



LEGISLATION AND RESPONSIBILITIES

By Dr. James Cowley

Republic of Vanuatu Maritime Bulletin

Introduction

A major purpose of this bulletin is to ensure that the officers and crews of the Vanuatu fleet are familiar with the country's national legislation in accordance with the requirements of the 1995 Amendments to the STCW Convention. The bulletin is also intended to outline some of the responsibilities of individuals and organizations within the shipping industry with whom fleet personnel have contacts in the course of their duties.

In meeting these objectives, every attempt at clarity has been made but the situation is complicated since the individuals and organizations have responsibilities to more than one other individual or organization. Furthermore, there are two sides to every contract and relationship and in each case, these responsibilities are mutual. For example, a shipowner has responsibilities to various individuals and organizations but they have reciprocal responsibilities to him.

Vanuatu's Legislation and the Shipowner

Overview

The Republic of Vanuatu's maritime legislation is contained in the Maritime Act Cap 131 and the Maritime Regulations Order No.25. Copies of these instruments have been made available to all shipowners and to each newly registered ship since 1991. Additional copies are available on request. Authority for its implementation is vested in the Commissioner of Maritime Affairs based in Vanuatu and Deputy Commissioners based in England, Greece, Japan, Hong Kong, Singapore, Vanuatu and the USA. However, the immediate day to day responsibility for the safety and pollution matters covered in this bulletin rests with the Vice President Maritime Safety (VPMS)/Deputy Commissioner, based in New York where the 24 hour rollover contact telephone number for all incidents including port State control interventions is:

Tel: +1-212-425-9600

Fax: +1-212-425-9652

Email: email@vanuatuships.com

Basic Legislative Requirements

Basically under Vanuatu's safety and pollution prevention legislation, the shipowner is required to ensure that his ship is operated:

- a. in full accordance with defined International Conventions and Agreements;
- b. in a seaworthy condition; and
- c. he must cause prescribed reports to be made to the VP MS/Deputy Commissioner on casualties in addition to those required under the Conventions.

Conventions

In explanation of (a) above, Conventions are treaties between countries who mutually agree to observe the regulations and other provisions prescribed in them. The most important safety (e.g. SOLAS) and pollution prevention (e.g. MARPOL) instruments fall under the auspices of the International Maritime Organization (IMO). Each signatory to these Conventions is responsible to other signatories collectively (i.e., to IMO) for complying with their provisions. A list of the instruments applicable to Vanuatu ships is given in the Annex.

These instruments are being continually amended and the legislation includes the reciprocal responsibility for Vanuatu to periodically publish details of the amendments to these Conventions and Agreements in order that the ships can be maintained in accordance with all updated requirements. This information on future requirements is published in Vanuatu's system of circulars, safety bulletins and newsletters which include an IMO Calendar of future legislation.

Ship Certificates

A list of all the ship certificates which the Conventions require according to the type of ship was included in Vanuatu Maritime Bulletin VMS MB 107 on Port State Control. These certificates, if valid, should be sufficient for a vessel to trade since under the Convention system, every country's ships should comply with the requirements of the Conventions according to the size, type and age of the ship. Countries should not apply requirements above those of the Conventions to foreign ships although they may do so for their own fleet. However, some countries, ostensibly with the objective of providing additional security for their citizens but at the expense of their adherence to the Conventions, impose additional requirements. In most cases, these additional requirements are well publicized and owners can act accordingly. Unfortunately, this is not always so. In such a case, the VPMS/Deputy Commissioner should be informed immediately in order that the matter may be taken up with the relevant authority and other ships informed of the practice.

Seaworthiness

Overview

Regarding the seaworthiness requirement of (b) above, classification with one of the full members of the International Association of Classification Societies (IACS) together with compliance with the instruments referred to in (a) is accepted as a satisfactory standard of seaworthiness under Vanuatu legislation. Additionally, when an owner requests a waiver of age for registration of a vessel, a general condition survey is mandatory.

Non-mandatory inspections

Vanuatu ensures that the standards are being maintained by employing over 250 inspectors world wide to conduct non-mandatory inspections. During 1995 approximately 90% of all internationally trading vessels, excluding offshore supply vessels, were inspected. Under Vanuatu's legislation, shipowners and ships' personnel are required to present their ships for inspection and afford full assistance to the inspectors.

Shipowner's Responsibilities

In spite of the foregoing comments, the primary responsibility for ship safety rests with the shipowner exactly as it did before international regulations were introduced. Every new regulation introduced gives him a more prescribed manner in which he must maintain or enhance the safety of his ship. Compliance with the regulations does not guarantee safety. A seaworthy ship will be safe if the hatches are open in fair weather but unsafe with them open in heavy weather. Hence, the shipowner must employ seafarers competent to operate his ships safely. As in the case of ships' structures and equipment, IMO's requirements are also becoming more and more prescriptive in the case of personnel education and training e.g. under the 1995 Amendments to the Standards of Training, Certification and Watchkeeping Convention (STCW 95). In addition, non-prescriptive legislation is being introduced through the International Safety Management (ISM) Code which was the subject of Vanuatu Bulletin VMS MB 106. Whilst the ISM Code is intended to represent good management practice (including anticipation of all possible eventualities) it poses implementation difficulties and potential legal problems for the shipowner in the event of a casualty.

Prescribed Reports on Casualties

Overview

In respect of the prescribed reports referred to under (c) above, the shipowner or master is required to immediately inform the VPMS/Deputy Commissioner whenever a casualty results in: loss of life; injury causing any persons to remain incapacitated for a period in excess of 72 hours; stranding or grounding; material damage affecting the seaworthiness or efficiency of a ship; or actually physical damage to property in excess of US \$50,000.

The legislation also prescribes that the owner and his representatives must co-operate fully in any marine investigation. Failure to do so may result, in respect of the ship directly involved or any other ship of the same owner, in penalties which include: monetary fines; revocation or suspension of the Certificate of Registry; or refusal to accept registration or re-registration. Furthermore, the legislation also requires licensed officers or certificated personnel to co-operate (see "Investigations and the Obligation to Co-operate").

Penalties

Vanuatu gives every assistance and encouragement to its shipowners to meet its standards and their responsibilities and the great majority respond positively. Non-compliance risks fines and other penalties with the ultimate sanction of deletion from the register. The need to impose penalties is rare but, in 1995, two ships were deleted from the register whilst one additional vessel responded positively during a one year probationary period.

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Website: www.vanuatuships.com; E-Mail: email@vanuatuships.com.

Classification Societies, Shipowners and Flag States

Overview	Shipowners may employ Classification Societies to conduct surveys for statutory and non-statutory (i.e. practical) purposes. The practical purposes include "classing" the ship as meeting the society's standards to facilitate insurance and to obtain expert services to maintain the ship's performance and protect their assets.
Delegation of functions.	For statutory purposes, i.e. surveys for issue of a statutory certificate (International Load Line Certificate, Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, etc.), shipowners may only employ those Classification Societies approved by the flag State. This restriction is because, under the IMO Conventions, flag States may (all do so) delegate survey functions to "recognized organizations" (generally classification societies) but neither they nor their shipowners may delegate their responsibilities for safety. Consequently, Vanuatu is selective and recognizes only those societies which meet IMO's Guidelines.
Responsibilities of Class Societies	From the above discussion, it will be noted that the society has responsibilities to both the flag State and to the shipowner but this should not result in a conflict of interests. It is, however, essential that the responsibilities of, and the responsibilities to, the societies are clearly defined. In Vanuatu's case, the authorization to carry out functions is included in a comprehensive formal agreement which specifies its policy of ensuring that its ships are both safe and seaworthy and defines how its surveyors can assist in carrying out this policy and meet the requirements of the Conventions. To enable the surveyors to fulfil their responsibilities they are: empowered to board any ship to undertake a general inspection without permission; given clear guidance regarding interpretations of the regulations, equivalent solutions and provision of advice to the Commissioner in the event of an application for an exemption; authorized to take action whenever the ship does not comply with its certificates or its manning is deficient in respects required by its Safe Manning Certificate; and to verify that all personnel hold the certificates prescribed by the Commissioner.
Responsibilities to the Class Societies	The responsibilities to the classification society include, where relevant, those of the master, shipowner, port State control officers, to call in a surveyor whenever either classification or appropriate statutory requirements are not met. Vanuatu's Deputy Commissioners have also accepted the duty of regularly consulting the societies and inviting their surveyors to Vanuatu's Safety Seminars held in New York and overseas.

Port State Control and Flag States

Overview	As indicated earlier, under the Convention system the flag State is responsible for enacting national legislation which covers the Conventions' requirements and for ensuring that its shipowners comply with this national legislation. The flag State is assisted in this task by the classification societies who may be authorized to conduct surveys and issue statutory certificates on its behalf.
Responsibility of PSCOs	It is recognized by IMO that a flag State cannot maintain a presence in all foreign ports - in fact most flag States have no overseas representation. Consequently, the Conventions provide that ships in a foreign port may be subject to inspections by Officers duly authorized by the port State (see Vanuatu Bulletin VMS MB 107 on Port State Control). In brief, the responsibility of the port State control officer (PSCO) is to follow the provisions of the Conventions. If the port State decides to conduct an inspection, this should be limited to document examination (e.g. statutory certificates, oil record book, officers' certificates) unless the PSCO has "clear grounds" for believing either that the condition of the ship and its equipment are not in accordance with the certificates or, due to specified reasons, the ship's personnel may not be competent to perform their duties.
Need to Inform	In such cases, the Conventions require that the PSCO informs the shipowner forthwith. Bringing the defects to the shipowner's notice relieves the PSCO of responsibility for the ship's subsequent safety. Conducting a full inspection in the absence of "clear grounds" (and thus deciding that the certificates issued by, or on behalf of, the flag State do not represent that ship complies with the Conventions) immediately incurs responsibility. For this reason experienced PSCOs inform the shipowner and, if the defects involve class items, the classification society surveyor.

Ship's Personnel, Shipowners and the Flag State

Articles of Agreement

To ensure that all concerned are aware of their mutual responsibilities, Vanuatu's legislation requires that Articles of Agreement between the master and other ship's personnel are signed and adhered to by both parties to the Agreement. In view of their respective responsibilities, the Articles provide that the shipowner and master may issue such rules and regulations as may be necessary for the safe and proper operation of the ship. The Articles and the maritime legislation include reciprocal responsibilities to the ship's personnel who "shall conduct themselves in an orderly, faithful, honest and sober manner, and shall at all times be diligent in their respective duties and obedient to the lawful commands of the master, or of any person who shall lawfully succeed him, and their superior officers, in everything relating to the vessel, its stores and cargo, whether on board, in boats or on shore. In consideration of this service, the master agrees to pay the undersigned seamen the wages expressed herein and/or set forth in supplemental provisions and/or agreements".

Investigations and the Obligation to Co-operate

In brief, the Maritime Regulations and the Articles cover the rights and obligations of all the ship's personnel and their conditions of employment. In particular, in the event of a marine casualty, marine pollution incident or offence, the Commissioner or Deputy Commissioner will institute an investigation and all personnel are obliged to co-operate. Failure to do so may result in any or all of the following consequences: suspension or revocation of licences or other certification held, before or after expiration; at the discretion of the Commissioner or Deputy Commissioner, a monetary penalty not exceeding US \$10,000. If the investigation reveals that the cause or any contributory causes of the casualty or circumstances of the offence reveal any act of misconduct, inattention to duty or negligence, or violation of any law or regulation, appropriate action will be taken.

Concluding Comments

Attitude of Courts

The fair minded reader will probably be surprised at the extent of the shipowners' responsibilities and liabilities for the actions of other parties in the responsibility network. It seems unjust that the courts should, for example, hold them responsible for the consequences of, say, the failure of a shipyard fitter to correctly assemble a piece of equipment or a failure on the part of one of his employees or agents. In such cases, shipowners generally find it impossible to invoke the defence of "due diligence" as the courts appear unwilling to diminish the shipowners' non-delegable duty to maintain the seaworthiness of their vessels.

It seems similarly unjust that the whole of a flag State's fleet may be considered substandard because a single ship incurs three PSC detentions or that all the ships of a certain type must be re-designed because the crew of one such ship failed to follow good seamanship procedures. In this imperfect world, responsibilities and legislation are inextricably linked.

Effect of Penalties.

Although the owner may be thousands of miles away, his responsibility is held to be undiminished on the grounds that his masters, crews and agents should be competent and act responsibly on his behalf. Legislation has long been in place to penalize irresponsible or unseamanlike behaviour but, at best, this is a post accident procedure which may deter others. Consequently, recent legislation (e.g. STCW 95) is aimed at prescribing higher standards of training and certification in an attempt to reduce the very high proportion of accidents due to human error, although it is recognized that in many accidents very highly trained personnel were involved.

Casualties and Legislation

Similarly, such a continual volume of legislation applicable to ships and their equipment is being enacted in an attempt to reduce or mitigate the effects of casualties that the law of diminishing returns must be applicable. Yet, in most cases, the causes are the failure of individuals to meet their responsibilities and so long as this situation prevails, casualties will occur and legislation will follow (conversely - no casualties, no legislation). If we are to benefit from past experience, all concerned must be aware of relevant legislation and their responsibilities thereunder. It is hoped that this Bulletin has assisted in that objective.



LEGISLATION AND RESPONSIBILITIES - ANNEX

By Dr. James Cowley

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Summary Note on Vanuatu's Legislation

Vanuatu's legislation is contained in the Maritime Act Cap 131 and the Maritime Regulations Order No.25. Copies of these instruments have been made available to all shipowners and to each ship registered since 1991. Additional copies are available on request. An outline of the varying responsibilities of organizations and individuals under these instruments is provided in Vanuatu Maritime Bulletin VMS MB 108.

The legislation prescribes that shipowners must comply with the provisions of all international safety and pollution prevention Conventions in force and that its ships must be classed by one of the full members of the International Association of Classification Societies. To assist shipowners in meeting their responsibilities, Vanuatu is required to provide information on future and current international regulations.

In addition to the above requirements, Vanuatu's legislation requires that all casualties involving: loss of life; injury causing absence from duty for over 72 hours; groundings and collisions; and material damage affecting seaworthiness; be immediately reported in order that investigations may be promptly conducted.

The rights and responsibilities of ships' personnel are included in the Articles of Agreement which must be signed when joining a ship. Ships' personnel are required to co-operate with Vanuatu's inspectors conducting non-mandatory inspections; classification surveyors operating under its formal Agreement; casualty investigations; port State control (PSC) officers and any person having legitimate business on board their ship.

Any defect affecting the safety or seaworthiness of a ship must be reported in the first instance to the Vice President - Maritime Safety* and, if it involves an item subject to classification society survey, to the relevant society.

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INTERNATIONAL CONVENTIONS AND INSTRUMENTS RATIFIED BY THE REPUBLIC OF VANUATU.

IMO CONVENTIONS

- Convention on the International Regulations for Preventing Collisions at Sea, 1972 as amended (COLREG 72);
- International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS (amended) 1974);
- Protocol of 1978 relating to International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT (amended) -1978);
- Protocol of 1988 relating to International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT (HSSC) 1988);
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW (amended) 1978);
- International Convention on for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL (amended) 73/78);
- Optional Annexes III and V of MARPOL 73/78;
- International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969);
- Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1976) ;
- Athens Convention relating to the Carriage of Passengers and their Luggage by sea, 1974 (PAL 1974);
- Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL PROT 1976);
- International Convention for Safe Containers, 1972, as amended (CSC (amended) 1972);
- International Convention on Load Lines, 1966 (LL 1966);
- Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT (HSSC) 1988);
- International Convention on Maritime Search and Rescue, 1979 (SAR 1979);
- International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969);
- Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL (amended) 1965);
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, (FUND 1971);
- Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1976);
- Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976);
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION 1969);
- Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended (INTERVENTION PROT (amended) 1973).
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972, as amended (LC (amended) 1972);

NON-IMO CONVENTIONS

- The Convention on the International Regime of Maritime Ports (1923);
- The International Convention relating to the Limitation of Liability of Owners of Seagoing Ships (Brussels), 1957.