PORT STATE CONTROL: A TOOL FOR SUSTAINABLE MANAGEMENT OF MARITIME SAFETY AND MARINE ENVIRONMENT

by

Mfon Ekong Usoro

Secretary General, Abuja MoU on Port State Control

at

Maritime Women: Global Leadership International Conference

World Maritime University, Malmo, Sweden

31st – 1st April, 2014
1. Introduction

The timing and theme of this Conference is most appropriate coming on the heels of International Women’s Day, celebrated just last month. A day we celebrate the extraordinary journey of women and at the same time individually and collectively commit to keeping the Gender Agenda on the front burner. As I began conceptualizing the contents of this paper, one question agitated my mind i.e. how have we fared in achieving MDG 3 (promote gender equality and empower women) with respect to participation of women in maritime sector? Put differently, where are we on indicator 11 of MDG 3 i.e. share of women in wage employment in the non-agricultural sector?

This paper attempts to highlight the not so often talked about areas of shipping where women could participate in, and excel as we have done in port/maritime administration, maritime law, marine insurance, shipping operations as owners or managers. It seeks to broaden the horizon for younger women in search of a satisfying and challenging career in shipping. Sustainable management of maritime safety and marine environment, very broadly, is aimed at the preservation of the marine environment, sustainable exploitation of marine resources, efficient operation and management of ships and installations at sea in a manner that prevents pollution, offers safety security to ship board officers/crew, the ship and cargo. The ever increasing volume of global trade and overwhelming dependence on the sea to facilitate international commerce, dependence on marine resources for food security, economic development, scientific research and leisure, the improved understanding of the dynamics of the ecosystem, means we all individually and collectively have an enduring interest and duty to invest in a sustainable management of maritime safety and the marine environment. This presentation identifies port State control as an effective tool in enforcing compliance with international standards on maritime safety and marine environment management. Consequently, the paper will not extend to a general discuss on marine pollution from oil and waste dumped by ships, offshore installations and pipelines; or from land based polluted run-off such as discharge of sewage, agricultural and toxic industrial chemicals that percolates into, pollute underground water which eventually finds its way into rivers and estuaries and finally into the seas. The remit of this paper is limited to appreciating how we could, through port State control inspection preserve our marine environment.

Marine environment as used in this paper covers the open seas, inland waters, territorial waters and exclusive economic zones, estuaries, etc. Marine environment is one of earth’s most precious and delicate resources and there is a growing awareness amongst nations of the world that drastic and sustainable measures need to be adopted and implemented to protect it from further deterioration. It is generally accepted that about 90% of global trade are seaborne. Economic development and indeed the very existence
and quality of human life depends on the viability of the oceans, seas and the entire marine ecosystem. Several international and regional conventions have been adopted by nations for the purpose of setting new standards and regulations that will not only protect but also sustain the aquatic environment. The sea does not recognize national boundaries as such any activity with a deleterious effect on the sea by a party can have negative impact well beyond the waters of the responsible littoral state or party. This recognition of the sea as a common resource underscores the necessity of and justification for global, regional and national measures to sustainably manage and conserve marine environment and the resources therein.

UNCLOS (United Nations Convention on Laws of the Sea 1982) offers a simple and comprehensive definition of marine pollution which is adopted as the operative definition for this presentation. Pollution of the marine environment under UNCLOS:

“means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries which results or is likely to result in such deleterious effects such as harm to living resources and marine life, hazard to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of the sea and reduction of amenities.”

The United Nations through the International Maritime Organization (IMO) have developed and continue to develop global regulatory framework for safety of ships, safety of life at sea, prevention, reduction and control of pollution of the marine environment amongst others. There are several legal regimes (domestic, regional and international) aimed at prevention, protection, control and reduction of activities that pollutes the marine environment. Prominent in this respect are the UNCLOS 1982, International Maritime Organization (IMO) conventions including MARPOL 73/78, SOLAS 1974 and Protocols, Load Lines 1966 and Protocol, Tonnage 1969, STCW 78 and Protocol, AFS 2001 and International Labour Organization’s (ILO) MLC 2006. Each of the aforementioned conventions have control provisions for port State inspection of ships as elaborated later in the paper. Reference will be made to several such international conventions and codes in the course of this presentation.

---

1 United Nations Convention on Laws of the Seas
2 International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and as further amended by the Protocol of 1997 (MARPOL 73/78);
3 International Convention for the Safety of Life at Sea, 1974 (SOLAS); (SOLAS PROT 78); (SOLAS PROT 88);
4 International Convention on Load Lines, 1966 (LOAD LINES 66); (LL PROT 88);
5 International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 69);
6 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78);(STCW 95)
7 International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS2001);
8 Maritime Labour Convention 2006
2. Maritime Safety

The concept of maritime safety is comprehensively elaborated in SOLAS. The SOLAS Convention and its Protocols are generally regarded as the most important of all international treaties concerning the safety of merchant ships. Broadly speaking, maritime safety refers to the technical integrity of ships, crafts or installations at sea whether used for navigation or extractive purposes, the operation of ships, observance of global standards regarding qualification and welfare of the human personnel onboard, and measures to prevent pollution of the marine environment. We can identify 3 key focus of maritime safety: 1) minimum standards for construction and structural condition of ships, type and quality of equipment installed therein; 2) minimum standards for operations and management of ships; 3) minimum manning requirements, training and certification of crew and working/living condition aboard ships.

SOLAS and the ISM Code provide detailed measures for sustainable maritime safety and covers inter alia: stability requirements for both passenger and cargo ships, emergency systems, fire protection, fire detection and fire extinction, life-saving equipment and location of same in a ship, radio-communication equipment, navigational safety services to be provided by coastal States, mandatory safety management systems for ships, surveys and inspection of ships to enhance maritime safety.

3. Sustainable Management of Maritime Safety and Marine Environment through Port State Control

Sustainable management of maritime safety and marine environment flows from the generally accepted meaning development is sustainable if it “meets the needs of the present without compromising the ability of future generations to meet their own needs.” The need to keep the marine environment and ships safe and secure for global commerce imposes immense responsibilities on flag, coastal and port States with respect to the sustainable management of marine environment and maritime safety.

The concept of flag State, port State and coastal State have sometimes converged and consequently present difficulties in determining the safety and marine environment protection obligations attached to each of

---

9 International Safety Management Code. Resolution A.741(18) as amended by MSC.104(73), MSC.179(79), MSC.195(80) and MSC.273(85)

them. To be sure, while the duties of the three i.e. flag, port and coastal States do converge; their functions are distinct with different specific obligations under relevant IMO instruments. It is also the case in several countries that flag and port State duties are performed by a single institution – the maritime safety administration. Brief highlights of the obligations of coastal, flag and port States are presented below.

3.1 Coastal State

A country is a coastal State by virtue of geography. A coastal State abuts a sea or ocean and its obligation arises from the fact that it must respect the customary international law granting right of safe and innocent passage to ships across its territorial waters mindful that whatever happens to the sea in its territory is likely to impact on neighbouring countries. It therefore has a duty in the context of maritime safety, marine pollution and security under UNCLOS, SOLAS and MARPOL to ensure that shipping activities do not cause pollution of the waters; to provide navigational signals and warning; provide hydrographic services; provide and make necessary arrangements for search and rescue services; provide life-saving signals; detect and provide information on incidents involving dangerous goods; provide reception facilities for discharge of waste from ships and report its efforts and incidents of pollution to the IMO.

3.2 Flag State Administration

The concept of flag State originates from the practice of hoisting the flag of the country where a ship is registered on the ship as a mark of identification of the ship’s port of registry. This practice became necessary when ships began to venture beyond their immediate waters into the high seas. The 15th century doctrine of Freedom of the Seas protected the rights of all States to use their vessels to explore and harvest the oceans’ resources. Over time, nations negotiated on how best to administer the use of the seas for the good of humanity and global commerce. International customary laws on use of the seas together with the Convention on High Seas of 1958 became codified in the United Nations Convention for Laws of the Seas 1982 (UNCLOS). The starting point therefore in discussing the meaning and obligations of a flag State is by reference to UNCLOS. Art 90, 91 and 94 of UNCLOS guarantees the right of navigation in the high seas to every country who wishes to do so and the right of countries to grant its nationality and right to fly a country’s flag to a ship by registration of that ship in its territory. The institution for such registration is usually called flag administration or ship registry.
3.3 Port State

A country is a port State where it provides ports or facilities for ship-shore interface (includes offshore facilities) which services are open to foreign ships to anchor, or berth for any purpose ranging from loading or discharge of goods to repair or transhipment. A port State will typically have cargo handling equipment for transfer of cargo from shore to ship or ship to ship; and in some instances off-shore installations.

Port State has a major role in promoting maritime safety and prevention of marine pollution. The rights and obligations of port State are derived from several mandatory UNCLOS,IMO and ILO instruments, and national laws often referred to as Relevant Instruments under port State regional Memoranda. Art 219 of UNCLOS empowers States to take administrative measures against substandard ships in their harbours and to enforce applicable conventions on foreign vessels visiting their harbours.

Specific obligations of a port State include inspection of foreign ships calling at their ports, exercising control measures such as detection of deficiencies, detention, banning, directing that a ship not leave the port until deficiency (ies) detected are rectified etc. Port States through the IMO have been organized into regional blocks who through their respective regional Port State Memorandum have developed harmonized port State control inspection procedures aimed at the prevention, reduction and eventual elimination of substandard shipping, prevention of marine pollution and improvement of the living and working conditions of seafarers aboard ships.

4. Regional Port State Control Regimes and Sustainable Management

Port state control is the inspection of foreign ships visiting the port of another country. The purpose of the inspection is to determine the compliance level of the ships with relevant international conventions and codes governing maritime safety, marine pollution, and the living and working conditions of seafarers on board ships with the ultimate goal of eliminating substandard ships from our waters, reduction, prevention and control of marine pollution. Several IMO Conventions and other maritime related conventions and codes contain provisions for ships to be inspected when they visit foreign ports. These inspections are very effective and the desired goal better achieved where inspections are organized on a regional level with each port State applying the harmonized inspection procedures. A ship sailing to a port of a particular country will generally visit other ports in the region before proceeding on a return voyage and a coordinated inspection process in the region’s ports is an advantage. It is important to note that the flag State has the

---

11 ABUJA MoU Port State Control Manual 2012
12 [http://www.imo.org/OurWork/Safety/Implementation/Pages/PortStateControl.aspx](http://www.imo.org/OurWork/Safety/Implementation/Pages/PortStateControl.aspx) accessed 10 March 2014
primary responsibility for safety standard of ships flying its flag. Port State control provides a safety net to stop substandard ships operating in the region.

The IMO has developed a series of international regulatory framework that promote compliance with global standards on maritime safety and port State control procedures and a port State derives its legal powers from the control provisions contained in the international conventions to which a country is a party and also from its domestic laws. The conventions mandate a port State through qualified port State control officers to board ships to examine the certificates carried by ships for validity and compliance including crew certificates; detain the ship where certificates are expired or not carried; inspect living and working conditions on ships; carry out periodic survey of ship management systems etc. Detailed provisions on procedure for inspection, detention and communication of detention to flags and recognized organizations are also provided. Sub-standard ships are identified during inspections and made to take corrective action before cleared to proceed on the voyage thereby reducing the risk of damage to the marine environment, life and property.

4.1 Subs-Standard Ships

The target of port State control are substandard ships use of substandard ships which use is not a recent practice. Substandard ships have long been identified as the leading cause of marine accidents. The world’s resolve to tackle the menace was catapulted by a spate of high profile marine casualties. Substandard ship has either one or more of the characteristics listed below:

- defective in its design and construction;
- neglects its maintenance and repairs;
- prolongs its working life past the age of scrapping;
- manned by poorly trained personnel; and/or
- maintains unacceptable safety standards.

In general, a “substandard ship” can be regarded as “a ship that, through its physical condition, its operation or the activities of its crew fails to meet basic standards of seaworthiness and thereby poses a threat to life and/or the environment.” Thus, “sub-standard” quality speaks to the structure/technical and physical

---

13 “The Cost to Users of Substandard Shipping” prepared for the OECD Maritime Transport Committee by SSY Consultancy & Research Limited, Page 7
14 “The Cost to Users of Substandard Shipping” prepared for the OECD Maritime Transport Committee by SSY Consultancy & Research Limited Page 7
condition, qualification and skill of the crew and operation of the ship including its shore-based management. Substandard shipping pose great and significant risks to human life, marine environment and cargo. The enormous financial and asset related risks are often times limited to the ship owner’s varying extents of liability for accidents insured. It is believed that a primary driver for these delinquencies are financial and inadequate regulation and enforcement. A substandard ship undermines the IMO’s initiative of “Safer Seas and Cleaner Oceans”.

Table A and Table B presents in a summarized form, examples of highly publicised marine accidents worldwide and some of the identified causes of the disasters. Findings from the investigation of these major accidents triggered further global collaborative efforts necessary to enhance global maritime safety.

**Table A: impact of sub-standard shipping in high profile maritime accidents**

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Facts</th>
<th>Cause of Accident</th>
<th>Damage/Casualties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Torrey Canyon 1967</td>
<td>This oil tanker struck a reef and discharged up to 119,000 tonnes of oil into the sea due to navigational error just off the Coast of Cornwall, United Kingdom.</td>
<td>The lever was kept in wrong position. This caused the helmsman to lose control of the ship.</td>
<td>Oil spill massively polluted the South West Coast of the United Kingdom.</td>
</tr>
<tr>
<td>Amoco Cadiz 1978</td>
<td>Oil tanker was transporting 227,000 tonnes of crude oil. It suffered a failure to her steering mechanism and despite the efforts of the crew ran aground. The entire cargo spilled out as the vessel split into two just off the coast of Brittany, France.</td>
<td>Failure to the ship's steering system</td>
<td>360 km of shoreline from Brest to Saint Brieuc was polluted with oil.</td>
</tr>
</tbody>
</table>
| Herald of Free Enterprise 1987 | This roll on/roll off passenger ferry was flooded and capsized in the coast of Belgium. | • Defective design and construction of the ship.  
• Poor workplace communication between the ship operators and its shore-based managers. | 193 lives were lost. |

Exxon Valdez 1989

Oil tanker struck Bligh Reef in Prince William Sound, Alaska, spilling more than 11 million gallons of crude oil off the Alaskan coast of North America. The size of the spill and its remote location which was accessible only by helicopter and boat, made the government and industry efforts to help very difficult.

Drunken captain.

Massive oil spill. The incident posed threats to commercial fishing, migratory birds and other wildlife animals in the area.\textsuperscript{18}

Erika 1999

\textit{Erika} broke its back before sinking 75 kilometres (45 miles) in France. It released about 20,000 tonnes of heavy duty fuel oil into the seas in Biscay, French Coast. The fuel polluted the sea and surrounding coastline.\textsuperscript{19}

Maintenance Problems.

Tens of thousands of seabirds perished as a result of the oil spill. Some of the best beaches in France were deserted as oil residues polluted large sections of the coast. Fishing, a mainstay of the local economy, was halted.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|}
\hline
Vessel & Facts & Cause Of Accident & Damage/ Casualties \\
\hline
Probo Koala Tanker – 47980 grt. 2006 & The Probo Koala discharged more than 500 tons of toxic waste at the Port of Abidjan unto trucks for disposal at dumpsites within populated areas.\textsuperscript{20} & Unlawful, illegal and inappropriate discharge of toxic waste from the vessel. & 17 deaths. 30,000 people developed severe illnesses. Pollution damage to the environment. \\
\hline
\end{tabular}
\caption{Impact of sub-standard ships in Africa}
\end{table}

\textsuperscript{18} http://www2.epa.gov/emergency-response/exxon-valdez-spill-profile accessed 10 March 2014
\textsuperscript{19} http://www.asser.nl/default.aspx?site_id=7&level1=12218&level2=12255&level3=13057 accessed 10 March 2014
<table>
<thead>
<tr>
<th>Ship Name</th>
<th>Event</th>
<th>Cause</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>MV Al Salam Boccaccio 98, 11,799grt 2006</td>
<td>Fire detected while sailing from Duba Saudi Arabia to Safaga (Egypt). Master/crew battled fire with water for 4 hours without success. Large amount of the water accumulation on deck due to blocked scuppers. This caused ship to tilt excessively to its starboard side. The Ship master only sent a mayday message when the vessel was tilted to 25%, 3 minutes before it sank. The ship sank in the Red Sea, 57 miles from the coast.</td>
<td>Fire. Accumulation of large amount of water on deck due to blocked scuppers (blocked with cargo cars, trailers, containers).</td>
<td>321 deaths. 710 missing persons. contravention of SOLAS,ISM codes</td>
</tr>
<tr>
<td>MV Spice Islander – 836grt 2011</td>
<td>The vessel was dangerously overloaded with passengers and rice cargo. The vessel capsized after loss of its engine in Zanzibar, Tanzania. The vessel had capacity for 45 crew and 645 passengers but had at least 800 passengers on board.</td>
<td>Loss of engine power. Dangerous overload with passengers and rice cargo.</td>
<td>240 deaths. Contravention SOLAS, Load Line Conventions</td>
</tr>
<tr>
<td>MV Skagit (Passenger Ferry) – 308grt 2012</td>
<td>Ferry was sailing between the Tanzanian commercial capital of Dar es Salaam and Zanzibar, when it capsized and sank between the east African coast and the Zanzibar archipelago.</td>
<td>Overloaded with over 290 passengers.</td>
<td>About 60 deaths. Contravention SOLAS, Load Line Conventions</td>
</tr>
</tbody>
</table>

The spate of occurrence and enormous impact of these maritime accidents prompted the need to create and maintain a global safety regime to prevent marine accidents, reduce or eliminate identified risks. It became


apparent that these goals could not be achieved by individual States acting alone due to the nature of maritime transport, and the fact that States had very limited jurisdiction over foreign flagged vessels navigating through a State’s territorial seas. Consequently, the IMO was mandated to develop an international regulatory framework for marine safety and pollution management that would provide for these exigencies. The amendment of SOLAS 1974 by the 1978 Protocol was in response to a spate of tanker accidents in the years 1976 and 1977 and contained measures affecting tanker design and operation. Some of the amendments in the 1988 Protocols was prompted by the findings from the investigation of the Herald of Free Enterprise disaster. New provisions were created to improve monitoring of doors and cargo areas and to improve emergency lighting. This amendment also included details of how the stability of passenger ships in a damaged condition should be determined and the requirement for all cargo loading doors to be locked before a ship leaves the berth.

In order to foster international and regional collaboration in monitoring and enforcement of safety requirements, IMO adopted Resolution A.682 (17) of 1991 which promotes regional co-operation in the application of Port State control measures in all parts of the world. This resolution was adopted to enhance international standards to prevent and eliminate the operation of substandard ships, thus making a significant contribution to maritime safety and pollution prevention. The resolution urged governments to consider concluding regional agreements on the application of Port State Control measures in cooperation with the IMO and to provide information on any such regional agreements concluded and the action taken to implement their provisions. That saw the birth of regional Memoranda of Understandings on port State control save for Paris Memorandum which was already on existence since 1982. Nine regional and one national port State control regimes currently operate worldwide namely: Paris Memorandum of Understanding, 1982; Viña del Mar or Latin-America Agreement, 1992; Tokyo Memorandum of Understanding on PSC, 1993; Caribbean Memorandum of Understanding on PSC, 1996; Mediterranean Memorandum of Understanding on PSC, 1997; Indian Ocean Memorandum of Understanding on PSC, 1998; Memorandum of Understanding on PSC for West and Central Africa, 1999; Black Sea Memorandum of Understanding on PSC, 2000; Riyadh Memorandum of Understanding on PSC in the Gulf Region, 2004; United States Coast Guard (USCG).

24 http://www.imo.org/KnowledgeCentre/ReferencesAndArchives/HistoryofSOLAS/Documents/SOLAS%201974-%20-%20Brief%20History%20-%20List%20of%20amendments%20to%20date%20and%20how%20to%20find%20them.html#16 accessed 10 March 2014
25 Ibid
26 Resolution A.682 (17) Adopted on 6 November 1991 Agenda Item 10, Regional Co-operation in the Control of Ships and Discharges.
4.2 Control Provisions in Relevant International Instruments

A few control provisions in relevant international conventions are highlighted below.

A. **International Convention for the Safety of Life at Sea, 1974 (SOLAS); (SOLAS PROT 78); (SOLAS PROT 88)**

The relevant provisions for port State control can be found in Regulation 19 of Chapter I; Regulation 6.2 of Chapter IX; Regulation 4 of chapter XI-1 and Regulation 9 of chapter XI-2 of SOLAS, as amended by the SOLAS Protocol 1988.

**Regulation 19, Chapter 1 - Control**

(a) Every ship when in a port of another Contracting Government is subject to control by officers duly authorized 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.

(b) Such certificates, if valid, 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 or that the ship and its equipment are not in compliance with the provisions of regulation 11(a) and (b).

(c) In the circumstances given in paragraph (b) or where a certificate has expired or ceased to be valid, the officer carrying out the control shall take steps to ensure that the ship shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard without danger to the ship or persons on board.

(d) In the event of this control giving rise to an intervention of any kind, the officer carrying out the control shall forthwith inform, in writing, the Consul or, in his absence, the nearest diplomatic representative of the State whose flag the ship is entitled to fly of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of the certificates shall also be notified. The facts concerning the intervention shall be reported to the Organization.

(e) The port State authority concerned shall notify all relevant information about the ship to the authorities of the next port of call, in addition to parties mentioned in paragraph (d), if it is unable to take action as specified in paragraphs (c) and (d) or if the ship has been allowed to proceed to the next port of call.
(f) When exercising control under this regulation all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained or delayed it shall be entitled to compensation for any loss or damage suffered.

Regulation 6.2, Chapter IX,

Regulation 6 - Verification and control

1 The Administration, another Contracting Government at the request of the Administration or an organization recognized by the Administration shall periodically verify the proper functioning of the ship’s safety-management system.

2 A ship required to hold a certificate issued pursuant to the provisions of regulation 4.3 shall be subject to control in accordance with the provisions of regulation XI/4. For this purpose such certificate shall be treated as a certificate issued under regulation I/12 or I/13.

Regulation 9, Chapter XI-2 - Control and Compliance Measures

1 Control of ships in port

1.1 For the purpose of this chapter, every ship to which this chapter applies is subject to control when in a port of another Contracting Government by officers duly authorized by that Government, who may be the same as those carrying out the functions of regulation I/19. Such control shall be limited to verifying that there is on board a valid International Ship Security Certificate or a valid Interim International Ship Security Certificate issued under the provisions of part A of the ISPS Code (“Certificate”), which if valid shall be accepted, unless there are clear grounds for believing that the ship is not in compliance with the requirements of this chapter or part A of the ISPS Code.

1.2 When there are such clear grounds, or when no valid Certificate is produced when required, the officers duly authorized by the Contracting Government shall impose any one or more control measures in relation to that ship as provided in paragraph 1.3. Any such measures imposed must be proportionate, taking into account the guidance given in part B of the ISPS Code.

1.3 Such control measures are as follows: inspection of the ship, delaying the ship, detention of the ship, restriction of operations, including movement within the port, or expulsion of the ship from port. Such control measures may additionally or alternatively include other lesser administrative or corrective measures.
2. Ships intending to enter a port of another Contracting Government

2.1 For the purpose of this chapter, a Contracting Government may require that ships intending to enter its ports provide the following information to officers duly authorized by that Government to ensure compliance with this chapter prior to entry into port with the aim of avoiding the need to impose control measures or steps:

1. that the ship possesses a valid Certificate and the name of its issuing authority;
2. the security level at which the ship is currently operating;
3. the security level at which the ship operated in any previous port where it has conducted a ship/port interface within the timeframe specified in paragraph 2.3;
4. any special or additional security measures that were taken by the ship in any previous port where it has conducted a ship/port interface within the timeframe specified in paragraph 2.3;
5. that the appropriate ship security procedures were maintained during any ship-to-ship activity within the timeframe specified in paragraph 2.3; or
6. other practical security-related information (but not details of the ship security plan), taking into account the guidance given in part B of the ISPS Code.

If requested by the Contracting Government, the ship or the Company shall provide confirmation, acceptable to that Contracting Government, of the information required above.

2.2 Every ship to which this chapter applies intending to enter the port of another Contracting Government shall provide the information described in paragraph 2.1 on the request of the officers duly authorized by that Government. The master may decline to provide such information on the understanding that failure to do so may result in denial of entry into port.

2.3 The ship shall keep records of the information referred to in paragraph 2.1 for the last 10 calls at port facilities.

2.4 If, after receipt of the information described in paragraph 2.1, officers duly authorized by the Contracting Government of the port in which the ship intends to enter have clear grounds for believing that the ship is in non-compliance with the requirements of this chapter or part A of the ISPS Code, such officers shall attempt to establish communication with and between the ship and the Administration in order to rectify the noncompliance. If such communication does not result in rectification, or if such officers have clear grounds otherwise for believing that the ship is in non-compliance with the requirements of this chapter or part A of the ISPS Code, such officers may take steps in relation to that ship as
provided in paragraph 2.5. Any such steps taken must be proportionate, taking into account the guidance given in part B of the ISPS Code.

2.5 Such steps are as follows:

1. a requirement for the rectification of the non-compliance;
2. a requirement that the ship proceed to a location specified in the territorial sea or internal waters of that Contracting Government;
3. inspection of the ship, if the ship is in the territorial sea of the Contracting Government the port of which the ship intends to enter or
4. denial of entry into port.

Prior to initiating any such steps, the ship shall be informed by the Contracting Government of its intentions. Upon this information the master may withdraw the intention to enter that port. In such cases, this regulation shall not apply.

3. Additional provisions

3.1 In the event:

1. of the imposition of a control measure, other than a lesser administrative or corrective measure, referred to in paragraph 1.3; or
2. any of the steps referred to in paragraph 2.5 are taken, an officer duly authorized by the Contracting Government shall forthwith inform in writing the Administration specifying which control measures have been imposed or steps taken and the reasons thereof. The Contracting Government imposing the control measures or steps shall also notify the recognized security organization which issued the Certificate relating to the ship concerned and the Organization when any such control measures have been imposed or steps taken.

3.2 When entry into port is denied or the ship is expelled from port, the authorities of the port State should communicate the appropriate facts to the authorities of the State of the next appropriate ports of call, when known, and any other appropriate coastal States, taking into account guidelines to be developed by the Organization. Confidentiality and security of such notification shall be ensured.

3.3 Denial of entry into port, pursuant to paragraphs 2.4 and 2.5, or expulsion from port, pursuant to paragraphs 1.1 to 1.3, shall only be imposed where the officers duly authorized by the Contracting Government have clear grounds to believe that the ship poses an immediate threat to the security or safety of persons, or of ships or other property and there are no other appropriate means for removing that threat.
3.4 The control measures referred to in paragraph 1.3 and the steps referred to in paragraph 2.5 shall only be imposed, pursuant to this regulation, until the non-compliance giving rise to the control measures or steps has been corrected to the satisfaction of the Contracting Government, taking into account actions proposed by the ship or the Administration, if any.

3.5 When Contracting Governments exercise control under paragraph 1 or take steps under paragraph 2:
   1. all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained, or delayed, it shall be entitled to compensation for any loss or damage suffered; and
   2. necessary access to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes.

B. International Convention on Load Lines, 1966 (LOAD LINES 66); (LL PROT 88)

   Article 21 – Control

(1) Ships holding a certificate issued under Article 16 or Article 17 are subject, when in the ports of other Contracting Governments, to control by officers duly authorized by such Governments. Contracting Governments shall ensure that such control is exercised as far as is reasonable and practicable with a view to verifying that there is on board a valid certificate under the present Convention. If there is a valid International Load Line Certificate on board the ship, such control shall be limited to the purpose of determining that:

   (a) the ship is not loaded beyond the limits allowed by the certificate;
   (b) the position of the load line of the ship corresponds with the certificate; and
   (c) the ship has not been so materially altered in respect of the matters set out in sub-paragraphs (a) and (b) of paragraph (9) of Article 19 that the ship is manifestly unfit to proceed to sea without danger to human life. If there is a valid International Load Line Exemption Certificate on board, such control shall be limited to the purpose of determining that any conditions stipulated in that certificate are complied with.

(2) If such control is exercised under sub-paragraph (c) of paragraph (1) of this Article, it shall only be exercised in so far as may be necessary to ensure that the ship shall not sail until it can proceed to sea without danger to the passengers or the crew.
(3) In the event of the control provided for in this Article giving rise to intervention of any kind, the officer carrying out the control shall immediately inform in writing the Consul or the diplomatic representative of the State whose flag the ship is flying of this decision and of all the circumstances in which intervention was deemed to be necessary.


Provisions relating to port State control in MARPOL can be found under Articles 5 and 6, Regulation 11 of Annex I; Regulation 16.9 of Annex II; Regulation 8 of Annex III; Regulation 13 of Annex IV; Regulation 8 of Annex V and Regulation 10 of Annex VI.

**Article 5 - Certificates and special rules on inspection of ships**

(1) Subject to the provisions of paragraph (2) of the present article a certificate issued under the authority of a Party to the Convention in accordance with the provisions of the regulations shall be accepted by the other Parties and regarded for all purposes covered by the present Convention as having the same validity as a certificate issued by them.

(2) A ship required to hold a certificate in accordance with the provisions of the regulations is subject, while in the ports or offshore terminals under the jurisdiction of a Party, to inspection by officers duly authorized by that Party. Any such inspection shall be limited to verifying that there is on board a valid certificate, unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate. In that case, or if the ship does not carry a valid certificate, the Party carrying out the inspection shall take such steps as will ensure that the ship shall not sail until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment. That Party may, however, grant such a ship permission to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available.

(3) If a Party denies a foreign ship entry to the ports or offshore terminals under its jurisdiction or takes any action against such a ship for the reason that the ship does not comply with the provisions of the present Convention, the Party shall immediately inform the consul or diplomatic representative of the Party whose flag the ship is entitled to fly, or if this is not possible, the Administration of the ship concerned. Before denying entry or taking such action the Party may request consultation with the Administration.
of the ship concerned. Information shall also be given to the Administration when a ship does not carry a valid certificate in accordance with the provisions of the regulations.

(4) With respect to the ship of non-Parties to the Convention, Parties shall apply the requirements of the present Convention as may be necessary to ensure that no more favourable treatment is given to such ships.

**Article 6 - Detection of violations and enforcement of the Convention**

(1) Parties to the Convention shall co-operate in the detection of violations and the enforcement of the provisions of the present Convention, using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence.

(2) A ship to which the present Convention applies may, in any port or offshore terminal of a Party, be subject to inspection by officers appointed or authorized by that Party for the purpose of verifying whether the ship has discharged any harmful substances in violation of the provisions of the regulations. If an inspection indicates a violation of the Convention, a report shall be forwarded to the Administration for any appropriate action.

(3) Any Party shall furnish to the Administration evidence, if any, that the ship has discharged harmful substances or effluents containing such substances in violation of the regulations. If it is practicable to do so, the competent authority of the former Party shall notify the master of the ship of the alleged violation.

(4) Upon receiving such evidence, the Administration so informed shall investigate the matter, and may request the other Party to furnish further or better evidence of the alleged contravention. If the Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken in accordance with its law as soon as possible. The Administration shall promptly inform the Party which has reported the alleged violation, as well as the Organization, of the action taken.

(5) A Party may also inspect a ship to which the present Convention applies when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party together with sufficient evidence that the ship has discharged harmful substances or effluents containing such substances in any place. The report of
such investigation shall be sent to the Party requesting it and to the Administration so that the appropriate action may be taken under the present Convention.

**Regulation 11 of Annex I - Exceptions**

Regulations 9 and 10 of this Annex shall not apply to:

(a) the discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of a ship or saving life at sea; or

(b) the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:

   (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and

   (ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or

(c) the discharge into the sea of substances containing oil, approved by the Administration, when being used for the purpose of combating specific pollution incidents in order to minimize the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.

**Regulation 16.9, Annex 6, Revised Annex II of MARPOL 73/78**

Regulation 16.9 - Port State control on operational requirements

9.1 A ship when in a port of another Party is subject to inspection by officers duly authorized by such Party concerning operational requirements under this Annex, where there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by Noxious Liquid Substances.

9.2 In the circumstances given in paragraph 9.1 of this regulation, the Party shall take such steps as will ensure that the ship shall not sail until the situation has been brought to order in accordance with the requirements of this Annex.

9.3 Procedures relating to the port State control prescribed in article 5 of the present Convention shall apply to this regulation.
9.4 Nothing in this regulation shall be construed to limit the rights and obligations of a Party carrying out control over operational requirements specifically provided for in the present Convention.

**Regulation 8 of Annex III**

Regulation 8 - Port State control on operational requirements

1. A ship when in a port of another Party is subject to inspection by officers duly authorized by such Party concerning operational requirements under this Annex, where there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by harmful substances.

2. In the circumstances given in paragraph (1) of this regulation, the Party shall take such steps as will ensure that the ship shall not sail until the situation has been brought to order in accordance with the requirements of this Annex.

3. Procedures relating to the port State control prescribed in article 5 of the present Convention shall apply to this regulation.

4. Nothing in this regulation shall be construed to limit the rights and obligations of a Party carrying out control over operational requirements specifically provided for in the present Convention.

**Regulation 13, Annex IV, Resolution MEPC.143(54), (Addition of Regulation 13 to Annex IV of MARPOL 73/78)**

Chapter 5 – Port State Control

Regulation 13 – Port State control on operational requirements

1. A ship when in a port or an offshore terminal of another Party is subject to inspection by officers duly authorized by such Party concerning operational requirements under this Annex, where there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage.

2. In the circumstances given in paragraph (1) of this regulation, the Party shall take such steps as will ensure that the ship shall not sail until the situation has been brought to order in accordance with the requirements of this Annex.

3. Procedures relating to the port State control prescribed in article 5 of the present Convention shall apply to this regulation.
4. Nothing in this regulation shall be construed to limit the rights and obligations of a Party carrying out control over operational requirements specifically provided for in the present Convention.

**Regulation 8 of Annex V**

Regulation 8 - Port State control on operational requirements

(1) A ship when in a port of another Party is subject to inspection by officers duly authorized by such Party concerning operational requirements under this Annex, where there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by garbage.

(2) In the circumstances given in paragraph (1) of this regulation, the Party shall take such steps as will ensure that the ship shall not sail until the situation has been brought to order in accordance with the requirements of this Annex.

(3) Procedures relating to the port State control prescribed in article 5 of the present Convention shall apply to this regulation.

(4) Nothing in this regulation shall be construed to limit the rights and obligations of a Party carrying out control over operational requirements specifically provided for in the present Convention.

**Regulation 10, Annex VI**

Regulation 10 - Port State control on operational requirements

(1) A ship, when in a port or an offshore terminal under the jurisdiction of another Party to the Protocol of 1997, is subject to inspection by officers duly authorized by such Party concerning operational requirements under this Annex, where there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of air pollution from ships.

(2) In the circumstances given in paragraph (1) of this regulation, the Party shall take such steps as will ensure that the ship shall not sail until the situation has been brought to order in accordance with the requirements of this Annex.

(3) Procedures relating to the port State control prescribed in article 5 of the present Convention shall apply to this regulation.
(4) Nothing in this regulation shall be construed to limit the rights and obligations of a Party carrying out control over operational requirements specifically provided for in the present Convention.

D. **International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78);(STCW 95)**

**Article X - Control**

(1) Ships, except those excluded by Article III, are subject, while in the ports of a Party, to control by officers duly authorized by that Party to verify that all seafarers serving on board who are required to be certificated by the Convention are so certificated or hold an appropriate dispensation. Such certificates shall be accepted unless there are clear grounds for believing that a certificate has been fraudulently obtained or that the holder of a certificate is not the person to whom that certificate was originally issued.

(2) In the event that any deficiencies are found under paragraph (1) or under the procedures specified in Regulation I/4 - "Control Procedures", the officer carrying out the control shall forthwith inform, in writing, the master of the ship and the Consul or, in his absence, the nearest diplomatic representative or the maritime authority of the State whose flag the ship is entitled to fly, so that appropriate action may be taken. Such notification shall specify the details of the deficiencies found and the grounds on which the Party determines that these deficiencies pose a danger to persons, property or the environment.

(3) In exercising the control under paragraph (1) if, taking into account the size and type of the ship and the length and nature of the voyage, the deficiencies referred to in paragraph (3) of Regulation I/4 are not corrected and it is determined that this fact poses a danger to persons, property or the environment, the Party carrying out the control shall take steps to ensure that the ship will not sail unless and until these requirements are met to the extent that the danger has been removed. The facts concerning the action taken shall be reported promptly to the Secretary-General.

(4) When exercising control under this Article, all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is so detained or delayed it shall be entitled to compensation for any loss or damage resulting therefrom.
(5) This Article shall be applied as may be necessary to ensure that no more favourable treatment is given to ships entitled to fly the flag of a non-Party than is given to ships entitled to fly the flag of a Party.


**Article 12. - Inspection**

(1) A ship flying the flag of a State the Government of which is a Contracting Government shall be subject, when in the ports of other Contracting Governments, to inspection by officers duly authorized by such Governments. Such inspection shall be limited to the purpose of verifying:

(a) That the ship is provided with a valid International Tonnage Certificate (1969); and

(b) That the main characteristics of the ship correspond to the data given in the certificate.

(2) In no case shall the exercise of such inspection cause any delay to the ship.

(3) Should the inspection reveal that the main characteristics of the ship differ from those entered on the International Tonnage Certificate (1969) so as to lead to an increase in the gross tonnage or the net tonnage, the Government of the State whose flag the ship is flying shall be informed without delay.

F. **International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS2001);**

**Article 11 - Inspections of Ships and Detection of Violations**

(1) A ship to which this Convention applies may, in any port, shipyard, or offshore terminal of a Party, be inspected by officers authorized by that Party for the purpose of determining whether the ship is in compliance with this Convention. Unless there are clear grounds for believing that a ship is in violation of this Convention, any such inspection shall be limited to:

(a) verifying that, where required, there is onboard a valid International Anti - fouling System Certificate or a Declaration on Anti - fouling System; and/ or

(b) a brief sampling of the ship’s anti - fouling system that does not affect the integrity, structure, or operation of the anti - fouling system taking into account guideline
developed by the Organization. However, the time required to process the results of such sampling shall not be used as a basis for preventing the movement and departure of the ship.

(2) If there are clear grounds to believe that the ship is in violation of this Convention, a thorough inspection may be carried out taking into account guidelines developed by the Organization.

(3) If the ship is detected to be in violation of this Convention, the Party carrying out the inspection may take steps to warn, detain, dismiss, or exclude the ship from its ports. A Party taking such action against a ship for the reason that the ship does not comply with this Convention shall immediately inform the Administration of the ship concerned.

(4) Parties shall co-operate in the detection of violations and the enforcement of this Convention. A Party may also inspect a ship when it enters the ports, shipyards, or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party, together with sufficient evidence that a ship is operating or has operated in violation of this Convention. The report of such investigation shall be sent to the Party requesting it and to the competent authority of the Administration of the ship concerned so that the appropriate action may be taken under this Convention.

G. **Maritime Labour Convention, 2006**

*Article V (4)*

A ship to which this Convention applies may, in accordance with international law, be inspected by a Member other than the flag State, when the ship is in one of its ports, to determine whether the ship is in compliance with the requirements of this Convention

**Regulation 5.1.4 – Inspection and enforcement**

1. Each Member shall verify, through an effective and coordinated system of regular inspections, monitoring and other control measures, that ships that fly its flag comply with the requirements of this Convention as implemented in national laws and regulations.

2. Detailed requirements regarding the inspection and enforcement system referred to in paragraph 1 of this Regulation are set out in Part A of the Code.
Standard A5.1.4 – Inspection and enforcement

1. Each Member shall maintain a system of inspection of the conditions for seafarers on ships that fly its flag which shall include verification that the measures relating to working and living conditions as set out in the declaration of maritime labour compliance, where applicable, are being followed, and that the requirements of this Convention are met.

2. The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under paragraph 1 of this Standard. Where recognized organizations have been authorized to carry out inspections, the Member shall require that personnel carrying out the inspection are qualified to undertake these duties and shall provide them with the necessary legal authority to perform their duties.

3. Adequate provision shall be made to ensure that the inspectors have the training, competence, terms of reference, powers, status and independence necessary or desirable so as to enable them to carry out the verification and ensure the compliance referred to in paragraph 1 of this Standard.

4. Inspections shall take place at the intervals required by Standard A5.1.3, where applicable. The interval shall in no case exceed three years.

5. If a Member receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag does not conform to the requirements of this Convention or that there are serious deficiencies in the implementation of the measures set out in the declaration of maritime labour compliance, the Member shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

6. Adequate rules shall be provided and effectively enforced by each Member in order to guarantee that inspectors have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.

7. Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:

   (a) to board a ship that flies the Member’s flag;

   (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and

   (c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including
seafarers’ rights), or represent a significant danger to seafarers’ safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.

8. Any action taken pursuant to paragraph 7(c) of this Standard shall be subject to any right of appeal to a judicial or administrative authority.

9. Inspectors shall have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of this Convention that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.

10. Inspectors shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers’ working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner’s representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

11. Inspectors shall not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties. In particular, inspectors shall:

(a) be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect; and

(b) subject to appropriate sanctions or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.

12. Inspectors shall submit a report of each inspection to the competent authority. One copy of the report in English or in the working language of the ship shall be furnished to the master of the ship and another copy shall be posted on the ship’s notice board for the information of the seafarers and, upon request, sent to their representatives.

13. The competent authority of each Member shall maintain records of inspections of the conditions for seafarers on ships that fly its flag. It shall publish an annual report on inspection activities within a reasonable time, not exceeding six months, after the end of the year.

14. In the case of an investigation pursuant to a major incident, the report shall be submitted to the competent authority as soon as practicable, but not later than one month following the conclusion of the investigation.
15. When an inspection is conducted or when measures are taken under this Standard, all reasonable efforts shall be made to avoid a ship being unreasonably detained or delayed.

16. Compensation shall be payable in accordance with national laws and regulations for any loss or damage suffered as a result of the wrongful exercise of the inspectors’ powers. The burden of proof in each case shall be on the complainant.

17. Adequate penalties and other corrective measures for breaches of the requirements of this Convention (including seafarers’ rights) and for obstructing inspectors in the performance of their duties shall be provided for and effectively enforced by each Member.

Guideline B5.1.4 – Inspection and enforcement

1. The competent authority and any other service or authority wholly or partly concerned with the inspection of seafarers’ working and living conditions should have the resources necessary to fulfil their functions. In particular:

   (a) each Member should take the necessary measures so that duly qualified technical experts and specialists may be called upon, as needed, to assist in the work of inspectors; and

   (b) inspectors should be provided with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.

2. The competent authority should develop a compliance and enforcement policy to ensure consistency and otherwise guide inspection and enforcement activities related to this Convention. Copies of this policy should be provided to all inspectors and relevant law-enforcement officials and should be made available to the public and shipowners and seafarers.

3. The competent authority should establish simple procedures to enable it to receive information in confidence concerning possible breaches of the requirements of this Convention (including seafarers’ rights) presented by seafarers directly or by representatives of the seafarers, and permit inspectors to investigate such matters promptly, including:

   (a) enabling masters, seafarers or representatives of the seafarers to request an inspection when they consider it necessary; and

   (b) supplying technical information and advice to shipowners and seafarers and organizations concerned as to the most effective means of complying with the requirements of this Convention and of bringing about a continual improvement in seafarers’ on-board conditions.
4. Inspectors should be fully trained and sufficient in numbers to secure the efficient discharge of their duties with due regard to:

(a) the importance of the duties which the inspectors have to perform, in particular the number, nature and size of ships subject to inspection and the number and complexity of the legal provisions to be enforced;

(b) the resources placed at the disposal of the inspectors; and

(c) the practical conditions under which inspections must be carried out in order to be effective.

5. Subject to any conditions for recruitment to the public service which may be prescribed by national laws and regulations, inspectors should have qualifications and adequate training to perform their duties and where possible should have a maritime education or experience as a seafarer. They should have adequate knowledge of seafarers’ working and living conditions and of the English language.

6. Measures should be taken to provide inspectors with appropriate further training during their employment.

7. All inspectors should have a clear understanding of the circumstances in which an inspection should be carried out, the scope of the inspection to be carried out in the various circumstances referred to and the general method of inspection.

8. Inspectors provided with proper credentials under the national law should at a minimum be empowered:

(a) to board ships freely and without previous notice; however, when commencing the ship inspection, inspectors should provide notification of their presence to the master or person in charge and, where appropriate, to the seafarers or their representatives;

(b) to question the master, seafarer or any other person, including the shipowner or the shipowner’s representative, on any matter concerning the application of the requirements under laws and regulations, in the presence of any witness that the person may have requested;

(c) to require the production of any books, log books, registers, certificates or other documents or information directly related to matters subject to inspection, in order to verify compliance with the national laws and regulations implementing this Convention;
(d) to enforce the posting of notices required under the national laws and regulations implementing this Convention;

(e) to take or remove, for the purpose of analysis, samples of products, cargo, drinking water, provisions, materials and substances used or handled;

(f) following an inspection, to bring immediately to the attention of the shipowner, the operator of the ship or the master, deficiencies which may affect the health and safety of those on board ship;

(g) to alert the competent authority and, if applicable, the recognized organization to any deficiency or abuse not specifically covered by existing laws or regulations and submit proposals to them for the improvement of the laws or regulations; and

(h) to notify the competent authority of any occupational injuries or diseases affecting seafarers in such cases and in such manner as may be prescribed by laws and regulations.

9. When a sample referred to in paragraph 8(e) of this Guideline is being taken or removed, the shipowner or the shipowner’s representative, and where appropriate a seafarer, should be notified or should be present at the time the sample is taken or removed. The quantity of such a sample should be properly recorded by the inspector.

10. The annual report published by the competent authority of each Member, in respect of ships that fly its flag, should contain:

(a) a list of laws and regulations in force relevant to seafarers’ working and living conditions and any amendments which have come into effect during the year;

(b) details of the organization of the system of inspection;

(c) statistics of ships or other premises subject to inspection and of ships and other premises actually inspected;

(d) statistics on all seafarers subject to its national laws and regulations;

(e) statistics and information on violations of legislation, penalties imposed and cases of detention of ships; and

(f) statistics on reported occupational injuries and diseases affecting seafarers.
Regulation 5.2 – Port State responsibilities

Purpose: To enable each Member to implement its responsibilities under this Convention regarding international cooperation in the implementation and enforcement of the Convention standards on foreign ships

Regulation 5.2.1 – Inspections in port

1. Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be the subject of inspection in accordance with paragraph 4 of Article V for the purpose of reviewing compliance with the requirements of this Convention (including seafarers’ rights) relating to the working and living conditions of seafarers on the ship.

2. Each Member shall accept the maritime labour certificate and the declaration of maritime labour compliance required under Regulation 5.1.3 as prima facie evidence of compliance with the requirements of this Convention (including seafarers’ rights). Accordingly, the inspection in its ports shall, except in the circumstances specified in the Code, be limited to a review of the certificate and declaration.

3. Inspections in a port shall be carried out by authorized officers in accordance with the provisions of the Code and other applicable international arrangements governing port State control inspections in the Member. Any such inspection shall be limited to verifying that the matter inspected is in conformity with the relevant requirements set out in the Articles and Regulations of this Convention and in Part A only of the Code.

4. Inspections that may be carried out in accordance with this Regulation shall be based on an effective port State inspection and monitoring system to help ensure that the working and living conditions for seafarers on ships entering a port of the Member concerned meet the requirements of this Convention (including seafarers’ rights).

5. Information about the system referred to in paragraph 4 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member’s reports pursuant to article 22 of the Constitution.

Standard A5.2.1 – Inspections in port

1. Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the maritime labour certificate and the declaration of maritime labour compliance, finds that:
(a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or

(b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention; or

(c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or

(d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention; a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers’ rights).

2. Where a more detailed inspection is carried out on a foreign ship in the port of a Member by authorized officers in the circumstances set out in subparagraph (a), (b) or (c) of paragraph 1 of this Standard, it shall in principle cover the matters listed in Appendix A5-III.

3. In the case of a complaint under paragraph 1(d) of this Standard, the inspection shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph 1(b) of this Standard. For the purpose of paragraph 1(d) of this Standard, “complaint” means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

4. Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in accordance with paragraph 3 of this Standard, the authorized officer shall bring the deficiencies to the attention
of the appropriate seafarers’ and shipowners’ organizations in the Member in which the inspection is carried out, and may:

(a) notify a representative of the flag State;
(b) provide the competent authorities of the next port of call with the relevant information.

5. The Member in which the inspection is carried out shall have the right to transmit a copy of the officer’s report, which must be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties which might be interested in availing themselves of relevant recourse procedures.

6. Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Convention and:

(a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
(b) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers’ rights);

the authorized officer shall take steps to ensure that the ship shall not proceed to sea until any non-conformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer shall also inform forthwith the appropriate shipowners’ and seafarers’ organizations in the port State in which the inspection was carried out.

7. Each Member shall ensure that its authorized officers are given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship under paragraph 6 of this Standard.

8. When implementing their responsibilities under this Standard, each Member shall make all possible efforts to avoid a ship being unduly detained or delayed. If a ship is found to be unduly
detained or delayed, compensation shall be paid for any loss or damage suffered. The burden of proof in each case shall be on the complainant.

Guideline B5.2.1 – Inspections in port

1. The competent authority should develop an inspection policy for authorized officers carrying out inspections under Regulation 5.2.1. The objective of the policy should be to ensure consistency and to otherwise guide inspection and enforcement activities related to the requirements of this Convention (including seafarers’ rights). Copies of this policy should be provided to all authorized officers and should be available to the public and shipowners and seafarers.

2. When developing a policy relating to the circumstances warranting a detention of the ship under Standard A5.2.1, paragraph 6, of the competent authority should consider that, with respect to the breaches referred to in Standard A5.2.1, paragraph 6(b), the seriousness could be due to the nature of the deficiency concerned. This would be particularly relevant in the case of the violation of fundamental rights and principles or seafarers’ employment and social rights under Articles III and IV. For example, the employment of a person who is under age should be considered as a serious breach even if there is only one such person on board. In other cases, the number of different defects found during a particular inspection should be taken into account: for example, several instances of defects relating to accommodation or food and catering which do not threaten safety or health might be needed before they should be considered as constituting a serious breach.

3. Members should cooperate with each other to the maximum extent possible in the adoption of internationally agreed guidelines on inspection policies, especially those relating to the circumstances warranting the detention of a ship.

H. IMO Guidelines and Procedures for Port State Control Implementation

The IMO periodically publishes procedures and guidelines for Port State Control which regional Memoranda adopt and enforce. The published Guidelines and Procedures provide a framework for common standards and procedures channelled towards the promotion of globally harmonised and co-ordinated PSC activities. Procedural guide was first published pursuant to IMO Resolution A.787(19) in 1995, amended in 1999 by resolution A.882(21) to account for changes to various
other regulations and conventions. The most recent version is the Procedures for Port State Control, 2012 adopted pursuant to IMO Resolution A.1052(27) in November 2011.27

4.3 Efficient and Sustainable Port State Control Inspections

A combination of the specific obligations contained in the relevant the instruments elaborated in preceding paragraphs require that qualified port State control officers board foreign ships to carry our inspections which will generally cover: documentation, structural condition, water/weather tight condition, emergency systems, radio communication, cargo operations, fire safety, alarms, living and working condition, navigation equipment, life-saving appliances, dangerous goods, propulsion and auxiliary machinery, pollution prevention, ship management systems, ship security level and procedures.

The PSCO is expected to make a judgement after initial or more detailed inspection whether deficiencies found in a ship are sufficiently serious to merit detention. In addition to assessing whether the ship has relevant, valid documentation; has the number and skilled crew required in the minimum Safe Manning Document, the port State control Officer would further assess whether the ship and/or crew, throughout its scheduled voyage, is able to:

a) navigate safely;
b) safely handle, carry and monitor the condition of the cargo;
c) operate the engine-room safely;
d) maintain proper propulsion and steering;
e) fight fires effectively in any part of the ship if necessary;
f) abandon ship speedily and safely and effect rescue if necessary;
g) prevent pollution of the environment;
h) maintain adequate stability;
i) maintain adequate watertight integrity;
j) communicate in distress situations if necessary; and
k) provide safe and healthy conditions on board.

Given, all the actual tasks and procedure involved in inspection coupled with the competing obligation to cause minimum disruption to shipping activities i.e. obligation to reduce delays as much as possible, efficient port State control regimes have adopted “Risk Based Targeting Systems”. This approach focusses

27 IMO, Procedures For Port State Control 2011, (IMO London, 2012 Ed)
port State inspections on vessels that are most likely to be deficient while rewarding compliant vessels with fewer inspections and long intervals between inspections. With this system, Administrations can allocate its resources and assets only to vessels specifically targeted. The targeting matrix works with accumulated data on the performing trends of the flag administration, age of ship, type of ship, the vessel’s classification societies and recognized organization’s performance, the historical performance of the ship, company’s performance covering its entire fleet and any ISM deficiencies. Let us quickly explain at this point, that classification societies certify compliance with standards applicable to construction, equipment, maintenance and required surveys of ships. Where this functions are performed on behalf of flag administrations, they are referred to as recognized organizations and therefore are a critical party to sustainable maritime safety and eradication of sub-standard shipping. All these information including the result of field inspection usually recorded in PSI Forms are fed into automated information database. The database produces automatic shortlists of high-risk, medium and low risks ships which are consequently targeted for inspections. A functional and automated information system is a sine qua non for an efficient port State inspection regime. Abuja MoU has a central computerized information database hosted by a third party.

The Risk Based Targeting System using data generated from the information system, provide empirical data to support policies to ban consistently delinquent vessels from a region, reward compliant ships and shipping companies, minimize undue delay and ensure detention of only ships that deserve to be detained. The direct impact is a sustainable safety system and reduction in risk of maritime accidents and the consequential damage to marine environment.

**ABUJA MoU - Memorandum of Understanding on Port State Control for West and Central African Region**

Abuja MoU is one of 9 Regional MoUs worldwide established pursuant to IMO Resolution A.682(17) of 1991. It came into existence on 22nd October, 1999 in Abuja, Nigeria by a Memorandum of Understanding signed by Maritime Authorities of countries on the Atlantic Coast of Africa. The regime covers 22 countries from Mauritania to South Africa, 16 are signatories to the Memorandum and 14 are full members. Like other regional Memoranda, Abuja MoU operates under a Cooperative Agreement with the IMO. Its mission is to develop a system of harmonized port State control inspection procedure for all the countries in the region aimed at the reduction and eventual elimination of substandard shipping, prevention of marine pollution and improvement of the living and working conditions of seafarers aboard ships. We have developed a harmonized Port State Control Officers’ Manual for use in the region. Inspection reports and
analysis are published in our Annual Reports and on our website for the public. We invite you to visit and read more about port State activities in Abuja MoU region at our website at www.abujamou.org.

5. Career Opportunities for Maritime Women

A significant requirement for a sustainable port State control system is for Administrations to have a sufficient pool of adequately trained and experienced port State control officers. A PSC officer must possess the technical knowledge and skills for the professional application of technical procedures as they evolve. Administrations generally have challenges in recruiting and retention of qualified officers and this is particularly so in Africa. Requirements for becoming a PSCO include qualification as marine or mechanical engineer, naval architect, flag State surveyor, a master or chief engineer, certified ship officer (deck or engine) with appropriate seagoing experience, minimum of 1yr on the job training and sufficient theoretical and practical experience in maritime security. World class institutions like the WMU, IMLI and maritime academies offer suitable courses for acquisition of needed skills.

It is often said that shipping is male-dominated. It is even more so in the sub-field of flag surveyors and port State inspectors. This is a matter of concern for gender equality is considered to be a key instrument for driving sustainable economic growth and development. Whereas, women have made considerable inroads in port/maritime administration, maritime laws, shipping operations as owners or managers and marine insurance etc, same cannot be said of port State inspection officers or surveyors. The challenge for gender participation and visibility in these areas are two fold, first is getting young ladies to embrace these fields as career options and second is absorption and retention after qualification is obtained.

Table 3: Female Cadets in Maritime Academy of Nigeria

<table>
<thead>
<tr>
<th>Discipline</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nautical Science</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Marine Engineering</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Boat/Ship Building Technology</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 4: Abuja MoU Register of PSCOs

<table>
<thead>
<tr>
<th>Female</th>
<th>Male</th>
<th>Member States</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>131</td>
<td>15</td>
</tr>
</tbody>
</table>
The numbers speak for itself. At the Nigerian Maritime Expo just concluded last month, a female cadet in attendance lamented the bleak future faced by female graduate given the reluctance of shipping companies to employ female officers and difficulty in finding berthing space to complete their training. It is in this regard that the IMO’s programme on Integration of Women in the Maritime Sector\textsuperscript{28} with its focus on Training-Visibility-Recognition is most welcomed and encouraged. We request the IMO’s intervention in exposing and or securing shore and seagoing jobs for graduating female cadets in Africa. The same request is extended to all the shipowners and shipping companies in the audience.

6. CONCLUSION

A sustainable management of maritime safety and marine environment requires well-coordinated and harmonized port State control practices in every country within the region to promote compliance with global standards on safety. Whereas efficient regional PSC regime drive away substandard ships from trading in their region, records reduction in number of detentions as shipowners improve their compliance standards in return for freedom to trade in the region with the knowledge that there is no hiding place, the opposite happens in areas with weak PSC. The corollary of inefficient port State control system is the concentration of sub-standard ships in the region as shipowners perceive those areas as a safe haven. Ships capitalize on the absence of a harmonized and coordinated procedures and absence or weak enforcement.

Non-performing PSC regimes, characterized with less rigorous inspection mechanisms and proliferation of run-down vessels experience higher incidents of marine accidents resulting in damage to the marine environment, loss of life and property. Other fallouts are increase in insurance premiums, higher freight rates, inadequate qualified maritime manpower, difficulty in getting classed by classification societies, underdeveloped auxiliary shipping services such as repair yards etc.

With respect to involvement of women in wage earning non-agriculture employment – indicator 11 on achievement of MDG3 and in this instance, core shipping professions, statistic show that we have not performed very well. It is the duty of each of us in this audience to make concerted efforts with set targets and measurable outputs to produce more female marine engineers, more female nautical engineers, more female captains, more female flag surveyors and female port State inspection officers.

\textsuperscript{28}http://www.imo.org/KnowledgeCentre/Resources_for_Seaferers/WomenintheMaritimeSector/Pages/default.aspx
Global application of safety standards will ensure that sub-standard ships driven away from one region do not find a safe haven in another region. It is therefore hoped that every port and flag State will institute sustainable measures that will promote ‘safer seas and cleaner oceans’ for the present and future generations.

Thank you for your attention.

Mfon Ekong Usoro
REFERENCES

(6) Özçayır Z Oya (2001) The impact of Caspian oil and gas development on Turkey and Challenges Facing the Turkish straits. 1