

Regulatory Role of International Maritime Organization: Case Study “Port State Control”

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Received: 2020/09/18

Accepted: 2020/10/29

Abstract

The world witnessed a change in the arrangement of international actors after the Second World War and the rise of international organizations in the international landscape. The International Maritime Organization (IMO) was one of these entities, acting as the UN specialized agency in maritime affairs. This study mainly aims at reviewing the regulatory role of the IMO, particularly Port State Control (PSC) regime, by addressing its concept, as well as legal basis and the control procedures. This mainly descriptive–inductive study describes and analyzes the legal bases of the PSC. Generally, IMO is identified with two types of functions: legislation and regulation. IMO’s regulatory function is reflected in two main tools, namely, Audit Scheme of its Member States and Port State Control (PSC). With its supplementary nature, PSC is in fact an efficient maritime system for the safety and protection of the marine environment, encouraging states to watch for the safety of ships other than those flying their flags, especially those visiting their ports. This control system has led to effective and efficient implementation of IMO rules and regulations.

Keywords: International Maritime Organization, Port State Control, the Convention on the Law of the Sea, Regional Agreements

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1. Introduction

The world witnessed a change in the arrangement of international actors after the WWII and the rise of international organizations in the international arena. The International Maritime Organization (IMO) was one of these entities. IMO acts as the UN specialized agency in maritime affairs. Due to the expansion of IMO's influence and development of countless rules and regulations covering all aspects of maritime affairs, and considering its flexibility and repeated reforms, IMO has turned into one of the most important specialized agencies of the United Nations that has taken big steps towards better coordination between exploitation of the sea and the legal and technical aspects of shipping activities. The new obligations the organization has accepted due to requirements of the time calls for studying the structural and functional dimensions of this specialized institution. The main purpose of this study is analysis of the regulatory role of the Organization as well as the PSC. The Organization seeks to develop monitoring, examination, and evaluation of its Member States by establishing special strategies and procedures. These processes contribute to effective implementation of documents issued by IMO. In fact, they serve as benchmarks to evaluate IMO Member States in terms of the execution of conventions to which they are party. Port State Control is one of the most important regulatory processes of IMO that helps with better implementation of standards developed by this Organization. The importance of examining dimensions of this procedure lies in identification of the function of regulatory systems in order to implement IMO instruments in the most effective way. Lack of effective and academic research in this field also makes an academic examination of different aspects of PSC regulatory system necessary.

2. Theoretical Framework and Research Methodology

The institutional theory studies focus on political institutions, which includes various international entities. This theory focuses on official regulations, procedures, and organizations of the government. Therefore, this type of study is very effective in the fields of political science, international relations, and international law (Haqiqat, 2008:198).



Moreover, the institutional theory addresses governmental institutions such as the legislature, the executive branch, courts, and political parties (Ashtarian, 2008:7). “As a theory, the institutional theory provides propositions about the causes and consequences of political institutions while believing in political values of liberal-democracy. Proponents of this theory consider legal rules and procedures a fundamental independent variable, and the function and nature of democracies as a dependent variable, believing that these rules prescribe behavior. As a method, the institutional theory has three features of descriptive-inductive, formal-legal, and historical-comparative” (Haqiqat, 2008:198). The institutional theory is recognized as the defining feature of the English school of politics. According to the English school, international institutions shape international participations in line with common goals and interests of the society of states (Moshirzadeh, 1989: 166). The most important assumptions of institutionalism include:

- **“Importance of Institutions:** Political behavior is deeply influenced by the institutional context within which it is formed and gains significance.
- **Significance of History:** The legacy of the past is significant for the present.
- **Complexity and Unpredictability:** Political systems are complex and inherently unpredictable.
- **Significance of Non-Material Interests:** The behavior of actors is not always an instrumental function of material gain” (Hay, 2006: 37).

Given the above, one can discuss the connection between institutionalism and the International Maritime Organization. IMO is considered an international institution and therefore, the institutionalism method, concerned with studying institutions and their course of evolution, is applicable. Moreover, given the significance of PSC, examination of its formation and legal bases is essential. Accordingly, this study used a descriptive-inductive method as its main research method for describing and analysis of the legal bases of PSC.

3. Research Background

No well-founded research has been done on the subject of this research in Persian. However, several notable studies were conducted in Latin-based languages, which are divided into two categories: papers and book. Among the papers is the work of Peter Bautista Payoyo, “The Implementation of International Conventions through Port State Control: An Assessment,” which examines the implementation of the International Convention on Prevention of Pollution of Ships (MARPOL) and the Convention on the Contract for the Carriage of Goods in accordance with Port State Control mechanism. Experimental cooperation in this regime has yielded results that indicate the vast possibilities of PSC. Moreover, this system was examined as an effective mechanism for implementing international maritime conventions. The author of “Port State Control: Strong Medicine to Cure a Sick Industry,” John Hare, suggests that PSC, with its roots in requirements raised from successive maritime casualties, is now one of the most effective tools for stripping world’s ports and ocean from non-assessable and dangerous ships. This, of course, doesn’t mean that international pressure on flag states, industry owners, and associations for proper and responsible fulfilment of their duties should be ignored. Accordingly, the international message of PSC is that bad ships, bad ship owners, bad flag states, and bad associations are parties for which there should be no place in the future in the transportation industry. Another example of these papers is “Regional Agreements of Port State Control: Some Issues of International Law,” by Ted L. McDorman. This study examines regional agreements on the development of a port state control regime at specific regions addressing also the specific arrangements these agreements require.

In their paper, “Enforcement of law by the Port State Control,” Kevin X Li and Haisha Zheng suggest that IMO has played an important role in implementation of the law on maritime safety around the world by introducing the Port State Control program. This paper also discusses the effectiveness of this type of control and the effectiveness of selection methods for ships that should be inspected by the PSC. Moreover, this study indicates that PSC is effective in improving the safety level of



maritime transport. The methods adopted by PSC are essential in effectiveness, efficiency, and consistency of identification of non-standard vessels.

Pierre Cariou, Maximo Mejia, and Francois-Charles Wolff use 4080 observations of the Swedish Maritime Administration between 1991 and 2001 to test how vessel's characteristics influence the length of time between two port state control inspections (PSC) along with the number of deficiencies detected during PSC in their study, "On the Effectiveness of Port State Control Inspections." This study also investigated whether a PSC inspection at a given time reduced the total number of deficiencies detected during the next inspection. Analyzing 874 successive inspections, the study concludes that the number of defect reported during the second inspection reduced by 63% after implementation of PSC.

As for books, we came across several reference books. "Port State Control," by Oya Ozcayir is a guideline regarding implications and regulations of port State control. The book provides detailed information on all aspects of the subject, including legal basis, global application, and major practical functions of OSC in seafaring. It also presents a specialized analysis of PC procedures as defined by IMO and provides us with extensive information on PSC regional agreements around the world. The "Post State Control," prepared by IMO, refers to a modeling course. The book is divided into four sections, each of which deals with a topic from the course. The first section addresses the framework, the second the content outlines and the timetable, the third detailed curriculum, and the last the course manual.

In his book, "Port State Control and Jurisdiction: Evolution of the Port State Regime," George Kasoulides acknowledges that the 1982 UN Convention on the Law of the Sea, which was ratified by 54 countries by the end of 1992, consolidated a number of new regulations, one of which is about implementation of Port State resolutions concerning violations of law outside Port State jurisdiction. Port State Control is a very old concept. It is based on a rule in international law, according to which a state can exercise its general judicial authority in its inland waters and has the right to deny access to such waters. The 1982 Convention expands this authority giving

Regulatory Role of International Maritime Organization: Case Study...

executive powers to Port State on violations outside its national jurisdiction.

Another book is the “Port State Control Procedures,” compiled by IMO. This book defines the control system, recognizing that Port State Control involves inspecting foreign ships in national ports to verify the condition and performance of the ship and its equipment in accordance with international regulations. It also acknowledges that while the implementation of international maritime standards has always been the responsibility of the Flag State, the organization recognizes that having the right to exercise control over the Port State plays an important role in ensuring consistent conformity with those criteria in ships of different nationalities.

4. History of Maritime Monitoring

In the modern era, France and Britain had the most powerful navy forces. Therefore, major developments in different areas related to maritime affairs, particularly on regulatory rules, were first formulated by these two countries. A port monitoring agency was formed in France during that era. In August 17, 1977, an announcement was made to complete inspection regulations by requiring double checking of ships on overseas and return voyages. These regulations became even more stringent later by late 18th century and they were applied to vessels that conducted long voyages. Such vessels were inspected twice: once for their equipment and once before cargo loading. Interestingly, during this era, most of the efforts for formulating maritime regulations and monitoring them were completely private. It was widely believed that state control on transportation would be an obstacle for the free trade. However, by the mid-19th century, following the ever-increasing growth of the maritime industry and the movement towards uniformity in maritime regulations, governments began a major leap in entering the maritime sector. France entered the shipping industry with full force following the passage of a law in April 17, 1907, and its completion with two guideline amendments issued on September 20 and 21, 1908. On the other hand, Britain sought to enhance safety of maritime transportation under the public pressure ensuing sea accidents. Britain took the most important step in 19th century by passing the Commercial



Shipping Act of 1850. Formulated to monitor, regulate, and control all maritime trade related affairs, this act brought all shipping activities under government control. However, the end of 19th century witnessed dramatic changes in development of maritime regulations. During this time, multilateral treaties came into the limelight. In 1889, a meeting was held in Washington DC to develop a suitable code for exploiting the sea and unifying regulations regarding shipping, sailing, ship lights, and signals. The first widespread international maritime conference defined 13 groups of regulatory principles that consequently were adopted and implemented by all countries without the conference and its agreements becoming official conventions (Boisson, 1999). Next step included the Treaty of Constantinople (1889), which was comprised of an introduction and 71 articles. This treaty addressed basic regulations such as free passage of commercial vessels and warships during peace as well as wartime, the neutrality of canals, equal sailing rights for all countries, and supervisory measures and inspections required for fulfillment of those obligations (ZakerHossen, 1991:189,190). Finally, formation of the International Maritime Organization at the second half of the 20th century brought formulation and supervision of maritime laws and regulations to the next level.

5. Discussion

1.5. Formation of the International Maritime Organization

Prior to international efforts for the establishment of the International Maritime Organization in 1948, two temporary and transitory institutions were established, namely the United Maritime Consultative Council and the Provisional Maritime Consultative Council (Marzban, 2012:59). Eventually, after the formation of the United Nations, a convention was signed to establish the International Maritime Consultative Organization (IMCO) during a 17-days conference held by the UN Economic and Social Council on February 19, 1948. The Convention was finally enacted on March 17, 1958, following adaptation of 21 states and under special circumstances. The first IMCO Summit was held in January 1959. At the same year, the Organization was identified as a UN specialized agency

Regulatory Role of International Maritime Organization: Case Study...

through an agreements. IMCO was eventually renamed International Maritime Organization (IMO) by an amendment to its founding document in November 1977, which was enacted on May 22, 1982 (Baigzadeh, 2010:725). IMO acts as a custodian and a guide for maritime shipping. According to Article 1 of the Convention of the International Maritime Organization, the main tasks of IMO include activities related to maritime safety, marine environment, and determination of international strategies for maritime security.

2.5. IMO Regulatory Tools

The Convention on the Law of the Sea defines general maritime obligations and regulations for states based on maritime activities in various sailing areas using terms such as flag state, port state, and coastal state (Beckman and Sun, 2017:227). Article 94 of the Convention on the Law of the Sea addresses responsibilities of flag states. According to this article, every state has the right of enacting executive, technical, and social controls, as well as jurisdiction over all ships that bear its flag. This extends to the captain, the officers, and the crew and includes managerial, technical, and social affairs of the ship. These states must also adhere to generally accepted international rules, processes, and procedures and are obliged to assess ships that bear their flags to ensure their safety at the sea (Chircop, 2016). Therefore, the priority of a flag state is enforcing rules and obligations over ships that fly its flag, while the Member States of the Convention on the Law of the Sea must implement rules and regulations regarding safety of sailing and protection of the marine environment included in IMO treaties. In addition and according to the Convention on the Law of the Sea, states are obliged to use domestic laws to implement rules and regulations enacted by IMO in order to meet their commitments as flag states (Beckman and Sun, 2017:228). Under the UN General Assembly Resolution A/68/L.18 (27 November 2013), those flag states that lack efficient maritime management systems and suitable legal frameworks for adoption or consolidation of the necessary infrastructure or lack legal and executive capacity to ensure compliance with the law and execution of their obligations under the international law, and particularly the Convention on the Law of the Sea, shall decrease, suspend, or postpone



granting their flag to new ships. These states must call on port and flag states to conduct all activities in accordance with international law in order to prevent operation of non-standard ships (Chircop, 2016). Given that some states have difficulty in full implementation of IMO treaties, IMO has issued a number of guidelines to help flag states in executing IMO treaties. This is monitored by the Subcommittee on Implementation of Instruments and under the supervision of the Maritime Safety Committee, aiming at effective and sustainable implementation of regulations set by IMO. Such controls that aim at empowering states in implementing IMO treaties help governments adhere to general obligations under the Convention on the Law of the Sea (Beckman and Sun, 2017:228). The main supervisory measures used by IMO to monitor implementation of regulations include:

- Mandatory audit of IMO Member States, including flag, port, and coastal states.
- Port State Control (Chircop, 2016).

3.5. Port State Control

1.3.5. Definition of Port State Control

An efficient maritime system for the safety and protection of the marine environment, encouraging states to watch for the safety of ships other than those flying their flags, especially those ships visiting their ports. This type of control, known as Port State Control, acts as a supporting procedure for Flag State to enforce international rules and regulations (Moursy, 2011:4). The concept of Port State Control differs from that of Port State Jurisdiction (PSJ). As a rule, under customary international law, ports are not publically accessible. Port State has extensive powers to determine conditions of entry into its ports and to exercise jurisdiction over activities within the port area. However, it cannot exercise jurisdiction over the internal affairs of a foreign ship that does not affect Port State's rights and interests. Furthermore, the regional or trans-region jurisdiction of Port State is determined based on treaties. Nevertheless, the concept of Port State Control refers to inspection of foreign ships in national ports in order to endorse the condition of the ship and its equipment in accordance with the

Regulatory Role of International Maritime Organization: Case Study...

requirements of international regulations and to confirm that the ship operates in accordance with these laws (Beckman and Sun, 2017:230). In other words, the control and inspection of foreign ships in inland waters is due to non-observance of laws and regulations by ship owners, flag states, and ranking institutions who do not implement maritime conventions accurately (Rozkhosh, 2006:2). This inspection is a legal right of the Port State under the international treaties to which it is a party. MARPOL Convention, for example, gives the Port State the right to inspect. Therefore, any member of this Convention may inspect foreign ships entering its ports or sea terminals for unloading of harmful substances and violating the legal provisions of the said Convention, or submit a request for inspection to any member who has sufficient evidence of unloading of harmful substances or transport of these materials anywhere. However, Port State has no executive jurisdiction over the foreign ship in its port that has violated the provisions of the said Convention (Beckman and Sun, 2017:230)

2.3.5. Legal Basis

In addition to the MARPOL Convention, other IMO conventions also recognize the right to inspect foreign ships and to take necessary measures in the ports of other Member States (Rothwell and Stephens, 2010:354). Port State Control has many objectives, the most important of which include protecting the interests of the Port State, ensuring that the Flag State implements IMO rules and regulations, and investigating any negligence by responsible groups, including ship owners and insurance industries. Therefore, when a control officer inspects a ship, it is to ensure that the minimum IMO-approved parameters are enforced on the ship (Moursy, 2011: 4). However, these conventions differ in terms of extent of control they provide to port states. For example, attorney granted to a port state by the Tonnage Measurement Convention does not include the right to seize the ship with an international tonnage certificate, even if the inspection of the vessel indicates non-compliance with the certificate. However, SOLAS and MARPOL conventions grant the Port State the right to seize a ship whose deficiency prevents it from sailing (Beckman and Sun, 2017:230). In addition to IMO Conventions, the 1982 Convention on



the Law of the Sea is also one of the legal bases for Port State Control. This is referred to in Articles 218, 219, paragraph one of Article 220, and Article 226.

3.3.5. Control Procedure

The inspection of Port State Control was initially carried out in the form of a limited set of corrective measures that allowed the Port State to implement procedures aimed at correcting deficiencies in the Flag State's exercise of competence. Over time, this became a general principle to implement requirements and regulations of IMO Conventions over the foreign ship present at the port, even if the Flag State was not a member of that Convention. Accordingly, in order to increase the consistency and efficiency of PSC inspections, IMO coordinated procedures at the international level and increased regional cooperation to coordinate methods of inspection. The first IMO instructions to coordinate ship inspections by the Port State began with the SOLAS and the Load Lines Conventions. Over time, the procedure was also put forward for conventions related to maritime pollution. Subsequently in 1995, IMO passed an instrument based on PSC procedures. The purpose of this instrument was to provide a guideline on the implementation of inspections based on the PSC that ensured consistency in implementation of inspections and detection of deficiencies in the ship, its equipment, and its crew. This instrument was amended in 2011 (Beckman and Sun, 2017:231). In general, the general condition of the ship and its equipment, operating style of the personnel, ship's documents and certificates, and inspection of those areas where most number of deficiencies are usually detected are considered during an inspection. However, experience has shown that valid certificates are no guarantee of compliance with the provisions of IMO Conventions. Therefore, even if there are valid certificates or documents, more detailed inspections will be carried out if there are clear reasons to believe that the condition of the ship or its equipment or crew do not essentially comply with the requirements of the relevant conventions (Özçayır, 2018:509).

4.3.5. International Measures

On the other hand, IMO encourages states to sign regional agreements on the implementation of PSC and cooperation with the organization. IMO General Assembly also adopted Resolution A.682 (17) (6 November 1991) on regional cooperation and promotion of regional agreements on ship inspection. Currently, nine regional agreements on PSC have been signed in the form of memorandums of understanding as follows:

- Europe and the North Atlantic Memorandum of Understanding (Paris MoU)
- Asia and the Pacific Memorandum of Understanding (Tokyo MoU)
- Latin America Memorandum of Understanding (Acuerdo de Viña del Mar)
- Caribbean Memorandum of Understanding (Caribbean MoU)
- West and Central Africa Memorandum of Understanding (Abuja MoU)
- Black Sea Region Memorandum of Understanding (Black Sea MoU)
- Mediterranean Memorandum of Understanding (Mediterranean MoU)
- Indian Ocean Memorandum of Understanding (Indian Ocean MoU)
- Riyadh MoU

It is also noteworthy that the tenth regional PSC regime was established by the US Coast Guard (IMO, 2018).

6. Conclusion

As a regulatory entity, IMO seeks to consolidate and establish the implementation of international maritime regulations and standards by all countries through various mechanisms. One of these mechanisms is Port State Control. This process is in fact an efficient maritime system for the safety and protection of the marine environment, encouraging states to watch for the safety of ships other than those flying their flags, especially those ships visiting their ports. This type of control, known as the Port State



Control, acts as a supporting procedure for the Flag State to enforce international rules and regulations. This concept is different from Port State Jurisdiction. This process refers to inspection of foreign ships in national ports in order to endorse condition of the ship and its equipment as well as its operation and governing systems in accordance with the requirements of international regulations. This inspection is based on the legal right of the Port State granted to that State under the international treaties to which it is a party. This process has been effective in increasing compliance with IMO rules and standards. In particular, the conclusion of regional agreements on the implementation of PSC, a very important step has been taken to better implement this process. However, it should not be forgotten that PSC is not a complete and sufficient solution to deal with ships that violate the laws, because control mechanisms are not accessible and are limited in the high seas and territorial waters of coastal states.

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Regulatory Role of International Maritime Organization: Case Study...

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*The Iranian Review for Law of the Sea and Maritime Policy,
Vol.2, Issue 1, June 2021*



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Regulatory Role of International Maritime Organization: Case Study...