
**COMPLIANCE AND ENFORCEMENT OF INTERNATIONALLY AGREED
UPON REGULATIONS IN THE INTERNATIONAL SHIPPING INDUSTRY**

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SUMMARY

For many years pollution of the world's oceans and seas has become a matter of increasing international concern. This great concern about oil pollution of the seas, ports and harbors resulted in the International Convention for the Prevention of Pollution from Ships, 1973. This convention was adopted by the International Conference on Marine Pollution in November 1973 and modified by the Protocol of 1978. It is known as MARPOL 73/78. This convention was the most ambitious international treaty covering maritime pollution ever adopted. It deals not only with oil, but with all forms of marine pollution except the disposal of land-generated waste into the sea. Technical regulations are contained in six Annexes.

Enforcement of these measures requires resources, both manpower and equipment, and sanctions for violations. It is always advisable to estimate the required resources for enforcement prior to the implementation of proposed measures. Moreover, if the regulations cannot be enforced they should not be implemented. Violations will occur if the necessary resources are not available and enforcement is impossible. There is a danger that if too many environmental standards are adopted, those companies operating within the evasion culture will not comply with the new rules as they do with the old ones. Internationally one level playing field is necessary. The Flag state- and Port state controls are eminent in this case. However pollution generated on a ship during a voyage makes enforcement difficult as the violation is hard to prove.

1 HISTORY

Oil pollution of the sea, ports and harbors was already recognized as a problem before the First World War. After this war various countries introduced measures to control discharges of oil within their territorial waters. Although international measures were considered, an agreement could only be reached after the Second World War. In 1954 the United Kingdom organized a conference on this subject which resulted in the adoption of the International Convention for the Prevention of Pollution of the Sea by Oil. In 1958 the International Maritime Organization entered into force. This organization took over the depository and secretariat functions in relation to the convention from the UK. The oil pollution problem was tackled in two main ways:

- establishing "prohibited zones"; and
- promoting the provision of facilities for the reception of oily water and residues.

In 1969 further amendments were adopted. The operational discharge of oil was restricted for oil tankers and machinery spaces of all ships. In the years to follow, there was a growing concern for the world's environment including concern over the growth in maritime transport of oil and chemicals and the increasing size of tankers. The measures taken so far against oil pollution seemed to be inadequate.

In 1967 the disaster with the oil tanker "Torrey Canyon" took place. Inspired by this accident, the assembly of the International Maritime Organization decided to convene a conference in 1969. In 1973 the conference met in London. It not only dealt with oil but with all forms of marine pollution. The main objective of this so called 1973 MARPOL convention is the complete elimination of international pollution of the marine environment by harmful substances as oil and chemicals being ship generated waste and cargo residues and the minimization of accidental discharge of such substances. The convention resulted in 5 annexes with technical measures. Which deal with the following:

- Annex I Oil
- Annex II Noxious liquid substances carried in bulk (e.g. chemicals)
- Annex III Harmful substances carried in packages (e.g., tanks and containers)
- Annex IV Sewage
- Annex V Garbage

Besides the annexes there are 20 articles which deal with topics such as: application, amendments, entry into force, communication with the International Maritime Organization, violations, and enforcement. The articles also specify the rights and obligations of each party to the convention.

In 1997 a new annex to the MARPOL convention was adopted. This Annex VI deals with air pollution from ships.

2 COMPLIANCE AND ENFORCEMENT

Governments that have ratified (adopted) and implemented the MARPOL conventions have the obligation to enforce these conventions. According to Article 4, any violation shall be prohibited and sanctions shall be established under its laws. Administrations from the member states shall cause proceedings in accordance with its law. By Flag State- and Port State control enforcement is more or less feasible.

2.1 Flag State control

The prime responsibility for the enforcement of the conventions lies with the Flag State who confirms by certificates that the vessel complies with the conventions covered by these certificates. The marine administrations of each Flag State should have sufficient resources to carry out surveys of its own flagships. However where the administration does not have sufficient qualified surveyors, surveys can be delegated to recognized classified nominated surveyors. These organizations or surveyors should have backup from the marine administration in order to carry out the duties required by MARPOL 73/78. The relevant instruments to comply with are:

- The International Convention on Load Lines.
- The Protocol of 1988 relating to the Int. Conv. On Load Lines 1966.

- The International Convention for the Safety of Life at Sea, 1974 (SOLAS74).
- The protocol of 1978 relating to SOLAS 74.
- The protocol of 1988 relating to SOLAS 74.
- The already mentioned International convention for the prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 relating thereto (MARPOL 73/78).
- The International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 as amended (STCW).
- The Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72).
- The Merchant Shipping (Minimum Standards) Convention, 1976. (ILO No. 147) National regulations.

2.2. Port State control

Due to the fact the some Flag States were unable or unwilling to exercise their obligation under the International Conventions, the only way to try to eliminate the operation of substandard shipping proved to be Port State control.

The right of Port States to carry out Port State control on foreign ships in their ports is given to them in the before mentioned conventions. In principle every ship entering a foreign port is subject to Port State Control, over and over again, unless there are agreements like the Paris Memorandum of Understanding on Port State Control. At this moment there are 18 participating maritime authorities under this Paris Memorandum. Member countries are: Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Poland, Portugal, Russian Federation, Spain, Sweden, the United Kingdom of Great Britain and Northern Ireland and Canada. Cooperating maritime authorities are the United States Coast Guard, Iceland and Japan.

The partners of the Paris Memorandum specified a number of commitments to which the participating countries should live up.

These commitments are as follows:

- Each maritime authority will give effect to the provisions of the Memorandum.
- Each authority will maintain an effective system of Port State Control to ensure that foreign merchant ships visiting its ports comply with the standards laid down in the relevant international conventions and all amendments thereto in force. In this context, it should be noted that a participating maritime authority regards a ship flying the flag of another Paris Memorandum member as a foreign ship too.
- There shall be no discrimination as to flag.
- Each country will have to achieve an annual total of inspections corresponding to 25% of the estimated number of individual ships which will enter the ports of its State during a twelve months period. In practice this will result in an inspection rate of approximately. 90% of all ships using the ports of region.
- Each authority will consult, cooperate and exchange information with the other partners in order to develop further the aims of the Memorandum.

- In so far as the relevant conventions do not contain requirements for small ships, the authorities should be guided by any certificate or document issued by the Flag State and will take, if necessary, such action as to ensure that those ships are not clearly hazardous to safety, health or the environment.

The intention of Port State control is not to enforce on foreign flag merchant shipping any requirement in addition to those imposed by the conventions and has the same international relevant instruments for enforcement and control as mentioned for the Flag State control.

Ships that fly the flag of a State which is not a party to a specific convention, as far as such convention contains a provision to that effect, will not given favorable treatment, but shall comply with the convention when entering a port of the Paris Memorandum.

All results of each Port State control carried anywhere in the member states of the Paris Memorandum are entered into a computer, the Sirenac system. The computer centre is located at Saint Malo in France. The results of the inspections are on-line available for consultation for the members. The computer contains details of almost all seagoing vessels, such as name, former name, International Maritime Organization number, call sign, size, year of build, type, classification society, target factor, inspection history. Furthermore the computer provides on the basis of the inspection file the material for the production of statistics.

The surveyors or as they are called now Port State Control Officers who carry out the inspections in accordance with the Paris Memorandum are qualified officials who belong to the respective national inspection services of the participating authorities. In the Netherlands, Port State control is carried out by the Department of the Netherlands Shipping Inspectorate, which is part of the Directorate-General for Freight Transport of the Ministry of Transport, Public Works and Water management. Regular seminars for surveyors (twice yearly) are arranged to ensure effective and uniform inspection procedures throughout the region covered by the Paris Memorandum.

Due to the fact that the Paris Memorandum is not a legal binding instrument, the European Commission decided that a more stringent policy should be followed to achieve harmonization and developed their own legislation resulting in EU Directive 95/21/EC. This Directive has been implemented in the National Legislations of the European Union Members. To prevent two different not equal systems, the Paris Memorandum has been adjusted in order to meet the requirements of the Directive and to incorporated the relevant parts of the International Maritime Organization Resolution 787 "Procedures for Port State Control".

In addition to the Paris Memorandum, other regions started their own Memorandums of Understanding, based for a large extent on the Paris Memorandum. With some of these other Memorandums of Understanding, close cooperation exists, even resulting in the linking of their computer systems

2.2.1 The selection of ships for inspection

There are several criteria for the selection of ships for inspection, being the priority list of the EU directive, professional judgment of the surveyor or the Target Factor developed to assist in the selection.

This "Target Factor" consist of two basic factors: the Generic Factor and the History Factor. The History (inspection) Factor is calculated by adding values given as a result of previous Port State Control inspection results, the Generic (ship related) Factor consist of the following elements:

Targeted flag, targeted ship type, non-EU recognized class society, and class withdrawn. The Target Factor can never be lower than the Generic Factor.

2.2.2 Detentions

It also could happen that during this superficial round of review of records or Target Factors, the surveyor observes so many deficiencies that he decides to carry out a more detailed inspection, which even may result in detaining the vessel. It must be stressed that detaining a vessel is the ultimate instrument which the surveyor has at his disposal and this decision is not lightly taken.

The EU directive stipulates that a vessel should be detained whenever the surveyor finds it necessary to reinspect the vessel to verify that deficiencies are rectified before departure of the vessel. In most cases deficiencies will be rectified during the normal stay of the ship in the port of inspection, but sometimes detention is necessary to convince the ship to have all deficiencies rectified before departure. In this respect, the intended voyage will also be considered.

Taking into account the geographical situation in Europe where ports are situated at only a few hours sailing distance apart, the surveyor may allow the vessel to proceed to the next port within the Paris Memorandum with certain deficiencies outstanding which could be rectified more effectively in the next port, provided there is no unreasonable danger to safety, health or the environment. In such cases the surveyor will make sure that the next port of call of the vessel will be informed, in order to allow the inspection service at that port to take over from where he left and the inspection will be entered into the computer system with outstanding deficiencies, causing clear grounds for inspection within the next six months period.

Also in case of a detention it could be possible that the vessel will be allowed to proceed to another port of the Paris Memorandum to carry out repairs, in which case the next port will be requested to re-detain the vessel. If the vessel does not comply with the agreed procedures and does not sail to the agreed repair port, the vessel will be banned from all Paris Memorandum ports till a re-inspection has taken place on the invitation and expense of the owner, in a port outside the region.

2.2.3 Production figures

As mentioned under chapter 2.2. "Port State control" at least 25 % of the individual foreign ships that enter the ports will be inspected by the several States. The actual number of vessels to be inspected is depending on the number of foreign vessels entering the ports and on the inspection capacity of a Port State.

The number of Port State control inspections and detentions in the Netherlands over the last four years are as follows:

<u>Year</u>	<u>1997</u>	<u>1996</u>	<u>1995</u>	<u>1994</u>
Inspections	2,150	2,085	2,095	2,338
Detentions	258	278	329	410

From the 258 ships that have been detained in 1997, 113 were violating MARPOL, Annex I, Oil. Since 1995 there is a decline in the number of detentions.

The total number of inspections carried out by the member states of the Paris Memorandum Port State control are as follows:

<u>Year</u>	<u>1997</u>	<u>1996</u>	<u>1995</u>	<u>1994</u>
Inspections	16,813	16,070	16,381	16,964
Detentions	1,624	1,719	1,837	1,597

In accordance with the results in the Netherlands a decline in the number of detentions can be observed.

From every inspected ship the results are entered into the computer Sirenac. Through the so called IMO number the ship's name can be asked for and the inspection results can be read into the computer. The port where the inspection took place, the date and if applicable the deficiencies are input data. In case of detention of a ship, more detailed information is added. All input is available to the member states.

3 FUTURE DEVELOPMENTS

New regulations will be adopted by the International Shipping Community, such as the International Safety Management System, compulsory as from July 1st 1998 for certain types of ships and in 2002 for all ships covered by the conventions.

Furthermore, the International Maritime Organization is working very hard to combine the Annexes I and II of MARPOL 73/78 covering oil and chemicals into one Annex, whereby the often difficult to determine difference in treatment of both products will be eliminated.

4 CONCLUSIONS

There is still a long way to go to eliminate substandard shipping. New regulations must be such that control can easily be exercised with the resources available. Technical solutions should not replace the human factor in ships. This is based on tragedies such as the accidents with the "Herald of Free Enterprise", "Estonia", "Scandinavian Star", "Kharg V" or "Exxon Valdez" to name only a few shipping accidents in which the human factor played an important role.

It is time to minimize designing new rules, but to ensure that the existing rules are enforced throughout the whole worldwide shipping industry, which is not operating on a local scale, but influencing the environment world wide.