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The feasibility of establishing a port state control agreement in the Central American region

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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**THE FEASIBILITY OF ESTABLISHING A
PORT STATE CONTROL AGREEMENT IN
THE CENTRAL AMERICAN REGION**

By

MIGUEL ANGEL LARIOS

HONDURAS

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

in

MARITIME ADMINISTRATION AND

ENVIRONMENTAL PROTECTION

2000

DECLARATION

I certify that material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

.....

.....

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Miguel Angel Larios Gonzales

ABSTRACT

Title of Dissertation: The Feasibility of Establishing a Port State Control Agreement in the Central American Region.

Degree : MSc

The dissertation is a study of the pros and cons in implementing port State control in the Central American region, due to the fact that there is a big concern for the safety and protection of the marine environment and there is no control at all, and to study the possibility that if the condition are against in each Maritime Administration will be much better to joint to other MOU on PSC that already are in operation in the Caribbean and other in the South American region.

For the last decade the increment of the trade and goods in the area to and from USA, Europe and the Caribbean is going up and obviously the risk of oil spill, collision also increase.

Although the only way to keep control of the commercial vessels such as cargo and oil tankers that call Central American Port is establishing the right mechanism that work under the same principle and objectives.

To achieve this objective, the region will need two level of co-operation, such as **political** and **technical** Also is important to bear in mind that the region should learn from the PSC that already are in full operation around the world.

Additionally the IMO offer a full co-operation in order to support the Maritime Administration.

In conclusion, the studies of the establishment of the PSC in the area is the main focus and many recommendation are suggested due to many difficulties that CA Administration are going to face.

KEYWORDS: Central American Maritime Administration, IMO, port State control.

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LIST OF ABBREVIATIONS

CA	Central America
COCATRAM	Central American Commission of Maritime Transport
CORLEG 72 /81	Convention on the International Regulation Prevention Collision at Sea
CSs	Classification Societies
Circ	Circular
EU	European Union
GRT	Gross Registered Tonnage
H&M	Hull and Machinery
ILO	International Labor Organization
IMO	International Maritime Organization
ISM	International Safety Management Code
ISO	International Organization for Standardization
MARPOL 73/78	Marine Pollution Convention 73/78
OP	Open Registry
PSC	Port State Control
STCW /78	International Convention on Standards of Training and Watchkeeping for Seafarers
SOLAS/74	Safety of Life at Sea Convention
UNCLOS	United Nations Conventions on the Law of the Sea
USA	United States of America

CHAPTER 1

INTRODUCTION

Importance of Dissertation

The Central American region traditionally has not maintained close relationships with the sea, in spite of the fact that the region has several thousands of coast line. Today the maritime authorities are presented with a the big change to see how important is to be updated with marine matters. Safety and protection of the marine environment are the key phrases of the day. However, there are a great number of things which the agencies involved in these matters need to improve. For instance, the feasibility to establish a port State control (PSC) in the area and more important to have the official agency and the legal regime to enforce it.

The Central American region consists of the six following countries: Guatemala, Nicaragua, El Salvador, Costa Rica and Honduras and Belize. The purpose of establishing of ports State control regime in the region is to ensure safer ships and cleaner oceans by eliminating substandard shipping. Before we can examine the feasibility of establishing a port State control regime in Central America(CA), there is a need to examine some basic concepts. What is a port State control(PSC) ? How does it work?

There is not a very clear definition of PSC, but are might say that PSC is a system of harmonised inspection procedures designed to target sub standard ships with the main objective being their eventual elimination and also serve as the last safety net when flag State administrators, Classification Societies, insurers and shipowners have failed in performing their jobs". This work is done throughout a well established system of harmonised procedures and control and a very good chain of communication between flag State and port State authorities combining the legal international regime(IMO) as well as domestic legislation.

As is well known the Central American area is not part of any PSC agreement in spite of the fact that there is one in the South American region and another in the Caribbean region, The question is do the region need a port State control? The answer is yes but is important to make sure to avoid all mistakes and misunderstanding of those MOU that are in full operation, this referring to the targeting system and lack of co-operation between flag State administration and port State control

When speaking of the maritime field in the CA region, one could note the underdevelopment of the maritime administrations which can be attributed to the fact that in each country the sea is not in the top list of government priorities. This is due in part to a generally land-based culture in spite of the fact that a significant part of the population lives very close to the coastal area.

Adding to the situation is that in the CA region some countries legislation does not even exist to regulate maritime activity related to the safety and the protection to the marine environment.

However, there is one advantage that is available to nations with weak maritime traditions is that those nations can get the information and trainee from those nations with a well established maritime administration, also and through out the IMO but they are require to show political will and to change government strategy to at least pay more attention to one of mankind last frontiers the Sea.

Another important issue in the area that need to be resolved are the maritime boundaries as disputes that already exist among the countries in the area will certainly present obstacles in all treaties that cover many aspects of the sea, particularly its use.

The idea of establishing a Central American agreement on port State control begs numerous questions, the answers to which depend on two aspect - political and

technical. Politically, the creation of the PSC regime requires signatory States to ratify, accept, approve and accede to relevant IMO convention. The question is however, how long will this process take when the maritime field is not counted among government priorities? How long will it take for those conventions to become national law? It will also require the full support of the office in charge of the maritime safety, if such office already exists. Technically, the enforcement of the PSC agreement means not only personnel with advanced education and training in the maritime field, but also competitive wages in order to avoid the problems related to conduct, credibility and reputation in the conduct of PSC in the area.

It is now very important to have a clear idea of the tasks and objectives that need to be reached in order to establish the PSC regime, including the impact that it is going to have in the regional shipping industry and possible overlaps the PSC agreement may cause with others agreements.

Another important point to keep in mind in the implementation of PSC in the region is the control of their own fleet in each country, this refer to the flag state duties and then the enforce of the port State control

Finally if the CA maritime administrations agree to establish a PSC regime, the agreement will not take the form of a convention, Plaza(1999,p.14) has the following to say regarding this point:

The agreement is to be considered as a Memorandum of Understanding between the maritime authorities (responsible for the inspections and surveys of ship) of the participating States, and it is therefore to be considered an operative document. It is not a convention binding on States but an MOU binding maritime authorities to carry out, in close co-operation, certain tasks at their ports to improve safety and the protection of the marine environment. Only those maritime authorities belonging to States that have ratified the relevant instruments, and therefore apply the same standard to their own ships, are legally entitled to exercise port State control on foreign flagged ships under such instrument. For example, the maritime authority of a State which is not party to MARPOL 73/78 may not exercise port State control for

MARPOL purposes on ships visiting its ports, though such a State would have jurisdiction over for visiting ships whilst they are in the territorial waters. However, port State control the purpose of the agreement could, therefore, not be applied.

Objectives. A very important point to the readers is that this study does not try to provide a perfect plan to establish a PSC regime in the Central American region. The main points of the study is based on four main objectives: Review the Central American maritime administration, identify the problems that they will face in establishing Central American MOU on PSC, identify the international instrument to enforce, and recommend which of the existing models of PSC MOU might be most suitable and appropriate for the CA-MOU, bearing in mind the particular circumstances of the region .

Difficulties. The dissertation was done during the last year of studies at the World Maritime University and many difficulties were faced due to the difficulty of access to some actual information. The dissertation is written in the English language, which is not the mother language of the author. Therefore, the author is certain that some points might not be perfectly expressed or may be misleading.

The author will welcome any suggestions and critiques from all persons that are truly interested in this topical today subject for the simple reason of improving this study.

CHAPTER 2

Maritime Administration in the Central American region at present

2.1 The Guatemalan Maritime Administration

The Republic of Guatemala does not have a maritime administration, per se. All matters related to maritime safety and marine environmental protection is handled by the Guatemalan Navy that is under the Ministry of Defence. Such duties are carried out in many port captaincies spread throughout the country 400 kilometres of coast line. With coasts on both the Pacific and Atlantic. Guatemala has 5 main port facilities with the capabilities to receive and service international shipping.

Naval and maritime activities are administered by two regional commandants, one for each coast. Each commandant has full autonomy, meaning that each Commandant has the main responsibility of enforcing the following tasks:

- Control ships that call Guatemalan ports,
- Review technical certificates of all vessels, these task are performed under the command of naval officers,
- Monitor the fishing activity and control the catch season,
- Conduct search and rescue operations,
- Inspect stowage operations,
- Grant or deny clearance to all vessels in port.

The main port facilities are found in: Champerico, Puerto Barrios, Puerto Quetzal, San Jose, and Santo Tomas de Castilla. At the moment Guatemala does not have a merchant fleet.

Taking the above into consideration and in view of the fact if already has qualified personnel, the Navy seems to be in the best position to establish the maritime administration such a step. However, will require the full commitment of the government and the co-operation of the Navy. In order to avoid any potential

conflict, it should already be settled as early as possible between the Ministry of Defence and the Ministry of Transport.

2.2 The Nicaraguan Maritime Administration

The Directorate General of Aquatic Transport is the government authority in all maritime matters. It was created on 10 March 1980 by virtue of a ministerial decree. This directorate is the only government maritime authority with power to implement government policy at sea, control the water ways, protect to the marine environment, and promote the safety of life at sea.

The General Directorate enforces the law in maritime matters through different ports and harbours, the main port facilities are found: Bluifields, Corinto, El Bluff, Puerto Cabezas, Puerto Sandino, Rama, San Juan del Sur. Its objectives are

- To advice the Ministry in all matters related to treaties and bilateral agreements in the maritime sphere,
- To formulate and enforce policies and programs related to maritime and ports matters,
- Control all activities related to the exploitation of the waters ways,
- Prepare drafts of laws for the development of the waters ways, control of the safety of navigation,
- Promote safety of life at sea, conduct search and rescue operations, protect the marine environment,
- Administer the register of the national fleet which operates for the domestic service,
- Promote the shipping industry for the national service,
- Promote the national merchant fleet,
- Control of the charter service and cargo space,
- Collect statistical information on the cargo,
- Support the users of the maritime transport in order to avoid dumping and unfair tariffs,

- Support multimodal transport, support the idea of establishing new shipping agencies and charter services,
- Encourage construction of warehouses catering to the maritime sector,
- Enforce the STCW regulations,
- Provide piloting and towing services,
- Promote the establishing of classification's societies,
- Ship surveyor,
- Diving operation and certified them,
- Support the construction of dry docks for repair and ship construction and register them,
- Demolition operations,
- Suggest fees for the maritime transport,
- Co-ordinate with intergovernmental offices the training of seafarers, attend in behalf of the government in international meetings,
- Co-ordinate with intergovernmental education centre to promote the maritime culture and the marine science,
- Inspection of construction off shore and off shore operations.

The above tasks are distributed among the General Directorate four main branches: Legislation and Maritime Register, Aquatic Safety, Ports, and Shipping Development

2.3 The Salvadorian Maritime Administration

The General Directorate of the Maritime Transport is the governmental office responsible for the control and supervision of the maritime transport, waterways, protection of the marine environment, safety of life at sea and promotion of the maritime activities.

These duties assigned to the General Directorate by presidential Decree No 72 signed in June 25 of 1993 the same decree also created the office of the Vice Minister of the Transport to co-ordinate the policies in relation to air, land and maritime transport.

Also this office has such as the principal of executing government policies in relation to the Maritime and navigation matters in the continental waters, the maritime safety and the protection to the marine environment such tasks is done through maritime dependencies in each Port facilities.

The Republic of El Salvador has Ports and Harbours the main port facilities are found : Acajutla, Puerto Cutuco, La Libertad, La Union and Puerto El Triunfo.

Following are the responsibilities of the General Directorate :

- Enforce the Salvadorian Constitution in relation with the maritime activity and international agreements ratified by El Salvador,
- To enforce all maritime legislation,
- Advice the Vice Minister in the preparation of law, decree, and legal requirements for the maritime developments,
- Protect the safety of life at sea in the waterways,
- Preserve and protect to the marine environment in co-ordination with other governmental offices,
- Authorise the operation and maintain registers of the shipping industry,
- Register the national fleet and off shore facilities,

- Floating devices with navigation capabilities with the exception of military vessels,
- Perform the flag States and port States duties in accordance with international regulations,
- Maritime casualty investigation,
- Maritime accidents,
- Violations to the law,
- Vessels inspection
- Issue of technical certificates in compliance with the domestic and international legislation
- Prepare the National Contingency Plan in relation to oil spills.

2.4 The Costa Rican Maritime Administration

The General Directorate of Maritime Transport was created in virtue of decree No 11147-MOT under the authority of the Ministry of Public Structure and Transport to regulate maritime transport in the waterways

This office was changed to Sub Area of Aquatic Transport by executive decree No 25379-MOT with the main responsibility of making sure that the maritime services and systems of the waterways transport are safe, economically efficient, and friendly to the environment.

The General Directorate concentrate on the two following activities: aquatic safety and protection to the marine environment and the commercial and operational aspects of the maritime transport. The office exercises its authority through the five port captaincies located at: Caldera, Golfito, Moin, Puerto Limon, Puerto Quepos and Punta Arenas.

2.5 The Honduran Maritime Administration

General Directorate of the Merchant Marine is the only governmental office in charge of the co-ordination, control and administration of the all maritime activities related to the merchant marine, maritime transport, maritime safety and the protection of the marine environment.

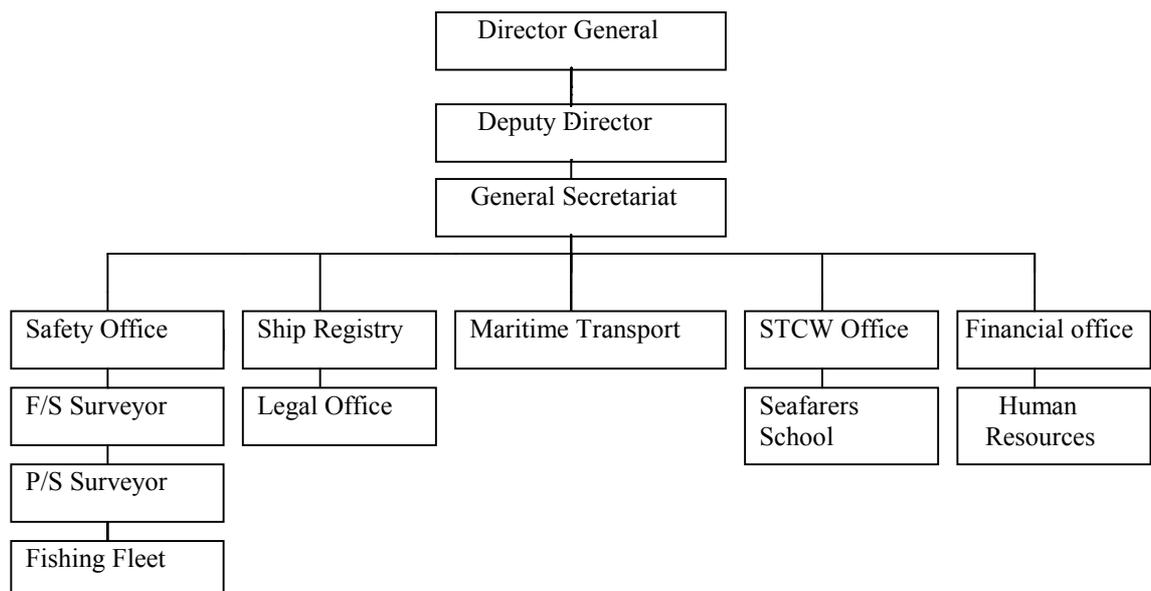
The responsibilities assigned to the GDMM by virtue of executive decree No 167-94 such responsibilities are:

- Enforce maritime related provision in the Honduran Constitution,
- Enforce international agreements to which Honduras is party,
- Advice the executive branch of government in order to establishing the policies and strategies in relation to maritime transport, administer the merchant marine and within his competence,
- Control maritime traffic in co-ordination with the Navy
- Search and rescue with the Navy as well as oil spill combating operations
- Control the arrival of vessels calling Honduran ports,
- Inspect technical certificate of vessels,
- Authorise the operation of dry docks involve in the repair and construction of ships,
- Authorise and accredit it companies involved in the maritime activities such as:
 - Towage
 - Pilot service
 - Shipping
 - Bareboat chartering
 - Dredging operations
 - Classification societies
 - Diving
 - Maritime accounting
 - Off shore operations
 - Supervise ship owners and

- Shipping companies to make sure that their activities are in accordance with the law,
- Regulate the port captaincies
- Regulate artificial construction in the territorial sea
- Solve problems within the maritime transport
- Ensure the efficient use of waterways by all means
- Training and certification of the seafarers.

Honduras has port facilities in the eleven following locations: Puerto Cortes, Puerto de Tela, Puerto la Ceiba, Puerto Castilla, Puerto de Omoa, La Mosquitia and three small port facilities in Guanaja Island, Utila Island, Roatan Island and in the Pacific Ocean (Golfo de Fonseca) El Puerto de San Lorenzo and the Puerto de Amapala . Honduras is the only country in the region that has developed its port facilities in the Atlantic coast. Honduras and Belize also are the only country in the CA region that maintain a highly active international register, with a international fleet of more that 3,400 vessels totalling around 2,000,000 gross tonnage and Belize 3,000 vessels.

General Directorate of the Honduran Merchant Marine



2.6 The Belizean Maritime Administration

The government of Belize has not maritime safety administration per se, but some responsibilities related with the environment are managed under the Ministry of Natural Resources, the Environment and Industry (MNREI) in co-ordination with the Ministry of National Security and Economic Development (Belize Coast Guard under the Ministry of National Security & Immigration) ;however, all matters related with the ship registry are administrated under the International Merchant Marine Registry of Belize(IMARBE) due to the fact that Belize is in the Open Registry services sector like Honduras.

MNREI has the following mission statement ” to improve life for all Belizeans by effectively managing and conserving the natural and environmental resources in order to improve the sustainable economic development of Belize. “The Belize Defence Force has the following mission statement “ The Force shall be charged with the defence of Belize; the support of the civilian authorities in the maintenance of order in Belize; and such other duties as may from time to time be defined by the Governor-General”. IMARBE was created under special circumstances to be the official agency to operate the Belizean registry although all related to the ship registration and certification for seafarers are its responsibility.

Is important to keep in mind that in case to establish the Central American MOU on port State control this country like Honduras has the primary task or moral obligation to control their own fleet flying under their flag and then to enforce PSC.

There are 3.000 ship flying under the Belizean flag, many of them old, also small fishing vessels engage in deep – water fishing activities.

2.7 Analysis

Looking at the Central American Maritime Administration or counterpart, it is important to recognise a number of weaknesses. There is an absence of forward looking policies planning, one indication of which is the fact that some countries does not have the legal regime or the relevant instrument in relation to enforce the port State control.

Vanchiswar(1996,p,11) has the following to say in relation to the above:

The maritime situations in many developing countries reveal that the following are the basic problems as regards matters pertaining to maritime administration

- (i).inadecuate awareness of the basic problems themselves
- (ii) Non-involvement in the evolution of international standards and the consequential problem of having to deal with them in isolation.
- (iii) Out dated maritime legislation (both primary and subsidiary)
- (iv)Inadequate infrastructure, as regards organisation and personnel, for ensuring,
 - (a) proper standards of maritime safety on board ships and prevention of pollution from ships, which cover not only the ships themselves but also the personnel manning them
 - (b) maritime development in general, and
 - (c) attention to allied maritime matters
- (v) shortage(acute shortage in many countries) of marine officers with the needed qualifications and experience
- (vi) lack of training facilities for marine officers and seamen.

the aforesaid basic problems have continued to exist because:

- (a) there has been the need to identify the very problems themselves, and
- (b) there has been the vital need to provide guidelines, proposal, suggestions and information on the many activities to be attended to in order to overcome the problems and to lead to appropriate administrative maritime administration development.

In addition there are numerous observations that need to be take into consideration. One is the need to identify the common problems in each maritime administration that already exists, if the earlier are not solve the PSC is going to be one more.

Another is that the CA region can learn from the well established maritime administration all related with PSC. In addition, the region must get the required level to establish the PSC. The different infrastructure in each maritime administration does not have to be an obstacle to implement PSC. The CA region must get the legal regime to enforce the PSC and must understand that there is a difference between maritime administration and maritime safety administration in order to have a clear objective, role and function due to the size and budget assigned.

The region must understand that the implementation of the PSC to be successful is by the regional approach and the role of the Central American Commission of Maritime Transport (COCATRAM) is very important and all problems that already exist within the organisation must be solve specially those related with conflicts of interest and the COCATRAM is the organisation which all co-operation from IMO are manage for the maritime administration.

The CA region must understand that the implementation of the PSC is going to promote safety and safety has a price. However, this also will bring protection to the safety and marine environment, and the most important is that in case of marine accident someone has to be blame for it. The question is, “who is going to be responsible for having done nothing?”

The CA region must understand that the first task is to implement the flag State regime. This should include the ISM Code that has already partially entered into force to some type of ships. PSC and the code require the training of personnel in different areas such as administration, legal, and technical.

The CA region must understand that the implementation of the PSC regime will require full political will and technical support. Unsolved problems such as maritime boundaries and others are going to be barriers to the implementation of the PSC in the region.

The updating of the conventions is crucial. The specific department in the administration that shall keep all information that IMO sends every month in order to keep in track issues all related to it should be identified.

Finally the idea to have a PSC in the area will depend on how well the maritime administration and maritime safety offices are established no matter under which ministry it operates. In addition, the political will and technical matters are crucial for. Without this, top level commitment in the implementation of the PSC will be impossible.

CHAPTER 3

INTERNATIONAL INSTRUMENT TO ENFORCE PSC

3.1 Convention

A number of international conventions form the legal basis for implementing a PSC regime. These conventions, together with the specific provisions relevant to PSC, are as follow:

The principal instruments used in port State control are:

- The International Convention of safety of life at sea(SOLAS)Regulation 19,
- The International Convention for the prevention of Pollution, 1973, a modified by the Protocol of the 1978 (MARPOL 1973/1978)Article 5and 6,
- The International Convention on Tonnage, Measurement of Ships, 1966 article 12,
- The International Convention on Load Lines(LL),1966 article 21,
- The International Convention on Standards of Training Certification and watchkeeping for Seafareres,1978 (STCW) article X, CLC 69 Article VII (1).

There are others International conventions such as:

- Merchant shipping Convention of International Labour Organisation No 147 article 4 and different section,
- Oslo Convention article 15 (1)(b),LDC 1972 article VII(1)(b)
- Helsinki Convention 1974 article 9(3)(b),
- Barcelona Dumping Protocol 11(1)(b),
- UN Convention on Conditions for the registration of ships 1986 Article 6(4), and IMO Resolutions.

3.2 Contracting Governments of IMO Conventions in the Area .

The Central American countries are members of IMO, but not all are parties to the different conventions related to PSC. Below is a table showing the CA countries and which conventions each has ratified.

No	Conve	Guate.	Nicarag	El Salvado	C.Rica	Hodu.	Belize
1	Solas 1974	x				x	x
2	Solas 1978					x	x
3	Colreg 1972	x	x	x		x	x
4	LL 1966	x	x			x	x
5	STCW 1978					x	x
6	Marpol 73/78	x					x
7	ILO No 147						
8	IMO Conv	x	x	x	x	x	x
9	Tonnage 69		x	x		x	x
10	UNCLOS	x	x	x	x	x	x
11	CLC						x
12	OPRC			x			
13	London Conv						

Source: International Maritime Organisation 2000/ ILO/UN

Another important convention which is listed in the table above is the United Nations Convention on the Law of the Sea (UNCLOS). There are numerous provisions under UNCLOS that are related with many IMO conventions such as MARPOL73/78, this duties are given under the Article 211 of UNCLOS 1982 pollution from vessels, Article 212 Pollution from or through the atmosphere (Blue

print for the annex VI of MARPOL). Article 218 Enforcement by port State control, Article 216 Pollution by Dumping, Article 219 Measures relating to seaworthiness of vessels to avoid pollution, Article 220 Enforcement by coastal States, article 221 Measures to avoid pollution arising from maritime casualties.

As was explained before, one of the first tasks for the CA region is to establish the legal framework for PSC. The prevailing legal systems in the region is a civil law system, and maritime administrations are urged to ensure that measures are undertaken to cover all aspects in relation to the execution and enforcement of a the port State control regime.

Now in relation to the flag State duties (Honduras and Belize case), UNCLOS establish the rights and duties for instance Article 91 Nationality of the ships and Article 97 Penal jurisdiction in matters of collision or any other incident of navigation. Duties of flag States, are in UNCLOS Article 94 Duties of the flag State, and in reference to penalties is under UNCLOS Article 230 Monetary penalties and the observance of recognised rights of the accused.

A contracting governments obligations under international conventions are primarily of three types: As a flag State: supervision of ships flying the State's flag(i.e.: Flag State Control). As a Port State: supervision of foreign ships calling at the ports within that State (i.e: port State control) and as a coastal State: supervision of all ships in the coastal waters within that country's jurisdiction (i.e.: coastal State control).

Flag State Control. Ensuring that its ships meet the standards of the conventions (primarily through surveys and inspections); carries out certain other duties (e.g: casualty investigations, reporting, safe manning, imposition of sanctions in case of violations).

Port State control: Ensuring that foreign ships calling at its ports are safe to proceed to sea and not likely to cause pollution (primarily through verifications of certificates and inspections).

Coastal State control. Ensuring that ship's operating within a country's jurisdiction comply with the provisions of the convention (similar to port State control, except that compliance assurance usually starts with the detection of a violation rather than

an inspection). The blue print is under UNCLOS Article 217 enforcement by a flag States and on IMO Convention as follow:

SOLAS

This IMO convention require from the administration all information related to its enforcement, such as Article III, List of Agencies, texts of law, specimen of certificate (p.2); chapter 1, regulation 6 delegations, details(p.22); chapter1, regulation 21-finding of casualties investigations (pp21,34); Chapter 1, regulation 3 - list of exemptions (pp21,380); chapter v regulations 5- information on shore-based facilities(p.383).

MARPOL

Also this IMO convention require from the administration all matters related to its enforcement such as Article 4(3)-information and evidence re violations; Article 6 (4)-action taking re violations; Article 8(4)-report of incidents; article11(1)-communication of information including texts of laws; article 12(2)-findings of casualty investigations; article 17-promotions of technical co-operation; Annex I Regulation 3(2)-equivalents allowed; regulations4(3)(c)-nominated surveyors and recognised organisations; regulations 2(4)(c)-exceptions; regulation 12(5)-inadequate reception facilities; Annex II regulation 2(7)(b)-justification for relaxation; regulation 3(4)-notification re UN categorised substances; regulation 2(4)-inadequate reception facilities; regulation 10(2)(b)-nominated surveyors and recognised organisation, Annex IV regulation 10(2)- inadequacy of reception facilities; Annex V regulation 7(2)-inadequacy of reception facilities.

STCW

Another very important convention is the STCW 78/95 which due to its last amendments will have a great impact in the administration due to they have to probe that all implementation has taken place in order to qualified in the well know white list having as date line by the year 2002. Relevant provision are; Article IV Texts of law, etc; article VIII -details of dispensation given; article IX -details of equivalents requirements allow; article XI -promotion of technical co-operation, regulation 1/3 details of near coastal voyages; regulation 1/7 full and complete effect given to the convention, regulation 1/8 information relating to evaluation of quality

standards of non government agencies; regulation 1/10 measures agreed and information provided recognition of certificate issue by others State party; regulation 1/13 details and results of trials to evaluate alternative methods of performing duties.

Resolutions to enforce PSC

IMO provide all procedures to the enforcement of PSC; such as A.466(XII) procedures to control ship; A.481(XII), Principle of Safe Manning; A.542(13) Procedures for Control of Ship and Discharges under Annex I of MARPOL 73/78; A.597(15) Amendments to the Procedures for the Control of Ship; A.680(17) Guide lines on Management for the Safe operation of ship and pollution prevention; A.742(18) Procedures for the Control of Operational Requirements related to the Safety of ship and Pollution Prevention; A.744(18) Guide lines on the Enhanced program of Inspection during Surveys of Bulk Carriers and Oil Tankers; A.746(18), Survey Guidelines under the Harmonised System of Survey and Certification; A.787(19) Procedures for Port State Control; A.739(18); A 789(18). MEPC 26(23), Procedures for the Control of Ship and Discharges under Annex II of MARPOL 73/78 .

Port State Control Jurisdiction

The enforcement are provide under major IMO Convention, the blue print is given under UNCLOS in relation to safety and pollution as follow:

Part XII PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT, article 194, article 210, article 211, article 218.

Under IMO Convention and Resolutions, for instance:

MARPOL

Article 5(2)" any such inspection shall be limited to verifying that there is onboard a valid certificate, unless there are clear grounds for believing that condition of the ship or its equipment does not correspond substantially with the particulars of that certificate".

SOLAS

In relation to the marine safety is given in Regulation 19 of chapter I

(b) Such certificate, if valid, shall be accepted unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of any of the certificate or that the ship and its equipment are not in compliance with the provisions of regulation 11(a) and (b) of this chapter.

(c) in the circumstances given in paragraph (b) of this regulation or where a certificate has expired or ceased to be valid the officers 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 person on board.

STCW Convention

Regulation I/4. Control exercised by a duly authorised control officer under article X shall be limited to the following:

1. Control exercised by a duly authorised control officers under article X(1) that all seafarers serving on board who are required to be certificate by the Convention hold a valid certificate or a valid dispensation,(b) assessment of the ability of the seafarers of the ship to maintain watch keeping standards as required by the Convention if there are grounds for believing that such standards are not being maintained because , while in port, the following have occurred:

(i) the ship has been involved in a collision, grounding or stranding, (ii) there has been a discharge of substances from the ship when under way, at anchor or at berth which is illegal under international Convention or (iii) the ship has been manoeuvred in an erratic or unsafe manner or navigational course markers or traffic separation schemes have not been followed.

Beside the earlier Convention mention also are COLREG, Load line Article 21, ILO 147 relate to: Minimum age Convention, 1973 (No 138), Minimum age (sea) Convention (revised), 1936 (No58), Minimum Age(sea) Convention 1920 (No7), Medical examination(Seafarers)Convention, 1946 (No73,), Prevention of

accidents (seafarers) Convention,1970 (No134) (Article 4 and 7), Accommodation for Crew Convention (Revised), (1949) (No 92), Food and Catering (Ships Crew) Convention,1946 (No 68)(Article 5), Officers Competency Certificate Convention No539 (Article 3and 4) and Resolutions. A. 787(19)

3.3 National Legislation

The discussion in chapter 1 on the national legislation that every country has in order to enforce the law for the safety and marine environment gives us an idea of how weak some legislation is in relation to the administration of maritime safety.

This is a key point that needs to be addressed if each administration is to succeed in the implementation of PSC. If this is not supported at the highest political levels the agreement is doomed to fail. This will require considerable political will in congress in order to pass the necessary amendments to maritime legislation in each country.

This means changes in the national legislation that will bring about the following:

- ❑ the power to enforce the PSC
- ❑ to clarify one and for all who is responsible for enforcing PSC
- ❑ to define the role and structure that each maritime administration would have
- ❑ to solve all problems related to technical personnel describing them as high priority in the administration for the PSC and budget to keep them independent from political decision even after changes in government administration because this is going to be handled at the top level; without this, the agreement is going to fail
- ❑ and most important of all is that violations to the conventions must be punished by very reasonable amount following international pattern

3.4 Agreements that already exist in the area

In relation to the maritime field the most important agreement in the Central American is COCATRAM, Central American Commission of Maritime Transport (Commission Centroamericana de Transporte Maritimo) such commission is supported by each central american port authority, although it is important to mention that in most aspects it is totally separate from the maritime administration.

It is noteworthy to mention, however, that this body is the official agency tasked to manage IMO co-operation in the region.

Last year the IMO signed a agreement with the COCATRAM to administer all the technical co-operation to the CA region for each maritime administration. If the PSC agreement succeeds, this is going to be one of the most important agreements in Central America in the interest of maritime safety and protection of the marine environment. The Wider Caribbean Initiative for Ship-Generated Waste, is another important agreement which has the purpose of protecting the Wider Caribbean from pollution described under Annex V of the MARPOL Convention. The success of this initiative is in the hands of the flag State and the vigilance of the port State. Outside the CA region there are two main important agreements in relation PSC, namely the Caribbean MOU and the Viña Del Mar agreement

CHAPTER 4

4. Port State Agreements that already exist in other regions around the world

There are three ways to enforce PSC. It can be done globally, regionally or unilaterally. Since the 1920s the United States has played a very important role in the development of the open register. In the Honduras case it was for the exportation of bananas that those companies dedicated to the bananas plantation decided to use vessels registered under the Honduras flag. However, the first country that began with the concept of an open register was Panama in the year 1925 with vessels being registered in the port of Liverpool. By 1943, Costa Rica, Honduras and Liberia had adopted this concept.

Some years earlier, in 1933, the International Labour Organisation (ILO) reported to the international community the poor living conditions in some ships that sailed under the open register. Yet the flagging out phenomenon was catching on due to one the simple reason the business was good for everybody, For instance, it meant less regulation, less tax to pay under the country the flag of which they were flying, and more employment opportunities for seafarers. While the international shipping activity was growing, so was the threat to maritime safety and the marine environment, all of this due to lack of international regulations.

By 1959 IMCO came to existence changing its name to IMO in January 1982, and formulated numerous regulations by either updating those which already existed or by creating new conventions, codes and protocols.

The casualties of the TORREY CANYON in 1967 off the coast of Scilly brought many questions in relation to oil pollution and civil liabilities. By 1974, some consideration was being taken in relation to port State control in IMO. Such procedures were taken under the Maritime Safety Committee which be considered.

Recommended that regulation under SOLAS 60 (SOLAS) and Load Line, 1966. As a result those procedures were adopted by resolution A.321 (IX) in 1975.

By the year 1978 another maritime disaster shocked the maritime community, when the Amoco Cadiz was grounded off the Brittany coast in France, spilling more than 230,000 tonnes of crude oil, in spite of the fact that some rules were established and signed just two weeks before the Hague Memorandum.

The idea of that Memorandum was to keep an eye on vessels to make sure they comply with conventions existing at that time.

Two years later, French authorities called for a meeting with other European authorities to discuss what needed to be done to control all the consequences that the spill brought about. The meeting took place in Paris and was attended by IMO, ILO and EC.

4.1 The Paris MOU on Port State Control came into existence and entered into force on July 1982. The Paris Memorandum superseded the Hague Memorandum of Understanding signed by eight European countries in March 1978 to make all ships comply with ILO requirements (147).

Under the Hague agreement each maritime authority was committed to honouring the provisions of the MOU, to maintaining an effective system of PSC to ensure that foreign ships comply with international conventions and their amendments, to practising no discrimination as to the flag of registry, to achieving an annual total of inspections amounting to 25 percent of ships entering its ports during the 365 days a year, and exchanging information with other members.

The Paris MOU has the follow structure:

EXECUTIVE. The PSC Committee serves as the executive body and is composed of representatives of each member country and of the Commission of the European Communities, the main activity of which is to develop specific tasks and promote the harmonisation of procedures and practices relating to inspection, rectification and detention, and the application of the non- favourable treatment clause.

ADMINISTRATION. Acting under the Committee is the Secretariat, located at Rijswijk near The Hague in the Netherlands, the main task is to prepare meetings and assist the committee in carrying its function.

DATA BASE. This Computer Centre located in Saint Malo, France, has the main duty of keeping all the results of the inspection done by all PSC members of the MOU, giving them all the chance to log in to the information automatically.

By 1991 the Memorandum decided to extend its scope from mainly checking certificates and defective equipment, to probing whether ships's crews possess the skills necessary to perform their duties especially during emergencies.

The same year, the MOU developed a proposal to the Marine Environment Protection Committee recognising the right under PSC to exercise control on foreign ships in respect of compliance with operational requirements. The proposal was adopted by the assembly in IMO in November 1991.

By the year 1993 another disaster struck the region, the running aground of the Liberian oil tanker the "Braer", an incident that brought more strength to the MOU in the sense of targeting ships with poor safety records, it was also decide to make public the list of all ships that were detained in the preceding three months, and those detained at least once in the last two years.

After its inauguration and entry into force many amendments have been effected due to other accidents in the region. Today, the Committee of Paris MOU has decided to make more information available to the public through European Quality Shipping Information System and also to make public the list of ships detained. In

others words, it was decided to let the public, media and shipping industry check by themselves the record of the fleet that has visited any port under the Paris MOU. It also adopted guidelines under the STCW 95 and finally the MOU decide to monitor the classification societies by making public their performance as reflected in detention cases involving ships under their classification.

The current members of the Paris MOU on PSC are Belgium, Canada, Denmark, Finland, France, Germany, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russian Federation, Spain, Sweden, and United Kingdom of Great Britain and Northern Ireland. The official languages of the MOU English and French

4.2 The Viña Del Mar Agreement on PSC(Latin American Agreement)

This Agreement was signed on November 1992, in Viña del Mar, following the same principle as the Paris MOU but adapted to the South American situation.

Each maritime administration pledges to maintain an efficient level of PSC, the idea being to inspect 15% of foreign vessel visiting the region.

The regime to enforce the PSC is also based on the IMO conventions:

Load Lines 1966,

SOLAS 74 and protocol 78,

MARPOL 73/78,STCW 1978,

COLREG1972.

The members meet once a year with one observer each from ROCRAM, CEPAL, and IMO in attendance .

The Agreement was adopted taking into consideration that no prejudice as to the right and obligation imposed by any international convention. The Secretariat and the Information Centre (CIALA) is in Buenos Aries, Argentina.

The official languages are Spanish and Portuguese.

The agreement recently accepted new members such as Bolivia and Cuba. It also adopted a check list for inspecting bulk carriers as well as high speed craft.

The current members are: Bolivia, Cuba, Argentina, Brazil, Chile, Panama, Chile, Venezuela, Ecuador, Mexico, and Colombia.

Having studied the Viña del Mar Agreements very clear to see that its is the best model to choice due to is very suitable and appropriate for the CA-MOU for reason such as language and cultural matters. Also a good point to consider is that there is a lot of co-operation in relation to the maritime field that in the last 15 years the CA region had received, in fact 25 % of the merchant marine officer and naval officers that is available in the region had successfully graduate from the South American maritime academies, today some of them are senior officer in their respective Central American naval institutions and they are going to be the candidate to be trained as port State inspector.

In the Belizean case, the Belizean coast guard has a lot of naval officers trained and educated in the United Kingdom and also they are going to be the candidate to be trained as port Sate control officers.

4.3 The Tokyo MOU on Port State Control

The Tokyo MOU on port State control was established in 1992, as a result of four meetings following the Paris MOU principles. In the beginning, the Tokyo experiment encountered many difficult situations due to the varying maritime capabilities of its members.

At the beginning of the enforcement some members had many problems such as the lack of economic resources, high qualified personnel, and most importantly the legal regime to enforce the agreement as well as the relevant IMO conventions. On the other hand other members did not have problems at all due to extensive experience in and sufficient economic resources.

Some contributed to the development of MOU standards, such as the level of enforcement required to be successful as well as levels of education and training and the publication of a manual for all inspectors. The Tokyo MOU follows certain procedures to detain a ship as follows: verification of certificates, clear grounds, deficiency rectification, detention intervention and reporting.

The MOU focus special attention on passenger ships, ro-ro ships, bulk carriers, ships that represent special hazard, ships with several recent detention, ship with histories associated with detention and delay, history and ships that have not been inspected in the last 6 months.

The relevant instruments in the Tokyo MOU are

SOLAS 1966,

LL 1966,

SOLAS PROTOCOL 1978,

MARPOL 73/78,

STCW 1978,

COLREG 1972,

and the ILO Convention No 147,

The information centre is located in Vancouver, Canada and the Secretariat is in Tokyo. The official language is English.

The current members of the MOU are: Canada, Australia, Fiji, Indonesia, Republic of Korea, Malaysia, Thailand, Singapore, Hong Kong (China), Viet Nam, Russian Federation, New Zealand, Vanuatu, Solomon Island, China, Philippines, Papa New Guinea.

The MOU has observers from United States IMO, ILO, ESCAP and Paris MOU.

The MOU is very strong in the sense that in 1998 signed a Joint Declaration with the Paris MOU to tighten PSC, this was done to the Vancouver Declaration the main point of the declaration was the action to eliminate sub-standard ship such enforcement is on ILO and IMO Conventions such as the ISM Code. The MOU agree to increase the level of training and technical co-operation in the region.

Today the 17 members of the Tokyo memorandum of understanding (MOU) on port State control(PSC) agreed to increased inspection rate of 75% for the Asian Pacific region, this decision was taken in Singapore. The 75% inspection rate will be taken as an average across members countries of the MOU rather than as a target for each individual administration, the problem that was consider to decide this rate was that port like Singapore and Hong Kong could not be expected to carry out of inspections on 75% of all ship calling. Also agreement has already been reached on the development of a system under which authorities would target ships more likely to have a problems, such a system would be based mainly on past inspection record, but it would also take into account factors such as flag, owner and class.

The Tokyo MOU launched the Asia- Pacific computer information system, based in Vladivostock, to act as a database to exchange PSC information among members States. Two others proposal under discussion cover a criteria for the standardisation PSC inspection procedures across members authorities. The membership criteria proposal would ensure that members authorities met certain standards for their own flag ships and performance of PSC and encourage uniform standard both for PSC inspection and for actions taken against ships found with defects.

4.4 The Caribbean MOU

The final meeting to establish the Caribbean MOU on port State control took place in Barbados February 1996 with 22 countries in the region becoming signatories.

The relevant instrument to enforce it are the following IMO convention and ILO conventions:

LL 1966,

SOLAS 1974,

SOLAS Protocol 1978,

MARPOL 73/78,

STCW 1978,

COLREG 1972

and ILO Convention No 147.

The MOU pays special attention to ships which represent a special hazard, ships with several and recent detentions, passenger ships, ro-ro ships bulk carriers, and ships flying the flag of a state appearing in the 3 years with average table in delay and detentions. The MOU allows observers representing the IMO, ILO, CARICOM, IACS, USA, Canada, Netherlands, Paris MOU, Viña del Mar Agreement and Tokyo MOU to attend its meeting. The official language is English.

The MOU has such main enforcement Convention the MARPOL 73778, this due to the big concern in the Caribbean of the growing of the threat from pollution produce by passenger ship and oil tanker. To give an idea as to how crowded is the Caribbean is, the annual average of commercial ships that calls the Caribbean Ports is about 63.000 ships and bringing to the area 82.000 tonnes of garbage. The traffic passing through the Panama Canal is about 13.000 vessels a year.

The traffic of oil tankers coming and going to Venezuela , Mexico and USA presents a huge threat to the area that includes : Antigua and Barbuda, Belize, Guatemala, Honduras, Nicaragua, Costa Rica, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Panama, St Kitts and Nevis, St Lucia, St Vincent and Grenadines, Suriname, Trinidad Tobago, Venezuela, Cayman Islands, and Colombia.

The Secretariat is in Bridgetown, Barbados. The current members of the MOU are Antigua and Barbuda, Aruba, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Monserrat, Netherlands Antilles, Saint Kitts & Nevis, Saint Lucia, Saint Vincent, Panama, Mexico, The Grenadines, Suriname, Trinidad and Tobago, Turks and Caicos Islands.

Today, the MOU is facing problems such as the fact that some of the members are not ever party to IMO conventions. This has recently been improved in the area and recognised as the back bone of PSC, the MOU also recently joined the PSC of Cuba and has been receiving support from the USCG in developing the Caribbean Maritime Inspection Data Base.

Another issue is that in the there exists in the area a Code of Safety for Caribbean Cargo Ships. The Committee of the MOU adopted the code in 1996 and in 1997 adopted amendments to its. The idea of the Code was to control all small vessels trade in the area and with USA, such trade represent for US export the sum of USD 20.000 million and import from the Caribbean for about USD17.000 million given to USA USD 3.000 million of super habit and is much better to control in a safety code in stead of to close the US port for those ships.

4.5 The Mediterranean MOU on Port State Control

This agreement was signed in 1997 covering the Mediterranean area, the relevant instrument to enforce the MOU are the following ILO and IMO conventions:

LL 1966,

SOLAS 1974,

SOLAS Protocol 1978,

MARPOL73/78,

STCW 1978,

COLREG 72

and the ILO Convention No 147.

The MOU gives particular attention to the following ships that visit their port for the first time or after being away from more than one year, ships that were released leaving some rectifications and deficiencies, ships that represent hazard to safety and the marine environment, ships with a history of detentions in the last 6 months.

The Information Centre is in Casablanca, Morocco and the Secretariat is in Alexandria, Egypt and the official language is English, French, and Arabic. The MOU allows observers from IMO, ILO and the EC to attend its meeting. The current members are Algeria, Malta, Egypt, Israel, Lebanon, Tunisia, Turkey, Morocco, the Palestinian Authority and Jordan.

Included in the MOU's current work plan are efforts to improve the training for inspectors and the enforcement of a decision not to recognise transitory seafarers certificates. In addition, a web site has been created that will give faster check up of data among MOU members.

4.6 The Indian Ocean MOU

The MOU, signed in 1998, has a legal regime to enforce it the IMO Convention such as:

LL 1966,

SOLAS 1974,

SOLAS PROTOCOL 1978,

MARPOL 73/78,

STCW 1978,

COLREG 1972,

TONNAGE 69

and the ILO Convention 147.

The members of the MOU are Australia, Eritrea, India, Iran, Mauritius, Mozambique, Myanmar, Oman, Sri Lanka, South Africa, Tanzania, Ethiopia Kenya, Maldives, Seychelles, Djibouti, South Africa, Sudan and Yemen.

The MOU allows observers from IMO, ILO.. The information centre is located in Pretoria, South Africa, and the Secretariat is located in Goa, India. The MOU pays special attention to vessels visiting the area for the first time, vessels that had been absent from the area for one year, vessels that the MOU has been allow to leave with deficiencies, vessels that represent a hazard, and vessels with detention records in the last 6 months.

Today, the MOU made the final arrangements in order to have clear objectives in relation to inspection procedures, financial agreements and improvements in relation to training for surveyors and to strengthening co-operation.

4.7 The West and Central African MOU on PSC (Abuja MOU)

Signed on October 1999, the MOU was organised by IMO and supported economically by the Government of Nigeria, this MOU control all ships that visit the area and also control all vessel that are under 500 gross tonnage.

The MOU is going to operate under temporary administration rules for the following three years and have as its main goals the improvement of their respective maritime administrations, training for surveyors for the region specially on flag State and port State inspections.

The aim of the MOU is to have an effective system of port State control, exchange information with the purpose of identifying sub standard ships and controlling ships that have not been inspect within six month.

The Current members of the MOU are Benin, Cape Verde, Congo, Ivory Coast, Gabon, Gambia, Guinea, Liberia, Mauritania, Namibia, Ghana, Nigeria, Senegal, Sierra Leone, South Africa, Togo, Angola, Cameroon and Equatorial Guinea.

The MOU allows observers from IMO, MINCONMAR and ILO to join meeting. The Secretariat was decided to be in Lagos, Nigeria and the Information Centre in Abidjan, Ivory Coast.

4.8. MOUs being negotiated in other regions

As is well known, the IMO encourages all governments to enter into PSC agreements. A successful regional PSC regime can only benefit IMO member countries and the globe in general, as safety and marine environmental protection are promoted. Its is also good for individual maritime administrations in the sense that it will put some pressure on them to pay more attention to the sea and improve their maritime administration for one thing, joining a requires a State to become a party to the IMO convention.

Having said that and now with the entry into force of many amendments of some IMO conventions such as ISM code and STCW Conventions, there will be no way out for those flag States that had so far failed to implement such conventions. Therefore the IMO supports the idea of developing more PSC in some region that are not covered. There many agreements PSC under development such as:

4.8.1 Persian Gulf Region

The Regional Organisation for the Protection of the Marine Environment is proposing the establishment PSC for the ROPME sea area. Bahrain, in co-operation with the Gulf Co-operation Council and the IMO, has decided to set up a technical/legal meeting to discuss the proposal.

The members of the region are Bahrain, Oman, Kuwait, Qatar, Saudi Arabia and United Arab Emirates. The region will award consultative status to organisations such as IMO, ILO, GCC and UNEP/ROWA (Regional Office for West Africa). All matters in relation to infrastructure, administrative secretariat and information centre are yet to be decided.

4.8.2 The Black Sea

This region just held the initial meeting last year in order to develop the preparatory agenda. The region is composed of Bulgaria, Georgia, Romania, the Russian Federation, Ukraine, and Turkey. The region is going to allow observers from IMO, ILO and the Istanbul Commission. The big concern will be focus in the national capacity for performing different task as either flag State or port State.

Having mentioned the different MOU's (existing and proposed), it is worth mentioning that IMO has a global project to give all the necessary assistance to the regions intending to implement PSC. Such support is related to facilitating harmonisation, inter-regional co-operation and exchange of information between MOU's. IMO support also include workshops for staff, advisory missions, executive training program and secretariat staff training. .Its was Signed on Friday, 7 April 2000.

4.9 Credibility and cost of running the MOU

One of the most important factors determining the success of the PSC and which can be described from many points of view, is the manner by which it is enforced. As was explained in the beginning, there are three ways to enforce the PSC regime- unilateral approach, global approach and, regional approach .

All of the above can be exercised by industrialised countries a clear example of which is the United States. Through the US Coast Guard, they possess all the means to enforce, for instance, the Code of Federal Regulations or CFR, the legal regime for enforcing safety and marine environment regulations. This is a very clear example of unilateral PSC enforcement.

The USCG has a tradition of more than 100 years of experience in safety, in the maritime transport in peacetime and operates under the Navy in war time. It is manned by high qualified personnel and is allocated a huge budget. It has laboratories specially for oil spill investigations, one of them located in Groton, Connecticut and is backed by one of the most powerful enforcement tools such as the Oil Pollution Act 90 that gives the right to the State to prescribe penalties that carry no limit in case of oil pollution. This is another proof that the political will is on stand by any ready for any amendments whenever necessary.

In Europe, the majority of the Paris MOU members have had well established maritime administrations for more than 50 years and maritime traditions of more than 1000 years. Proof of that is its trade is done by sea, high valuable goods export among them and to the region to another's continent. The Paris MOU is one of the best examples of the regional approach of the PSC.

This MOU also shows that there are a common interest in the sea within the region. The exploitation of technology to share information among the members gives less chance for sub standard ships to operate.

The cost of a year needed to run the MOU is shared among member. Effort are taken to ensure that the same procedures are enforced by all members of the MOU

and in so doing avoid unfair competition among port facilities. This approach forces the sub standard ship to move its operations to another region.

The Viña del Mar agreement is another example of a regional approach. The South American region has a tradition of more that 100 years of maritime history, counting all the means available to enforce PSC. The Chilean Coast Guard and Navy, for example, has 150 years of maritime tradition behind.

Other MOUs such as Tokyo is also another example of a regional approach where in the beginning some members possessed a limited capabilities for enforcing PSC, but are now more capable. The global approach can be said to be the only way to eliminate certain type of substandard ships that operate in many areas. This gives us a clear idea why some of the MOU enjoy very high credibility in enforcing PSC in their areas of responsibility.

The Caribbean MOU nowadays is facing some problems due to fact that many countries in the region that are not part of the MOU allow vessels to avoid or switch their trade to their region. It is also is very important to consider that in order to have full implementation objectivity and independence are essential. This mean that all staff members working full time for the MOU must be totally separate from the country that host the secretariat. Another problem is that many countries are still not party to important IMO conventions or do not have the technical capability to enforce them. If the problems mentioned seriously happened the operation of the MOU credibility may lost and greater technical support will be needed from IMO.

Is very clear that the best way to enforce PSC is by regional approach but in some cases as the Paris MOU has been criticised to be against on open register. The important point to consider is that no matter the arguments for flag and PSC the main responsible for keep running ships to standards require by international convention is full responsibility of the owners and ship operator. Also the lack of co-operation between PSC and flag State administration will be a the main barrier for quality shipping. In fact, even today in IMO and the international community is most important issue about PSC rather than the freight and the also the controversy STCW provision and the ISM code.

According to Mr Lino C Vassallo Executive Director of Malta Maritime Authority (2000) state "They are an important role to play in this enforcement and in the shipping industry and its productivity is measured in how profitable they are. ports compete with each other to attract cargoes and ships from all over the world. It is therefore not illogical to expect port administration to play their part and to contribute towards ensuring safer shipping and clear oceans.

Sub standard shipping existed long time ago before the introduction of the concept of open registry, while, substandard ships have also been flying, and still fly, the flags of traditional maritime nations, most ships flew the flag of countries whose maritime administrations now claim that sub standard ships are a modern phenomena created by the open registry nations. There is no perfect ship under some MOU criteria flying under open registry.

Today many MOU has a main objective rigid and unpractical attitude driven by considerations which at times are more related to political, commercial and many others exigencies rather than salaries to seafarers, safety and marine protections".

MOU acting by regional approach and having a good channel of co-operation with flag State administration will create a good quality shipping. Some MOU that are in full operation are facing many problems in relation to international regime(IMO conventions, Caribbean MOU) and criteria to operate and lack of communications due to political and others issues.

In the case of costs to running the MOU, for the Paris MOU is no less than US\$ 2.000.000 millions, for the CA region is going to have some impact in their administrations due to the salaries to be pay to the port State control inspector that at less will be 3 or 4 for each country.

CHAPTER 5

5. The capabilities of the Central American maritime administration to establish a port State control agreement

As was mentioned before that the Central American administration will face some institutional, technical and legal difficulties and challenges, particularly in the top level.

Hardling difficulties related to political will to implement a new framework to enforce the PSC regime is the most important phase to developing the agreement.

Some maritime administrations. However, are taking the matter very seriously and are complying with the regional strategy already established by the COCATRAM .

Such strategy includes: the strengthening of the maritime administration, modernisation of maritime legislation specially in marine environmental measures, upgrading of the maritime safety administration capabilities, improvement of sustainable development, and promotion of maritime transport.

5.1 Political and Technical effort

A concerted political and technical effort is going to be the key point to establishing the agreement. To be optimistic, political goodwill is the most important ingredient. The reason can be explained by examining certain issues obtaining in Central American today.

The Central American region is now being affected by some unsolved maritime boundaries, especially, in the Pacific Ocean where the Fonseca Gulf (Golfo de Fonseca) is disputed by El Salvador, Nicaragua and Honduras. The same problems are found in the Caribbean zone (Atlantic Ocean) between Nicaragua and Honduras especially in respect of the Serranilla Bank dispute, involving maritime

territory that Colombia and Honduras has solved by treaty and officially accepted by both Congresses.

This mean that the Serranilla and Rosalinda banks were split between Honduras and Colombia. On the other hand, Nicaragua argues that such treaty affected the Nicaraguan territorial sea due to the fact that the claim to the Caribbean waters extended all the way up to parallel 17 in stead of the parallel 15.

The main reason is that both states have the right to reach such agreement; however, the possibility exists that the area contains deposits of oil and natural gas. This affects all treaties that already exist in the area.

Also there are others maritime boundaries that remain unsolved in the area. For instance, Honduras has maritime boundaries with Guatemala, Belize, Mexico, Cuba, Cayman Islands and Jamaica which this authors believe that unsolved problems present potential disputes which may threaten future agreements due to the fact that this situation obligates some countries to enter into secret agreements to protect and further their claims to territorial seas that they believe belong to them. So this give a general view how much effort and political goodwill is going to be necessary to establish CA PSC at the highest levels of some countries.

With reference to technical capabilities, each country has within its administrations numerous technical maritime backgrounds, Quite a number having received highly qualified training at the World Maritime University. The naval forces in each country also has many officers who need only to undergo additional training in port State control matters by following the IMO courses. Past experience has showing. However, many maritime technical personnel nowadays such as master, mates and naval officers have not left the maritime field and some of them are working at sea for the simple reason that the private shipping industry pays higher salaries than the government can offer. This is going to be a big problem. The solution to this problem is to increase government salaries within the maritime administration to technical personnel.

The Central American area also has the operational net of regional co-operation in maritime affairs of Central American (ROCRAM-CA) and its executive secretariat is under the Central American Commission of Maritime Transport (COCATRAM). This commission is supported by port authorities in the area, the main activity being to create policies to develop port facilities and protect the marine environment and to manage IMO technical co-operation programs in the area.

Having said that, COCATRAM is the key body to advise and develop all strategies related to maritime administration for the region

5.1.1 Economy

The Central American economy depend on agriculture, tourism, textiles, minerals, seafood, meat, lumber, and clothing.

Guatemala. The agricultural sector accounts for one- fourth of GDP and two-thirds of exports and employs more than half of the labour force. Coffee, sugar, and bananas are the main products, Manufacturing and construction account for one-fifth of the GDP. Challenges include increasing government revenues, and negotiating a program with the IMF. Guatemala has industries as sugar, textiles and clothing, furniture, chemicals, petroleum, metals, rubber, tourism. Exports-commodities \$2.9 billion f.o.b. The products are coffee, sugar, bananas, cardamom and petroleum having as export partner US 37%, El Salvador 13%, Honduras %, Costa Rica 5% and Germany 5%.

In relation to import the figures are \$3.3 billions c.i.f. Import commodities as fuel and petroleum products, machinery, grain, fertilisers and motor vehicles, having as import partners US 44%, Mexico 10%, Venezuela 4.6%, Japan and Germany

Nicaragua had been pursuing a number of impressive economic reform and had begun to shed the legacy of a decade of civil war and economic mismanagement by posting strong annual growth numbers. The Nicaraguan industry is based in food processing, chemicals, metal products, textiles, clothing, petroleum refining and distribution, beverages and footwear. The total exports is about \$ 704 millions f.o.b,

the commodities are coffee, seafood, meat, sugar, gold and bananas and have as export partners US, Central America, Germany and Canada. The total import is \$ 1.45 billions c.i.f. and the import commodities are consumer goods, machinery, and equipment and petroleum products, the import partners are Central America, US, Venezuela and Japan.

El Salvador in recent years inflation has fallen to unprecedented levels, and exports have grow substantially, even so, El Salvador has experienced sizeable deficits in both its trade and its fiscal accounts. The trade deficit has been offset by remittances from large number of Salvadorans living abroad and from external aid. Inflation and trade deficit are expected to rise somewhat as a result. The industry is based on food processing, beverages petroleum , chemicals, fertiliser, textiles, furniture and light metals. The total export is \$ 1.96 billions f.o.b. The export partners are US, Guatemala, Germany, Costa Rica, and Honduras. The total import is \$ 3.5 billions c.i.f. The import commodities are raw materials, consumer goods, capitals goods and fuel and the partners are US, Guatemala, Mexico, Panama, Venezuela and Japan.

Costa Rica basically stable economy depend on tourism, agriculture, and electronics exports, Poverty has been substantially reduce over the last 15 years and strong safety net has been put into place. The industry is based on food processing, textiles and clothing, construction materials, fertiliser and plastic products. The total exports is \$ 3.5 billion f.o.b. The export commodities are manufactured products, coffee, bananas, textiles and sugar. The export partners are US, Benelux, Germany, Italy, Guatemala, El Salvador, Netherlands, UK and France.

The total imports is \$4.5 billion c.i.f. The import commodities are raw materials, consumer goods, capital equipment and petroleum. The import partners are US, Japan, Venezuela, Guatemala and Germany.

Honduras had been pursuing a moderate economic reform program and had posted strong annual growth numbers. The storm has dramatically changed economic forecast for Honduras, Honduras sustained approximately \$ 3.billions in damages and will probably see GDP shrink by 2% in the years ahead, problems as

unemployment rise. Hardest hit was the all import agricultural sector, which is responsible for the majority of exports. The total exports is \$1.3 billion f.o.b. The exports commodities are bananas, coffee, shrimp, lobster, minerals, metal, and lumber. The exports partners are US 54%, Germany 7%, Belgium 5%, Japan 5% and Spain 3%. The total Imports is \$ 1.8 billion c.i.f. The imports commodities are machinery, and transport equipment, industrial raw materials chemical products, manufactured goods, fuel and oil and foodstuff. The imports partners are US 43%, Guatemala 5%, Japan 5%, Germany 4%, Mexico 3% and El Salvador 3%.

Belize The small, essentially private enterprise economy is based primarily on agriculture, agro based industry, and merchandising, with tourism and construction assuming greater importance. Sugar, the chief crop, accounts for nearly half of exports, while banana industry is the country's largest employer. The total export is \$ 95.3 million f.o.b. The export partners are US Mexico and UK. The export commodities are bananas 26%, sugar, 46%, citrus fruits, clothing, fish products molasses and wood. The total import is 147.9 millions c.i.f. The import commodities are machinery and transportation equipment, manufactured goods food, fuel, chemicals and pharmaceuticals. The import partners are US 52%, Mexico 13%, and UK 5%.

Two years ago the region was hit by the hurricane Mitch recently and now some of the countries are facing very serious problem due to the devastation for the phenomenon, this referring to the Honduran case, this will bring significant impact in the government projects due they have to allocate the resources available to the re-construction and as was explained the economy rely on the exploitation of the agriculture. This underscore the fact that the maritime fields is not high on the list of government priorities. In fact this has always been so even before the impact of the hurricane, therefore, the region is not in good condition which means that now more than ever is the time to look at other areas such as the Sea for economic exploitation

5.1.2 Current situation in shipping

A significant amount of trade in the CA region is carried is by sea. This is done by international shipping companies that move the goods from and to the area, giving no chance to national shipping companies to feasibly into the business because they would begin at an economic disadvantage. As a result of poor exportation figures in region, import freight are very expensive this is also due to very low commodities exports from the region to others. Having said that it is possible to mention that this is due to very low cargo volume and high feeding cost. As a result, the freight rate is very high. Central American ports also receive small ships that trade with the Caribbean and the USA, some which of the are non-convention ships, while this vessels allow some trade, some vessels do not meet international standards.

Another issue is the operation of fishing vessels that need to be controlled in safety and pollution matters. Due to operational activities, it is important to consider the training for the crew as well as training for fishing vessel inspectors.

5.1.3 Phases to establish the agreement

In order to establish the agreement the following requirements will be necessary:

- political will
- relevant International convention
- domestic legislation
- maritime administration with the capabilities to enforce the safety and the marine environmental protection regulations
- highly qualified officers
- a regional PSC code of conduct.

Phase one. The official intention by the maritime authorities with the appropriate persons to establish the agreement, the agenda to study the capabilities of each administration, the objectives of the agenda must show the real picture of the

intention of the agreement such as: infrastructure, legal regime, and the willing to accept the agreement, the Honduran maritime administration has showed high degree of importance to it, in fact, just last year conducted a seminar to its staff, possible international agencies to co-operation, IMO and co-operation from others MOU.

Phase two. The official technical meeting to establish the rule of the game, requirements for the MOU this will be the appropriate persons which will be involve in the preparation of the PSC infrastructure, training (IMO course), recruiting, requirements to be inspector, guide lines, design of the report for inspector and obviously the high level representative of all administration involve on it, legal interment to enforce it, this will give as a result the time of the preparation of the inspector officers.

Phase three. Once established, the technical strategy that will be the backbone of the agreement, the final phase is the establishment of the compromise and the committee, power of the committee, secretariat objectives of the secretariat, the information centre, objectives of it, procedures to exchange information, the relevant instrument, procedures for inspection, rectification and detention, availability of the information, penalties for violations of the conventions, cost of the agreement and how will be share among members, procedures to amendment the agreement by the committee, tariff for inspection carry out, adoption, procedures to enter into force, members to be allow such as observers, and finally the design of the agreement to be sign by the maritime administration.

5.2 Training and Qualification requirements for the PSC Officers

At the beginning, it was explained that one of the success of the Paris MOU was because of the well established maritime administrations, which includes man power capabilities. With the experience of 50 years and more, the Paris MOU members have accredited centres to train high qualified merchant marine officers and seafarers.

In Central American region, there are inadequate training centres for merchant marine officers. Thus, the candidates have to undergo training at foreign institutions such as in South America, Mexico and USA.

In that sense, the Honduran maritime administration has developed a study to establish the merchant marine academy that will have the capabilities to give the full education according with the STCW 95 Convention and Amendments. The capability include education for deck officers and engine officers and also training for seafarers, short courses following IMO patterns such as oil tankers, training for chemical tankers, course for fire fighting survival at sea and rescue boats.

The idea is to provide scholarships to all future Central American officers and seafarers that want to embark on a maritime career, Honduras is currently the leading source of maritime man power in Central America, having more than 70,000 seafarers.

This author believes that in order to achieve this goal it is necessary to request technical assistance and co-operation from IMO and the international maritime community.

Some administrative requirements are going to be necessary when establishing a PSC, with the following being highly recommended:

- ❑ the inspector must work under the maritime administration or maritime Safety administration of each member country of the agreement
- ❑ no commercial interest should be considered
- ❑ ability to communicate and write in the English language
- ❑ full training in IMO and ILO conventions relevant to PSC
- ❑ clear procedures for ship detentions
- ❑ full training in domestic maritime legislation
- ❑ full acknowledgement in flag State duties
- ❑ full acknowledgement of the PSC duties
- ❑ full acknowledgement of procedures of ship detentions
- ❑ full acknowledgement IMO's role in PSC matters

- full acknowledgement that the administration can be liable in case of unnecessary detention
- full acknowledgement in non convention ships,
- familiarity with all the agencies and offices that co-ordinate with the port authority, harbour master, pilot, immigrations, customs, naval force or defence force, ship agency in charge to receive the ship in behalf of the ship-owner.

In terms of technical qualifications, PSC inspections must possess certificates such as master mariner, chief officers, chief engineer, naval architect, naval officer or other deck or engineer officer with ship board experience within the last 3 years in merchant ships.

5.3 Code of Conduct

The author believes that in order to have credibility and avoid all kinds of situations it is necessary to have clear rules for the performance of the personnel. In so doing, the PSC agreement gains confidence and credibility to the PSC agreement. All matters related to this are given by IMO in the General Procedures for PSC Officers”.

5.4 Cost, Secretariat and Data Information Centre

Another issue of great concern for the maritime administration is the salaries to be paid to each PSC inspector, for instance, having consider 3 PSC inspector for the 5 countries will give the total of 15 PSC officers, this mean that a decent salary must be paid to them. At the beginning was explained that one of the main problems in the region specially in the maritime administration is the lack of technical personnel and some of them are hire by the private sector. In the Honduran case, many improvement has been made in this matters. For instance, a good salary to be pay to PSC inspector taking into consideration opportunities in the private sector, would be not less than US\$ 1,500.00.

The cost of the keep running the Secretariat is also to be consider, due to is not good idea that the Secretariat is under any Administration, by experience from others MOU has to be full independent, this mean that all operational cost to run the

office has to be share among all members. For instance a office with 3 PSC inspector and administrative personnel will give a estimate cost of US\$ 5,500.00 by month for each country.

The Secretariat, in order to establish where and who is going to be the secretary is good to follow procedures from others MOU.

The data information centre also need to be decide where is going to be set up and will have such a main task to keep all report of inspection feeding by all members, this due to keep informed and running the equipment 24 hours a day for all the members and users, to keep up date all the information available, to have the competent equipment to the MOU, to store the information for the time decided by the members.

5.5 Possible Draft if the PSC Agreement is Establish

The author believe and being positive if all the ministries involve in the establishment of the PSC regime in the area and find out that this is going to be for their own interest is very important to notice the follow observations. The top level of each country has to show interest for the establishment of the agreement and the framework of the agreement will bring co-operation better than ever with the Central American. The top level authorities will understand that the IMO Convention and others related for the enforcement of the PSC regime are so important for the safety and protection to the marine environment. The top level authorities will find out the importance to have maritime centre Institution for the reason that the ILO convention specified all related to the safety and working conditions for seafarers and they are the key point being part of vessels crew, more precisely the human element that play the main role in the safety and protection to the marine environment and the most important the lack of the marine officer, nautical and engineers.

The top-level authorities will understand the importance to control all vessels engage in trade and passenger transport being non-convention vessels and special

attention must be pay to safety operation of such vessels. The top-level authorities must understand that only by the regional approach is the best way to enforce the Port State Control and the safety and protection to the marine environment. The top-level authorities will understand the importance to have a legal and up date regime to mange situation especially with the oil pollution incident and the importance to be party or not of the CLC 69 /72 and Fund Convention. The top-level authorities will understand that by the regional approach is the only way to get technical co-operation from others MOU.

Taking into consideration cultural, linguistic, and geographic factors, this author believes that the best model for the establishment of a Central American MOU on port State control is the Viña del Mar agreement. Presented in the succeeding pages is a draft MOU based on Viña del Mar.

DRAFT

**MEMORANDUM OF UNDERSTANDING ON PORT STATE CONTROL IN THE
CENTRAL AMERICAN REGION**

The Maritime Authorities of
Guatemala
Nicaragua
El Salvador
Costa Rica
Honduras

hereinafter referred to as “ the Authorities”

Recognising the importance of the safety at life at sea and in port and the growing urgency of protecting the marine environment and its resources;

Recalling the importance of the roll of the Central American Commission of Maritime Transport (COCATRAM) and its strategy for the year 1999-2002 in relation to the safety and protection to the marine environment;

Taking into consideration the IMO resolution A 787(19) in relations to port State control (PSC) procedures.

Taking into consideration the IMO resolutions A.682(179) in relation to regional measures to application on PSC;

Recognising that the principal responsibility for the effective application of standards laid down in international instruments rest upon the Administration whose flag a ship is entitled to fly;

Recognising that it is necessary to avoid differences or avoid unfair competition between port.

Convinced of the necessity, for the purposes, of and harmonised of port State control and strengthening co-operation and exchange of information;

Have reached the following understanding:

Section 1 General

1. Each maritime authority that has accepted the memorandum will give effect to the provision of the present memorandum and the Annexes thereto which constitute an integral part of the memorandum.

2. Each maritime authority will establish and maintain an effective system of port State control with the view to ensuring that, without discrimination, foreign merchant ship visiting its ports comply with the standards laid down in the relevant instrument as defined in section 2.

3. Each maritime authority under the co-ordination of the committee will determine an appropriate annual percentage of individual foreign merchant ships, hereinafter referred to as ship, to be inspected.

4. Each maritime authority will consult, co-operate and exchange information with the other authorities in order to further the objectives of the memorandum.

Section 2 Relevant Instrument

- The International Convention on Load lines 1966
- The International Convention for the Safety of life at Sea, 1974 as amended;
- The International Convention on Standards for Training, certification and watch-keeping for Seafarers, 1978;
- The Tonnage Convention 1969;

- The Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention) No 174), and
- The Convention on International Regulation for preventing Collision at Sea, 1972

2. Each maritime authority will apply those relevant instrument which are in force and binding on it. In the case of amendments to a relevant instrument each authority will apply those amendments which are in force and binding upon it. An instrument so amended will then be deemed to be relevant instrument for that authority.

3. In applying a relevant instrument for the purpose of port State control, the Authorities will ensure that no more favourable treatment is given to a ship entitled to fly the flag of a non-party to that instrument.

4. In case of ship less than 500 gross tonnage, the Authorities will apply those measures that are applicable, in the opposite case, the Authorities will be guide by the standards specified in the Annex 1.

Section 3 Inspection procedures, Rectification and Detention

1. In the implementing this Memorandum, the authorities will carry out inspections, which will consist of visit on board a ship in order to check the certificate and documents relevant for the purposes of the memorandum. In the absence of valid certificate or documents, or if there are clear grounds for believing that the conditions of a ship or its equipment or its crew does not substantially meet the requirements of a relevant instrument, a more detailed inspection will be carry out. it is recommended that Authorities include control on compliance with on board operational requirements related to the safety of ships and pollution prevention in their control procedure.

Inspected will be carry out in accordance with the guidelines specified in the Annex I.

2. Clear Grounds

1. The Authorities will regard as “clear ground” inter alia the following:

- A report or notification by another Authority;

- A report or complaint by the master, a crew, or any person or organisation with a legitimate interest in the safe operation of the ship, shipboard living conditions or the prevention of pollution, unless the Authorities concerned deems the report or complaint to be manifestly unbounded;

- Other indications of serious deficiencies, having regard in particular to Annex I

2. For the purpose of the control on compliance with on board operational requirements specific “clear grounds” are the following:

- Evidence of operational shortcomings revealed during port state control procedures in accord with SOLAS 74, MARPOL 73/78 and STCW 78;
- Evidence of cargo and others operational not being conducted safely or in accordance with IMO guidelines;
- Involvement of the ship in incidents due to the failure to comply with operational requirements;
- Evidence, from the witnessing of a fire and abandon ship drill, that the crew are not familiar with essential procedures,
- Absence of an up to date muster list,
- Indications of that key crew members may not be able to communicate with each others or with others on board.

3. Nothing in this procedure should be constructed as restricting the powers of the Authorities to take measures within their jurisdiction in respect of any matters to which the relevant instruments relate.

3. In selecting ship for inspection the Authorities will pay special attention to:

- passenger ship, roll-on roll off ship and bulk carriers;
- ship which may present a special hazard, including oil tankers, gas carriers, chemical tankers and ship carrying harmful substances in packaged form,
- ship which have had several recent deficiencies;
- ship that had not been inspected by the authorities

4. The Authorities will seek to avoid inspected ships which have been inspected by any of the others Authorities within the previous six months, unless they have been clear grounds for inspection, the frequency of the inspection does not apply to the ship referred to in paragraph 3.3, in which case the Authorities will seek satisfaction whenever they will deem this appropriate.

5. Inspections will be carried out by properly qualified persons authorised for that purpose by the Authorities having comply with the inspector qualification.

6. Each Authorities will endeavour to secure the rectification of deficiencies detected.

7. In case of the deficiencies which are clear hazardous to safety, health or the environment, the Authority will, except as provide in paragraph 3.8, ensure that the hazard is removed before the ship is allow to proceed to sea and for this purpose will take appropriate action, which may include detention. The Authority will as soon as possible, notify the flag Administration through its consul or, in their absence, it's nearest diplomatic representative or, its Maritime Authority of the action taken. where the certifying authority is an organisation other than a maritime administration, the former also will be advised.

8. Where deficiencies referred to in paragraph 3.7 can not be remedied in the port of inspection, the Authority may allow the ship to proceed to another port, subject to any appropriate condition determined by that Authority with a view to ensuring that the ship can so proceed to sea without unreasonable danger to safety, health or the environment. In such circumstances the Authority will notify the Authority of the ships next port to call, the parties mentioned in paragraph 3.7 and any other authority as appropriate. Notification to Authority will be made in accordance with Annex 2. The Authority receiving such notification will inform the notifying Authority of action taken.

9. The provision of this section are without prejudice to the requirements of relevant international Convention concerning notification and reporting procedures related to port State control.

10. The authority will ensure that, on the conclusion of an inspection

- the master of the ship is provided with a document, in the form specified in the Annex 3, giving the results of the inspection and details of any action taken.
- when exercising control under the Memorandum, the Authority will make all possible effort to avoid unduly detaining or delaying a ship. Nothing in the Memorandum affects rights created by provisions of relevant instrument relating to compensation for undue detention or delay.

Section 4 Provision of information

1. Each authority will report on its inspection under the memorandum and their results, in accordance with the procedures specified in the Memorandum.

Section 5 Operational Infractions

1. The authorities will, upon the request of another authorities, endeavour to secure evidence relating to suspected violations of the operational matters of Rule 10 of the International Convention for the Prevention Collision at sea, 1972 and the International Convention for the Prevention of Pollution from Ship, 1973, as modified by the protocol of the 1978 relating thereto. In case of suspected violations involving the discharge of harmful substances, an Authority will, upon the request of another Authority, visit in port the ship suspected of such a violation to obtain information and where appropriate, to take a sample of any alleged pollutant.

Section 6 Organisation

1. A **Committee** composed of a representative of each a maritime administration that has accepted the memorandum will be established. An observer from the executive secretariat from the COCATRAM, the International Maritime Organisation, and any other organisation or authority which the committee may deem appropriate will be invited to participate.

2. The committee will meet once a year and at such others times as it may decide;

3. The committee will:

- prepare and adopt its task assigned under the memorandum and to the Secretariat and to the information centre.
- promote by all means necessary, including training and seminars, the harmonisation of procedures and practices relating to inspection, rectification and detention whilst having regard to 2.3;
- develop and review guidelines for carrying out inspections under the memorandum;
- develop and review procedures for the exchange of information,

- keep under review other matters relating to the operation and effectiveness of the memorandum.

4. A **Secretariat** will be established according with the following principles

- the Secretariat will be totally independent from any maritime Administration or organisation;
- the Secretariat will act under the guidance of the committee;
- prepare meeting, circulate papers and provide such assist as may be required to enable the committee to carry out its function;
- facilitate the exchange of information;
- the Secretariat will operate from the budget to be established;
- facilitate the exchange of information and
- carry out such others work as may be necessary to ensure the effective operation of the memorandum.

5. A Information centre will be established with the following principles

- the centre will be guide under the Secretariat,
- the centre will be provide will all electronic means to carry out its duties;
- the centre will keep up date data information provided by the members and available to the public in the internet.

Section 7 Amendments

- (1) Any authority that has accepted the memorandum may propose amendments to the memorandum;
- (2) in the case of propose amendments the following procedure will apply:
the propose amendment will be submitted through the Secretariat for the consideration by the Committee. Amendments will be adopted by a two-thirds majority of the representatives authorities present and voting in the committee, each authority exercising one vote. if so adopted an amendments will be communicated by the secretariat to the authorities for acceptance;
- an amendment will be deemed to have been accepted either at the end of a period of six months after adoption by the representatives of the authorities in the

committee at the time of adoption, unless within the relevant period an objection is communicate to the Secretariat by an authority,

- -an amendment will take effect 60 days after being it has been deemed accepted, or at the end of any different period of deemed acceptance as determined unanimously by the representative of the authorities in the Committee.

3. In case of propose amendments to Annexes of the Memorandum the following procedure will apply:

The propose amendment will be submitted through the Secretariat for consideration; the amendment will be deemed to have been accepted at the end of a period of three months from the date on which it has been communicated by the secretariat unless, an authority request in writing that the amendment should be considered by the committee. In the latter case the procedure specified in the paragraph 7.2 will apply;

-the amendment will take effect 60 days after it has been accepted or at the end of any different period determined unanimously by the authorities.

Section 8 Administrative Provision

1. The Memorandum is without prejudice to rights and obligations under any International instrument.

2. Any maritime authority may, with the unanimous consent of the Authorities present and voting at the committee meeting, adhere to the memorandum. For such an authority, the memorandum will take effect upon such date as may be mutually determined.

3. Any authority may withdraw from the memorandum by providing the committee with 60 days notice in writing.

4. The Spanish and English are the official language

Section 9. Enter into force

The memorandum is going to enter into force when the members will notified to the executive secretariat of COCATRAM

Guatemala

Nicaragua

El Salvador

Costa Rica

Honduras

Belize

ANNEXS OF THE CENTRAL AMERICAN PORT STATE CONTROL AGREEMENT

ANNEX I Guidelines to the Inspectors

Section 1 Generals

1. Guidelines to be observers during the inspection performance
2. Action taken for deficiencies, detention and rectification
3. Procedures for no more favourable treatment principle
4. Guide lines for non convention vessels

Section 2 Safety on ships according to SOLAS 1974, Protocol 1978 SOLAS, Load Lines 1966, COLREG 1972 and MARPOL 73/78

1. Grounds for more detail inspection

Section 3 Minimum manning standards and certification

1. Minimum Safe Manning Document, IMO Resolution A.481(XII), Annex 1;
2. Guidelines for the application of Principles of Safety Manning (IMO) Resolution A.481(XII), Annex 2
3. Crew number and composition
4. Certification Verification
5. Ship detention

ANNEX 1

Section 1 Generals

1. Guidelines to be observer when carry on inspection to foreign vessels

The guidelines given in the section 3.1 of the Agreement contain procedures provide in this annex according with IMO after being mandatory enter into force.

2. The principles of action taken for rectification or ship detention

After the deficiencies had been found, the nature of the deficiencies and the corresponding action taken has to be filled in on the inspection report.

In principle all deficiencies must be rectified prior departure of the ship. It is up to the professional judgement of the PSC Officers if the ship has rectified all deficiencies from the point of view that the ship does not represent a treat for the safety and marine environment having taking into consideration the particulars circumstances of the voyage. All related to the safe manning, the principles given in the special procedures in the section 3 must be apply.

3. Application of the no more favourable treatment principle

In applying a relevant instrument for the purpose of the port State control, the principle of “no more favourable treatment” has to be apply to ship which fly the flag of the State which is not a party of that convention.

CHAPTER 6

6 Conclusion and Recommendations

As was explained at the beginning, this study has four main objectives, which are the following.

1. To review the Central American maritime administration
2. To identify the problems that will face in case of establishing the CA-MOU on PSC
3. To identify the international instrument to enforce and
4. To recommend which of the existing models of PSC might be appropriate for the CA, bearing in mind the particular circumstances of the region.

International trade involving the CA region, whether among CA countries or between CA and US or Europe, is mostly carried by sea. The increasing traffic of merchant vessels in all the region including the Caribbean brings every day a huge concern in the maritime administration, resulting in the need for the region to develop a maritime culture especially since a great amount of population live near the coast.

The establishment of the Central American port State control agreement is being necessary in the sense of the huge concern for the safety and marine environment protection. However, many problems must be solved in order to proceed to establish it. One of the main barrier of the establishment of the PSC is going to be the international convention that is the legal regime to apply to those vessel calling the Central American ports, even that each state has the right to allow or deny a vessel the right to enter once being in their waters, this due to the application of their national legislation.

The Central American region has more than 25 international port facilities and receives more than 8.000 vessels of all types each year. The need for a PSC regime has become more important than ever in the promotion of safety and protection of the marine environment. The area is also going to be the last point of control of sub standard ships that attempt to evade controls by the Caribbean MOU and the Viña del Mar Agreement.

The establishment of the port State control regime in the region will follow the same objectives as the others that already are in full operation. However, the process for those countries in the CA region is going to be difficult for one principal reason that the sea is not high in the government priorities.

The training for the personnel is crucial and this has to be done through the COCATRAM in recognition of its status as the official agency for the management of IMO technical co-operation programs in the CA region. It is strongly recommended that each administration select competent persons and pay decent salaries in order to keep them for long term.

The role of technology for the implementation of the PSC is also important in the sense that it allows all members and PSC inspectors to share information through the system and keep each other informed in advance of all the ship movements in the CA as well as in others MOU regions.

The region offers a great advantage, such as being able to avoid some of the problems associated with establishing new MOUs as well as being able to learn the positive successes of existing MOUs. In the CA case only a regional approach can succeed in the implementing a credible PSC regime. However, many improvements particularly in the modernisation or even creation of maritime administrations.

The establishment of the PSC regime in the area is also going to allow control of the huge amount of non convention vessels that are still trading between the CA countries and the Caribbean. In the other hand, it might also affect the poor

economy of those countries for which all trade is done by sea. The trade done in inland waters has to be regulated and enforced to comply with safety measures. Procedures need to be enacted in the domestic legislation in a forward looking manner. So far, there have been no big casualties specially in the transport of fuel and passengers by sea. The administrations shouldn't have to wait for a high profile incident before acting decisively.

Keeping in mind the importance of the PSC and the Code of Safety for Caribbean Cargo Code to ratified and implementation of the MARPOL 73/78 Convention has double importance for government in the area. If any country in the CA area is not party to the Convention, by international principle that country can not enforce MARPOL. On the others hand having ratified the convention will also give states the right to enforce it as well as the obligation to meet certain requirements such as the establishment of reception facilities.

The author believes that this has been one of the main problems in the Caribbean area due to the lack of political will to ratify the MARPOL Convention, although the objectives of the Wider Caribbean initiative for ship-generated waste have not been reached completely.

The author believes that establishment of the PSC regime will require the following:

- Use COCATRAM and its infrastructure to act as the back bone of the new PSC agreement.
- Accession to IMO and ILO conventions
- Full implementation of the domestic law
- Establishing of maritime administrations with the legal mandate and regime to enforce the PSC
- Political will at top level of the members countries because without this commitment there is not going to be a PSC agreement at all.
- The official persons that are going to attend the first meeting of the establishment of the PSC regime must be the appropriate person, and, when selecting technical personnel, this has to be done in this way in order to keep tracking the objectives and avoid waste time for the first meeting, and for the

second avoid, that the candidate to be PSC inspector have commercial interest in the maritime activities.

- COCATRAM needs to encourage governments to solve all domestic problems that could intervene negatively in the operation of its objectives and avoid all kinds of situations such as conflicts of interest that could force some countries to withdraw from the Commission
- The strategies already establish by COCATRAM in relation to the safety and marine environment protection must be put into operation by the maritime administration.
- The flag State should properly implement their duties, such as control the societies that issue technical certificates in behalf of the administration (Honduran and Belize case), the training and qualification of the flag State surveyors, ratified and implement IMO conventions and resolutions, manning procedures, and ISM code, the establishment of a quality system and the enforcement of port State control.
- The establishment of the maritime centre is crucial, such training must be continuously up dated in relation to IMO conventions relevant to PSC; co-operation among MOU members is also necessary to share experiences and maintain a harmonised inspection regime.

If all the above objectives are reached the establishment of the PSC agreement will get closer to becoming a reality. Otherwise, will take time for the Central American administrations to have the high level of technical capabilities by their own if they decide to individually join one of the others regional agreement such as the Caribbean MOU or the Viña del Mar agreement.

So far the Honduran maritime administration had expressed high interest in the establishment of PSC. In fact, last year Honduras conducted a training session for staff members on PSC with the co-operation of the International Development Bank,

PSC is not an easy matter and requires the full co-operation of many groups such as classification societies, flag State administrations and ship owners. After

studying all the different factors and legal matters related to establishing a PSC regime, Central American maritime administration should first set their priorities and address deficiencies and weaknesses if a regional MOU is to be successful.

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