take certain actions against ships registered in its jurisdiction, but also accepts that Coastal and Port States can take certain measures against the Flag State's ships when under their concurrent jurisdiction. However, both Parties accept that the measures that may be taken are restricted to those contained in the UNCLOS Convention.

5 AUTHORITY

5.1 Generally speaking, international conventions are treaties with many parties – multi-lateral agreements by which States agree to be bound. A treaty is an agreement between two or more States to do something, or to refrain from doing something, and is generally not legally enforceable, although this is changing. Until recently, the international law of treaties was governed by customary rules of international law. However, many (but not all) of these aspects of treaty law have been codified in the Vienna Convention on the Law of Treaties, 1969, which entered into force in 1980. The development of international maritime conventions is included in the work programme of many international organisations, such as the IMO, the ILO, the U.N. Conference on Trade and Development (UNCTAD), the U.N. Commission on International Trade Law (UNCITRAL) and UNCLOS. The Comité Maritime International (CMI), created in 1897, has also been very effective in developing international conventions in the area of private maritime law.

5.2 International Conventions

5.2.1 International conventions represent a great deal of thought, discussion and compromise. Usually a convention arises from a recognised need. Often it is something that results from a proposal made to, and a resulting recommendation from, a Committee or Sub-Committee of IMO. As a result of these deliberations, draft regulations are prepared and a diplomatic

conference is convened to review, discuss, modify and eventually adopt the resultant treaty. Since treaty instruments adopted by such diplomatic conferences are generally expected to have global application (and may even apply indirectly to non-Parties), these conferences are open to all IMO member States, as well as those that are members of the UN. All States have equal rights at these conferences. Although interested non-governmental organizations are invited to attend (since their technical input is appreciated), they do not participate in the decision-making process. The conference usually adopts a treaty instrument – a Convention, Protocol or similar instrument - and all States that have agreed to it, will be bound by it.

5.2.2 States send accredited representatives to a diplomatic conference to participate on their behalf. If the delegate is in agreement with the general principles of the draft convention, he may sign on behalf of his State, usually "subject to ratification, acceptance or approval". This is because some States' constitutions may require that Cabinet, Parliament or some other body review the terms of the convention before the Executive is able to accept the agreement as binding. Once the agreement has been confirmed by whatever national authority is required, the signature of the delegate will be ratified (i.e. the State will agree to be bound by the convention). A treaty or convention usually remains open for signature for a finite period of time, usually for a period of 12 months. Those States that did not attend the diplomatic conference can still become Party to a Convention by submitting an Instrument of Accession.

5.2.3 Any State can adopt an IMO convention, even though it is not a Party to the IMO Convention (which confers membership in IMO). Any State can incorporate the provisions of an international maritime convention into its national law, even though it is not itself a Contracting Party. In fact, this is the preferred way of acceding to a convention, since the State is in compliance from the first day of accession.

5.2.4 Each convention includes criteria stipulating conditions that have to be met before it enters into force. These conditions vary, but generally speaking the more important and more complex the document, the more stringent are the conditions for its entry into force. For example, SOLAS '74, provided that entry into force required acceptance by 25 States whose merchant fleets comprise not less that 50% of the world's gross tonnage. For the Tonnage Measurement Convention 1969, the requirement was acceptance by 25 States whose combined merchant fleets represent not less that 65% of world tonnage.

5.3 National Legislation

5.3.1 For States to give effect to international conventions they have ratified, or to which they have acceded, they need to incorporate the provisions of those conventions into national law, since conventions themselves do not contain enforcement provisions. How they do this depends on the State's constitution. In some cases, a convention becomes part of the national law automatically through the act of ratification or accession. More often, the State's constitution will require that treaties and conventions to which the Executive wishes the State to become a Party will require approval by the Legislature prior to their coming into effect. This is especially the case if the obligations of the convention will impose sanctions or controls on the general public.

5.3.2 Conventions are typically written in “treaty language”, which stipulates obligations between States, but not what individuals within those States have to do to carry out the State’s obligations. For example, a convention may say that, “Parties will endeavour to develop standards…in order to give effect to the provisions of…”, which means that the State cannot merely ratify or accede to the convention alone. The State often has to take some active measures in order to give practical effect to its international obligations and has to “translate” the language of the convention into national law.

5.3.3 By and large, conventions are general in nature. They have to be to cover a wide variety of legal systems in different countries around the world. States have to convert those general provisions into specific requirements in a manner that is in accordance with the traditional legal instruments of that country and is compatible with their administrative system of government.

5.3.4 Generally speaking, international maritime conventions do not include penalties for non-compliance. This is for national legislation to consider, and this is why many treaties have to be confirmed by the legislature before coming into force in that country. Furthermore, implementation of national obligations will be *via* national authorities, corporations and individuals. Therefore the convention has to be customised to suit the local legal regime.

5.4 Non-Parties

5.4.1 At first glance, it would seem that a country that did not sign, ratify or accede to a convention had no further interest in that convention. This is not correct. Before conventions became the norm, many countries were bound by customary international law. An example of this was the extent of the Territorial Sea (generally accepted to be three or twelve, and in some cases up to 200, nautical miles) and the concept of freedom on the High Seas outside that small coastal zone. Here, the freedoms of navigation, and the right to fish, lay submarine cables and pipelines, were recognised as general principles of international law to be exercised by all States (with reasonable regard to the interests of other States). Sometimes, much of this customary international law was codified into conventions, such as the Geneva Convention on the High Seas, 1958.

5.4.2 It has been said that many aspects of UNCLOS incorporated a great number of the unilateral claims that States had been making in the previous decades. Since the early 1960s many States claimed a wider zone over which they sought the right to manage and exploit the resources of the sea, in the water and on and under the seabed. This later was given legitimacy in UNCLOS and is now known as the Exclusive Economic Zone, in which Coastal States have the obligation to manage and conserve the natural resources, as well as the right to explore and exploit them.

5.4.3 By the time the UNCLOS Conference concluded its debate in 1982; many of these claims had been recognised as legitimate by other countries that felt the claim was justified. With the passage of time, these claims, once dismissed as outrageous, were increasingly accepted and respected. So, it is the same with other conventions. They attain a certain amount of legitimacy even before they come into force, because many influential States, which have ratified or acceded to the convention, incorporate the provisions into national law and enforce them within their jurisdiction.

5.4.4 Between the adoption of the final draft UNCLOS in 1982 and its coming into force in 1994, many of the concepts, zones, provisions and institutions had achieved a legitimacy equal to that of a convention that had entered into force. States that had not adopted the provisions or who had failed to accede to the Convention were being pressured by the international community to accept the provisions irrespective of whether they were Parties or not.

The Paris MOU includes the following statement in respect of ships registered in states that are not parties to the convention:

> "Ships entitled to fly the flag of a State which is not a Party to a relevant instrument and thus not provided with certificates representing *prima facie* evidence of satisfactory conditions on board, or manned with crew members who do not hold valid STCW certificates, will receive a more detailed or, as appropriate, expanded inspection. In making such an inspection the Port State Control Officer will follow the same procedures as provided for ships to which the relevant instruments are applicable. If the ship or the crew has some alternative form of certification, the Port State Control Officer, in making this inspection, may take the form and content of this documentation into account. The conditions of such a ship and its equipment and the certification of the crew and the flag State's minimum manning standard must be compatible with the aims of the provisions of the relevant instruments; otherwise the ship must be subject to such restrictions as are necessary to obtain a comparable level of safety and protection of the marine environment".

5.5 No-more-favourable treatment

5.5.1 When a State, which is a Party to an international maritime convention that is in force, incorporates the provisions of that convention into national law and enforces that law with respect to its own nationals and ships on its own register, that State is entitled to ask the question, "Why should we apply these high standards to our own ships and to our own citizens if we do not apply those same standards to foreign ships coming to our shores and entering our ports?"

5.5.2 This idea has received international acceptance as an IMO Resolution, which states:

> "All Parties should as a matter of principle apply the procedures…[of no-more-favourable treatment]…to ships of non-Parties and ships below convention size in order to ensure that equivalent surveys and inspections are conducted and an equivalent level of safety and protection of the marine environment are ensured."

5.5.3 Article II (3) of the Protocol of 1987 to SOLAS '74; Article 5(4) of MARPOL 73/78 and Article X (5) of STCW'78 stipulate that not more favourable treatment be given to ships of countries that are not Parties to these Conventions. In other words, ships registered in non-Party States should be held to the same international standards as ships registered in the Coastal State, if the Coastal State is a Contracting Party to one of the conventions.

5.5.4 A similar doctrine applies to ships below convention size. Generally speaking, a ship should not be permitted to sail if it is not safe or if it poses a threat to the marine environment. While these ships may be exempted from international conventions (such as passenger vessels over 500 tons gross tonnage engaged in domestic voyages; cargo vessels under 500 tons gross tonnage engaged on international voyages; or fishing vessels), Port State Control Officers (PSCOs) may take action, including detention if necessary, to ensure that the ship does not present a clear hazard to safety, health or the marine environment. "The conditions of and on such ship and its equipment and the certification of the crew and the Flag State's minimum manning standard are required to be compatible with the aims of the provisions of the conventions; otherwise, the ship shall be subject to such restrictions as are necessary to obtain a comparable level of safety and protection of the marine environment." States in some regions have, with assistance of IMO, developed specific national regulations governing non-convention sized vessels.

6 PORT STATE CONTROL

6.1 In exercising PSC, Parties can only apply those provisions of the conventions that are in force and to which they are a Party. The "Exxon Valdez" incident led to unilateral action on the part of the United States with regards to the construction and operation of tankers in US waters. However, since the "Erika" incident and the recent sinking of the Italian-flag chemical tanker "Levolo Sun", there have been a number of calls in Europe for unilateral action to impose more stringent safety measures on tankers. Fortunately these have been resisted and it is now recognised that IMO should be the only forum to consider and adopt safety measures affecting international shipping. Nevertheless, there is no doubt that these two recent pollution incidents will lead to more international provisions and the need for those measures to be incorporated into national legislation.

6.2 The way in which these powers are used varies from one State to another, but, generally speaking, those States that have effective Flag State administrations usually have the most effective PSC.

6.3 Some countries, notably the United States have implemented PSC measures on a unilateral basis, while other States have opted for the regional approach. It should be noted that a Port State cannot enforce, against a foreign ship, the provisions of a Convention to which it is not itself a Party.

6.4 Compliance

6.4.1 An international convention cannot come into force, until it has been approved by a certain number of States. The conditions vary but, generally speaking, the more important and more complex the document, the more stringent the conditions for its entry into force. When the appropriate conditions have been fulfilled, the convention enters into force for those States that have ratified it or acceded to it. There is usually a grace period to allow those States that have ratified it or acceded to it to take the necessary measures for implementation. Recent conventions have been open for signature for a period of 12 months. After that, it is possible for non-signatory States to accede. Conventions place an obligation on the State to take the measures required by the convention. Often national law has to be enacted or changed to enforce the provisions of the convention, since IMO has no power in this respect. Contracting Governments enforce the provisions of IMO Conventions, as far

as their own ships are concerned, by creating regulations or passing legislation and establishing penalties for infringement of them. Port States have limited powers of enforcement with respect of foreign ships. Some conventions require that ships be required to carry certain certificates indicating they have been inspected and, in fact, meet the required standards. These certificates are normally accepted as proof by the authorities of the Port State that the vessel has met the required standards, although in some cases, further action can be taken.

6.5 Safety

6.5.1 Regulation 19 of Chapter I of SOLAS 1974 states: "Every ship when in a port of another Contracting State is subject to control by officers duly authorised by such Government in so far as this control is directed towards verifying that the certificates issued under Regulation 12 or Regulation 13 are valid." The Regulation goes on to say that these certificates shall be accepted "unless there are clear grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the particulars of any of the certificates". 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". The vessel can be detained if there are clear grounds for believing that the condition of the ship and its equipment does not correspond substantially with the particulars of that certificate. However, in the event that such action is taken, the Flag State (and IMO) should be notified. In any event, the Port State should make all possible effort to avoid unduly delaying the vessel. The SOLAS Convention contains many provisions and is being continually updated as technology advances and as accidents illustrate some of the shortfalls of existing regulations. Safety Certificates required by SOLAS 1974 cover a vast range of topics and are included in Appendix I.

6.5.2 According to Article 21 of the International Convention on Load Lines 1966, ships holding load line certificates issued under the Convention are subject, when in the port of a Contracting Government, to control by duly authorised officers. Similar provisions are contained in the International Convention on Tonnage Measurement of Ships 1969, where Article 12 contains provisions for the verification of the Tonnage Certificate. Although this is not a "safety convention" *per se*, tonnage measurement is important in that it determines whether a convention applies to a specific ship.

6.6 Maritime Environment

6.6.1 With a few exemptions, the MARPOL Convention covers all aspects of pollution of the maritime environment caused by ships, including the prevention of pollution by oil, by noxious liquids in bulk, by harmful substances in packaged form, pollution by sewage; by garbage, and recently, by emissions from shipboard machinery. It applies to ships of all types except warships and government-owned ships on non-commercial service. Article 5 of the Convention allows Parties to verify that a vessel within a port or offshore terminal has been issued with valid certificates. Article 6 provides that inspections may be carried out to verify whether a ship has discharged any harmful substances into the sea, in contravention to the Conventions.

7 STANDARDS

7.1 While the standards applied are usually those contained in international conventions providing for PSC, there is some need for consistency in application. There is now in place a Harmonised System of Survey and Certification (IMO Resolution A.718(17)) to reduce duplication of surveys and the IMO has published guidelines for the planning of surveys of bulk carriers and tankers.

7.2 Certificates and Documentation

7.2.1 There are a number of international maritime conventions with PSC provisions. These include the International Convention for the Safety of Life at Sea (SOLAS) 1974, and the Protocols of 1978 and 1988; the International Convention on Load Lines (Load Lines) 1966, and amendments of 1971, 1975, 1979, 1983 and 1995, plus the Protocol of 1988; the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78), and the International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW) 1978 together with the massive amendments of 1995 (STCW-95), and the International Convention on Tonnage Measurement of Ships (ITC) 1969, as amended (see Appendix II). In addition, there are over 200 Assembly Resolutions dealing with technical specifications; more detailed recommendations dealing with specific situations; performance standards; codes and guidelines. Then there are some Resolutions passed by the Maritime Safety Committee, fortunately not nearly as many, but possibly more important from a safety standpoint. Some PSC regional agreements include the monitoring of the ILO Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

7.2.2 Flag States are obligated to establish and maintain effective control over the ships flying their flag. This requirement is set out in Article 94 of UNCLOS and is specifically contained in the Conventions listed above. Flag State surveyors should have a first -class education, as well as appropriate qualifications and experience. This also applies to PSC Inspectors. It is recognised that some countries may not have sufficient numbers of such well-qualified individuals. In these cases, States may delegate their responsibilities in this regard to “Recognised Organizations Acting on Behalf of the Administration”. The IMO has published “Guidelines authorising organisations to act on behalf of an Administration” in Resolution A.739(18). Most of these authorised organisations are Classification Societies.

7.3 Classification Societies

7.3.1 Classification Societies date from the middle of the 19th century with the establishment in 1834 of the Society of Lloyd’s Register. Based on older register books, the “Lloyd’s Register of British and Foreign Shipping” was a detailed description of all sea-going vessels to assist underwriters in assessing risks, but it was also of greater significance to ship safety. To be classified, vessels were required to by built and equipped under the strictly enforced supervision of classification-society surveyors. Only materials approved and tested by the society could be used, and in order to maintain its class, a vessel had to be periodically surveyed to ensure that its hull and machinery remained in an acceptable condition. The same principles are followed today. However, classification societies have increasingly come under scrutiny for the standard of their inspections. There have been claims

for compensation for the deemed negligence of their surveyors in granting certificates of seaworthiness to ships that have subsequently evidenced mechanical or structural failures. Many States, especially those operating "Open Registers", delegate many of their Flag State responsibilities to Classification Societies. In some cases, Classification Societies actually issue documentation on behalf of Flag States. This raises some questions of responsibility and accountability, as well as potential conflicts of interest issues, since on matters of "Class" the Classification Societies conduct their surveys for the owner, not the Flag Administration.

7.4 Harmonisation

7.4.1 Whilst there are some unilateral declarations of legal action by some countries (notably the United States) and that the several current members of the International Association of Classification Societies (IACS) compete with each other for business, there is a fair degree of harmonisation of rules and regulations. Most pervasive are the IMO international maritime conventions that Member-States incorporate into their national legislation, either by reference or by incorporation of the text into national laws or regulations. Therefore, most matters concerning the safe operation of ships are covered by IMO conventions, and most nations have adopted these provisions into national law with few, if any, amendments or modifications. However, there are some discrepancies when it comes to interpretation, and the IMO has issued a number of Resolutions and Circulars regarding procedures for PSC.

7.5 Other Instruments – ISM

7.5.1 Accident investigations have discovered that deficiencies in the management of shipping companies in the operation of their ships have been a contributing factor to many maritime incidents. As a result, steps have been taken to codify certain management practices to ensure that standards of safety management are established and maintained that can be later verified by operational audits. The International Safety Management (ISM) Code has been in effect for passenger ships, tankers and high-speed craft since July 1998 and all other ships since July 2002. It is believed this ISM Code will have a profound effect on the safety of ships at sea and the preservation of the marine environment, in that the Code requires shipping companies to make considerable changes to their structure; implement safe management practices; and keep proper, verifiable records. By making the Code part of SOLAS, it will have to be implemented by shipowners and monitored by Flag States, but it will also be subject to inspection by Port States. Ships not carrying the requisite certification in this regard could well be prevented from entering foreign ports.

8 INSPECTION

8.1 At the earliest opportunity, a PSCO should ascertain the year of build and the size of the ship in order to determine which provisions of the conventions, if any, are applicable. Where a PSCO conducts an inspection of a ship, he may, before boarding, gain from its appearance in the water, an impression of its standard of maintenance from such items as the condition of its paint-work, corrosion, pitting or un-repaired damage. On boarding, and upon introduction to the master or the responsible ship's officer, the PSCO should examine the vessel's relevant certificates and documents.

8.2 Limitations

8.2 If the certificates are valid and the PSCO's general impression and visual observations on board confirm a good standard of maintenance, the PSCO should generally confine the inspection to reported or observed deficiencies, if any. However, if the PSCO has clear grounds for carrying out a more detailed inspection, Resolution A.787(19) provides General Procedural Guidelines. The master should be informed, who may in turn advise the Administration or Recognised Organization responsible for issuing the certificate and invite their presence on board. The Resolution reminds PSCOs that the main purpose of PSC is to prevent a ship from proceeding to sea in an unsafe condition or if it presents an unreasonable threat of harm to the marine environment. If this is deemed to be the case, a more detailed inspection may be carried out and the general principles for this detailed inspection is spelled out for the type of deficiencies identified in relation to various conventions. Where deficiencies cannot be rectified at the port of inspection, the PSCO may allow the ship to proceed to another port, subject to appropriate conditions. The PSCO should ensure that the competent authority at the next port of call, as well as the Flag State, is notified.

8.3 Clear Grounds

8.3.1 Generally speaking, where a foreign-flag ship, that is required to hold various certificates, is in the port or offshore terminal under the jurisdiction of a Contracting State, any such PSC inspection shall be limited to verifying that there are valid certificates and other relevant documentation on board. The PSCO can form an impression as to the general condition of the ship, its equipment and crew, but cannot take any action to delay or detain the vessel unless there are "clear grounds" for believing that the condition of the ship, its equipment, or crew do not substantially correspond with the particulars of the certificates. "Clear grounds" are defined much along the lines described above and several examples of "clear grounds" are included in the IMO or MOU guidelines:

1 the ship has been identified as a priority case for inspection;

2 during examination of the certificates and documents inaccuracies have been revealed or the documents have not been properly kept or updated;

3 Indications that the relevant crew members are unable to communicate appropriately with each other, or with other persons on board, or that the ship is unable to communicate with the shore-based authorities either in a common language or in the language of those authorities;

4 evidence of cargo and other operations not being conducted safely or in accordance with IMO guidelines;

5 failure of the master of an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage;

6 absence of an up-to-date muster list, or crew members not aware of their duties in the event of fire or an order to abandon the ship;

7 the emission of false distress alerts not followed by proper cancellation procedures;

8 the absence of principal equipment or arrangements required by the conventions;

9 evidence from the Port State Control Officer's general impressions and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weather tight integrity of the ship;

10 excessively unsanitary conditions on board the ship;

11 information or evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out.

It is supposed that pilots, crewmembers, passengers, trade union officials or others witnessing the navigation of the vessel, or pollution caused by the vessel, in coastal waters could provide this information.

8.4 Undue Delay

8.4.1 All possible efforts should be made to avoid a ship being unduly delayed or detained. If a ship is unduly delayed or detained, the owners may be entitled to compensation for any loss or damage suffered as a direct result of such delay or detention. The lack of valid certificates mandated by the relevant conventions is *prima facie* evidence that the ship may be substandard and may form the basis of a decision to detain the ship and inspect it further.

8.5 Identification of a Substandard Ship

8.5.1 In general, a ship is regarded as substandard if the hull, machinery, equipment or operational safety is substantially below the standards required by the relevant conventions, or whose crew is not in conformance with the safe manning document, as a result of:

- The absence of the principal or arrangement required by the conventions;
- Non-compliance of equipment or arrangement with relevant specifications of the conventions;
- Substantial deterioration of the ship or its equipment as a result of, for instance, poor maintenance;
- Insufficiency of operational proficiency, or unfamiliarity of essential operational procedures by the crew; and
- Insufficiency of manning or insufficiency of certification of seafarers, (IMO Resolution A.787(19) adopted 23 November 1995, (Amended by A.882(21)).

8.5.2 If these factors, as a whole or individually, make the ship unseaworthy and put the ship or the life of persons on board at risk, or present an unreasonable threat of harm to the marine environment if it were allowed to proceed to sea, it should be regarded as a substandard ship. A lack of valid certificates will constitute *prima facie* evidence that the ship may be substandard enabling the ship to be detained and inspected in greater detail.

9 REMEDIES

9.1 Initial inspection

9.1.1 As noted earlier, the PSCO will carry out an initial inspection, following accepted international procedures (Appendix IV), consisting of a visit on board the ship to check the certificates and documents (listed in Appendix 1). During this inspection the PSCO will satisfy himself 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.

9.2 More detailed inspection

9.2.1 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, the Maritime Safety Authority or Maritime Administration of the Contracting State (the Authority) may carry out a more detailed inspection in the area(s) where clear grounds were established. Alternatively, the PSCO may carry out a more detailed inspection in other areas at random, which may include further checking of compliance with on-board operational requirements.

9.3 Suspension of inspection

9.3.1 If, after the initial control and a more detailed inspection, the overall condition of a ship and its equipment, as well as the crew and living and working conditions, are found to be sub-standard, the Authority may suspend the inspection until the necessary steps have been taken to ensure that the ship complies with the requirements of the relevant instruments.

9.4 Deficiency to be rectified before departure

9.4.1 The Authority should endeavour to secure the rectification of all deficiencies detected and that any identified hazard is removed before the ship is allowed to proceed to sea.

9.5 Deficiency to be rectified at the next port

9.5.1 If all possible efforts have been made to rectify all deficiencies, other than those that are clearly hazardous to safety, health or the environment, then the ship may be allowed to proceed to a port where they can be rectified (repair yard, slipway or technicians, etc.). Certain conditions may be imposed, such as discharging of cargo and/or temporary repairs, ensuring that the ship can proceed without risk to the safety and health of the passengers or crew, or risk to other ships, or without being an unreasonable threat to the marine environment.

9.6 Notification at next port of call

9.6.1 The Authority exercising this Port State jurisdiction should notify the Authority of the State where the next port of call of the ship is situated as to the action taken and conditions imposed. The Authority receiving such notification should inform the notifying Authority of action taken. The Flag State should also be notified.

9.7 Detention

9.7.1 In the case of deficiencies that are clearly hazardous to safety, health or the environment, the Authority should ensure that the hazard is removed before the ship is allowed to proceed to sea. Appropriate action may include detention or a formal prohibition of a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.

9.8 Criteria for detention

9.8.1 Section 9 of Annex 1 of the Paris MOU in sets out the procedures (Appendix IV) for the detention of ships, which will be used if deficiencies are found during the course of inspection. The two main criteria are as follows:

1 Timing: ships that are unsafe to proceed to sea will be detained upon the first inspection irrespective of the time the ship will stay in port;

2 Criterion: the ship will be detained if the deficiencies are sufficiently serious to merit a PSCO returning to the ship to satisfy himself that they have been rectified before the ship sails.

9.9 Application of main criteria

9.9.1 When deciding whether the deficiencies found on a ship are sufficiently serious to merit detention, the PSCO should assess whether:

1 the ship has relevant, valid documentation;

2 the ship has the crew required in the Minimum Safe Manning Document.

During inspection, the PSCO should further assess whether the ship and/or crew is able to:

3 navigate safely throughout the forthcoming voyage;

4 safely handle, carry and monitor the condition of the cargo throughout the forthcoming voyage;

5 operate the engine room safely throughout the forthcoming voyage;

6 maintain proper propulsion and steering throughout the forthcoming voyage;

7 fight fires effectively in any part of the ship, if necessary, during the forthcoming voyage;

8 abandon ship speedily and safely and effect rescue, if necessary, during the forthcoming voyage;

9 prevent pollution of the environment throughout the forthcoming voyage;

10 maintain adequate stability throughout the forthcoming voyage;

11 maintain adequate watertight integrity throughout the forthcoming voyage;

12 communicate in distress situations, if necessary, during the forthcoming voyage; and

13 provide safe and healthy conditions on board throughout the forthcoming voyage.

9.10 Multiple deficiencies

9.10.1 If the result of any of these assessments is negative, taking into account all deficiencies found, the ship should be strongly considered for detention. A combination of deficiencies of a less serious nature may also warrant the detention of the ship. A list of detainable deficiencies, grouped under relevant Conventions and/or Codes is also provided in Annex 1 of the Paris MOU (available at http://www.parismou.org).

9.11 Notification of detention

(a) If a ship is detained, the Authority should immediately notify the Flag State Administration in writing and include the report of inspection.

(b) If a recognised organisation has issued the relevant certificates on behalf of the flag State Administration, then the recognised organisation should be notified in writing of the release of detention, as well as the Flag State Administration.

10 REGIONAL AGREEMENTS

10.1 While it is reasonable to believe that Contracting States to conventions providing for PSC inspections will follow through on those obligations, an uncoordinated effort within a region can result in duplication of effort, redundancy, inefficiency and the few substandard ships that should be detained being able to avoid detection. Furthermore, if subsequent PSC inspectors have no prior knowledge of earlier inspections, they cannot follow up on the correction of deficiencies or target habitual offenders. As a result, a number of Regional Agreements have come into being (see Appendix III). If a regional approach is not adopted, operators of substandard ships will just divert their ships into ports in the region where there are either no, or less stringent, PSC inspections. This may seriously hamper the economic situation of the ports that do conduct proper inspections.

10.2 In 1982, 14 European countries signed the Paris Memorandum of Understanding on PSC. Since then the Paris MOU has expanded to 18 maritime administrations and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe. The Paris MOU is not an international convention, but rather an administrative agreement. It does not introduce any new technical requirements, but marks the common will of its signatories to have relevant conventions enforced strictly, while providing the means of doing so. The Parties agreed to inspect 25% of foreign-flag ships visiting their ports each year. They established a permanent secretariat to co-ordinate the various national activities and provide for a regional database. If a ship is inspected in one country and is found to be in full compliance with all the Conventions covered by the Memorandum, then there is no need for the same ship to be inspected again as it moves to the next country. The PSCOs can direct their attention to a ship that has so far not been inspected.

10.3 Since then, the value of regional co-operation has been recognised and a number of regional agreements have been signed by countries with an interest in promoting safer ships and cleaner seas. The most important functions within these regional agreements is the formation of a secretariat and the establishment of central databases so that national PSC control functions can report information and all members can access the database and examine the PSC history of a particular ship. This allows members to exchange information about ships, their records and the results of inspections carried out. This information is important in that it enables subsequent ports of call to target only ships that have not been recently inspected. In general, ships inspected within the previous six months are not re-inspected unless there are clear grounds for doing so. Another reason for co-operating with other ports in the region is to ensure that identified substandard ships are effectively monitored. This applies especially to ships that have been allowed to sail with certain minor deficiencies on condition that they are rectified in the next port of call. When permission has been granted for a substandard ship to sail from one port, contingent on the deficiencies being rectified in the next port, it is essential for this information to be passed on to the authorities in the next port to ensure that those deficiencies have, in fact, been rectified.

10.4 Targeting flag states

10.4.1 Some Flag States have a worse safety record for ships entered on their register than do others. This is a result of a number of factors, including an insufficient number of qualified surveyors, small and over-extended maritime administration, and a lack of political will to improve the safety record though legislation, proper administration and enforcement. While the list of high risk Flag States varies from year to year, some Flag States manage to be included in this infamous list for some time. They typically are States operating “Open Registries” that have “contracted out” the administration of their merchant fleets to private operators who attempt to operate without the minimum number of personnel or with surveyors without the necessary skill, experience or knowledge or with insufficient incentive. These high-risk Flag States usually have insufficient means of carrying out effective prosecutions. Other States in this category administer ships owned by their own nationals, but again lack the skills or motivation to demand high standards of ship operators. Many are developing countries and others have emerged from recent political or economic turmoil.

10.5 Targeting special types of vessels

10.5.1 Canada and Australia have in recent years targeted bulk carriers for their specific attention. Both countries export raw materials in bulk and a number of vessels that have loaded bulk cargoes in local ports have suffered subsequent damage at sea, or in many cases, disappeared without a trace. Australia suffered a scare from the *Kirki*, a tanker bringing crude oil into Western Australia, when the bow simply fell off the ship leaving oil leaking out of the forward tanks. The Australian authorities examined the problem in detail and published a report entitled “Ships of Shame” and believed that PSC was a key element in ensuring acceptable levels of maritime safety. This title has been preserved by an Australian maritime publication that reports on ships that have been detained by the Australian Maritime Safety Authority (AMSA) during the previous month, citing Classification Society, Flag, Tonnage, the name of the Owner, as well as a brief description of the Deficiencies and the Action taken by the authorities. A subsequent Australian

report identifies the principal source of *Ships of Shame* as being Flag States that ignore their responsibilities under maritime conventions they have ratified, and concludes that PSC mechanisms are still the most effective means of ensuring regulatory compliance for shipping. The Canadian response to the *Exxon Valdez* incident was to form a Public Review Panel on Tanker Safety and Marine Spills Response Capacity, which resulted in stricter marine pollution legislation and the privatisation of marine spill response capability. Parties to the Paris MOU decided, following the loss of the *Erika*, to mount a concentrated inspection campaign on oil tankers, focusing on oil tankers over 15 years old and over 3,000 gross tonnage.

11 NEED FOR UNIFORMITY OF PSC

11.1 While the most important benefit of regional co-operation is uniformity of PSC inspections between countries and between regions, at the present time inspection standards and procedures vary greatly throughout the world and between members of regional MOUs. Standard inspection procedures and manuals, training and exchange of surveyors on attachment in other countries can achieve uniformity. This can also be achieved by the use of seminars between members of regional agreements in order to harmonise procedures.

11.2 A very useful concept is the Concentrated Inspection Campaigns (CIC), originally introduced by the Paris MOU. During these campaigns PSC Inspectors included a detailed inspection or scrutiny of a particular area/item. To ensure these inspections are carried out uniformly throughout the region, PSC Officers throughout the region are issued a detailed set of instructions and inspection guidelines. This increases uniformity of inspections and consistency of actions of PSC Officers within the region.

11.3 However, the ultimate goal will be the integration of all the regional MOUs, which now cover most of the maritime administrations that conduct PSC inspections. To accomplish this there will have to be uniformity in information systems, databases and other technical issues. Although data storage and exchange systems have generally evolved within each region, the long term benefits of having a standard coding system were recognised from the start and most of the database systems have at least been developed using the coding sets of the Paris MOU computer system. In order to be successful, it will also need some changes in attitude on behalf of shipowners and maritime administrators, who in the past have tended to be secretive and glossed over problems. It also provides opportunities for charterers to select properly constructed and equipped ships that have been well maintained and diligently managed by quality operators.

12 EFFECT OF PORT STATE CONTROL ON PORT OPERATIONS

12.1 Time spent on inspections

12.1.1 PSC inspections are conducted to ensure that foreign ships are seaworthy, do not pose a pollution risk, provide a healthy and safe working environment for those persons working on board the ship and that they comply with relevant International Conventions. These include the ten conventions listed in Appendix 2. The time spent on inspection will be a function of the number of inspectors available; the condition of the vessel; the focus of the inspection; the initial review of vessel and certificates and the result of previous inspections. If the ship is “high risk” in terms of type (a bulk carrier, for example) or has had a poor history of PSC inspections, or is new to the

particular jurisdiction, the time spent on the inspection of the ship could be considerable. Similarly if it appears to the inspector that the crew is not familiar with the essential shipboard procedures relating to the safety of ships the inspector may require the crew to prove their competence by means of demonstration. However, if the ship is a regular visitor to the port; is well maintained and well documented; the PSC inspection could be over in a matter of a few hours.

12.1.2 In spite of the requirement not to unduly delay a ship, Port States have an obligation to prevent unsafe ships from going to sea and may detain them until they comply with international standards. If the ship is unsafe, unseaworthy, or insanitary it may require repairs or the replacement of essential equipment, which could take several days.

12.2 The effect of detentions

12.2.1 If a ship is detained until it is safe for it to go to sea or go proceed to the next port for repairs, some work may have to be carried out aboard the ship by engineers, mechanics, technicians or shipyard workers. The length of the detention will depend on the availability of equipment, spare parts and the accessibility of competent persons to effect the repairs. If the ship is detained because of expired certificates, or if the ship does not correspond substantially with any of the convention certificates it is carrying, then the Port State will have to contact the Flag State administration, which may in turn have to contact the classification society. This again could take time, depending on the Flag State involved and the extent to which the Port State pursues its verification of the validity of the certificates produced. If the detention results from the incompetence of the crew to perform essential tasks, if the certificates of persons who will stand a watch are not in compliance with STCW-95, or if the State issuing the certificates is not included on the IMO list, the Port State may insist that those crew members not meeting international standards be replaced by crew members who do. Again, this may take some time, depending on the availability of watch keeping seafarers with appropriate qualifications to serve on the ship of the Flag State.

12.3 Stowaways and illegal immigrants

12.3.1 There has been a spate of recent incidents involving stowaways and illegal immigrants in places as diverse as Canada, Italy, and the United Kingdom. Illegal immigrants have been found in trucks, trailers, and containers - even in the cargo holds of some ships. Some survive, but some also perish. Most pay large sums of money to organised gangs for the privilege of travelling in this manner, whether their attempt to enter the country is successful or not. Stowaways on the other had are those who wish to travel to another country, often singly and sometimes on the spur of the moment, but often have to enter a country illegally since they do not have the proper documentation. While not strictly subject to any international convention at the moment (although there is one in preparation), the enforcement of immigration laws has become a major priority in most countries today. Immigration officers or law enforcement officers rather than marine surveyors usually conduct searches for illegal immigrants and stowaways. However, the result is similar: those apprehended are taken into custody for processing and the ship may be detained or arrested and the owners required to pay damages or a fine before it is released.

12.4 Need for reception facilities

12.4.1 One option to prevent ships from dumping waste oil, chemical residues, sewage and garbage in a Coastal State's waters is for the Coastal State to provide facilities for ships to rid themselves of such waste in port. All parties to MARPOL are required to ensure the provision of adequate facilities for the reception of oily residues and oily mixtures at oil loading terminals, repair ports etc. However, many oil-loading facilities are located in developing countries that often do not have the funds for the construction of such facilities. However, MARPOL does not state that the governments of these countries have to provide these reception facilities, nor does it specify that they have to provide such facilities free of charge. It is ironic that many of the countries that have been complaining about marine pollution in their waters are the very countries that have failed to ensure that proper reception facilities are provided, where necessary, in their ports. There are a number of guidelines on the provision of adequate reception facilities in ports published by the IMO that show how reception facilities for various substances can be provided at reasonable cost:

> *Guidelines on the Provision of Adequate Reception Facilities in Ports* published by IMO, (London 1976), – *Part I (Oily Wastes), Part II – Residues and Mixtures Containing Noxious Liquid Substances in Bulk*, Part *III – Sewage* and *Part V – Garbage* (IMO, London 1978).

Failure to provide such facilities means that ships will either have to: (a) attempt to carry wastes generated on board in perpetuity; (b) deviate to a port where reception facilities are available, (adding to the operational costs), or (c) illegally discharging these wastes in a clandestine fashion and risking possible huge penalties if apprehended, charged and successfully convicted.

12.5 Disposal of sludge, spoil and shipyard hull scrapings

12.5.1 "Sludge" is generally what is left after crude oil tankers that have cleaned their tanks or pumped their machinery space bilges, transferred the oily water to a slop tank, where after the water and oil have partially separated, the remaining oily water is put through an oily-water separator and pumped over the side if the oil content is less than 15 ppm.

12.5.2 "Spoil" is the unwanted material that is brought from the seabed on board a dredger or barge after a dredging operation to create, deepen or maintain the depth of a channel, usually in the approaches to a port.

12.5.3 "Hull scrapings" are the material, usually comprising hull anti-fouling or anti-corrosion coatings, that have been removed from the underwater parts of a ship when in a floating or graving dock or on a slipway, which generally contain chemicals that are toxic to marine life. Hull scrapings are often hosed out down the slipway of pumped out of the graving or floating dock into the waters immediately adjacent to the ship-repair or maintenance facility, which, over the years, has caused massive pollution to the waters and the seabed.

12.5.4 Sludge (oil residues) resulting from the collection of remains of purified fuel (ifo), diesel (mdo) and other residues such as drainages, leakages, exhausted oil within the machinery spaces of a vessel. A rough guide to sludge quantities generated is that approximately 1% of all bulk oils taken on board a vessel will be sludge that will require either on-board incineration or discharge to a shore sludge reception facility. The generation and subsequent disposal

of all sludge is recorded in the vessel's "oil record book" as set out in part 1 of that document. Often once sludge has been received on shore, its further disposal is a problem for developing countries without incinerators or equipment to salvage the material into a useable product.

12.5.5 Slops, also known as "tank washings" are tank cleaning residues that are a mixture of cargo oil and tank cleaning water. This is retained on board in the vessel's designated "slop tank" for eventual disposal ashore. The requirements for recording generation and disposal of slops are set out in part 2 of the vessel's oil record book.

12.5.6 It should be noted that under MARPOL 73/78 oil record books may be inspected at any port by Port State Control officers. Should deficiencies or contraventions be noted, the vessel may be detained and prosecution follow.

12.5.7 Spoil often contains chemicals that have been laid down on the seabed for many years, which, when disturbed by dredging become toxic, and again present a problem for disposal elsewhere. When dredged material is disposed of at sea, it can cause turbidity, toxicity and a number of other conditions that are deleterious to marine life.

12.5.8 Generally speaking, these matters do not come under PSC, but they are issues that the Port State must address.

12.6 Pilotage

12.6.1 Pilots have a great impact on PSC, inasmuch as the pilot is the first person to meet the inbound ship and is often the only person to witness the conduct of the ship and the behaviour of the crew when the ship is underway. He can often make a determination as to whether the crew appears to be properly trained. For the purpose of the proper conduct of the ship in pilotage waters, the pilot will have to make himself aware of the ship's capabilities and note any deficiencies in any of the essential equipment. Thus, although the pilot may not be a qualified PSC inspector, his observations can be critical in providing evidence to the PSC inspector that certain matters appear to be deficient with regard to international standards and warrant a further, deeper investigation. The pilot boat crew can scrutinise the approach of the vessel, inspect the hull and equipment (such as the adequacy of the pilot ladder and gangway, if used) of the vessel whilst boarding the pilot, and can monitor the progress of the vessel underway. The pilot will be able to determine the skills of the bridge management team and make a determination of the deck crew as they perform anchoring or berthing functions. He will also be able to assess whether or not the engine room staff is efficient, depending whether or not the engine responses are appropriate to the commands, or the state of the engine and deck machinery/equipment if there are failures. Docking masters and/or tug skippers may be able to give evidence of potential deficiencies of a ship and may have to alert PSC inspectors.

12.7 Port services

12.7.1 Port services include marine communications, pilotage, towage, berthage, bunkers and fresh water, shore power, port reception facilities and such sundry items as spare parts, stores, provisions and laundry. Ports are also required to provide navigation aids, safe berths and accurate traffic services information. They are required to maintain channels to the charted depth and ensure that berths and piers are properly maintained. Ports are required to

ensure that the facilities are adequate for the purposes of the vessels using the port and that any navigational hazards such as wrecks or other obstructions are removed. Ports are obliged to make sure that any hazards, such as underwater cables or overhead power lines are properly marked and the hydrographic function of the administration is to ensure that charts are up-to-date and contain the relevant information to masters, pilots and other users of the port. Maritime administrations are responsible for transmitting safety messages and publishing Notices to Mariners if there are any threats to safe navigation in the port area or harbour approaches. Thus, while the Port State had the ability, and the responsibility, to monitor the ships of other Flag States, it must keep its own house in order, by providing all the facilities it is required to by customary international law, international conventions and national legislation and regulations.

12.8 Port vessels

12.8.1 Vessels owned by the port authority or operating within the port must comply with relevant national law, as they are not subject to Port State Control. Tugs, pilot boats, bunker barges, hydrographic vessels, buoy tenders, mooring launches must comply with national laws and international conventions as they apply (such as the Regulations for the Prevention of Collisions at Sea). Instructions given by Vessel Traffic Services, Harbour Masters, or Pilots must be clear, concise and accurate. Care should be taken to ensure that the orders are fully understood by the recipient vessel.

13 CONCLUSION

13.1 In accordance with customary international law, States have the right to exercise control over foreign ships within their ports. This is not an absolute right, but is qualified by the concurrent jurisdiction of the Flag State. Each State has different rights, responsibilities and obligations. Flag States have complete and exclusive jurisdiction over the vessel on the High Seas, and are required to effectively exercise their jurisdiction and control in administrative, technical and social matters over ships flying their flag. This means that Flag States are required to establish a register of ships containing the names and particulars of ships flying their flag and assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters. Flag States must also take measures as are necessary for: (a) construction, equipment and seaworthiness of ships; (b) the manning of ships, labour conditions and training of crews; and (c) the use of signals, the maintenance of communications and the prevention of collisions.

13.2 Coastal States exercise certain specific rights over ships within their 200 nautical mile Exclusive Economic Zone, especially in respect of fisheries and the prevention of marine pollution. Within this area, Coastal States have sovereign rights over for the purpose of exploring and exploiting, conserving and managing the living and non-living resources of the sea and the seabed. Flag State jurisdiction is considered complementary to Coastal and Port State jurisdiction.

13.3 Port State jurisdiction involves that State's power to control activities of foreign ships within territorial and inland waters, although foreign ships have the right of innocent passage through the territorial sea as evidenced in Articles 17 and 18 of UNCLOS. Since a State has sovereignty over its territory, its jurisdiction applies to foreign ships in its ports. The rights of Port

States in respect of foreign ships are contained in a number of IMO and ILO conventions and are limited to certain specific activities. Most conventions provide for the power to investigate and prosecute violations that have occurred within the jurisdiction of the Port State. This right is also qualified by the concurrent jurisdiction of the Flag State.

13.4 An important feature of the conventions is the no-more-favourable treatment clause. This means if the Port State is a contracting party to a relevant convention it will not give any more favourable treatment to foreign ships in its ports, than it does to its own ships. This includes the ships flying the flag of States that are not party to the convention. The Port State usually has to incorporate the provisions of the convention into its domestic legislation in order to provide for offences and penalties for violation of the local law or the non-compliance with the international standards.

13.5 The conventions also stipulate, with a certain amount of exactitude and complemented by a number of advisory circulars published by IMO, what method of inspection may be used. This initially includes the verification of certificates and checking for "clear grounds" that the prescribed standards have not been met. If so, the ship may be detained until the deficiencies have been rectified and the ship is safe to go to sea, or proceed to another port were repair facilities or replacement equipment are available.

13.6 In order to provide for uniformity of inspections within a State certain procedures and standards have to be developed for the guidance of local surveyors. In order to provide for harmonisation, the elimination of duplication and the exchange of PSC information, States have developed regional agreements, known as MOUs. This provides for a secretariat, the creation of a database and the reporting of national inspections to the regional centre. This enables other States in the region to better target suspect ships; ensure that repairs have been carried out; and reduce the number of inspections of the ships of "quality" ship owners and operators. These agreements will eventually eliminate the operation of substandard ships by taking away the rewards of lower operating and maintenance costs. The eight MOUs in existence have virtual global coverage and some States are parties to more than one MOU. The challenge of the future is to integrate these regional MOUs into a world-wide MOU so that the results of a PSC inspection are immediately available to maritime authorities in other States, so that they can decide whether to conduct a PSC inspection of a particular ship, and if so, to be diligent in the inspection of ships with a poor history of safety, maintenance or crew competence. The ultimate objective is to make sure that unsafe, inadequately manned and improperly managed ships do not go to sea until the deficiencies in compliance to minimum international standards have been rectified.

Appendix I Certificates

The Paris MOU lists the following certificates and documents that should be inspected, as applicable, as part of the PSC initial inspection:

1 International Tonnage Certificate (1969);
2 Passenger Ship Safety Certificate;
3 Cargo Ship Safety Construction Certificate;
4 Cargo Ship Safety Equipment Certificate;
5 Cargo Ship Radio Telegraphy Certificate;
6 Cargo Ship Radio Telephony Certificate;
7 Cargo Ship Safety Radio Certificate;
8 Exemption Certificate and any list of cargoes (as per SOLAS II-2/53.1.3);
9 Cargo Ship Safety Certificate;
10 Document of Compliance (SOLAS 74, Regulation II-2/54)
11 Dangerous goods special list or manifest, or detailed stowage plan;
12 International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk, or the Certificate of Fitness for the Carriage of Liquefied Gases in Bulk, whichever is appropriate;
13 International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, or the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, whichever is appropriate;
14 International Oil Pollution Prevention Certificate;
15 International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk;
16 International Load Line Certificate (1966);
17 International Load Line Exemption Certificate;
18 Oil Record Book, parts I and II;
19 Shipboard Oil Pollution Emergency Plan
20 Cargo Record Book;
21 Minimum Safe Manning Document;
22 Certificates of Competency;
23 Medical certificates (see ILO Convention No. 73);
24 Stability information;
25 Copy of Document of Compliance and Safety Management Certificate issued in accordance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (IMO Resolutions A.741(18) and A.788(19));
26 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);
27 Survey Report Files (in case of bulk carriers or oil tankers);
28 For Ro-Ro passenger ships, information on the A/A-max ratio;
29 Document of authorisation for the carriage of grain;
30 Special Purpose Ship Safety Certificate;
31 High Speed Craft Safety Certificate and Permit to Operate High Speed Craft;
32 Mobile Offshore Drilling Unit Safety Certificate;
33 For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage;
34 The muster list, fire control plan, and for passenger ships, a damage control plan, a decision-support system for the master (printed emergency plan);
35 Ship’s logbook with respect to the records of tests and drills and the log for records of inspection and maintenance of lifesaving appliances and arrangements;
36 Reports of previous Port State Control inspections;
37 Cargo Securing Manual;
38 For passenger ships, List of operational limitations;
39 For passenger ships, a Plan for co-operation with SAR Services;
40 Bulk Carrier Booklet;
41 Loading/Unloading Plan for bulk carriers;
42 Garbage Management Plan;
43 Garbage Record Book.

Appendix II Relevant Instruments (under the Paris MOU)

1 International Convention on Load Lines, 1966 (LOAD LINES 66);

2 Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 88);

3 International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);

4 Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974 (SOLAS PROT 78);

5 Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974 (SOLAS PROT 88);

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

7 International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978 (STCW 78);

8 Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);

9 International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 69);

10 Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147) (ILO 147).

Appendix III Regional MOUs

- Paris Memorandum of Understanding on Port State Control (Paris MOU) adopted in Paris (France) on 1 July 1982
  Belgium, Canada, Croatia, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russian Federation, Spain, Sweden, United Kingdom.

- Acuerdo de Viña del Mar (Viña del Mar or Latin-America Agreement), signed in Viña del Mar (Chile) on 5 November 1992
  Argentina, Bolivia, Brazil, Chile, Columbia, Cuba, Ecuador, Mexico, Panama, Peru, Uruguay, Venezuela.

- Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MOU), signed in Tokyo (Japan) on 2 December 1993
  *Australia, Canada, China, Fiji, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Papua New Guinea, Philippines *, Russian Federation, Singapore, Solomon Islands *, Thailand, Vanuatu, Viet Nam, Hong Kong (China).*

- Memorandum of Understanding on Port State Control in the Caribbean Region (Caribbean MOU), signed in Christchurch (Barbados) on 9 February 1996
  *Anguilla *, Antigua and Barbuda, Aruba, Bahamas, Barbados, Bermuda *, British Virgin Islands *, Cayman Islands, Dominica *, Grenada, Guyana, Jamaica, Montserrat *, Netherlands Antilles, Saint Kitts & Nevis *, Saint Lucia *, Saint Vincent & the Grenadines *, Suriname *, Trinidad & Tobago, Turks and Caicos Islands *.*

- Memorandum of Understanding on Port State Control in the Mediterranean Region (Mediterranean MOU), signed in Valetta (Malta) on 11 July 1997
  *Algeria *, Cyprus, Egypt, Israel *, Jordan, Malta, Lebanon, Morocco *, Tunisia, Turkey and the Palestinian Authority *.*

- Indian Ocean Memorandum of Understanding on Port State Control (Indian Ocean MOU), signed in Pretoria (South Africa) on 05 June 1998
  Australia, Bangladesh, Djibouti, Eritrea, Ethiopia, India, Iran, Kenya, Maldives, Mauritius, Mozambique, Myanmar, Oman, Seychelles, South Africa, Sri Lanka, Sudan, Tanzania, Yemen.

- Memorandum of Understanding on Port State Control for the West and Central African Region (Abuja MOU), signed in Abuja (Nigeria) on 22 October 1999.
  Benin, Cape Verde, Congo, Côte d'Ivoire, Gabon, Gambia, Ghana, Guinea, Liberia, Mauritania, Namibia, Nigeria, Senegal, Sierra Leone, South Africa, Togo.

- Black Sea MOU**
  Bulgaria, Georgia, Romania, Russian Federation, Turkey, Ukraine

* Acceptance Pending
** Under Preparation

Appendix IV Port State Control Procedures

Section 1 Priority inspections
Section 2 Examination of certificates and documents
Section 3 No-more-favourable treatment
- 3.1 Ships of non-Parties
- 3.2 Ships below convention size

Section 4 Examples of “clear grounds” for a more detailed or expanded inspection
Section 5 More detailed inspection
- 5.1 General
- 5.2 Procedures for inspection of ship structural and equipment requirements
- 5.3 Crude oil washing
- 5.4 Unloading, stripping and pre-wash operations under Annex II to MARPOL 73/78
- 5.5 Procedures for control of operational requirements

Section 6 Manning
- 6.1 Introduction
- 6.2 Manning control
- 6.3 Control under the provisions of STCW 78

Section 7 Merchant Shipping (Minimum Standards) Convention, 1976 (ILO 147).
Section 8 Expanded inspection of certain ships
- 8.1 General provision for expanded inspection
- 8.2 Passenger ships in regular services
- 8.3 Categories of ships subject to expanded inspection
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Section 9 Rectification and detention
- 9.1 Principles governing rectification of deficiencies or detention of a ship
- 9.2 Detention related to minimum manning standards and certification
- 9.3 Procedures for the detention of ships of all sizes

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