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## A proposal for further improvement of port state control in China

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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**A PROPOSAL FOR FURTHER  
IMPROVEMENT OF PORT STATE CONTROL  
IN CHINA**

By

**HUANG TIANBING**  
**The People's Republic of China**

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 AND ENVIRONMENT PROTECTION**  
**(Policy)**

**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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Organisation.....

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Last, but not at least, my deepest thanks to my parents, my sister, and especially to my beloved wife, Chen Jie, for their continuous support, encouragement and prayers during my study. My success at the University is as much theirs as is mine.

## **Abstract**

The primary purpose of this dissertation is to present a proposal to the Ministry of Communications and the Maritime Safety Administration of the People's Republic of China for further improvement of port State control in China.

A brief look is taken at the necessity of better performance of port State control in China from the Chinese national interests.

A critical analysis is made on the present situation of port State control performance in China, from the point of view of legislation and administrative system, a member State of Tokyo MOU as well. Furthermore, major problems associated with present situation are investigated.

On the basis of good understanding of the present situation and problem areas, a series of recommendations are made, together with a feasibility study of such recommendations.

**KEYWORDS:** Port State Control, Improvement, China

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## List of Abbreviations

AMSA	Australia Maritime Safety Administration
APCIS	Asia-Pacific Computerised Information System
CCS	China Classification Society
China MSA	Maritime Safety Administration of People's Republic of China
COLREG 72	Convention on the International Regulations for Preventing Collisions at Sea, 1972
COSCO	China Ocean Shipping (Group) Corporation
DOC	Document of Compliance
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
GMDSS	Global Maritime Distress & Safety System
IACS	International Association of Classification Societies
ILO	International Labour Organisation
IMO	International Maritime Organisation
ISM	International Safety Management
LL 1966	International Convention on Load Line
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended
MOC	Ministry of Communications
MOU	Memorandum of Understanding
MSA	Maritime Safety Administration
NPCC	National People's Congress of China
PSC	Port State Control
PSCO	Port State Control officer
SMC	Safety Management Certificate
SOLAS 74	International Convention for the Safety at Sea, 1974, as amended
STCW 78	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended

Tonnage 69	International Convention on Tonnage Measurement of Ships, 1969
UNCLOS	United Nations Convention on Law of the Sea
USCG	United States Coast Guard

## **Chapter One**

### **Introduction**

#### **1.1 What is port State control**

Port State control is the inspection by the surveyors of a maritime authority of foreign vessels visiting the country's ports to ensure compliance with international maritime safety and pollution conventions. (Dayton, 1993, 15) Its underlying objective lies in eliminating the operation of substandard ships from the trade routes of the world.

Port States enjoy sovereignty over their internal waters, including their ports and harbours. (Article 2 and 11 of UNCLOS). It is also generally accepted that there is no customary international law restrict the competence of port States to regulate foreign vessels voluntarily present in their ports and presenting pollution hazards. The basis of the port State's jurisdiction over foreign ships is territorial: it stems from the presence within internal waters of a merchant ship, which thereby owes temporary allegiance to the sovereign, and the occurrence of acts or omissions by or on board ship within its territorial waters. (Plant, 1998)

Much publicised in recent years, port State control is not new. It was actually built into the 1929 Safety of Life at Sea convention (SOLAS). (Bond, 1995,61) However, for many years the world community relied almost wholly upon the flag State to maintain standards of safety and protection of life, property and the environment. Since the efforts of flag States are of primary importance in ensuring that ships conform to international standards. It is also the responsibility of shipowners and classification society (particular when acting on behalf of the flag State) to ensure that the ship always comply with the international standards. In an ideal world, port State control would not exist, but when shipowners, classification societies and flag State administrators have in one way or another failed to do their job, port State control comes onto the scene.

In the early 1970s, the increases in substandard ships arouse more and more international concern. Most literatures attributed the increasing substandard ships to the extremely rapid development of open registries. Port State control jurisdiction was first introduced for detailed international consideration at the 1973 IMO Conference on Marine Pollution. (Kasoulides, 1993, 113) Article 6(2) of the MARPOL Convention adopted at that Conference provides that port officials in the contracting parties may inspect a foreign vessel in order to verify whether it has discharged in any sea area harmful substance in violation of the regulations annexed to the Convention. In 1975, the first port State control procedure was adopted by IMO by Resolution A.321 (IX) "procedures for the control of ships". Port State control regime was endorsed by United Nations Convention on the Law of Sea in 1982. Article 218 "Enforcement by port State" has been well recognised as the principle law of port State control. Until now, port State control provisions have been introduced in many IMO and ILO conventions, including the most important ones. Meanwhile, a set of inspection procedures has been developed.

The first regional co-operation on port State control was established by eight North Sea States in 1978, known as Hague Memorandum of Understanding. The need for more stringent measures against substandard vessels was first felt in the North Sea area after the foundering of the *Amoco Cadiz* in March 1978. This was superseded in 1982 when 14 European countries agreed to establish a harmonised system of port State control resulting in the signing of Paris Memorandum. The MOU has been duplicated in the other regions in 1990s. Agreement has been reached in Latin American, Asia-Pacific, Caribbean Mediterranean and Indian Ocean most recently. The future regional agreement would be centred on the Persian Gulf and West and Central Africa. A world-wide application of port State control regime will be realistic in the near future. The expansion of port State control supplements the opportunity to eliminate substandard ships, having much more influence for safe shipping.

## **1.2 The necessity for better performance of port State control in China**

As a major developing country with long coastline, China attaches great importance to marine development and protection. China boasts a mainland coastline of more than 18,000 kilometres and more than 5,000 islands in China's territorial waters. Chinese sea areas have comparatively advantageous natural environmental and resource conditions. Some 20,278 species of sea creatures have been verified there. The fishing grounds that have been developed in China's sea areas cover 818,000

square nautical miles. The shallow seas and tidelands have a total area of 13.33 million hectares, of which 2.6 million hectares of water surface are suitable for raising aquatic products in terms of the current scientific level. So far, 938,000 hectares are being utilised for this purpose. (The Development of China's Marine Programmes, 1998) There are more than 1,500 tourist, scenic and recreational spots favourable for developing marine tourism. In addition, China's offshore areas abound in seawater resources and renewable marine energy resources.

China is well recognised as one of the most important developing maritime states in the world today by its enormous population, maritime tradition, large import and export, trade, geographical location, maritime infrastructure etc.

Since the economy reform and open door policy, china is already the world's fifth largest trading power, and the second largest recipient of foreign investment. (Ruggiero, 1997) China has become more economically interdependent than ever upon access to global markets. China economic growth is closely linked to the world economy as a whole and the majority of the trade is carried on and over the world's oceans. Seaborne trade accounts for 90 per cent of trade among nations. In 1997, foreign trade of export and import reached \$325.1 billion; ports throughput of foreign trade cargoes was 359.15 million tons, up by 12.1 and 12.5 over previous year. (Statistical Communiqué, 1998) China owned fifth largest merchant fleet in the world at the beginning of 1997 excluding Hong Kong, Taiwan and Macao, aggregated 1785 ships and 35 million gross tonnage. (ISL, 1998,30) 37,873 ships from 95 countries called at 130 Chinese ports in 1997. (China MSA, 1998)

Shipping is of international attribute; China has consistently taken an active part in international and regional maritime affairs. From the 16<sup>th</sup> sessions of IMO, China has successively elected as an A-level council member State. China has also ratified and acceded to the 30 some conventions formulated by the IMO.

The human society will inevitably come to depend more and more on the ocean, the environment protection and pollution prevention becomes more pressing. At the same time, economic and foreign trade growth brings more sea traffic, the potential hazard brought by substandard ship is greater as it seemed the international community still have a long way to eradicate such ships. It is from Chinese national interests to seeking for better performance of port State control, an effective methods for combating substandard ships.

Figure 1. Major Chinese Ports



### **1.3 Dissertation objectives and research methodology**

This dissertation is aiming at by critical analysis of present situation of port state control in China, particularly from legislative, administrative and human resource aspects, identify the areas which need to be improved by comparison with relevant IMO, ILO instruments, practice of Tokyo MOU, Paris MOU, present recommendations for overcoming problems and barriers which impede further improvement.

To achieve the above objective, a research plan has been made in early October 1998. Contact has been made with the Ministry of Communications, the Chinese Maritime Safety Administration and local branches for the latest reform and policy. A literature search has been undertaken to examine the development and trend of port State control regime, relevant international conventions, especially on IMO and ILO instruments. Studies are continued on the profile of other countries Port State Control procedures undertaken and delivered by various resourceful persons. Contact has been also made with Tokyo MOU Secretary, AMSA and USCG. Field studies have been attended with the various ports and maritime administration of other countries, especially of those Nordic countries.

Chapter One of this dissertation takes a brief look at the origin and development of port State Control regime and illustrate the significance of improvement of Port State Control in China from national interests.

Chapter Two is a critical analysis of port State control present implementation situation in China, by looking at the present administration, legislation, and member State of Tokyo MOU as well. It also looks recent annual inspection statistics from various aspects

Chapter Three identifies the barriers and problems affecting the further improvement of port State control performance in China based on the analysis of present situation in previous chapter. Those problems are mainly reflecting unreasonable distribution of functions within the administration and lack of expertise, incomplete legislation by not being ratifying State of ILO 147 Convention and lack of harmonisation of inspection procedures.

Chapter Four is author's recommendations for further improvement of port State control in China. Emphasis has been put on how to overcome the problem areas

identified in the previous chapter. The recommendations concentrate on streamlining the administrative system, ratifying ILO147 Convention, harmonising inspection procedures and international and regional co-operation. Chapter Five concludes the dissertation.

## **Chapter Two**

### **Port State Control in China: Present Situation**

This chapter is a critical analysis of port State control present implementation situation in China, by looking at the present administration, legislation, and member State of Tokyo MOU as well. It also looks recent annual inspection statistics from various aspects.

#### **2.1 Port State Control Administrative system in China at Present**

The maritime administration of a country with maritime interest is an integral part of its public administration. It plays a very active part in the maritime world. Since shipping industry is on the international trade basis, the concept and the function of maritime administration are almost same among countries. On the other hand, the structure of the maritime administration differs from country to country. Nevertheless, whatever structure is applied, it must be appropriate to its present needs, political system and culture, while at the same time being flexible enough to permit change.

Being a centralized country, all the things in China are controlled by the corresponding organization at national level. The Ministry of Communications (MOC) is the competent authority that is solely responsible for all the maritime administration, except that the National Oceanography Administration is in charge of observation and protection of marine resources and the Ministry of Agriculture is responsible for the administration of fishery and fishing ships.

Port State control implementation in China is directed and supervised by the Chinese Maritime Safety Administration under the leadership of the MOC. Practical inspections are carried out by the inspectors in the district offices which nearly embracing the whole coastal area of China and covering the Yangtse River areas.

##### **2.1.1 The Ministry of Communications (MOC)**

Since 1979, China has adopted a policy of economy reform and opening up to the outside world, shipping industry has undergone great development as to meet the needs of international and domestic trade. The structure of the maritime administration has been

reformed several times to be in line with external environmental changes in terms of political, economical, social and technical aspects. At present, MOC is being undergone a most significant structure reform ever since. The reform is planned to lasting for three years from 1998 to 2000. The core tasks of the present reforming is to separate the administration functions from business management, for example, COSCO (China Ocean Shipping (Group) Corporation) is no longer belonging to MOC. Meanwhile much more emphasis will be put on the aspects of marine safety and environment protection. Figure () shows the organizational structure of MOC at present.

In the MOC, there are some departments that are more connected with maritime affairs.

#### 1. Maritime Safety Administration

Under the leadership of the MOC, the Chinese Maritime Safety Administration is key body to control all the aspects related to the maritime safety and maritime environment. As the result of reorganization of the MOC, the Maritime Safety Administration becomes a relatively independent governmental body. Although it is still under the MOC, but has its own budget and income, remains as a non-profit organization. Another big change is that it has merged with Chinese Register of Shipping. In order to enhance the position of the new administration, one deputy minister is appointed to be the director of the Administration concurrently. The detailed information will be given further on.

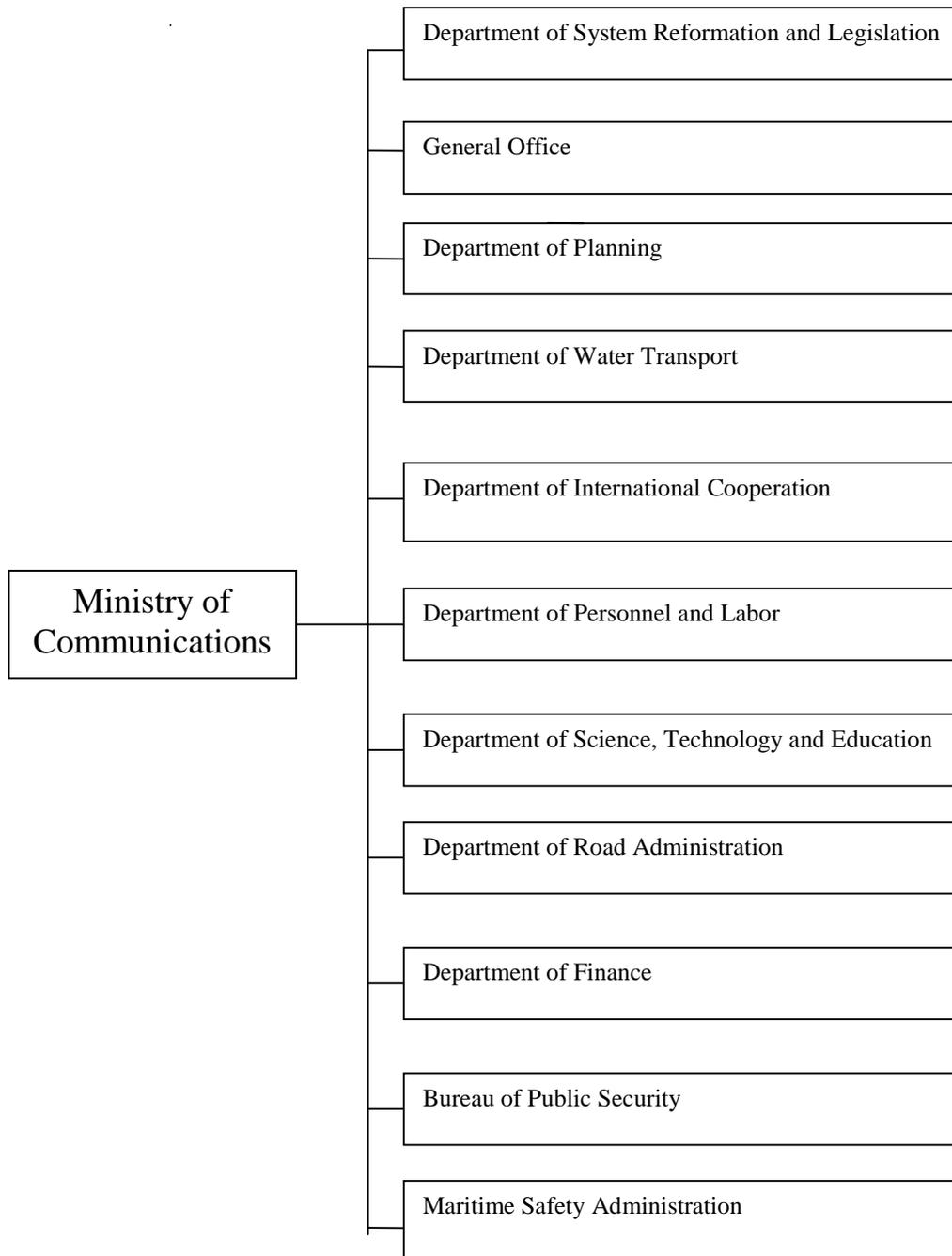
#### 2. Department of Water Transport

Its main functions are: undertaking the administration of water transportation; taking care of shipping, port operation policy, freight rate and port dues rate, port production control in general; negotiating the bilateral agreements with foreign counterparts in the field of water transport.

#### 3. Department of International Cooperation

Its main functions are: responsible and instruct maritime matters concerning international co-operation; coordinate the relationship between the MOC with international organizations; send appropriate delegates to international meeting, prepare proposals, suggestion, etc. Formality the process of ratifying or accessing international conventions.

Figure (). Organizational Structure of MOC at Present



## 2.1.2 The Chinese Maritime Safety Administration

The Chinese Maritime Safety Administration (it is also called Harbor Superintendence Administration) is a specialized body to control all aspects related to the maritime safety and maritime environment. It undertake Chinese government' obligations under the IMO conventions both as a port State and a flag State. Figure () shows the Chinese Maritime Safety Administration organization structure.

The Chinese Maritime Safety Administration 's Head Office in the MOC instructs and control all the maritime safety administration activities at national level, drafts and promulgates maritime safety rules and regulations and gives advice and suggestions to the ministry on the maritime safety policy making. The detailed main functions are distributed in the following divisions:

### 1. Ship Safety and Environment Protection Division

- registration of national ships
- formalities for foreign vessels entering and departing Chinese ports
- safety inspection of national ships (unscheduled inspection)
- safety inspection of foreign ships ( port state control )
- ship minimum safety manning
- supervision and control of maritime dangerous goods
- control and supervision of discharge of pollutants from ships
- management of port reception facilities

### 2. Navigation Safety Division (Search and Rescue Center)

- commanding and co-ordination search and rescue operation
- the use and management of vessel traffic system (VTS) in China
- approval of application of foreign vessels for entering Chinese ports
- ship route and separation scheme
- promulgation of navigation warnings
- investigation maritime casualties
- approval of surface and under water projects

### 3. Mercantile Marine Division

- examination and certification of seafarers
- professional training, examination and certification of seafarers
- issuing and administration of seaman's passports
- management of pilotage and pilots

#### 4. Aids To Navigation and Hydrographic Division

- planning, construction and administration of coastal light houses and buoys
- administration of coastal radio navigation stations
- hydrographic survey in coastal waters
- production of nautical charts

#### 5. Safety Management (ISM) Division

- verify compliance with requirements of the ISM Code
- issue Documents of Compliance(DOC) to shipping companies ( as to issue Safety Management Certificate for each ship has been delegated to China Classification Society)

#### 6. General Office & Planing and Development Division

- budget and payments control of local maritime safety administration
- MSA personal management and training
- other internal affairs

#### 7. Rules & Regulation Division

- develop the drafts laws and regulations for maritime safety and environmental protection in accordance with national needs and the international conventions, of which China is a contracting party

#### 8. Ship Surveying Division

- carry out statutory surveys for non-convention vessels and domestic vessels
- issue these ships with appropriate construction and technical certificates

The Ship Surveying Division is a new division after Chinese Maritime Safety Administration merged with Chinese Register of Shipping in 1998.

As can be seen from the chart that the Chinese Maritime Safety Administration system consists of two parts. The main part of the system is set by the MOC, that is the fifteen coastal maritime safety administrations and the two administrations in Yangtse River and Heilong River. The major port sea areas and inland navigable waters are controlled by this part. The other part of the system is that in some provinces the Department of Transport of the provincial governments other than the MOC set up the respective district maritime safety

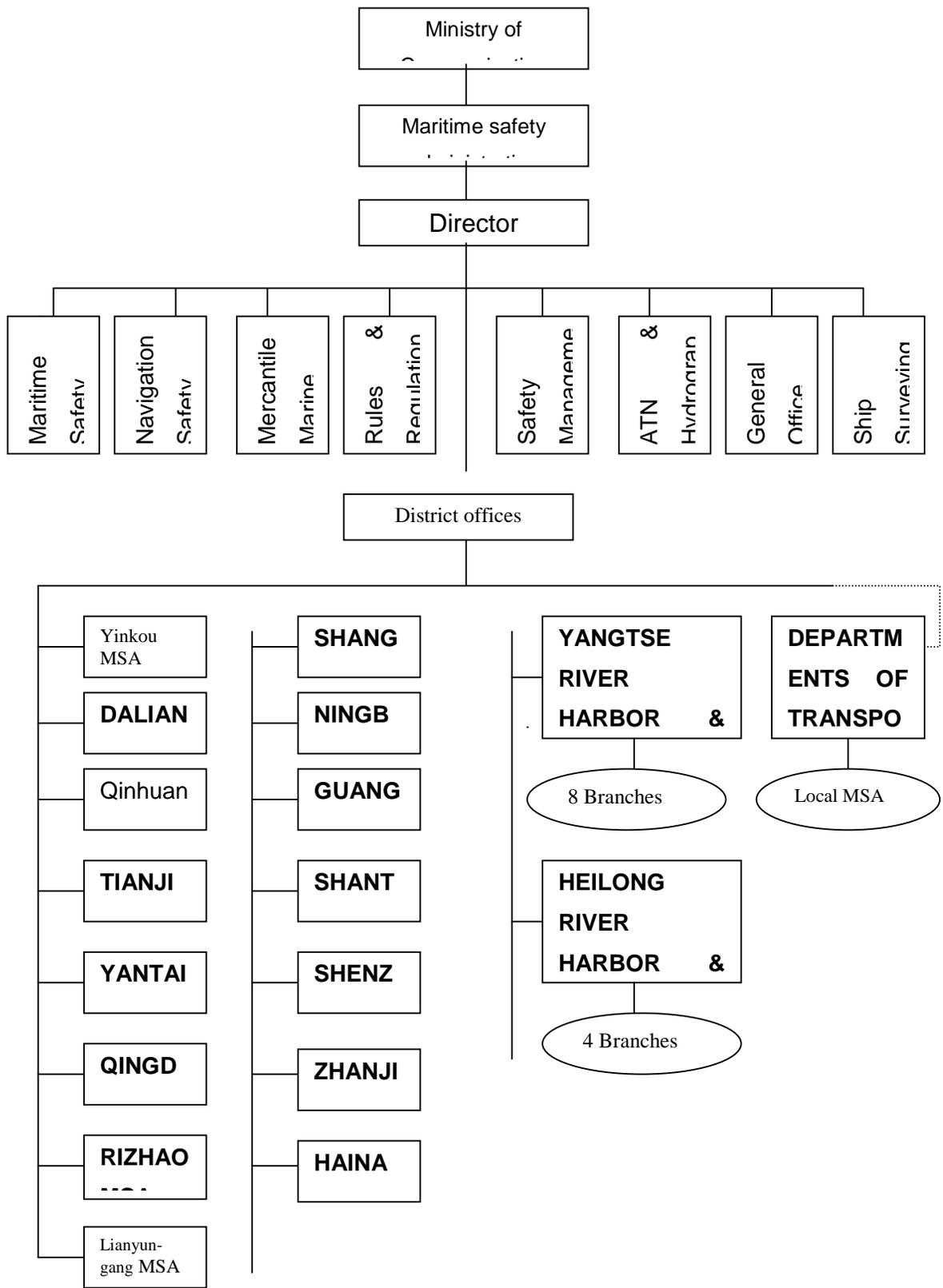
administrations. This is due to some historical reasons and that China is so large a country, it is sometime difficult to control everything from the central government. However, it is the Chinese Maritime Safety Administration's responsibility to offer technical guidance to such district offices.

All the district offices have the similar structure as the head office in the MOC. While in the district offices the statutory surveys for non-convention vessels and domestic vessels and issuing relevant certificates is still carried out by the former branches of Chinese Register of Shipping. The MOC plans to finish the merge by 2000.

Currently there are 24 district offices authorized by the Chinese Maritime Safety Administration to carry out port State control under their respective jurisdiction, these district offices are:

- the fifteen coastal maritime safety administrations
- Nanjing, Nantong, Jiangyin, Zhangjiagang, Zhengjiang district offices under the Ysngtse River Harbor & Navigation Supervision Administration
- Weihai, Zhuhai Fuzhou, Xiamen district offices under Departments of Transport of the provincial governments

Figure () The Chinese Maritime Safety Administration Organization Structure



## **2.2 Port State Control Legislation System in China at Present**

The Chinese port state control legislation system contains two parts, i.e., implementation of international conventions and national legislation. Such legislation is the basis and presuppositions for carrying out port state control in China. All the administrative activities should be carried under the legislation and regulated by them.

### **2.2.1 International Conventions**

Shipping is of international attribute, operated and regulated internationally. There is no doubt that, international action is generally more effective than single national action, especially in the context of port state control. As a contracting state of most international conventions relating to port state control, it is also in China's commitment and interest to properly implement these conventions within its territory.

#### **United Nations Convention on the Law of the Sea (UNCLOS)**

UNCLOS has been described as a constitution for the oceans and is widely considered to be a most significant achievement of the international community. It sets out principles and norms for the conduct of relations among States on marine-related issues and would be the order for the oceans at the turn of the century. (Nandan, 1998)

The "blue print" for port state control is contained in UNCLOS in the respect of ship safety and pollution prevention. Article 94 of UNCLOS "Duties of the flag State" has the provisions that "Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag..." While article 218 "Enforcement by port States" has been well known as the origin of the concept of port State control.

China has taken very positive attitude to UNCLOS and adopted the Convention on June 7, 1996.

#### **Port state control provisions under IMO conventions**

Since its inception in 1959, IMO has developed numerous conventions and other instruments relating to maritime safety and prevention and control of marine pollution from ships. The most important IMO conventions include provisions which in fact regulate the features of port State jurisdiction and the extent to which this jurisdiction should be exerted. It should be noted that within the context of the implementation of IMO instruments, port State jurisdiction is a

concept of an essential corrective kind: its exercise aims at correcting non-compliance or ineffective flag State enforcement of IMO regulations by foreign ships voluntarily in port.

The exercise of port State jurisdiction for the purpose of correcting deficiencies in the implementation of safety rules is established in the main IMO safety conventions, namely as follows:

- International Convention for the Safety at Sea, 1974, as amended (SOLAS 74);
- International Convention on Load Line, (LL 1966);
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78);
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978);
- International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 69)
- Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG,72)

These treaties regulate the right of the port State to verify the contents of certificates issued by the flag State attesting compliance with safety provisions. They also entitle the port State to inspect the ship, if the certificates are not in order or if there are clear grounds to believe that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate or if they are not properly maintained. SOLAS provides that the port State can check operational requirements when there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedure relating to the safety of the ship. Table () shows the list of articles and regulation which prescribe port State control in relevant IMO conventions.

**Table () Port State Control Provisions**

<b>Convention</b>	<b>Port State Control Provision</b>
SOLAS 74	Regulation I/19, XI/4
LL 66	Article 21
MARPOL 73/78	Article 5
Annex I	Regulation 8A
Annex II	Regulation 15
Annex III	Regulation 8
Annex V	Regulation 8
STCW 78	Article X, Regulation I/4
TONNAGE 69	Article 12

The first port State control procedure was developed by MSC (Maritime Safety Committee) and adopted by the Assembly in 1973 by resolution A.321 (IX). Since then, IMO has developed a number of procedures for port State control of ships and discharges under the SOLAS, Load Line and MARPOL Conventions, i.e., resolutions A.466 (XII), A.542 (13) and MEPC.26 (23). Furthermore, port State control has been extended to cover operational requirements under resolution A.742 (18). The above control procedures have been amalgamated in a single document entitled “Procedures for port State control” which was adopted by the Assembly in 1995 by resolution A.787 (19).

China has played a very active role in IMO since it became a Member State since 1973. Table () show the ratification of IMO conventions which are regarded as port State control instruments by China.

**Table () Ratification of Port State Control Instruments by China**

<b>Name of Convention</b>	<b>Date of deposit of instrument by China</b>	<b>Date of convention entry into force</b>
<b>Load Line 66</b>	05/10/73	21/07/68
<b>SOLAS 74</b>	07/01/80	25/05/80
<b>SOLAS PROT 78</b>	17/12/82	01/05/81
<b>MARPOL 73/78</b>	01/07/83	02/10/83
<b>Annex I &amp;II</b>	01/07/83	02/10/83
<b>Annex III</b>	13/09/94	01/07/92
<b>Annex V</b>	21/11/88	31/12/88
<b>STCW 78</b>	08/06/81	28/04/84
<b>COLREG</b>	07/07/80	15/07/77

### Port state control provisions under ILO conventions

Founded in 1919, the International Labour Organisation (ILO) is a specialised agency to bring governments, employers and trade unions together for united action in the cause of social justice and better living conditions everywhere. (Nilssen, 1998) The special nature of the conditions of work and life of maritime workers has led ILO to adopt an extensive range of conventions and recommendations applying specially to seafarers. The instruments, when referring to port State control are often known as the Merchant Shipping (minimum standard) Convention (ILO 147) which constitute a comprehensive set of minimum standards on board ships. Until now, China has not ratified this convention, further analysis will be made in Chapter three and four.

### **2.2.2 National Legislation**

#### Implementation of international conventions into national legislation

International maritime legislation was initiated from the combination and unification of national maritime laws. After the adoption of a convention, the implementation of international conventions, which is the aim of international legislation, relies solely on national legislation and enforcement. Each IMO and ILO convention has prescribed the contracting party's obligation under the convention. Similar wording can be found as the provisions in article I of SOLAS 74.

- (a) The Contracting Governments undertake to give effect to the provisions of the present Convention and the annex thereto...
- (b) The Contracting Governments undertake to promulgate all laws, decrees, orders and regulations and to take all other steps which may be necessary to give the present Convention full and complete effect, so as to ensure that, from the point of view of safety of life, a ship is fit for the service for which it is intended.

Generally speaking, China can be described as a country where monistic method is prevailing in implementation of international conventions. In the monistic method of implementation, where it is so provided by the domestic constitutional law, an international convention can become part of the domestic law simply as a consequence of its ratification or accession by the State. Virtually no legislative action is required for implementation in such a case. (Mukherjee, 1998) There is no provision governing the relationship between international convention and national legislation in Chinese Constitution law. However, article 142 of General Principles of the Civil Law of the People's Republic of China, 1987 has the provision to deal with this matter. It states that "If any international treaty concluded or acceded to by

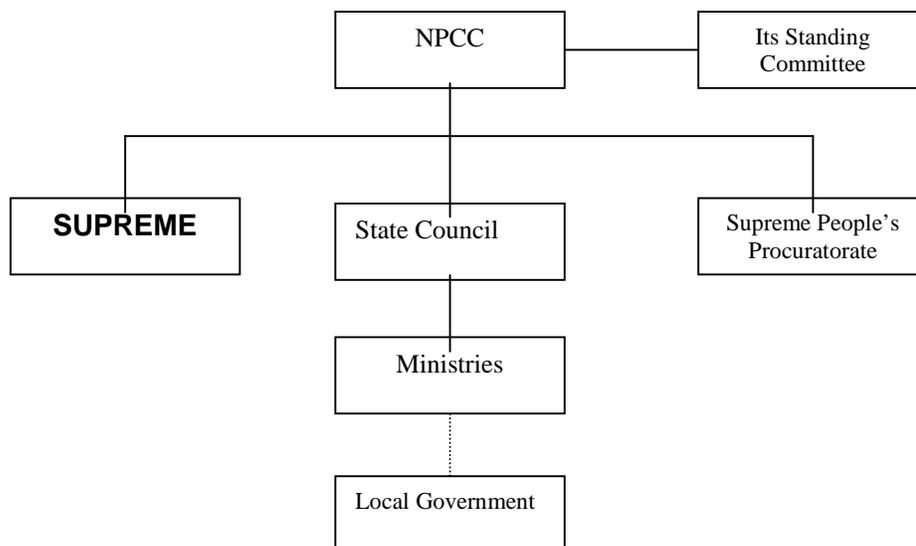
the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations." Although this provision was initially to be limited in the content of civil law, virtually it becomes the prevailing principle of how to deal with the relationship between international convention and national legislation.

In practice, after ratifying the convention, an enabling notice is issued by relevant government body. As to the maritime safety and environment protection aspects, the MOC is responsible for issuing such enabling notice, sometime an official translation is attached (in most case, Chinese is one of the official language of the Conventions). As many conventions are not self-executive and in some case conventions leave the provision "to the satisfaction of the flag State", under such circumstance, a certain kind of supplemental national legislation is necessary to make the convention be executive.

*Different levels of national legislation relating to port State control in China*

In China, there are four levels of legislative power as shown in Figure (). The National People's Congress of China (NPCC) is the highest agency of the State power and its Standing Committee is its permanent body. The State Council is the executive body of the highest organ of State power and is the highest organ of State administration. The Ministries under the State Council may issue orders, directives and regulations within the jurisdiction of their respective mandates and in accordance with the laws enacted by the NPCC or its Standing Committee and administrative rules, regulations, decisions and orders issued by the State Council. Finally there are some local regulations enacted at the provincial, municipality levels.

**Figure (). Four Levels of Legislation in China**



There are certain numbers of laws, regulations, rules falling into the above levels, especially in the first three levels, concerned with port State control.

At the first level, laws approved by the NPCC and its standing committee, there are two important laws in this system, being regarded as the basic laws for maritime safety and environment protection in China.

- Maritime Traffic Safety Law of the People's Republic of China of 1983;
- Marine Environmental Protection Law of the People's Republic of China of 1982;

In both these two laws, the Maritime Safety Administration (the Harbour Superintendency Administrations) was appointed as the competent authority solely responsible for the supervision and administration of maritime traffic safety and of the protection of marine environment within the water areas under the jurisdiction of Chinese government. This gives a clear definition of legal status of the Maritime Safety Administration in China.

The second level, rules and regulations approved by the State Council.

- Regulations Governing Supervision and Control of Foreign Vessels by the People's Republic of China, 1979;
- The Regulations concerning the Prevention of Pollution of Sea Areas by Vessels, 1983;
- The Regulations concerning Investigation and Treatments of Maritime Traffic Accidents of the People's Republic of China, 1990

The third level, rules and regulations promulgated and issued by the Ministry of Communication. These instruments very often contain more professional provisions, technical requirements and detailed procedures.

- Regulations Governing Ship Safety Inspection of the People's Republic of China, 1997;

- Regulations Governing Penalty and Punishment on Maritime Traffic Supervision and Administration, 1998;
- Regulations concerning the Safety Manning of Ships, 1998

*Regulations Governing Ship Safety Inspection of the People's Republic of China, 1997*

This Regulation was promulgated by the MOC on November 5<sup>th</sup>, 1997 which supersede the previous one under the same title in 1990. It contains comprehensive provisions governing implementation of ship safety inspection of Chinese vessels (unscheduled inspection) and port State control. It specifies the application, competent authority, relevant instruments and procedures, items for inspection, frequency of inspection, detention and appeal, etc. Following are the most important articles.(the text is translated by the author and is not an official translation)

The Regulation applies to all ships of foreign nationalities calling at Chinese ports and ships of Chinese nationalities of 200 gross tons or more and are not applicable to any military ships, fishery vessels and yachts, which are not engaged in commercial transportation services (Article 2).

The Chinese Maritime Safety Administration is empowered with the overall responsibility for ship safety inspection nation-wide. (Article 3).

Port State control shall be conducted in accordance with relevant Chinese Laws, decrees, regulations of the People's Republic of China, the relevant international conventions and the Memorandum of Understanding on Port State Control in the Asia-Pacific Region. (Article 5).

Inspection includes the following sixteen items (Article 7):

- ship's certificates and relevant documents
- seafarers' certificates and manning
- life saving appliance
- fire fighting appliance
- accident prevention
- safety in general
- alarm signals
- cargo stowage and loading and unloading equipment
- load lines and stability
- mooring arrangements
- propulsion & auxiliary machinery
- navigation equipment

- radio installations
- pollution preventing equipment
- liquid cargo handling system
- operational inspection

In the case of ship's deficiencies which are seriously hazardous to safety, health or the environment, the Maritime Safety Administration shall issue the Notice of Departure Prohibition to prohibit the ship from leaving the port (Article 14).

The ship may appeal for reconsideration of the detention. (Article 19).

## **2.3 Member State of Tokyo MOU**

The initiative of the Pairs MOU and its successful implementation in the 1980's was endorsed by IMO, which adopted IMO Resolution A 682(17) "regional cooperation in the control of ships and discharges" in 1991. This resolution, in particular, recognized the important contribution to maritime safety and pollution prevention made through regional cooperation under the Pairs MOU in the preventing the operation of substandard ships and invited Governments to consider concluding regional agreements on the application of port State control measures.

Pursuant to the above resolution, as a consequence of developments, ten Latin American countries concluded a Memorandum of Understanding of port State control known as the Acuerdo de Vina del Mar in November 1992. Eighteen Asia-Pacific countries and associate members concluded Tokyo MOU in December 1993. In later 1990's the Caribbean MOU and Mediterranean MOU have also been concluded.

### **2.3.1 General overview of the Tokyo MOU**

During the fourth preparatory meetings dated 29 November to 2 December 1993, the Memorandum of Understanding of port State control in the Asia-Pacific Region known as Tokyo MOU was concluded. By the first port State control Committee held in Beijing, China in April 1994, it was signed by 18 maritime Authorities in the Asia-Pacific Region. The participant authorities are: Australia, Canada, China, Fiji, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Papua New Guinea, Philippines, Russian Federation, Singapore, Solomon Islands, Thailand, Vanuatu and Vietnam.

The MOU is an agreement concluded at the administrative level, i.e. maritime authorities of the States, and therefore does not have the status of multilateral treaty which requires parliamentary approval and which binds State parties to that treaty.

The MOU stipulated the following international convention as relevant instrument for the regional port State control:

- 1966 Load Line Convention
- 1974 SOLAS Convention, as amended by the 1978 Protocol
- MARPOL 73/78
- 1978 STCW Convention
- COLREG Convention
- 1969 Tonnage Convention
- ILO Convention No. 147( China has not ratified it yet)

As to the port State control inspection procedure, the Tokyo MOU closely follow the Paris MOU. After IMO Resolution A.787 “ Procedure for port State control” was adopted in 1995, a set of new amendments has been brought to the MOU in consistence with the resolution. Unlike the approach taken by Paris MOU that provisions of resolution has been directly introduced in the Paris MOU, only reference to Resolution A. 787(19) are made in Tokyo MOU, and the resolution is referred to as guideline for port State control.

A committee composed of a representative of each of the Authorities and observers from IMO, ILO, ESCAP (United Nations Economic and Social Commission for Asia and the Pacific), Paris MOU and United State Coast Guard, together with a secretariat based in Tokyo has been established under the MOU. For reporting and storing port State inspection results and facilitating exchange of information in the region, in accordance with the MOU, a computerized database system, the Asia-Pacific Computerized Information System (APCIS) was established in Ottawa, under the auspices of Transport Canada.

### **2.3.2 Training of port state control officer programs in Tokyo MOU**

Considering that many maritime Authorities in the Asia-Pacific region are in the early stage of development of the port State control activity, special attention has been paid to the education and training of port State control officers (PSCO). An integrated strategic plan for the training and exchange of port State officer in the Asia-Pacific region was approved just after the inception of the MOU. The plan consists of three component programs, namely:

1. PSCO training program which includes:

- Basic training course which is aimed at training of junior or new PSCO to learn the primary knowledge in conducting port State inspection.

- Expert mission whereby one or two experts from port State control advanced Authorities are sent to port State control developing Authorities specific training suitable for the need of the requesting Authorities.
  - Fellowship training which is designed for PSCO in port State control developing Authorities who have complete basic training course to have practical training in port State control advanced Authorities.
2. PSCO exchange program which is intended to establish a two way PSCO exchange scheme in the region, whereby each Authority could send out their officers to another Authority in exchange of receiving officers from the Authority
  3. Seminar for PSCO, which is intended to provide a forum for exchange views and experiences of PSCO to, updated technical details of PSC procedures and improve their expertise.

By the end of 1997, five training course, in which 118 port State control officers from 14 Authorities obtained the training, and four seminars had been organized. These seminars and training courses are based yearly held, it would contribute to a significant extent to the development of port State control in the region as a whole, and at the same time, greatly promote port State control activities in Authorities who participated in the training.

### **2.3.3 An unique target regional inspection rate**

Unlike the Pairs MOU and other MOUs, Tokyo MOU has adopted an unique regional target inspection rate, whilst preserving some latitude for individual administrations to set their own targets, as follows:

1. Each Authority will determine an appropriate annual percentage of individual foreign merchant ships to be inspected.
2. The Committee will monitor the overall inspection activity and its effectiveness throughout the region.
3. As a preliminary target, subject to subsequent review, the Committee will endeavor to attain a regional annual inspection rate of 50% of the total number of ships operating in the region by the year 2000. The percentage is based on the number of ships which entered regional ports during a recent base period to be decided by the Committee.

The reason for not setting an identical inspection rate for each authority, for example, 25% annual inspection rate per country within 3 years in Pairs MOU, is based on the consideration that the region does not enjoy the same nature advantages as Europe in terms of:

- Geographical proximity;
  - Uniform level of economic development;
  - Close political ties;
  - Maritime administration with a uniformly high standard of technical expertise.
- (Dayton, 1993, page 6)

#### **2.4 Port State Control in Relation with Flag State Control in China**

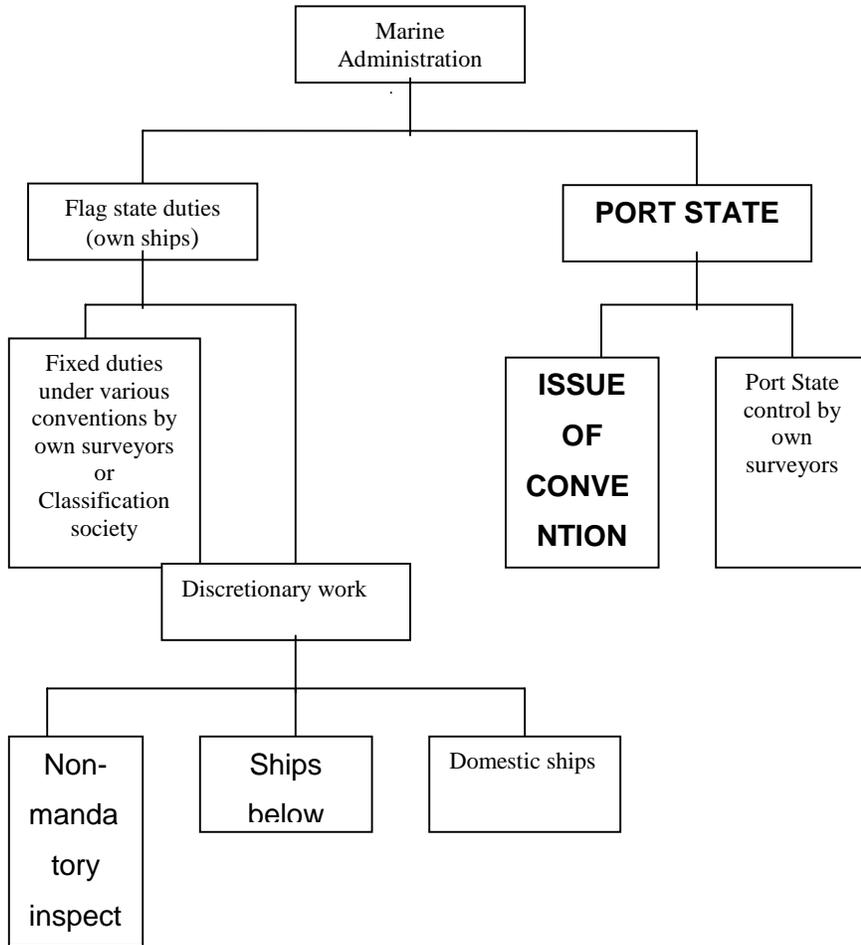
A government's obligation under the conventions dealing with marine safety and environmental protection are of two main types:

1. As a Port State it must ensure that foreign ships visiting its ports are safe to proceed to sea and not likely to cause severe pollution.
2. As a Flag State it must ensure that the ships flying the flag of Flag State meet the standards of IMO conventions and it carries out certain other duties in respect of safe manning, and investigates casualties to ships and reports to the organization accordingly.

The allocation of available resources between these two functions causes major problem. The long and vulnerable coastline that China has and the greater the number of ship visits needs a large proportion of surveyor resources employed on port State control. On the other hand, the larger merchant fleets that China has, the greater proportion of resources employed on Flag State will be required.

However, it must be recognized that almost no government has a marine administration extensive enough to perform all its obligation under the conventions, in particular, almost no administration has sufficient resources to deal with all statutory surveys required under the conventions without the assistance of the Classification Societies who maintain world-wide networks of qualified surveyors. This delegation is permissible under the convention system but it does not relieve an administration of its responsibilities. The responsibility is clearly defined in Regulation 6(c) of SOLAS 74 Protocol 78, which states: " In every case, the administration shall fully guarantee the completeness and efficiency of the inspection and survey and shall undertake to ensure the necessary arrangements to satisfy this obligation."

**Figure (). The Main Duties of Maritime Administration in terms of Port State and Flag State**



Source: Cowley (1989). The International Maritime Organization and National Administration. *Trans IMarE*,

In China, the situation has changed several times since 1980's. Before 1986, the China Classification Society (CCS) was only a sector of Chinese Register of Shipping. The Chinese Register of Shipping carried out the whole function of survey and certification of ships, both conventional and non-conventional ships. In 1986, CCS was separated from the Chinese register of Shipping and become an independent social non-profit making organization. Since then, CCS has been solely delegated by Chinese government to carry out statutory survey and certification to ships registered in China. Meanwhile the Chinese Register of Shipping remained responsible for survey and certification of non- conventional and domestic vessels. CCS joined the International Association of Classification Societies (IACS) in May 1988 as one of its 11 full members. From the early 1990's the Chinese Maritime Safety Administration began to carry out port State inspection and unscheduled inspection to Chinese vessels. From 1998, the Chinese Maritime Safety Administration begins to merge with the Chinese Register of Shipping.

Unfortunately, China has appeared in the three-year rolling average table of above- average detentions published in the annual report of the Tokyo and Paris MOU during recent years. For example, in 1996, the three-year rolling average detention rate for ships flying Chinese flags in Tokyo MOU was 11.99%, with 6.74% above the average 5.25%, in 1997, the figure was 11.88%, 5.88% above the average. Meanwhile, statistics from Paris MOU shown that in 1996, the three-year rolling average detention rate for Chinese vessels was 17.73%, 1.38 % above the average 16.35%, the situation in 1997 was improved, 15.90% for Chinese vessel, 0.52% below the average 16.42%.

The reason is rather complicated, in my opinion it is mainly relating to the old average age of the Chinese vessel and improper maintenance. In order to improve the situation, in 1997 the MOC decided to amend the Regulations Governing Ship Safety Inspection of PRC. The new regulation came into force in the March of 1998 and from then on, the inspection standard apply to port State control will also apply to unscheduled inspection to Chinese vessels. The Chinese Maritime Safety Administration also decided that vessels bounding for the country belonging to the Paris MOU, Unite States and Australia must pass through the unscheduled inspection before departure from Chinese ports. This has made part of the unscheduled inspection become mandatory.

## **2.5 Recent Annual Statistics of Port State Control Carried out in China**

China begun to carry out port state control in the early 1990's, firstly in 5 major ports, Tianjing, Dalian, Shanghai, Qingdao, Guangzhou. After the inception of Tokyo MOU, great progress has been achieved, by now there are port State control officer conducting inspections in 24 Chinese ports, which nearly embraces the whole coastal area of China and is also covering

the Yangtse River areas. Table () show the three years (from 1995 to 1997) port State control statistics carried out by Chinese Maritime Safety Administration. Form the table we can see 1163 ships in 1995, 1229 ships in 1996, and 1333 ships in 1997 were inspected. The annual inspection rate is about 19%-20%, which contributes approximate 10% to the whole region. The number of deficiencies and the detention rate also shows a steady increase. Table () shows the 1997 statistics of port State inspection by Authorities in Tokyo MOU. In 1997, a total of 12,957 port State inspections were carried out by member Authorities of Tokyo MOU and this gives the regional annual inspection rate of 52%, attaining, for the second year, inspections of 50% of total number of ships operating in the region. This means that Tokyo MOU has achieved, three years in advance, the primary regional target inspection rate, as provided for in the Memorandum. The statistics also showing that there are huge difference in the performance among the whole region in term of inspection rate.

**Table () Three Years Port State Control Statistics  
carried out by Chinese Authority**

<b>Year</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>
<b>No. of inspection</b>	<b>1163</b>	<b>1229</b>	<b>1333</b>
<b>No. of ships with deficiencies</b>	<b>547</b>	<b>724</b>	<b>756</b>
<b>No. of deficiencies</b>	<b>2835</b>	<b>4048</b>	<b>4736</b>
<b>No. of detentions</b>	<b>17</b>	<b>32</b>	<b>79</b>
<b>No. of individual ships</b>	<b>5837</b>	<b>6468</b>	<b>6997</b>
<b>Inspection rate %</b>	<b>19.92</b>	<b>19.00</b>	<b>19.05</b>
<b>Detention percentage %</b>	<b>1.46</b>	<b>2.6</b>	<b>5.93</b>

Source: Tokyo MOU Secretariat and Chinese Maritime Safety Administration.

**Table (). Port State Inspection carried out by  
Authorities of Tokyo MOU, 1997**

Authority	No. of inspection	No. of ships with deficiencies	No. of deficiencies	No. of detentions	No. of individual ships	Inspection rate %	Detention percentage %
<b>Australia</b>	3131	1966	13334	203	4762	65.75	6.48
<b>Canada</b>	267	193	1065	51	2052	13.01	19.10
<b>China</b>	1333	756	4736	79	6997	19.05	5.93
<b>Fiji</b>	0	0	0	0	193		
<b>Hong Kong</b>	501	448	4701	192	6097	8.22	38.32
<b>Indonesia</b>	1049	528	1086	6	5590	18.77	0.57
<b>Japan</b>	3785	2183	8864	120	11451	33.05	3.17
<b>Republic of Korea</b>	1096	673	3865	123	8027	13.65	11.22
<b>Malaysia</b>	37	22	112	3	5415	0.68	8.11
<b>New Zealand</b>	1038	374	1109	7	1213	85.57	0.67
<b>Papua New Guinea</b>	0	0	0	0	590	0	
<b>Philippines</b>	43	34	368	2	1335	3.22	4.65
<b>Russian Federation</b>	349	239	1971	39	722	48.34	11.17
<b>Singapore</b>	303	96	232	5	10991	2.77	1.65
<b>Thailand</b>	25	6	13	0	3287	0.76	0
<b>Vanuatu</b>	0	0	0	0	53	0	
<b>Total</b>	12957	7518	44456	830	Regiona l 24779	Regional approx. 52%	Regional 6.41 %

Source: Tokyo MOU Secretariat (1998)

## **Chapter Three**

### **Port State control in China: Problem areas at present**

This chapter identifies the barriers and problems affecting the further improvement of port State control performance in China based on the analysis of present situation in previous chapter. Those problems are mainly reflecting unreasonable distribution of functions within the administration and lack of expertise, incomplete legislation by not being ratifying State of ILO 147 Convention and lack of harmonisation of inspection procedures.

#### **3.1 Basic Problems**

As we all know that the establishment and maintain an appropriate maritime administration is the basis and prerequisite of effective implementation of port State control in each country. However, there are problems that affect the performance of the maritime administration, particular in developing countries. As Professor Vanchiswar identified in his manual “Establishment Administration of Maritime Matters with Particular Reference to Developing Countries” that, the following are the basic problems as regards matters pertaining to maritime administration in developing countries:

- Inadequate awareness of the basic problems themselves;
- Non-involvement in the evolution of international standards and the consequential problem of having to deal with them in isolation;
- Out-dated maritime legislation (both primary and subsidiary);
- Inadequate infrastructure, as regards organisation and personnel, for ensuring:

(a) proper standards of maritime safety on board ships and prevention of pollution from ships, which cover not only the ships themselves but also the personnel manning them

(b) maritime development

(c) attention to allied maritime matters

- Shortage (acute shortage in many countries) of marine officers with the needed qualifications and experience;
- Lack of training facilities for marine officers and seamen.

China is still a developing country although there are significant progress and development in economy and in maritime field as well. It is no exception that those problems exist in China, but the extent of the problems, may differ from country to other countries.

Considering the above mentioned problems, in my opinion there are some special problems within the Chinese Maritime Safety Administration which affect the functions and implementation of port State control in China. These problems are:

- Incomplete maritime legislation regarding port State control, mainly reflects in not being ratifying State of ILO 147 Convention.
- Unreasonable distribution of functions and lack of expertise
- Lack of harmonisation of port State control inspection procedure and information exchange

### **3.2 Unreasonable distribution of functions and lack of expertise**

China has developed a relatively complete and functional port State control administrative system. However, there are still some problems associated with the system, which prevent further improvement of effectiveness and efficiency.

First, there are two kinds of Maritime Safety Administration organisations exist in China. One is belonging to the Ministry of Communications, and the other is under the leadership of Department of Transport of the provincial governments. (Refer to 2.1.2) The result is that some port State control district offices are not directly under the supervision of MOC and Chinese Maritime Safety Administration. As the main responsibility of Department of Transport in provincial governments is to ensure ship safety and environment protection of inland water areas. Sometime, port State control has been considered less important and to which not enough attention has been paid. Moreover, bureaucracy has caused the delay of passing instruction from MOC and Chinese Maritime Safety Administration to actual inspectors and information exchange within different ports.

Secondly, in my opinion, the major problem connected with Chinese port State control administrative system is that the long-time separation of Chinese Maritime Safety Administration with the Chinese Register of Shipping. This has caused in China flag State control and port State control are almost completely separated, except that the Chinese Maritime Safety Administration is responsible for exercising unscheduled inspection on Chinese vessels until early 1990s. As the flag State and port State survey and inspection are conducted by surveyors and inspectors from two different organisations and system, limited administrative facilities and human resource has not been reasonably exploited and to some extent be wasted.

Furthermore, such separation has affected the qualification of port State control officer in China by and large. The qualification requirements of port State control officer set out by IMO Resolution A 787(19), inter alia, requires that " the port State control officer should be an experienced officer qualified as flag State surveyor." Tokyo MOU has applied the same criteria as section 3.5 of the MOU states " Inspection will be carried out by properly qualified persons authorised for that purpose by the Authority ...having regard to section 2.4 and 2.5 of IMO Resolution A. 787(19)". The criteria set out by Paris MOU is much more explicit, as stipulated in Annex 6 of the MOU, " A proper qualified port State control officer must have completed a minimum of one year's service as a flag State surveyor dealing with surveys and certification in accordance with the relevant instruments..." The reason for such requirements is obvious that it is so closely linked between these two kind of inspection and control. As flag State inspections are generally referred to a comprehensive and systematic inspection, while port State inspections are to large extent random check, it could be desirable that a qualified port State control officer

would have developed his basic profession knowledge and experience as a previous flag State surveyor.

However, the situation in China has caused that most of port State Control officers do not have the crucial background as flag State surveyors. In the early 1990s, when Chinese Maritime Safety Administration decided to conduct port State inspection, it had to train and develop port State control officer by itself. At very begin, the Chinese Maritime Safety Administration held a six month training course for selected candidates from district offices in major ports, mainly young officers just graduated from maritime college. Some of the candidates had short period of sea experience and holding a mariner certificate, some of the candidates did not have sea experience. At that time, there were not such incentive to recruit experience sea masters and chief engineers because of the huge difference of salary and welfare between government officers and shipping companies. Later on, similar training program was held by Dalian Maritime University for several times approved by the Chinese Maritime Safety Administration. The training program mainly covers international Conventions and English communication skill.

As port State control inspection has developed as such that more and more items would be covered by inspection, an assessment of the ability of ship's crew to perform their duties in respect of operational requirement may also be included. Lack of background as Flag State surveyor and enough sea experience may prevent Chinese port State control officers from further improvement of their performance.

### **3.3 Incomplete legislation by not being ratifying State of ILO 147 Convention**

It is obvious that the major problem associated with Chinese port State control legislation system is that China is still not a ratifying State of ILO 147 Convention. Port State control officers are frustrated in its efforts to enforce the ILO Conventions on foreign vessels calling at Chinese ports in case of there are poor working and living conditions on board ships.

#### **3.3.1 The origin of ILO 147 Convention**

International shipping is a highly competitive business. The profit margins are small and market forces cause every shipping company to pay careful attention to its capital and operating expenses and to continuously search for economies. The decline of fleets of traditional maritime countries and rapid growth of Open Registry is

the predominant phenomenon in today's shipping industry. In 1997, it is estimated, the share of world tonnage registered in Open Registry was about 45%. (ISL, 1997) The percentage is still growing. The reasons for which shipowners put their vessels under foreign flags are believed to be from two concerns: (Ma, 1998)

1. Cost, including lower crewing costs/manning requirements, unrestricted choice of crew in the international market and not being subject to onerous national wage scales, lower operating cost generated by "lighter" maintenance, the probable avoidance of tax;
2. Accessibility of the register and standards enforced by the State of register, mainly reflecting in less regulatory control and less stringent enforcement of safety and labour standards;

ILO had noticed the rapid growth of Open Registry in early 1970s and observed that Open Registry shipowners were trying to avoid safety and labour standards in order to make excessive profits. ILO further observed that Open Registry States failed to implement properly ILO standards and regulations governing the safe operation of ships and crew conditions and Open Registry vessels were likely to cause accidents and pollution owing to the poor physical condition of such ships, inadequate manning standards, the use of crew comprising different nationalities and the lack of properly trained and properly certified seafarers in such vessels. Attention had also been paid that such phenomenon did happen to some national registry ship and did not including all Open Registry ships. As part of its long-standing efforts and in response to great international concern for safety at sea and the prevention of marine pollution, ILO adopted the Merchant Shipping (Minimum Standards) Convention, (No. 147) in October 1976. This convention is recognised as having strengthened substantially the international will to eliminate the operation of substandard ships. It aims to improve the efficiency and safety of navigation, enhance measures to protect the marine environment and advance seafarers' interests in the fields of health and safety, working conditions and trade union rights. The convention, which essentially applies to every seagoing ship employed for any commercial purpose, entered into force in November 1981. Until December of 1998, 37 States has ratified the ILO 147 Convention, which covers more than 50% of world fleet tonnage. In 1996, a protocol has been adopted to the Convention. (This protocol has not yet come into force).

### **3.3.2 ILO 147 Convention: an important tool for combating substandard ships**

ILO 147 Convention prescribes a set of minimum standards relating to safety, social security, shipboard conditions of employment and living arrangements to be observed in merchant shipping registered under any flag, by reference to a number of other ILO Conventions listed in an Appendix to Convention No.147. These conventions cover minimum age, medical examination, articles of agreement, officers' competency certificates, food and catering on board ship, crew accommodation, and prevention of occupational accidents, sickness or injury benefits and repatriation. The appendix also refers to conventions on freedom of association and the protection of the right to organise, and on collective bargaining.

Article 2 of the ILO 147 Convention contains extensive provisions on obligation with respect to ships registered in ratifying members' territory. Meanwhile, under Article 4 of the Convention, a ratifying State may, on the basis of a complaint or evidence that a ship does not conform to the standards of the Convention, inspect any foreign ship calling at its ports, regardless of whether the flag States has ratified the Convention. This represents an innovation since, prior to the adoption of the Convention No. 147, port States refrained from intervening in the internal affairs of ships, such as crew conditions, except for certain matters affecting safety. (ILO, 1988) The adoption of Convention No. 147 in 1976 has enlarged the concerns of international shipping regulations. An inspection may be made by the port State whenever it obtains evidence that a ship does not conform to the standards of the Convention or when it receives a complaint from a member of the crew, or any other person or entity concerned with the safety of the ship and the well-being of its crew. In addition, the port State can take action, including detention, to ensure the rectification of any conditions on board which are clearly hazardous to safety or health.

ILO 147 Convention has been playing an important role in combating substandard ships since it has been included as a relevant instrument regarding port State inspection along with IMO conventions. Not only the IMO Resolution A. 787(19) Procedures for Port State Control but also the Pairs MOU, Tokyo MOU, Caribbean MOU and Mediterranean MOU have included the ILO 147 Convention as a relevant instrument. Table () and Table () show the inspection results of major deficiencies in respect of living and working condition by Tokyo MOU and Paris MOU in the year from 1995 to 1997.

From the tables, we can see that the deficiencies in living and working conditions on board ship have made up a significant percentage of the total deficiencies during the port State control inspection. It also shows an increasing of percentage during recent years. In 1997, the percentage in Tokyo MOU was 6.30%, while in Paris MOU it reached to 10.33%. Attention shall be paid that this is not an exhaust statistic since there is overlapping between ILO147 Convention and IMO conventions, mainly in the respect of crew competency and other ship and personnel safety requirements.

**Table () Major deficiencies of living and working conditions in Tokyo MOU**

Deficiencies Categories	Number of Deficiencies			Percentage of total deficiencies		
	1995	1996	1997	1995	1996	1997
Accommodation	419	850	1102	2.16	2.69	2.66
Food and Catering	349	496	520	1.81	1.10	1.25
Working Space	68	123	306	0.35	0.39	0.74
Accident Prevention	115	257	289	0.60	0.81	0.70
Mooring Arrangements	243	387	393	1.26	1.22	0.95
<b>Total</b>	1194	2113	2610	6.17	6.69	6.30

Source: Tokyo MOU, 1997 Annual Report.

**Table () Major deficiencies of living and working conditions in Paris MOU**

Deficiencies Categories	Number of Deficiencies			Percentage of total deficiencies		
	1995	1996	1997	1995	1996	1997
Accommodation	1381	1417	2183	2.54	2.63	4.09
Food and Catering	623	686	1508	1.14	1.27	2.83
Working Space	485	408	505	0.89	0.76	0.95
Accident Prevention	665	684	911	1.22	1.27	1.71
Mooring Arrangements	312	359	401	0.57	0.67	0.75
<b>Total</b>	3466	3554	5508	6.37	6.59	10.33

Source: Paris MOU, 1997 Annual Report.

In the late 1997, Paris MOU carried out a three-month concentrated inspection campaign on seafarers' living and working conditions. The campaign, which ran from 1 September to 30 November revealed that over 25% of the 3791 ships inspected had deficiencies in at least one of the selected inspections areas. Most deficiencies were found in food storage, the condition of the galley, sanitary facilities and hospital accommodation. The statistics of the campaign also revealed a close correlation between flag States which are targeted for poor standards concerning maritime safety and marine environmental protection and those found to have poor living and working conditions. This suggests, yet again, the vital affect of the human element on all phases of maritime safety and environmental protection.

### **3.3.3 The disadvantage of not being ratifying State of ILO 147**

Article 4 of ILO 147 expressly provides for the intervention of the port State on questions relating to the conditions of the crew on board a foreign ship irrespective of the ship's flag state's ratification status of the convention.

However, a port State can apply only those relevant instruments which are in force and to which it is a party. It is this element which must be addressed if port State control is to be widely adopted and completely implemented in China.

Because China has not ratified ILO 147, the port State control officer is frustrated in its efforts to enforce these conventions on foreign flag vessels visiting Chinese ports, in particular, China is especially restrained in preventing abuse of basic human rights regarding working and living conditions. Although China has some national legislation on living and working conditions on board ships, such legislation merely apply to the Chinese vessels and does not apply to foreign vessels. This has resulting in no inspection and enforcement regime on the foreign vessels unless there is overlapping between ILO Conventions and some of the IMO Conventions on this matter.

ILO147 Convention may not seemed directly related to marine safety and pollution, this does not mean that the need to assess the standards achieved by vessels entering Chinese waters is not pressing. The safety operation of the ship is not only influenced by its structure and technical condition, but also to very large extent by a number of other factors including crew fatigue, watchkeeping qualification, crew training and etc. Those factors are no doubt relating to the living and working

conditions. It is not only a matter of humanity, it is also a matter a ship safety and environment protection.

The results of inspection by Tokyo and Paris MOU, especially the concentrated inspection campaign carried out by Paris MOU in late 1997, have clearly shown that there are serious problems existing in the living and working conditions on board ships. Importance should be stressed that all flag States to exercise effective jurisdiction and control over their ships to ensure the ILO minimum standards are applied. Increasing attention should also be drawn from port State control officers to take any appropriate actions as to ensure that such minimum standard is maintain during the port State inspection. However, both the flag State and port State implementation and enforcement shall be based on the prerequisite that the State has ratified the Convention.

On the other side, since China has not ratifying the ILO 147 Convention, it has also brought some negative effect on the Chinese vessels. CCS has made an analysis on 120 Chinese vessels detained by port State inspection in 1996. Among all the deficiencies which constitute the grounds for detention, accommodation makes up 3.58%, working space 0.39%, food and catering 2.42%, mooring arrangements 0.97. This means at least 7.36% of the deficiencies, which are so serious as grounds for detention, fall into the category of living and working condition on board ships. Most Chinese port Sate control officers are not familiar with the provision of ILO 147 Conventions. Such provisions do not apply to the unscheduled inspection to Chinese vessels.

Based on the above analysis, it is clear that not being the ratifying State of ILO 147 Convention has refrained China from comprehensive implementation of port State control regime and hindered its further improvement. It also has caused some negative effect on the Chinese vessels, since other port States will inspect Chinese vessels by ILO 147 Convention as a relevant instrument by no favourable treatment principle contained in Article 4 of the Convention. Therefore, aiming at better combating substandard ships by port State inspection and improving the living and working conditions on board Chinese vessels, Chinese government is urged to carry an investigation on the ILO convention and ratify it as early as possible.

### **3.4 Lack of harmonisation of port State control inspection procedure**

Each port State shall ensure that inspections are carried out in accordance with the procedures set by relevant IMO instruments, ILO guidelines and procedures set by MOUs under the above principles. Only a harmonised inspection procedure could lead to accountability and consistency. The Chinese Maritime Safety Administration has made great efforts to uniform the inspection procedures within the country in accordance with relevant IMO and ILO instruments and procedures adopted by Tokyo MOU. However, it is not an easy task as China is such a large country. Besides harmonisation might be a never-ending process, as the Paris MOU member States are still seeking ways for further harmonisation after 16 years efforts since the inception of the MOU.

The main problems associated with harmonisation of inspection procedures in China are elaborated in the following sections.

#### **3.4.1. Different interpretation of IMO Resolution A.787 (19)**

In accordance with IMO Resolution A.787 (19), port State control is limited to verify that ship with valid relevant certificates. However, in the absence of valid certificates, or if there are clear grounds, a more detailed inspection shall be carried out. Each Authority shall endeavour to secure the rectification of all deficiencies detected and may take appropriate actions including detention.

"Clear ground" is defined as section 1.6.1 of the resolution, it means "evidence that a ship, its equipment, or its crew does not correspond substantially with the requirements of the relevant conventions or that the master or crew members are not familiar with essential shipboard procedures relating to the safety of ships or the prevention of pollution". Section 2.3 of the Resolution gives out some examples of "clear ground" which warrant a more detailed inspection. It can be seen that it is a very broad based definition and in itself leads to inconsistent interpretations. Furthermore, there is no detailed provisions dealing with how to establish whether or not there are clear grounds on board ship in the Resolution, professional judgement is emphasised. Some examples of the "clear ground" are quite obvious as "evidence from a review of the ship's certificate that a certificate or certificates are clearly

invalid, while some are not straightforward as such unless on the spot inspection have been made.

The situation in China is that in some ports there is tendency for the port State control officers to make a thorough inspection to every ship, operational inspection are normally included. On the other hand at some ports, inspectors are still remaining at the stage of checking the validity of ship's certificates, detained inspection will be followed unless there is invalid certificate(s). Such inconsistent practice would affect the accountability and quality of the inspection and may cause complaint from the ships for different measures in inspection at different ports within the same country.

#### **3.4.2. Detention procedure in China**

As required in IMO Resolution A.787 (19) and MOUs, each Authority shall endeavour to secure the rectification of all deficiencies detected. In the case of deficiencies which are clearly hazardous to safety, health or the environment, the port State shall ensure that the hazard is removed before the ship is allowed to proceed to sea. For this purpose appropriate action will be taken, which may include detention. In the event of a detention, the port state shall as soon as possible, notify in writing the flag State. Since detention a ship is an extremely serious matter, a guideline for the detention of the ships has been developed which contained as Appendix 1 of the Resolution. Meanwhile Authorities are reminded to make all possible efforts to avoid unduly detaining or delaying a ship. If a ship is thereby unduly detained or delayed it shall be entitled to compensation for any loss or damage suffered

It is for these reasons, the Chinese Maritime Safety Administration decided in the early 1990's, all the detention shall be approval by Chief Division of Maritime Safety and Environment Protection in its headquarter in Beijing. Later in 1995, it decided some of the major ports, detention may be approval by the Director of the respective district offices. As to other small ports, it is still required an approval from Beijing headquarter. It is appreciated that such a prudent manner. However, in practice it brings a lot of inconvenience to the inspectors who actually conduct the inspection. It can be imagine that after the serious deficiencies be discovered, how much formalities shall be undergone until approval be granted from Beijing, considering sometime the ship is in such a short period time of turnaround. Nevertheless, when detention is supposed to be lifted, the same formalities shall be repeated. Being afraid of such a complicated procedure, some inspectors preferred to take alternative

actions, such as instructing the ship to rectify in next port or within certain period of time, other than detention, especially when the case occurred during weekend or holidays. The outcome of such measures is that certain number of substandard ships would escape from the detention which should be taken. Therefore, it is recommended further simplifying of detention procedure be made.

### **3.4.3. Difficulties in information exchange**

To achieve an effective port State control system, a free flow of information is of paramount importance. To get information and particulars about the ship, particularly the recent port State inspection history before boarding could help inspectors to determine the boarding priority among ships and be prepared before the actual inspection. It is also crucial that after inspection that the relevant information be forwarded to relevant parties to ensure that the deficiencies be properly remedied, especially in the case of detention or ship allowed to sail with known deficiencies

Article 3.3 of the Tokyo MOU stipulates certain types of ships to which priority shall be given by the Authorities in selecting ships for inspection, such types of ships including: passenger ships; roll-on/roll-off ships; oil tanker and bulk carriers of 10 years of age and over; ships visiting a port of a State, the Authority of which is a signatory to the Memorandum, for the first time or after an absence of 12 months or more; ships flying the flag of a State appearing in the three-year rolling average table of above-average detentions and etc. Meanwhile, Article 3.4 of the MOU requires” the Authorities will seek to avoid inspecting ships which have been inspected by any of other Authorities within the previous six months, unless they have clear grounds for inspection...” The intention for such provisions is obvious. It is intend to allow port State control officers to focusing their efforts on boarding and examining those ships which may present a special hazard (oil tankers, gas carriers etc.) and ships mostly likely to be substandard. At the same time it allows resources to be used more efficiently and rewarding well-managed vessels with less frequent boarding.

Chapter 5 of the IMO Resolution A.787 (19) contains specified reporting requirements. In the case of a detention, notification shall be made by port State without delay to the authorities of the flag State, recognise organisation (if appropriate). In addition, copies of such deficiency reports should be forwarded to IMO and ILO (if appropriate). If the ship has been allowed to sail with known

deficiencies, the port State should communicate all the facts to the next port of call to ensure appropriate follow-up action are taken.

Realising the importance of information exchange, Tokyo MOU has established the Asia-Pacific Computerised Information System (APCIS) for that purpose in the very beginning. However, only a limited number of Authorities participate in the APCIS database, although the MOU stipulate that all the results of port State inspection should be electronically transmitted to host sever in APCIS in Canada. Meanwhile due to some technical problems, state of art technology like Internet has not been used, Authorities have experienced frequently difficulties in submitting and transferring data to the APCIS central host.

China has established a national wide port State inspection information computer net based in Beijing headquarter and has connected to the APCIS for experimental transmission of data since late 1997. However, due to financial and technical difficulties, for example, in some ports, computers are still under the old MS-DOS environment, while some ports have changed to under Windows environment, smooth data transmission has been serious affected. The problems existing in APCIS has made the situation worse. At present, it is almost impossible for Chinese port State control inspectors to get the relevant information before boarding, the search process will have to via Beijing to connect APCIS and it usually takes a week, considering the ship turn around time. Priority the boarding becomes difficult. Sometime the inspectors are so fluctuated that after a long time driving, they find that the ship has just been inspected recently in the last port of call. Frequent cracking down of the net impedes information exchange between different ports within the country. Information exchange within the region is replaced by fax. Due to financial difficult, it could only be done in the case of detention and by Beijing headquarter.

Aiming an effective and efficient port State inspection performance, a functional information exchange computer net should be achieved and maintained. The Chinese Maritime Safety Administration is urged to offer supports both in financial and technical aspects. At the same time, regional participation and co-operation is of great importance.

## ***Chapter Four***

### **Port State control in China: Proposal for further improvement**

This chapter offers a series recommendations for further improvement of port State control in China. Emphasis has been put on how to overcome the problem areas identified in the previous chapter. The recommendations concentrate on streamlining the administrative system, ratifying ILO147 Convention, harmonising inspection procedures and international and regional co-operation.

#### **4.1. Streamline administrative system**

It is appreciated that the Ministry of Communications has realised the problems relating to present port State control administrative system in China. The undergoing reform process will finish the consolidation of Chinese Maritime Safety Administration and the Chinese Register of Shipping by the year 2000. As a first step, the headquarter of Chinese Register of Shipping has already become a new division, Ship Surveying Division, under the Chinese Maritime Safety Administration. Meanwhile, the MOC has begun the negotiation process with relevant provincial governments on the matter of transferring the leadership of some local Maritime Safety Administration which currently under the Department of Transport from local government to the Chinese Maritime Safety Administration.

While MOC and the Chinese Maritime Safety Administration are making efforts to streamline the Chinese port State control administrative system, in my opinion, attention could be paid to the following issues.

#### **A target inspection rate**

As mentioned before, unlike other MOUs, Tokyo MOU has set up an unique regional target inspection rate, i.e., 50% of the total number of ships operating in the region by the year 2000. As a matter of fact, such target rate has been reached since 1996. Tokyo MOU also requires that each Authority determine an appropriate annual percentage of individual foreign merchant ships to be inspected.

However, the MOC and Chinese Maritime Safety Administration has never set up a target inspection rate for the whole country. This could possibly result uneven inspection rates in different ports in the long run. It is believed that setting up a target inspection rate could demonstrate the State's commitment and to some extent motivate inspectors. However, such target rate shall be reasonable and reachable, otherwise it will make the things worse. It would be difficult to abandoned or replace a too high target rate by a more realistic target, since it has come to assume a life of its own life in the eyes of politicians, the press and the general public. In my view, considering the resent inspection rate, from 1995 to 1997, the Chinese inspection rate was around 19% to 20%, a 25% target inspection rate by the following three or five years could be desirable and tangible. A 25% inspection rate has been proven by Paris MOU be a relatively reasonable and scientific rate. If all the Tokyo MOU members reach a 25% inspection rate, taking into consideration of each vessel's average calling ports within the region, it means that around 85% to 90% of the ships visiting the region will be inspected.

*Rationally reallocate the human resources*

The problem associated with most Chinese port State control officer is that lack of background as a flag State Surveyor and enough sea experience other than the number of inspectors. Currently there are about 150 port State Control officer working in 24 Chinese Ports. Table () shows a survey conducted by Tokyo MOU in 1995 on the number of port State control officer in several member States.

Table () Survey on the number of port State control officer

Authority	Number of inspector	Number of individual ships	Number of inspection	Inspection rate %
Australia	43	4051	2542	63
Canada	41	1871	391	21
China	120	5837	1163	20
Japan	410	10729	2949	27
New Zealand	19	1186	1071	90

Source: Tokyo MOU Secretariat (1996)

From the table, it shows that by comparing with other Authorities, the number of Chinese port State control officer seems quite reasonable in relation with the number of individual ships and inspection rates at present.

The main tasks facing the Chinese Maritime Safety Administration and its district offices in the following years are not only to finish the merge of previous Chinese Register of Shipping, but also how to reasonable exploit human resource and expertise. In my opinion, to set up a new division in the Chinese Maritime Safety Administration could be only a first step. As there are more than one hundred surveyors (not including surveyors exclusively for inland small ships) working in Chinese Register of Shipping, it is strongly recommended that reallocate be made those surveyors and the existing port State Control officer among the function of flag and port State inspection. For those existing port State control officers who does not have the background of flag State surveyor could have certain period time of on the job training on flag survey. On the other hand, experienced flag State surveyor could have a short period training program of port State control knowledge and procedures. Thus, experience and expertise could be exchanged and the qualification of both flag State and port State inspectors can be substantially improved.

#### *A comprehensive training program*

By nature of the shipping business, port State control officers come from a variety of culture, backgrounds and disciplines. A master mariner who has many years experience would still feel alienated in a machinery space, similarly for engineers in the wheelhouse. The vast development of technology is bring shipping industry great change. On the legislation side, new conventions and new requirements are also make the whole shipping industry more and more sophisticate and somehow complicate. It is really never can be enough training for the port State control officers.

To be adapted with the situation, it is recommended that the Chinese Maritime Safety Administration to develop a comprehensive training program national wide and to be in the long run instead of temporal arrangement as before. Such training program should cover not only the basic training course, but also, as more important, regularly update knowledge training. At present, the knowledge of ISM Code, STCW 95 Amendment, GMDSS (Global Maritime Distress & Safety System) seems urgent. Periodic seminars, workshop should be on the regularly base.

Another important thing is that Chinese Maritime Safety Administration is urged to establish the qualification requirements for port State control officer in accordance with those set in section 2.5 of IMO Resolution A. 787 (19). For the new recruit inspectors, such criteria shall be met.

## 4.2 Ratify the ILO 147 Convention and improve national legislation

### 4.2.1 Process of ratification and implementation

To ratify an international Convention is a significantly important event. Once the Convention has been ratified, it is the State 's obligation to fully implementation. It is crucial for the State to carry a careful study and make detailed plan before the ratification. The following table shows a recommended process for implementation of international maritime convention.

**Table() Process for implementation of international maritime convention**

Phase 1	Phase 2	Phase 3	Phase 4
<p>(a). Detailed examination of the implication of the Convention, in consultation with all concerned in the country.</p> <p>(b). Determination of acceptability of the provisions of the Convention.</p> <p>(c). Decision of Government to become a Party to the Convention.</p>	<p>(a). Become a Party to the Convention (ratification, accession, etc).</p> <p>(b). Prepare national legislation (primary and subsidiary).</p> <p>(c). Documentation</p> <p>(d). Prepare the executive orders, instructions to official concerned.</p> <p>(e). Develop appropriate and adequate Maritime Administration infrastructure</p>	<p>Implementation of national legislation through the exercising of appropriate functions by the officials of maritime administration</p>	<p>Certification of ships/seafarers</p>

Source: Vanchiswar (1996).

#### 4.2.2 A feasibility study of ratifying the ILO 147 Convention by China

Before a State ratifying an international convention, it is essential to make a detailed investigation of the convention and make comparison with the present legislation situation of the State, what will be the obligation and privilege of the ratifying States, and what could be the possible impact on the ratification of the convention. In other words, it is paramount important to carry out a feasibility study of the ratifying the convention. The following is try to make an analysis of the major provisions of ILO 147 Convention, to make an comparison with Chinese maritime labour legislation at present and to exam the acceptability of the Convention.

The substantive obligation on States parties to ILO 147 Convention are set out in Article 2, each State which ratifies this Convention undertakes, *inter alia*:

- (a) to have laws or regulations laying down substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix to this Convention;
- (b) to exercise effective jurisdiction or control over their own ships in respect of : safety standards, standards of competency, hours of work and manning, social security measures, shipboard conditions of employment and living arrangement.
- (c) to hold an official inquiry into any serious marine casualty involving ships registered in its territory, particularly those involving injury and/or loss of life, the final report of such inquiry normally to be made public.”

The first Chinese Labour Act was adopted by NPCC in 1994. Previous labour matters had been addressed solely by regulations. The Labour Act covers comprehensive provisions relating labour matters and all local or specified labour legislation shall under the umbrella of the Labour Act. The main provisions in the Labour Act including: rights and obligations of workers, right to freedom of association, promotion of employment, employment contracts and collective agreements, hours of work, rest and leave and wage, occupational safety and health, vocational training, social insurance and welfare, regulating labour disputes and supervision and inspection and etc.

ILO 147 Convention itself only contains the general provisions and serves as a framework Convention. It is helpful to exam the detailed provisions in a number of other ILO conventions, which have been referred by the appendix of the ILO Convention 147. Analysis has also been made of the Chinese legislation in each particular aspect. Among those conventions listed in the Appendix of ILO147 Convention, China has already ratified four conventions, namely, Minimum Age(Sea) Convention, 1920 (No.7), Minimum Age Convention, 1973 (No. 138), Seamen's Articles of Agreement Convention, 1926 (No. 22) and Repatriation of Seamen Convention, 1926 (No. 23).

### *Minimum age*

There are three ILO Conventions on minimum age pertaining to seafarers, namely:

- Minimum Age Convention, 1973 (No. 138) or
- Minimum Age (Sea) Convention (Revised), 1936 (No. 58) or
- Minimum Age (Sea) Convention, 1920 (No. 7)

Generally, in accordance with these three Conventions, children under the age of 15 shall not be employed or work on any ship engaged in maritime navigation, except under certain specified national conditions this may be reduced to 14 years. In the case of employment which is likely to jeopardise the health, safety or morals of young persons, the minimum age shall not be less than 18 years.

China has ratified ILO No.7 and No. 138 Conventions. As to national legislation, Article 2 of the "Regulation on Banning the Use of Child Labour " issued by the Chinese State Council in 1991 explicitly bans use the child labours under age of 16. These regulation also stipulate sanctions including repartition of child labourers, responsibility for any damages caused to the health of the child, and the administrative punishment by labour authorities. In 1994, the Ministry of Labour ( from 1998, the name has been changed to Ministry of Labour and Social Security) issued "Circular of the Ministry of Labour on Issuing the Provisions on Special Protection for Juvenile Workers", which contains specified provisions governing employment of workers between 16 and 17 years of age. Specified types of labour, which shall not be, performed by juvenile workers and list medical conditions which bar a juvenile from working.

### *Medical Examination*

The substantive provisions of the Medical Examination (Seafarers) Convention, 1946(No. 73), may be summarised as follows

- Every person on board a seagoing merchant ship of 200 gross registered tons or over...shall possess a certificate attesting his fitness to work signed by a medical practitioner.
- A certificate pertaining only to eyesight may be signed by an authorised person.
- The medical certificate shall be valid for a period not exceeding two years, except as it relates to colour vision, in which case the period of validity may extend to up to six years.

Article 4 of the "Regulations Governing Examination and certification for Marine Officers of the People's Republic of China" promulgated by Chinese Maritime Safety Administration in 1998 has the provision that seafarers apply for certificate of competent shall meet the requirements, *inter alia*:

- Minimum age
- Comply with seafarers medical examination standards, especially in the respect of vision, audibility and communication ability.

Article 102 of the "Rules for the Implementation of Frontier Health and Quarantine Law of the People's Republic of China " promulgated by Decree No. 2 of the Ministry of Public Health on March 6, 1989 states " Chinese crew members working on the means of international transport must carry their health certificates issued by the health and quarantine organ or the hospital at or above the county level. The health administrative department under the State Council of the People's Republic of China shall unify the items and form of health certificate. The term of validity is 12 months.

### **Vocational training and officers' certificates of competence**

Under article 2(e) of the ILO 147 Convention, each ratifying States shall ensure that seafarers employed on ships registered in its territory are properly qualified and trained, due regard being given to the Vocational Training (Seafarers) Recommendation, 1970(No.137). Besides, the Officers' Competency Certificates Convention, 1936 (No.53) lays down precise requirements regarding certificates of

competency for certain ship's officers, calls for system of inspection to ensure enforcement.

Chapter III of the " Maritime Traffic Safety Law of the People's Republic of China" adopted by NPCC in 1983 deals with the personnel on vessels and installation. Vessels shall be manned with qualified crew members according to a standard quota to ensure the vessel's safety. Article 32 of the " Maritime Code of the People's Republic of China" adopted by NPCC in 1992 states " the master, deck officers, chief engineer, engineers, electrical engineer and radio operator must be those in the possession of appropriate certificate of competency." Meanwhile, "Regulations Governing Examination and certification for Marine Officers of the People's Republic of China" provides describe of ships officers, administrative structure for examining candidates, minimum qualification for each position, and description of subjects upon which candidates must be tested before certification may occur.

### **Prevention of occupational accidents**

Article 4 and 7 of the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) must be applied under the terms of Convention 147. It requires national provision on occupational health and safety, such provisions should specify measures for prevention of accidents particular to maritime employment and cover certain areas listed in Article 4. A suitable person or persons, or a suitable committee shall be made under the master for accident prevention by Article 7.

The Maritime Traffic Safety Law of the People's Republic of China is the basic law to control of the maritime traffic, ensure the safety of vessels, human life and property. The Ministry of Communications has developed a number of regulations, guideline in respect of seafarers prevention of occupational accidents. Examples of such regulations as " Regulations Governing Safe Operation onboard Oil Tanker", " Guidance on Prevention Oxygen Deficiency in Confined Spaces onboard", "Guidance on Prevention Oil Vapour Poisoning on board Oil Tanker and Oil Terminal" and etc.

### **Hours of work and manning**

As to the matter of hours of work, the Chinese State Council issued Provisions on Hours of Work for Workers and Staff Members in 1994. It prescribes an eight-hour

per day, 44 hours of work each week for employee in all enterprise, state bodies and public institutions. Where a flexible working hour system be used in the organisation, the amount of flexible hours shall equal statutory working hours as set above. These regulations fully comply with Article 2 of the ILO 147 Convention requirement on hours of work.

In 1998, the Chinese Maritime Safety Administration promulgated " Regulations concerning the Safety Manning of Ships", by which a minimum safety manning standard has been set up in China.

### **Food, catering and accommodation**

Food and Catering (Ships' Crews) Convention, 1946 (No. 68) prescribes minimum standards concerning the food supply and catering service for the crew of ships. Only Article 5 must be applied under the terms of Convention No.147. This Article provides that countries shall maintain in force laws or regulations and ensure ships have on board food and water supply which are suitable in respect of quantity, nutritive value, quality and variety regarding to the size of crew and the duration and nature of the voyage.

Accommodation of Crews Convention (Revised), 1949 (No. 92) contains detailed provisions setting minimum standards for the location, construction, arrangement, equipment and facilities of crew accommodation on board ships, sanitary facilities, mess room and hospital spaces.

There is no provisions specified dealing with food, catering and accommodation on board ships issued by relevant Chinese government agencies. General provision on crews' wellbeing is referred to the Chinese Labour Act. However, state owned shipping companies, such as COSCO (China Ocean-going Shipping Company (Corporation)), have developed a number of detailed company provision on this subject. In accordance with COSCO provisions, a certain amount of subsidy shall offer to crew on board ships depending on different voyage. Where international voyage be engaged, such subsidy shall calculated in US dollars. Such subsidy shall only be used for the purpose of food and catering for crew on board and shall be managed by person appointed by captain. Such policy has been followed by almost all the shipping companies in China.

### Other aspects

Article 73 of the Chinese Labour Act has the provision that labourers shall enjoy social insurance benefits under circumstances of retirement, illness or injury, disability caused by work-related injury or occupational disease, unemployment and child bearing. The social insurance amount that labourers are entitled to must be timely paid in full. These provisions, together with the "Regulations Governing Labour Social Insurance of the People's Republic of China" promulgated by the Ministry of Labour in 1953, and "Provisions on Reporting and Handling Accident Related and Casualties Incurred by Workers and Staff in Enterprise" in 1991, could be considered to meet with the requirements set in Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), or Sickness Insurance (Sea) Convention, 1936 (No. 56), or Medical Care and Sickness Benefits Convention, 1969 (No. 130).

Finally, there is no conflict between the Chinese Labour Act with Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Article 7 of the Labour Act states "Labours shall have the right to participate in and organise trade unions in accordance with the law. Trade unions shall represent and safeguard the legitimate rights and interests of labours, and independently conduct their activities in accordance with the law."

### Summary

Based on the above comparison, it can be concluded that there is no big gap between the present Chinese maritime labour legislation with ILO 147 Convention. In principle, the requirements in Chinese legislation are in line with the ILO Conventions. China also meet with the requirement set in Article 5 of the Convention by which the Convention is open to the ratification of members which are parties to the SOLAS, Load Line and COLREG. Besides, an interpretation gave by ILO legal advisor indicated that the ratification of ILO 147 Convention would not in any way imply ratification of the conventions listed in the appendix, in the view of the fact, in particular, that Article 2 provides for "substantial equivalence" and not the total equivalence which would bind a member state also to ratify the conventions list in an appendix which it had not ratified. (Kasoulides, 1993). Such interpretation has offered flexibility in considering the relation of ratification between ILO 147 Convention and

the Conventions listed in the Appendix. All of above has confirmed the feasibility of ratifying the Convention.

On the other hand, it also can be seen that there are still some areas need to improve in the Chinese maritime labour legislation. In some aspects, it can be found the lack of relevant legislation. The ratification of the Convention will, no doubt, contribute a lot in improving the Chinese legislation.

#### **4.2.3 Enabling legislation**

The comparison of the Chinese maritime labour legislation with ILO 147 Convention has proved the acceptability of the Convention. When a State becomes a party to an international convention by the process of ratification or accession, the legal affect of it is that the State then becomes bound by the convention and is therefore obliged to implement it by incorporation into its body of national law.

The process of incorporation of ILO 147 Convention into domestic legislation to some extent is a technical matter. ILO 147 Convention is not self-executing because of the numerous provisions requiring actions to be taken by State Party Governments. Thus, only those convention provisions which represent the law must be incorporated, provisions which speak to the state party, mainly in terms of formalities, procedures and other similar obligations need not be inserted in the legislation. Meanwhile, attention shall be paid to scheme of arrangement of provisions, language and drafting style and etc.

Besides these matters, in my opinion, the most important thing is that the incorporating of ILO 147 Convention should be a process by which to great extent to improve the Chinese maritime labour legislation.

The problems associated with Chinese legislation at present are mainly reflect in the two aspects. One is that there is no specified law of act only dealing with maritime labour matters, such as Merchant Shipping (seafarers) Act in some countries. The provisions concerned with living and working conditions are distributed in a variety of regulations promulgated by different government agencies. Some of the important aspects, such as food and catering, accommodation are still left to be decided by shipping companies. The other problem is that there is no effective inspection and enforcement system to ensure that the living and working conditions on board are

comply with relevant requirements. The Chinese Maritime Safety Administrations do not have clear jurisdiction to conduct such inspection. Attention could be drawn to “Regulations Governing Ship Safety Inspection of the People’s Republic of China” does not cover the inspection items in relation with living and working condition onboard.

To overcome the above mentioned problems, it is necessary to carefully study the ILO 147 Convention, together with the conventions listed in the appendix, provision by provision to determine which of those need to be extracted for insertion into the legislation by comparing with Chinese legislation. At the end of the day, such an incorporating legislation should be a comprehensive maritime labour law concerning the minimum standard of merchant shipping which incorporating all the relevant Chinese legislation at present, make adjust and supplement under the principle of ILO 147 Convention, and most important, make clear, that Chinese Maritime Safety Administration shall be the competent authority of such legislation.

#### **4.2.4 The role of MOC in the process of ratification and implementation**

To ratify an international convention is of political desire of a State. The State’s decision is based on the advice from its own governmental agencies. In the matter of preparation for Chinese ratification and implementation of ILO147 Convention, it is no doubt that the Ministry of Communications shall play leading role in the whole process.

MOC is urged to conduct a detailed examination of the implication of the Convention, in consultation with all concerned parties, Ministry of Labour and Social Security, Ministry of Foreign Affairs, Maritime Safety Administration, shipping companies and etc. Afterwards MOC (it could be together with Ministry of Labour and Social Security) shall make application to NPCC for approve for the ratification.

In the meantime, MOC and Chinese Maritime Safety Administration is urged to consider the matter of implementation of Convention through the exercising appropriate functions by the officials of maritime administrations. Such functions should including the control on Chinese vessels in accordance with Article 2 of the Convention and port State Control prescribed in Article 4 of the Convention.

The Chinese Maritime Safety Administration is urged to prepare the relevant training course for both flag State and port State Control officers. ILO has adopted a guidance on the conduct of such control inspection. The "Inspection of Labour Conditions on board Ship: Guidelines for Procedure" is contained in the ILO publication "Maritime Labour Conventions and Recommendations".

As to port State inspection, emphasis shall be put on the provisions contained in the conventions concerning minimum age, medical examination, prevention of accident, accommodation, food and catering and officers competency certificates. Those Conventions are very often referred to as " hardware" conventions. Due reference shall be made to the remaining conventions listed in the appendix concerning article agreement, repatriation, social insurance, freedom of association and collective bargaining. Those conventions are relevant in the framework of the provisions for port State control, often described as "soft ware conventions". (Ulstrup, 1999). When carrying out inspection, particular attention shall be paid to the following areas: food supply and storage; condition of the galley; condition of equipment for receiving and producing potable water; ventilation and heating in accommodation spaces; sanitary facilities; hospital accommodation; and condition of accommodation spaces. (Paris MOU, 1998) Detention shall be followed on the following deficiencies:

- insufficient food
- insufficient potable water
- excessively unsanitary conditions on board.
- no heating
- no air condition
- excessive garbage blockage of equipment in passage ways
- in addition, if the professional judgement of a part State control officer deems it necessary. (Jonsson, 1998)

### **4.3 Harmonise inspection procedure**

#### **4.3.1 General overview**

Only a uniform port State inspection could to large extent lead to accountability and consistency and prevent uneven between ports and States. The establishment of regional MOUs and adoption of IMO Resolutions, in particular IMO Resolution A.787

(19) is all aiming at uniform the inspection procedures, while the Resolution A.787 (19) is believed as a milestone by setting up a model inspection procedure.

However, the implementation largely upon mutual understanding and consensus among inspectors. The harmonisation is an incremental improvement process. The most effective and possible way in terms of harmonisation of inspection procedures is all sorts of training programs, seminars and workshop, which greatly help to communication within inspectors and create a consistent approach within the country. Internal newsletters showing peculiarities and details of unusual inspections, defect etc, all help to enhance consistency. Communication within Tokyo MOU, other MOUs and IMO are also important.

The Chinese Maritime Safety Administration is also recommended to further simplify the detention provisions in China. In my opinion, the decision should be made by the inspectors. For the reason of prudence, it could be approval by chief division (normally the chief inspector) of each district offices at different ports at present.

Besides, it is also recommended that the Chinese Maritime Safety Administration to examine the possibility of introducing targeting method in selecting the ship for inspection and the possibility of uniform of initial inspection procedure. These two recommendations are detailed in the following sections.

Another important thing is that the urgent need for a functional information exchange network. The use of modern technology will continue to underlie the success of the port State control program. It is appreciated that Tokyo MOU recognised that the need to upgrade the present APCIS system and decided to develop a new information system by using modern computer technology in the late 1997. A new regional database system, using the latest Internet technology will become fully operable since 1 January 2000 as the target operation date. (Tokyo MOU, 1999) To be compatible with the regional database, the Chinese Maritime Safety Administration is urged to upgrade the port State control computer system as soon as possible, financial and technical supports from the MOC and respective district offices is urged.

### **4.3.2 Using targeting methods**

The goal of the port State control is to identify and eliminate substandard ships. Using targeting methods allow port State control officers to pursue this goal by focusing boarding and examination efforts on those vessels most likely to be substandard, to hold those most responsible for substandard ships accountable, including owners, classification societies and flag states. In the meantime, it allows resources to be used more efficiently while rewarding well-managed vessels with less frequent boarding. A targeting method is used to identify those vessels at greatest risk of being substandard based on identified risk factors. It allows a ship's risk of being substandard to be consistently measured and allows limited resources to be directed towards boarding those which represent the greatest risk.

#### **The overall targeting factor of Paris MOU**

The target factor introduced by Paris MOU consists of two parts, i.e., the generic target factor and the history target factor. The generic target factor is based on elements of the ship's profile, such as flag, class, age, type and detention ratio. The history target factor is related to the ships inspection history in the Paris MOU region during the 12 months. The different elements of the generic factor are expressed as numerical values, based on their importance in the selection of a ship. The history factor is applied to modify the value of the generic factor. This result in the overall targeting factor, which can show on the screens in SIRENAC (central computer database of Paris MOU).

#### **The USCG Boarding Priority Matrix**

The United States Coast Guard (USCG) has introduced a targeting method called Boarding Priority Matrix since 1994. This is a risk-based regime based on five factors. These factors are a ship's owner, flag State, classification society, boarding history and vessel type. The risks associated with each of these factors are determined based on Coast Guard boarding data. These determinations are used to assign points using the targeting matrix, which determines the boarding priority given to foreign vessels entering U.S. waters. Table () illustrates the Boarding Priority Matrix.

The matrix is one part of the process for determining a ship's boarding priority. Points are assessed in each of the five columns and then summed for a total point score. This numerical score, along with performance based factors, determines a ship's boarding priority. The priority ranges from Priority I to Priority IV. Generally, a ship with 17 or more points on the Matrix will be categorised as Priority I vessels, port entry may be restricted until vessel is examined by the Coast Guard. Priority II vessels are those with 7 to 16 points on the Matrix, Cargo operations may be restricted until vessel is examined by the Coast Guard. Priority III vessels are those 4 to 6 points on the Matrix, no operational restrictions imposed; vessel will most likely be examined at dock. Vessels with 3 or fewer points on the Matrix will fall into Priority IV vessels, those vessels are believed with a low risk, and will probably not be boarded.

**Table (). USCG Boarding Priority Matrix**

<b>Owner</b>	<b>Flag</b>	<b>Class</b>	<b>History</b>	<b>Ship Type</b>
<b>5 Points</b>	<b>7</b>	<b>Priority 1</b>	<b>5 Points Each</b>	<b>1 point</b>
Listed	<b>Points</b>	≥10 arrivals with detention ratio	Detention within	Oil or
Owner or	Listed	more than 4 times the average	previous 12	Chemical
Operator	Flag	<b>OR</b>	months	Tanker
	State	<10 arrivals and involved with at	<b>1 Point Each</b>	<b>1 point</b>
		least one detention in the	Other operation	Gas Carrier
		previous three years	control within	
		<b>5 Points</b>	the previous 12	<b>2 points</b>
		≥10 arrivals with detention ratio	months <b>OR</b>	Bulk freighter
		between 3&4 times the average		over 10
		<b>3 Points</b>	Casualty within	years old
		≥10 arrivals with detention ratio	the previous 12	
		between 2&3 times the average	months <b>OR</b>	<b>1 point</b>
		<b>1 Point</b>		Passenger
		≥10 arrivals with detention ratio	Violation within	Ship
		between the average &twice the	the previous 12	
		average	months <b>OR</b>	<b>2 points</b>
		<b>0 Point</b>		Carrying low
		≥10 arrivals with detention ratio	Not boarded	value
		below the average <b>OR</b>	within the	commodities
		<10 arrivals with no detention in	previous 6	in bulk
		the previous 3 years	months	

Source: USCG port State control home page, <http://www.uscg.mil/hq/g-m/psc/psc.htm>.

### Recommendations

The Chinese Maritime Administration is recommended to carry an investigation on the different targeting methods, and adopt the appropriate method in China. Quantified method is believed to be easy operate and straightforward. In this sense, regional co-operation is emphasised. It would be more desirable that a unique method be implemented in the region. At the same time, a functional computer network is urged.

#### **4.3.3 Possibility of an uniform initial inspection procedure**

Concerning the port State control inspection procedures, it is held that from the very beginning that most inspectors explicitly against the use of checklists during inspections. It is feared that rigidity and inflexibility might result from that and that the inspector professional judgement would be useless. In the absence of checklists, however, it is very important that a certain mutual understanding, consensus among the inspectors emerges.

It is noticed that from the early 1980 in Europe and in 1990s almost in all of the world, port State control has developed to be conducted by more and more States and the number of inspectors expands. The inspection also has developed to cover much more items concerning ship safety and environment protection. Realising the professionalism and experience of the inspectors is critical to the success of the port State control program, inspectors in certain countries feel it is essential in the interests of uniformity and objectivity to prescribe a number of areas which will always be checked during a port State inspection, i.e. to establish a standard initial inspection procedure. This in no way limits the discretion of surveyors and indeed it has been reported that the inspection of key areas often leads to the discovery of substantial deficiencies in other parts of the ship which may have escaped attention during previous inspections. It is also believed that it could facilitate consistency and uniformity in inspections between different inspectors. Australia, Sweden and United States and some other countries have developed such procedures and seemed work very well.

The following is standard initial checklist developed by AMSA and amended in 1998, it provides a list of principal items in the different areas of a ship. The inspector must

visit every area identified in the checklist. They should check and/or test the listed items to the extent that the inspectors is satisfied no significant defect exist in each specified area which may be itself or in combination with other defects noticed make the ship unseaworthy or substandard or pose a threat to the marine environment. When there is evidence that the ship, its equipment, or its crew does not correspond substantially with the requirements of the relevant conventions or the master or crew members are not familiar with essential shipboard procedures relating to the safety of ships or the prevention of pollution, the inspector should consider carrying out a more detailed inspection.

## **AMSA Standard Initial Checklist**

### **Area 1-External Hull & Pre-boarding**

- 1.1 Hull Condition
- 1.2 Evidence of Tank Leakage
- 1.3 Hull Marking
- 1.4 Accommodation Ladder & Side Netting

### **Area 2-Certificates**

- 2.1 Ships Certificates
- 2.2 ISM Code-Designated Person Defined
- 2.3 ISM Code- Manuals & Document Control
- 2.4 ISM Code- Document Emergency Procedures

### **Areas 3-Wheelhouse**

- 3.1 Voyage Charts
- 3.2 ARPA Radar
- 3.3 Appropriate Publications
- 3.4 Compass Deviation Records
- 3.5 Echo Sounder
- 3.6 Fire Detection Panel
- 3.7 Navigation Light Panel

### **Area 4- Radio**

- 4.1 Correct MSI Reception
- 4.2 On Air Radio Check Radoitelephony
- 4.3 On Air Radio Check DSC
- 4.4 Antenna Inspection
- 4.5 Battery Inspection
- 4.6 406 EPIRB Inspection
- 4.7 SART Inspection

### 4.8 Portable VHF Inspection

### **Area 5- Wheelhouse Top**

- 5.1 Masts & Attachments
- 5.2 Vent Closures
- 5.3 Standard Compass

### **Areas 6 - External Superstructure & Deck**

- 6.1 Accommodation Vent Closures
- 6.2 Battery Room Vents
- 6.3 Battery Stowage & condition
- 6.4 Weather Doors/Frames
- 6.5 Hydrants/Hoses/Nozzles
- 6.6 Engine Room Dampers
- 6.7 External Accommodation Stairs
- 6.8 Emergency Power Source
- 6.9 Funnel Flap Operation
- 6.10 Man-Overboard Light/Smoke
- 6.11 Fire Control Plan outside accommodation
- 6.12 Lifebuoy/Lines/Lights

### **Area 7- Boat Deck**

- 7.1 Boat Preparation & Overside Lights
- 7.2 Stowage & Release Arrangement
- 7.3 Launching Instructions
- 7.4 Embarkation Ladder

### **Area 8- Lifeboats**

- 8.1 Launching Arrangements
- 8.2 Lifeboat/Rescue Boat Hull/Attachments

8.3 Lifeboat/Rescue Boat Equipment

8.4 Lifeboat/Rescue Boat Engine

**Area 9- Main Decks**

9.1 Load Line Closing Devices

9.2 Crew Protection

9.3 Deck Structure & Machinery

9.4 Pilot Boarding Arrangements

**Area 10 - Fixed Fire Fighting System**

10.1 Operating Instruction

10.2 Overall Condition

**Area 11- Emergency Fire Pump**

11.1 Emergency Fire Pump

11.2 Engine Room Fire Main Isolating Valve

11.3 Fire Main Condition

**Area 12- Steering Gear Flat**

12.1 Change Over Instruction

12.2 Emergency Steering

12.3 Overall Condition

12.4 Communications To Wheelhouse

**Area 13- Engine Room**

13.1 Hoses, Nozzles, Hydrants

13.2 Quick Closing Valves

13.3 Engine Room Doors

13.4 Fire Appliances

13.5 Emergency Escape Route

13.6 Electrical Safety

13.7 Bilges/Tank Tops Cleanliness

13.8 Self Closing Cocks/Valves

**Area 14 -Pollution Prevention**

14.1 Oily Water Separator &Associated Equipment

14.2 15 PPM Alarm

14.3 Garbage Arrangement

**Area 15- Accommodation /Catering**

15.1 Cleanliness/Hygiene

15.2 Sanitary Arrangement

15.3 Mess &Recreation Facilities

15.4 Food & Food Storage

15.5 Fire Fighting Arrangements

15.6 Overall Conditions

15.7 Fire Dampers

**Area 16 Fixed Fire Suppression Control System**

16.1 Fireman's Outfit

16.2 Remote Stops/Fuel Shutoffs

16.3 International Shore Connection

16.4 Fixed Fire Suppression System Controls

**Area 17- Additional for Passenger Ships**

17.1 Emergency Plans

17.2 Zone Isolation Operation

17.3 Sprinkler Auto Pump Cut-In

17.4 Sprinkler Station Alarms

17.5 Lifeboats

17.6 Passenger Cabin Emergency Information

17.7 Evacuation Direction Signs

17.8 Emergency Lighting

17.9 Watertight Doors Local & Remote

17.10 Rescue Boat

17.11 Emergency Drills Demonstration

**Area 18- Additional for Bulk Carriers**

18.1 Gas Sampling Points &Electrical Equipment

18.2 Enhanced Survey Records

18.3 Topside Ballast Tank

**Area 19- Additional for Ro-Ro's**

19.1 Shell Doors Locking Indicators

19.2 Shell Doors Sealing Arrangements

19.3 Cargo Deck Drainage System

19.4 Ramp Bulwarks/Guard Rails

19.5 Internal Water Barriers

19.6 Lower Deck Sealing

19.7 Cargo Securing Arrangements

19.8 Fire Fighting Arrangements

**Area 20- Additional for Gas/Chem/Oil Tankers**

20.1 Tanker Surveillance

20.2 IG System

As using such kind of standard initial checklist is still a controversial issue, the Chinese Maritime Safety Administration is recommended to conduct a survey of the necessity of introducing such method. In my own opinion, considering that China is such a large country, and the existing port State control officers qualification background, it may be helpful to establish such standard initial procedures and outline a number of principal items in the different areas of a ship where the inspector must visit during each inspection in order to facilitate and promote consistency and uniformity among inspectors. However, it should not restrict inspectors in using their professional judgement in inspecting more or less items as considered appropriate to the ship being inspected. Such procedure and checklist shall be reviewed and amended if necessary.

#### **4.4 International and regional co-operation**

Port State control has been recognised as one of the most effective means of eradicating substandard shipping from the oceans of the world. This could be most effectively achieved through the development of regional co-operation as in a manner of MOU. The evidence suggests that as port State control activity increases in particular countries or region, substandard ships tend to trade elsewhere. the development of regional system of port State control appears to be one of the more satisfactory means of making sure that the trading options available to the unscrupulous shipowners are reduced by the greatest possible extent.

The advantage of port State control on a regional basis may be summarised as follows: (Dayton, 1993)

- Maximum commitment from participating regional countries share common safety and environment interests;
- More effective use of regional available information;
- More effective deployment of available resources by participating port States;
- Harmonised port State control procedures prevents competitive imbalances arising between regional ports

Accessing to the data on a regional basis, would be great helpful to information exchange, setting targeting methods and facilitating the follow up action by inspectors. Further accessing to the data collected in other regions, would mean that

participating countries might achieve an effective inspection rate, which is likely to further deter substandard shipping from trading in the region.

The first joint Ministerial Conference of the Paris and Tokyo MOU, the first one of its kind was held in Vancouver, Canada in March 1998. Significance of the co-operation between regions was stressed, a joint ministerial declaration "Tightening the Net: Inter-Regional Action to Eliminate Sub-Standard Shipping" was signed at the Conference. (IMO, 1998) It also decided to carry a test transmission of data as between the Paris and Tokyo MOUs.

Tokyo MOU has developed an integrated strategic plan for the training and exchange of port State control officer in the region. More than twenty Chinese inspectors have joined the basic training course from the beginning. In March 1998, another kind of training, expert mission as set up in the Tokyo MOU was held in China. Two experts from AMSA (Australia Maritime Safety Administration) made a trip to Shanghai, where they held a two weeks seminar for nearly 50 Chinese inspectors. As an agreement among AMSA, Chinese Maritime Safety Administration and Tokyo MOU, such expert mission will last for five years. Those training course, expert missions and seminars within MOU will no doubt beneficial Chinese port State control officers' professional knowledge and skills and harmonisation of inspection procedures.

Concentrated Inspection Campaigns has been introduced in the Paris MOU since 1995 and proved effective. These campaigns focus on a particular area on board, with the aim of gathering information on the compliance with international regulations applicable to that specific area and to help improve compliance. In 1998, the first concentrated inspection campaign on the compliance with ISM Code was held by Tokyo MOU, During the campaign period, a total of 1,820 inspections were carried out on ships to which the ISM Code was applicable. A total of 63 detentions involving 61 ships were recorded where either there was no proper ISM Code certification or major non-conformities in ship's safety management system were noted. (Tokyo MOU, 1998) It clear shows the effectiveness of Concentrated Inspection Campaigns to combating substandard ships.

All of above, it is strong recommended that Chinese Maritime Safety Administration be active involved in the regional and international co-operation, since it is the only way to achieve the maxim effectiveness and efficiency in combating sub-standard ships, to ensure the marine safety and environmental protection.

## **Chapter Five**

### **Conclusion**

In days of yore, international shipping was neatly arranged and simple to oversee. Historically, flag State administrations, sometimes assisted by classification societies, took full responsibility for the compliance of ships on their registers with international maritime safety and pollution prevention regulations.

In those days, ship owners did what they were supposed to do to keep their ships up to standards. There was a genuine link between the country of registry and the domicile of the ship owner, and in general, his ships were manned with competent nationals.

What a nice world that was, and how things have changed!

Today, ships are registered in one country, manned by multi-national crews often rounded up by obscure agents in far outposts, and operated by management companies in other countries. The owner, very often, has no longer real link with the country of registry and the beneficiary ownership is most likely held by a banking consortium whose chief interest is the investment return. This is an environment where substandard ships thrive. (Huibers, H E, 1995)

Begun in Europe with the Paris Memorandum of Understanding in 1982, port State control has prevented the movement of many substandard ships through ports. The concept is spreading rapidly throughout the world. An all out drive for improved worldwide maritime safety and marine environmental protection is underway. Brought on by rising doubts about the ability of many flag States, classification societies and ship owners to ensure the adequacy and safety of their fleets, port State are introducing tough new measures to protect themselves from the risk of substandard ships. Regional co-operation, publishing names of those associated with substandard ships, and boarding programs focusing on ships of great risk are hallmarks of port State control on the cutting edge.

As a major developing country with long coastline and advantageous natural environmental and resource conditions, China attaches great importance to marine development and protection. The economy reform and open door policy makes China more economically interdependent than ever upon access to global market. Seaborne trade accounts for 90 per cent of trade among nations. Accompanying with the growth of economic and foreign trade brings more sea traffic, the potential hazard brought by substandard ships is increasing as many substandard ships are still in operation despite of the continuing effort by the port State Authorities. It is from China's national interests and the obligations of being ratifying State of relevant international conventions and member State of regional agreement (Tokyo MOU), that China has the imperative necessity for a good performance on port State control.

The establishment and maintain an appropriate maritime legislation and administration system is the basis and prerequisite of effective implementation of port State control in each country. Port State control implementation in China is directed and supervised by the Chinese Maritime Safety Administration under the leadership of the MOC. Practical inspections are carried out by the inspectors in the district offices which nearly embracing the whole coastal area of China and covering the Yangtse River areas. A critical examination of present situation of port State Control in China shows that to large extent that China has already established a rather functional port State Control regime, both from legislative and administrative aspects. However, there are still some special problems which affect the functions and implementation of port State Control in China. These problems are:

- Incomplete maritime legislation regarding port State control, mainly reflects in not being ratifying State of ILO 147 Convention. ILO 147 Convention prescribes a set of minimum standards relating to safety, social security, shipboard conditions of employment and living arrangements to be observed in merchant shipping. ILO 147 Convention has been playing an important role in combating substandard ships since it has been included as a relevant instrument regarding port State inspection along with IMO conventions. IMO Resolution A. 787(19), the Pairs MOU, Tokyo MOU, Caribbean MOU and Mediterranean MOU have included the ILO 147 Convention as a relevant instrument. Because China has not ratified ILO 147, the port State control officer is frustrated in its efforts to enforce these conventions on foreign flag vessels visiting Chinese ports, in particular, China is especially restrained in

preventing abuse of basic human rights regarding working and living conditions.

- Unreasonable distribution of functions and lack of expertise. There are two kinds of Maritime Safety Administration organisations concurrently exist in China. One is belonging to the Ministry of Communications, and the other is under the leadership of Department of Transport of the provincial governments. The result is that some port State control district offices are not directly under the supervision of MOC and Chinese Maritime Safety Administration. Secondly, the long-time separation of Chinese Maritime Safety Administration with the Chinese Register of Shipping has caused in China flag State control and port State control, these two extremely close linked activities are almost completely separated. Limited administrative facilities and human resource has not been reasonably exploited. Furthermore, it results that most of port State Control officers do not have the crucial background as flag State surveyors and may serious affect the qualification as an inspector.
- Lack of harmonisation of port State control inspection procedure and information exchange. A unique port State control inspection procedures is essential for accountability and objectivity. The present problems in China are mainly reflected in the different interpretation of relevant instruments, especially on IMO A.787 (19) in terms of initial inspection procedures, excessive complicate detention provisions. To achieve an effective port State control system, a free flow of information is of paramount importance. The financial and technical difficulties, together with the problems encountered by APCIS have impeded the effective and efficient information exchange, making the targeting boarding impossible.

On the basis of good understanding and perception of the present situation and problem areas, it is paramount important to make practicable recommendations to overcome these problems. The author's proposal for further improvement of port State control in China are mainly consisted by following recommendations:

*Streamline administrative system.* It is appreciated that the undergoing reform process with the Ministry of Communications will finish the consolidation of Chinese Maritime Safety Administration and the Chinese Register of Shipping by the year

2000. The MOC also begun to incorporate some local MSA into the China MSA system. In my opinion, during the reform process, emphasis shall be put on the following aspects.

- The MOC and China MSA is urged to set up an appropriate national annual percentage of individual foreign merchant ships to be inspected. A 25% inspection rate within three to five years will be desirable.
- Rationally reallocate the human resources with China MSA and the former Chinese Register of Shipping.
- A comprehensive training program, and more emphasis on the updating knowledge and skill training. China MSA is urged to establish the qualification requirements for PSCO in accordance with IMO A. 787(19).

Ratify ILO 147 Convention. A feasibility study shows that there is no big gap between present Chinese maritime labour legislation and ILO 147 Convention in principle. The MOC is urged to conduct a detailed examination of the implication of the Convention and make application to NPCC for approval of the ratification with relevant Ministries concerned. The enabling and implementation of the Convention shall be the process to improve the national legislation and enhance the working and living conditions on board Chinese vessels as well.

Harmonise inspection procedure. China MSA is recommended to conduct a survey of the necessity of introducing so called standard initial procedures developed by some countries. Considering that China is such a large country, and the existing port State control officers qualification background, it may be helpful to establish such standard initial procedures. By outlining a number of principal items in the different areas of a ship where the inspector must visit during each inspection, it may facilitate and promote consistency and uniformity among inspectors. China MSA is also recommended to introducing targeting methods for boarding. It allows port State control officers to focus on boarding and examination efforts on those vessels most likely to be substandard. In the meantime, it allows resources to be used more efficiently while rewarding well-managed vessels with less frequent boarding. Besides, it is also recommended to further simplify the detention procedures. PSCO

shall be authorised to make decision. As the use of modern technology will continue to underlie the success of the port State control program, China MSA is urged to upgrade the port State control computer system as soon as possible, financial and technical supports from the MOC and respective district offices is crucial.

*International and regional co-operation.* The advantage of port State control on a regional basis may be summarised are maximum commitment from participating regional countries share common safety and environment interests, more effective use of regional available information and deployment of available resources, and harmonised port State control procedures prevents competitive imbalances arising between regional ports. Tokyo MOU has made great progress in promoting regional port State control performance since its inception. The first joint Ministerial Conference of the Paris and Tokyo MOU, with a joint ministerial declaration "Tightening the Net: Inter-Regional Action to Eliminate Sub-Standard Shipping" is towards global control. It is strongly recommended that MOC and China MSA be active involved in the regional and international co-operation, since it is the only way to achieve the maximum effectiveness and efficiency in combating sub-standard ships.

It seems that those who are responsible for ensuring that the ship always comply with the international standards: flag State, port State, classification and ship owner. The order of importance should be 1) ship owner 2) classification society (particularly when acting on behalf of the flag State), 3) flag State, and 4) port State. (Sasamura, Y, 1997)

First and ultimately, the ship owner is responsible for the safety of his or her vessel at sea. (Ulstrup, A, 1995). Substandard ships can not be eliminated, unless substandard operators are eliminated. The implementation of ISM Code will hopefully make significant improvement in this sense.

Secondly, the flag State must conduct inspection to ensure compliance with requirements. As many flag States authorise organisations to act on their behalf in conducting the statutory surveys, but it does not relieve an administration of its responsibilities. The establishment of FSI sub-committee of IMO is the reinforcement of the flag State responsibility. The unscheduled inspection to national registry ships, especially the mandatory inspection to vessels bound for Paris MOU countries and some other countries by China MSA has been proven to be an effective practice to enhance the flag State control. However, the MOC and China MSA is recommended

to take further necessary measures to fulfil their responsibility, particularly in terms of regulate and control the performance of Classification society.

Finally, as substandard ships may continue exist because certain ship owners and flag States fail to do their job, port State control will serve as the last safety net. It is author's hope that the proposal elaborated in this paper could contribute for further improvement of port State Control in China.

## Bibliography

- Bond, M (1995). 'Port State Control'. *Sea Trade Review*, June 1995, pp61-63.
- Cowley, J (1989). The International Maritime Organisation and National Administration. *Trans IMarE*, Vol .101, pp 113-139.
- Dayton, C (1993) 'Development of Port State Control for the Asia-Pacific Region'. *Marine Technology 21<sup>st</sup> Century*, VOL.1, pp 1-15.
- General Principle of the Civil Law of the People's Republic of China*, 1987, China.
- ILO (1988). *Maritime Labour Conventions and Recommendations (2<sup>nd</sup> edition)*. Geneva: International Labour Office.
- IMO(1992). Assembly Resolution A.682 (17) Regional co-operation in the control of ships and discharges. *Resolutions and other decisions.(Resolution 680-732 )*. London: IMO.
- IMO (1997). *Procedures for Port State Control*. London: IMO.
- IMO (1998) First Joint Ministerial Conference of the Paris and Tokyo Memoranda on Port State Control, <http://www.imo.org/imo/speech-1/psccontro.htm>, 10 August 1998.
- ISL (Jan./Feb, 1998). *Shipping Statistics and Market Review*, Vol.42, No.1/2.
- ISL(1997). *Lloyd's Register of Shipping –Statistical tables*, 1997
- Jonsson, J (1998) 'Port State Control'. *Government Control: enforcement, jurisdiction and compliance mechanisms*. Lecture notes. World Maritime University, Malmö, Sweden.

Kasoulides, G C (1993). *Port State Control and Jurisdiction: Evolution of the Port State Regime*. London: Martinus Nijhoff Publishers.

Ma, S (1998). `Major Maritime Transport Countries`. *Maritime Economics*. Lecture notes. World Maritime University, Malmö, Sweden.

*Maritime Code of the People's Republic of China, 1992*, Dalian: Dalian Maritime University.

Maritime Traffic Safety Law of the People's Republic of China (1984), China.

Maritime Traffic Safety Law of the People's Republic of China, 1983, China.

Mukherjee, P K (1998). Implementation of IMO Conventions through national legislation. *Government Control: enforcement, jurisdiction and compliance mechanisms*. Lecture notes. World Maritime University, Malmö, Sweden.

Nandan, S N (1998). *An Introduction to the 1982 United Nations Convention on the Law of Sea*. Presentation. Final session of the third United Nations Conference on the Law of the Sea, Montego Bay, Jamaica.

Plant, G (1998). `The international legal basis of `port State ´ jurisdiction and control ´ *Introduction to UN Law of the Sea Convention and International Maritime Environmental Law*. Lecture notes. World Maritime University, Malmö, Sweden.

*Regulations Governing Examination and certification for Marine Officers of the People's Republic of China, 1998*, China.

*Regulations Governing Ship Safety Inspection of the People's Republic of China, 1997*, China.

Ruggiero, R(1998). *China and the world trading system*. Presentation. Beijing University, Beijing, China.

*Rules for the Implementation of Frontier Health and Quarantine Law of the People's Republic of China, 1989*, China

Statistical Communiqué of the State Statistical Bureau of the people's Republic of China on the 1997 National Economic and Social Development. China Daily, March 8, 1998.

Status of Convention. <http://www.imo.org/imo/convert/status.htm> (20 July, 1998).

The Development of China's Marine Programmes.  
<http://www.chinadaily.com.cn/cndy/marine.html> (Oct.28, 1998).

Tokyo MOU Secretariat (1997). *Annual report on Port State Control in the Asia-pacific region, 1997*. Tokyo: Tokyo MOU Secretariat.

Tokyo MOU (1999) Press Release on Results of Concentrated Inspection Campaign on ISM Code Compliance, <http://www.ijinet.or.jp/tokyomou/news.html>, 10 February 1999

Tokyo MOU (1999) Press Release: the Seventh meeting of the port State control Committee in the Asia-Pacific region <http://www.ijinet.or.jp/tokyomou/news.html>, 29 April 1999.

Ulstrup, A (1999). *Procedures for the port State control of ships, etc*. Lecture notes. World Maritime University, Malmö, Sweden.

United Nations (1983). *The Law of the Sea: United Nations Convention on the Law of Sea*. New York: St.Martin's Press, INC.

USCG Boarding Priority Matrix. USCG port State control home page, <http://www.uscg.mil/hq/g-m/psc/psc.htm>.(10,5,98),1998.

Vanchiswar, P S (1996). *Establishment Administration of Maritime Matters with Particular Reference to Developing Countries (Maritime administration/maritime safety administration)*, Vol 1. Malmö: World Maritime University.

Nilssen ,B J Background paper on the maritime activities of the International Labour Organisation,1998 handout

Maier, S (1985) Port State control-does it work? Money & Ships in the City, pp113-116

Brooks, M R(1992) Port State Control and Marine pollution: a Canadian perspective  
6<sup>th</sup> world conference on transport research, Lyon, France, July 1992

IMO (1997) *MARPOL 73/78 consolidated edition*, London: IMO.

IMO (1997) *SOLAS Consolidated Edition, 1997*. London: IMO.

Memorandum of Understanding on Port State Control in the Asia Pacific Region

<http://www.ijjnet.or.jp/tokyomou/memoran.html>

**MEMORANDUM OF UNDERSTANDING ON  
PORT STATE CONTROL IN THE ASIA  
PACIFIC REGION**

The Maritime Authorities of

<b>Australia</b>	<b>New Zealand</b>
<b>Canada</b>	<b>Papua New Guinea</b>
<b>People's Republic of China</b>	<b>Philippines</b>
<b>Fiji</b>	<b>Russian Federation</b>
<b>Hong Kong, China</b>	<b>Republic of Singapore</b>
<b>Indonesia</b>	<b>Solomon Islands</b>
<b>Japan</b>	<b>Thailand</b>
<b>Republic of Korea</b>	<b>Republic of Vanuatu</b>
<b>Malaysia</b>	<b>Socialist Republic of Vietnam</b>

hereinafter referred to as "the Authorities"

**Recognizing** the importance of the safety of life at sea and in ports and the growing urgency of protecting the marine environment and its resources;

**Recalling** the importance of the requirements set out in the relevant maritime conventions for ensuring maritime safety and marine environment protection;

**Recalling** also the importance of the requirements for improving the living and working conditions at sea;

**Noting** the resolutions adopted by the International Maritime Organization (IMO), and especially Resolution A682(17) adopted at its 17th Assembly, concerning regional co-operation in the control of ships and discharges;

**Noting** also that the Memorandum is not a legally binding document and is

not intended to impose any legal obligation on any of the Authorities;

**Mindful** that the principal responsibility for the effective application of standards laid down in international instruments rests upon the administrations whose flag a ship is entitled to fly;

**Recognizing** nevertheless that effective action by port States is required to prevent the operation of substandard ships;

**Recognizing** also the need to avoid distorting competition between ports;

**Convinced** of the necessity, for these purposes, of an improved and harmonized system of port State control and of strengthening cooperation and the exchange of information;

have reached the following understanding:

### **Section 1 General**

- 1.1** Each Authority that has accepted the Memorandum will give effect to the provisions of the present Memorandum.
- 1.2** For the purposes of the Memorandum, references to the "region", to "regional", to "regional ports" or to "regional port State control" mean the Asia-Pacific region, and references to "port State" means the States, and the territories recognized as Associate Members of IMO in which the ports are located.
- 1.3** Each Authority will establish and maintain an effective system of port State control with a view to ensuring that, without discrimination, foreign merchant ships calling at a port of its Authority, or anchored off such a port comply with the standards laid down in the relevant instruments as defined in section 2.
- 1.4** Each Authority, under the coordination of the Committee established pursuant to paragraph 6.1, will determine an appropriate annual percentage of individual foreign merchant ships, hereinafter referred to as "ships", to be inspected. The Committee will monitor the overall inspection activity and its effectiveness throughout the region. As a preliminary target, subject to subsequent review, the Committee will endeavour to attain a regional annual inspection rate of 50% of the total number of ships operating in the region by the year 2000. The percentage is based on the number of ships which entered regional ports during a recent base period to be decided by the Committee.
- 1.5** Each Authority will consult, cooperate and exchange information

with the other Authorities in order to further the aims of the Memorandum.

## **Section 2 Relevant Instruments**

**2.1** For the purposes of the Memorandum, the following are the relevant instruments on which regional port State control is based:

- .1 the International Convention on Load Lines 1966;
- .2 the International Convention for the Safety of Life at Sea, 1974 as amended;
- .3 the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974;
- .4 the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto;
- .5 the International Convention on Standards for Training, Certification and Watchkeeping for Seafarers, 1978, as amended;
- .6 the Convention on the International Regulations for Preventing Collisions at Sea, 1972;
- .7 the International Convention on Tonnage Measurement of Ships, 1969; and
- .8 the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147).

**2.2** With respect to the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147), each Authority will be guided by the instructions in chapter 4 of the Asia-Pacific Port State Control Manual (hereinafter referred to as the "Manual"). The implementation of ILO Convention No. 147 will not require any alterations to structure or facilities involving accommodation for ships whose keels were laid down before April 1, 1994.

**2.3** In the application of the other relevant instruments, each Authority will be guided by the standards specified in chapter 3 of the Manual.

**2.4** Each Authority will apply those relevant instruments which are in force and are binding upon it. In the case of amendments to a

relevant instrument each Authority will apply those amendments which are in force and which are binding upon it. An instrument so amended will then be deemed to be the 'relevant instrument' for that Authority.

- 2.5** In applying a relevant instrument for the purpose of port State control, the Authorities will ensure that no more favourable treatment is given to ships entitled to fly the flag of a non-party to that instrument.
- 2.6** When inspecting ships for provisions of the relevant instruments to which it is a Party, the Authority as the port State will not impose standards on foreign ships that are in excess of standards applicable to ships flying the flag of that port State.

### **Section 3 Inspection Procedures, Rectification and Detention**

- 3.1** In implementing this Memorandum, the Authorities will carry out inspections, which will consist of at least a visit on board a ship in order to check the certificates and documents, and furthermore satisfy themselves that the crew and the overall condition of the ship, its equipment, machinery spaces and accommodation, and hygienic conditions on board, meets the provisions of the relevant instruments. In the absence of valid certificates, or if there are clear grounds for believing that the crew or the condition of the ship or its equipment does not substantially meet the requirements of a relevant instrument, or the master or crew are not familiar with essential shipboard procedure relating to the safety of ships or the prevention of pollution, a more detailed inspection will be carried out. Inspections will be carried out in accordance with the Manual.

#### **3.2** Clear Grounds

**3.2.1** The Authorities will regard as 'clear grounds' *inter alia* the following:

- .1 a report or notification by another Authority;
- .2 a report or complaint by the master, a crew member, or any person or organization with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution, unless the Authority concerned deems the report or complaint to be manifestly unfounded; and

.3 other indications of serious deficiencies, having regard in particular to the Manual.

**3.2.2** For the purpose of control, specific 'clear grounds' include those prescribed in paragraph 2.3 of IMO resolution A.787(19) contained in chapter 3 of the Manual.

**3.2.3** Nothing in these procedures should be construed as restricting the powers of the Authorities to take measures within their jurisdiction in respect of any matter to which the relevant instruments relate.

**3.3** In selecting ships for inspection the Authorities will give priority to the following ships:

.1 passenger ships, roll-on/roll-off ships and bulk carriers;

.2 ships which may present a special hazard, including oil tankers, gas carriers, chemical tankers and ships carrying harmful substances in packaged form;

.3 ships visiting a port of a State, the Authority of which is a signatory to the Memorandum, for the first time or after an absence of 12 months or more;

.4 ships flying the flag of a State appearing in the three-year rolling average table of above-average detentions published in the annual report of the Memorandum;

.5 ships which have been permitted to leave the port of a State, the Authority of which is a signatory to the Memorandum, on the condition that the deficiencies noted must be rectified within a specified period, upon expiry of such period;

.6 ships which have been reported by pilots or port authorities as having deficiencies which may prejudice their safe navigation;

.7 ships carrying dangerous or polluting goods, which have failed to report all relevant information concerning the ships' particulars, the ships movements and concerning the dangerous or polluting goods being carried to the competent

authority of the port and coastal State;

- .8 ships which have been suspended from their class for safety reasons in the course of the preceding six months;
- .9 ships referred to in paragraph 3.9; and
- .10 type of ships identified by the Committee (referred to in paragraph 6.3) from time to time as warranting priority inspections.

The Authorities will pay special attention to oil tankers and bulk carriers of 10 years of age and over.

- 3.4** The Authorities will seek to avoid inspecting ships which have been inspected by any of the other Authorities within the previous six months, unless they have clear grounds for inspection. The frequency of inspection does not apply to the ships referred to in paragraph 3.3, in which case the Authorities will seek satisfaction whenever they will deem this appropriate.
- 3.5** Inspections will be carried out by properly qualified persons authorized for that purpose by the Authority concerned and acting under its responsibility having regard to sections 2.4 and 2.5 of IMO resolution A.787(19) contained in chapter 3 of the Manual.
- 3.6** Each Authority will endeavour to secure the rectification of all deficiencies detected. On the condition that all possible efforts have been made to rectify all deficiencies, other than those referred to in 3.7, the ship may be allowed to proceed to a port where any such deficiencies can be rectified. The provisions of 3.8 apply accordingly.

In exceptional circumstances where, as a result of the initial control and a more detailed inspection, the overall condition of a ship and its equipment, also taking the crew and its living and working conditions into account, are found to be substandard, the Authority may suspend an inspection.

The suspension of the inspection may continue until the responsible parties have taken the steps necessary to ensure that the ship complies with the requirements of the relevant instruments.

Prior to suspending an inspection, the Authority will have recorded detainable deficiencies in the areas set out in Appendix

1 of IMO resolution A.787(19) and ILO Convention deficiencies\*, as appropriate.

*(\* Examples of detainable deficiencies are set out in chapter 7 of the Manual.)*

In cases where the ship is detained and an inspection is suspended, the Authority will, as soon as possible, notify the responsible parties. The notification will include information about the detention. Furthermore it shall state that the inspection is suspended until the Authority has been informed that the ship complies with all relevant requirements.

- 3.7** In the case of deficiencies which are clearly hazardous to safety, health or the environment, the Authority will, except as provided in 3.8, ensure that the hazard is removed before the ship is allowed to proceed to sea. For this purpose appropriate action will be taken, which may include detention or a formal prohibition of a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous. In the event of a detention, the Authority will as soon as possible, notify in writing the flag State or its consul or, in his absence, its nearest diplomatic representative of all the circumstances in which intervention was deemed necessary. Where the certifying Authority is an organization other than a maritime administration, the former will also be advised.
- 3.8** Where deficiencies which caused a detention as referred to in paragraph 3.7 cannot be remedied in the port of inspection, the Authority may allow the ship concerned to proceed to the nearest appropriate repair yard available, as chosen by the master and agreed to by the Authority, provided that the conditions determined by the Authority and agreed by the competent authority of the flag State are complied with. Such conditions will ensure that the ship can proceed without risk to the safety and health of the passengers or crew, or risk to other ships, or without being an unreasonable threat of harm to the marine environment. In such circumstances the Authority will notify the Authority of the ship's next port of call, the parties mentioned in paragraph 3.7 and any other authority as appropriate. Notification to Authorities will be made in accordance with chapter 7 of the Manual. The Authority receiving such notification will inform the notifying Authority of action taken.
- 3.9** If a ship referred to in paragraph 3.8 proceeds to sea without

complying with the conditions agreed to by the Authority of the port of inspection:

- .1 that Authority will immediately alert all other Authorities; and
- .2 the ship will be detained at any port of the Authorities which have accepted the Memorandum, until the owner or operator has provided evidence to the satisfaction of the Authority of the port State, that the ship fully complies with all applicable requirements of the relevant instruments.

If a ship referred to in paragraph 3.8 does not proceed to the nominated repair port, the Authority of the repair port will immediately alert all other Authorities.

- 3.10** The provisions of this section are without prejudice to the requirements of relevant instruments or procedures established by international organizations concerning notification and reporting procedures related to port State control.
- 3.11** The Authorities will ensure that, on the conclusion of an inspection, the master of the ship is provided with a document, in the form specified in chapter 7 of the Manual, giving the results of the inspection and details of any action taken.
- 3.12** When exercising control under the Memorandum, the Authorities will make all possible efforts to avoid unduly detaining or delaying a ship. Nothing in the Memorandum affects rights created by provisions of relevant instruments relating to compensation for undue detention or delay.
- 3.13** In the case that an inspection is initiated based on a report or complaint, especially if it is from a crew member, the source of the information must not be disclosed.
- 3.14** The owner or the operator of a ship or its representative will have a right of appeal against a detention taken by the Authority of the port State. Initiation of the appeal process will not by itself cause the detention to be suspended.

#### **Section 4 Provision of information**

- 4.1** Each Authority will report on its inspections under the Memorandum and their results, in accordance with the procedures specified in the Manual.

- 4.2** Arrangements will be made for the exchange of inspection information with other regional organizations working under a similar memorandum of understanding.
- 4.3** The Authorities will, upon the request of another Authority, endeavour to secure evidence relating to suspected violations of the requirements on operational matters of Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. In case of suspected violations involving the discharge of harmful substances, an Authority will, upon the request of another Authority, visit in port the ship suspected of such a violation in order to obtain information and, where appropriate, to take a sample of any alleged pollutant.

### **Section 5 Training Programs and Seminars**

The Authorities will endeavour to establish training programs and seminars for port State control officers.

### **Section 6 Organization**

- 6.1** A Committee composed of a representative of each of the Authorities that have accepted the Memorandum will be established. An observer from each of the International Maritime Organization, the International Labour Organization, the Economic and Social Commission for Asia and the Pacific and any other organization or authority which the Committee may deem appropriate will be invited to participate without vote in the work of the Committee.
- 6.2** The Committee will meet once a year and at such other times as it may decide.
- 6.3** The Committee will:
- .1 carry out the specific tasks assigned to it under the Memorandum;
  - .2 promote by all means necessary, including training and seminars, the harmonization of procedures and practices relating to inspection, rectification and detention whilst having regard to paragraph 2.4;
  - .3 develop and review guidelines for carrying out inspections under the Memorandum;

- .4 develop and review procedures for the exchange of information; and
  - .5 keep under review other matters relating to the operation and the effectiveness of the Memorandum.
- 6.4** A Secretariat will be established in accordance with the following principles:
- .1 the Secretariat is a non-profit making body located in Tokyo;
  - .2 the Secretariat will be totally independent from any maritime administration or organization;
  - .3 the Secretariat will be governed by and be accountable to the Committee;
  - .4 the Secretariat will have a bank account into which all dues and contributions are made; and
  - .5 the Secretariat will operate from the established bank account in accordance with the budget determined by the Committee.
- 6.5** The Secretariat, acting under the guidance of the Committee and within the limits of the resources made available to it, will:
- .1 prepare meetings, circulate papers and provide such assistance as may be required to enable the Committee to carry out its functions;
  - .2 facilitate the exchange of information; and
  - .3 carry out such other work as may be necessary to ensure the effective operation of the Memorandum.
- 6.6** The Asia-Pacific Computerized Information System (APCIS) is established for the purpose of exchanging information on port State inspections, in order to:
- .1 make available to Authorities information on inspections of ships in other regional ports to assist them in their selection of foreign flag ships to be inspected and their exercise of port State control on selected ships; and

- .2 provide effective information exchange facilities regarding port State control in the region.

**6.7** The functions and operational procedures of the APCIS are specified in chapter 7 of the Manual.

### **Section 7 Amendments**

**7.1** The Memorandum will be amended by the following procedure:

- .1 any Authority that has accepted the Memorandum may propose amendments to the Memorandum;
- .2 the proposed amendment will be submitted through the Secretariat for consideration by the Committee;
- .3 amendments will be adopted by a two-thirds majority of the representatives of the Authorities present and voting in the Committee, each Authority exercising one vote. If so adopted an amendment will be communicated by the Secretariat to the Authorities for acceptance;
- .4 an amendment will be deemed to have been accepted either at the end of a period of six months after adoption by the representatives of the Authorities in the Committee or at the end of any different period determined unanimously by the representatives of the Authorities in the Committee at the time of adoption, unless within the relevant period an objection is communicated to the Secretariat by an Authority;
- .5 any such objection will be considered by the Committee at its next meeting, and the amendment will be confirmed if it is accepted by a two-thirds majority of the representatives of the Authorities present and voting in the Committee at such meeting. In these circumstances, a quorum of more than half of the total number of representatives of the Authorities that comprise the Committee is required. In the event that the amendment is confirmed, the date of its deemed acceptance will be either at the end of a period of six months after being confirmed or any different period determined unanimously by the representatives of the Authorities in the Committee at the time of

confirmation; and

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

**7.2** The Manual will be amended by the following procedure:

- .1 the proposed amendment will be submitted through or by the Secretariat for consideration by the Authorities;
- .2 the amendment will be deemed to have been accepted at the end of a period of three months from the date on which it has been communicated by the Secretariat unless an Authority requests in writing that the amendment should be considered by the Committee. In the latter case the procedure specified in paragraph 7.1 will apply; and
- .3 the amendment will take effect 60 days after it has been accepted or at the end of any different period determined unanimously by the Authorities.

## **Section 8 Administrative Provisions**

- 8.1** The Memorandum is without prejudice to rights and obligations under any international instrument.
- 8.2** Any maritime authority may, with the unanimous consent of the Authorities present and voting at the Committee meeting, adhere to the Memorandum. For such an Authority, the Memorandum will take effect upon such date as may be mutually determined.
- 8.3** Any maritime authority or organization wishing to participate as an observer will submit in writing an application to the Committee and will be accepted as an observer subject to the unanimous consent of the representatives of the Authorities present and voting at the Committee meeting.
- 8.4** Any Authority may withdraw from the Memorandum by providing the Committee with 60 days notice in writing.
- 8.5** The Memorandum is signed at Tokyo on December 1, 1993 and will remain open for signature until the signing during the first meeting of the Committee to be held in 1994.

- 8.6** The Memorandum will be available for acceptance from April 1, 1994, and will take effect for each Authority, which has signed the Memorandum, on the date its acceptance is duly notified to the Secretariat.
- 8.7** The English text is the official version of the Memorandum.

This Memorandum is signed at Tokyo on December 1, 1993 by the following Authorities:

<b>Australia</b>	<b>New Zealand</b>
<b>Canada</b>	<b>Papua New Guinea</b>
<b>Fiji</b>	<b>Philippines</b>
<b>Hong Kong, China</b>	<b>Russian Federation</b>
<b>Indonesia</b>	<b>Singapore, Republic of</b>
<b>Japan</b>	<b>Solomon Islands</b>
<b>Korea, Republic of</b>	<b>Thailand</b>
<b>Malaysia</b>	<b>Vietnam, Socialist Republic of</b>

This Memorandum is signed at Beijing on April 11, 1994 by the following Authorities:

<b>China, People's Republic of</b>	<b>Vanuatu, Republic of</b>
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*Note: The Memorandum contained herein is the text adopted on 1 December 1993 and amended on 13 August 1997 and 3 June 1998. The 1998 amendment is expected to take effect on 1 March 1999.*

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