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PUBLIC ADMINISTRATION OF SAFETY OF NAVIGATION: MULTI-LEVEL CHALLENGES AND ANSWERS

ABSTRACT

The article addresses the advantages and shortcomings of multi-level system of ensuring safety of navigation. The principle of the navigation safety is considered as fundamental determinant of changes in maritime laws and regulations at the international, regional and national levels. At the same time, the most important feature of the modern system of ensuring the safety of navigation is its administration at the national level, where the states and

their authorities act simultaneously in several guises: the flag state, the port state and the coastal state. Each such hypostasis has its own set of rights and obligations. The peculiarities of the process of regionalization of the PSC regimes and the associated emergence of regional peculiarities in procedures and practices are emphasized separately. This trend has both positive and negative effects on the enforcement of regulations in the field of safety of navigation. The problem of interaction between different stakeholders is examined on the example of countering substandard shipping. The practice of Ukraine as to implementation and realization of its liabilities under the international agreements in the sphere of ensuring the navigation safety is being analyzed. Emphasis is made on the necessity for not only declarative, but also a real compliance with the requirements of the principal imperative for maritime activity to ensure navigation. It is pointed the importance of the construction of organizational national procedures of implementation of the international standards of ensuring the navigation safety on the basis of the principle of “good governance”. In addition, international cooperation is key to improving the effectiveness of national PSC systems. Moreover, such cooperation should go beyond regional MoUs in order to implement the best world practices and procedures.

The key words: navigation, safety, public administration, provision of maritime safety, forms, methods, instruments of public administration.

Introduction

Navigation and work at sea have always been the sphere of high risks. The sector losses are correlated with the over-intensity of the maritime transport corridors, that cover about 90% of international trade. For example, according to the data for the period from 2013 to 2019, that was collected by International Union of Marine Insurance (IUMI) from 22 national insurance associations, it was 6,800 records of major losses (those over US\$ 250,000) totalling US\$ 10.2 billion (IUMI Stats, 2020, p. 31).

Active international efforts in the second part of the 20th century led to emerging of current standards of navigation safety. These standards are considered to be sophisticating enough to provide constant decrease of shipping losses. The sector saw the number of reported total shipping losses of over 100GT decline

again during 2019 to 41 – the lowest total this century and a close to 70% fall over 10 years. Improved ship design and technology, stepped-up regulation and risk management advances such as more robust safety management systems and procedures on vessels are some of the factors behind the long-term improvement in losses (Safety and Shipping Review 2020). Reviewing and improving existing provisions is a major challenge of International Maritime Organization (IMO) activities, and the national regulators shall create and work out the proper mechanism of their implementation.

The safety of navigation is a multidimensional issue. However, the basic structure may be assessed through the composition of the IMO's Maritime Safety Committee (MSC), which “deals with all matters related to maritime safety and maritime security which fall within the scope of IMO, covering both passenger ships and all kinds of cargo ships” (Maritime Safety Committee (MSC)). Its structure includes the Sub-Committees on:

- Carriage of Cargoes and Containers (CCC),
- Human Element, Training and Watchkeeping (HTW),
- Implementation of IMO Instruments (III),
- Navigation, Radio-communication and Search and Rescue (NCSR),
- Pollution Prevention and Response (PPR),
- Ship Design and Construction (SDC),
- Ship Systems and Equipment (SSE).

All above mentioned structural bodies of MSC represent specific fields of maritime safety. The safety itself “can be defined as the state of the marine system (ship, person, surroundings) in which none of its elements for any given reason threatens any other element of the system” (Formela at al., 2019, p. 286). Thus, combination of all above mentioned specific fields determine the operation conditions for vessels as well as the influence of vessels upon other subjects of navigation and marine environment.

The current system of shipping policy-making rests within an institutional framework characterized by those at international, supra-national and national level, with variable inputs from both regional and local bodies (Roe, 2008, p. 265). Which, in its turn, stipulates the same multilevel approach to the ways and means of enforcement the safety of navigation legal standards. Primarily, the efficiency of said standards is provided by port states, flag-states, and coastal states. At the same time, the global control mechanism of their compliances has been formed and the procedures of their application have been established. And the states are subjects of audits in accordance with the special procedure.

However, the practice of some countries up till now fails to meet the aims of the basic international maritime agreements – UNCLOS'82, SOLAS and STCW, or for a great extend distorts them. For example, the first consolidated audit summary report (CASR), prepared by IMO in accordance with the Procedures for the IMO Member State Audit, was based on the information from eighteen mandatory audits that were completed in 2016. That CASR included total of 290 findings and observations identified during the audits, concerning states' non-compliance in such spheres as strategy, organization and legal system, with the latter dealing mainly with the incorporation of mandatory IMO instruments into national law (Circular Letter No. 3772. September 4, 2017. IMO Member State Audit Scheme – Consolidated Audit Summary Report (CASR)).

Besides, in many cases national administrations basically create an illusion of compliance of the national systems of ensuring the navigation safety with the international standards. Sometimes the lack of information accompanied with the changes to the international maritime agreements play a facilitating role in it. Such illusions have both external and internal focus. The most indicative for the case is the situation with disclosures of IMO's audit reports by member states. Only two countries agreed to disclosure out of the

50 countries audited in 2016 and 2017, and in prior years when audits were voluntary, only about a dozen reports were made public out of the 152 audits done since 2006 (McIntosh, 2018). That happens despite the IMO's efforts to facilitate transparency of audit results. In particular, IMO has launched a module containing information on audits carried out under the IMO Member State Audit Scheme on its web-based information portal "Global Integrated Shipping Information System", specifically designed serve as the vehicle for the release of audit reports (A new module containing information on audits carried out under the IMO Member State Audit Scheme has been launched). In aggregate, domestic organizational issues often remain hidden from the attention of both international actors and national subjects involved in maritime activities.

Thus, the efficiency issues of administration of navigation safety standards should be simultaneously dealt at different levels: international, regional and national. At the same time, the sources for particular ways and means of tackling the issues of poor national administration of navigation safety are also located at deferent levels of governance.

Methodology

This study is aimed at analyzing the ways and means of improving public administration of maritime safety based on the concept of multi-level governance in this area. With this respect, the administration of the rules and procedures defined by international instruments is considered as the activity of state and non-state actors at the international, regional and national levels. As an empirical component, data on the differences between individual PSC regimes are used. In addition, as a practical example, the experience of the Ukrainian PSC system is utilized, based on the reports of shipping companies within BIMCO, P&I associations, and the Maritime Anti-Corruption Network.

1. The principle of ensuring the safety as basis of legal regulation of navigation

The principle of ensuring the navigation of safety is a specific principle, which has influenced the emerging current international instruments on the law of the Sea. It determines the original ideas of the whole complex of legal provisions that regulates navigation. This principle is included in the international agreements, technical and other documents of international institutional, domestic legislation of states. At this point it is necessary to underline that all the relations, connected with shipping, either public or private, are subject to imperative influence of the principle of safety of navigation. In addition, this principle is one of the oldest.

Incorporation of the principle of navigation safety in the international agreements took place from the very beginning of their development. For example, the Article 5 of the Statute on Freedom of Transit, 1921 defines the following:

“Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and good stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered” (Art. 5).

Convention on the High Seas, 1958, states the following

“1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard inter alia to:

(a) The use of signals, the maintenance of communications and the prevention of collisions;

(b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;

(c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance” (Art. 10).

UNCLOS'82, reproducing these provisions in the Articles 94, 98, contains also some new provisions as to providing the safety of navigation, stipulated in its Articles 21, 22, 24, 60.

A body of formal and informal rules was established over time; they brought under regulation different aspects of safe vessel operation and other maritime activities. These rules have an imperative and preventive nature: they became the reaction of maritime society to dreadful incidents and disasters at sea in order to avoid their occurrences in the future. They are based on the belief that it is possible to avoid the development of dangerous situations with vessels and reduce the accident incidence rate of the naval forces to the level accepted under the present conditions by the way of implementation of the prohibitive measures, imitating provisions and rules (Torskij, Topalov, Pozolotin, 2007, p. 35).

However, in course of time the technique and technology of maritime traffic, cargo, construction of vessels has been changed and, consequently, new reasons of emergency situations have appeared, requiring the new provisions and rules. Every new accident at sea and emergency situation case amplified the navigation experience and became the material for exploring and making changes to the applicable safety documents. Such approach becomes effective enough and spreads in the activities of IMO and other maritime organizations.

For example, the present the reasons of vessel accidents often include fatigue factors of the shift officers, caused by the physical, psychological and information overload in the process of performing their duties. As a result, the “prescribed” approach to the navigation safety, that has been used in the maritime sector for long and successfully, is becoming less and less effective under present circumstances (Torskij, Topalov, Pozolotin, 2007, p. 36).

Concern with the fatigue factors of seafarers led to the preparation and adoption of the special IMO Resolution, dated 4.11.1993, A.772(18) – “Fatigue factors in manning and safety”,

where it is determined that one of the effective measures of the fatigue cumulation problem among the seafarers shall be the method of determination the fatigue level before a vessel leaves the port. In the Resolution of 19.11.1981, A.481 (XII) "Principles of safe manning" IMO strongly urged the governments-members to take the necessary measures for securing the fact that every maritime vessel is constantly in possession of the document issued by the administration, stating the minimal crew size for such vessel. These documents were repeatedly revised. Significant dynamics of their changes reflects quick IMO reactions to the changeable conditions of navigation.

But the cooperation of the states regarding the development of legal standards of ensuring the navigation safety for now, unfortunately, cannot overcome the general negative tendency of further increasing of absolute accident number, loss of lives, vessels, cargoes, environment pollution. Accident quantities and maritime disasters are still increasing, despite the wide implementation of ship and coastal radio navigation facilities, putting into operation of the modern vessels, designed for any weather conditions. Despite the versatile problems of the accident incidence rate, about 80 % of all accidents at sea were caused, to the opinion of IMO specialists, by the faults of navigators, other crew members, marine pilots, operators, dispatchers and others. According to the data of the The London P&I Club, the human-caused accidents make no less than 65-70%. So, when analyzing factors, having negative influence on the safety of navigation, the so-called "human factor" prevails (Report of Maritime Safety Committee). Exactly the "human factor" is acknowledged as the main reason of wreck of the passenger cruise liner Costa Concordia with more than 4200 persons on board and allowed the collision with the rock near the Giglio island, Tuscany.

Besides, IMO hasn't yet drawn up the detailed mechanism to control the implementation of the provisions adopted. If during

decades IMO attempts were directed on the development and adoption of international agreements, establishing the requirements for ensuring the safety of navigation, then for the last years the situation has changed completely. The international society has come to understanding that it is not enough to establish the standards, great attempts are necessary to implement them in everyday practice of commercial navigation and control over their implementation. The central part in this process is assigned for the control by a port-state (Skrynnik, 2012, p. 262).

Therefore, firstly, it not enough to develop the international and legal standards of navigation safety and to oblige vessel crews and other international shipping members to strictly fulfill them. Secondly, it is necessary to constantly control such fulfillment, using as well specially developed international and national enforcement mechanisms to follow the imperative international and legal together with the national standards of the navigation safety. Understanding the necessity of such control and even enforcement to follow safety navigation ensuring, states cooperate during working out of the corresponding rules and procedures (Art. 8 of the General directions of state cooperation in the sphere of ensuring the safety of international navigation) (Vorob'ev, 2006, p. 12), take measures with regards to the effective realization of international standards in navigation, that had a special impact on formation of the complex approach for ensuring the navigation safety.

Most of international maritime agreements personalize the complex approach to ensuring the safety of navigation: usually they have provisions on technical, operational and navigation safety. But the most vividly such approach is represented in the globally acknowledged and supported by most of modern members of maritime sector procedures of the safety control and port state control that are based on ISM Code and Paris MoU.

2. Complex approach to ensuring the safety of navigation: the impact of regionalisation

Developments of international maritime safety regulations let significant shift in both rulemaking and administration processes in the field towards the a “multi-level governance approach characterized by the jurisdictional framework of the static approach but focusing more on multi-negotiated policies between all jurisdictional levels and also encouraging the active involvement of a full range of stakeholders” (Roe, 2009, p. 54) The idea of involvement of different stakeholders has been reflected in a number of IMO’s instruments.

For example, the ISM Code, that was adopted as resolution A.741 of IMO Assembly on the 4th of November, 1993 and added an Appendix to the section IX SOLAS, in particular, stipulated, that,

“The objectives of the Code are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment, and to property.

Every Company should develop, implement and maintain a safety management system (SMS) which includes the following functional requirements: a safety and environmental-protection policy; instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation; defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel; procedures for reporting accidents and non-conformities with the provisions of this Code; procedures to prepare for and respond to emergency situations; and procedures for internal audits and management reviews” (Art. 1.2, 1.4).

In general, ISM Code adoption has fundamentally changed the traditional understanding of navigation safety. Shipping companies started to bear key responsibility for implementing complex safety control system. And in cases of non-compliance, they take risks of expelling from the maritime business.

But the most considerable constituent of the complex approach for ensuring the safety of navigation is considered to be a Port State

Control (PSC), as inspection of vessels for the purpose of compliance with the requirements of the international conventions in force (Kolodkin, Guculjak, Bobrova, 2007, p. 500-501). This type of control appeared as the defense, as the reaction to the improper fulfillment of the control by other subjects involved. PSC is viewed as a safety net designed to compensate for the shortcomings of ship owners, flag states, and classification societies (Yuan et al., 2020, p. 13).

At the same time PSC became the field, where the process of regionalization of navigation safety emerged. The incident of the tanker “Amoco Cadiz” on the 16th of March, 1978, in the English Channel triggered the development of multiple regimes of PSC (Vlasov, Buev, 2016, p. 107) and caused the adoption of the Paris memorandum of understanding (MoU) on PSC.

Paris MoU provisions strengthened the control of a port state with regards to meeting the requirements of the navigation safety standards, thus producing a considerable result. Based on the example of this memorandum, the other regional memorandums were adopted that made the administrations establish and support the effective system of port state control with the purpose of providing, without any flag discrimination, that foreign commercial vessels, visiting ports of their states, were in full compliance with the provisions established by Load Lines 66, SOLAS, MARPOL, STCW, COLREG, TONNAGE, The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), The Maritime Labour Convention, 2006 (MLC, 2006), International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001, BUNKERS 2001, BWM 2004.

The wide-scale adoption of PSC was “an attempt to develop an exception to the competitive relationship of ports within the same region” and had “as its foundation and operational ethic cooperation amongst regional ports” (McDorman, 2000, p. 209). The importance of this cooperation was acknowledged by IMO: IMO Assembly at the 17th session in 1991 adopted the Resolution “Regional cooperation in the control of ships and discharges”

(A/Res.682(17), stated that such cooperation all over the world will increase the meaning of the international standards. The states that take part in the control, to be performed by a port state, are suggested to support it with regards to reaching regional arrangements and studying the issues of the international cooperation to secure information system and information exchange as to the control to be performed by a port state.

With the main goal to is to ensure that “all the regional ports apply and enforce the same rules in a similar manner to visiting vessels” (McDorman, 2000, p. 209), respective MoUs have become the regional (supranational) centers of generating common recommendations with respect to practices of evaluating compliance with standards and application procedures prescribed by IMO’s instruments. This process, considering initial idea of regional cooperation, is deeply influenced by regional and national peculiarities of public administration and basic traditions and principles of governance. Such functions of MoU are boosted by its nature to “simply expresses a convergence of will between the parties, indicating an intended common line of action, rather than creating a legal commitment” (Bang & Jang, 2012, p.172). The by the fact that MoU are concluded between maritime administrations makes direct arrangements exchange of practices even more simple, not involving traditional state mechanisms of implementing international rules.

Besides, PSC regimes have become an important source for IMO’s own rulemaking process, supplying “best practices” for drafting global rules and regulation. The PSC regimes feed IMO with PSC information, which has potential significant relevance to the IMO regulatory process, which basically include:

- annual reports on inspections and the outcome of concentrated inspection campaigns;
- a PSC module on the Global Integrated Shipping Information System (GISIS) (Port State control regimes move to boost collaboration, harmonization and information sharing (2017).

Currently “regionalization” of procedures and inspections outcomes within MoU has become a proved fact. Due to the research of differences across PSC Regimes the “treatment of vessels across port state control regimes differ although some groupings of regimes across the ownership groups can be found” and also “there is a difference in the emphasis that is placed by the regimes during their inspections” (Knapp, van de Velden, 2007, p. 9–10).

At the same time, the soft nature of MoU does not always provide the proper level of conformity, which is the issue even for the one of the most developed Paris MoU. Due to the study of harmonization level within the Paris MoU it was found two clusters of factors “Inspector Level” and “Member State Level”, which could lead to discrepancies during a Ship Inspection concerning differences in inspection procedures and differences in inspection outcomes (such as deficiencies and detention criteria):

| Inspector Level | MS Level |
|--|---|
| Background of the PSCOs Cultural influence Professional Judgment Attitude/Approach on Board | Use of Teams on Board Resources (Human & Financial) Local/National Legislation Training of PSCOs Internal Administrative Structure Political Influence/Support |

Table 1. Input and Output of a discretionary ship inspection system. (Graziano, at. al., 2017, p. 221).

Thus, we can assume, that PSC regimes have a potential to preserve the existing characteristics of members public administrations and at the same time to create and also preserve “regional” peculiarities. In the aspect of ensuring fair competition between the ports of the region, such regimes’ conservation may have positive effect, so that

“no single port seeks or acquires competitive advantage by offering to overlook sub-standard vessels” (McDorman, 2000, p. 209). At the same time, in the aspect of approximation to certain “better standards”, this may have a partly negative effect, since it has the potential to preserve various kinds of shortcomings of national maritime administrations. The latter is especially noticeable in the example of “peripheral” regimes, such as the Black Sea MoU. Since many of the shortcomings, for example, of the Ukrainian or Russian PSC systems (including issues of low efficiency and lack of transparency and integrity), in such conditions do not tend to improve. The “variation among the regional PSC MoUs creates an inevitable” problem, which is also “is an intractable problem because there are a number of operational limitations in each region” (Bang & Jang, 2012, p. 184).

3. Safety standards for prevention of substandard shipping: combined responsibilities

PSC provides strong support for reducing of substandard shipping. In fact, maritime vessels that have operational non-compliances are real danger for navigation and maritime environment. As a rule, such vessels, besides the weaknesses in design and equipment wear, perform the national and international standards on information safety not in full, crews don't have necessary certification documents (Vilskyi, Ben, 2015). The Resolution A.1119(30) of December, 6, 2017, specially gives the following notes of such vessels:

“Substandard ship: A ship whose hull, machinery, equipment or operational safety is substantially below the standards required by the relevant convention or whose crew is not in conformance with the safe manning document” (Art. 1.7.10).

The procedures, stipulated in the Resolution A.1119(30) regarding substandard vessels, are very informative and supplemented by the Appendix 2 that refers to their detentions. The new resolution displays all changes to the new IMO documents, that became

effective after 2011. Particularly, when performing the inspections of vessels on the basis of MLC requirements, 2006, the inspectors of state port control are guided by the OLI document “Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention-2006”. The determination of “Valid certificate” was changed with regards to the acknowledgement of electronic certificates as well as paper certificates. The Section 2,2 gives additional explanations as to e-certificates taking into account the circular note FAL.5/Circ.39/Rev.2 “Guidelines for the use of electronic certificates”. The Appendix 7 includes additional paragraphs regarding the entrance to the closed premises and rescue activities from them. The updated Appendix 8 gives recommendation as to ISM Code. Considerable changes are included to the Appendix 11 as to the seafarer certification checks, crew staffing and rest period of their members (Plachkova, 2019, p. 26).

It should be admitted that control strengthening of vessels from a port state stimulates a flag-state to be concerned about the quality condition of the commercial shipping. This challenge has not so much legal, but social and economic, political and even psychological character. In fact, a state being in the “Black list” of Paris MoU has negative impact on the shipping reputation of the country, don’t strengthen international image of a flag-state, but causes often and detailed, long-term and burdensome inspections of the commercial shipping (Dudar, 2011, p. 416). But it has to be noted, as the control in public side is powered by flag state control and PSC, their existence is closely related and complementary. Their relationship is when one control is stricter, it will help another. The problem arises when the proportion of PSC is more than flag state control, or when PSC is more powerful than flag state control. This might be an unhealthy relationship since the ultimate control is on the flag state, for no reason that PSC may replace the power of flag state. Imagine in an archipelago country like Indonesia where PSC is absence in domestic shipping, the flag state should take all control

functions by themselves. Therefore, the atmosphere of recent control must be gradually shifted to proper position. It does not solely mean that PSC is less needed than flag state control, but there should be a development of joint framework between port state and flag state, where the sharing of responsibility is shared proportionally (Fikri, 2007, p. 78–79).

PSC practice, that is carried out by the authorities of a coastal state, in some cases can even neutralize the neglected points, made by a flag-state. At the same time, carry-out of port control should not be too burdensome, since unjustified delay in a vessel departure can raise the liability for damage, caused by such delay. The authority of a port state – member of memorandum shall use only those agreements, which became effective and this state is a party hereof. It is obliged to check the certificates and documents, connected with the requirements of the stated international agreements. Should on shipboard be any discrepancies to the international rules that are deemed to be a real threat for safety, people health and environment, then the authority of a port state makes arrangements for the risk to be eliminated before a vessel is allowed to get underway, and for this purpose uses the corresponding measures, even to the extent of detention of a vessel. If the stated discrepancies cannot be eliminated in an inspection port, then a vessel can be allowed to go to the other port provided that any suitable conditions are met, with a view not to expose the safety, people health and environment to groundless danger (Plachkova, 2017, p. 274).

Consequently, the standards and procedures (protocols) to exercise PSC and navigation safety control by a flag-state for the present moment is considered to be sufficiently assured obligatory international and national legal orders. Their simultaneous usage will consequently provide for the necessary level of navigation safety. However, even along with the effective PSC practice there is still the necessity for UN Convention on Conditions for Registration of Ships 1986 to come into force, that, to our opinion, will help to “start

working” better and increase efficiency of real connection between a vessel and a state of its registration (Plachkova, 2019, p. 27).

4. Meeting international standards as the key to safety of navigation: the challenges for Ukraine

It is impossible to ensure the safety of navigation safety without the proper commonly recognized legal regulation and effective control of national of states and its authorities. Dedicated regulations and its administration are key factors in the system of respective international and national mechanisms. The importance of international component of safety regulations in maritime are based on three facts:

- navigation takes place in almost the same way in all countries and the existence of international regulations causes to avoid the existence of different legal regulations, which would lead to dangerous and unsafe shipping;
- international regulations prevent the international shipping industry to meet contradictory national safety regulations for the construction and operation of vessels;
- international conventions set up minimum standards for regulation of competition between States (Grdinic, 2016, p. 6).

Thus, internationalization of maritime safety regulations created the necessary basis, on which national systems of the legal regulation and administration in the field are established and develops. National mechanisms, in turn, become an organic part of the global system of ensuring the navigation safety.

In accordance with the Convention on the High Seas of 1958, UNCLOS’82 and other agreements the states are obliged to provide the navigation safety. States and their authorities are to use all possible means in order to avoid emergency situations and put in place the arrangements necessary to meet the international standards of navigation safety. In particular, above mentioned international instruments underline the mandatory nature of public administration

of this sector. The requirement is applied to states in all guises (flag-states, port states and coastal states). With the exception of land-locked countries, states typically perform all three functions and have the increased level of responsibility and significant liabilities in the sphere of ensuring the navigation safety.

Ukraine has access to two seas (Black Sea and the Sea of Azov), possesses the network of 14 seaports, and is among the top five countries-suppliers of workforce to the international maritime labor market. However, the maritime administration in Ukraine experiences a lot of flaws in its day-to-day business. The attempts to deal with the issue basically are limited to the multiple organizational “re-loads” that have very limited effect for the overall performance. However, every shipper coming to Ukrainian ports faces the bureaucratic and unfair system of the Ukrainian Port State Control (Sukachev, Dolya).

Indicatively, that in 2020 the Maritime Anti-Corruption Network (MACN) has expanded its anti-corruption ‘Help Desk’ concept to Ukraine’s ports and terminals. The primary objective has been “to make it easier for a ship’s Master to reject and ‘Say No’ to corrupt demands when calling Ukraine” and “to work collectively to develop tools, and to share best practice and lessons learned on how to reject demands in Ukraine” (Maritime Anti-Corruption Network Expands “Help Desk” Concept to Ukraine (2020)).

That event was preceded by more than 140 incidents of improper demands in Ukrainian ports recorded by MACH Anonymous Reporting mechanism for period from 2016 to 2020. The typical peculiarities of such incidents, that the shipping industry faces, are:

- challenges are connected to documentation and on-board practices (e.g. waste disposal, ballast water discharge);
- Port Authorities, customs, health and ecological authorities are the main government representatives making corrupt demands;
- requests for large cash payments and cigarettes are the main kinds of demand;

- the demands tend to be associated with threat of fines for alleged non-compliance and delays of the vessel;
- the majority of the incidents are reported from Yuzhny, Odessa and Nikolaev (Mykolaiv) ports, but reports are coming in from several other ports as well (MACN Baseline Survey).

Besides, the problems with informal practices with ballast waters control in Ukrainian ports had been repeatedly reported by BIMCO and Japan Ship Owners' Mutual Protection & Indemnity Association (Rasmussen, 2018).

Overall, there are a significant number of complains, that Ukrainian PSC has adopted “detention for the detention” practices, whereas masters and shipowners are proposed to pay specific amounts of money directly, or to use services of agents, specified by authorities, to avoid possible detention of fines (Kasianenko, 2017). This basically put shipowners in a complex situation of balancing expenses, whereas informal payments or imposed services are on the one side and possible loses from detention or fines – on the other.

The above-mentioned issues with PSC are accompanied by the corruption scandals in the sphere of seafarers' certification. During 2020 the problem of acquiring the seafarer document package received the widespread publicity (Sokolov, 2020). It was caused by several-fold increase in the prices for the preparatory courses and by the necessity to apply to the special “agents” to get an access for taking a qualifying exam. It is still unknown whether or not the objections of seafarers and human rights defenders will be effective. But the social aspect of ensuring the navigation safety, known as human factor, is already getting worse. In fact, seafarers, exhausted by the administrative problems, can hardly provide steady operation of vessels.

The strengthening functions of Ukrainian state agencies in the sphere of ensuring the safety of navigation in is proved by key program documents: the Maritime doctrine, the National transport strategy and the Strategy of Development of sea ports. But in

practice said documents are merely declarations. However, The Sustainable Development Goals adapted for Ukraine (2015–2030) include at least two targets specifically dealing with the issues discussed. The target 14.1. “Reduce marine pollution” of the SDG “Conserve Marine Resources”, in particular addresses application of instruments for control and management ships’ ballast water and sediments (Sustainable Development Goals, 2017, p. 98–99). Also, the target 16.6. “Reduce the scale of corruption” of SDG “Peace, Justice and Strong Institutions” make a strong emphasis on addressing fundamental causes of corruption, “including the high level of vulnerability to corruption of the licensing and regulatory system” (Sustainable Development Goals, 2017, p. 113).

There are also suggestions that the situation for weak regimes such as the Abuja and Black Sea MoUs may be improved through enhanced cooperation with the more advanced regional MoUs, which may include:

- joint ministerial meetings to enhance the exchange of information;
- annual meetings of all the MoUs’ PSC Committees, hosted by the IMO in order to coordinate activities;
- an increase in technical and financial assistance such as training inspectors (Bang & Jang, 2012, p. 184).

Considering above mentioned it might be natural for Ukraine to consider joining the Paris MoU to get the direct access to its principles and practices. At least another Black Sea state – Bulgaria is the member of the Paris and Black Sea MoUs simultaneously.

Further development of Ukrainian PSC can be also achieved within the European integration processes. The Article 411 of EU-Ukraine Association Agreement (2014), provides close cooperation towards integrated maritime policy, particularly through efforts to improve the maritime safety and security measures at sea. Under that Article, taking into account EU – Ukraine cooperation in the spheres of fisheries, transport, environment and other sea-related policies, the

Parties shall also develop cooperation on an integrated maritime policy, in particular: endeavoring to improve maritime safety and security measures and to enhance cross-border and cross-sectoral maritime surveillance in order to address the increasing risks related to intensive maritime traffic, operational discharges of vessels, maritime accidents and illegal activities at sea building upon the experience of the Coordination and Information Centre in Bourges.

Besides, the issue is mentioned indirectly in the Articles 138 and 368 of the Association Agreement and Ukraine shall be obliged to bring its legislation in the sphere of maritime transport into compliance with the EU rules to be stipulated in the Appendices to the Agreement. EU Regulations and Directives in the sphere of maritime safety are not innovative for Ukraine since they mostly reflect the requirements of the IMO regulations that Ukraine has already ratified. However, the EU regulations and directives requires the application of IMO resolutions with higher level of responsibility.

To meet the obligations of the international agreements and with the purpose of the successful undergoing of IMO and EMSA audits, the Maritime administration was founded in 2017 in Ukraine. It has been in operation since 2018, but up to the present its resultative quality is low, it is often criticized as not utilizing “good governance” principles in its operation. It is typical issue for Ukraine in its attempts to strengthen the system of public administration of the maritime sphere.

Currently Ukraine lacks greatly the balanced and accounted for long-term period policy of the maritime business rebirth, renewal of the sector legislation, construction of transparent system of public administration. Whilst, the role of a state and its agencies, as well as organizations and institutions certified by it, is defined as leading one both at the level of the international agreements and at the level of the national legislation and the public (state) administration system of ensuring the navigation safety, built on the basis of its provisions.

Conclusions

Multilevel governance, that is implemented within the modern IMO's framework of ensuring the safety of navigation is certainly endowed with a number of advantages. However, at the same time there is a whole complex of multi-level challenges and shortcomings. The latter is primarily associated with the emergence of an objective and currently insoluble division into advanced and weak PSC regimes with the different levels of efficiency and compliance to the international rules and procedures.

The biggest drawback of regionalization in this case is the tendency for "weak" PSC regimes to preserve shortcomings of regional and national systems of maritime administration. On the example of Ukraine, in this aspect, it is possible to highlight such problems as: low institutional capacity, complex and non-transparent procedures, high corruption risks, lack of partnerships with shipping companies, and so on.

This is exacerbated by certain complexities associated with IMO audit. For example, such as possibilities for national administrations to conceal negative trends from international control. In addition, the lack of requirements and a desire of national administrations to open the audit results makes it impossible for non-state stakeholders to control these processes.

The optimal ways to correct such shortcomings include: increasing transparency in the field of activities of national maritime administrations; closer cooperation with advanced MoUs, technical and organizational support from both advanced MoUs and IMOs, reforms within the framework of Europeanization of legislation in the field of safety of navigation.

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Плачкова Т., Авдєєв О. Публічне адміністрування безпеки мореплавства: багаторівневі виклики та відповіді. – Стаття.

У статті досліджуються переваги та недоліки багаторівневої системи забезпечення безпеки мореплавства. Принцип забезпечення безпеки

мореплавства розглядається як фундаментальний фактор змін у морському законодавстві та нормативних актах на міжнародному, регіональному та національному рівнях. Водночас найважливішою особливістю сучасної системи забезпечення безпеки мореплавства є її адміністрування на національному рівні, де держави та їх органи діють одночасно у декількох якостях: як держави прапора, держави порту та прибережні держави. Кожна така якість має власний набір прав та обов'язків. Окремо підкреслюються особливості процесу регіоналізації режимів PSC та пов'язана з цим поява регіональних особливостей у процедурах та практиках. Ця тенденція має як позитивні, так і негативні наслідки для забезпечення виконання норм у сфері безпеки мореплавства. Проблема взаємодії між різними стейкхолдерами розглядається на прикладі протидії субстандартному судноплавству. Проаналізовано практику України щодо виконання та реалізації своїх зобов'язань за міжнародними угодами у сфері забезпечення безпеки мореплавства. Акцентовано увагу на необхідності не лише декларативної, але й реальної відповідності вимогам головного імперативу морської діяльності – принципу забезпечення безпеки мореплавства. Вказується на важливість побудови організаційних національних процедур імплементації міжнародних стандартів забезпечення безпеки мореплавства на основі принципу “good governance”. Крім того, міжнародна співпраця є ключовим фактором для підвищення ефективності національних систем PSC. Більше того, така співпраця повинна виходити за рамки регіональних Меморандумів про взаєморозуміння з метою впровадження найкращих світових практик та процедур.

Ключові слова: мореплавство, безпека, публічне адміністрування, забезпечення безпеки мореплавства, форми, методи, інструменти публічного адміністрування.

Плачкова Т., Авдеев А. Публичное администрирование безопасности мореплавания: многоуровневые вызовы и ответы. – Статья.

В статье исследуются преимущества и недостатки многоуровневой системы обеспечения безопасности мореплавания. Принцип обеспечения безопасности мореплавания рассматривается как фундаментальный фактор изменений в морском законодательстве и нормативных актах на международном, региональном и национальном уровнях. В то же время важнейшей особенностью современной системы обеспечения безопасности мореплавания является ее администрирование на национальном уровне, где государства и их органы действуют одновременно в нескольких качествах: как государства флага, государства порта и прибрежные государства. Каждое такое качество имеет собственный набор прав и обязанностей. Отдельно подчеркиваются особенности процесса регионализации режимов PSC и связанное с этим

появление региональных особенностей в процедурах и практиках. Эта тенденция имеет как положительные, так и отрицательные последствия для обеспечения выполнения норм в сфере безопасности мореплавания. Проблема взаимодействия между различными стейкхолдерами рассматривается на примере противодействия субстандартному судоходству. Проанализирована практика Украины по выполнению и реализации своих обязательств по международным соглашениям в сфере обеспечения безопасности мореплавания. Акцентируется внимание на необходимости не только декларативного, но и реального соответствия требованиям главного императива морской деятельности – принципа обеспечения безопасности мореплавания. Указывается на важность построения организационных национальных процедур имплементации международных стандартов обеспечения безопасности мореплавания на основе принципа “good governance”. Кроме того, международное сотрудничество признается ключевым фактором для повышения эффективности национальных систем PSC. Более того, такое сотрудничество должно выходить за рамки региональных меморандумов о взаимопонимании с целью внедрения лучших мировых практик и процедур.

Ключевые слова: мореплавание, безопасность, публичное администрирование, обеспечение безопасности мореплавания, формы, методы, инструменты публичного администрирования.

