ABUJA MoU: AN AFRICAN REGIONAL INSTRUMENT FOR PORT STATE CONTROL

Abdennaji LAAMRICH
ATLAFCO Secretariat
Rabat 12-13 March 2018
A memorandum of understanding (MoU) is a document describing a bilateral or multilateral agreement between parties. Expresses a convergence of will between the parties, indicating an intended common line of action. Often used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement. More formal alternative to a gentlemen's agreement.
Port State Control is the process by which a nation *exercises authority over foreign ships* when those ships are in waters subject to its jurisdiction.

The right to do this is derived from both domestic and international law.

A nation may enact its own laws, imposing requirements on *foreign ships trading in its waters*.

Nations, which are party to certain international conventions, are empowered to verify that ships of other nations operating in their waters comply with the obligations set out in those conventions.
The Amoco Cadiz incident caused a strong political and public demand in Europe for much more stringent regulations with regard to the safety of shipping.

Following these developments, the ministers responsible for maritime safety of 13 European countries, together with the representatives of the Commission of the European Communities, IMO and the International Labour Organization (ILO) met in Paris in December 1980.
They agreed that the elimination of substandard shipping would be best achieved by co-ordination of port states and based on the provisions of a number of widely accepted international maritime conventions, the so called relevant instruments.

2nd ministerial conference, again in Paris, in January 1982, the present Paris MOU on Port State Control was adopted and signed by the maritime authorities of 14 states.

The Paris MOU has been in operation since July 1982.

For the first time, a regular and systematic control of ships was exercised by a regional group of port states which are parties to the relevant Conventions.

The Paris MOU is the model upon which other regions of the world base their agreements on port state control.
In order to carry out PSC effectively, a recommendation concerning regional co-operation in the control of ships and discharges was **adopted as a resolution by the IMO**.

In July 1982, fourteen European countries signed the Paris Memorandum of Understanding on Port State Control (Paris MoU).

Port states have grouped together under various regional memorandums of understanding on port state control to improve the efficiency and effectiveness of each state's port enforcement.

Currently, nine regional MOUs have been established that cover nearly all the regions of the world:

- **European and North Atlantic region**: Paris MoU
- **Asia-Pacific region**: Tokyo MOU
- **Latin American region**: Viña del Mar
- **Caribbean region**: Caribbean MOU
- **Mediterranean region**: Mediterranean MOU
- **Indian Ocean region**: Indian Ocean MOU
- **Black Sea region**: Black Sea MOU
- **West and Central Africa region**: Abuja MOU
- **Arab States of the Gulf**: Riyadh MOU
PORT STATE JURISDICTION: THE LEGAL BASIS

-1-

- Under international law, **port state control** complements **flag state control**.
- Port state control is an **important instrument** for certifying that a ship meets the **technical or other requirements contained in international maritime conventions**.
- Requirements for port state control have been delineated in several **key maritime conventions** and evolved over time to become more extensive and inclusive. Relevant conventions include:
  - International Convention on Load Lines, Article 21, 1966;
  - International Convention for the Safety of Life at Sea (SOLAS) Chapter I, Regulation 19, 1974;
  - International Convention for the Prevention of Pollution from Ships (MARPOL), Article 5(2), 1973/78;
  - International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, Article X, 1978;
  - ILO Convention No. 147.
<table>
<thead>
<tr>
<th>Flag State Jurisdiction</th>
<th>Coastal State Jurisdiction</th>
<th>Port State Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOSC Articles 211 (2), 217</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Principal responsibility</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Design, construction, manning, equipment, operation (MARPOL Standards).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Issues</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Complex because of flag States of convenience</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Defining flag States (nominal jurisdiction)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• While being primary enforcers, often the weakest ones because these are often States without the resources, expertise or political will. Thus the burden of responsibility shifted onto the coastal/port State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LOSC Articles 211(4), 220</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Complements the flag State responsibility</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Greater responsibility, especially when closer to the land boundary or territorial sea</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 200 nm EEZ enlarged the spatial scope of coastal State jurisdiction (Art 211(5),(6))</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LOSC Articles 211, 218</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>When a vessel is within a port or offshore terminal of a State</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Enforcement action even with respect to violations committed in the high seas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Under Article 218, port State would assume the role of an organ of the international community in the protection of the marine environment and safety at sea</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Port State Control consists of conducting inspections of various aspects of a ship once it has arrived in port, including:

- safety of life and property onboard the ship
- prevention of pollution by the ship
- Seafarers living and working conditions onboard the ship

It is a means of enforcing compliance in cases where the owner and flag State have failed in their responsibility to implement or ensure compliance.

The means of assuring that foreign vessels are in compliance with international regulations range from

- detaining substandard vessels to
- using information systems to raise awareness with the general public
- and also as a warning system for substandard vessels.
The Memorandum of Understanding on **Port State Control for West and Central African** Region, generally referred to as Abuja MoU, is one of the 9 Regional MoUs and 1 national MoU established pursuant to **IMO Resolution A.682 (17) of 1991**.

The Organization operates under a **Cooperative Agreement with the IMO**.

Abuja MoU was established **on 22 October 1999 as an inter-governmental organization** comprising of the Maritime Administrations of countries abutting the Atlantic coast of Africa.

Its objective is **eradicating substandard shipping activities** thereby ensuring protection of the pristine maritime environment from Pollution and as well the protection of lives of crew on board ships.

The birth of the Memorandum of Understanding of Abuja **devotes in Africa competences of the Port state** as regards control of the foreign ships.
<table>
<thead>
<tr>
<th>Country</th>
<th>Date of Acceptance of the MoU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>24.01.2012</td>
</tr>
<tr>
<td>Benin</td>
<td>29.06.2007</td>
</tr>
<tr>
<td>Cameroun</td>
<td>not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Cabo Verde</td>
<td>signed but not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Congo</td>
<td>16.11.2001</td>
</tr>
<tr>
<td>Côte d'Ivoire</td>
<td>17.12.2010</td>
</tr>
<tr>
<td>Democratic Republic of Congo</td>
<td>not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Gabon</td>
<td>25.09.2009</td>
</tr>
<tr>
<td>The Gambia</td>
<td>27.07.2007</td>
</tr>
<tr>
<td>Ghana</td>
<td>06.05.2003</td>
</tr>
<tr>
<td>Guinea</td>
<td>12.02.2002</td>
</tr>
<tr>
<td>Guinea Bissau</td>
<td>not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Liberia</td>
<td>signed but not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Mauritania</td>
<td>signed but not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Namibia</td>
<td>signed but not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Nigeria</td>
<td>19.08.2002</td>
</tr>
<tr>
<td>Sao Tome and Principe</td>
<td>16.08.2012</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>25.10.2001</td>
</tr>
<tr>
<td>Senegal</td>
<td>21.06.2001</td>
</tr>
<tr>
<td>South Africa</td>
<td>signed but not yet accepted the Memorandum</td>
</tr>
<tr>
<td>Togo</td>
<td>12.09.2007</td>
</tr>
</tbody>
</table>
Realizing how crucial information exchange is, the Abuja MoU Committee approved the development of the Abuja MoU Information System (AMIS).

AMIS is a web-based information system designed for reporting and storage of Port State Control inspection reports.

The AMIS in the Republic of Congo 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.

The annual PSC inspection data are generated automatically from the central database of Abuja MoU Information system (AMIS).
The region recorded 18.14% decrease in inspections from 2,348 in 2015 where 14 Administrations submitted reports to 1,922 in 2016, with 15 Administrations reporting.

In 2016, 153 of the inspections conducted generated 64.

The deficiencies are as a result of anomalies from:

- Ship's certificates and documents – 12.15%;
- SOLAS Convention – 37.84%;
- MARPOL Convention – 5.15%;
- STCW Convention – 3.12%;
- Load Line Convention – 2.02%;
- ILO (MLC, 2006) – 9.66%.

The positive effect of the national, regional and foreign trainings attended by port State control officers of the Abuja MoU is evidenced in the greater ability and confidence to identify deficiencies and detainable deficiencies.

The data showed an increase in number of deficiencies to 642 (18%) and detentions to 24 (167%) despite reduced inspections in 2016.
An inspection campaign has been held for three months, commencing from 1 September 2017 and ending 30 November 2017.

- **Port State Control Officers (PSCOs)** use a list of 12 questions to assure that:
  - navigation equipment carried onboard complies with the relevant statutory certificates,
  - the master and navigation officers are qualified and familiar with operation of bridge equipment, especially Electronic Charts Display Information System (ECDIS)
  - navigation equipment is properly maintained and functioning.

- If deficiencies are found, actions by the port State may vary from
  - recording a deficiency and instructing the master to rectify it within a certain period of time
  - to detaining the ship until the serious deficiencies have been rectified.

- In the case of detention, the data will be published in the non-performing ships section of Abuja MoU website.

- The results of the campaign will be analyzed and findings will be presented to the Abuja MoU Port State Control Committee for submission to the IMO.

- A ship is only be subject to one inspection in the region under this CIC during the period of the campaign.
In a workshop that took place from 24-26 October 2017, at the IMO headquarters in London, regarding the port State control (PSC) MoU/Agreement Secretaries and Database Managers and Member States,

The participants shared experiences, highlighted new projects and approved a wide range of recommendations, which are aimed to develop

- Collaboration,
- Harmonization
- Information sharing

The workshop emphasized the growing number of PSC regimes implementing targeted inspections mechanisms, as well as incentive schemes, so that ships complying with international standards are subject to fewer inspections, while substandard ships are targeted more.

The recommendations made by the meeting can be summarized as following:

- PSC regimes agreed to explore the development of statistical compatibility of their systems.
- They also agreed to consider moving away from “black/grey/white lists”.
- PSC regimes agreed to convey to their regional governing bodies the recommended use of the results of interregional information exchanges in their internal procedures.
To Adapt

To extend

To take inspiration from
CONCLUSION

- Effective **regional agreements**, including **harmonized inspection and detention procedures**
- Internationally **approved qualifications of inspectors** and transparency through increased information within regions and inter-regionally

Will play an essential role for both flag and Port State responsibilities
THANKS FOR YOUR ATTENTION

AVOID PROBLEMS – RUN A SAFE AND SECURE SHIP AND BE HONEST WITH PORT STATE CONTROL OFFICERS