

# PORT STATE CONTROL - THE BUCK STOPS HERE: DOES IT, SHOULD IT, CAN IT ?

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## Introduction

As Admiral Lord Beatty is reputed to have said at the Battle of Jutland in 1916 "There's something wrong with our b\*\*\*\* ships today".

There definitely is something wrong with some of our ships today and, although the problem is very different to that which Admiral Beatty was facing, the need to do something about it very much remains.

One of the major initiatives addressing the problem is port State control.

## Port State Control

Before we can decide where the buck does or doesn't stop we need to have a clear understanding of what port State control is and its contrast with flag State control.

There is a definition of port State control which I've been cautioned against using elsewhere as it is a little longwinded but, as it was written by an Admiralty Judge, Sir Anthony Clarke in an address to the British Maritime Law Association I feel quite privileged in passing it on to you.

**"The port state is the state in the territorial waters of which a vessel is at any particular time, provided that the vessel is destined to or has just left a port in that state. Port State control is the name given to the control and supervision of ships by that state. Its purpose is to ensure that sub-standard ships do not enter or leave its ports with consequent risk to safety of life, the preservation of property and the protection of the environment"**

To bring matters back to a national level, New Zealand is the port state for any visiting ship which is not registered in New Zealand.

## Flag State Control

We must also define the term flag State.

**“The flag State is the state whose flag the vessel flies.”**

In our local example for a New Zealand registered ship, New Zealand is the flag State. If that New Zealand ship goes to Australia then Australia is the port State and the New Zealand ship will be subject to Australian port State control.

### **International Maritime Organization (IMO)**

Historically it was the law of the flag State which regulated the safety of ships registered by it. There are many international Conventions which proceed expressly on this basis. Since the inception of its activities in 1959, the International Maritime Organization has been responsible for the introduction and adoption of some 30 Conventions and well over 700 codes and recommendations concerning maritime safety, prevention of pollution and related matters.

Most of these Conventions and Protocols imposed obligations upon flag States but, as time has passed, port States have gradually assumed greater powers and obligations.

The first occasion upon which the concept of the port State was enshrined in international law was under the International Convention for the Prevention of Pollution from Ships (1973), commonly referred to as MARPOL. This IMO Convention gave port States jurisdiction to inspect ships and report their defects to the flag state and to detain the vessel until repairs are carried out.

Port State control provisions were also included in Regulation 19 of the International Convention for the Safety of Life at Sea (1974) (SOLAS) and were strengthened in 1994 by the inclusion of operational requirements whereby the ability of the crew to carry out essential functions can be tested.

In 1991 the IMO adopted Resolution A.682(17) - “Regional Co-operation in the Control of Ships and Discharges”. This Resolution recognised the important contribution to maritime safety and pollution prevention made through regional co-operation and invited Governments to consider concluding regional agreements on the application of port State control measures in co-operation with IMO.

The powers of the port State have been further significantly reinforced in matters of pollution prevention and the detention of unseaworthy ships under the Law of the Sea Convention (UNCLOS III) which entered into force in November 1994.

New Zealand plans to become a party to MARPOL in 1996 and has signed UNCLOS III which will be ratified at a later date.

IMO has also recognised the problems faced by some flag States in ensuring that their ships are fully maintained to international standards, and are thus placing an increased burden on port States. As part of IMO's more active approach to the safety of ships and their crews, and the protection of the marine environment, the Sub-Committee on Flag State Implementation (FSI) was formed.

Important objectives of the FSI Sub-Committee are to assess the current level of implementation of IMO instruments by flag States, to assess problems being experienced by States in implementing instruments, to identify the reasons for such problems and to make proposals to assist parties to implement and comply with the provisions of the instruments.

### Paris MOU

Two notorious casualties in Europe in the 1960s and 70s brought home to coastal States how vulnerable they were to pollution damage from ships, over which they had no control, transiting their coasts and visiting their ports. These were the strandings of the *Torrey Canyon* and *Amoco Cadiz*.

These accidents provided the impetus for European coastal States to combine their resources. In 1982 a Memorandum of Understanding on port State control was signed in Paris between twelve European states; the Paris MOU. Presently sixteen states have signed adherence to this MOU.

Under this MOU member States undertake to inspect 25% of all foreign flag ships visiting their ports to ensure that the ships meet a uniform standard under various International Maritime Organization Conventions and do not pose a threat to the lives of those aboard or to the environment. This level of inspection and co-ordination between all member states ensures that more than 90% of ships visiting the region are regularly inspected.

As of 1994 member states of the Paris MOU had inspected almost 100,000 ships. More than 4500 of these ships had been detained. The reports of these inspections are stored on a database in St. Malo, to which all member states have access, and details of detentions are automatically copied to IMO.

### Worldwide developments

Even before IMO Resolution A.682(17) ten Latin American countries were investigating a regional port State control memorandum, and, in November 1993 the "Acuerdo de Vina del Mar" was signed in Cartagena, Colombia, by ten countries.

Also in line with this Resolution a preliminary meeting was held in Tokyo in 1992 to investigate the establishment of an Asia/Pacific port State control agreement. This resulted in the signing, in December 1993, of the Tokyo MOU, which entered into effect on 1 April 1994. New Zealand was one of the twelve signatories to this Memorandum which has set a target inspection rate of 50% of all ships visiting the region by the year 2000. New Zealand is already exceeding this target figure. Most other signatories are not.

Discussions on regional port State control are also taking place in the Caribbean.

## Port State control in New Zealand

To meet its obligations under the Tokyo MOU the Maritime Safety Authority (MSA) employs a total of 14 Master Mariners and Chief Engineers who act as Maritime Safety Inspectors at its eleven district offices covering every major port in New Zealand. One of their primary duties is to carry out port State control inspections on foreign flag vessels, and flag State control inspections on New Zealand commercial ships, charter launches and surveyed fishing vessels. Standards of inspection are the same for foreign and domestic vessels.

Foreign flag vessels are inspected at their first port of arrival in New Zealand if they have not been to this country previously, or if they have not been inspected here within the previous six months. All tankers, gas carriers and passenger ships are inspected upon every arrival. Vessels which have had deficiencies discovered at an overseas port and reported to us are inspected to ensure that those deficiencies have been, or are to be, rectified. Previous visiting ships which had deficiencies are also re-inspected.

The MSA has set, and is meeting, a target of inspecting 100% of eligible (as defined above) ships visiting New Zealand. Out of the average total of 2200 "ship visits" to New Zealand per annum about 1200 are inspected under port State control.

Under the Maritime Transport Act 1994, which came into effect on 1 February 1995, the Maritime Safety Inspectors, operating with the delegated authority of the Director of Maritime Safety, have significantly wider powers of detention than under the former Shipping and Seamen Act 1952. In passing, however, it should be noted that different port State authorities classify 'detentions' in various ways. This varies from the discovery of even a minor deficiency resulting in a (technical) detention to only classifying (and preventing) ships sailing where there is a genuine risk to life, limb and the environment. New Zealand's approach is very much in the latter category.

One reason for this is that the power also exists under the Maritime Transport Act 1994 to impose conditions upon the use or operation of any ship where the Director has clear grounds to believe that there is danger to life, property or the environment, that maritime documents are being misused, or that watchkeeping requirements are not being complied with.

These powers were used earlier this year to prevent a Greek registered tanker from loading a cargo of oil at New Plymouth, or any other New Zealand port, as her main engine had serious mechanical deficiencies. If the main engine had failed upon departure from New Plymouth with a full cargo of oil there could have been a major marine pollution incident. The ship proceeded empty to an overseas port for engine repairs. The local Harbourmaster stated that he now believed port State control worked!

In the first six months of 1995, a total of 573 foreign flag ships were inspected in New Zealand ports. 194 of these had deficiencies and eight were detained. The reasons for these detentions varied widely. They included: a Russian trawler loading frozen produce which was carrying 15 more people than her safety certificate allowed; the fast ferry *Albayzin* with its well publicised mechanical problems; a Panamanian reefer ship that couldn't go astern; a tallow tanker with holes in her lifeboats; a Russian trawler leaking oil into Dunedin harbour; a Chinese container ship with more than 30 deficiencies relating to the safety of the ship and crew; and a Norwegian tanker with a defective emergency fire pump.

Information on all inspections and detentions is fed into a common database accessible to all Asia/Pacific MOU participant countries, and is also copied to the European database. By these means New Zealand has access to information about the condition and history of many vessels due to arrive on our coast.

MSA Inspectors have noticed a significant and steady improvement in the standards of vessels visiting New Zealand. According to a number of ships' Masters with whom they come into contact, New Zealand appears to have gained an international reputation for taking a "hard line", both in terms of the quantity and thoroughness of our work in port State control.

In the continuing fight against sub-standard ships visiting our shores, the MSA has joined Australia and the members of the Paris MOU in publishing details of all ships which have either been detained or had conditions imposed upon their operation by the Maritime Safety Authority.

### **"The Buck Stops Here"**

Harry S. Truman 1884-1972

Unattributed motto on Truman's desk (Concise Oxford Dictionary of Quotations)

Interpreted to mean that the person uttering this saying will accept full responsibility.

Interestingly, the word "buck" comes shortly after "broken" immediately before "bucket" and shortly before "buggered" in the index of the Dictionary of Quotations; all very appropriate words in connection with port State control!

### **Does the buck stop with port State control ?**

It would certainly seem to with regard to the many "broken and buggered rustbuckets" disgracing the world's ports and oceans.

If it wasn't for the unwelcome visitations of port State control inspectors these ships would be free to roam the world endangering the lives of their unfortunate crews and threatening the environment. Certainly, all our inspectors, and indeed the authors, can recite lurid tales of visiting vessels in appalling condition. If they have crossed expansive and often wild oceans to reach us, who else can it stop with?

As a single illustration of why it **does not** stop with the Flag state, consider the attached copy from the NUMAST Telegraph relating to the United Kingdom. As the text indicates, a similar diagram could also be constructed by classification society.

### Should the buck stop with port State control ?

The answer to this is very clear. It should **not**.

In an ideal world, and in what was largely the maritime world as recently as the 1950/60s, ships were registered in traditional maritime countries that had effective maritime administrations, were owned **and operated** by reputable and well established shipping companies whose business was operating ships, and were manned and run by highly trained and professional crews who took a great pride in **their** ship and **their** company. Some vestigate of this remains in certain countries.

Increasingly however, and for a variety of reasons, ships are registered in a country whose registry can consist of a brass plate nailed to a coconut palm and/or a purely commercial 'agency'. Such administrations appear more interested in the revenue they can generate from foreign ship owners than in enforcing the IMO conventions they have often adopted, but which they have neither the resources, knowledge or apparent desire to enforce.

The owner of such a ship, who is usually invisible behind a plethora of holding companies and charter parties, will have contracted the management of his ship out to the cheapest ship management company available who, in turn, will have crewed the ship with the lowest common denominator of crew and qualifications.

Such ships are invariably "in class", often with one of the more reputable classification societies, and are insured. It is not unusual for a safety authority to detain a ship because of significant structural and safety deficiencies, when the ship has only very recently had its annual class survey. The New Zealand Maritime Safety Authority had occasion to detain just such a ship this year.

Another situation, which never fails to amaze, is that of shipping companies placing new tonnage under the control of masters and officers who have inadequate or even bogus qualifications. We need look no further than the entrance to Wellington harbour to see a graphic example of this bizarre situation.

The Taiwanese master of the *Pacific Charger*, holder of a Liberian Master's certificate issued on the strength of his Taiwanese certificate, wrecked his ship on her maiden voyage in a dismal display of bad seamanship and navigation. While he was waiting for the Liberian authorities to investigate this casualty, he was placed in command of another vessel in which he is believed to have lost his life when the vessel disappeared without trace. His Taiwanese Master's certificate had been issued largely upon his accumulated experience in coastal and deep-sea vessels rather than any formal structure of relevant examinations.

Before our paper becomes both too emotive and too depressing, let us be clear. The majority of ships are operated professionally in all respects, but, to say the least, "the buck" is a very significant number of unsafe ships, and/or ships operated by unsafe crews. They are a blight upon the whole international maritime community. Above all they are a problem which has arisen for reasons of 'commercial interest', a convenient and excessively polite phrase for the abdication of professional and frankly moral responsibility.

### **Can the buck stop with port State control ?**

We offer several answers. It can. It should not. Ideally not (for several reasons). Realistically it probably has to.

Port State control is, by definition, reactive rather than proactive and can be likened to the ambulance at the bottom of the cliff. It **can** fill a desperate need in trying to improve standards of safety at sea. This would be especially so if all port State authorities achieved anything like the targets being set under the various regional agreements previously discussed. What other options might be available?

Greater responsibility is being placed upon owners, operators and crews by the planned introduction of **The International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code)**. This IMO Code, which is in effect a quality management system, covers all aspects of the ships management and operation and will be mandatory for tankers, passenger ships, gas carriers, bulk carriers and mobile offshore units by 1998 and for all other ships by 2002.

New Zealand is already implementing a safety management system, based on the ISM Code, for small restricted limits vessels and fishing boats. Several New Zealand shipping and large fishing companies are also actively working towards implementing the ISM Code well in advance of its mandatory deadline.

P&I Clubs, alarmed at the increase in personal injury claims which are, for some Clubs, now exceeding cargo claims, have instituted training and education programs and appointed their own surveyors.

The International Ship Managers Association (ISMA) has produced a ship management code that embraces the ISM Code in its entirety.

Classification Societies are becoming proactive in offering ship management systems under the ISM Code. With increasing delegation by maritime administrations of survey functions, classification societies are positioning themselves to be 'one stop shops' in all matters of maritime safety, with administrations adopting a monitoring and auditing role.

The International Association of Classification Societies (IACS), whose eleven members cover 90% of the world's tonnage, are automatically suspending ships from class if surveys have not been carried out when due, and are not transferring ships to another classification society until outstanding repairs have been completed.

The more responsible registries are either rejecting or de-registering ships with an unsatisfactory safety record. They are also appointing their own flag state surveyors in other countries to ensure that the ships under their flag are being maintained and operated to international convention standards.

The question of the standards of qualifications has been addressed by a recent review of the **IMO International Convention on Standards of Training, Certification and Watchkeeping 1978 (STCW)**. Substantial amendments have been approved to this Convention, which had become very outdated and which many have come to view as having dragged the level of qualifications down to the lowest common denominator.

The changes are so far reaching that it could be said that the Convention has been rewritten. The legal changes adopted affect everyone in shipping: ship owners and ship managers, administrations, training establishments and masters and crews at sea, providing of course that they are adopted **and** adhered to.

The regulations will come into force on 1 February 1997 under the tacit adoption procedure which means they will automatically enter into force unless a significant number of governments declare other intentions.

### Summary

To use a couple of well worn nautical clichés, the tide may have turned and a sea change in matters of safety at sea may be taking place. The changes summarised above are more sweeping and significant in the operation of ships, than anything in the entire history of seafaring.

Yet, it could also well be said that we are only reverting to the way ships were run a mere generation ago, long before the concepts of quality management were the fashion.

Ideally, by the year 2002, all ships will be operating under a quality management system, will be manned by well qualified crews, and will be managed, insured, flagged, classed and operated by responsible companies, organisations and administrations. But we do not live in an ideal world. If we did there would be no need for lawyers!

The age of the world's merchant fleet continues to increase to an unacceptable level and the great majority of ships that either become detained, or cause marine casualties, are well past their 'use by' date. For all the good and caring shipowners that exist, there will always be those others that are the bane of a seafarer's life.

Ships will continue to be registered under flags of convenience that have neither the resources nor the interest in enforcing the IMO and ILO Conventions that they have casually ratified. Ships will continue to be classed by classification societies more concerned with the published numbers of ships on their books than with the standards they should be setting, verifying and maintaining. Ships will continue to be insured by companies that have never seen, let alone surveyed the ship.



Ships will continue to be operated by unscrupulous ship management companies.

And, for all these reasons, and more, ships will still be subjected to port State control as the place where the buck ultimately *does*, or perhaps on a final note of some resignation, *has to stop*.

NUMAST welcomes port state control clampdown, but says more must be done for Red Ensign

# UK HAS TO DETAIN 10pc OF FOREIGN FLAG SHIPS

**O**NE in 10 of the foreign flagged ships inspected in UK ports over the past year had so many defects that they had to be detained, according to Marine Safety Agency statistics.

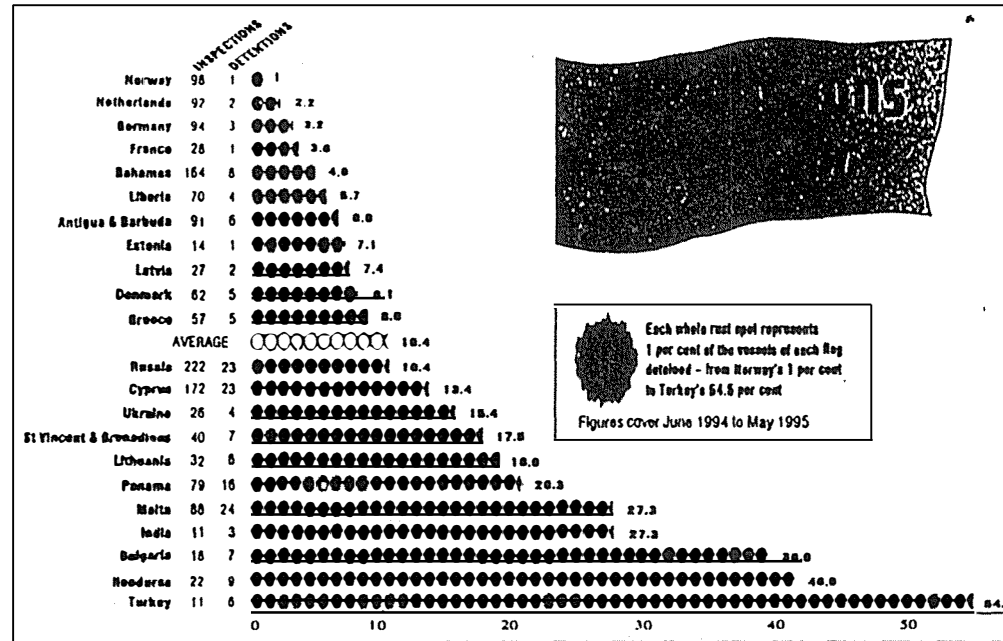
And the number of unseaworthy foreign registered ships failing UK port state control inspections has risen 13-fold over the past seven years, the report reveals.

NUMAST said the statistics showed the need for the government to produce effective shipping policies to reverse the drift to flags of convenience and to reverse the deepening seafarer skills shortage.

Announcing the results, shipping minister Viscount Goschen said port state control was becoming 'increasingly successful in detecting sub-standard ships.'

He added: 'Poor standards of maintenance and management, coupled in many cases with dubious standards of surveying and inadequate flag state control, lies at the root of many of these detentions.'

Just five registers accounted for half of the detained ships, with Malta topping the list with 24, followed by Russia and Cyprus with 23 each, Panama with 16 and Honduras with nine. The government warned that the worst flags and certain



ship types — and possibly the worst owners — will be targeted by inspectors.

After a year of publishing details of the inspections, the government said the detention rate had risen to 225 ships in 1994 — compared with 17 in 1987.

Analysis of the MSA report shows:

- one-third of ships had to be held for more than five days
- more than three-quarters were over 15 years old
- nearly one-third were bulk carriers
- one ship was still under detention after 219 days.

Assessed on the basis of the percentage of ships falling inspections, Turkey was the reg-

ister whose ships had the worst performance — 54.5 per cent being detained, compared with an average for all flags of 10.4 per cent.

The MSA also released details of classification society performance, although it warned that these should be treated with some caution because some ships were

detained for items which were not the societies' responsibility.

Classification societies with the highest detention rates included the Bulgarian Register (38.9 per cent of its ships inspected), the Romanian Register (35.7 per cent), Russian Register (18.6 per cent), American Bureau of Shipping (12.6 per cent) and Bureau Veritas (11.3 per cent).

NUMAST general secretary Brian Orrell said he welcomed the publication of the results and the government's decision to target suspect ships and suspect registers.

'Port state control is an effective weapon, but it is not enough and the government is guilty of window dressing in its approach to shipping safety. If it continues to operate without a proper shipping policy, the demands for such inspections will rise phenomenally.'

Without action to reverse the decline of the UK fleet and the loss of UK seafaring jobs, UK port state control would be 'dealing with the symptoms of slackness in international shipping rather than dealing with the causes,' Mr Orrell added.

● A total of 36 ships were detained in UK ports in May and June, including an Indian flagged bulk carrier described by inspectors as one of the worst ships they had detected.

GRAPHIC: ALAN SUNGSOBY