

# INFRASTRUCTURE



## TRANSPORTATION, WATER AND URBAN DEVELOPMENT DEPARTMENT THE WORLD BANK

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### PORT STATE CONTROL

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*Effective enforcement of international conventions aimed at ensuring safe vessel operations has remained problematic. Effective actions by regional port states hold promise of overcoming these deficiencies.*

Notwithstanding the numerous provisions dealing with maritime safety and the prevention of pollution at sea contained in various conventions and protocols, some unscrupulous shipowners still put to sea vessels that are unsafe or are manned by less than competent crews. This disregard for prescribed safety standards and seaworthiness criteria for vessels, driven by greed or motivated by profit in a very competitive industry, has resulted in port states taking enforcement measures to safeguard lives and protect their environment. This note provides an account of the emergence of port state control, a movement which has considerable significance for shipping worldwide and, in the process, highlights the features of the port state enforcement regime in the Asia-Pacific region as an example of the development that may have an impact on future Bank lending in the maritime sector. Heavy on the sustenance of the environment, the movement also has a flavor of the concern for human rights.

### LAW OF THE FLAG

Primary responsibility for ship safety and pollution prevention traditionally lies with the state in which the vessel is registered (the flag state), the shipowner and operator and its crew. The flag determines the national law which governs the ship and how and where an action can be enforced in relation to that ship. The flag state is expected to enforce applicable international rules and standards concerning, inter

alia, safety of ships and persons on board, and the prevention of pollution.

Classification societies survey vessels on behalf of the flag state to meet registration requirements. The enforcement regime is based on flag state jurisdiction. Customary international law, as a rule, does not provide a port state with jurisdiction over foreign vessels. Unfortunately not all flag states have been willing or able to implement the prescribed standards and safety codes. Confronted with mounting marine casualties (some with heavy loss of life and damaging pollution of coast and sea) and evidence of atrocious conditions that some seamen have been subjected to, port states have found it desirable to extend their jurisdictional regime to foreign-flagged vessels which operate within their internal waters. In doing so, they fully enforce their applicable laws and regulations. Since 1950, total losses of vessels have averaged 276 annually, and in the last ten years shipping casualties world wide have claimed more than 10,000 persons a year.

The regime of internal waters and its constituent elements is, however, undergoing a vigorous and dynamic transformation and, in the absence of a comprehensive treaty on the subject, a number of sensitive issues would appear to require consideration and clarification. For instance, the right of innocent passage through internal waters is asserted in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and the 1982 UN Convention on the Law of the Sea. But the right of a port state to deny a foreign vessel access to its ports is at the same time in the 1954 OILPOL and MARPOL 73/78

## **EMERGENCE OF PORT STATE CONTROL (PSC)**

Broadly defined, port state control is the regime by which a state extends its jurisdiction to include foreign vessels for the purpose of enforcing internationally accepted standards and safety codes. It is a relatively recent development having come into prominence with the signing of the Paris Memorandum of Understanding on Port State Control (Paris MOU) in 1982. The outcome of the Paris MOU was a regional co-operative mechanism for port state control in Europe.

One of the strongest arguments put forward for more effective control of vessels is based on concerns about environmental protection and the conditions of crews and ships. Concern for the latter has always been pervasive due mainly to the shortcoming in the registration of ships under Flags-of-Convenience where the general notion is that flag states have not always been willing or able to exercise the required level of control and enforcement in the design, construction, equipment and manning of vessels. This skepticism appears justified. Between 1986 and 1992, out of total losses of 1798 vessels, 367 were registered in Liberia, Panama, Cyprus, Bahamas, Malta and Vanuatu.

Coastal states' concern for the environmental impact of vessel operations, on the other hand, is relatively recent. The enforcement regime envisaged by the 1954 OILPOL Convention was based on flag state jurisdiction. But the rising number of tanker and other vessel accidents, particularly in the 1970s and early 1980s, gave rise to questions concerning the extent to which a state directly affected or threatened by a casualty which takes place outside its territorial waters can or should be allowed to take measures to

protect its coastline, harbors or amenities even when such measure might affect the interest of shipowners and other flag states.

Coastal states' concerns were shared by the International Maritime Organization (IMO). First raised for detailed consideration at the 1973 IMO Conference on Marine Pollution, when states having a large interest in the protection of their coastlines attempted to extend the powers of coastal or port states and to change the traditional power for legislating ship standards, the formulation of port state authority is now included in a number of marine conventions such as the 1966 Load Lines Convention; MARPOL 73/78; SOLAS 73/78; the 1976 ILO Convention No. 147; the 1978 Convention on Standards and Training, Certification and Watchkeeping for Seafarers; the Dumping Conventions; the 1969 Convention on Civil Liability and the 1986 United Nations Convention on Conditions for Registration of Ships. However, it should be noted that the implementation of these conventions did not mean an extension of the port states enforcement authority over violations on the high seas or in foreign coastal waters. The authority is limited to control of ships and their equipment (SOLAS 74/78, Load Lines, MARPOL 73/78), discharge at sea (OILPOL, MARPOL, dumping conventions), crew competence and working conditions (ILO No 147, 1978 STCW) and other requirements present in the ship as it enters a particular port. The rectification of these conditions is well within the jurisdiction of a port state since they are present while vessels are in its internal waters.

## **PARIS MEMORANDUM OF UNDERSTANDING ON PORT STATE CONTROL**

It soon became obvious that port state control procedures have to be uniformly applied in all ports to prevent the diversion of unsafe vessels to ports where there are no port state control measures or, if they are present, they are either minimal or not strictly enforced. It was also recognized that enforcement measures should be consistent and non-discriminatory in relation to nationality. The Paris MOU led to a cooperative regime on enforcement issues. The regime is managed by the maritime administrations of the member countries and is coordinated by a Secretariat originally funded and manned exclusively by civil servants appointed by the Netherlands without any interference from the other participating parties (see [Figure I](#) for reporting relationship between interested parties). The Paris MOU, by all accounts, is a success. More than 80 percent of ships calling at the ports of the region are inspected, making it increasingly difficult for substandard vessels to operate without being detected and forced to rectify serious deficiencies. In 1993, of about 40,000 vessels that were inspected, more than 10 percent were detained because of non-compliance in various degrees. Their owners were forced to rectify the identified shortcomings in order for their ships to be released.

## **TOKYO MOU**

The success of the Paris MOU has led to a similar arrangement for the Asia-Pacific region. In December 1993 sixteen maritime authorities of the Asia-Pacific region met in Tokyo to sign the Asia-Pacific Memorandum of Understanding on Port State Control (Tokyo MOU). They agreed that the maritime authority of each of the signatories would (a) establish and maintain an effective system of PSC; (b) determine an annual percentage of individual foreign merchant ships to be inspected; and (c) consult,

cooperate and exchange information on vessels with other authorities. The Tokyo MOU has been available for acceptance since April 1994 by any port state in the region and would take effect for each maritime authority on the date of its acceptance.

The Asia-Pacific PSC regime is patterned after the Paris MOU regime. In essence, it is a Committee composed of a representative of each of the authorities that have accepted the Memorandum. The Committee will monitor the overall inspection activity and its effectiveness throughout the region. An observer from each of the International Maritime Organization, the International Labor Organization, the Economic and Social Commission for Asia and the Pacific and any other organization or authority which the Committee may deem appropriate will be invited to participate without vote in the work of the Committee. The Committee will:

- Carry out the specific tasks assigned to it under the Memorandum;
- Promote by all means necessary, including training and seminars, the harmonization of procedures and practices relating to inspection, rectification and detention;
- Develop and review guidelines for carrying out inspections under the Memorandum;
- Develop and review procedures for the exchange of information; and
- Keep under review other matters relating to the operation and the effectiveness of the Memorandum.

Located in Tokyo, a permanent Secretariat acting under the guidance of the Committee and within the limits of the resources made available to it, will:

- Prepare meetings, circulate papers and provide such assistance as may be required to enable the Committee to carry out its functions;
- Facilitate the exchange of information; and
- Carry out such other work as may be necessary to ensure the effective operation of the Memorandum.

The following are the relevant instruments on which the Asia-Pacific regional PSC is based:

- the International convention on Load Lines, 1966;
- the International Convention for the Safety of Life at Sea, 1974;
- the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974;
- the International Conventional for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;
- the International Convention on Standards for Training, Certification and Watchkeeping for Seafarers, 1978;
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and
- the Merchant Shipping (Minimum Standards) Convention, 1976, (ILO Convention No. 147).

## **IMPLEMENTATION OF INSPECTION**

The preliminary target for inspection is set at 50 percent of the foreign merchant ships operating in the region by the year 2000. Inspections will consist of a visit on board a ship in order to check the certificates and documents relevant for the purpose of the Memorandum. A more detailed inspection will be carried out in the absence of valid certificates or documents, or if there are clear grounds for believing the condition of a ship or its equipment or crew does not substantially meet the requirements of the relevant instrument.

## **PROVISION OF INFORMATION**

Each authority will report on its inspections under the Memorandum and their results in accordance with the procedures specified in the Memorandum. Arrangements will be made for the exchange of inspection information with other regional organizations working under a similar memorandum of understanding. The Authorities will, upon the request of another authority, endeavor to secure evidence relating to suspected violations. In case of suspected violations involving the discharge of harmful substances, an authority will upon the request of another authority, visit in port the ship suspected of such a violation in order to obtain information and, where appropriate, to take a sample of any alleged pollutant.

The Canadian Coast Guard will establish and maintain a data base consisting of particulars transmitted to each authority through a computerized network on a daily basis. Each authority will be able to obtain information from the data base.

## **FUNDING**

Each authority will share financial responsibilities for the operation of the Secretariat. The share has been agreed; however, many developing countries have problems (financial and institutional) in providing the necessary training and equipment. Financial assistance from multilateral and bilateral agencies is expected to be required.

## **IS THERE A ROLE FOR THE BANK?**

The development of a regime of port state control in developing countries supports and complements the Bank's objective of providing assistance for developments that are environmentally sound and sustainable. As the movement gathers momentum and more developing countries decide to exercise port state control over vessels that call at their ports, requests for Bank assistance (both financial and advisory) can be expected. The first preparatory meeting for a Caribbean agreement was held in Barbados in December 1993 and regional agreements are also underway for Eastern and Southern Mediterranean and West Africa. The Bank should also consider encouraging those regions and countries that have no plans for the moment to consider extending their jurisdictional authority to include enforcement of compliance with internationally accepted standards by foreign vessels as a complement to the provision of ship waste reception and treatment facilities in furtherance of the objective of preventing degradation of the marine environment.

***TO LEARN MORE***

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