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VIÑA DEL MAR AGREEMENT
Latin American Agreement on Port State Control of Vessels

The Maritime Authorities of:

Argentina
Bolivia⁽²⁾
Brazil
Chile
Colombia
Cuba⁽¹⁾
Ecuador
Honduras⁽³⁾
Mexico
Panama
Peru
Uruguay
Venezuela

hereinafter referred to as "MARITIME AUTHORITIES"

RECOGNIZING the importance of the safety of life at sea and at ports and the increasing importance of protecting the marine environment and its resources;

BEING AWARE that the objectives of the Operative Network for Regional Maritime Cooperation among Maritime Authorities of South America, Mexico and Panama (ROCRAM) are directed thereto, as shown by its 1990-2000 Strategy for the Protection of the Marine Environment adopted in 1989, as well as by other regional resolutions;

NOTING that paragraph 63 of said ROCRAM Strategy considers the adoption of measures aimed at the creation of an effective vessel control system and the development of a coordinated system of inspections;

TAKING NOTE of the recommendations of the Heads of the Vessel Inspection Departments of Latin American Maritime Authorities and their representatives, who held a meeting in Panama in 1991 and in Uruguay in 1992;

TAKING INTO ACCOUNT the recommendations of the Heads of the Legal Departments of the Latin America Maritime Authorities, who held a meeting in Colombia in 1992;

NOTING WITH APPRECIATION the agreements in this field reached by the International Maritime Organization (IMO) which emphasize the Maritime Authorities main responsibility for the effective enforcement of international rules in vessels flying their flag, and which also recognize the need for effective action of Port States to prevent the operation of substandard ships;

RECOGNIZING that by Resolution A.682 (17) adopted in November 1991, the IMO Assembly invites Governments to enter into regional agreements on the application of supervision measures by Port States;

¹ The Maritime Authority of Cuba adhered to the Viña del Mar Agreement on July 1st, 1995.

² The Maritime Authority of Bolivia adhered to the Viña del Mar Agreement on August 18, 1999.

³ The Maritime Authority of Honduras adhered to the Viña del Mar Agreement on September 5, 2001.

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RECOGNIZING also that it is necessary to avoid differences in the treatment given to vessels by the different ports, and that said practices may distort competition between ports;

CONVINCED that, to such ends, it is necessary to implement an efficient and harmonized system of Port State Control and to strengthen cooperation and the exchange of information;

Have agreed to adopt the following LATIN AMERICAN AGREEMENT ON PORT STATE CONTROL OF VESSELS (hereinafter called the "Agreement")

Section 1. Commitments

1.1.1 Each and every Maritime Authority, within its legal competence, shall give effect to the provisions of the present Agreement and its Annexes which are an integral part thereof.

1.2 Each and every Maritime Authority shall maintain an effective port State control system with a view to ensuring, without discrimination as to flag, that foreign vessels calling at its ports meet the requirements set forth under the pertinent instruments described in Section 2.

1.3 Each and every Maritime Authority shall make efforts to reach, within a maximum three-year term as from the date of adoption of the present Agreement, a minimum number of inspections of 15% of the different foreign vessels, hereinafter called "vessels", which may have entered the ports of its State during a recent representative period of 12 months (*).

1.4 Each and every Maritime Authority shall consult, cooperate and exchange information with the other Maritime Authorities in order to achieve the goals of the present Agreement.

Section 2. Pertinent Instruments

2.1 For the purposes of the present Agreement, "Pertinent Instruments" are the following international conventions with their respective amendments in force:

- International Convention on Load Lines, 1966 (LOAD LINES, 1966).
- Protocol of 1988 relating to the International Convention on Load Lines, 1966 (1988 SOLAS Protocol)
- International Convention for the Safety of Life at Sea, 1974 (SOLAS, 1974).
- Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974 (1988 SOLAS Protocol).
- International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78).
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW, 1978).
- Convention on the International Regulations for Preventing Collisions at Sea, 1972. (COLREGs, 1972)
- International Convention on Tonnage Measurement of Ships (Tonnage), 1969.

2.2 Each and every Maritime Authority shall apply those pertinent instruments which are in force and to which its State is a Party. In the case of amendments to a pertinent instrument, each Maritime Authority shall apply those

(*) Concept of "DIFFERENT SHIP" for statistical purposes:

"It is a ship which has not been inspected for the last six months by a Maritime Authority member of the Agreement, and which has not called at a port of that country within that period, or a ship which must be inspected due to deficiencies to be corrected or due to clear grounds."



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amendments in force which have been accepted by its State. An instrument so amended shall be deemed as a pertinent instrument by said Maritime Authority.

- 2.3 When applying the provisions of an instrument for port State control purposes, the Maritime Authorities shall enforce said provisions in such a manner that the vessels authorized to fly the flag of a State that is not a Party to such Instrument shall not be granted a more favorable treatment.
- 2.4 In the case of vessels whose dimensions are smaller than those set forth in the conventions, the Maritime Authorities shall enforce the applicable provisions of the pertinent instruments and shall, to the extent that they are not applicable, take such actions as may be necessary to ensure that these vessels do not pose an obvious hazard to safety or the marine environment, taking Annex 1 into special consideration.

Section 3. Inspection, Rectification and Detention Procedures

3.1 Provisions concerning Port State Control contained in:

Regulation 19 of Chapter I, regulation 6.2 of Chapter IX and regulation 4 of Chapter XI of the SOLAS Convention, 1974 as amended by the Protocol of 1988 relating thereto, article 21 of the International Convention on Load Lines, 1966 as amended by the Protocol of 1988 relating thereto, articles 5 and 6, Regulation 8A of Annex I, regulation 15 of Annex II, regulation 8 of Annex III and regulation 8 of Annex V of MARPOL 73/78, Article X of the STCW Convention, 1978, and article 12 of the Tonnage Convention, 1969 provide for control procedures to be followed by the Parties to the pertinent conventions with regard to foreign vessels visiting their ports. The Authorities of port States should make effective use of these provisions for the purposes of identifying deficiencies, if any, which may prove that a ship is substandard (see section 2.4 of Annex I) and ensuring that appropriate corrective actions are taken.

- 3.2 In fulfilling their obligations, the Maritime Authorities shall carry out inspections to foreign vessels calling at their ports, employing Port State Control Officers for such purposes. Said inspections may be performed on the basis of :
 - 3.2.1 the initiative of the Maritime Authority;
 - 3.2.2 a report or notification from another Maritime Authority ;
 - 3.2.3 a report or complaint by the Master, a crew member or any person or organization interested in maintaining the safety of the vessel, its crew and passengers, or protecting the marine environment, unless the pertinent Maritime Authority considers that such report or complaint is clearly unfounded.
- 3.3 The initial inspection shall consist of a visit on board the vessel to check the validity of the pertinent certificates and documents, as well as the general condition of the vessel, its equipment and crew. In the absence of valid certificates or documents, or should there exist clear grounds for believing that the vessel, its equipment or crew do not substantially comply with the requirements of a pertinent instrument, a more detailed inspection shall be carried out. The Maritime Authorities, in their control procedures, should include compliance with operational requirements on board. Inspections shall be carried out pursuant to Annex 1.
- 3.4 Considering the inspection procedures established in chapter IX of the SOLAS Convention, 1974 with regard to the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), the PSCO shall use the guidelines contained in section 3.5 of Annex I.
- 3.5 Reasons and procedures for more detailed inspections.

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- 3.5.1 The Maritime Authorities shall consider as "clear grounds" for performing a more detailed inspection, among others, the examples detailed in Annex I.
- 3.5.2 None of the provisions above shall be construed as a limitation to the Maritime Authorities power to take measures within their jurisdiction as regards any case connected to the pertinent instruments.
- 3.6 When selecting vessels for inspection, the Maritime Authorities shall pay special attention to:
- Passenger ships, ro-ro vessels and bulk carriers;
 - Vessels which may pose a special risk, such as oil tankers, gas carriers, chemical tankers and vessels carrying dangerous and/or harmful substances and goods in packages;
 - Vessels which may have recently suffered repeated deficiencies.
- 3.7 The Maritime Authorities shall try to avoid inspecting vessels verified by any of the other Maritime Authorities during the preceding 6 months, unless there is a report or notification by another Maritime Authority or any person or organization interested in maintaining the safety of vessel operations, or in preventing pollution, or unless there exist clear grounds for such inspection. The frequency of inspections shall not apply to the vessels mentioned in Section 3.6 of the present Agreement, in which case the Maritime Authorities shall carry out inspections as they may deem proper.
- 3.8 Inspections shall be carried out by Port State Control Officers duly qualified and authorized by the Maritime Administration, taking into account the professional profile and minimum training and competence requirements set forth in Annex 5.
- 3.9 Each and every Maritime Authority shall make efforts to ensure that any deficiencies found during the inspection are rectified.
- 3.10 In the case of deficiencies posing a clear risk to safety or the marine environment, the Maritime Authority shall, except as provided for in paragraph 3.11, ensure that the risk has been eliminated before authorizing the vessel to sail and, to such end, it shall take the necessary steps which may include the vessel detention. The Maritime Authority shall make the necessary communications according to the requirements on port State control notification detailed in Annex 3.
- 3.11 Should it not be possible to rectify the deficiencies mentioned in paragraph 3.10 at the inspection port, the Maritime Authority may authorize the vessel to sail to another port subject to any appropriate conditions determined by that Maritime Authority, so that the vessel may continue its voyage without posing an excessive risk to safety or the environment. Notification to Maritime Authorities shall be made according to the requirements on port State control notification and those contained in Annex 2. The Maritime Authority receiving said notification shall inform the reporting Maritime Authority on actions taken.
- 3.12 The provisions of paragraphs 3.10 and 3.11 shall not be an obstacle to the application of the provisions of pertinent instruments or the procedures established by international organizations concerning notification and reporting procedures related to port State control.
- 3.13 When exercising control under the Agreement, the Maritime Authorities shall make all possible efforts to avoid unduly detaining or delaying a vessel. No provision in the present Agreement shall affect the rights set forth in the provisions of the pertinent instruments as regards compensation in the case of undue detention or delay of a vessel.
- 3.14 Where the ground for detention is the result of accidental damage suffered on the vessel's voyage to a port, no detention order shall be issued, provided that:

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- 3.14.1 due account has been given to the requirements contained in the conventions regarding notification to the flag State administration, the nominated inspector or the recognised organisation responsible for issuing the relevant certificate;
- 3.14.2 . prior to entering a port, the master or the company has submitted to the port State control authority details on the circumstances of the accident and the damage suffered and information about the required notification of the flag State administration;
- 3.14.3 appropriate remedial action, to the satisfaction of the PSC Authority, is being taken by the ship; and
- 3.14.4 the PSC authority has ensured, having been notified of the completion of the remedial action, that deficiencies which were clearly hazardous to safety, health or the environment have been rectified.'
- 3.15.1 The company or its representative shall have the right of appeal against the detention decision of the port State control authority. Said appeal should not cause suspension of the vessel detention. The PSCO shall duly inform the master of the ship on the existence of such right of appeal."

Section 4. Access to Information

Each and every Maritime Authority shall report on inspections and their results according to the procedures set forth in the present Agreement. To this end, they shall follow the steps indicated in point 7 of Annex 4.

Section 5. Operational Infractions

The Maritime Authorities shall, at the request of another Maritime Authority, make efforts to find evidence of the alleged infractions of provisions concerning the behavior of vessels provided in Regulation 10 of the International Regulations for Preventing Collisions at Sea, 1972, and in the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto. In the case of alleged infractions in connection with the discharge of noxious substances, a Maritime Authority shall, at the request of another, visit the vessel that is supposedly in infraction at port in order to obtain information and shall, whenever necessary, take samples of the alleged pollutant.

Section 6. Organization

6.1 A Committee composed of a representative of each of the Maritime Authorities adhering to the Agreement shall be created.

A representative of the ROCRAM Secretariat and one of the International Maritime Organization may attend the Committee meetings as observers. A representative of each of ROCRAM members not adhering to the Agreement may also attend the Committee meetings as an observer.

The Committee may decide to invite representatives of the Maritime Authorities which are not ROCRAM members and of international or regional organizations, either State-run or private ones, whose contribution may be deemed useful for the Committee tasks.

6.2 The Committee shall meet once a year and in any other occasion as it may deem proper.

6.3 The Committee shall:

- Develop and adopt operative regulations for the Committee, for the Secretariat and for the Information Center;

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- Undertake tasks assigned to it by the Agreement;
 - Promote by all means it may deem proper, including the organization of seminars for inspectors, the harmonization of inspections, rectification and detention procedures and practices, and the enforcement of provisions of paragraph 2.3;
 - Develop and review guidelines to carry out inspections within the Agreement;
 - Develop and review procedures for information exchange;
 - Permanently analyze other aspects related to the operation and efficiency of the Agreement.
- 6.4 The Argentine Maritime Authority shall provide a Secretariat located in Buenos Aires.
- 6.5 The Secretariat, acting upon the guidelines established by the Committee and within the limits of its available resources, shall:
- Organize meetings, circulate documents and give its support to the Committee to enable it to perform its functions;
 - Be responsible for the operation of the Information Center;
 - Facilitate the information exchange, carry out procedures as described in Annex 4 and prepare reports as may be necessary for the enforcement of the Agreement;
 - Carry out any other tasks as may be necessary to ensure the proper enforcement of the Agreement.

Section 7. Amendments

- 7.1 Any Maritime Authority may propose amendments to the present Agreement.
- 7.2 The procedure hereinafter described shall be used to amend parts of the Agreement:
- a) The proposed amendment shall be circulated to the Maritime Authorities through the Secretariat before being considered by the Committee.
 - b) Amendments shall be adopted by the majority of the two thirds of the attending Maritime Authorities representatives voting at the Committee. Should an amendment be adopted in such manner, the Secretariat shall inform the Maritime Authorities for their acceptance;
 - c) An amendment shall be deemed accepted at the end of a six-month period after its adoption by the Maritime Authorities representatives at the Committee, or at the end of another term as may be unanimously agreed upon by the Maritime Authorities representatives at the Committee at the moment of its adoption, unless a Maritime Authority notifies its objection to the Secretariat in the course of the period.
 - d) An amendment shall enter into force 60 days after acceptance or after any other period as may be unanimously agreed upon by the Maritime Authorities representatives at the Committee.
- 7.3 The hereinafter described procedure shall be applied to amend an Annex to the present Agreement:
- a) The Secretariat shall submit the proposed amendment for consideration by the Maritime Authorities;
 - b) The amendment shall be deemed accepted at the end of a six-month period from the date it was circulated by the Secretariat, unless a Maritime Authority raises an objection or requires in writing that the amendment be considered by the Committee. In both cases the procedure set forth in paragraph 7.2 shall apply.
 - c) The amendment shall enter into force 60 days after acceptance or at the end of any other period as may be unanimously agreed upon by the Maritime Authorities.

Section 8. Adoption and Signature.

- 8.1 The present Agreement is signed without prejudice to any rights and obligations derived from any International Convention.

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- 8.2 A Maritime Authority of another State in the region may adhere to the present Agreement with the consent of the Maritime Authorities which are parties hereto. Said Maritime Authority shall be added to the list of Parties and its date of incorporation to the Agreement shall be stated in a footnote. For said Maritime Authority, the Agreement shall enter into force on the date unanimously agreed upon.
- 8.3 The official languages of the present Agreement shall be Spanish and Portuguese.

Section 9. Entry into force

The present Agreement shall enter into force for each and every Maritime Authority on the date notification in this respect is given to the ROCRAM Secretariat.

Adopted at the VI Meeting held in Viña del Mar, Chile, by ROCRAM Resolution 5 (VI) dated November 5, 1992. The original document has been deposited with the Network Secretariat.