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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**MARITIME SAFETY ADMINISTRATION IN  
GUINEA-BISSAU: THE MARINE ENGINEER'S  
ROLE IN PORT STATE CONTROL**

By

**ANSELMO BARTOLOMEU GOMES LOPES**

**Guinea-Bissau**

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 SAFETY ADMINISTRATION AND ENVIRONMENT  
PROTECTION**

**(Operational Specialisation, Engineering)**

1999

## DECLARATION

I certify that all the 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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## ABSTRACT

Title of Dissertation: **Maritime Safety Administration in Guinea-Bissau: The Marine Engineer's Role in Port State Control**

Degree: **MSc**

The dissertation is a study of proposals to enhance Maritime Administration/ Maritime Safety Administration in Guinea-Bissau. The objectives of this topic are to analyse the present situation of the Guinea-Bissau Maritime Administration system versus the predominant universal standards as well as the diverse national and international obligations.

This goes in line with discussion regarding roles and regulatory functions of the Administration in relation to those of an adequately competent Maritime Administration. Based on these considerations, the study will try to point out various problems existing within the administration.

The method of this study is through identification of the current national legislation with a focus on the importance of international maritime standards on legislation. Therefore it will focus on relevant matters in the process of development and implementation of a Maritime Safety Administration in Guinea-Bissau. In particular, it concentrates on the Administration in relation to its roles and functions pertaining to Port State Control implementation, emphasising the marine engineer's roles.

The conclusion is based on the actions, which should be taken in order to overcome these problems and improve the performance of the administration throughout the successful implementation of the Flag State and Port State Control regime. A number of suggestions and recommendations are made which, if implemented, should move the country's maritime safety administration forward.

**KEYWORD:** Analyse, Competent, Enhance, MSA, Performance, Port State Control

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## LIST OF ABBREVIATIONS

ARPA	Automatic radar plotting aids
CS	Classification Societies
COLREG	Convention on the International Regulations for Preventing Collision at sea
DWT	Deadweight
DNMP	National Directorate of Marine and Ports
EIA	Environmental Impact Assessment
FS	Flag State
FSI	Flag State Implementation
FAO	Food and Agriculture Organisation of the United Nations
GDP	Gross Domestic Product
GMDSS	Global Maritime Distress and Safety System
IACS	International Association of Classification Societies
ILO	International Labour Organisation
IMDG	International Maritime Dangerous Goods Code
IFM	International Monetary Fund
IMO	International Maritime Organisation
IMOSAR	International Maritime Organisation Search and Rescue manual
ISM	International Safety Management Code
ITU	International Telecommunication Union
LL	International Convention on Load Lines, 1966
LSA	Life Saving Appliance
MARAD	Maritime Administration
MARPOL	International Convention for the Prevention of Pollution from Ships
MET	Maritime Education and Training
MOU	Memorandum of Understanding
MSA	Maritime Safety Administration
MSC	Maritime Safety Committee
MSD	Maritime Safety Department
MSITT	Ministry of Social Infrastructure, Transport and Telecommunications
MEPC	Marine Environment Protection Committee
NMFT	No More Favourable Treatment

PS	Port State
PSC	Port State Control
PSCO	Port State Control Officer
SAR	Search and Rescue
SOLAS	International Convention for Safety of Life at Sea, SOLAS
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
STCW-F	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel
UN	United Nations
UNCLOS	United Nations Conventions on the Law of the Sea, 1982
WB	World Bank
WHO	World Health Organisation

## **CHAPTER I**

### **INTRODUCTION**

For several years both industrialised and emerging countries have come to realise the advantages derived from commercial activities and industrial development in connection with ports when processing imports and exports operations. However, here it is not a specific development of seaport a case, but the safety of ships calling to port.

For decades substandard ships have been taken advantage of the absence of a proper maritime authority and effective Port State Control regime and have been sailing to a number of ports. Sometimes they are abandoned there, littering the ports with so many disabled ships which in turn pollute the seas with oil as well as other dangerous substances.

Currently this state of affairs is changing as many Maritime Administrations have been taking measures to ensure that their flagships meet the safety standards set by the international community. So, countries discharging their responsibilities as flag states, they fashion out a Memorandum of Understanding (MOU) at the regional level, which allows them to establish a strong regime to control ships entering ports within their region.

Guinea-Bissau is a maritime country considers its geographical position and economical development, as dependent on sea trade. In this respect it needs to start somewhere. This dissertation focuses on some of the problems faced by the country in the establishment of a proper maritime administration. In addition is an attempt to create a maritime safety department to be responsible for the main regulatory functions of the administration regarding the safety and prevention of marine pollution. It proposes possible solutions and actions to be taken toward the enhancement of the administration of maritime affairs.

The country's mainland is a territory of approximately 36,125 square km which lies in the West Coast of Africa bordered on the North and South by Senegal and Guinea (Conakry). With numerous islands lying offshore, an archipelago of eighteen principal and small islands it has 350 km of coastline along the Atlantic Ocean. The rivers and coastal waters have enormous potential to sustain a viable fishing industry, which basically is one of the reasons for having a port for a large number of vessels that visit and provide benefits to the national economy.

This fact shows that the Government must regard the shipping industry as an important part of the country's economic development. However, the problem is not only set up an organisation like Maritime Administration (MARAD), but to sustain and maintain it through competent management. It is sad to notice how the Government, conscious of the potentiality and contribution of this sector to the national economy, has expelled it out of its strategic development plan.

It is clear, that the role of port States in the struggle to enhance safety and protect the environment will increase rather than decrease in the future. So taking advantage of West and Central Africa MOU (WCAMOU), the main objective of this dissertation is also to draw the attention of the country's Government to the importance of this MOU of introducing a Port State Control regime in its national waters or ports.

### **1.1 THE SCOPE OF THE STUDY**

There is the tendency for a developing country's ports to be considered in general as the hideout of substandard ships. The main reason for such harassment is simple, that these countries do not exercise effective control even over their own ships and do not have a port State control regime. If they do there are seldom resources available to conduct the job properly.

Improving maritime safety is nowadays paramount so that it must affect and concern any single coastal state or flag state. This can be only achieved within the country through an establishment of a comprehensive maritime administration, which can perform a series of safety functions and daily practice safety measures for the benefit of all the maritime industry through exercising Port State control.

Furthermore, there is probable a good reason for the author to be wary of a maritime casualty involving a large tanker within the country's coastal waters. In such an event all the beaches, which are for tourism purposes, will be exposed to pollution, and fish and other valuable marine life destroyed. This undoubtedly will seriously affect the lives of millions of people who mainly depend on fishing as a source of livelihood.

In an endeavour to enhance maritime safety administration within his country, the author in writing this paper has based this work upon the information and knowledge gained at WMU, as no information could be gathered from his own administration due to civil war. Anyhow, knowledge and experience obtained during on-the-job training in the Nordic Countries call his attention for a need of a legal basis to sustain flag and port State implementation. Maritime law covering IMO relevant safety instruments must be developed and the government should be ready to provide facilities to support its implementation.

Furthermore, the Government, recognising the interdependence between safety failure and damage to the environment, must rigorously develop and implement a safety policy as a part of the Governmental strategic program for the maritime sector, otherwise the marine environment will still be exposed to disastrous consequences.

## **CHAPTER II**

### **SHIPPING ACTIVITY IN GUINEA-BISSAU**

This chapter is to give a general overview of the present state of the maritime industry in Guinea-Bissau. After that, the difficulties affecting implementation of effective maritime development are discussed, by looking at current the situation of the country's Public Administration in terms of organisation, structure and performance of its related functions. The chapter is also concerned with legal matters along with the country's commitment to ratify and implement the relevant international agreements that should facilitate both flag and port state implementation.

#### **2.1 PROBLEM**

In the second half of 1987, Guinea-Bissau signed a credit agreement with the World Bank (WB) and International Monetary Found (IMF) in a structural adjustment of economic conditions. Important initiatives have been taken in the restructuring of government machinery and economic reforms within the country, steps that must still be completed by transparent management and the administration of the tax system at a greater degree of responsibility of all civil service officials. This program was prompted to respond to the existing application of legislation strengthening transparency, equity and social justice in the conduct of public affairs.

In consideration of the essentially rural character of the country, good governance could be the immediate goals in the promotion of sustainable development. Accordingly, a

three-part national governance program could serve as a framework to consolidate the achievements of democracy, carry out institutional and administrative reforms and strengthen capacities for good economic management.

Notwithstanding the consensus in principle, scepticism remains and the discussion of democracy and skilful governance was limited and the role of the military in the process is still as one party ruled the state. Moreover, the weakness of the tools and strategies deployed in implementing the program is in itself related to institutional weakness that seriously affects public administration and leads to political instability. Given the nature of the system, governance was unfortunately distinguished by arbitrariness, lack of transparency, accountability and corruption at all levels.

Since 1987, the country has witnessed financial instability, partly because of the negative effects of the structural adjustment programmes on the most vulnerable public and economic sectors. Thus, the administration itself is characterised by a degree of evident malfunction in the very high number of institutions and a plethora of officials as well as in the MARAD.

As is common in any developing country, the effective maritime development of Guinea-Bissau depends on its capability to create suitable Public Administration, as is the case with maritime administration. At present the MARAD structure and legal tradition is still Portuguese, despite the fact that the country has been independent since 1973. There is no legally articulated and comprehensive maritime law and policy related to shipping activity, if any, so they are not clearly defined at all. Therefore this issues have never been discussed as the Government's priority in its development program.

These above-mentioned facts appear to be the main problem areas. In addition, the present maritime situation of many developing countries, with regards matters pertaining



to the MARAD according to Prof. Vanchiswar P S (Maritime Administration Seminar, WMU, 1996), is as follows:

- Inadequate attention pertinent to maritime matters due to weak Government position regarding its responsibility for shipping and ports,
- Deficient infrastructure in connection with organisation and personnel,
- Lack of training facilities for marine officers and seamen as well as for administrative personnel,
- Insufficient number of qualified professionals; particularly, marine officers furnished with tools to enhance both Flag and Port State implementation and their lacking post within the MARAD,
- Weak status of the present maritime legislation (both primary and Subsidiary); and
- Inadequate enforcement of outdated maritime legislation and related laws.

## **2.2 THE IMPORTANCE OF A MARITIME ADMINISTRATION**

Guinea-Bissau, as in many developing countries, totally depends on its international links and foreign trade considering that it has been showing continued economic dependence and increased levels of seaborne trade where more than 90 per cent of its trade goes by sea. In the economic sphere, the country's choice of a market economy and private enterprises has now become irreversible and has led to encouraging results for the national economy. Therefore, the value of foreign trade is higher compared to the size of its Gross Domestic Product (GDP) (Prof. Ma S, Maritime Economics, 1998). In the author's view it is not just a question of transport running properly. Also the income earned by port activities, for instance, has a considerable positive impact on the national balance. It is also crucially important from the viewpoint of ensuring supplies to the external market.

On the other hand, keeping shipping activities alive in Guinea-Bissau is probably important from employment aspects. Since the country has huge fishery resources, increased demand for fish has led to a notable growth in numbers, size and types of fishing vessels and correspondingly a greater exploitation of these resources. However, the expansion of fisheries, both vessels and crews without the required upgrading safety standards and the absence of enforcement of safety regulations appears to be a reasonable premise for having a MARAD as a matter of concern.

Another worry is the very intensive traffic of oil tankers off the region's coastlines. The ships are transiting in loaded condition from the South Atlantic Ocean, Guinea Gulf to Europe and North America and in ballast on the return leg which is a threat to the marine environment. This reflects the vulnerability of the country and its exposure to the risk of maritime navigation and marine pollution as a coastal State. In this regards MARAD is vital for the country to implement, as is the enforcement of the relevant international standards to prevent, control, combat and mitigate marine pollution.

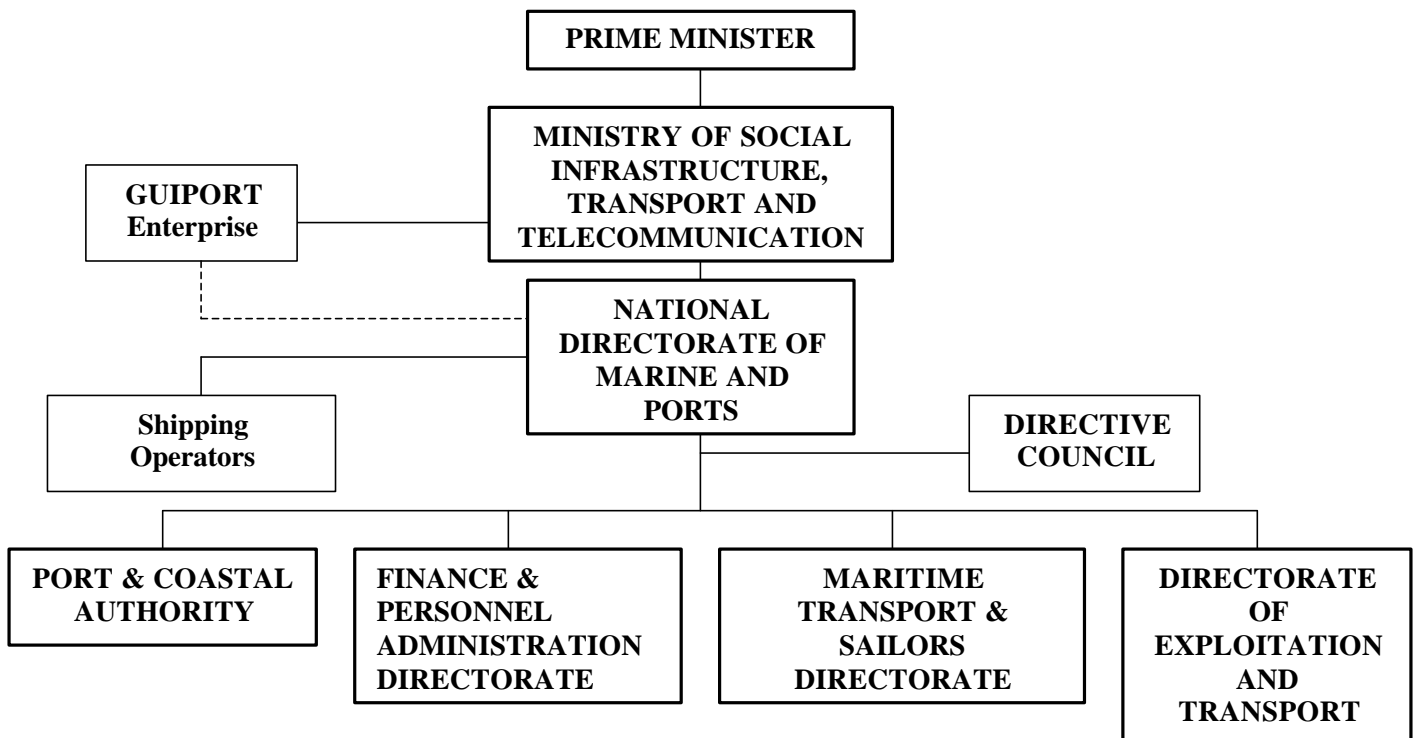
In exchange for international and regional competition that is hooting up, it is very important for a country such as Guinea-Bissau, even without shipping, to promote an efficient MARAD able to best ensure the smooth handling and reliability of sea transport. Furthermore, also the increasingly important aspects of safety and environment protection within national jurisdiction must be secured.

### **2.3 MARITIME ADMINISTRATION, ORGANISATION AND ADMINISTRATIVE STRUCTURE**

The government guidance for institutional and administrative reforms of Guinea-Bissau maritime administration requires a solid structure to strengthen its capacity for enhanced

economic management. One of the changes is the restructuring of transport and shipping activities, which led to the creation of the National Directorate of Marine and Ports (DNMP) as a body to be responsible for maritime matters.

The responsibility of pertaining maritime matters belongs to the Ministry of Social Infrastructure, Transport and Telecommunications (MSITT), which takes care of political and legal matters as well as financial affairs of the maritime administration. The basic organisation of maritime organisation in Guinea-Bissau is illustrated below in figure 2.



## **Figure 2. Current Organisation Structure of Maritime Administration in Guinea-Bissau**

As a specialized executive branch of the Ministry, the DNMP primary functions are those materialised within the national law which sets guidelines on the advice, evaluation and implementation of maritime policy. Therefore, the maritime administration is responsible for performing regulatory functions to ensure the safety of lives at sea, the safety of navigation and the protection of the marine environment (Vanchiswar P S vol. 1, page 52, 61).

Presently, the National Directorate of Marine and Ports head office contains four departments as follows:

- ❑ Port and Coastal Authority
- ❑ Financial & Personnel Administrative Directorate
- ❑ Maritime Transport & Sailors Directorate, and
- ❑ Directorate of Exploitation and Transport

The harbour master heads the Port and Coastal Authority with a major number of staff, and therefore undertakes all major roles pertaining to maritime safety under the prevailing Portuguese legislation or Port Authority Act N° 265/72 of July of 1972. Its main responsibilities involve:

- ✓ Ship's registration
- ✓ Navigation safety
- ✓ Hydrographic surveys
- ✓ Navigational aids (lighthouse, buoys, and etc)
- ✓ Pilotage
- ✓ Security of port activities (Policemen of port area)
- ✓ Ship's certification (non-convention and fishing vessels)

- ✓ Certification of seafarers (non-convention and fishing vessels)
- ✓ Domestic traffic safety regulations
- ✓ Pollution control of ships
- ✓ Safe manning of ships (mainly non-convention and fishing vessels)
- ✓ Port state inspection or visit on fishing vessels, and
- ✓ Co-operation with the navy (coastal security purpose)

The financial and personnel administrative department is in charge of personnel administration, financial and services guarantees such as the development and management of the current budget, departmental service account as well as planning development programs for service improvement.

The maritime transport and sailor department responds to the ship personnel administration such as seafarer's inscription and ship personnel work contracts. The department also promotes and designs the general strategy for seafarers' on board employment. Therefore, statistics on shipping, management of state port activities and inland transport are the Directorate of Exploitation and Transport's responsibility.

## **2.4 PORT AUTHORITY**

The Port Authority of Guinea-Bissau was established during colonial times. Nowadays, this function is exercised by the DNMP through the Port and Coastal authority division which is responsible for overseeing the safety of navigation and security of all the country's port. The remaining responsibility for port development infrastructure is executed directly by the Ministry.

Apart from the above mentioned functions, the Port and Coastal Authority acting under the port Act N° 265/72 has changed its competence for the time being, which involves additional responsibilities as follows:

- ✓ Execution of all maritime laws and regulations of all maritime and port activities within the country
- ✓ Ensuring safety operation of harbours, ports and channels in the country
- ✓ Provide compulsory pilotage service to all merchant ships entering the ports
- ✓ Survey, certification or licensing of non-convention ships and pleasure boats, and
- ✓ Installing and maintaining all navigational aids

The GUIPORT enterprise, acting as a port authority, has competencies in the organisation, planning and management of the port mainly for commercial purpose the under regulatory authority of the Ministry of Social Infrastructure, Transports and Telecommunications. A Managing Director operates it through the instructions of the Board of Directors or shareholders, which includes one Government representative. The GUIPORT's main duties are the following:

- Management and control of port services
- Support of installation and operation of lighthouses and others maritime navigational aids in co-ordination with the MARAD.
- Organisation and development of port regime
- Define port regime policy and regulations in co-operation with the MARAD
- Establish taxes for port service
- Control within the port area the compliance of regulations on the safety and security of goods
- Promote training of port personnel

The main port of Bissau is located 50 miles upstream from the mouth of the river Geba near the Fort of Amura to the north-east of the commercial centre, concretely at lat. 11°

51' N and long. 15° 35' W. Presently, there are two T-shaped quays. The old existing commercial quay with an access bridge of 144 meters and capacity for vessel up to 10,000 tons DWT with 20 feet draught, and the front side with 130 meters length and 25.5 meters wide. The second new quay has an access bridge of 292 meters, front side 257 meters and 27 meters wide for vessels up to 33 feet draught. Moreover, there is also a small port for the navy and for domestic traffic as well as the oil pier with a private status, but supported by the port service and pilotage.

The access to the port area is not difficult; a pilot is compulsory and provided for the fairway from Caio pilot station in the mouth of the river Geba until Bissau as well as for manoeuvring and going alongside. Therefore, aids to the navigation are available and the anchorage area is sufficiently large and protected against strong winds.

In the port, installations for transshipment activities are available as well as refrigeration facilities to support the fishing industry with storage, workshop, protected warehousing and open spaces for some miscellaneous cargo.

## **2.5 FUNCTIONS OF THE ADMINISTRATION**

As is common in many developing countries, the functions of the MARAD are mainly based on regulatory and developmental issues (Vanchiwar P S vol. 1, 1996). For that purpose, a coherent relationship between the Port and MARAD as regards developmental functions might be encouraged for control and some advice. However, regulatory measures by the administration call for a solid relationship between the port and shipping. This relationship within the country is mainly limited to safety control as the main port is commercially autonomous and administered by the GUIPORT enterprise.

According to Prof. Vanchiswar P S (Maritime Administration Seminar, WMU, 1996) there are four main categories of functions pertaining to the MARAD, which are described below in the subsections:

- ◆ Advisory function,
- ◆ Administrative function,
- ◆ Regulatory function, and
- ◆ Promotional function.

### **2.5.1 ADVISORY FUNCTIONS**

With regards to its duties and responsibilities, the MARAD is required to assist the Government with advice, suggestions or drafting of the maritime policy, which are submitted for evaluation and later approval at high government level.

### **2.5.2 ADMINISTRATIVE FUNCTIONS**

The MARAD as a Government executive branch within an administration of public interest, is obliged to discharge administrative functions as well. These functions should be administratively supported with financial rules and respective procedures like in other government units. Thus it must ensure policy implementation and execute mandate functions; such as regulatory and developmental issues related to maritime affairs under the Ministry concerned (Vanchiwar P S, WMU, 1996). Furthermore, functions related to international and regional agreements should be included because those agreements and their amendments involve implementation; acceptance and ratification as will be discussed further under paragraph 2.8.



### **2.5.3 REGULATORY FUNCTIONS**

In most MARADs similar functions are performed by the Maritime Safety Administration (MSA) which unfortunately does not exist in Guinea-Bissau as was previously mentioned and will be discussed further under Chapter III.

For an appropriate MARAD, the execution of responsibilities under the UNCLOS concept and other relevant conventions, as identified by many well-known maritime experts, are the following:

- Supervision and co-ordination of maritime matters (Flag, Port and Coastal State duties)
- Ship registration and related functions
- Surveys, inspections and related functions
- Conducting of examinations, issuance of Certificates of competence or proficiency to seafarers
- Conducting inquiries into shipping casualties
- Matters pertaining to prevention, control and combat of marine pollution
- The adoption and implementation of international conventions
- Advise to the Government on maritime concerns
- Salvage/wrecks in national jurisdiction
- Detection and inspection of unsafe ships

### **2.5.4 DEVELOPMENTAL/PROMOTIONAL FUNCTION**

Having a look at the identified problems preventing the implementation of an ideal MARAD, the development of the maritime sector, as well as, the performance of its

pertaining function, are extremely necessary. The developmental functions of a proper MARAD indeed depend upon a country's maritime policy with regard to its development and capability, which may call for the correct allocation of resources in connection with such a development. These functions could be the following:

- Promotion of maritime education and training
- Development of necessary manpower for shipping industry
- Development of employment opportunities for local seafarers
- Development of shipbuilding/ship-repair yard
- National shipping line development

## **2.6 THE MARITIME POLICY**

Formulating maritime policy in any country is exclusively political a decisions, which is done at the highest government level. However, it will require the assistance of the all parties connected to maritime matters and the MARAD especially due to its technical expertise. The significance for such a maritime policy should be based on:

- The assessment of a country's maritime involvement
- The country's economic considerations and capacity
- The present and future objectives of the country as regards a maritime development plan
- The country's obligation at the national and international levels

Considering that any maritime policy is a prerequisite to the promulgation of maritime legislation, a state is also required not only to identify its maritime objectives but also to develop a convincing strategy that effectively should engage its maritime activities. Therefore, setting priorities and establishing policy objectives will be to create a precondition to build a legislative foundation for the implementation of that policy.

Subsequently, this serves as a ground to develop proper maritime legislation, which later becomes the step towards the development of a functional administration with a better-suited structure (UN, Guidelines for Maritime Legislation, vol. 1, page 2, 1991). Lamentable, as it has been referred too earlier, there is no clear, well-defined maritime policy in Guinea-Bissau due to the insufficient attention of the Government to this sector.

## **2.7 NATIONAL MARITIME LEGISLATION**

The organization and functioning of any administration of maritime affairs is based on maritime legislation, which provides a legal framework for exercising such activities to implement and assure the basic objectives of a State as the flag, port and coastal state. It is therefore essential to have a mechanism that regulates the relationship of all parties involved in this field.

As a flag or port state, the enforcement of laws to ensure safety and prevent accidents and environment pollution by ships calling at the port or passing along the coast, might be a primary objective of any coastal state. This should constitute a reason for Guinea-Bissau to have an updated legislation both primary and subsidiary, which moreover is very important for those people who are responsible for conducting port state control inspection.

As a result, the Government is required sooner or later to be able to promulgate developmental, regular and conformity legislation considering its inevitable involvement in the maritime community. This legislation may consist of two steps:

1. Primary legislation is mainly in the form of a Merchant Shipping Act. This needs to be updated since the Act N° 265/72 of 1972 requires a detailed review and the DNMP can take steps towards it, bearing in mind all the international standards of related matters.
2. Secondary legislation is required to cover all technical rules before it is promulgated.

Since the country has no legislation in order, there is a particular necessity for redrafting it, focusing on the most relevant IMO Conventions and the country's commitment as a part of west and central African MOU. For this reason, as far as the three regulatory powers of Guinea-Bissau are concerned (legislative, executive and judicial) it should be persuaded to pay as much attention to this question as it deserves.

## **2.8 IMPLEMENTATION OF INTERNATIONAL CONVENTIONS**

The process of the implementation of any convention is quite delicate issue due to its political nature, which sometime has noting relevant for the country's benefit. Furthermore, the subsequent responsibility of a state and consequent implication after ratifying an international agreement requires detailed analysis; so its obligations must be identified and evaluated against the country's necessities. This process requires not only time but also the country's participation or engagement in different IMO events, and therefore frequent consultation is needed outside and within MARAD.

Although Guinea-Bissau has been a member of IMO since its independence, it has not ratified any maritime agreement at the international level. The provisions of IMO documents not yet implemented by the country are clearly identified and no action has been taken to promote their ratification and incorporation for further implementation. Hence, no enforcement may take place without its support by the law, because of

reasons which are attributed to the Government political perception and its non-involvement in the evolution of maritime business, such as its participation in international forum (Vanchiswar P S, vol. 1, 1996, page 4).

In addition, according to Vanchiswar the procedure for ratification of an international convention pertaining to maritime safety and environment protection may have four phases as follows:

**Phase 1**

- (a) Detailed examination of the implication of the Convention in consultation with all the concerned parties in the country;
- (b) Determination of the acceptability of the provisions of the Convention,
- (c) Decision of the Government to become a party to the Convention.

**Phase 2**

- (a) Become a party to the Convention through Ratification, Accession, etc,
- (b) Prepare National Legislation (both Primary and Secondary),
- (c) Prepare the Executive Orders; instructions to officials concerned,
- (d) Documentation
- (e) Development of an appropriate and adequate Maritime Administration Infrastructure.

**Phase 3**

Implementations of National Legislation through the exercising of appropriate functions by the Officials of the Maritime Administration.

**Phase 4**

Certification of Ships, Seafarers and Issue of Clearance of Ships to proceed to sea.

## **CHAPTER III**

### **THE DEVELOPMENT AND IMPLEMENTATION OF A MARITIME SAFETY ADMINISTRATION**

#### **INTRODUCTION**

Being an important technical and executive arm of a maritime system of administration, the Maritime Safety Administration (MSA) has become an imperative institution for every coastal State. It contributes to the enhancement of the MARAD, its capacity of performing international rules and standards as well as the national maritime legislation or Merchant Act requirements, regarding the safety and protection of the marine environment.

Accordingly, the MSA should enable the maritime country to implement and enforce its regulatory functions; specifically those concerned with the registration of ships, maritime safety, maritime personnel, marine casualty investigation and prevention and control of the marine environment.

It consequently plays an active part in maintaining the national sovereignty, ensuring safe traffic and promoting sea transport. Its primary functions, such as developmental and regulatory, would surely contribute directly to the maritime development in Guinea-Bissau. However, more precisely it will be dependent on the MSA implementation and how its efficiency and effectiveness is balanced within the MARAD.

Until recently, as the Ministry of Social Infrastructure, Transport and Communication had been fully responsible for maritime affairs in the country, so there has been no specialised and competent Maritime Safety Administration. The job concerning maritime safety was divided and overlapped among four departments of the DNMP as has been mentioned before.

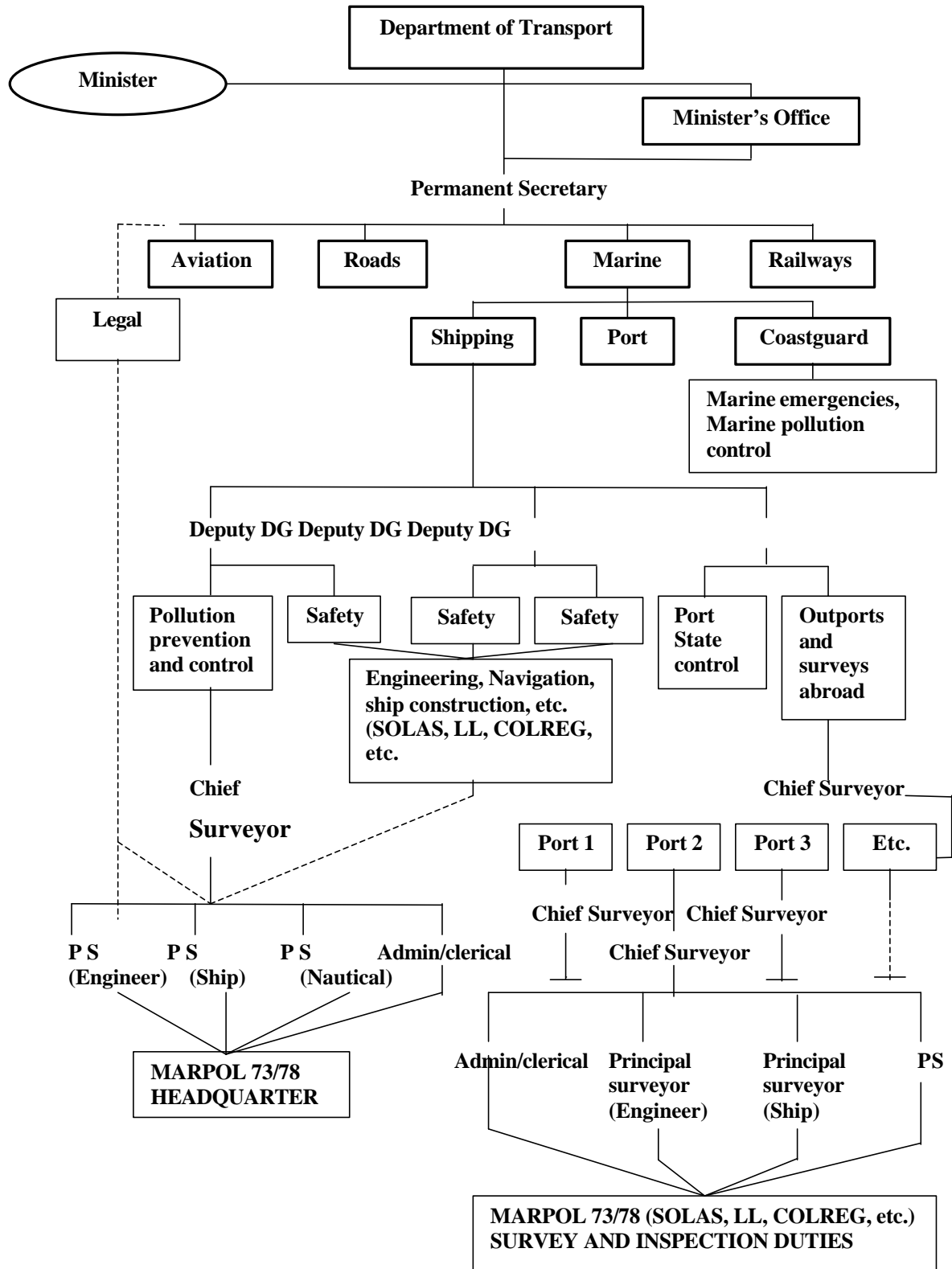
So, the Ministry has the overall authority in related matters, and therefore dictates its policy to MARAD. There is a vital need to entirely understand and specify the roles and functions to be undertaken concerning maritime affairs between the Ministry and the reorganised MARAD as it is the DNMP.

However, the overall infrastructure of the administration also will depend upon the extent of the duties and responsibilities involved which in turn could depend on the current Government priority and its plan for future maritime development. Therefore, it is very important to make sure that the MAARD structure is capable of carrying out efficiently those essential functions in the promotion of maritime development as pertinent to the country. This in addition, will undoubtedly require not only the establishment of a shipping division within the Ministry, which will particularly deal with maritime matters, but also a special department within the administration to take control of the functions concerning the safety issues.

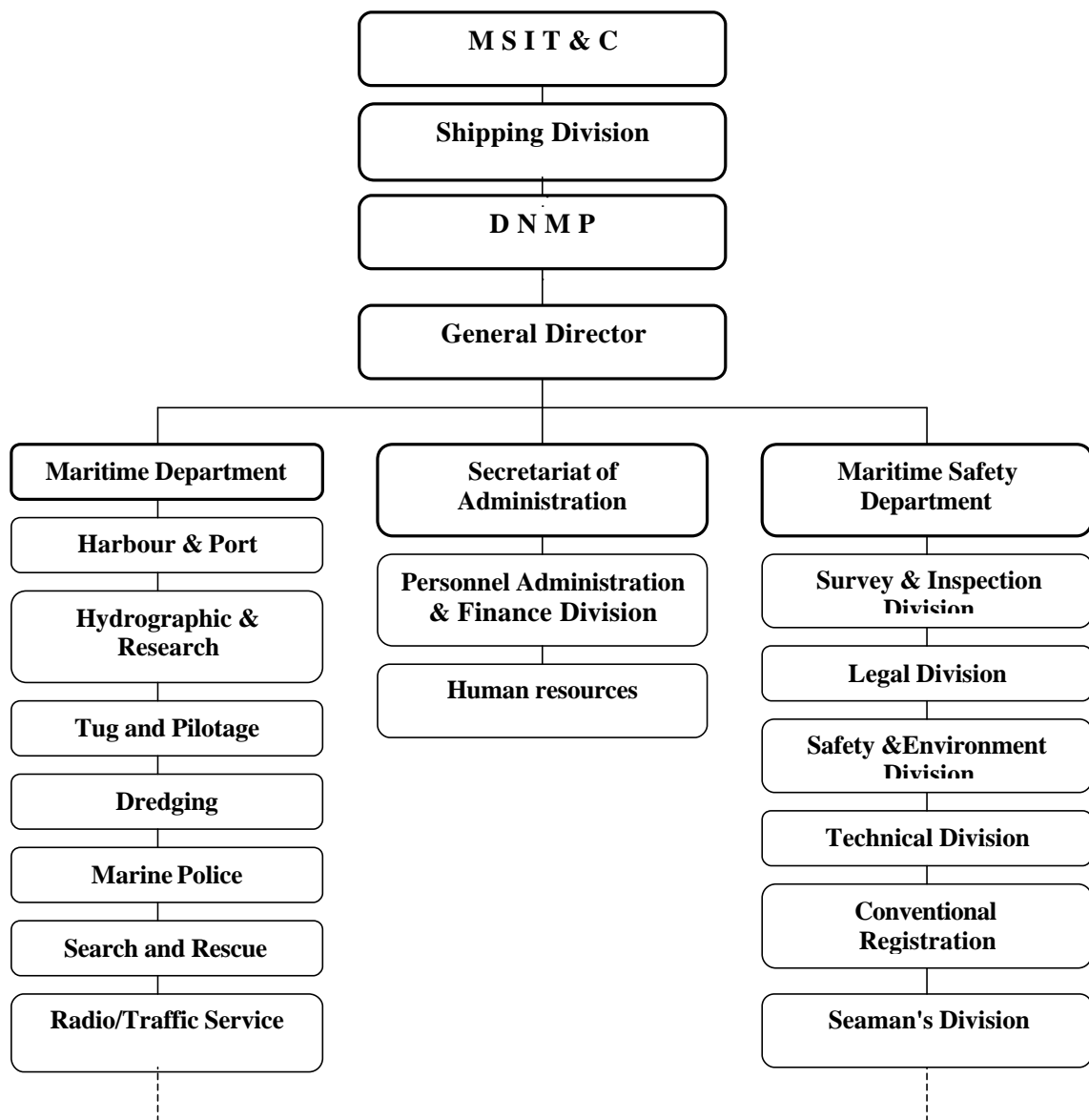
### **3.2 PROPOSED ORGANISATIONAL STRUCTURE FOR ESTABLISHMENT OF A MARITIME SAFETY ADMINISTRATION WITHIN THE DMNP IN GUINEA-BISSAU**

A small, competent and flexible MSA is a paramount, attractive privilege of the author in this country's uncertain political future. Therefore the malfunction of the public administration, in general, requires a foundation of solid maritime administration. This administration must be able to respond to any important level of maritime safety demands at the international and national level. Its ability of organising, planning, defining and managing policies must predominate. Therefore, this must focus on considerations dealing with the safety of ships, human lives, ports, navigation and marine environment matters in general, as well as in national affairs. Such an organisation of a comprehensive maritime administration is shown in figure 6.

**Figure 2. The Organisation of a Comprehensive Maritime Administration**







**Figure 3. Proposed Organisation Structure for MSA in Guinea-Bissau**

The author’s suggestion in developing a maritime safety administration through the administrative structure is to pursue the organising and creation of new operational branches within the DNMP, such as the Marine Department and Maritime Safety Department. The intention is to diminish charge on Harbour and Port Authority, which responds to all safety matters along with other departments, and therefore

avoid the awareness of maritime safety procedures. Thus, it would fix the limits of power between departments and also between departmental divisions, as well as promoting independence in the decision making process in safety matters, which was imposed by the overlapping of functional requirements between departments in the past.

Consequently, this delicate transfer of a few existing departments to the two new one would create administrative problems regarding the holding of positions and personnel rank. Nevertheless, there will be a need to minimise unfruitful departments and superfluous or ineffective personnel, which obviously requires the transfer of those staff among the departments.

Generally speaking, the approach of establishing these two new branches does not require a major change in the DNMP. Therefore, the author's prospect is to facilitate the implementation and discharge of the function of the Flag State regarding safety in the most effective way to protect the needs of the country.

In this new organisational chart of MSA, the four relevant branches of the maritime safety department are as follows:

## **1. LEGAL DIVISION**

Undoubtedly, the establishment of the proposed MSD will be a significant turn towards improving maritime safety in Guinea-Bissau. Therefore, since the country has not ratified any IMO Conventions, a legal division would be involved in this issue as a primary objective so as to have a close relation with IMO and regional maritime organisations. Consequently, in dealing with external contacts and the exchange of information, this division is to focus its attention on preparation of legal, administrative and technical issues in maritime safety matters for the country. Thus, it is to give advice and assist in accessing and adopting relevant international

maritime agreements like SOLAS, STCW, MARPOL, LL 66, COLREG, etc. It has also to deal, in its primary stage, with analysing all statutory obligations of the MARAD as a flag State as well those that might be delegated to CS.

In dealing not only with legal issues, at the national level as well as internationally, there will be a need for qualified staff, technical as well as legal maritime lawyer.

## **2. TECHNICAL DIVISION**

This division within the MSD as a technical body would basically work on the technical approach for all maritime issues and assist the administration in the decision making process regarding technical matters. In addition, it is intended to provide support, whenever required, to other departments as regards safety.

## **3. SURVEY AND INSPECTION DIVISION**

This operational division is in charge of carrying out the duties of the Flag State (FS) and Port State (PS). Willing to answer the concerns in relation to improved safety and marine environment protection this specialised operational as well technical body must therefore be able to perform both FS and PSC actions and responsibilities. Further discussion will be given below in this paper.

## **4. CONVENTIONAL REGISTRATION**

The Flag State has a task to have a close relationship with ship registration procedures for that intended to fly its flag. So this executive body, within the MSD structure in charge of ship's registration, can work in strict harmony with the survey and inspection division to enforce standards on and act against substandard ships to prior their registration.

## **5. SAFETY AND ENVIRONMENT DIVISION**

Although, the Ministry of Environment is responsible for the general policy for the environment, the National Directorate of Marine and Ports (Maritime Authority) has competencies in the prevention of marine pollution caused by ships and off shore installations as well as in the protection of the marine environment (Port Authority Act N° 265/72).

The genesis of this environmental branch as a specialised body would conduct the administration to stick to proactive measures to prevent and mitigate any possibility of serious maritime pollution.

Furthermore, it is intended to perform its duties in regional co-operation. It also should promote communication and the exchange of information with international specialised environmental agencies and institutes as well regarding the development of a national contingency plan for collecting information on environmental and regulatory matters, such as an environment impact assessment (EIA).

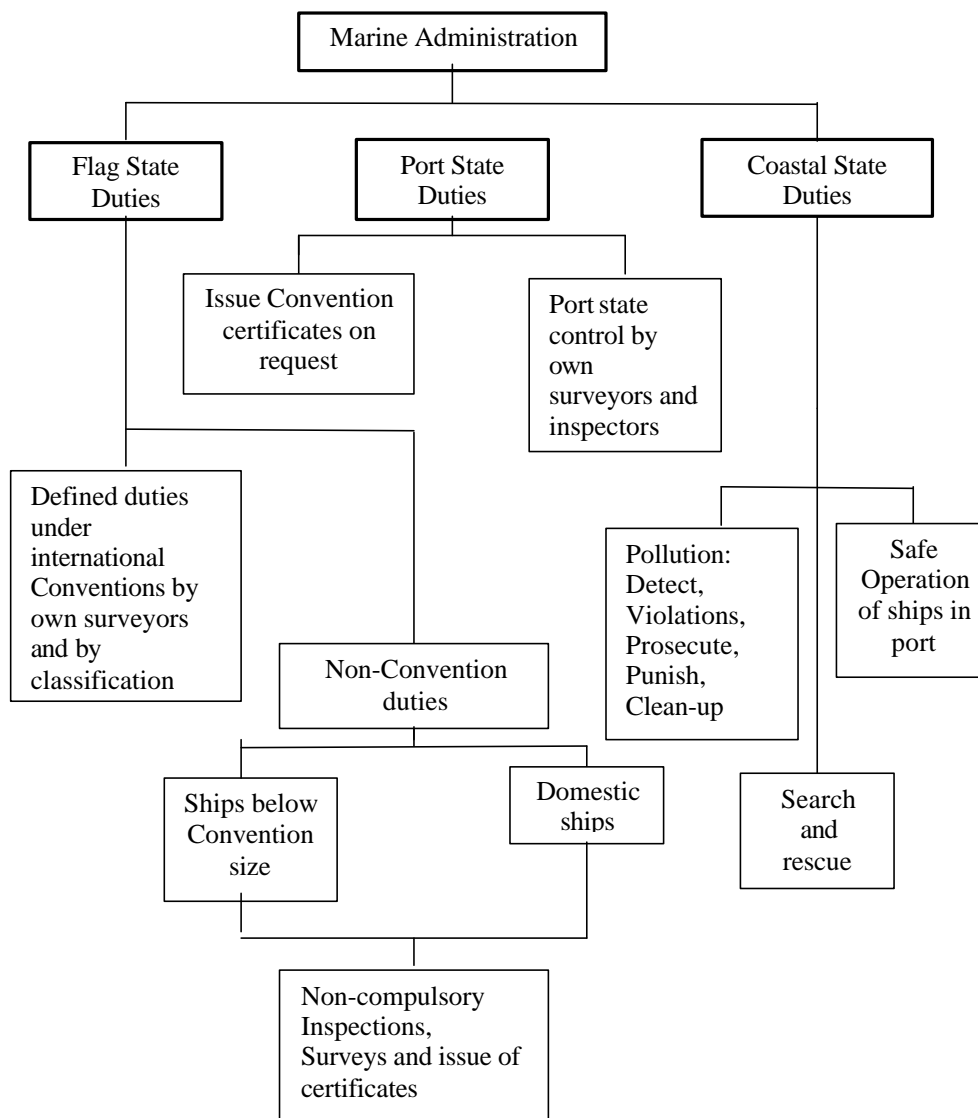
It is also of vital importance to take into consideration such environmental issues as coastal erosion, which has been threatening the country's coast for the last decade. However, this requires the support of technical expertise to get suitable solutions. The training of experts will be required as well and also adequate advice to the concerned Ministry to predict the repercussion and accept the seriousness of this threat.

### **3.3 FUNCTIONS AND RELATED MATTERS**

The Safety of life at Sea, the Safety of Navigation and the preservation of the marine environment appear to be the most indispensable functions of the MSA. To achieve

this goal the Maritime Safety Administration must perform those roles and functions mentioned in 2.5.3, Chapter II, which are also explained in some detail in the following pages below. This is intended to list the execution of responsibilities in operational aspects under the context of UNCLOS and especially the SOLAS Conventions, among others.

Obviously, to perform these roles and function, there is an immediate need for qualified and well-trained surveyors, examiners and accident investigators. In addition, to enhance the position of the administration, one of the highly trained officials among those available should be appointed a principal official. This principal official would be capable of assuming the responsibility and perform the functions of co-ordination and supervision of maritime matters as a whole.



**Figure 4. Convention and non-Convention duties of a comprehensive marine administration *reference MARPOL How to do it.***

Therefore, the training and upgrading of maritime personnel would be an ongoing process, for instance at WMU if maritime developments were really desired to advance along the correct track.

### **3.3.1 REGISTRATION OF SHIPS AND RELATED MATTERS**

The procedure of registration involves the observance of the requirements and formalities prescribed under the United Nations Convention on the Law of the Sea (UNCLOS), articles 91, 92, 93 and 94 as well as the Convention on Conditions for Registration of Ships, 1986, although not yet in force. The primary logic for registering a ship under those conventions, is:

- a) To provide evidence of the right to fly the flag of the State as well as evidence of ownership and title which lead to meet national obligation such as:
  - ensuring compliance with national law
  - establishing jurisdiction
  - providing a genuine link between State and ship
- b) to establish identity
  - facilitate the issue of all statutory certificates and documents
  - Promote the legal basis for commercial purposes like Bills of Lading, Charter Parties, etc and also service contracts, claims and litigation.

- c) to meet the international obligation, leading to the conformity with the international laws and conventions
- d) to facilitate mortgages and other transactions as the ship is secure for mortgage and other possible liens in use in maritime business

Therefore, the United Nations Convention on the Law of the Sea 1982 determines in Article 91 that ships have the nationality of the State whose flag they are entitled to fly. This requires every ship to fix the condition for grant of nationality through registration to guarantee the right to fly the national flag of the State.

In Guinea-Bissau, the General Regulation of Port Authority (Decree N°265/72) lists all the details and circumstances, which must be accomplished by a ship and its owners or agents preceding the acceptance to the country's registry. A Register Book is required in which all the details of the ships and particulars of the owners and mortgages must be registered.

The DNMP so far is designated by the regulation as the competent Authority responsible for a ship's registration and therefore to ensure that those relevant rules and regulations, governing the registry of ship, are complied with.

### **3.3.2 EXAMINATION AND CERTIFICATION OF SEAFARERS**

To secure the safety of life and property at sea as well as the preservation of the marine environment, the country must promulgate the "Regulation on Examination, Assessment and Certification of competence for Seafarers" under the STCW 78/95.

The revised STCW Convention, known as STCW 95, has as its main purposes as follows:

- To establish minimum standards for the various levels of officers and ratings

- To obtain global harmonisation of the standards of training and examination of the seafarers
- To facilitate world-wide recognition and acceptance of certificates issued under the Convention, and
- To consequently ensure the safe and efficient manning of ships

According to the provisions of the STCW Convention, the maritime safety administration should periodically arrange courses to assist the seafarers to acquire knowledge, for instance on the proper use of Radar, ARPA, life-saving appliance, and fire-fighting equipment and how to provide first aid. It is of primary importance, as this will considerably promote a crew's level of skills and proficiency to handle properly the jobs they have to perform at sea.

In Guinea-Bissau, the system of maritime training and certification of seafarers over the years has involved along with the different ranges of the country's economic uncertainty.

However, to conduct periodical training courses the national maritime administration has established training centre for local crew, financed by WB and with the participation of the Portuguese Maritime Administration. The project is intended to improve the technical and professional competence of seafarers as well as the harbour superintendent officers and pilot, to meet the needs of modern ship management.

It also came into view to establish separate organs for the assessment/examination and training, but at this point the administration, through the port and coastal authority, remains in charge of monitoring, controlling and issuance of certificates for seafarers. However, in respect of the quality control system it will be in accordance with the Portuguese maritime education unified system and most of the instructors will be from Portugal.



The country for purely economic reasons still does not have any type of MET institution and, therefore, there is no hope that it will be established in the near future. From this point of view, the author proposes that the training needs for maritime superintendent officers and seafarers are handled abroad within the region. By way of illustration, they should take place in such training centres as in Cabo-Verde, Ghana and Abidjan through the IMO's technical regional co-operation, which is offered at a low cost.

Later on, the system of issuance of equivalent certificates to holders of foreign certificates should be introduced from "white listed" countries to seafarers on local ships. Furthermore, for the local seafarers operating small wooden craft within the region or locally, safety measures and navigation training should be instructed by the administration's officers (nautical and engineer). Therefore, they should be provided with certificates as a participant, not in conformity with STCW provisions.

This clearly indicates that in a small administration like DNMP, due to limited resources, educated personnel are needed to be multipurpose.

### **3.3.3 MANNING OF SHIPS**

The Safety manning of a ship is one of the Flag State Administration's responsibility, which intends to ensure that ships proceeding to sea are sufficiently, efficiently, and safely manned (SOLAS, Reg. V/13 and ILO 109). Besides, IMO Res. A. 481(XII) of 1981 and ILO 109 exhort that a State exercising Port State control under international conventions observe the compliance with a document as evidence that the ship is safely manned.

The administration, in establishing the minimum safe manning for each particular ship can issue the document based on the guidelines of the resolution, which provide considerations such as:

- ◆ Safe navigational watch, including general surveillance of the ship (STCW 78, Reg. II/1).
- ◆ Safe engineering watch, including surveillance of main propulsion and auxiliary machinery (STCW 78, Reg. III/1).
- ◆ Operational capacity of the crew to handle fire equipment, life-saving appliances, etc.
- ◆ Support services in emergency operations (muster and disembarkation)
- ◆ Mooring and unmooring the ship (effectively and safely)

Manning considerations such as wages, hours of work and rest on board, accommodation, etc is given by ILO, ITU and WHO instruments as stated in Resolution A. 481 (XII) and therefore more specified in ILO 109. Moreover, when the principle of safety manning is applied under Art. III of the STCW Convention, factors like ship's type, size and characteristics, length and nature of voyage, including trade area and water are to be considered to ensure the safe operation of the ship. Therefore, according to the revised STCW 95, all persons, on board ship should have qualifications for the job assigned.

In the view of Guinea-Bissau, the administration in exercising its responsibility under the Port Act N 265/72, such considerations have more social warning rather than safety concerns, which urges to strict policy demands regarding seafarers' employment opportunities on board ships, mainly fishing vessels.

With regard to the certification regime, analogous consideration is new for the administration due to its inefficiency in handling regulatory functions well. However, it would probably change since the MARAD schemes its own safety-manning regime for ships arriving at its port.

### **3.3.4 CASUALTY INVESTIGATION**

The casualty investigation is a fact-finding process to learn about the cause of an accident in order to prevent a reoccurrence of accidents of a similar nature. The purpose of an investigation shall be to:

1. As far as possible, make clear the cause of event and the cause of the occurrence as well as the damage and effects otherwise.
2. Form the basis for decision concerning measures, which aim at prevention of a repetition of the occurrence or similar occurrences.
3. Form the basis for a review of the efforts made by the rescue service of the society in connection with the occurrence and, if justified, for improvements of the rescue services.

A reference can be made to the definition in the IMO draft Code for the Investigation of Marine Casualties and Accidents in the report of Maritime Safety Committee (MSc 68/23/Add 1, Annex 8, 1997d). Moreover, it is also defined in the IMO Resolution A.849 (20) on 27 of November 1997, agenda item 11.

Apart from this, the international obligation of the States arises through several IMO agreements, which contain regulations pertaining to maritime casualty investigation including:

- SOLAS Convention (Reg. 1/21)
- MARPOL Convention (Art. 6 (2,4 & 5) and 12)
- Load Lines Convention (Art. 23)
- ILO Convention 147 (2.g), 153 (Art. 36, 39) and 134 (Art. 2, 3)
- UNCLOS (Art. 94 (7), 97, 217 (4,6), 220 and 226)

Furthermore, guidelines and recommendations are also given in other IMO Resolutions, such as A.442, A.173, A.322, A.440, A143 and A.637 as well. Most of these recommendations are meant to drive States and contracting Governments to unify investigation practice in the interest of safety and to encourage the information flow between nations involved, and therefore also between nations and IMO.

In any particular case, considering that the casualty investigation is a function of the Administration, a designated section with experienced personnel should be organised to carry out this important obligation. It also must be clear that the assigned person to conduct the preliminary investigation must be specialised and have some investigation skill or training in the field. The procedures of investigation obviously should differ from one country to another.

The emphasis of an investigation comes from the reports and the recommendations of the analysis made on it. So far, after the completion of a formal investigation and the final draft report, there is an obligation of the maritime safety administration to study it and give appropriate advice to the Government. Then the Government must take posterior measures regarding the prevention of accidents in the future

#### **3.3.4.1 INTERNATIONAL OBLIGATION AND GUIDELINES**

The international obligation for casualty investigation arises through various international agreements and maritime laws, which are predominantly covered in the following:

- ◆ Article 94, 217, 220 and 226 of UNCLOS, 1982
- ◆ Chapter I, regulation 21 of SOLAS Convention
- ◆ Article 6 and 12 of MARPOL 73/78
- ◆ Article 23 of the International Convention on Load Lines, 1966 (LL 66)
- ◆ ILO 147 Convention, 2 (g)
- ◆ Article 36 and 39 of the ILO 152 Convention

- ◆ Article 2 and 3 of the ILO 134 Convention

Furthermore, there are many IMO Resolutions and MSC/Circulars in which guidelines and recommendations concerning investigation into maritime casualties are met, therefore a complete list can be found in SOLAS, Consolidated Edition of 1997.

### **3.3.4.2 TYPES OF CASUALTIES**

Casualty investigation falls into two administrative categories (Dr. F. L. Wiswall, course lectures on Casualty Investigation, 1999), that according to the type of vessel can also be of civilian and of military nature, and judicial. The administrative investigation covers three levels as follows:

- ◆ Initial report: normal standards procedure, that is usually done by the flag Administration
- ◆ Preliminary Inquiry or Informal Investigation: one of the lowest forms of investigation which does not attract any public attention
- ◆ Formal Investigation: the top level of inquiry
- ◆ Judicial Investigation: a criminal investigation to determine the guilt and reasonable punishment

In the eventuality of a casualty of excessive public interest, or a case of the withdrawal of one officer's certificate, the Government without a preliminary inquiry should immediately order a formal investigation.

Regarding the seriousness of an accident and relation of human fatalities per type of accident, the IMO instrument FSI 5/INF. 6, 1996j illustrates some types of maritime accidents as follows:

- a) Accident per type of casualty:
  - Flooding/Grounding-45%
  - Collision/Contact- 16%

- Stranding/Grounding-16%
  - Fire/Explosion-18%
  - Capsizing-5%
- b) Lives lost per type of casualty
- Flooding/Grounding- 54%
  - Collision/Contact- 27%
  - Stranding/Grounding-1%
  - Fire/Explosion-14%
  - Capsizing-4%

### **3.4 PROPOSAL FOR THE ESTABLISHMENT OF THE DEPARTMENT OF SHIP SURVEY IN GUINEA-BISSAU**

A proposal for the establishment of the department of survey within the country's MARAD is emphasised from the view that a marine survey division is needed, which requires effective management, and qualified, trained and well-organised staff

It is, nevertheless, important to note that this should increase in value the administration's activities, giving new dynamic, especially in the early stages of the establishment of the MSA. The establishment of this department of surveys will unequivocally assist MARAD to overcome such difficulties as those pertaining to its main regulatory functions. Thus, it should absolutely deliver settlements to ensure that the vessel is seaworthy and without threat to the environment as a view of MARAD's main objective.

### **3.4.1 INTERNATIONAL STANDARDS AND IMPLICATION VERSUS NATIONAL LEGISLATION**

Presently, all laws governing maritime affairs are based on international agreements. This means that international instruments can not be enforced by the state if not ratified and further incorporated into domestic law. Thus, the state is obliged to step up ratification of the IMO instruments and adopt them into national legislation to give them legal effect.

Guinea-Bissau is an IMO member since 1973, nevertheless has not ratified any of the relevant Conventions. Therefore, having an old-fashioned legislation, there is a vital need for the country first to discuss and outline the purpose of its maritime legislation with an emphasis on:

- ◆ The legal framework for maritime transport
- ◆ The national economic objectives e.g. ship's registration, employment, etc.
- ◆ Supporting coastal and port jurisdiction
- ◆ Source for the implementation of IMO Convention
- ◆ Maritime policy to be implemented

It is extremely important for any country, before attempts to ratify and implement such international agreements, to predetermine criteria for which certain studies are sustained to examine the technical, economical and legal implications of the instrument as well as the evaluation of the impact and the provisions of the instrument. Hence, towards the implementation process of the instrument the following procedures are considered:

- (a) Detailed examination of all provisions of the convention. With this respect, all major parties concerned in the shipping industry and other interested parties within the country are solicited or consulted. Their feedback is of notable importance to assist a State's legislators in establishing the accessibility and acceptance of the provisions in the event they meet the country's need.

- (b) Through the Ministry of Foreign Affairs or Consulate of the country deposit at IMO in London, the document of acceptance and ratification.
- (c) Willing to develop an appropriate and competent MARAD, the Government through the Council of Ministry or country's legislators can prepare the integration of such an instrument into national legislation, which might even be made by ministerial decree.
- (d) After the ratification procedure, the MARAD using its prerogatives can proceed to exercise appropriate functions.

Actually, every Flag State must always put maritime safety awareness and marine environment concerns in first place as a big support for the enhancement of maritime safety. There is urgency for the related Ministry in Guinea-Bissau to focus its attention on legal issues concerning safety matters. For instance, with national legislation in place, ratification and implementation of the IMO Conventions will be easier and quicker, considering the fact that the country's jurisdiction tradition is still Portuguese, which is based on the civil law system.

Unfortunately, it is common within the country that the Minister is more an administrative politician without any inclination in the maritime field, and obviously he relies on the Director, who is a politician as well rather than a technical person. In addition, most of their deputed, who directly or indirectly are close to them, do not have a minimum expertise within the field. So, this crew of politicians is the main reason that the Government never gets current information related to this area as well as intelligent or reasonable advice regarding the development of the maritime sector.

In the author's view, it is not just enough to have the legislative jurisdiction to be able to act. It is also of vital importance to have a good information flow between the top management and, for instance, the operational branch, so that a mechanism is in place to enforce the compliance.



### **3.4.2 QUALIFICATION AND RECRUITMENT FOR ADMINISTRATION SURVEYORS**

Bearing in mind that the complexity of the statutory surveys requires experienced and skilled personnel to enhance maritime safety, there is not only a call for a competent Administration with own infrastructure to be in place, but also for human development. Therefore, many Flag State administrations, having the responsibility to ensure that ships flying their flag meet the international standards, have been unsuccessful in their responsibility so that further action is needed to improve their duties.

So, the phrase “To the competence of the Administration” must not only be well understood but requires correct interpretation as well. Consequently, to meet this obligation, a maritime administration acting within the provision of an effective legislation, can not be enough. The human element is of such vital importance, so that its performance in operational and managerial positions with relevance for safety will improve the MSA services. Obviously, it will require the employment of highly-qualified, well-educated, trained and well-motivated personnel to deal with this issue.

For this reason adequate training and qualification of surveyors, to increase the surveyor’s confidence and credibility is of utmost importance, so that it should drive them to have sufficient statute for making perfect judgement in any circumstances.

The IMO draft document on guidelines to assist flag States to implement relevant international instruments (FSI 5/16, Annex 3, 1997b, page 8), is relevant for this purpose, as it points out the minimum qualifications which a flag State surveyor must

have in such matters. There it is recommended that flag state surveyors to have professional qualifications as follows:

1. a Certificate issued under the provision of the STCW Convention, as amended as:
  - a master, the person who is empowered to command a ship of 3,000 GT or more; or
  - a chief engineer, the person who is enable to command machinery installed in a ship with a main propulsion power of 3,000 kW or more; or
  - meet the provisions of the Radio Regulations or hold an appropriate certificate related to GMDSS; or
2. a University degree or diploma as naval architect, mechanical engineer, electromechanical engineer, or other professional education degree relating to the maritime field; or
3. Or not less than five years' service as an officer on board a ship at sea, or as naval architect, or as an engineer in the field; or
4. A relevant university degree or diploma based on the fulfilment of the model course: 3.03 Machinery, 3.04 Electrical Installations, 3.05 Fire Appliance and Provisions, 3.06 Life-saving Appliances, 3.07 Hull and 3.08 Navigational, and therefore having sea-service of not less than six months.

Nowadays, with the inception of MOU on PSC in West and Central African Countries, and the review and amendment of various IMO Conventions, the time has finally come for the Government of Guinea-Bissau to wake up and set up a basis for the training of personnel to deal with these issues properly.

The number of technical staff is considerably few at managerial as well as operational, level within the MARAD. So there is urgency for the administration to recruit marine officers, train and engage them for more diversified and qualified staff at the above-mentioned level.

### **3.4.3 TRAINING OF SURVEYORS**

The right approach and enthusiasm to learn must always prevail for all those choosing marine surveying as a career and their qualifications are of vital importance. Apart from this fact, if the administration is willing to have a team of national surveyors, the training scheme must be set up and be based on IMO requirements prescribed under STCW provisions. Additionally, this programme must be done taking into consideration the national needs of the Flag State with a structure, which aims to undertake both the theoretical and practical aspects of training.

Furthermore, personnel who would be engaged in this survey's course must have at least the entry level as mentioned above in paragraph 3.4.2. In addition, other officers below that rank, who have substantial experience in different types of ship also, should be favoured.

The administration, together with the Ministry of Education and all other concerned institutions, may be instructed to set up a program, sustain and conduct the training. Bearing in mind the country's urgent need in this concrete sector, and due to the lack of funding, this training should be organised at first stage through seminars, workshops and short courses. Therefore, it necessary to take into consideration aspects like theoretical lessons, technical and practical practice. Conducting ship surveys should only be granted after completion of the programme within the stipulated time, and then followed by an issuance of certificate.

Having achieved sufficient practical experience, a successful application to study abroad, such as at the World Maritime University, might be granted for more advanced training. Meanwhile, it might be suggested to the MARAD of Guinea-Bissau to possess qualified and experienced surveyors to work with those junior inspectors until they acquire enough practice.

### **3.4.4 SURVEY/INSPECTION OF SHIPS CERTIFICATIONS**

Safety of life at sea and protection of the marine environment or minimise the pollution of the sea from ships, is an aspiration of remarkable degree that places the statutory surveys as mandatory by the international conventions.

In this respect, the maritime safety administration is in charge of the survey/inspection, and subsequent certification, of ships. However, with the delegation of some survey/inspection and certification to the CS of international credibility, either in total or in limited condition. But it must be observed that the responsibility in such cases still remains with the administration. Therefore, it is necessary to establish a monitoring system to ensure that duties performed by the CS are in conformity with national and international requirements.

To cover such functions different types of periodical surveys/inspections of ships will be carried out in accordance with the relevant rules under the international and national provisions. So far, the following certificates should be issued to the particular ship:

1. Passenger Ship Safety Certificate along with the “Record of Equipment”
2. Cargo Ship Safety Construction Certificate
3. Cargo Ship Safety Equipment Certificate along with the “Record of Equipment”
4. Cargo Ship safety Radio Certificate along with “Record Equipment”
5. Safety Certificate for Cargo Ships along with the “Record Equipment”. This can substitute those certificates listed in 2, 3 and 4 above.
6. Load line Certificate

7. Tonnage Certificate
8. IOPP Certificate
9. International Pollution prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk
10. Safety Management Certificate, which becomes mandatory for all ships from 1s of July 2002.
11. Exemption Certificate, if necessary

To prove the quality of the service provided, strict control measures to verify a ship's condition, including its equipment in compliance with the certificates, must be carried out by the MSA to secure that:

1. Port State control inspection of foreign ship is carried out
2. Inspection and detention when necessary of unseaworthy or unsafe ships are made as required
3. Various plans approval of newbuilding ships are done
4. The development of design, manufacture and approval of marine equipment are assured
5. Technical records of national ships are kept and retained
6. Request for exemption from any statutory requirements are dealt with reasonably

Since the administration has not a specialised department for survey/inspection these duties are co-ordinated and carried out by the Port and Coastal authority. Although all surveys, mainly of fishing vessels and small craft of less than 500 GT, falls on the lap of this division, the high rate of casualty of these vessels shows how inappropriate this procedure is.

Regarding flag state control, there are a few officers (nautical and engineer) who perform inspection duties mainly on fishing vessels. However, the administration still has a lot of qualified officers with seagoing experience, but lacking a particular

assignment or not on duty at all. In the author's viewpoint they must be given the opportunity and be trained to perform both survey and inspection assignments.

### **3.4.5 TYPES OF SURVEYS**

The adoption of the Harmonised System of Surveys and Certification, IMO Resolution A. 746 (18) will simplify the process of survey and renewal of international certificates, and therefore reduce the charge on administration, ship's operators/agents and seafarers. Under this system the following types of surveys are suggested to be done:

#### **1. Initial survey**

This is the first survey that can be made on a ship before it is put into service as the name implies. This survey includes a complete inspection and test, as it is vital to the ship's structure, machinery and equipment to verify the compliance in accordance with the requirements of the particular certificate. This is to ensure that the structure, machinery and equipment are fit for the service for which the ship is intended.

#### **2. Annual survey**

This is done within three months before or after the expired date of the Certificate. The annual survey is done to enable the administration to verify that the condition of the ship; its machinery and equipment are correspondingly maintained as prescribed in the relevant provisions.

Accordingly, this must include an examination of certificates and inspection of the ship and its equipment through visual scrutiny to confirm that no unauthorised

modifications or accretions have been taken place to the ship or its relevant equipment.

After this survey, if all conditions were maintained and satisfy the requirements an endorsement is made to the respective certificate. On the other hand, if it is verified that the condition of the ship along with its respective equipment does not match with, the provisions fixed in the certificate, then the necessary repair works should be ordered to restore the requisite standard.

### **3. Intermediate survey**

This is held within three months before or after the second date of expire or within three months before or after the third anniversary date of the appropriate certificate. Thus, it also is switching one of the annual surveys. The survey consists of an examination of items to the appropriate certificate to ensure that the ship has been managed in satisfactory condition.

### **4. Periodical survey**

The periodical survey, for instance for cargo safety equipment certificate, is held within three months before or after the second anniversary date or within three months before and after third anniversary period of time. Therefore, for the purpose of the cargo ship radio certificate, the survey should switch one of the annual surveys and within three months before or after the anniversary term.

To ensure the conformity with the requirements of the appropriate certificate, the survey is carried out through an inspection, which should include tests wherever necessary. In addition, it should cover a check of the relevant certificates on board as prescribed in the provisions on those certificates, and also cover verification of record books, operation manuals and other on board documents.

## **5. Renewal survey**

The survey which is held before the renewal of the appropriate certificate also consists of an inspection and tests, whenever necessary, the ship' structure, machinery and equipment to ensure if their condition meet the requirements of the particular certificate. To justify the presence of the required certificates, record books, operation manuals and other relevant document on board ship, a check should be carried out.

After this survey the certificate is normally issued, valid for five years. However, this validity of certificate could be reduced to be less than five years upon the surveyor's judgement based on the age and condition of the ship.

## **6. Additional survey**

An additional survey is always held after an accident has occurred to a ship or any defects are detected that affects the ship's integrity or the efficiency of its equipment. Before the issuance of the certificate, the damage and defect is recommended to be examined to ensure that the necessary repairs have been made and the condition of the ship and, or its equipment coincide with the standards for the appropriate certificate.

Apart from the above-mentioned types of surveys, IMO Resolution 746 (18) also gives guidance for Inspection of the Outside of the Ship's Bottom of Cargo ship and Passenger Ship. Therefore, the inspection of the outside of the ship's bottom is to be done in a dry dock at least twice within each five years period. Therefore, the interval between the two surveys can not transcend three years.



There is as well stated that passenger vessels must undergo a periodical survey once every twelve months (SOLAS 74/78, Reg. 1/7) apart from the initial and additional surveys as the occasion arises. This survey is expected to cover a complete inspection of the ship, its machinery and equipment, as well as the outside bottom.

#### **3.4.6 CONDUCTING SURVEY**

Time available to carry out the physical inspection, as an example, is not always easy to find for conducting a survey. This means that there is a need for preparation, and the surveyor should in advance get as much information as possible in order to effectively plan the time available.

Therefore, in this planning stage the surveyor should consult, beforehand, the rules governing a such ship. Thus, it is their responsibility to be aware of the changes made to the convention so that such consultation should include a check of the survey's file or records in order to apply the right rules to the right types of ship.

Normally, survey assessment starts already when the surveyor approaches the ship or the ship's gangway. For instance, on the way to the master's cabin, general housekeeping observation should be made. If it is the case of a tanker engaged in cargo handling a look should be made for the posted safety notices on the material being handled, signs guiding visitors, safety barriers, lay out of portable fire-fighting equipment and their ready access ability, emergency plan and so on. In the master's cabin/office, the survey is proceeded with an examination of all appropriate certificates, record books, manuals and other relevant documents, which must be carried on board ship. This examination consists of the following:

- ◆ Check the validity of Safety Certificate in accordance with Chapter I, Reg. 12 and 14 of SOLAS Convention.

- ◆ Check the validity of Load Lines Certificate, the Certificate of Fitness or NLS Certificate.
- ◆ Check the Certificate of Class
- ◆ Check whether the Cargo Record Book is on board and being in use.
- ◆ Check if the validity of all other relevant certificates are in conformity with standards in association with the ship's safety and environment protection.

After a while, before the surveyor starts ship's general overlook, personnel safety as well as of those on board must be of vital importance. The layout of the checklist should guide the surveyor along the appropriate route.

Considering that it is not possible to give a detailed point by point procedure for every item to be surveyed in the scope of this paragraph, nevertheless, some categories are given under SOLAS 74/78, such as:

Survey of Life Saving Appliance, which should cover the following:

- personnel LSA such as life buoys, lifejackets, immersion suits and thermal protective aids (SOLAS, Chapter III, Reg. 31-34);
  - ◆ visual signals like rocket parachute flares, hand flares and buoyant smoke signals (SOLAS, Chapter III, Reg. 35-37)
  - ◆ survival crafts such as liferafts and lifeboats of all types (SLOAS, Chapter III, Reg. 38-46);
  - ◆ rescue boats (SOLAS, Chapter III, Reg.47);
- Launching and embarkation appliances (SOLAS, Chapter III, Reg. 48),
  - ◆ Other LSA (SOLAS, Chapter III, Reg. 49-50);
  - ◆ miscellaneous (SOLAS, Chapter III, Reg. 51-53)
- Survey of construction, fire protection, fire detection and fire extinguishing:
  - ◆ Fire safety measures- passenger ship (SOLAS, Chapter II, Reg.23-41);
  - ◆ Fire safety measures- cargo ship (SOLAS, Chapter II, Reg. 42-54);
  - ◆ Fire safety measures- tanker SOLAS, Chapter II, Reg. 55-63);

- ◆ Survey of Radio communication equipment and requirements of its carriage (SOLAS, Chapter IV, Reg. 6-17);
- ◆ Survey of navigational equipment and requirement of its carriage (SOLAS, Chapter V, Reg. 1- 21)

### **3.4.7 DELEGATION OF SURVEY**

Presently, to minimise the statutory functions due to the inadequacy of qualified surveyors and expertise, most Administrations appreciate being able to delegate surveys to reputable Classification Societies.

There are about 62 non-government organisations, according to an IMO document (FSI 5/INF 7 Corr, 199 c.c.) that countries after their careful consideration, may trust and grant the delegation of statutory work. These organisations inspect ship designs and carry out class surveys during and after construction on behalf of the administration and shipowners.

Despite this fact, Guinea-Bissau has not yet signed any agreement with any particular classification society and therefore their operations inside the country are allowed and it is up to the owner's own decision. Thus for such a country with a small inefficient administration it is incompatible to accomplish the exigency made by survey matters. In this respect, due to the lack of administration expertise there is a present need for the country's MARAD to identify and select a reputable CS for the delegation of the statutory work, such as among the IACS members.

No MARAD is allowed to issue an international certificate unless the country is part of the particular convention. Notwithstanding the country has not adopted or ratified any of the international conventions pertaining to safety and environment protection. This issue should partly be solved through the recognised Classification Societies.

Below is a list of IACS member societies, recommended by the author, that their delegation should be granted regarding statutory surveys and the issuance of certificates on behalf of the country's MARAD:

**Table 1. International Recognised Classification Society and Associated Members**

Source: IACS

Societies	Symbol	Country of origin
American Bureau of Shipping	ABS	United States of America
Bureau Veritas	BV	France
China Classification Society	CCs	China
Det Norske Veritas	DNV	Norway
Germanischer Lloyds	GL	Germany
Korean Register of Shipping	KRS	South Korea
Lloyds Register of Shipping	LR	United Kingdom
Nippon Kaiji Kyokai	NK	Japan
Registro Italiano Navale	Rina	Italy
Marine Register of Shipping	RS	Russia

The Associated members:

Croatian Register of Shipping	CRS	Croatia
Indian Register of Shipping	IRS	India

## **CONCLUSION**

To sum up, a good maritime infrastructure in place should be seen as a tool to assist the coastal State to comply with its own responsibility under the most relevant international maritime agreement as a flag State. However, the non-appearance of adequate legal framework along with a bad administration structure is proof of inappropriate Flag State implementation.

Furthermore, a proper MARAD, designed to enhance safety standards, can only be successful with human resource development, professional quality and training personnel for efficient FS and PSC implementation supported by well-drafted national legislation, which should cover international Conventions pertaining to safety and environmental protection.

## **CHAPTER IV**

### **PORT STATE CONTROL**

Leaving aside the Flag State Implementation matters, which have been the subject of the previous chapter, the discussion of this chapter will address the basic principles and procedures of Port State Control. It will discuss its role in ensuring maritime safety and environmental protection by the enforcement of international conventions within its waters, and therefore its purpose to eliminate substandard ships by inspection and detainment. The fact that Guinea-Bissau is a party to regional co-operation on Port State Control, adopted as a means of increasing its effectiveness, is considered a paramount. The importance of the human element in maritime safety is stressed through the role of the marine engineer officer within PSC.

#### **4.1 BACKGROUND**

Port State control is the inspection by a port state authority of foreign ships visiting its ports that is primarily seen as a back-up system and not a substitute to effective Flag State control. Previously, it was believed that the application of provisions for port state control stated in relevant IMO documents, would be a matter of national concern. Further, each particular country could have the right and mechanism to inspect ships arriving at its ports, as there was no singular harmonised requirement, guidelines or inspection procedures to do so.

Since the Paris MOU was established, Port State control is carried out on a regional basis, which provides the means of inspection to be harmonised, more effectively organised and facilitates reasonably the use of resources. With the expected signing of a MOU for West and Central Africa in October this year almost global coverage

of Port State control implementation will be achieved. This will make it very difficult, if not to say impossible, for the owners to move their ships into areas where a PSC does not exist effectively. There will be no place any more to hide their ships like in the past.

Furthermore, the prime responsibility for ensuring a ship's compliance with the provisions of the relevant maritime agreement rests upon the owners, the masters as well as the Flag State (Prof. Ulstrup, Notes on PSC Implementation in Denmark, 1999). However, for different reasons certain owners and flag states fail to fulfil their commitments. Subsequently many ships have been sailing throughout the world's oceans in doubtful safety condition, threatening the lives of those working on board, and the environment.

The PSC, as an essential part of the MSA, is a measure to control the safety of ships and prevent pollution. It is intended to assist those who are directly responsible for the compliance and improvement of safety to detect, detain and even eradicate substandard ships through unexpected inspection.

For the promotion and improvement of maritime safety, pollution prevention and seafarers social welfare, security, etc as a framework when carrying out PSC, there are international legal instruments giving powers to the states to check ships under and in their jurisdiction.

## **4.2 RELEVANT INTERNATIONAL CONVENTIONS**

In accomplishment of their duties, the administration, its surveyors or Port State control officers constantly rely on international obligations of ships concerning safety and pollution prevention.

As a matter of fact, most of these obligations have been written down mainly in the form of conventions, protocols and, or guidelines for coastal governments and all of the maritime community in general, but before they can be implemented and enforced, they must be incorporated.

So the wish of the author is to mention some considerations of these international instruments, which mostly are associated with safety of property, safety of life and pollution prevention in relation to inspection control. These are:

1. Chapter 1, Regulation 19 of SOLAS 74. Regarding the "No More Favourable Treatment Clause" is not provided in this regulation, however it can be found in Article II (3) of the SOLAS Protocol.
2. Article 21 of the International Convention on Load Lines, 1966 (LC 66). There is no "NMFT Clause" in this convention.
3. Article 5 (2) and 6 of MARPOL 73/78. The "NMFT Clause" can be found in Article 5 (4).
4. Article 12 of the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69). The "NMFT Clause" can be found in Article 22.
5. Merchant Shipping (Minimum Standards) Convention, 1976 and ILO 147
6. Article X and Regulation 1/4 of International Convention on Standards of Training, Certificates and Watchkeeping for Seafarers, STCW 1978/95. The "NMFT Clause" is in the same article.
7. Article 21 of UNCLOS 82
8. Article 1 of International Convention relating to Intervention on the High Seas in Case of Pollution Casualties, 1969

Apart from those above-mentioned relevant instruments, there are also various IMO resolutions to be considered as they offer valid recommendations and guidance to PSC as listed below:

- Resolution A. 466 (XII): Procedure for the Control of Ships



- Resolution A. 542 (13): Procedure for the Control of Ships and Discharge under Annex I of MARPOL 73/78
- IMO MEPC Res. 26 (23): Procedures for the Control of Ships and Discharge under Annex II of MARPOL 73/78
- Resolution A. 681 (17): Procedure for the Control of Operational Requirements related to Safety of Ships and Pollution Prevention
- Resolution A. 682 (17): Regional Co-operation in the Control of Ships and Discharge
- Assembly Resolution A. 787 (19): Procedures for Port State Control, which revoke resolution A.466 (XII), A. 542 (13) and MEPC Resolution 26 (23).

### **4.3 INSPECTION PROCEDURES**

The control procedures normally arise from information given to a port State regarding a ship prior to its arrival. A PSCO must first, at the earliest possible chance, check and examine a ship's data to decide which provisions of the conventions are pertinent to that specific ship. From the appearance of the ship in the port, even before boarding, the PSCO's proceeding to the ship may initiate the control procedure through observation of the quality of the maintenance, the condition of the paintwork, appearance of corrosion or pitting or any damage left without repair.

The PSCO on board a ship, after introduction to the master or the responsible ship's officer, normally begins with a control and verification of the certificates and documents as listed below:

- Certificates and documents issued in accordance with the relevant IMO instruments as mentioned above
- Oil record book
- Record of construction and equipment
- International tonnage certificate /1969)

- Minimum safe manning document (IMO Res. A.481 (XII), Annex 1 and 2)
- Certificates of competency
- International certificates of fitness for the carriage of liquefied gases in bulk or dangerous chemicals in bulk (if relevant)
- Medical certificates (ILO convention 73)
- Stability information
- Cargo record book (if relevant)

If consistent, class certificates should be requested as to the ship's hull strength and machinery. If all certificates are valid and the PSCO's general impression and visual observations on board confirm a good standard of maintenance, the officer should generally restrict the inspection to the report. However, if the PSCO feels unconvinced and considers it opportune, he may conduct an inspection of several ships' areas to verify that the condition of the ship really satisfies what is prescribed in the certificates.

On the other hand, presuming an absence of valid certificates or any other shipboard document, the PSCO from his own judgement and general perception has clear grounds for believing that a ship's condition, its equipment or its crews do not meet the requirements of the relevant instruments. Consequently, whenever this belief exists a more detailed inspection should be carried out, including even a check of on board operational requirements.

For example, clear grounds for a more detailed inspection include:

1. The absence of any equipment or arrangements required by the convention
2. Facts from the review of the certificates of the ship or if it has invalid certificate or certificates
3. Facts from the PSCO's perception and remarks, where there is damage of the hull or structure e.g. watertight or weathertight integrity of the ship

4. Evidence in the ship's log, manuals or other relevant documents or its absent or not being kept on board
5. Indications of serious deficiencies regarding safety, pollution prevention or navigational equipment
6. Inadequate communication between key crew members
7. Lack of an up-to-date muster list, fire control plan and a damage control plan for passenger ships
8. A report or notification by another authority
9. A report or complaint by the master, a crew member or person with an interest in the safe operation of the ship;
10. Survey report file, if any
11. Report of previous port State controls

Generally, the PSCO must issue a clean inspection report Form A as in appendix to the master of the ship. Thus, whether or not deficiencies are found all data of the ship and all details from each inspection should be recorded in a computer. However, theoretically all deficiencies must be rectified before departure of the ship. It is up to PSCO's professional judgement to decide if the ship should be allowed to proceed to sea.

#### **4.4 PROFESSIONAL PROFILE, QUALIFICATION AND TRAINING OF PSCO**

The person in charge of carrying out port state control must retain a good professional posture, an experienced officer qualified as flag state surveyor and properly identified with an identity card by the administration. While discharging his duties on board ship he must be able to communicate in English or in an appropriate language used on board with the key crew members. No commercial interest, either

in the port of inspection or in the inspected ship, not even work on behalf of a recognised organisation, is admitted for an authorised port state control officer.

The administration is requested to provide training for PSCOs to give them the necessary knowledge of the relevant provisions of conventions regarding PSC. These courses should be based on the latest IMO Model courses for port state control, or throughout seminars in order to refresh and update their knowledge concerning new technical developments or any other new provisions on PSC.

With regards the inspection of operational requirements the PSCO can be qualified as a master or chief engineer with seagoing experience. Therefore, the PSCO should have qualifications from specialised institutes in the maritime field, or be a qualified officer of the administration with sufficient experience and training for performing such a kind of job. Thus, a properly qualified PSCO must have appropriate knowledge of the provisions of the relevant IMO instruments, as well as of the relevant procedures, on port state control.

#### **4.5 SOME CONSIDERATIONS ON WEST AND CENTRAL AFRICA MOU**

Safer shipping and cleaner oceans are always the IMO's main objectives, so that port state control activities, as complementary to flag state implementation, are of paramount importance in achieving these objectives (Plaza, WCAMOU conference, Ghana, Accra, Feb., 1998).

Today, in West Africa the situation is more complex. At a time when multiplying efforts are being made to stimulate the economy in the region and international trade is growing, the region's ports are being subjected to greater and more complicated pressures. For instance, larger and busier ports, the ever-increasing demands of tourism, exploitation of resources such as oil exploration and production, fisheries

and many other activities have had a significant effect on the sea and coastal areas. In addition, old vessels of traditional design share the harbour waters with modern ships. Therefore small ships trading in the area are particularly vulnerable to the perils of the sea and deserve special safety attention, as the major IMO's safety instruments do not cover them.

Since the Paris MOU, which covers European ports, was established, IMO's vital effort to enhance safety at sea and environment protection has assisted the development of the five other MOUs around the world. For the West and Central Africa MOU the IMO has played, once more, a leading part in bringing together countries sharing the same regional concerns. This goes in line with the promotion of the MOU draft on PSC, so as the WCAMOU in due course is expected to triumph in October of this year in Lagos (Nigeria) which would add another link in the chain of a global MOU.

The WACMOU of fourteen countries is to develop a regional regulatory background designed to enhance safety and, at the same time, to protect and preserve the maritime environment in the region. It is important for the countries involved to bear in mind the fact that the region has not yet developed any common maritime policy on port state control and therefore this will lay the foundation for indispensable safety issues. Consequently, to achieve this, the Flag State is urged and expected to play a key role with the support, to the extent possible, of the port states.

Thus, for this purpose the author evidently would like to highlight the necessity first, for ratification, and second for effective implementation of the relevant instruments included in the Memorandum by the countries, as a means of providing a harmonised regime and avoiding the conflict of interest between ports of the region.

For Guinea-Bissau this regional integration reveals the willingness of the Government, which is already working towards a change of attitude within the

maritime sector, where a long tradition of MARAD isolation too often leads to problems being ignored, mostly hidden rather than revealed and solved. This regional co-operation would hopefully bring change to that culture and replace secrecy with openness for the benefit of the country's maritime industry. Otherwise the administration can not work effectively in darkness without, at least, the exchange of information technology, knowledge and experience.

#### **4.5.1 APPLICATION OF THE CLAUSE OF "NO MORE FAVOURABLE TREATMENT"**

Ships are normally requested to fly the flag which a flag State must be a party to a relevant instrument. This fact goes in line with Art. II (3) of SOLAS 74, Art. 5(4) of MARPOL 73/78 and Art. X of STCW 95 regarding the "NMFT" clause where it can be found. Sometimes ships that are flying the flag of a state, which is not a party to a certain convention, do not obviously comply with the requirements in that convention. In any situation, if such a ship has no certificates which can justified a satisfactory condition on board, a detailed inspection shall be carried out based on the provisions of all safety conventions, plus recommendations given by the IMO Res. 787 (19) and IMDG Code as well.

It is, however, clear that port states prior to acting on this clause should consequently have national regulations, permitting the pertinent step to be taken, otherwise it can not be implemented within the framework of a technical standard of the legislation, (A Ulstrup, lecture notes, WMU, March, 1999)

#### **4.6 SAFETY OF FISHING VESSELS AND SMALL CRAFT**

This paragraph is intended to examine factors of major relevance to the safety of smaller vessels in view of the fact that most of the vessels in the national fleet are

non-convention, and, therefore their safety at sea deserves the attention of the national authority.

The safety of such vessels seems granted due to their size and considering their trade area, mostly in inland waterways that are less hazardous this is the reason why less attention is paid to the safety of these ships.

Practically all safety regulations governing these vessels are those determined by national administrations, reflecting the non-uniformity of rules for small vessels regarding load lines, construction requirements as well as survey procedures and other safety aspects.

The dangers of pollution of the environment by these small vessels is hugely serious, not just to the living resources of the sea, but also because it is a threat to the tourism sector.

The main concern of the author in this regard depends mainly on the critical conditions of these vessels' structure, in general due to their age. Consequently, there is a vital need for such a country as Guinea-Bissau to take into account the safety consideration of non-convention vessels seriously. So, the national maritime authority must be more responsible and ensure those small ships, if they are registered, are crewed properly and regular inspections are performed.

Another concern, not less important, to be considered by the administration is the level of training and proficiency of the individuals operating these ships. With respect to the lack of such rules within the country, the following sections, which in principle would be taken into consideration, are given as a guideline.

#### **4.6.1 GUIDELINES FOR FISHING VESSELS**

Historically, small vessels have, throughout the years, been congesting the coastal areas and inland waterways, while large vessels have been sailing on the high sea.

For the time being, the international community through the IMO has developed many international agreements, so-called Conventions ratified by maritime nations. Unfortunately, most of these documents are applicable only for larger vessels and disregarding smaller vessels, to which most of the IMO conventions do not refer, especially in respect to rules and regulations connected with the design, construction, operation, maintenance, load lines, stability, etc.

Today, however, the tendency is changing as the construction of smaller and fishing vessels are more reliable so as these vessels are greater in lengths than previously and even sailing as far away as the larger vessels. Considering the fact that much national legislation does not yet perform uniform safety in this regard, in an attempt to enhance the safety of fishing vessels the Torremolinos International Convention for Safety of Fishing Vessels, 1977 as the “Torremolinos Protocol” was adopted on 2 April 1993.

Despite the fact that it has never come into force, this regulatory guidance, by harmonising the different and diverse national safety requirements, is about to set up a harmonised safety regime for fishing vessels of 45 m and over. Other guidance which would be considered regarding this kind of ship, are those prepared by the United Nations Food and Agriculture Organisation (FAO) as well as the ILO and IMO so-called Voluntary Guidelines for the Construction and Equipment of Small Fishing Vessels.

Furthermore, there are also documents such as the Code of Safety for Fisherman and Fishing Vessels Part A and B (IMO and ILO) and the STCW-F Convention for fishing vessel personnel in which safety issues are laid down for this category of



ship. So the Government must ratify those previously mentioned safety instruments in order to improve and perform safety measures regarding those vessels.

#### **4.6.2 GUIDELINES FOR SMALL CRAFT**

The safety of all vessels, including small vessels as well as fishing vessels in one way or other, must in principle appear under the responsibility of the maritime safety administration.

With respect to non-convention ships, there is a concrete guideline and the West and Central African MOU on Port State control has developed a recommendation, which urges a party to take safety measures to ensure the safety of those smaller vessels flying their flag which are traditionally built. This document is to be adopted in October of this year in Lagos (Nigeria).

Furthermore, the IMO “Recommendations Concerning Fire Safety Requirements for Passenger Ships Carrying Not More than 36 passengers and A Code of Practice” are among a few of the available guidelines on which the indispensable rules for small vessels should be based.

In Guinea-Bissau, however, small crafts and fishing vessels fall under different Ministries of maritime affairs. Therefore, both are required to be registered under the Port Authority Act N° 265/72. This gives MSA some responsibility for the safety of those vessels, although limited only to the extent of inspection and certification of vessels and their equipment, safe manning aspects and crew employment.

So with WACMOU in place, the author believes that it would help the MARAD, because it will empower the maritime authority more and cease dual power over small national vessels, while appealing to PSC to cover even vessels which are traditionally built.

#### **4.6.3 ENFORCEMENT OF SAFETY ON SMALL VESSELS**

With the serious increase in both the number and size of non-convention vessels, such as of traditional design, it is opportune to adopt and enforce rules and regulations for small vessel activities. As was highlighted during the last meeting of WACMOU in Guinea-Conakry, there is a vital need to work out safety regulations for non-convention sized ship, trading in regions like those developed the in Caribbean and Asian regions. Such safety regulations seem to be of great importance for the region as most of the ships there fall under this size with limited safety or without any requirements.

#### **4.7 MARITIME SEARCH AND RESCUE (SAR)**

The obligation of ships to respond to distress messages and signals from other ships in danger is the oldest form of fraternity at sea (Wernhult S Å, Notes on Maritime Search and Rescue, 1999).

The main feature of an organisation of SAR is to provide background for search and rescue with an appropriate system of alerting the organisation, detecting persons and ships in distress as quickly and efficiently as possible, wherever this occurs. However, the effectiveness of SAR would depend on how the system is planned and organised within the country, as well as on the facilities available for the purpose. The guidance of those requiring assistance at sea or who would find who, is given under the IMOSAR (IMO Search and Rescue Manual) of 1993.

To assist Governments in dealing more clearly with the SAR organisation, the IMO manual on search and rescue suggests that they establish basic elements such as:

- ◆ Develop a SAR plan,

- ◆ Establish a SAR mission co-ordinator and operational functions,
- ◆ Assign responsibility to each involved authority, and if a SAR is at regional level, distribution of regional responsibilities,
- ◆ Identify and organise available resources,
- ◆ Provide means of communication,
- ◆ Establish a rescue co-ordination centre with 24-hour basis of operation by personnel with English knowledge, and
- ◆ Train SAR personnel

The Guinea-Bissau navy which has co-operated at the regional level with neighbouring coast guards regarding coastal defence and surveillance of the fishing zone, would assume this responsibility for SAR, as it is quite capable and experienced enough to play this role properly. The navy should be engaged in performing this activity so that the role of the maritime safety administration in search and rescue operations would solely be the collaborator rather than the controller. In addition to the MSA, in conducting its obligation on safety issues, it should ensure that all local seafarers, including those operating traditionally built vessels and engaged in coastal trade, have an elementary knowledge regarding SAR. However, this should be in line with the provisions of the national legislation. Special training can be conducted by the administration in order to keep the personnel more familiar with the procedures and get them informed about the importance of a SAR operation.

#### **4.7.1 INTERNATIONAL OBLIGATION**

The international obligations for search and rescue are laid down through various maritime conventions including:

- ✓ Chapter V, Reg. 15 along with regulation 10 of SOLAS 74
- ✓ Article 12 (2) of the Convention on Maritime Search and Rescue, 1979
- ✓ Article 98 of the UNCLOS, 1982

- ✓ Article II of the International Convention for the Unification of Certain Rules relating to Assistance and Salvage, 1910

#### **4.8 ROLE OF THE MARINE ENGINEER SURVEYOR ON PORT STATE CONTROL**

Considering the weakness of the administration in performing its functions, it is significant enough to identify how important the human factor can be as a foundation for the solutions of safety and environmental issues. Thus, to what extent the marine engineer and other related officers should be useful for improving and performing safety matters, must be decisive and decided by the administration.

The role of the marine engineer, as well as other marine officers, reveals clearly that it is very important to enhance maritime safety through their ability, skills and technical knowledge in order to interpret the engineering approach so, as to translate these issues into maritime Administration safety matters.

Furthermore, these officers should be appointed to prestigious posts within the Maritime Safety Administration. Particularly in the proposed maritime safety department their duty obviously would be specifically to evaluate, perform, and improve the working and operational conditions of the MARAD. Obviously their designation and active participation in MSA activities would bring accessible safety awareness in all maritime fields through safety advice, training, instruction, and safety management concepts since their technical expertise and experience in the field are relevant, although some upgrading training would be necessary. Due to their academic level and maritime knowledge their training will require less investment.

The MARAD in Guinea-Bissau, in an endeavour to enhance its regulatory functions and recognising the extent of its performance, must establish a clear job description

and distribute responsibilities and duties among those marine officers, twelve in all, and the experienced members of staff in the field in an equitable way.

Furthermore, their professional expertise as seafarers, in addition to their technical and engineering knowledge, is an important feature to be considered in the execution of safety measures. Therefore, their performance in handling PSC duties as PSCOs should appear to be faster than expected, due to their ability to deal with on board safety requirement as well as some relevant safety conventions.

Currently, they are the most distant from any position in the administration. Some are even searching for a better job because the motivation factors such as job description, function and duties to perform are not clear and the salary is miserable. The author honestly believes that the incorporation and appointment of these officers in the maritime safety department is one of the basic supports towards an enhanced safety culture and change of attitude concerning safety issues within the country's maritime industry. So, in performing their technical and operational duties, they will be dealing with important technical matters, particularly planning, management, inspections, surveys, etc.

## **CHAPTER V**

### **CONCLUSION AND RECOMMENDATIONS**

In view of the discussion made in the preceding chapters, the conclusion can be drawn to say that the paramount reason for an effective establishment of an MSA in Guinea-Bissau is to develop the maritime sector. Therefore, it seems clear that as a result of the non-existent safety culture over many decades, the situation can only change through the improvement of many functions of the maritime administration as the important branch of this transport sector.

The main emphasis of improving maritime safety is on the establishment of a maritime safety department within the DNMP. Its primary objectives are to provide safety concepts in all maritime fields, performing the responsibilities of a proper MARAD. However, it is probably true to say that the issue is not the administration itself, but rather how to achieve these objectives in a country, where no attention is paid to this sector at all. It requires more than governmental reflection. Since if there is no flag state control, then a PSC can not be implemented decently. Consequently, the primary goal should be to have a FS control properly implemented with a competent technical staff, defined Government policy and well formulated safety standards and control procedures to control maritime activities.

In pursuance of the philosophy that you should first clear up your house prior to complaining about your neighbour's house, the country should first have a good flag state regime before attempting to implement and enforce PSC measures. For this purpose it must first be a party to the main related IMO conventions, and therefore it is also required by the WCAMOU to all its members.

It has been stressed that the national maritime law does not appeal to the safety issues currently required. The few and old technical administrative instructions available are informal and cover only a small safety area. This is to say that only adequate maritime

legislation would support the MARAD in an endeavour to carry out its function effectively.

The author, in addition to the recommendations proposed throughout the previous chapters, hereby suggests the following:

- a. The Ministry needs to examine and establish maritime policy changes, which will represent all maritime interests of the country.
- b. The Ministry must improve the communication system with its main executive branches since the establishment of a shipping division within the Ministry dealing specifically with maritime affairs is paramount.
- c. The Ministry must persuade the Government to prioritise maritime safety and marine pollution prevention programmes within the national development strategies
- d. The Ministry must persuade the Government to actively lobby through the UNDP and other UN bodies for the incorporation of the maritime sector as a priority funding issue, or it should identify the sources of funding within the country.
- e. The country's active participation in regional bodies representing maritime issues as well as in programming and prioritisation processes within IMO through the Technical Co-operation Committee is of vital importance. This closer relationship with IMO should secure the FSI and PSCI.
- f. The establishment of an indispensable national infrastructure to sustain the flag and the port state control implementation.
- g. Participation in maritime projects e.g. seminars, meetings, consultants and IMO meetings.
- h. Assign an expert with a full knowledge-based in the maritime field to assist and give advice to the Minister regarding maritime questions. This person should have the knowledge that reflects the broad scope of the conventions capable of giving precise advice for maritime development.

With the above changes once accomplished or in progress, the maritime administration should then be able to implement the FS and PS regime effectively in Guinea-Bissau. It is absolutely true that sustaining and improving safety calls for a lot of resources. For

instance, the absence of coherent, relevant and well-drafted maritime legislation has been an obstacle in regulating many functions of the maritime administration. There is a need for both primary and secondary legislation. The administration should actually strive to create that legislation, which would affect the performance of its main regulatory functions, as it is quite impossible to think about enforcement of safety measures without comprehensive regulations and rules.

Thus, the following should be done by the administration:

1. The existing Port Authority Act must be amended to cover most of the technical, procedural and operational provisions required under the relevant IMO convention
2. Persuade the Ministry to ratify all IMO's relevant safety conventions or their incorporation into the national law through ministerial dispatch or decree without parliament interference, as it takes time for approval.
3. The M.S.D needs competent technical staff and personnel to be trained as Flag State and PSCOs so as to fulfil and assure their technical safety functions.
4. The salary and work environment within the MSA, especially within M.S.D must be attractive enough to seduce those responsible for carrying out PSC and avoid their corruption.
5. Consider the necessity to identify and involve a recognised classification society for all structural surveys, as the administration has no means for statutory surveys. The IACS member should be the priority and the agreement should be signed as required in Assembly Res.A.739 (18).
6. Legal protection should be arranged to safeguard PSCO in the event of a ship's detention resulting in repercussions, so as the administration should be charged in court and not an individual officer.
7. Develop a national contingency plan with all the concerned societies, including the navy and airforce, utilising their facilities and human resource skills. If needed, training exercises should be provided regularly.
8. Develop and enforce pollution prevention in harbour and port areas, as there is no means of reception facilities and ships staying at port pose a pollution threat.



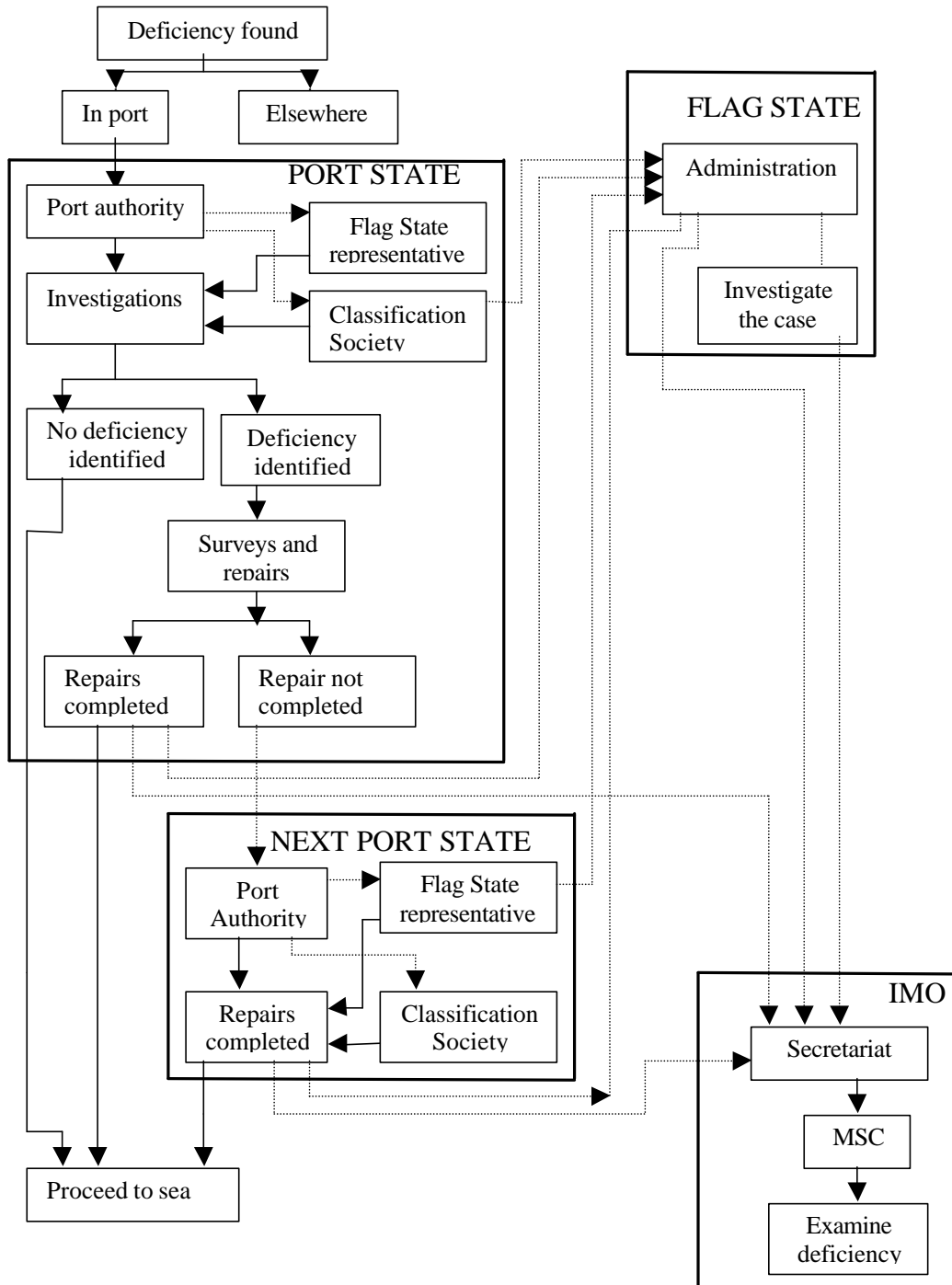
9. The implementation of the STCW 95 provisions regarding training, examination and certification of seafarers must be considered a paramount issue for the safety and protection of the marine environment. Although the country is not potential provider of seafarers, the improvement of the seafarer's qualification can be one of the administration's concerns.
10. Implement the ISM Code in Guinea-Bissau as an issue that should bring changes of attitude at all management levels within the maritime industry and, therefore, resulting in the introduction of a safety culture concept in the maritime sector.

Apart from the above-mentioned issues, the administration should endeavour to utilise the improved capabilities and human resources skills. It must be focussed on marine officers within the administration who should be able to transfer their skills, knowledge and ideas of safety into desirable safety culture level. Their integration in different posts of MSA are vital to expand the comprehensive maritime safety culture concept among those who deserve it more, e.g. seafarers, operators, port workers etc. Therefore, their credibility as inspectors or surveyors can be enhanced through training courses, port exchange of experiences or co-operation between administrations within a MOU region or PSC.

In the final conclusion of this dissertation, the author in his honesty and sincerity believes that an enhanced MSA in Guinea-Bissau is possible only through a reasonable effort by all interested parties. This refers to the Government itself, maritime authority, port operators etc, which can seek the development and prosperity of this sector and maritime safety as well.

## APPENDIX 1

### PROCEDURES FOR THE CONTROL OF SHIPS



## APPENDIX 2

### **JAPAN'S RECOMMENDED AMENDMENT TO A.787 819)**

(Control procedures for ships below convention size)

- 1 To the extent a relevant instrument is not applicable, the port State control officer's task will be to assess whether the ship is of an acceptable standard in regard to safety, health or the environment. In making that assessment the port State control officer will take due account of such factors as the length and nature of the intended voyage or service, the size and type of the ship, the equipment provided and the nature of the cargo.
  
- 2 In the exercise of his duties under paragraph 3.1 of these guidelines the port State control officer should be guided by any certificates and other documents issued by the flag administration. The port State control officer will, in the light of such certificates and documents and in his general impression of the ship, use his professional judgement in deciding whether and in what respects mentioned in paragraph 1 of these guidelines. When carrying out a more detailed inspection the port State control officer will, to the extent he deems necessary, pay attention to the items listed in paragraph 3 of these guidelines. The list is not considered exhaustive but it is intended to give an exemplification of relevant items.

- 3 Items of general importance
  - 3.1 Items related to conditions of assignment of load lines
    - .1 weathertight (or watertight as the case may be) integrity of exposed deck;
    - .2 hatches and closing appliances;
    - .3 weathertight closures to openings in superstructures;
    - .4 freeing arrangements;
    - .5 side outlets;
    - .6 ventilators and air pipes; and
    - .7 stability information
  - 3.2 Other items related to the safety of life at sea
    - .1 life-saving appliances;
    - .2 fire-fighting appliances;
    - .3 general structural conditions (i.e. hull, deck, hatch covers, etc);
    - .4 main machinery and electrical installations;
    - .5 navigational equipment including radio installations
  - 3.3 Items related to the prevention of pollution from ships:
    - .1 means for the control of discharge of oil and oil mixture e.g. oil water separating or filtering equipment or other equivalent means for (tank(s) for retaining oil, oily mixtures, oil residues);
    - .2 means for the disposal of oil, oily mixtures or oil residues;
    - .3 presence of oil in the engine room bilge.
- 4 In the case of deficiencies which are considered hazardous to safety, health or the environment the port State control officer or Authority, as appropriate, will take such action, which may include detention as may be necessary, having regard to the factors mentioned in paragraph 3.1 of these guidelines, to ensure that the deficiency is rectified or that the ship, if allowed to proceed

to another port, does not present a clear hazard to safety, health or the environment.

### **APPENDIX 3**

#### **LIST OF PUBLICATIONS RELATED TO THE SAFETY OF FISHING VESSEL**

##### ***INTERNATIONAL CONFERENCE ON SAFETY OF FISHING VESSELS, 1977 (1977 EDITION)***

Deal with uniform principles and rules concerning construction, equipment, stability, radiocommunications and other safety aspects of fishing vessels and includes:

- ✓ Final Act of the Conference;
- ✓ Torremolinos International Convention for Safety of Fishing Vessels (SFV), 1977, including- Regulations for the construction and equipment of fishing vessels;
- ✓ Summary of survival craft and rescue boat equipment;
- ✓ Recommendations and resolutions adopted by the conference;
- ✓ Understanding of the Conference in relation to participation in the Convention and the performance of depository functions in relation thereto by the Secretary-general of the Organisation.

##### ***SAFETY OF FISHING VESSEL, 1977/1993 (1995 edition)***

Contains the regulations for the construction and equipment of fishing vessels. Also included are:

- ✓ The Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessel, 1973; and
- ✓ The consolidated text of the regulations annexed to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, as modified by the Torremolinos Protocol of 1983 relating thereto.

## ***CODE OF SAFETY FOR FISHERMEN AND FISHING VESSELS***

A joint effort by the Food and Agriculture Organisation of the United Nations, the International Labour Office and IMO, this publication covers all aspects of the safety of fishing vessels and fishermen, its is divided into two parts:

□ **Part A-Safety and Health Practices for Skippers and Crews** (1975 edition)

Prepared as a guide and educational medium, this part will be found helpful not only to skippers and crews but also to owners of fishing vessels, government departments, safety associations, vocational training centres for fishermen and all those working to make fishing a safer industry. It provides safety principles designed to reduce risk of injury to fishermen, danger to the vessel and damage to equipment, incorporating provisions on navigation, fishing operations, life-saving appliances and other aspects of safety. A supplements containing amendments adopted in 1981 is included.

□ **Part B-Safety and Health Requirements for the Construction and Equipment of Fishing Vessels** (1975 edition)

Part B contains provisions related to the hull and equipment, stability, shipborne navigational equipment and other aspects of the design, construction and equipment of fishing vessels, as well as a supplement containing amendments adopted in 1983.

## ***FAO/ILO/IMO VOLUNTARY GUIDELINES FOR THE DESIGN, CONSTRUCTION AND EQUIPMENT OF SMALL FISHING VESSEL*** (1980 edition)

This publication amplifies Part B of the Code of Safety for Fishermen and Fishing Vessels by providing guidelines on the design, construction and equipment of fishing vessels less than 24 meters in length.

***DOCUMENT FOR GUIDANCE ON FISHERMEN'S TRAINING AND CERTIFICATION*** (1988 edition)

This international maritime training guide was prepared jointly by the Food and Agriculture Organisation of the United Nations, the international Labour Office and IMO and takes account both of the convention and recommendations adopted by the ILO and IMO and of the wide practical experience and FAO in the field of fishermen's training.

It is intended to provide guidance when national training schemes and courses are instituted, amended or developed for the vocation training of any category of fishermen and covers the training and certification both small-scale and industrial fishermen catching fish, whales, seals and other living resources of the sea.



## APPENDIX 4

### **A POSSIBLE FRAMEWORK FOR NATIONAL LEGISLATION IMPLEMENTING SOLAS, MARPOL, LOAD LINE AND STCW CONVENTION**

The national legislation, both primary and subsidiary, should deal with the matters set out below. Detailed guidance on this subject is given in " Guidelines for Maritime Legislation", a United Nations publication.

#### **1 General Provisions**

- 1 definitions
- 2 scope, i.e., to which ship's regulations apply
- 3 power to give exemptions and to allow equivalents
- 4 recognition and authority of classification societies

#### **2 Substantive Provisions**

- .1 structures, machinery and equipment, maintenance
- .2 load lines
- .3 stability
- .4 stowage, loading, ballasting, deballasting
- .5 instructions, documents and others information on board
- .6 practice drills
- .7 linkage with and status of class rules and regulations
- .8 manning level
- .10 safe manning document
- .11 standards of training
- .12 certificates of competence and endorsements
- .13 conduct of examinations, examiners, conditions for admission
- .14 watchkeeping requirements
- .15 hours of work
- .16 medical fitness
- .17 ships log book and entries

- .18 prohibition on the discharge of harmful substances
- .19 provision of reception facilities in ports
- 3 Requirements for foreign ships in waters under national jurisdiction of flag State**
- 4 Surveys and certification**
  - .1 surveys, intervals, authority to be entrusted with surveys
  - .2 issue of certificates and entrusted authority
  - .3 issue of certificates by another Government on request
  - .4 acceptance of foreign certificates and formats
  - .5 period of validity of certificates and formats
  - .6 suspensions, withdrawal, loss and return of certificates
  - .7 class surveys and certificates
- 5 Rights and obligations of owner/operator, master and seamen**
  - .1 prohibition to make alterations to a ship without the permission of the competent authority
  - .2 duty to maintain conditions of the ship during the voyage
  - .3 duty to notify competent authority on damage sustained
  - .4 duty to report discharges of harmful substances
  - .5 prohibition against the master going to sea, unless
    - .1 the ship complies with the relevant requirements
    - .2 the ship is provided with valid certificates and safe manning document, log and record books
    - .3 the ship is manned in accordance with the requirements
  - .6 prohibition to serve on board without appropriate endorsement
  - .7 duty of the owner to enable the master to carry out his obligations
  - .8 right of the crew members to complain to competent authority and duty of authority to investigate complaints
- 6 Enforcement**
  - .1 designation of authority entrusted with enforcement
  - .2 carrying out random inspections

- .3 rights and powers of surveyors (administration and class)
- .4 duty of master to produce certificates to surveyors
- .5 duty of owner and master to co-operate during surveys
- .6 power to withdraw certificates and to detain a ship
- .7 detention and release procedures
- .8 duty of master if the ship is detained abroad

## **7 Penalties**

- .1 penalties for non-compliance, operational violations, contravention of a prohibition
- .2 penalties on the owner who incites the master to violate any of the provisions

## **8 Appeal**

- .1 right to appeal from decisions of the competent authority
- .2 appeal procedures

## **9 Investigation of casualties and accidents**

## **10 Costs and fees**

*Reference: IMO (1997b9). (FSI/5/16, Annex 3, Appendix, Pages 11 and 12*