

## ***An Analysis of the Legal Aspects of the Mandatory Audit Scheme imposed upon the member States of the International Maritime Organization***

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### **Abstract**

All various functions of the International Maritime Organization (IMO) can be categorized into two types the legislation and the Regulation. IMO's regulatory function includes different processes with various objectives, principles, and mechanisms. This study investigates one of the main IMO regulatory tools, namely, the Mandatory Audit Scheme of its Member States, by studying its objectives, principles, and processes. In general, this regulatory tool has evolved in the historical course of its formation, transforming from a self-reporting tool to a voluntary and then a mandatory one. The Mandatory audit process is also performed based on specific principles. Accordingly, each flag, coastal, and port state has Specific Obligations in addition to their general duties. Overall, the tool contributes to enhancing accountability of IMO Member States regarding their obligations under IMO Conventions. Moreover, it helps the governments identify problems regarding law enforcement as well as applicable maritime safety and environmental standards, including issues that have helped IMO develop its capacity to meet its objectives. **Keywords:** International Maritime Organization, Mandatory Audit Scheme, Voluntary Audit Scheme, Subcommittee on Implementation of Instruments, Implementation Code

### **1. Introduction**

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The world witnessed a change in the arrangement of international actors after the World War II and the rise of international organizations in the international community. The International Maritime Organization (IMO) has been a salient example of one such entities which acts as the United Nations' specialized agency affiliated in maritime affairs. This study mainly aims at analyzing the regulatory role of this organization. As a legislator, IMO issues various types of documents on different fields it is working on to formulate international maritime standards while as a regulatory entity, it deals with strategies and processes for monitoring, reviewing, and evaluating Member States. 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. The voluntary and particularly mandatory audit scheme of International Maritime Organization (IMO) member states is one of the most significant monitoring procedures of this organization in order to effectively enforce its required standards. Although the procedure of self-assessment and then voluntary audit is important in explaining and accepting IMO's rules, the mandatory audit's authorization and operation is considered as a crucial and influential step. The reason is the significant effect of analyzing its dimensions on the identification of the function of the aforementioned process with the effective operation of IMO's documents. The importance of the present research lies in the lack of effective and academic studies in this field. The time that has passed since the enforcement of the audit scheme has even doubled the necessity of this scheme's explanation and investigation.

## **2. Theoretical Framework and Research Methodology**

### **2.1. Theoretical Framework**

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 method, the institutional theory has three features of descriptive-inductive, formal-legal, and historical-comparative" (Haqiqat, 2008:198). The theory is recognized as the defining feature of the English school of politics. According to this school, international institutions shape international participations in line with common goals and interests of the society of states (Moshirzadeh, 1989: 166).



## **2.2. Research Methodology**

This research is applied in terms of purpose. It is also considered as a research based on data analysis and various qualitative variables because of using library and documentary studies. On the other hand, regarding the purpose, it can be considered as a practical research. Regarding the nature of the subject, the required data was collected by referring to and analyzing printed and Internet texts. This is also a cross sectional study covering four years after entry into force of the Mandatory Audit Scheme.

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 the historical course in this method, we examine and analyze the performance of this organization in formulating regulatory procedures and its response to the demands of the time. Accordingly, this study used a descriptive-inductive method to describe and analyze IMO's performance in formulating a regulatory framework as the Mandatory Audit Scheme of its Member States.

## **3. Research Background**

In general, the existing sources in this matter include the researches which lay the foundations for IMO in order to achieve a mandatory audit scheme. These sources analyze the historical development of the audit scheme from self-assessment to a voluntary audit and discuss the basics of how a mandatory audit shall be accumulated. The most important researches that have been carried out in this respect involve the following studies.

Alireza Hojjatzadeh, Soheila Koosha, and Majid Tazam studied the voluntary audit scheme of IMO Member States and its historical course and governing principles in a study titled, "Objectives, Principles, and Scope of the Voluntary Audit Scheme of IMO Member States." According to this study, IMO launched the Voluntary Audit Scheme in 2005 and approved the Mandatory Audit Scheme in 2009 to be implemented in 2015. Building on experiences gained over the course of the years, IMO can now design and implement the audit scheme optimally. As a member state, the Islamic Republic of Iran has been actively involved in the development process of the scheme and has been voluntarily audited as part of the Voluntary Audit Scheme in 2011.

In his study, "Making a case for the Voluntary IMO Member State Audit Scheme: An Accountability Regime for the States on Maritime Affairs,"

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Lawrence D. Barchue addresses controlling the conformity of commitments and responsibilities that states have accepted in different IMO conventions. This study seeks to find out why controlling the compliance of performance and commitment is now an important issue and the development of a voluntary audit scheme is essential. Based on the results, the positive outcome of voluntarily audits and the level of participation of Member States justifies the necessity of a mandatory audit regime for all IMO Member States.

Yun-Cheol Lee and Sung-Ho Park studied the IMO audit scheme in “A Study on the Enhancement of Maritime Education and Training to cope with IMO Member-state Audit Scheme.” According to them, occurrence of maritime accidents, especially those that involve human lives and marine environment, in spite of the passage of various IMO conventions, is due to non-effective implementation of these conventions. In other words, some flag states have not yet established specific appropriate organizations and structures for maritime safety and environmental protection due to not strengthened communication between these states and ships registered under their laws. Consequently, the voluntary and then Mandatory Audit Schemes were raised and approved. Thus, this study describes the outlines of the IMO audit scheme for its Member States and the implementation code of mandatory IMO Instruments used for the audit standards of this scheme, as well as examining commitments and responsibilities of Member States concerning the implementation of the IMO Mandatory Audit Scheme in 2015. Based on the results, the study proposes to improve maritime training in order to positively cope with the implementation of Mandatory Audit Scheme by the Member States.

The thesis entitled as "IMO's Mandatory Audit Scheme: an Analysis of IMO's Enforcement Power" by Elise Fresen is one of the other noteworthy researches, which has focused on IMO's mandatory audit scheme and the actions that this organization can take to implement such a scheme. In this research, the legal source of a mandatory audit scheme in IMO conventions has been studied and the writer has noted that the employment of an audit scheme can play an effective role in the influential enforcement of IMO's regulations.

"From a Voluntary Self-assessment to a Mandatory Audit Scheme: Monitoring the Implementation of IMO Instruments" by Ling ZHU and Henning Jessen is also amongst the previously mentioned studies which has analyzed the historical and legal evolution of IMO's most important monitoring instruments from a voluntary scheme to its conversion to a mandatory instrument. In addition, this research has concentrated on comparable issues and different approaches of IMO and International Civil Aviation Organization (ICAO) in the audit scheme



of participating countries. Having emphasized the desirability of a constant monitoring maritime approach, the writers of this article have argued that this scheme can complement the authority of a port government and also pave the way for an effective implementation of IMO's rules and laws.

Overall and concerning what has been noted about the substantial and procedural aspects of the abovementioned articles, there are some points which require to be considered carefully. First of all, most of the performed researches were written before the enforcement of the mandatory audit scheme. Secondly, the already mentioned researches have focused on the voluntary audit scheme and have only mentioned the basics regarding the mandatory audit scheme. Consequently, the major difference between the current research and the earlier studies can be measured in two aspects. Firstly, it was written after enforcing the mandatory audit scheme and secondly, the major issue of this study is the mandatory audit scheme while the voluntary audit scheme has been investigated as a minor subject

#### **4. Historical Context for Monitoring Maritime Law Enforcement**

In the modern era, France and Britain were the countries with 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. 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 18<sup>th</sup> 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. The industrial revolution and introduction of steam engines led to expansion of naval fleet and therefore, precluded the expansion of colonialism by European powers. Moreover, replacement of manual tools with machinery led to widespread exploitation of the sea. Each country operated separately at the time. 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 and the possibility of government adopting too restrictive and aggressive regulations was very much worried. However, by the mid-19<sup>th</sup> 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



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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 19<sup>th</sup> 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 19<sup>th</sup> 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, though 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 20<sup>th</sup> century brought formulation and supervision of maritime laws and regulations to the next level.

### **5. Regulatory role of the IMO in the field of the UNCLOS**

The Convention on the Law of the Sea (UNCLOS) defines general maritime rights and regulations for states based on maritime activities in maritime shipping 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 bear 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 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).

Given the significance of the IMO Mandatory Audit Scheme in execution of rules and regulation, the following section describes and analyzes this regulatory tool.

## **6. Mandatory Audit Scheme**

### **6.1. The process of establishing a mandatory audit scheme**

#### **First Step: from self-expression to a voluntary audit**

In 2001, IMO adopted Resolution A.912 (22) (22 January 2002) on self-assessment of the performance of flag states. This resolution included guidelines and criteria for measuring the performance of flag states. Moreover, IMO encouraged its Member States to self-assess their capabilities and performance in the form of implementing IMO treaties before urging them to submit their self-assessment report to IMO voluntarily (Beckman and Sun, 2017: 232). In

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2002, the IMO Council adopted a scheme proposed by 19 Member States to develop the audit scheme into a model, asking the Marine Environmental Protection, Maritime Safety, and Technical Cooperation Committees to form a joint task force to formulate documents and take preliminary measures for the Audit Scheme (Barchue, 2018).

At the 23<sup>rd</sup> IMO session in November 2003, the Resolution A.946 (23) (25 February 2004) was adopted for the Voluntary Audit Scheme of IMO Member States. This resolution reaffirms the Council's decision to develop a voluntary audit scheme while not ruling out the possibility of it becoming mandatory. It also calls on the Council to develop methods and other conditions for the implementation of the scheme as a priority.

Several resolutions were passed in IMO's 24<sup>th</sup> session, held in November and December 2005. The first, Resolution A.973 (24) (19 December 2005), was about the set of rules for implementation of IMO's mandatory instruments (Implementation Code), which determines the audit standard. This resolution urges flag, port, and coastal states to implement its annexed code at the national level. It also calls on the Maritime Safety and Environmental Protection Committee to review the code and propose relevant amendments to the General Assembly in cooperation with the Council. The resolution was adopted at IMO's 25<sup>th</sup> General Assembly and was amended on November 29, 2007 by Resolution A.996 (25) (15 January 2008). The second resolution, Resolution A.974 (24) (21 December 2005), was about the framework and process of voluntary audit of IMO Member States. This resolution specifies the framework and procedures for the voluntary audit in its annex. It also calls on states to volunteer to be audited in accordance with these frameworks and procedures and to consider the necessary resources to ensure the success of the Audit Scheme. In addition, it requests the Council to monitor the implementation of the Audit Scheme and to submit the related report to the Assembly. Following the approval of this Scheme, many states volunteered to be audited and submitted their reports to IMO's Secretary-General, who prepared and shared with all Member States a standard summary of these reports and their executive highlights (Beckman and Sun, 2017:234). The third resolution, Resolution A.975 (24) (23 January 2006), addressed the future development of the voluntary audit scheme. This resolution calls on the Maritime Safety and the Marine Environmental Protection Committees to review and evaluate the future of issues such as objectives and scope of the Audit Scheme, security affairs, and other matters that are not currently covered by the Audit Scheme. It also asks for identifying the consequences of expanding the scope of the Audit Scheme and reporting it to the council, while calling on the Council to cooperate in establishing and





developing appropriate rules and regulations on safety, environmental protection, and maritime security to be included in the Audit Scheme, given the experiences gained from implementation of the Scheme by committees.

Denmark and Chile were the first countries to sign the voluntary audit agreement, with South Korea being the third. Eventually, Denmark was the first country to be audited (IMO, 2007). As a member of IMO, Iran also actively participated in the development process of the Audit Scheme and was voluntarily audited in 2011 (Hojjatzadeh et al., 2015:49).

### **Second step: establishing a mandatory audit**

In 2009, the groundwork was laid for a Mandatory Audit Scheme. At the same year, a resolution was adopted entitled “Completion of the Development of the Voluntary Audit Scheme of IMO Member States” [Resolution A.1018 (26) (18 January 2010)]. The annex of this resolution states that a resolution is to be adopted during the 28<sup>th</sup> IMO General Assembly in 2013 on the framework and procedures of the Mandatory Audit Scheme, in line with its development process. Accordingly, Resolution A.1067 (28) (4 December 2013) was passed at the 28<sup>th</sup> IMO General Assembly in 2013, while Resolution A.1068 (28) (4 December 2013) was adopted regarding the transfer from a voluntary scheme to a mandatory one. Another important and notable resolution was on several updates of the Implementation Code, which has been amended several times since 2005 [Resolution A.1070 (28) (4 December 2013)]. Subsequently, in 2014, the Maritime Safety Committee approved amendments to SOLAS Conventions, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, and the Convention on the International Regulations for Preventing Collisions at Sea in order to enforce mandatory use of the Implementation Code and the Audit Scheme by parties committed to the said treaties. Moreover, in the same year, the Marine Environmental Protection Committee passed similar amendments to MARPOL. These were in line with the amendments made at the 28<sup>th</sup> IMO General Assembly on conventions such as Tonnage Measurement, Load Lines, and COLREG (IMO, 2014). These were all completed in a course of nearly 10 years with the continuous efforts of IMO bodies, especially the Assembly, the Council, the Maritime Safety Committee, and the Marine Environmental Protection Committee. With the adoption of appropriate amendments, these bodies mandated use of the Implementation Code and auditing of the Member States. Mandatory audits of IMO Member States were launched on January 1, 2016 (Beckman and Sun, 2017:234). The IMO Conventions, which are considered part of the Audit Scheme, include the

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1974 Conventions and the 1988 Protocol of SOLAS, MARPOL, 1978 Convention on Standards of Training, Certification and Watchkeeping for Seafarers, the 1966 Convention and the 1988 Load Lines Protocol, the 1969 Tonnage Measurement Convention, and the 1972 COLREG Convention (IMO, 2018a).

### **6.2. Executive body**

As explained above, Mandatory Audit Scheme is a method to support the implementation of international maritime rules and regulations. With its regulatory nature, the scheme evaluates adherence of the Member States to their commitment to IMO treaties. The Subcommittee on Implementation of IMO Instruments has made commitments in this regard and works accordingly. This is one of the seven subcommittees of IMO that brings flag, port, and coastal states together and examines issues related to the implementation of IMO Instruments. It also receives and analyzes necessary data and information from port and ship inspection centers in different countries and uses them to review and update procedures governing these centers (IMO, 2018b). The main duties of this subcommittee in terms of its regulatory and audit function are as follows:

- Examining the rights and obligations of states based on IMO treaties,
- Evacuating, monitoring, and reviewing the current level of implementation of IMO treaties by flag, port, and coastal states,
- Identifying causes of problems in implementation of IMO regulations by states,
- Providing assistance to states in implementing and complying with IMO treaties (IMO, 2018a).

### **6.3. Objectives of the Mandatory Audit Scheme**

The purpose of the Mandatory audit is to determine the extent to which the Member States have enforced and implemented IMO rules and regulations. To achieve this, audit experts review and evaluate the following:

- Compliance with the audit standards;
- Enactment of laws in accordance with IMO applicable instruments relating to maritime safety and prevention of pollution to which the Member State is a party;
- Administration and enforcement of the applicable laws and regulations of the Member State;



- Mechanisms and controls in place, by which the delegation of authority by a Member State to a recognized organization and for the purposes of implementing convention requirements related to safety and protection of the environment is effected;
- Control, monitoring, and feedback mechanisms of the Member State with respect to its own survey and certification process and, as applicable, of its recognized organization.
- The extent to which the Member State discharges any other obligations and responsibilities under the applicable IMO instruments (Framework for the IMO Member State Audit (Resolution A.1067), Part 1, Article 5, Para 1). In addition, the Mandatory Audit Scheme also considers some other issues that can be called implicit goals. These issues include:
  - Fostering capacity building and the provision of related technical assistance by identifying areas which would benefit from further development to the extent which technical assistance could assist the Member State in discharging its responsibilities ;
  - Providing the audited Member State with feedback to assist in improving its capacity to implement the applicable instruments;
  - Providing all Member States with feedback in generic lessons learned from audits of Member States, so that the benefits can be widely shared, while taking care to preserve the anonymity of the audited Member State;
  - Systematically feedback any lessons learned from the audits for further consideration by IMO of the effectiveness and appropriateness of its legislation (Framework for the IMO Member State Audit (Resolution A.1067), Part 1, Article 5, Para 1).

#### **6.4. Principles of the Mandatory Audit Scheme**

The principles governing the Mandatory Audit Scheme include “Sovereignty and Universality,” “Consistency, Fairness, Objectivity, and Timeliness,” “Transparency and Disclosure,” “Cooperation,” and “Continual Improvement.” These principles are, in fact, audit guidelines and should be taken into account during the audit process in order to avoid any misdirection. Violation of these principles would lead to invalidation of the audit and distrust of Member States. Therefore, these principles should govern the work process at each stage of the audit. Each of these principles will be examined in the following:

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- **Sovereignty and Universality:** Audits should be positive and constructive in approach and carried out in accordance with the established procedures. They should be organized and conducted in a way which recognizes the sovereignty of a Member State to enact laws and to establish implementation and enforcement mechanisms for such laws, consistent with its obligations and responsibilities contained in the IMO Instruments to which the Member States is a party. All Member States should be subject to the same principles, processes and procedures for the conduct of the audit (Framework for the IMO Member State Audit (Resolution A.1067), Part 1, Article 6, Para 1).
- **Consistency, Fairness, Objectivity, and Timeliness:** Audits should be pragmatic, fair and carried out in accordance with an agreed time frame. Recognizing and appreciating that different Member States may have different and equally valid ways of discharging their responsibilities, audits should be conducted by appropriately trained and qualified auditors, in a consistent and objective manner. Consistency and uniformity in the quality of audits must be ensured (Framework for the IMO Member State Audit (Resolution A.1067), Part 1, Article 6, Para 2).
- **Transparency and Disclosure:** Audits will be planned and conducted in a fully transparent manner through the execution of the Memorandum of Cooperation, to be signed between each Member State and the Secretary-General. The detailed audit planning will include the full scope of the audit. Moreover, interim and final reports, audit records and relevant information and material related to the audit should be confidential and available only to the audited Member State, the audit team and the Secretary-General. The audited Member State may authorize the release of the above-mentioned reports by the Secretary-General and make available to other parties details of the findings and observations and of its own subsequent actions. Therefore, the release of the executive summary report to the public or Member States should be subject to the authorization of the Member State concerned, prior to the audit. In addition, the Secretariat shall prepare consolidated audit summary reports in a standardized format, containing findings, observations, related root causes and corrective actions, as well as areas of positive development and areas for further development to facilitate the identification of lessons learned and possible areas for regulatory review and technical assistance in a standardized format. The audit summary report should be anonymous and be issued on a periodic basis for consideration by the relevant IMO





body (Framework for the IMO Member State Audit (Resolution A.1067), Part 1, Article 6, Para 3).

- **Cooperation:** Audits should be conducted in such a manner that the Member State being audited can contribute to the audit process within an established timeframe (Framework for the IMO Member State Audit (Resolution A.1067), Part 1, Article 6, Para 4).
- **Continual Improvement:** Audits should lead to continual improvement of the implementation and enforcement of the applicable IMO Instruments by the Member State. In this regard, the Member State should carry out appropriate and agreed follow-up activities (Framework for the IMO Member State Audit (Resolution A.1067), Part 1, Article 6, Para 5).

### **6.5. Duties and responsibilities of governments under the mandatory audit**

The criterion for auditing governments is the IMO Instruments Implementation Code (Implementation Code). This code was passed in the form of Resolution A.1070 (28) (4 December 2013) by the IMO General Assembly. This code was updated in 2015, 2017 and 2019. The objective of this Code is to enhance global maritime safety and protection of the marine environment and assist the Member States in the implementation of IMO Instruments (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 1). The code divides states into three categories: flag states, coastal states, and port states. By virtue of geography and circumstance, some States may have a greater role as a flag state than as a port state or as a coastal state, whilst others may have a greater role as a coastal state or a port state than as a flag state (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 2).

#### **6.5.1. General Obligations**

This code generally specifies some tasks, including:

- **Initial Actions:** When a new or amended IMO instrument enters into force for a State, the Government of that State should be in a position to implement and enforce its provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure. This means that the government of that State must have:
  - A. The ability to promulgate laws, which permit effective jurisdiction and control in administrative, technical and social matters over

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ships flying its flag. Moreover, it should be able to provide the legal basis for general requirements for registries, the inspection of ships, safety and pollution prevention laws applying to such ships and the making of associated regulations.

- B. A legal basis for the enforcement of its national laws and regulations including the associated investigative and penal processes,
  - C. Sufficient personnel with maritime expertise to assist in the promulgation of the necessary national laws and to fulfill all the responsibilities of the State, including reporting as required by the respective conventions (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 8).
- **Communication of Information:** The government must communicate its strategy, including information on its national legislation to all concerned (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 9).
  - **Records:** Records, as appropriate, should be established and maintained to provide evidence of conformity to requirements and of the effective operation of the State. They should remain legible, readily identifiable, and retrievable. A documented procedure should be established to define the controls needed for the identification, storage, protection, retrieval, retention time, and disposition of records (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 10).
  - **Improvement:** States should continually improve the adequacy of the measures which are taken to give effect to those conventions and protocols which they have accepted. Improvement should be made through rigorous and effective application and enforcement of national legislation, and monitoring of compliance (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 11). The State must also stimulate a culture which provides opportunities for improvement of performance in maritime safety and environmental protection activities. These include continual training programs relating to safety and pollution prevention; regional and national drills on safety and pollution prevention, which engage a broad spectrum of maritime-related national, regional and international organizations, companies and seafarers; and ultimately, employment of reward and incentive mechanisms for shipping companies and seafarers regarding improving safety and pollution prevention (IMO Instruments Implementation Code



(Resolution A.1070), Part 1, Article 12). Moreover, the State must take measures to identify and eliminate the cause of any non-conformity in order to prevent recurrence. These measure include review and analysis of non-conformities, implementation of necessary corrective actions, and review of corrective action taken (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 13). The State should determine action needed to eliminate the causes of potential non-conformities in order to prevent their occurrence (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 14).

### **6.5.2. Specific Obligations**

In addition to these general responsibilities, each State has specific duties, depending on its role in the code. These specific duties can also be categorized based on those treaties that are included in the audit.

- **Flag State:** The responsibilities of the flag State are concerned with safety and protection of the marine environment. These include ship registries; regulation and implementation of international safety standards; safety and protection of the marine environment; inspection and certification of ships; compliance with the requirements of applicable international regulations; assessment of accidents; and providing guidance on international IMO instruments. In addition to these, one of the most important responsibilities of the flag State is to comply with the requirements of International Standards of Training, Certification and Watchkeeping for Seafarers, which include:
  - A. Training, assessment of competence, and certification of seafarers,
  - B. Impartial investigation to be held of any reported failure, whether by act or omission that may pose a direct threat to safety of life or property at sea or to the marine environment, by the holders of certificates or endorsements issued by the State,
  - C. Arrangements for the withdrawal, suspension, or cancellation of certificates or endorsements issued by the State when warranted and when necessary to prevent fraud (IMO Instruments Implementation Code (Resolution A.1070), Part 1, Article 16).

It is noteworthy that the most crucial audit obligations are those of the flag state. Even though the IMSAS also addresses both coastal- and port States, it is being recognized that flag States bear the main responsibility with regard to compliance with international law: According to the

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Secretary-General of the UN Oceans and the Law of the Sea (DOALOS) division, “it is the duty of flag States, not port States, to ensure that ships meet internationally agreed safety and pollution prevention standards” (Fresen, 2015: 5).

At the national level, recognized organizations are partly responsible for enforcing the international regulations issued by the IMO in their Contracting States. The audit evaluates the performance of these organizations and their respective governments. Accordingly, IMO has allowed the flag states to provide statutory services and certification of ships by these recognized organizations. As a result, these organizations play a vital role in the qualification and control of the flag state (Fresen, 2015: 26).

- **Coastal State:** The coastal State also has responsibilities and obligations, the most important of which are providing the following:
  - Radio communication services,
  - Meteorological services and warning,
  - Search and rescue services,
  - Hydrographic services,
  - Ship routing,
  - Ship reporting systems,
  - Vessel traffic services,
  - Aids to navigation (IMO Instruments Implementation Code (Resolution A.1070), Part 3, Article 48).

Moreover, a coastal State must also periodically evaluate its performance in respect of exercising its rights and meeting its obligations under the applicable international instruments (IMO Instruments Implementation Code (Resolution A.1070), Part 3, Article 51).

- **Port state:** The third group of states in the code includes port states. Port states can play an integral role achieving maritime safety and environmental protection, particularly pollution prevention. In order to play this role as best as possible, the port states assume responsibilities derived from international treaties, conventions and national laws as well as, in some instances, from bilateral and multilateral agreements (IMO Instruments Implementation Code (Resolution A.1070), Part 4, Article 53). These obligations and responsibilities include:





- A. Providing appropriate reception facilities or the ability to accept all waste streams regulated under the instruments of the Organization,
- B. Providing Port State control,
- C. Keeping a register of oil fuel suppliers (IMO Instruments Implementation Code (Resolution A.1070), Part 4, Article 56).

A port state should periodically evaluate its performance in respect of exercising its rights and meeting its obligations under the international law (IMO Instruments Implementation Code (Resolution A.1070), Part 4, Article 63).

### **6.5.3. Obligations under the IMO Conventions**

In addition to the classifications mentioned above, the obligations of states can be separated based on each of the treaties within the scope of the audit. Accordingly, each flag, port, and coastal states shall have responsibilities concerning the treaties covered by the audit, which are beyond the scope of this article. These tasks were mentioned in Resolution A.1077 (28) (10 December 2013), passed by the Assembly in 2013. The resolution was adopted under the heading “Non-exhaustive List of Obligations under Instruments Relevant to the IMO Instruments Implementation Code (Resolution A.1077)” and specified the commitments of flag, coastal, and port states based on the treaties included in the audit. This resolution includes seven annexes, with the first to fourth addressing the commitments of states. The first annex deals with the general obligations of states and parties to treaties, the second deals with the specific obligations of flag states, the third addresses specific obligations of coastal states and the fourth deals with the specific obligations of port states. The Non-exhaustive list of obligations went through examination in 2015 and 2017. The last revision of this list took place in 2019 with Resolution A.1141 (31) of the General Assembly.

### **6.6. Sanction of the mandatory audit scheme**

The bottom line about the mandatory audit scheme is that, although it is a so-called mandatory, the member state can decide whether or not to be audited. If a government chooses not to grant this consent, IMO has no way of forcing that government to inspect. For example, the government opposes and refuses to accept the amendments to the IMO conventions that sanction the enforcement of the audit (Liejun, 2013: 14). However, in case of non-fulfillment of obligations by the Member States, what sanction does IMO, as the accountable

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authority, anticipate? The IMO Convention states no specific mechanism. Except for minor cases of non-compliance with financial obligations, virtually no other enforcement sanctions are defined. Accordingly, it is necessary to refer to additional sanctions, divided into two categories.

### **6.6.1. Sub-instruments (soft tools)**

In general, several sub-tools are effective in enforcing the mandatory audit scheme and provide a kind of soft sanction tool for this scheme. These instruments include:

- A transparent audit scheme system and the possibility of a country violating IMO regulations will force states to comply with the mandatory audit scheme. In a way, not cooperating with the IMO will put pressure on the violating government and target its international credibility (Guzman, 2002: 1849).
- The comprehensive nature of the mandatory audit scheme makes it clear that the flag state must not only be accountable to IMO, but also all actors in the maritime transport industry; because it will harm everyone (Barchue, 2009: 64).
- Extensive talks with the IMO Member States on the development of regulations have led governments to demonstrate their willingness to implement a mandatory audit scheme. Therefore, it provides the necessary ground for the implementation of laws and regulations (Fresen, 2015: 32).

### **6.6.2. Main instruments (hard tools)**

To impose sanctions and penalties on the IMO Member States that do not comply with IMO regulations, one must focus their attention beyond the IMO regulations because the fundamental basis is not provided in IMO regulations. Accordingly, the most important measures to be taken under international law are as follows:

- The port State can revoke access to the port for ships that do not comply with IMO regulations.
- The port State may inspect the ship as soon as it arrives at the port and, if necessary, detain the vessel until the required repairs and alterations are made per IMO regulations.



- Classification societies can reject ship safety certification. As a result, these ships lose their ability to navigate internationally (Fresen, 2015: 43).

Overall, there are very few punitive options that guarantee enforcement. Because the port State is the only actor that can impose sanctions, and that depends on the vessel entering the port. This matter makes the punitive mechanisms that play the role of a performance bond very limited (Fresen, 2015: 29).

### **6.7. Analysis of the implementation of the mandatory audit scheme**

To date, only 75 Member States have conducted voluntary audits (Kim, 2017:21). Since the audit became mandatory in January 2016, 65 mandatory audits have been conducted so far and 12 more are scheduled for the next year (IMO, 2019). Overall, the mandatory audit scheme has had many benefits. In particular, the mandatory audit scheme is more important and superior to the voluntary audit scheme. These benefits include:

- Transparency of the information obtained from the audit
- Improving the performance of IMO documents and tools
- More uniformity in international shipping and maritime safety regulations (Fresen, 2015: 22-25).

Audits of Member States have provided IMO with invaluable feedback, based on which it can assist its Member States to improve their capacity to implement IMO instruments. Furthermore, the points and highlights extracted from the audit reports can be presented to all Member States so that the benefits of the audit can be widely shared. The audit results can also systematically help develop an IMO monitoring regimen to help improve the effectiveness of monitoring activities within the framework of international shipping regulations. Moreover, the audit process has been very effective in complying the adoption of national laws with IMO instruments, implementing and enforcing laws and regulations, transferring power to recognized organizations, and establishing control and monitoring mechanisms related to the process of examination and certification of Member States (IMO, 2018a). In addition, the Audit Scheme serves as a tool to build and strengthen the accountability of the Member States regarding their obligations under the IMO conventions. It also assists states in identifying problems related to the implementation of applicable laws and standards on maritime safety and marine environmental protection, as well as issues that have contributed to development of the capacity of IMO for meeting

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its objectives. An example being providing technical assistance to its Member States (Beckman and Sun, 2017: 234 & 235).

### **8. Conclusion**

As a qualified organization in the realm of maritime rules, IMO has taken pivotal steps towards the improvement of maritime standards, especially in meeting objectives set out in the Convention on the International Maritime Organization. The most important measures taken by IMO can be categorized into legislative and regulatory measures. As a legislator, IMO has issued a huge amount of documents concerning its activities, while as a regulatory entity, it has tried to consolidate and better enforce international maritime regulations and standards with a variety of mechanisms. One such mechanism is the Mandatory Audit Scheme of IMO Member States. With its regulatory nature, the Scheme measures adherence of the Member States to their obligations under IMO treaties, aiming to determine the extent to which the Member States have implemented the required IMO laws and regulations. The implementation of this Scheme is based on five principles, namely “Sovereignty and Universality,” “Consistency, Fairness, Objectivity, and Timeliness,” “Transparency and Disclosure,” “Cooperation,” and “Continual Improvement.” The Subcommittee on Implementation of IMO Instruments has accepted commitments in this regard and is working accordingly. IMO first encouraged states to self-assess their capabilities and performance by implementing IMO treaties before calling on these states to voluntarily submit a self-assessment report to IMO. Subsequently in 2009, the groundwork was laid for the introduction of a Mandatory Audit Scheme. The project was completed after nearly 10 years, with the continued efforts of IMO bodies, especially the Assembly, the Council, the Maritime Safety Committee and the Marine Environmental Protection Committee. Consequently, audit of Member States became mandatory. The Mandatory Audit of IMO Member States includes the 1974 Conventions and the 1988 Protocol of SOLAS, MARPOL, 1978 Convention on Standards of Training, Certification and Watchkeeping for Seafarers, the 1966 Convention and the 1988 Load Lines Protocol, the 1969 Tonnage Measurement Convention, and the 1972 COLREG Convention. The benchmark for auditing states in the Mandatory Audit Scheme is the IMO Instruments Implementation Code. According to the code, governments are divided into three categories: flag, coastal and port states. In addition to their general obligations, each state has its specific responsibilities and duties based on the role it is assigned in the code. These specific duties are also dependent on each of the treaties that are included in the audit. The implementation of mandatory audit proved this Scheme to have many benefits. Audits of Member States have provided IMO with invaluable feedback, based





on which it can assist its Member States to improve their capacity to implement IMO instruments. Furthermore, the points and highlights extracted from the audit reports can be presented to all Member States so that the benefits of the audits can be widely shared. The audit results can also systematically help develop an IMO monitoring regimen to help improve the effectiveness of monitoring activities within the framework of international shipping regulations. Moreover, the Mandatory audit process has been very effective in matching the adoption of national laws with IMO instruments, implementing and enforcing laws and regulations, transferring power to recognized organizations, and establishing control and monitoring mechanisms related to the process of examination and certification of Member States. In addition, the Mandatory Audit Scheme serves as a tool to strengthen the accountability of the Member States regarding their obligations under the IMO conventions. It also assists states in identifying problems related to the implementation of applicable laws and standards on maritime safety and marine environmental protection, as well as issues that have contributed to development of IMO capacity for meeting its objectives.

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