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WORLD MARITIME UNIVERSITY
Malmö, Sweden

**AN ANALYSIS OF THE VOLUNTARY IMO
MEMBER STATE AUDIT SCHEME**

BY

AFRIYIE KWAKU ANTHONY

Ghana

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirements for the award of the degree of

**MASTER OF SCIENCE
IN
MARITIME AFFAIRS**

(MARITIME SAFETY & ENVIRONMENTAL ADMINISTRATION)

2007

Declaration

I hereby certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessary endorsed by the University.

Afriyie, Kwaku Anthony
MSEA – 2007

Date

Supervised by: Sven-Åke Wernhult
Lecturer

Institution: World Maritime University

Assessor: Jens-Uwe Schröder
Associate Professor

Institution: World Maritime University

Co-assessor: Dan Sarenius
Survey and Inspection Coordinator

Organisation: Swedish Maritime Administration

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The idea for this dissertation occurred to me while attending a workshop on IMO MSAS Auditor Course for Maritime Safety and Environmental Administration (MSEA) 2007 class, organised by World Maritime University and Mr Jorgen Rasmussen on 29-01-2007 to 02-02-2007. During the workshop, it occurred to me why should not I consider an analysis into the Voluntary IMO Member State Audit Scheme as a dissertation topic. When I approached Mr Jorgen Rasmussen, he encouraged me to give it a thought. He has been a real mentor seeing this dream through. Along the way, many transformations occurred due to my professors. Captain Sven-Ake Wernhult, as my supervisor made sure I did the right research in the library and on the net. Although as painful as his comments are due to days of rewriting,

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Afriyie, Kwaku Anthony
World Maritime University,
Malmö, Sweden.
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Title of Dissertation: **An Analysis of the Voluntary IMO Member State Audit Scheme**

Degree: **MSc**

Abstract

The dissertation reviews the two resolutions A.973 (24) and A.974 (24) in relation to the objective of the Voluntary IMO Member State Audit Scheme (VIMSAS). The study concentrates on audit principles which auditors and the auditee need for a successful audit. Audit methods from private organizations and the International Civil Aviation's Safety Oversight Audit Programme (ICAO's SOAP) are explained as pacesetters to the IMO audit scheme. What guided this work is the study into what went wrong with the flag, coastal and port States implementation of IMO mandatory instruments. This study also looks for reasons why the first decade of the 21st century has been the best time for VIMSAS. Part of this study was analysed from a questionnaire presented to maritime administrations for their considered responses. This work uses pie charts to evaluate findings presented by the respondents. Comments from the questionnaire determining the respondents' perception and thinking of the audit scheme are presented in an appendix.

The recommendations and conclusion highlight the future prospect of the audit scheme, what IMO intends to achieve with this scheme, and how the successes of the scheme could be enhanced and maintained. The particular factors luring Member States to volunteer for the audit when in the beginning they have shown less interest would be examined. Problems preventing other Member States to come forward for the audit are investigated and analysed. Many stakeholders have heralded VIMSAS as the ultimate audit scheme which will make sure that Member States wake up to their responsibilities. Whether it will meet expectations have been the subject of the analysis in this dissertation.

KEYWORDS: A.973(24); A.974(24); organizations; pacesetters; implementation; recommendations; analysis; auditor; auditee; responsibilities

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List of Abbreviations

BIMCO	Baltic and International Maritime Council
CAP	Condition Assessment Programme
CDI	Chemical Distribution Institute
COLREG	Convention on the International Regulations for Preventing Collision at Sea 1972, as amended
ed	Edition
Ed	Editor
EEZ	Exclusive Economic Zone
EU	European Union
FSI	Flag State Implementation
GPS	Global Positioning System
IACS	International Association of Classification Societies
ICAO	International Civil Aviation Organization
ICS	International Chambers of Shipping
ILO	International Labour Organization
IMO	International Maritime Organization
INTERCARGO	International Association of Dry Cargo Shipowners
INTERTANKO	International Association of Independent Tanker Owners
ISF	International Shipping Federation
ISM	International Safety Management Code
ISMA	International Ship Managers Association
ISO	International Organization for Standardization
ISPS Code	International Ship and Port facility Security Code
JWG	Joint Working Group
MA	Maritime Administration
MAIB	Marine Accident Investigation Branch
MARPOL 73/78	International Convention for the Prevention of Pollution from ships, 1973, as modified by the Protocol of 1978
MCA	Maritime and Coastguard Agency
MEI	Mandatory Expanded Inspection

MEPC	Marine Environment and Protection Committee
MSAS	Member State Audit Scheme
MSC	Maritime Safety Committee
OCIMF	Oil Companies International Marine Forum
p/pp	page/pages
Paris MOU	Paris Memorandum of Understanding
PDF	Portable Document Format
PSC	Port State Control
PSSA	Particular Sensitive Sea Area
RO	Recognized Organization
SAR	Search and Rescue
S-G	Secretary-General
SIRE	Ship Inspection Report Exchange
SOAP	Safety Oversight Audit Programme
SOLAS	International Convention for the Safety of Life at Sea, 1974
SOP	Safety Oversight Programme
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995
TC	Technical Co-operation
UIs	Unified Interpretations
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the sea
VIMSAS	Voluntary IMO Member State Audit Scheme
VTS	Vessel Traffic Services
WMU	World Maritime University
WWW	the World Wide Web

"I think one point we could all agree on is that the solution does not necessary lie in creating more and more legislation. Over the last three and a half decades, IMO has adopted several shelves full of rules and regulations. They have certainly helped to improve the situation. However; regulations are only effective if they are put in practice and are enforced and there is no doubt that many IMO conventions and other standards are not implemented as vigorously as they should be. Before adopting still more regulations, we should, therefore, concentrate on assuring that the ones that already exist are, in fact, applied to all ships throughout the world".

W.A. O'Neil (former Secretary General, IMO)

CHAPTER 1

1. INTRODUCTION

1.1 Objectives and significance of the IMO audit scheme

This dissertation focuses on the objective of the Voluntary IMO Member State Audit Scheme, which is to determine the extent to which Member States have implemented their obligations of SOLAS 74 (as amended), MARPOL 73/78 (as amended), STCW 78 (as amended), LOAD LINE 66 (as modified by its 1988 Protocol), TONNAGE 69, and COLREG 72 (as amended), and the code associated with these instruments. Looking back at the IMO, the prevailing situation shows that the implementation of IMO instruments by Member States has not been consistent.

In June 2002, the IMO Council at its 88th session put forward an IMO Model Audit Scheme proposed by nineteen Member States. This scheme is similar to the International Civil Aviation Organization's Safety Oversight Audit Programme (ICAO SOAP), which was introduced in the civil aviation industry in 1999. The ICAO SOAP was initiated by the aviation industry as a way to improve their safety record which has been tarnished due to several accidents. For the first time in the history of IMO, the Voluntary IMO Member State Audit Scheme is making it possible for external audits of sovereign States. Member States would open their doors fully to other Member States to assess their compliance of IMO instruments. Over the past decades, attention has been focussed on Member State responsibility for the better implementation, oversight and enforcement of existing requirements. It has also been evident in the past that while introducing new conventions and amendments is relatively easy; ensuring that these are effectively enforced poses significant difficulties to contracting governments. The first country which submitted itself for the voluntary audit¹ scheme was Denmark in September 2006, and since then other

¹ Kuusisto in his book, *Safety management systems: Audit tools and reliability of auditing*, writes that the two main tasks of auditing are, 1) compliance verification to establish whether the relevant legal requirements are met, and 2) validation to see whether the correct types of methods are in use, and whether they are effectively implemented.

States have undertaken the audit successfully. As at July 2007, thirty two (32) Member States had so far volunteered for audit and thirteen (13) had been audited. The idea to set up an audit scheme for maritime administrations is a radical approach by IMO to ensure that Member States implement mandatory IMO instruments, since they have the overall responsibility for the implementation and enforcement of international maritime regulations. The maritime administrations have to ensure that all ships keep safe, secure and pollution-free operations in accordance with the United Nations Convention on the Law of the Sea (UNCLOS 82).

1.2 Scope of the study

In November and December 2005, the Assembly at its twenty-fourth sitting adopted Resolutions A.974(24), *Framework and Procedures for the Voluntary IMO Member State Audit Scheme* and A.973(24), *Code for the Implementation of Mandatory IMO instruments* which is the audit standard. The adoption of these two resolutions opened the way for formal auditing of all Member States on a voluntary basis. The aim of this research is to investigate if the scope of the audit has actually improved the degree of compliance, including flag, coastal and port State obligations in relation to the IMO mandatory instruments.

1.3 Method and areas covered

Background experience for writing this dissertation comes from workshops and seminars organized by the World Maritime University. One of the courses, '*IMO MSAS Auditor Course for MSEA 2007*', was a great success and prompted interest and further study into the IMO audit scheme. The first chapter covers the objectives, scope of the study, method and areas covered, and limitations of the audit scheme analysis. Chapter two explains the history of the audit scheme. It describes what is generally VIMSAS and the significant shift by IMO to promote the compliance of its mandatory instruments. In the maritime industry, private organizations have established successful audit programmes which have served their members well. In chapter three, the basic skills in auditing techniques is introduced with an emphasis

on what is actually an audit. An audit of this nature requires the knowledge and auditing experience of the auditors. In order to have a successful audit, basic skills in time management, conflict resolution and effective communication required for auditors are explained. The historical background to the code for the implementation of Mandatory IMO instruments begins in chapter four. The pre-audit questionnaire in appendix three is explained in the second section of chapter four which is relevant to the mandatory instruments. An explanation of the framework and procedures as in Resolution A.974 (24) is contained in chapter five, including the responsibilities of the Secretary-General, Member State and Audit team leader and members. It also draws together all types of reports which are prepared in respect of the auditors' findings. The introduction to the IMO audit process and an explanation of all the requirements from the opening meeting till the closing meeting is also expounded. An explanation of the questionnaire and an analysis of comments from respondents are set out in chapter six, while chapter seven contains recommendations and a concluding section to the dissertation.

1.4 Limitations of the study

In order to know what people think about VIMSAS, a questionnaire was prepared for the maritime administrations which were the main respondents. The questionnaire consisted of thirty-two (32) questions and was sent to maritime administrations by normal post and others by email. The initial problem encountered was that many countries did not have one functional maritime administration. The questionnaire was sent to other ministries which declined to take part in the research. Others cited under-staffing, and the difficulty of the English language prevented them taking part. A total of fifty-two (52) questionnaires were distributed to twenty-five (25) maritime administrations and thirty (30) were returned by fifteen (15) maritime administrations. The questionnaire covered two resolutions A 974(24) and A.974 (24), objectives and scope of the audit scheme. The respondents were made to select from a set of responses from Strongly Agree to Not Sure. Pie charts were used to calculate and compare the responses from the respondents. Another limitation is the duration of the audit scheme. Denmark was the first country to be audited in September, 2006.

A period of eight months is not enough to afford an in-depth analysis as might be expected, notwithstanding, it will serve as a 'spring board' for others to follow.

CHAPTER 2

2. THE NEED FOR VIMSAS, AND THE AUDIT PACESETTERS

2.1 The Voluntary IMO Member State Audit Scheme (VIMSAS) – An Introduction

The International Maritime Organization (IMO) Assembly, at its 23rd sitting in November 2003, adopted by resolution A.946 (23), the Voluntary IMO Member State Audit Scheme. This is an audit scheme to be implemented on a voluntary basis by IMO Member States. After extensive meetings by the council, VIMSAS was accepted as a significant change, development and a positive audit initiative, to enhance compliance of established IMO regulations. The Voluntary IMO Member State Audit Scheme is aimed at promoting the assessment of Member States' effectiveness in implementing and enforcing relevant IMO conventions. This audit scheme will monitor development of national regulatory framework based upon international standards. The focus then has shifted to enhancing the level and quality of compliance in every Member State. What is worthwhile with VIMSAS is the code for the implementation of IMO mandatory instruments, which clearly enumerates flag, coastal and/or port State responsibilities.

The audit scheme covers implementation of IMO instruments, national legislation, enforcement and organization as well as the various legal and technical responsibilities of national administrations. It also probes into levels of casualty investigation, survey and certification, and authorisation of Recognized Organizations. In the book, *Maritime legislation*, the author² explains further that, “when a state becomes a party to a convention, by the process of ratification, accession, adoption or acceptance, the legal effect of it is that the state then becomes bound by the convention and is therefore obliged to implement it by incorporation into its national law. If the state fails to implement the convention, it is nevertheless subject to it *vis a vis* other state parties, but it cannot enforce the

² See P.K. Mukherjee, *Maritime Legislation*, Malmö.WMU Publications, 2002, at p.126.

convention against them, unless that convention becomes part of the law of the land by whatever legal process is applicable in that state's jurisdiction".

As a matter of fact, IMO intends to ask all contracting governments to 'come forward' voluntarily to demonstrate that they do implement the legal instruments they have ratified and acceded to. At the conference of the international shipping associations (Bimco, Intercargo, Intertanko, ICS and ISF), organised on the occasion of the World Maritime Day in 2006, representatives of the above organizations observed that the IMO audit scheme, "could prove to be the most significant regulatory milestone of the decade" (Bimco, 28/09/2006). Due to the radical nature of this initiative, the representatives further commented that, the scheme provides a transparent system for monitoring the effectiveness and efficiency of the implementation and enforcement of safety and pollution prevention regulations by flag States and maritime administrations.

2.2 Objectives of VIMSAS

The objective³ of the audit is to determine to what extent Member States are implementing and enforcing the applicable IMO instruments. Member States have to monitor and control the IMO instruments by enacting the appropriate national legislation. The audit scheme observes and assesses the compliance of States in enacting appropriate national legislation. These responsibilities are imposed on Member States as outlined in section 5 of the *Audit Framework*;

- Compliance with the code for the implementation of mandatory IMO instruments;
- All enacted national legislation for the applicable IMO instruments relating to maritime safety and pollution prevention;
- The administration and enforcement of all applicable laws and regulations by the Member State;

³ The objective of the audit scheme is stated in the *IMO MSAS Framework rev2006 JR.doc*, and presented as lecture notes by Rasmussen during IMO MSAS auditor course, organized for MSEA 2007 at WMU (29/01/07 to 02/02/07). See also Joint working group on the VIMSAS 3rd session(JWGMISA 3/WP.5,18 March 2005,Annex 1,Part 1)

- Recognized organization's (if applicable), monitoring and control feedback mechanisms in place to enable Member State to check activities relating to survey and certification; and
- Member States other obligations and responsibilities under the IMO instruments. Audit assesses extent of discharge of these obligations.

The audit outcome will enable Member State access to the following as outlined in section 5.2;

- Foster capacity-building by identifying areas where Member States need further development and assistance in order to discharge their responsibilities;
- Outcome of the audit will be made available to Member States with feedback to assist in capacity-building to implement the applicable instruments;
- Provision of beneficial generic lessons from IMO to all Member States and care to preserve the anonymity of the audited Member State; and
- Systematic feedback of any lessons learnt during the audit for further consideration by IMO to improve the audit scheme.

2.3 VIMSAS as a tool to achieve the harmonised implementation of IMO standards

From the outset, maritime stakeholders realised the need of an audit initiative and scheme to serve as a benchmark for all IMO Member States. By effective implementation, a lot will be learnt from this scheme as it will lay emphasis on the shortcomings, mistakes and lapses of the past, and lessons to be learnt. In the current scheme, safety and the environment, as well as tonnage measurement and collision regulation are areas for audit. Security issues may be included in the future.

The audit scheme will have some well informed ideas as to how Member States can learn from the past and apply or make the most of the benefits in the future. This is what the IMO Assembly has agreed to so far, by accepting a range of measures that ought to make the harmonised implementation of IMO standards work better. Can this be the conclusive or decisive solution to the problems? The answer could be a

yes or no. Yes, as there is this expectation that what has worked well for the aviation industry could achieve the same harmony for the maritime industry. Probably no, due to the fact that two different terrains are being considered or compared, but the most important point is to have a tool, although not perfect in comparison could be refined and improved with usage. The audit scheme will be a measuring mechanism, which will serve as a standard for all maritime administrations whether flag, coastal or port State.

2.3.1 The urgent need for a common audit scheme

Shipping has been in practice since humans came to exist on this planet. A mixture of actors comes into play in shipping management. The IMO was established as a specialised agency of the United Nations, with the sole aim and responsibility to promote safety of navigation, protection of the marine environment and security. It does this by fostering the maintenance of global standards for all ships on international voyages. One of the actors is the maritime administration, acting on behalf of its Contracting Government; to ensure that standards from IMO are implemented accordingly. Other actors are the recognised organisations, ship owners, shipboard personnel, shore-based personnel, training institutions, insurance companies, charterers and shipyards. The lack of trust among the actors in the maritime field, as observed by S.Knapp and P.H.Franses (2006), has created all type of inspections and audit regimes. Audits therefore overlap between statutory and industry driven inspections. It has become necessary that a common audit scheme is established to curtail audits performed repeatedly and unnecessarily on vessels worldwide.

Considering such a list of actors, controlling and regulating shipping becomes a challenging task naturally. Each actor has an interest which must be considered, and most of these interests conflict to satisfying all the playmakers. Complex discrepancies therefore disrupt the standards of the world's shipping fleet. This disruption also makes implementing and monitoring of all instruments a Herculean task. From the dawn of history, shipping has experienced a crisis whenever any of the actors has caused disequilibrium in the shipping cycle.

2.3.2 Perceptions of the International Maritime Organization (IMO)

Many bureaucrats have over the years criticised the IMO of ineffectiveness in respect of the conventions IMO develops but never monitors⁴ the compliance by States. However, most of the criticisms are unfair or unfounded. The criticism is usually focused on the slowness of IMO conventions coming into force, as there is a long interval between Member States acceding to a convention and the actual date of implementation. There are recommendations that (Sasamura 1998) IMO should develop new rules quickly or revise existing ones as quickly as possible. Adopting and bringing into force new conventions or amending existing ones requires complex and time-consuming procedures. In total, five to six years may be considered a fair timeframe for the process to be completed and this is shown in table 1.

Table 1 IMO rule-making process

Action required	Time needed
Sub-Committee work	2-3 years
Approval by the MSC or MEPC and circulation under six months rule	9-12 months
Adoption and entry into force	18 months
Total time needed	4.5 - 5.5 years

Source: Sasamura; Development of international regulations

The modus operandi in treaty implementation lies on the actors who are obligated to effect treaties, but eventually default on these obligations. Member states⁵ and all stakeholders are expected to fulfil their obligations under the treaties they are

⁴ See BIMCO NEWS, 6th April, 2005, pp.1-5.

⁵ IMO adopts international shipping standards regulations and it is the responsibility of contracting governments to implement them. The flag state has the ultimate responsibility for ensuring that ships which fly its flag meet applicable IMO standards. Certificates are to be issued to ships only when they are seaworthy. IMO conventions contain provisions allowing PSC officers to inspect ships in ports. This is done to target sub-standard ships which do not keep to standards. See-*What is IMO? Poster (PDF)*; <http://www.imo.org/homepage>.

signatories or parties to. Unfortunately, this has not been the case. It is known however, that ratification of international maritime conventions does not necessarily confirm whether the provisions of these global instruments are being properly enforced. It is obvious that contracting States differ from one another in their ability to implement IMO conventions. The low degree of implementation and compliance with such treaties has culminated in VIMSAS being adopted by the IMO.

2.4 The development of VIMSAS

For many years, IMO adopted many resolutions, conventions, codes and protocols in the hope of promoting safety of ships and the protection of the marine environment. Auditing member states through VIMSAS was originally (De Bievre 2005) conceived as a flag state audit scheme. Though many of the traditional maritime nations have reduced influence as flag States, yet they still possess considerable power under port state control regime. The VIMSAS was adopted to address the obligations of all IMO Member States, in their capacity as flag, coastal and/or port States. This approach was adopted, as De Bievre puts it, “to appease any tensions arising from the mistrust on the part of certain large tonnage nations in the developing world, toward strict targeting of their flag vessels in the ports of traditional maritime nations”. The precipitation of VIMSAS in the twenty first century was therefore aimed to get rid of sub-standard ships, by maintaining uniform standard, and embracing audit standards that have worked for organizations in and outside the maritime industry.

2.4.1 Flag State inability to get rid of sub-standard ships

For decades, open registry flagged ships have been competitive due to low tax regimes, reliance on cheap maritime labour, and retention of good profits (Cooperman 1998). Enforcement of IMO conventions to get rid of sub-standard ships has been a challenge. With the establishment of the IMO in 1948 in Geneva, it has effectively developed and amended multilateral conventions dealing with safety

of ships and the protection of the marine environment⁶. When it comes to enforcement of conventions, IMO has depended on the goodwill of Member States. It becomes clear that many flag States⁷ are not in a position to enforce IMO standards on ships under their jurisdiction due to these factors;

- They have not enacted the required national legislations.
- They are not endowed with competent human resource for effective empowerment.
- Flag states are not exercising effective jurisdiction to enforce international and national regulations, according to article 94 of the Law of the Sea Convention 1982 (UNCLOS 82)⁸.

Flag States sometime ignore their prime responsibility to ensure that ships entitled to fly their flags are in compliance with international conventions. Rigorous enforcement is never applied simply because flag states are in competition with each other. It is evident that much has to be done by IMO to make sure that all stakeholders in the maritime field become accountable for safety, security and environmental concerns.

For decades, maritime incidents have had various influences on conventions which try to prevent future catastrophes. Conventions and amendments have evolved from the Torrey Canyon disaster (18th March, 1967), Amoco Cadiz (16th March, 1978), and Exxon Valdez (March, 1989). Conventions have become tools, to reduce and decrease maritime casualties and pollution.

⁶ See IMO's objectives. IMO was set up in the last century to develop and maintain a comprehensive regulatory framework for shipping. Today, activities of the IMO include safety, environmental concerns, legal matters, technical co-operation and maritime security. http://www.imo.org/home.asp?topic_id=161

⁷ Definition of flag State here is the State whose flag the ship is entitled to fly. In IMO conventions it is synonymously referred to as the "Administration".

⁸ UNCLOS 1982, article 94, *Duties of flag State*. The flag state is to exercise control over manning, prevention of collision, proper survey intervals and appropriate navigation of ships. Also appropriate crew qualification, control of pollution, port state control activities and marine casualty investigations.

2.4.2 Shipping has never been a level playing ground

By the end of the 1970s, countries in Europe saw their declining powers as flag States. Europe lost this position due to a lot of factors. While one 'school of thought' has it that stringent enforcement of IMO conventions led to this demise; others are of the opinion that accepting whatever sails on the high seas by certain flag States also led to this decline. Whatever standpoint one maintains, it is obvious that compliance with IMO instruments has never been uniform or consistent. What led to such a discrepancy in implementation was the way treaties have been developed from the outset. Perusing the text of various IMO treaties, it could be observed that much power and scope is accorded to flag States to delegate statutory work.

There is a persistent tendency to adopt different regulatory interpretations and applications by administrations and classification societies. In support of this argument, Barchue (Sasamura 1998), in his paper-*Making a case for Voluntary IMO Member State Audit Scheme* puts it that, "some treaties provide additional latitude for Member States when it comes to determine shipping standards". There are different international interpretations, for example in the phrase, "to the satisfaction of the Administration" and are in many documents which make IMO instruments rather too complex in their compliance⁹.

2.5 The pacesetters; leaders leading by exemplary examples

The audit practice is not new in the shipping industry. The ISM code and STCW convention are audit pacesetters introduced by the IMO. Additionally, to address specific concerns about sub-standard shipping, many programmes were launched from the 1990's by ports and shipping organizations to check the safety of vessels. Among them are the Rotterdam Green Foundation, Ship Inspection Report Exchange, Rightship, Chemical Distribution Institute and the Paris MOU's

⁹ L. Barchue writes that as a result of the phrase, "to the satisfaction of the administration", national laws to implement shipping treaties vary from country to country. This leads to partial or full delegation of statutory work to non-state entities. Member States have different degrees of implementation and enforcement. Regulation of ships is attractive and legitimate due to absence of state accountability and also some ship owners enjoy considerable economic advantage due to lack of uniform enforcement by flag States.

Mandatory Expanded Inspections. IMO learned from the International Civil Aviation Organization's SOAP example, and adopted VIMSAS to establish safety in the shipping industry. The following organizations would show how safety has been regulated in the past before IMO embraced the Voluntary IMO Member State Audit Scheme.

2.5.1 Good practices: The ICAO Example

The civil aviation industry started auditing with the ICAO Universal Safety Oversight Audit Programme (SOAP). The civil aviation, embracing an aggressive quality audit culture for aircraft management and regulation, (Sasamura 2003) adopted SOAP to achieve safety in the air. In the early 1990s, there was a dramatic increase in air transportation. This created a number of serious accidents or near misses due to lack of proper implementation of international aviation regulatory standards by some Contracting ICAO member states¹⁰. This poor or average safety record led to the establishment of the ICAO's Voluntary Safety Oversight Program (SOP) in 1998. The Safety Oversight Program was launched as an assessment rather than an audit scheme. The primary findings after these assessments showed that some Member States lacked an adequate regulatory framework, basic aviation laws as well as specific regulations(Sasamura 2003), and inadequate administrative structures and organisation. Key areas of serious concern were the lack of appropriate certification, monitoring, licensing system, and lack of control and supervision capabilities. In order to solve these problems, the ICAO Safety Oversight Audit Programme started on January 1st, 1999. Similarly, the IMO audit scheme was developed as a maritime equivalent. It is hoped that VIMSAS, will help facilitate the world shipping community to maintain and operate ships according to safe standards than what SOAP¹¹ has achieved.

¹⁰ See Y.Sasamura. *Development of Audit Scheme in ICAO and IMO*. Seminar on Model Audit Scheme, London, 27 May, 2003.

¹¹ Sasamura explains again that the legal basis for this audit programme was, in addition to the ICAO Assembly resolution A. 32-11, each Contracting State signs memorandum of understanding with the Secretary-General.

2.5.2 Initiatives in self-auditing

Over the years, associations and other stakeholders in the maritime field have taken initiatives for many safety practices through self-auditing. The safety of ships, especially bulk and crude carriers have standards checked by the Green Award Foundation and the Paris Memorandum of Understanding (Paris MOU) Mandatory Expanded Inspections (MEI's), and the voluntary codes developed by the International Ship Managers Association (ISMA), the Ship Inspection Report Exchange (SIRE) initiative for oil tankers, and the Chemical Distribution Institute (CDI) for chemical tankers, which require their ships to undergo vetting programmes. S.Cooperman¹² further elaborates these vetting initiatives by explaining that many such organisations take enforcement into their own hands instead of leaving it to international regulatory bodies or flag States because of their concern that ships are unsafe.

2.5.2.1 The Green Award Foundation

In 1994, the Port of Rotterdam formed the Green Award Foundation. All tankers passing the audit's exact standards receive 6% reduction in port dues as well as receiving preferential treatment from nautical service companies¹³ operating in the port. This is an independent inspection bureau on the terms that tankers meet the bureau exact standards. The Green Award is working with SIRE and CDI to provide mutual recognition to limit inspections¹⁴. Their differences are that SIRE does not inspect management procedures while Green Award does not give a vetting report breakdown to the charterer. Green Award of Rotterdam is now established also in

¹² S.Cooperman presented the papers: *Bad Ships Drive Good Ships out of circulation*, and was one of the speakers in the shipping conference under the theme *Market Mechanisms for Safer Shipping and Cleaner Oceans* organised on the University of Rotterdam campus. Further, he has it that the CDI audit evolved out of the failure of class, flag and insurance institutions to maintain high standards.

¹³ Lloyd's list, Monday 11/08/04. J. Parker's article explores some of the underlying assumptions covering industry beliefs about standards.

¹⁴ Ibid.

countries¹⁵ outside Netherlands like South Africa, Lithuania, New Zealand and Portugal.

2.5.2.2 Rightship

Rightship is another independent audit system. It is a joint venture between BHP Billiton Freight Trading & Logistics and Rio Tinto Shipping for inspecting tankers and dry bulk carriers. Information for ranking is obtained from vetting inspections, port state control, casualty investigations, ship information, and ship owner's information. Inspectors look for seaworthiness of cargo holds, ship structure, cargo handling equipment, and ballast water tank inspection. Other oil majors and the Oil Companies International Marine Forum (OCIMF) require ship owners to participate in a Condition Assessment Program (CAP) for hull or machinery survey; which rates ships from one to three¹⁶.

2.5.2.3 Ship Inspection Report Exchange (SIRE) Program

This vetting is purposely for oil tankers. The participating companies follow a Vessel Inspection Procedure (VIP) divided into inspection phase and reporting phase. An Inspection questionnaire is used in the inspection phase for the ship to be inspected. The questionnaire addresses safety and pollution prevention procedures. The reporting phase is developed from a completed electronic questionnaire. SIRE inspections are performed by OCIMF¹⁷ and are done for the cargo owners, who are

¹⁵ Incentives for Green Award vessels are now established in various countries. This is to keep the Ports and Harbours waters free from tanker and bulk carrier pollution accidents. Belgium's port of Ghent gives 6% premium on the port fees for clude oil/product tankers and 10% for dry bulk carriers. Lithuania's Klaipeda State Seaport Authority gives 5% premium on vessel dues for clude oil/product tanker. New Zealand's CentrePort Wellington gives 3% of the port Marine Services Charge (MSC) for bulk carriers and oil tankers. Portugal reduces 3 and 5 percent while South Africa is 5% port dues rebate in all national ports. <http://www.greenaward.org/incentives.htm>

¹⁶ S.Knapp, P.H.Franses. *Econometric Institute Report 2006-30*. It is evident that targeted ships are gas, bulk, oil and chemical carriers while statutory requirements are valid for all ship types. Apart from the Green Award of Rotterdam, these inspections are necessary for the cargo owner or ship owner to show a certain quality level.

¹⁷ From Ship Inspection Report (SIRE) Programme, pdf (4th Edition 2007)

mainly the oil majors. Inspections can take 8 to 10 hours, and mainly concentrate on cargo handling operations. A standardized questionnaire serves as the basis for the vetting procedure with additional requirements from oil majors added to the inspections¹⁸.

2.5.2.4 Chemical Distribution Institute (CDI)

The ship owner requests for this type of audit, so all fees are paid by him. Like the SIRE, standardized questionnaire forms basically cover all areas of shipboard operations. A thorough inspection takes about 8 to 10 hours. This type of inspection is primarily performed on chemical tankers¹⁹.

2.5.2.5 The Paris MOU Mandatory Expanded Inspections (MEI's)

The Paris Memorandum of Understanding (Paris MOU)²⁰ also requires 'high risk ships' to undergo Mandatory Expanded Inspections (MEI's), carried by European Union (EU) members of the Paris MOU region every year. These 'high risk ships' are classified as 3000GT oil tankers over 15 years old and gas and chemical tankers over 10 years old. Other classified ships are bulk carriers over 12 years old and passenger ships over 15 years old.

2.6 Recent IMO attempts towards auditing

The IMO has restricted legal enforcement on Member States when it comes to non-compliance to existing rules. In IMO's desire to promote safe, secure and environmentally friendly maritime transport, flag and port States were seen as the first line of defence in eliminating sub-standard ships. Taking into account the policy guidance given by resolution A.500 (XI), IMO established the Sub-Committee on Flag State Implementation in 1994. One important measure was the development of

¹⁸ See S.Knapp, P.H.Franses.*Econometric Institute Report 2006-30*.

¹⁹ Ibid

²⁰ See <http://www.parismou.org>. One of the Paris MOU mission is to eliminate the operation of sub-standard ships through a harmonized system of Port State Control mechanism.

the Self Assessment Form²¹. The introduction of the Standard of Training, Certification and Watchkeeping for Seafarers (STCW) convention, adopted on 7 July 1978 shifted responsibility for implementation and enforcement to maritime administrations²². The 18th Assembly session by resolution A.741 (18), adopted the International Safety Management Code (ISM) in 1998. The ISM Code became fully effective on 1 July, 2002. These became the first IMO attempt to introduce a formal audit system.

The STCW convention was the first mechanism which conferred certain executive powers on IMO secretariat to undertake audit. It required that governments have to submit compliance reports to IMO. For example, the “White List” is seen as a flag State vetting initiative by IMO. Few would, in principle, question why the IMO audits administrations. While the ISM Code aims at developing and sustaining a safety culture on board ships and in shipping companies, the STCW amendments intended to improve personnel standards at sea through proper education, increased safety awareness, training, communication and the competent execution of tasks (Gratsos 1998)²³. The adoption of the ISM Code and the STCW amendments represent a very positive step by IMO. It is a fact that these two imposes a number of important obligations on the shipping communities, governments and training institutions. Through the STCW amendments, the International Maritime Organization has for the first time been given authority to monitor whether or not their rules have been complied with.

²¹ Y.Sasamura on *Development of Audit Scheme in ICAO and IMO*. Seminar on Model Audit Scheme, London, 27 May 2003. See <http://www.jterc.or.jp/english/kokusai/Yoshio%20Sasamura.pdf>

²² Most of the discussion here has proved that lot has been done by the IMO, ILO and UNCTAD in the past to improve design and equipments of ships. But the total commitment on implementation and enforcement require the co-operation of member governments.

²³ See H.E. Haralambides (Ed, 1998). *Quality Shipping: Market Mechanisms for Safer Shipping and Cleaner Oceans* (Pg XXXVII).

CHAPTER 3

3. BASIC SKILLS AND TECHNIQUES IN AUDITING

3.1 Introduction

An audit standard provides the minimum guidance as a measure which helps determine the extent of the audit. This minimum guidance determines the steps and procedures that should be applied to fulfil the audit objectives. The audit process covers the planning and preparation, performance stage, findings and report stage, and follow-up phase. The audit has to be free from personal and external impairments if it is to cover the agreed timeline. The personnel from the Member State and the auditors must possess adequate professional knowledge of the audit's objective, scope and procedures. Also it is shown in this chapter that the effectiveness and efficiency of the audit scheme depends on the Member State or organization, as well as the audit team providing reasonable, reliable and relevant evidence to all concerned.

3.2 Auditing: Definition and description

The ISO Standard 8402 'Quality Management and Quality Assurance parlance' defines an audit as, "a systematic and independent examination to determine whether quality activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve the objectives". Blank (1999) argued that the main reasons for doing an audit could not be far from these;

- Ensure process and system compliance;
- Procedures are being followed;
- Ensure control of documents;
- Ensure activities are recorded;
- Compliance to contracts and specifications;
- The evaluation of the process;
- Effectiveness of the system becomes evident; and

- Opens up opportunities for improvement.

Discussing the effectiveness of any audit system, one way or the other, follows this pattern. Estimating the compliance of any process is simply to determine in principle that any form of written documentation; specifying ways of doing things are actually being done in the same manner or in different ways. In agreement with R. Blank, another author (Russell, 2000) explains that compliance looks for strict adherence to a set of rules, nothing else but includes requirements and standards. In the world of the audit, words like framework, procedure, scope and purpose cross ones mind all the time. Any process encountered in everyday life, auditors think is planned to work in a sequence of events to produce an intended outcome.

In the maritime world, any time a discussion on safety takes the centre stage, peoples' perception on safety record of flag States is reflected in the State's process of adopting conventions and other safety instruments. Therefore the laying down of procedures to implement safety conventions has been established to be followed as a standard. By following these lay down procedures shows compliance. The audit has therefore become a measure which compares the actual practices followed by maritime administrations with standards set for compliance by the IMO.

Importantly, a maritime administration has to be audited to ensure that it is implementing safety and environmental systems. Safety and environmental audits are an essential part of any sound operation. As noted (Chatterjee 2006), safety operations in the shipping industry can be subject to recurrent audit in the same way as is done in shore based industries. Audit brings out the weaknesses in safety and environmental protection systems. In order for maritime administrations to draw up plans for corrective action, the audit is used to collect independent information on the efficiency, effectiveness, and reliability of the total safety management system²⁴. The most widely used audit standard in general is contained in ISO 19011.

²⁴ A.Chatterjee (November 2006). *Auditing the ISM-A guide for ISM auditors*, has introduced a proactive approach to functional requirements in auditing. Although the text is written with the ISM auditor in mind, chapter two of this book comes with the general title-*Understanding Auditing*.

3.3 Independence in the conduct of an audit

An audit is different from an inspection²⁵ because of its degree of independence. In order to conduct an audit, three primary participants come into play; auditor, auditee and client. Using the IMO as a preferred example, the selected people conducting the audit are the auditors²⁶. The Member State or the administration being audited is the auditee. The IMO qualifies as the client, the organisation requesting for the audit. The nature of the audit may be done in two categories, internal²⁷ and external²⁸. The audit performed within an organisation or administration is an internal audit, while the external audit is one performed by an outside source. In the external audit, “the client and /or the employer of the auditing organization should define the purpose and scope of the audit as well as the standard against which the audit is to be conducted” (Russell 2000, p31).

Similarly, it is important to understand the objectives of the audit and its potential benefits to the organization. This understanding and clarification has resulted in some audit programs being strictly limited to auditing for compliance. Other audit programs also seek management input in the effectiveness of the compliant system. Audit has now become an indispensable tool when used internally; its purpose is to verify that systems are compliant and achieving objectives, and when externally, is used to determine compliance to a set of rules (Russell 2000). The findings of the audit system become a good source of information for management review. A good finding ensures that the administration or organization can learn from experience; improve performance and respond to change.

²⁵ As per ISO 9000, inspection may be defined as conformity evaluation by observation and judgment accompanied as appropriate by measurement, testing or gauging.

²⁶ Distinction of auditors auditing member states for the VIMSAS are made clear from other auditors by J.Rasmussen during his lectures on *IMO MSAS Auditors Course* (WMU, 29th January-2nd February, 2007). He explained that auditors for the VIMSAS are not employees of the IMO Secretariat, but placed at the disposal of the Secretary-General by various member states of IMO.

²⁷ Although this is in essence not a focal point of the audit scheme, Member States use internal audits for self-verification in putting wrong things in their right places before going ahead to sign for the formal IMO audit scheme.

²⁸ Note that external audit may comprise of adequacy audit and/or compliance audit. VIMSAS will mostly be compliance audit.

3.4 Basic skills in time management, conflict resolution and effective communication

Auditors have to acquire basic skills in time management, conflict resolution and effective communication to undertake a successful audit. The auditee has to establish trust in the audit that the audit team will provide a level of assurance during the audit process.

3.4.1 Time management

Enough time must go into the preparation of an effective audit. The auditors have to arrive on schedule to the audit site as planned and agreed with the auditee. This will ensure that the stipulated time agreed during the audit stages are on course. Much time should not be wasted for the opening meeting to ensure good time management. The audit team leader is to retain control, which is very important during the audit period and has to be brief with the objective, scope and guidelines for the audit. For the Voluntary IMO Member State Audit Scheme, the audit period is about one week unless there is otherwise a special arrangement for extra time.

During the audit opening meeting, one of the most important concerns to all is the agreement to complete the audit by the specified time. Proper preparation is needed for this time frame. To make the most use of time, the audit questionnaire should be studied in advance. Once the different entities making the administration are established, it will be known which sites are to be visited at various times during the audit. The auditor must look out for unscheduled meetings which will take the work off course. Sometimes delay tactics and time consuming techniques are employed by the auditee. In the *Quality Audit Handbook*, the editor (Russell, 2000) warns against the auditee's repeated time-wasting tactics to hinder the progress of an audit and even deliberately threaten to compromise the audit schedule severely. Whatever the situation which tries to impede the course of the audit, it is the responsibility of the audit team leader to lodge complaints by notifying the auditee

administration and IMO. An audit is not carried on the administration²⁹, but particularly on all the entities or branches which are responsible for carrying out different roles within the administration. These roles are traditionally different for various administrations.

3.4.2 Methods of resolving conflict

Whatever the situation, differences of opinion will occur. However tactful and cautious the audit team members prove to be, conflicts will occur one way or the other. The most effective way of resolving conflict is, to ensure that mechanisms are in place to reduce conflict occurrence³⁰. Auditors must remain open-minded and flexible. They have to be considerate and respectful of the culture of the auditee during both formal and informal meetings. The auditor must make the auditee aware of what is been recorded and written; avoid surprises and make all audit proceedings clear to the auditee. In any situation, the auditor must be prepared to redress a misunderstanding promptly, and proceed with the audit.

In order to be on schedule, the auditor may be tempted to show concern where there is uncooperativeness and belligerence. Much of the success of an audit depends on the auditor, so it is necessary to be open-minded as far as possible and to listen more while repeating questions whenever this is required. Already, it has been stated in this chapter that an audit is not designed to find fault or blame, so identification of non-conformity is no cause for celebration. The auditors' objective should be to identify and evaluate the evidence of implementation and compliance of all applicable IMO mandatory instruments by the auditee. The auditor must therefore try to create a conducive environment to achieve the audit objective.

²⁹ See the final audit report of United Kingdom of the Great Britain and Northern Ireland. Audit was undertaken from 13 to 20 November 2006. Within the UK administration are various entities or branches which were subjected to the audit. These included the Department for Transport, Marine Accident Investigation Branch (MAIB), Maritime and Coastguard Agency (MCA) Headquarters in Southampton, and marine offices in Southampton and Belfast, as well as port reception facilities, search and rescue facilities (SAR) and vessel traffic services (VTS) facilities.

³⁰ See J.P.Russell, p194. Russell enumerated the common causes of conflicts as poor communication, poor listening, and auditors' bias which truly leads to misunderstanding.

3.4.3 Effective communication

A number of misunderstandings occur during an audit due to poor communication. Communication takes many forms, including written statements, verbal conversations, recording, notification and by using computers. In order to communicate well, auditors must ensure that their message is clear, and then verify that whichever form it is received by the other is understood; use simple, clear and the appropriate media for transmission. In *The Management Task* (Dixon 2003), the author explains that communication is an attempt to achieve as complete and accurate understanding as possible between two or more people. It involves an exchange of ideas and information. Another definition by Dixon is that, "it is the process by which people attempt to share meaning via the transmission of symbolic messages"³¹. The audit team leader presides over the opening and the closing of the meetings. Wherever the location given to the audit team members for the presentations, they must diligently ensure that the auditee understands all their recorded formats, and is able to interpret the data correctly in order to implement the recommended corrective action plan.

3.5 General benefits and consequences of an audit system

When an audit is performed, it provides management with a realistic status of the functional effectiveness of their system. It identifies deficiencies formally overlooked for the implementation of proper corrective actions. Russell (2000) emphasised that effective audit performance provides management with unbiased facts that can be used to:

- Provide input for management decisions;
- Inform them of actual and potential risks;
- Identify areas of opportunity for continuous improvement;
- Assessment of personnel training effectiveness and equipment capability, or generally effective resource management;
- Provide visible management support (in the form of capacity-building); and
- Verify compliance to applicable statutory and regulatory requirements.

³¹ R.Dixon (2003, p 127)

3.5.1 Observing, verifying and recording factual evidence

The effective combination of listening, questioning, verifying, observing and recording factual evidence is a crucial means to carry out an effective audit. The job of an auditor is to collect factual information, analyse this information and evaluate it in terms of the specified requirement. According to the findings, the auditor must draw conclusions from this comparison and report³² accordingly. What usually is examined includes documents, records, instructions, staff interview and legislative instrument compliance. An auditor has to look for significant indicators which will provide objective evidence of compliance or non-compliance.

In his book, *Auditing the ISM*, Chatterjee (2006) makes a significant observation that whenever an auditee makes a statement on a vital point to the auditor, his response should be, "please show me". This makes the auditee feel at ease and cooperative. Chatterjee further argues that verification can be made by various means including;

- Checking the records;
- Asking someone else and comparing answers; and
- Asking people what they think about the effectiveness of this or that method of doing things.

Experience in verifying documents and the examination of records will help the auditor to reveal incomplete, conflicting or incorrect information in the audit process. Regional seminars and workshops are in progress for training auditors. The IMO has set up regional training centres to make sure auditors have the requisite training in auditing. The training also helps the auditors to evaluate Member States in accordance with the laid down procedures of VIMSAS. The following table shows the VIMSAS regional training courses and technical co-operation to the month of July 2007.

³² J.P.Russell, (2000).*The Quality Audit Handbook*, (2nd.Ed. p.79).

Table 2 Regional training courses 2005-2007

	Venue	Region	Dates	No. of Trainees
Pilot	Ljubljana, Slovenia	CIS/Eastern and Western Europe	12-16/09/2005	26
1	Colombo, Sri Lanka	Asia	20-24/02/2006	19
2	Guayaquil, Ecuador	South and Central America	27-31/03/2006	20
3	Alexandria, Egypt	Arab/Med and Gulf countries	15-19/07/2007	13
4	Dar es salaam, United Republic of Tanzania	South and East Africa	18-22/09/2006	11
5	Algiers, Algeria	Arab and West (Francophone) Africa	10-14/02/2007	13
6	Lagos, Nigeria	West and Central (Anglophone) Africa	02-06/04/2007	10
7	Bridgetown, Barbados	Caribbean and North America	11-15/06/2007	13
8	Sydney, Australia	South Pacific	16-20/07/2007	12

Source: IMO

Observations recorded in the form of checklists or memos provide factual evidence as auditors should never rely on their memories. Whatever format recordings are made in, it has to be easily retrievable. For instance, the recorded observation will reinforce credibility in the event of disagreement arising later. Also recording factual evidence is important when non-conformities are observed.

3.6 Fault and criticism – the bane of auditing

The purpose of the audit should be objective review to ensure that procedures do indeed exist (Adedeji 1995). The audit should not be a device for fault finding and

destructive criticism as is often the case. The Secretary-General of the IMO, E.E Mitropoulos commented that, “the audit is not a tool to label administrations, ridiculing or causing embarrassment to the auditee, but is to show an objective presentation of positive and principled constructive recommendations³³”. It provides a learning process to know the level of Member States strengths and weaknesses. Audit findings are to help administrations to overcome problems with respect to implementation and compliance of IMO treaties. They offer assistance in the form of capacity-building from IMO and other Member States.

The audit process will compare systems operating in each country and compare them to an audit standard. Although comparing systems from different countries would be appropriate in all cases because of different levels of experts and competence, an audit outcome will provide valuable lessons, regarding non-conformities. The audit scheme (Barchue, 2005), it is hoped will improve the overall monitoring, enforcement and reporting by flag, coastal and port States to IMO. Member States will undertake better casualty investigations; more rigorous delegation to Recognized Organization's and best practises by implementing treaty obligations. Better communication between flag and port States will result in increased port State control performance. The audit will impose obligations on an administration to regard safety as its prime responsibility. Safety policies will enforce regulations; thereby ensuring fewer detentions of sub-standard ships, and therefore protection of coastal flora and fauna.

3.6.1 Confidence-building in maritime administration

Since the audit is intended to identify weaknesses and shortcomings, the maritime administration should take the lessons learnt seriously. As audit is performed relative to an established standard, this should assure the administration that an improvement of its operations is possible. Where a Member State has deviated from

³³ Opening the Joint Working Group on VIMSAS, 3rd session, 14 – 18 March 2005, E.E. Mitropoulos explained that the scheme's central idea is to enhance safety at sea and environmental protection through positive, not negative, ways and means. And the scheme won't be a fight to cause embarrassment by exposing weaknesses that might be identified in the process.

established standards an audit should ensure return to the standards. The purpose of the ISO Quality and Environmental standards is to demonstrate good operational practices. Therefore, in addition to identifying procedures dysfunctional, an audit is regarded as a useful tool for self-improvement.

CHAPTER 4

4. CODE FOR THE IMPLEMENTATION OF MANDATORY IMO INSTRUMENTS

4.1 Historical Background

Work on the code followed a proposal to develop amendments³⁴ to Resolution A.847 (20). This was meant as a guideline to assist flag States in the implementation of IMO instruments. From time immemorial, every non-compliance of IMO instruments have appeared to target flag States. This led to internal disagreement as major flag States complained that only flag States are reprimanded but not port or coastal States. It is obvious that port and coastal States have legal responsibilities and obligations to ships' safety standard and environmental protection in their ports and along their coastlines. This is stipulated in the United Nations Law of the sea (UNCLOS 82) "umbrella" convention, and in various IMO regulations on safety and vessel generated pollution control. For instance, Port State Control (PSC) surveyors/inspectors, though empowered by numerous legislations to inspect, arrest and detain ships, often fail in their duty to inform the flag State. The flag States objected to the double standards of PSC surveyors who try to right the 'wrongs' without duly informing flag States of the detentions. Another legitimate complaint from the flag State was the eagerness of Port State Controls (PSCs) to detain vessels over MARPOL non-compliance, when only few port States have operational reception facilities in their ports.

The Flag State Implementation (FSI) sub-committee was tasked to update the guidelines for proper implementation of IMO conventions to cover the responsibilities of Member States in their roles as flag States, port States and

³⁴ A number of countries, including Denmark submitted a proposal in April 2002 to FSI and proposed to develop amendments to resolution A.847 (20). It was meant that this will introduce transparent criteria for proper implementation of IMO instruments by flag States. The idea behind this proposal was eventually to transform the Guidelines into a flag State Implementation Code, to be made mandatory at a later stage. Resolution A.912 (22), *Self-Assessment of flag State Performance*, adopted on 29 November 2001 was poorly patronized by Flag States.

coastal States. Extending the scope of the audit scheme to all Member States therefore makes practical sense. Work was carried out on the audit scheme from 2002³⁵ to 2005 by two groups, the Flag State Implementation sub-committee and the IMO Council. During the 23rd session of the Assembly, in November 2003, resolution A.946 (23)³⁶ on the Voluntary Member State Audit Scheme was adopted. The Maritime Safety Committee (MSC) and the Marine Environmental Protection Committee (MEPC) were mandated to review the audit scheme, with the duty to include maritime security matters which are not present. It is hoped that by resolution A.975 (24), adopted on 1 December 2005 on *Future Development of the Voluntary IMO Member State Audit Scheme*, all other important IMO instruments and codes which presently are not in the scheme will be covered.

4.2 The code: A standard and guidance for the audit scheme

Going through the code³⁷ for implementation of mandatory IMO instruments, the Voluntary IMO Member State Audit Scheme imposes no other obligation on flag, coastal and /or port States. Contracting governments to SOLAS, STCW, MARPOL, etc have different obligations as flag State, coastal State and port State. For instance Switzerland, though it is a landlocked country, is nonetheless a flag State. Other countries primarily play a greater role as a coastal State or port State than as a flag State. It should be noted that there is no introduction of new mandatory

³⁵ See IMO Council (88th Session, 10-14 June 2002), C88/13/1/Add.1 on proposal for the introduction of an IMO Model Scheme submitted by Australia, Canada, Cyprus, Denmark, Finland, Germany, Hong Kong China, Indonesia, Italy, Japan, the Netherlands, Norway, the Republic of Korea, Marshall Islands, Singapore, Spain, Sweden, the United Kingdom and the United States.

³⁶ Resolution A.946 (23). Through this resolution, the Assembly approved for the further development of the Member State Audit Scheme. The Assembly also requested the council to develop, as a matter of urgency, procedures and other modalities for its implementation. Then in June 2004, the council decided that pilot project be undertaken by 6 Member States forming two separate pilot Audit groups: Cyprus, Marshall Islands, and the United Kingdom in one group; France, Islamic Republic of Iran and Singapore in the other group. The audit is based on the draft framework and procedures that were developed same year by the Joint Working Group (JWG).

³⁷ See Assembly\24\RES\973.doc. In addition to providing guidance for the implementation and enforcement of IMO instruments also forms the basis of the Audit scheme, particularly concerning the identification of the auditable areas.

instruments but those States to be audited are already a party to. The code has two different roles. Firstly it serves as a standard for the audit, and secondly as guidance. The scheme is now voluntary. Though not all Member States in this respect will volunteer to be audited but as IMO members they still have to follow the guidance given in the code and have to decide whether to be audited or not.

4.3 Relevant IMO mandatory instruments

The scope of the audit addresses flag, port and coastal State obligations of the national maritime administration.

An objective of the audit is to determine to what extent Member States are implementing and enforcing these applicable IMO instruments³⁸ :

- The International Convention for the Safety of Life at Sea 1974, as amended (SOLAS 1974);
- The Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, as amended (SOLAS PROTOCOL 1978);
- The Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROTOCOL 1988);
- The International Convention for the Prevention of Pollution from ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78);
- The Protocol of 1997 to amend the International Convention for the Prevention of Pollution from ships, as modified by the Protocol of 1978 relating thereto (MARPOL PROTOCOL 1997);
- The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978);
- The International Convention on Load Lines, 1966 (LL 66);
- The Protocol of 1988 relating to the International Convention on load lines 1966 (LL PROTOCOL 1988);

³⁸ See section 6, *Scope* for the Code for the Implementation of Mandatory IMO Instruments.

- The International Convention on Tonnage Measurement of ships 1969 (TONNAGE 1969); and
- The Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972).

In addition to the above, the instruments made mandatory through these conventions and protocols are included. Thus the audit assesses and evaluates the effectiveness of States implementation and degree of compliance with the code.

4.4 Pre-audit questionnaire

Before the auditing and completing this pre-audit questionnaire, Member States³⁹ identify their shortcomings in order to develop and adopt tested plans to rectify inadequacies and differences. This is an advantage as it allows Member States to make changes before the actual audit starts. Much care goes into the filling of the questionnaire. A copy of the pre-audit questionnaire is in Appendix 3. This is the most important document and gives lots of information to auditors. For instance auditors use this to identify 'weak points' where many of the audit questions will eventually evolve from. After a country has volunteered for an audit, it goes through the prescribed sequence of activities. A Member State has the legal right to suspend, modify or cancel the audit process at any time, by only giving one month's written notice to the IMO Secretariat. Due consideration should be provided when this happens, to smoothen up arrangements put in place in the memorandum of Cooperation.

³⁹ The reader should note that the words State, Member State and administration are used interchangeable.

4.4.1 General information

The pre-audit questionnaire⁴⁰ opens with general information, the name of the state requesting the audit, followed by full contact details of the person to serve as guide during the entire audit period including name, address and title. Through this guide, it is hoped that whatever problems the auditors face can be explained and resolved. Under the government, contacts for safety and environmental protection, and the areas of responsibility of government entities have to be explained. Administrations as in the United Kingdom, Denmark, and Sweden etc, have several branches or entities performing different functions. Therefore, it is up to the state to provide an organigram and/or diagram showing the area of responsibility of each of these government entities.

The first seven sections of the questionnaire are for the flag, coastal and/or port States. In the fifth, categories and number of employees for each relevant government entity has to be stated, with their location. The nature of trade is specified for a number of different types of vessels and if the State runs different registers this must be done separately for each registry. Section eight, is on port and coastal State activities. States are required to specify the number of ports, traffic density, length of coastline, important straits and whatever other activities pertain to the port and coastal State.

4.4.2 Information on international instruments

What is really significant comes under the mandatory instruments. A Member State is audited against the IMO mandatory instruments to which the State is party. The State is required to fill in which instruments it is party to and show whether the instruments have been incorporated into the State's national legislation. In a flow

⁴⁰ The Pre-Audit Questionnaire will be found in Appendix 2 at I:\ASSEMBLY\24\RES\974.DOC. Take special note of the footnote beneath the questionnaire. It explains that the format is only presentational and does not restrict administrations to the extent or form of response to questions. Other attachments in the form of documents, diagrams, organigrams, flow charts and all arrangements the administration think will help in the smooth running of information during auditing are essential and welcomed.

chart to be attached, the state must illustrate the processes by which all relevant international instruments are formally adopted and transposed into national legislation⁴¹. In addition there is information on the government entities responsible for implementation and enforcement, the equivalents/exemptions issued, and contracting governments or parties requested to act on behalf of the state. All information on national laws is required to be submitted and an indication of what has been communicated or reported, as appropriate, to IMO. Next is to describe the State's policy in respect of the term, "to the satisfaction of the administration", and acceptance of IACS Unified Interpretations (UIs) unless otherwise specifically stated in class agreements. The administration should show requirements for equipment to be approved by it. How policies are applicable to the above, and how the maritime administration implement them.

4.4.3 Information on enforcement

All enforcement provisions in the code pertain to the flag, coastal and port States. Periodic inspections by the port State control or Recognised Organisations show the actual condition of ships. Penalties should be set as a deterrent to discourage violation of international rules and standards. A State must have a monitoring programme in place for prompt and thorough casualty investigation, data collection, and timely response to deficiencies and reporting to the IMO as appropriate.

Section one requires the details of how States implement the enforcement provisions of the code with respect to mandatory IMO instruments. Other enforcement actions taken against State flagged ships, companies and/or seafarers for the preceding twelve months must be provided. In three, the State is to provide how statistical information is obtained and conducted in relation to trend analyses to indicate problem areas within the State's fleet. There should be detailed statistical information, on procedures dealing with ships detained by port State control, and

⁴¹ There should be an evidence of transposition into national legislation of mandatory IMO instruments or their amendments which the Member State has enacted. Failure of this show an evidence of non-conformity on the part of the State, and during the audit proposed corrective action will be initiated.

what mechanism does the State apply to oversee that appropriate corrective measures are taken.

4.4.4 Recruitment and training of surveyors

Member States employ surveyors to do surveys, inspections and other duties. The first section opens with a description of recruitment criteria, qualifications and the processes for selection surveyors and other staff engaged in flag and port State duties. The State needs to explain what initial training requirements are in place for new entrant surveyors; as well as how in-service trainings are organised for experienced surveyors and their training requirements. Surveyors and other staff engaged in flag and port State duties have job descriptions. The State is to describe or specify management arrangements in place for these duties by defining responsibilities, authority, and the interrelation of surveyors and other staff engaged in flag and port State duties. In appointing line managers as surveyors, description or specification of entry criteria used e.g. qualification, experience and training needs have to be provided.

4.4.5 Information on recognised organizations (ROs)

Recognised Organisations (ROs) do statutory work on behalf of the administration, and play an important role in ship safety. The administration is required to give a list of ROs it has authorised to act on its behalf. A written agreement entered into with each of the ROs must be specified, and in the absence of one, the State must specify the scope of authorization(s)⁴²; that is any legal arrangement in place. Also to be provided is a matrix indicating functions, e.g. plan approvals, surveys, certification, exemption and equivalent arrangements which have been delegated.

⁴² Under regulation 1/6(a) of the SOLAS Convention, administration can delegate inspections and surveys to ROs or nominated surveyors. IMO must be notified through regulation 1/6(c) of all responsibilities and authorities so delegated. Then in SOLAS regulation 1/12(a) vii, indication of the authorized persons or organizations which may issue the statutory certificates. MARPOL 73/78 and Tonnage 1969 has similar provisions, except STCW convention which does not have a provision for delegation of authority.

Delegating to ROs still confer ultimate responsibility to the State. In view of this, the administration is required to show how ROs' performances are verified and monitored and then to indicate the allocated resources which the State uses to verify and monitor a Recognized Organization's⁴³ performance.

4.4.6 Information on investigation and analysis of maritime casualties and pollution incidents

Investigation is usually conducted after an occurrence of a marine casualty or pollution. One of the State's obligations is to conduct investigations irrespective of the region, distance or locality when incident occurs. A State must describe the relevant national legislation in place regarding maritime casualties investigations. The State has to describe its organizational structure for casualty⁴⁴ investigation and provide an organigram to illustrate the national framework. Also to be included in this description is how impartial and independent the investigators are in the conduct of their responsibilities. Section three, describes how the analysis of the human element contributes to accidents and how the use of this analysis helps to improve maritime safety and pollution prevention. Finally, the State must describe the means by which reports are forwarded to IMO in section four.

4.4.7 Information on port State control (PSC) activities

The first section verifies if the state carries out port State controls, and secondly indicates the relevant sections in the national legislation which permits control on

⁴³ Recognized Organization play an important role in bridging the IMO and the flag State. As Barchue explained in his article, *Making a case for the Voluntary IMO Member State Audit Scheme*, parties to SOLAS provide information to IMO on authorization granted to ROs based on Resolution A739 (18), *Guidelines for the authorization of organizations acting on behalf of the Administration* and Resolution A.789 (19), *Specifications on the survey and certification functions of recognized organizations acting on behalf of the administration* (Regulation 1 SOLAS Chapter XI-1), but no independent mechanism is in place to verify how Parties and ROs adhere to both resolutions and there is no idea about their competencies.

⁴⁴ In accordance with IMO resolution A.849 (20): *Code for the investigation of marine casualties and incidents*, as amended by resolution A.884 (21).

visiting foreign ships. A State must mention one or more regional port State control regimes to which it belongs. Next is the description of mode of interventions which the State has designed and how these interventions are transmitted to all parties concerned, especially to flag States. The numbers of port State control inspections carried out over the last two years with the records of number of detentions are contained in sections four and five. Finally, section six describes and gives advice concerning reception facilities of the State and how adequately this is as required in MARPOL 73/78⁴⁵.

4.4.8 Information on coastal State activities

This paragraph of the questionnaire deals with coastal State implementation and control of relevant treaties including UNCLOS 82, and how the State legislates to implement the “force majeure”⁴⁶ provisions of SOLAS article IV. A coastal State has to describe arrangements for promulgating navigational warnings and dangers along the coast to ships. The third section is about arrangements in place for the establishment and maintenance of navigational aids which the State is responsible for. The coastal State must describe the measures in place which encourages the collection of meteorological data; and arrangements for coast watching and rescue of persons in distress. Protection of the environment from ship source pollution is one particular field of concern to the IMO. Sections six to eight are descriptive procedures the State has for investigating reported incidents of pollution and in

⁴⁵ Port States in order to fulfil their treaty obligations are required to provide and operate adequate port reception facilities as accorded them in MARPOL 73/78. In the IMO’s *Comprehensive Manual on Port Reception Facilities* (1999 Edition), part of section 4.2.1 states that the annexes to MARPOL 73/78 prescribe what parties should undertake to ensure that adequate reception are provided, so that ships can deliver (specific categories of) waste in ports.

⁴⁶ Extract from the yearbook of the International Law Commission, 1978, vol II (1), *In the Agreement on Co-operation with regard to Maritime Merchant shipping* (Budapest, 3 December 1971), article II defines “force majeure” as any “process which provides for assistance and facilities to be granted by the authorities of the territorial State to a vessel, its crew, passengers and cargo in distress or which is wrecked, runs aground, is driven ashore or suffers any other damage off the shore of a contracting party” (p.66). See also the *National Legislation and Treaties relating to the law of the Sea* (United Nations publication, Sales No. E/F .76.V.2), p382. Also in the English language legal dictionaries, in addition to “act of God” and “vis major”, expressions such as “overwhelming force”, “irresistible force”, “Superior force”, etc may be found (p.68) synonymous to “force majeure”.

addition the shipping and pollution prevention legislation applicable in the Exclusive Economic Zone (EEZ). If there are Particular Sensitive Sea Areas (PSSAs) established, the mention of associated protective measures State has for protecting them must be given. Traffic routeing are covered in sections nine to ten. Section nine covers traffic routeing schemes enforced under the State's responsibility, not mandated by the IMO and ten is related to the description and management of the IMO maritime routeing systems in force but under the state's jurisdiction.

The State must describe the type of reporting systems or vessel traffic service (VTS) systems (adopted by IMO) in operation. Mention of national legislation within Member State's jurisdiction to establish sanctions for violations of mandatory IMO instruments, and the methodology employed to enforce national maritime legislation on ships within the territorial waters should be described. Section fourteen verifies arrangements for hydrographical services and ship reporting systems, with measures taken by the State to evaluate the effectiveness in implementing IMO mandatory instruments (e.g. exercises to test counter-pollution measures, rescue of distressed persons, etc).

4.4.9 Information on reporting requirements

This section is about the State's preparedness for developing and submitting mandatory reports to IMO. It is also mentioned in section four of paragraph 4.4.6.

4.4.10 Evaluation and review

The code stipulates periodic evaluation of performance with respect to the implementation of administrative processes, procedure and resources. Performance indicators include;

- Detention rate of ships by PSC officers or otherwise;
- Casualty statistics, inspection results and occupational accidents investigation;
- Suspension or withdrawal of certificates, endorsements and approvals; and
- Recorded number of violations under MARPOL 73/78, as amended.

A Member State has to describe how performance indicators are measured. Section two contains a description of future policies; methods by which the results obtained from evaluation and review will influence future policies and promote continuous improvement.

4.4.11 Information about management systems

The State should provide information on whether it uses a recognised quality management system, e.g. ISO 9001:2000, for part or all of its activities. If the State does use ISO, further relevant documentation confirming usage must be copied and submitted with the questionnaire. If a State uses other management systems apart from what is stated, then copies of contract of the new system or other relevant documentation should be submitted.

4.4.12 Scope of the audit

This provides that States should indicate whether they want some of the areas included in the code for the implementation of mandatory IMO instruments to be excluded from the audit.

4.5 Evaluation of States

The objective in section 2 of *Common Areas* (Annex to Code for the Implementation of Mandatory IMO Instruments) explains that administrations 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. The following sections evaluate the activities of the flag State, coastal State and port State.

4.5.1 Evaluation of flag State

The international nature of shipping is a challenge for flag States in respect of the monitoring of ships flying their flags. What compounds the problem is that many of

the flag States simply do not have the resources to enable them supervise and monitor ships around the world. Flag States have the ultimate duty to ensure that ships comply with standards accepted under international law and regulations. In order to have greater measures of control and monitoring, flag States have provisions stipulated in Resolutions A.973 (24) and A.974 (24).

4.5.2 Evaluation of coastal State

Most coastal States around the world default on their responsibilities and obligations under various IMO mandatory instruments. Various duties impose on coastal States, such as search and rescue, vessel traffic separation, place of refuge, safe navigational aids, and pollution response to shipping have already been mentioned. Regarding States defending rights under the UNCLOS 82 convention, coastal States often insist on their sovereignty, but neglect their responsibility. Areas where coastal States fall short include;

- Not fully compliant with the obligations of innocent transit of shipping by failing to provide the required facilities;
- Lack of places of refuge along their coast;
- Ineffective oil-spill contingency plan observed during oil-spill incidents; and,
- Failure to provide lighthouses and navigational aids for passing ships in accordance with IMO and ILO guidelines.

4.5.3 Evaluation of port State

The port State has responsibilities and obligations under international treaties, conventions, national laws, bilateral and multi lateral agreements to enhance safety of ships, security, and the protection of environment and pollution prevention. It has other obligations in controlling and implementing existing conventions such as SOLAS (modified by its 1988 protocol), MARPOL and STCW. These conventions empower officers to carry out port State controls. The port State should periodically evaluate and review performance.

CHAPTER 5

5. FRAMEWORK AND PROCEDURES FOR THE AUDIT SCHEME

5.1 Introduction

To undertake the audit scheme, a Member State sends a formal request to the Secretary-General of IMO. The pre-audit questionnaire is then sent to the Member State which stipulates obligations to relevant mandatory instruments imposed on Member States such as flag, coastal and port State. The selection of auditors and notification of selected auditors is transmitted to the Member State after the latter submits the completed pre-audit questionnaire to the IMO Secretariat. The IMO in collaboration with the Member State agrees on the final selection of auditors. An audit team leader is then appointed. A Memorandum of Co-operation is negotiated and signed by the Secretary-General and Member State, opening the way for the formal audit. This is followed by the preparation of the audit plan. The plan must be prepared by the audit team leader and the Member State representatives. When the audit plan is agreed, it specifies a timeframe for the audit and also the audit's modus operandi.

In the interest of all parties, the audit is done within the agreed timeframe with an opening meeting, audit performance and closing meeting in that order. The audit team leader presents the interim report with all the comments from the Member State during the closing meeting. This interim report enables the Member State to design an appropriate corrective action plan for submission to the IMO. The final audit report is then prepared. This report is confidential; only the Audit team, Member State and Secretary-General have access to it. The Member State receives copies of the interim, final, mission and summary reports. In the case of the summary report, the Member State has to give permission for it to be circulated to other IMO Member States, but the consolidated summary report is circulated to all Member States by the Secretary-General.

5.2 Responsibilities of the Secretary-General, Member State and Audit team

The Secretary-General, Member State and audit team members have various responsibilities in order to conduct a successful audit. The following sections address their respective tasks as defined by Resolution A.974 (24).

5.2.1 Responsibilities of the Secretary-General

The implementation and success of the audit scheme depends on the Secretary-General. He is responsible for selecting the audit team and appointing the audit team leader. The Secretary-General is to ensure that selected Auditors have the requisite competencies, education and experience. When a State applies to be audited, a questionnaire is sent to the administration by the Secretary-General. The audit questionnaire which must be completed by the country to be audited covers commitments as flag, coast and port State. Though the selection of auditors is done by the Secretary-General, he does it by notifying the Member State. Prior to the audit the Secretary-General signs the Memorandum of Cooperation with the Member State.

5.2.2 Responsibilities of the Member State

Since the audit scheme is voluntary, the Member State has to express interest and willingness to be audited. Member States do vigorous work usually to set things in order before applying to the Secretary-General for the audit. The Member State has to be bound by audit standards in the code for the implementation of IMO instruments and the framework and procedure as in the resolutions. The Member State has to cooperate throughout the audit period. The Voluntary Member State Audit Scheme should be seen as an open and transparent audit exercise carried out on the administration. The success of an audit depends on the auditee as a good organiser, free exposure of records, and the efficient use of time, reliability and co-operation. The Member State has to give consent to the Secretary-General's choice of auditors, including the audit team leader. Disagreement on the choice of auditors has not arisen since the audit began in September 2006.

Much as the audit depends on the outcome of the questionnaire, how effectively different entities in the administration are prepared is also a factor. In order for the audit to proceed successfully, all parties involved should be in readiness; and any arrangement needed to facilitate the auditors work has to start from the first day.

5.2.3 Responsibilities of the Audit team leader and auditors

The audit team leader plans the audit with the Member State. The team leader has the responsibility of planning, controlling and keeping the audit on schedule. The team leader as in section 8.3 of the audit framework is responsible for maintaining overall control of all interviews and meetings in accordance with the audit procedure. The team leader directly represents the Secretary-General. He has total oversight over all the audit team members. The audit team leader observes protocol by showing any non-conformity or deficiencies to the auditee. He is also responsible for preparing interim, final, summary, and the mission audit reports. A significant factor is that he has to agree with the Member State over the summary report to be delivered to the Secretary-General. Whenever the Member State prepares the corrective action plan, the audit team leader assists in the verification of this plan and conducts a follow-up audit any time it is requested.

5.3 Qualification of auditors

The credentials an auditor needs to have includes working knowledge of existing ISO standards like ISO 9000 and ISO 14000. An ISM auditor is duly qualified by participating in a workshop and seminars on Voluntary IMO Member State Audit Scheme. Other necessary qualifications include a good knowledge of the IMO regulatory framework, functions of a maritime administration and all IMO mandatory instruments, and a good knowledge of ISO 19011 and other ISO standards in operation. Computer literacy is also an advantage in this electronic age. Auditors who constitute the audit team are drawn from Member States, accredited to the IMO Secretariat for the audit purpose. Their appointment is determined by the Secretary-General, since they would represent the IMO and not their Member States.

5.4 Preparing for the audit scheme

The audit team leader acquires the necessary background of an auditee from the Memorandum of Co-operation and the Pre-Audit Questionnaire. The Member State has to conclusively and honestly provide all information in the completion and presentation of the two documents. The questionnaire could contain additional information as a follow-up and must be added as an annex. The audit preparation should include scope, purpose and procedure as outlined in Resolution A.974 (24). These should be spelt out in the audit plan mutually agreed to by the auditors and the Member State. Various entities are included in the audit under the administration. The date for the opening meeting, audit duration, and places to be audited should be part of the preparation. In the event of delays, extension of the timeframe should be mutually agreed to by all parties.

A lot of the work during this period would involve travelling. Arrangements regarding means of travel, entry visas application, and accommodation have to be prepared in advance. As good preparation facilitates the execution of an audit, the auditee State should organise and arrange documents before the first audit day. When the Member State decides to carry out the audit, requirements in Resolutions A.973 (24) and A.974 (24) become binding.

5.5 Opening meeting

The opening meeting is attended by all parties involved in the audit, that is the audit team and representatives of the administration. Normally the administration top management, including the Director-General, attend this important opening meeting. The audit team members are introduced and also the auditee's side. The meeting is chaired by the audit team leader. The necessity for this opening meeting is to make it possible for the audit team and the administration to know each other. For a successful audit, personnel are introduced during the opening meeting to explain their designated responsibilities. The meeting opens the way for evaluation of the audit plan and areas of concern if there are any changes. Once the audit is underway, interruptions are unacceptable so this meeting clarifies questions that are pending. The audit team leader allows further discussion over methods and

procedures as reported in the two resolutions, relative to non-conformities and findings. This forum is used to clarify the roles of auditee representatives, mode of communication and the possibility of using interpreters. Whatever is discussed, including attendance, is recorded. Although the pre-audit questionnaire contains the names and addresses of point of contacts from the Member State, the identity of the audit team members and administrative personnel must be known.

5.6 Investigating and recording factual evidence

It already has been noted that the standard for an audit is the code for the implementation of mandatory IMO instruments which has been specifically developed for the audit. The proper audit procedure takes place after the opening meeting until the closing meeting terminates the audit. During this period, audit team members through the use of checklists, pre-audit questionnaire, interviews and other information provided by the auditee do all the data gathering to confirm or deny previous records submitted. The audit team members do the audit investigation and the recording of objective evidence wherever it is observed. The auditee has the responsibility to provide documents to support any evidence when required. With this mutual co-operation, the auditor and auditee agree on the accuracy of audit observations and other non-conformities. It should be noted that most audit conflicts are related to or associated with the verification of non-conformities. The role of the auditor is to examine the administrative entities' compliance with all applicable requirements as in Resolutions A.973 (24) and A.974 (24); and evidence of their effective implementation.

5.7 Preparing the audit reports

The audit team compares all the findings collected in the course of the audit. This must be supported by all the respective objective evidence agreed by the Member State. Explaining objective evidence, Chatterjee (2006) wrote that it is what the auditor sees and verifies from all the authentic documents and records available at the audit site. Also objective evidence includes what the auditor notices from observing activities and conditions regarding administrative practices. The audit

team findings are mainly supported by the physical, testimonial, documentary, and analytical evidence. Therefore, evidence must be relevant, and useful as a good basis for audit findings and recommendations. The audit team leader must make available the interim report with all the objective evidence to the Member State during the closing meeting. As per the procedures of VIMSAS in section 7.1.1 *Reporting*, it states that, “the audit reports must be consistent by taking into account contents in the interim, corrective action plan, final, summary and mission reports”. For clarity, findings must be stated clearly and presented as concisely as possible. It is very important to make sure none of the checklists, memos, and notes of the audit team get into unauthorised hands. The audited State has the right to make known to the public any section of the corrective action plan and the audit’s final reports⁴⁷. All documents have to be treated with strict confidentiality.

5.7.1 Interim report

The Audit team prepares the audit interim report which covers all the findings during the audit period and must be made available to the Member State and the Secretary-General. Through the interim report, the Member State becomes aware of all the non-conformities and therefore prepares the corrective action plan. The State has ninety calendar days after the day of interim report's receipt to present the corrective action plan to the IMO Secretariat. The interim report and corrective action plan form the basis for the audit final report. This is explained in figure 1.

⁴⁷ The kingdom of Denmark published the Voluntary Member State Audit Scheme (18-25 September 2006) final report, including the corrective action plan on the homepage of the Danish Maritime Administration. Also published for the public perusal is the audit of the United Kingdom of Great Britain and Northern Ireland (13-20 November 2006).

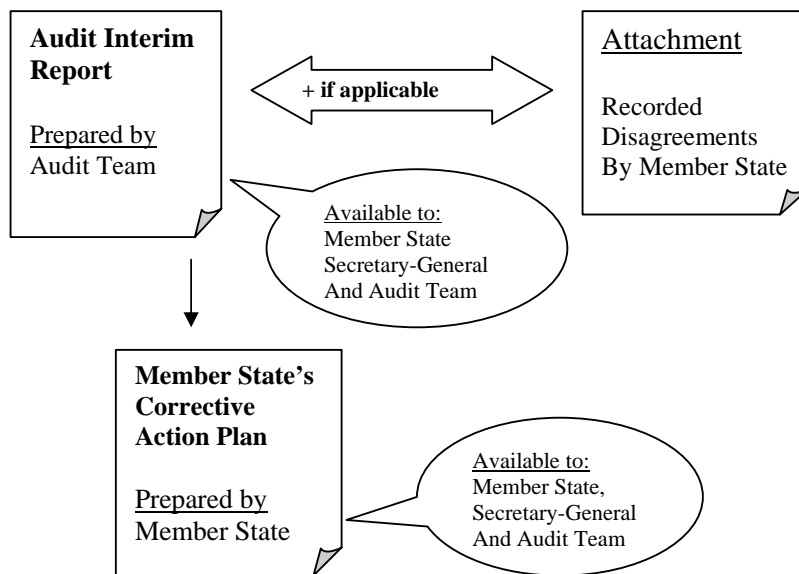


Figure 1 Preparation of initial audit reports

Source: IMO MSAS auditor course manual

The interim report gives a general description of the flag, coastal and port State activities. It covers areas in the audit where there are positive developments and areas which needed further developments, and all observations and non-conformities. Any audit finding which the Member State disagrees with should be put in writing as an annex to the interim report.

5.7.2 Final report

The final report is the final document of the audit mutually agreed to by the Member State, Secretary-General and the Audit team. It is prepared by the audit team and consists of objective evidence as observed by the team and subjective issues for process improvement from the Member State. The final report includes the corrective action plan with a timeline. The Member State includes in the corrective action plan all the procedures it will employ to eliminate problems observed during the audit.

At present, there is no immediate follow-up system to check the effectiveness of the corrective action plan. In paragraph 9, as per the procedures *Records and follow-up*, it is stated that determination of the status of implementation of corrective action plan will be conducted after one or two years following the audit. It is hoped that an effective means is found to review the results of the corrective action plan as early as possible.

5.7.3 Summary report

This contains lessons learnt from the audit submitted to the Secretary-General. The audit summary report provides an overview of the whole audit process especially all non-conformities and findings summary. It serves as a reliable measure of the audit's success. It includes the audit team's comments in relation to how the Member State adheres to compliance as stated in Resolution A.973 (24).

5.7.4 Audit team leader's mission report

The audit team leader presents a mission report as a separate report to the Secretary-General. The report describes conditions during the audit, disagreements, positive elements, difficulties encountered and general behaviour regarding the audit period. All opinions regarding proposals to improve future audits have to be included for consideration by the IMO. The mission report covers the audit preparation up to the closing meeting, explaining useful feedback for future amendments. In section 7.5 as contained in the procedures for VIMSAS, the audit team leader's mission report is an integral part of the quality assurance programme to improve audit planning. The figure below shows the sequence of the audit report preparation.

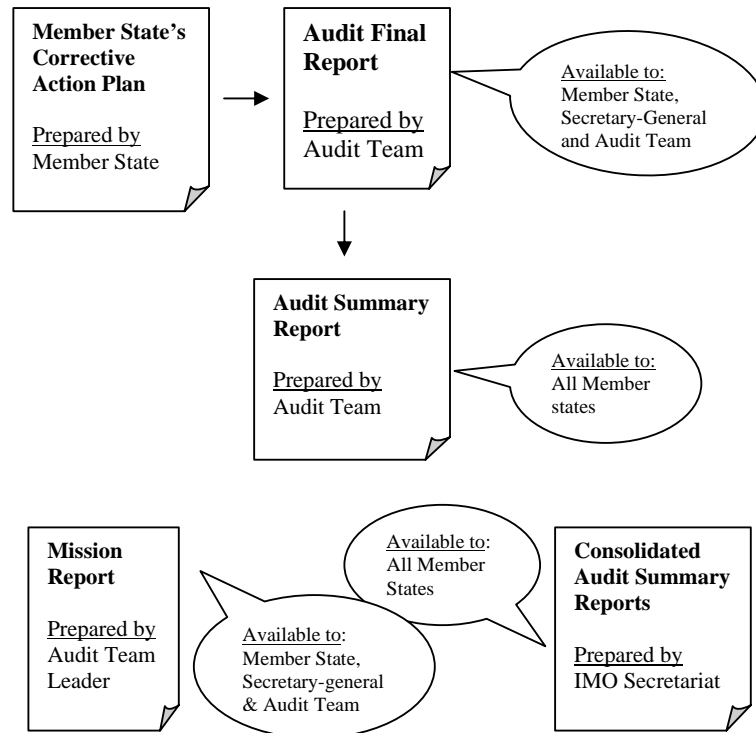


Figure 2 Preparation of final audit reports

Source: IMO MSAS auditor course manual

5.8 Audit closing meeting

The closing meeting brings all audit activities to an end. It is as important as the opening meeting, but closing meeting is brief and usually attended by the senior management. Most of the courtesies are performed at the closing meeting. The auditors should acknowledge the auditee's co-operation, time, patience and hospitality during the audit period. The personnel who devoted their time wholeheartedly and helped during the fact finding and data gathering are also recognised. The Member State is expected to appreciate the role played by the audit team members for the audit's success.

The closing meeting presents an opportune time for the presentation of the audit team's findings and opinions. It is very important for the audit team leader to take every opportunity to clarify statements made to ensure that whatever communication

ensued during the audit is understood. This briefing should be as short as possible. Other points to be included are what are to be expected in the audit interim report. Any conclusions reached should be based on the evidence obtained from the audit. In section 6.5.3 of chapter 6, *Conducting the Audit*, the audit team leader should discuss with the Member State any follow-up activities. Further visits have to be discussed and arranged as necessary to verify that all corrective actions have been effected. These activities should include suggestions regarding the need for the corrective action plans the Member State intends to develop. The team leader also has to inform the Member State of the critical dates, for the submission of the corrective action plan, the final and summary reports. Section 6.5.4 gives the format of the audit closing meeting as follows:

- Review of the purpose, scope and objectives of the audit;
- Summary of the audit procedure;
- Presentation of observations and non-conformities included in the audit Interim report;
- Information on visits to regional offices and other involved organisational entities, as applicable;
- Actions taken by the audited Member State following the audit; and
- Time frames for response, corrective action plan, final and summary reports.

5.9 Technical co-operation, accepting a degree of peer review

In adopting the *IMO and Technical Co-operation in the 2000's* on 25 November 1999, the Assembly reaffirmed Resolution A.873 (20) that technical co-operation is an essential part of IMO's work to achieve the ratification and implementation of IMO's legal instruments. The IMO mobilizes financial, human and logistic resources for its projects from a wide variety of sources⁴⁸. The eventual implementation of

⁴⁸ Funding for IMO maritime projects comes from wide variety of sources including IMO's Technical Cooperation Fund, International funding agencies, regional development banks, donor countries, recipient countries, the private sector (shipping and port industries), non-governmental organizations and individuals; <http://www.imo.org/home.asp>

technical assistance⁴⁹ will help administrations which have taken part in the audit process to implement the corrective action plan. The audit scheme outlines the requirements which will enable a Member State after an audit to implement and establish a safety and environmental system in conformity with international regulations.

In accordance with sections 9.3 and 9.4 on *Technical Co-operation*, this will become part of the process with the view of facilitating;

- Assistance to Member States to prepare for the audit;
- The effective implementation of all audit findings;
- Any related capacity-building in the form of training, exchange programmes and providing experts.

Part of the technical co-operation will be for training auditors from developing member countries to be part of the audit team in the Voluntary Member State Audit Scheme process.

⁴⁹ Resolution A.901 (21) on *IMO and Technical Co-operation in the 2000s*; technical co-operation is to be provided as appropriate, including capacity-building aspects of the pre- and post- audit process. The assembly decided that the key objective shall be maritime capacity-building to ensure safer shipping and cleaner oceans. The assembly decided at section 3 also that mission statement (report) shall be to help developing countries improve their ability to comply with international rules and standards relating to maritime safety and the prevention and control of marine pollution, giving priority to technical assistance programmes that focus on human resource development, particularly through training, and institutional capacity-building.

CHAPTER 6

6. QUESTIONNAIRE PRESENTATION AND ANALYSIS

6.1 Introduction

The questions to be analysed in these pages were simply designed to inquire into what maritime administrators thought of VIMSAS. This was intended to clarify some of the misconceptions of administrators regarding the audit scheme. Very few people outside the maritime industry are aware of such an audit scheme. Great care and time was therefore spent in drafting a questionnaire of this nature and length, in order to ensure that readers will acquire an insight into what the 'noise' is about VIMSAS. Though it is a huge challenge to cover all aspects of the audit scheme, nevertheless questions selected covered every part of the audit including mandatory instruments, national legislation, areas of responsibility, recognized organizations, audit team selection, information on flag, coastal and port State activities and all the stakeholders whose roles are critical to shipping.

6.2 Questionnaire design

The questionnaire⁵⁰ was designed to cover 32 questions. In the questionnaire, respondents were asked to choose from a set of alternatives; Strongly Agree (SA), Agree (A), Disagree (D), Strongly Disagree (SD), and Not Sure (NS) in that order. Respondents were free to express their thoughts in the comment section beneath each question. The comment section yielded fruitful benefits, since a lot of respondents wrote sound explanations of their answers. Other questions had positive and negative responses where the respondents simply had to choose yes or no. The element of anonymity of the respondents afforded people the opportunity to express themselves freely regarding information presented in appendix 2. Questions were as straightforward as possible by limiting branch questions.

⁵⁰ Copy of the questionnaire will be found in Appendix 1.

6.3 Access to respondents and collection

Fifty-two (52) copies of the questionnaire were sent to twenty-five (25) Maritime Administrations. Many of the copies were sent by post and others were sent electronically. Fifteen (15) Administrations returned thirty (30) copies by regular post and by electronic mail. The breakdown of total copies received from the regions are as follows; Europe 14, Africa 6, Asia 4 and the Americas 6.

6.4 Data analysis and interpretation

The table below shows data received from various maritime administration respondents.

Table 3 Data presentation from questionnaire

Question	STRONGLY AGREE (SA)	AGREE (A)	DISAGREE (D)	STRONGLY DISAGREE (SD)	NOT SURE (NS)
8	6	12	8	0	4
9	5	13	6	0	6
10	6	15	5	0	4
11	4	11	12	3	0
12	3	5	13	6	3
13	3	10	8	4	5
14	4	12	7	4	3
15	7	15	7	1	0
16	10	8	9	0	3
17	4	15	9	0	2
18	3	9	12	5	1
20	4	15	7	2	2
22	0	11	10	1	8
24	0	4	14	6	6
25	8	12	6	0	4
26	1	4	12	7	6
27	0	5	20	4	1

TOTAL RESPONDENTS= 30

Source: From questionnaire presented to maritime administrations

6.4.1 Sovereignty and auditor-selection issues

The intention of the audit scheme is to make it possible for Member States to audit each other. This is a new phenomenon or approach. Countries did their own internal audit and submitted reports as required to the IMO. IMO had to determine whether a State was in compliance with its obligations or not. But with the inception of VIMSAS,

State sovereignty which has protected countries in the past from external interference is gradually allowing Member States to be audited by others. Question 8 was answered with the following percentage data; Strongly Agree 20%, Agree 40%, Disagree 27%, Strongly Disagree 0% and Not Sure 13%.

Considering framework of the audit scheme, section 6.1.1 under *Sovereignty and Universality*, takes into account that audits should be constructive in approach and carried out on a voluntary basis at the request of the Member State, and in accordance with the established procedure. The issue of national sovereignty is still in force. Member States still have the right to choose to be audited or not. As indicated by one respondent, sovereignty still protects states from outside interference in their domestic affairs. Two respondents suggested that there is no need to abandon or replace self-audits. All respondents agreed many nations will not volunteer as long as is not mandatory.

Many respondents agree in question 9 that there are other means to assess Member State compliance to IMO instruments apart from VIMSAS. The percentage data are Strongly Agree 17%, Agree 43%, Disagree 20%, Strongly Disagree 0% and Not Sure 20%. The lists of comments are presented in Appendix 2, and affirm the general reasons given by respondents.

In question 10, the percentage data are as follows, Strongly Agree 20%, Agree 50%, Disagree 17%, Strongly Disagree 0% and Not Sure 13%. From Resolution A.974 (24), section 8 of *Secretary-General's responsibilities*, states clearly that the Secretary-General is responsible for the formal appointment and maintenance of an appropriate list of audit team leaders and auditors. Though auditors are recommended by Member States, section 4.3 on *Selection of Auditors* stipulates that acceptance of these auditors shall be the responsibility of the Secretary-General who should verify that the relevant individuals are competent to conduct the audit. A high number of respondents (70%) agreed with this choice. A look at section 5, *Preparing for the Audit*, section 5.1 in the procedures notes that the auditee Member State should be advised of the names of the audit team members

and other relevant personnel information prior to the commencement of the audit. In this sense the Secretary-General cannot unilaterally appoint auditors.

Regarding questions 11 and 12, some respondents agreed that unless possibility arises for future amendments, the Secretary-General at present has the responsibility for constituting the audit team(s). This should be done with caution because the Member State cannot be left out entirely. Section 4.4.1.5; requires the Secretary-General to have regard to the need for agreement with the Member State as to the suitability of the team members being proposed. There is an inherent advice in section 6.1.1 that audits should be organized and conducted in such a way as to encourage Member States to submit or agree to an audit.

In question 13, the issue was raised that auditors from the developed world will audit developing countries with standards prevailing in the developed countries. Shipping is universal and therefore standards everywhere should be the same, it was argued. Nevertheless, the percentage data shows this trend; Strongly Agree 10%, Agree 33%, Disagree 27%, Strongly Disagree 13% and Not Sure 17%. Based on this outcome, more than half of the respondents responded positively that such an outcome should not be the case. Experience and training will allow auditors to set the same standards for all Member States irrespective of whether a country is developed, developing or under -developed.

In question 14, the percentage data are Strongly Agree 13%, Agree 41%, Disagree 23%, Strongly Disagree 13% and Not Sure 10%. More than 50% agreed on the mixture of audit team members from developed and developing Member States. It was further explained by some respondents that this will be good for sharing ideas, imparting experiences, and also for regional co-operation. One respondent said the use of the words developed and developing is out of context. Rather, the use of words like background experience and education should be the main reasons for selecting auditors. As per the procedures in Resolution A. 974(24), section 4.3.1 states the criteria applied in the verification of IMO audit team selection. The audit team member must have qualification in ISO standards, have the ability to speak and understand more than one official IMO language, and be part of the

geographical mix; including developing countries. Section 4.4.1.8 added that audit members should come from different nations. Under *Technical Co-operation* in section 9.5, account should also be taken of the need to ensure participation by maritime and auditing experts from developing countries in the audit process. Arrangements are to be made for the training of internal auditors from all Member States who may subsequently become part of the audit team.

6.4.2 Outcome of a successful audit

The question 15 is on the audit final official report and the corrective action plan. Respondents were asked if results from the audit should be made available only to the Member State, Secretary-General and the Audit team. Strongly Agree and Agree totalled 74%. But anyone reading the comments will be confused as to the meaning of this outcome. The response suggests that 74% agreed that documents should be confidential while their comments showed otherwise. Question 16 which shows a similar trend asked if the audit reports should be made public. The result show Strongly Agree and Agree topping to 60%, while Disagree was 30%. It seemed that the two questions were assumed to be similar. In section 7.3.2 as per the procedures of the audit, the audit final report should only be available to the audited Member State, the Secretary-General and the Audit team. In addition, section 7.1.2 mentions the confidentiality of the audit, but the audited State has the right to publish the final report and the corrective action plan or can request the Secretary-General to do so on its behalf⁵¹. Respondents agreed that making the reports public would foster exchange of information, transparency, and may encourage other countries to take similar corrective action.

In question 17, 63% of the respondents agreed that the audit scheme will be effective in implementation and enforcement of the relevant IMO conventions. But in their comments, many wrote with caution, arguing that the effectiveness of VIMSAS

⁵¹ The kingdom of Denmark, Sweden and the United Kingdom of Britain and Northern Ireland, out of section 7.1.2 have published their final report and their corrective action plan. Check following links for the three Member States' audit reports; <http://www.dma.dk/sw15992.asp> , <http://www.sjofartsverket.se> and <http://www.dft.gov.uk> .

will depend on the total participation and commitment of IMO Member States. It is voluntary which make it unlikely that all countries would participate. One respondent indicated that identification of weaknesses in a system is only a beginning, but improving upon the weaknesses is crucial.

How should a Maritime Administrations be rated after undergoing the audit scheme? Is the audit an adequate yardstick to consider them as responsible flag, coastal or port States? The percentage data from question 18 comes out as follows; Strongly Agree 10%, Agree 30%, Disagree 40%, Strongly Disagree 17% and Not Sure 3%. Surprisingly, 57% disagreed. It shows an interesting scenario. Comments which followed depict the views and thinking of many respondents. One of the principles of the audit, as per the framework at section 6.1, is to organise and conduct the audit in such a way as to encourage Member States to submit to an audit. One way to do this is making it voluntary. But what should happen after Member States have voluntarily submitted to an audit? One reason is that the audit scheme in itself does not improve or change anything. Rather it is actions 'on the ground' that count, as commented by some respondents.

The IMO Secretary-General, E.E. Mitropoulos in 2004 said that, "the Voluntary IMO Member State Audit Scheme will be a tool in the battle against sub-standard ships". He made the comment at the opening of the second session of the ad-hoc Council Joint Working Group (JWG). The outcome at question 20 shows that the respondents agree with him. However, in their comments the respondents did not show this affirmation. Although they agree VIMSAS could eliminate sub-standard ships, this would not easily happen unless the audit becomes mandatory. One respondent argued that despite the ISM Code, the STCW convention and other instruments, there are still sub-standard ships in operation. Rather, this one fails to acknowledge that VIMSAS as an audit tool works differently from others, in the sense that VIMSAS makes it possible for IMO to control the practical application of its mandatory instruments.

In question 22, half of the participating group agreed while the other half disagreed. This question might have been misunderstood from the high value of Not Sure

(27%). The reason for this deviation must come from the construction of the question. The question was intended for respondents to agree or disagree if VIMSAS will help improve the activities of Port State Control. A lesson has been learnt from this anomaly and questions will be better structured in the future.

In question 24, almost all the respondents agreed that the flag State is to audit the Recognized Organization (RO) but not IMO. In this question, 67 percent of respondents disagreed. Furthermore, it is argued that flag States authorise the ROs to act on their behalf in conducting surveys, inspections and the issue of certificates. VIMSAS is designed to audit flag, coastal and port States but not ROs. It was pointed out that many administrations depend on ROs as many statutory works are delegated to them. In the past, the extent of flag State auditing or controlling ROs has not worked properly and is not going to change in the future.

6.4.3 General questions about VIMSAS

Question 25 inquired whether VIMSAS should be made mandatory within the next five years. It may be recalled that respondents have advocated in previous questions for VIMSAS to be mandatory. So it was not surprising there was overwhelming support for it to be made mandatory. The percentage data are Strongly Agree 27%, Agree 40%, Disagree 20%, Strongly Disagree 0% and Not Sure 13%. Respondents suggested between 7 and 10 years for the scheme to become mandatory.

The full benefits from the scheme will be realised when total consideration is given to capacity-building. Question 26 discusses if VIMSAS as an audit tool is a 'marketing ploy' by developed maritime countries to gain greater control of the shipping business. As many as 64% of the respondents disagreed. The percentage data has the following frequency; Strongly Agree 3%, Agree 13%, Disagree 41%, Strongly Disagree 23% and Not Sure 20%. Many strongly objected to such a presumption. They see this noble idea by IMO as another means to help in the capacity-building of Member States. As per the framework of the audit, section 9.1 states that, "in order to obtain the full benefits from the scheme, consideration of

capacity-building matters is essential, particularly in respect of human and financial resources. Where appropriate, Member States will be assisted in order to prepare for the audit and to address audit findings”. According to one respondent, most developed countries already use internal audit programmes. The audit scheme is an opportunity for developing countries to get audited and thus receive the support needed to improve their systems through the Technical Co-operation programme.

In question 27, the issue was whether VIMSAS will ultimately increase administration costs and burdens and also if it will lead to over-regulation. The percentage data are as follows; Strongly Agree 0%, Agree 17%, Disagree 67%, Strongly Disagree 13% and Not Sure 3%. As many as 80% of the respondents disagreed with the increase in cost, burden or over-regulation. Mr Rasmussen in January 2007 said that, “if you think safety is expensive, try an accident”. Therefore, drastic measures to improve the safety of vessels and the protection of the marine environment are of paramount importance.

Other questions which follow give either a yes or no answer with comments from the respondents. One question asked why countries have to undergo the VIMSAS. Respondents came out with interesting comments. There were no observed variations. There is total agreement in the sense that an external audit may detect problems overlooked or missed internally. What is important is that most international organisations should have no problem with auditing if the right things are put in place. There was no comment with the question asking if any country has the intention not to undergo the Voluntary IMO Member Audit Scheme. It is unanimously agreed that all countries or maritime administrations must open up for auditing. Question 21 is on the possibility that VIMSAS could have been adopted by IMO a long time ago. Why is it done now? Respondents expressed their comments emphasising on the likely causes of delay. Thoughtful comments which developed from this question can be found in appendix 2. There is a question on the lessons likely to be learnt from VIMSAS by the flag State, coastal State, port State and IMO. Another question also on the indication of areas in which respondents think VIMSAS can further be improved. All their comments and criticisms are outlined in the appendix.

In the final question (32), respondents were to comment or express their overall view of the questionnaire. They submitted comments and criticisms which indicated areas for further development. The first comment stipulated that while the questionnaire was well designed; it was a bit elaborate. This is accurate considering that the questionnaire is made up of 32 questions and comments covering 8 pages of A4 paper. The toil and dedication with which the respondents responded to these lengthy questions has produced valuable feedback. Another person said the questionnaire was presented a bit early. Reflecting on the audit scheme, Denmark did the first audit in November 2006. From then to May 2007 seems a short period for many people in any good analysis of the audit scheme. But it is also to be remembered that within this period as at July 2007, 13 Member States have been audited. The number of Member States signing the memorandum of co-operation with the Secretary-General is increasing every month. Therefore an early analysis, putting in perspective the past, present and future prospects of the scheme as well as its shortcomings, should be recommended and also serve as a 'spring board' for others to follow.

The eighth comment explains, "The questionnaire is acceptable as such. However as many questionnaires it invites to generalities and to a certain extent guess work. When an audit scheme affects parties as defined by ratified Conventions, it requires that all parties concerned have agreed on which conditions such scheme shall function-and not be subject to questionnaires or guess work of any kind". This has not been the case for this questionnaire. In the introduction to Appendix 2, it is stated categorically that the inputs to the questionnaire are from IMO audit scheme course instructors/auditors, maritime administrators, managers, International Safety Management(ISM) auditors and PSC surveyors. The content and comments made by the respondents attest to all what has been said. The IMO adopts innovative conventions through the Assembly, Council, Committees and Sub-committees through proposals from Member States. However, any survey which helps to receive feedback from maritime administrations should be encouraged. Section 1 of Resolution A.975 (24), *Future development of VIMSAS* states that, "the Assembly requests the MSC and MEPC to review the future feasibility of including, within the

scope of the audit scheme, security-related issues and other items not presently covered, to identify any implications of broadening the scope of the audit scheme in this way and to report to the Council, as appropriate". In section 2, it adds that "the Assembly further requests the Council to develop suitable provisions for the possible future inclusion of security-related issues in the audit scheme, taking into account the experience gained from the implementation of the scheme and of any salient safety, environmental protection, and security-related issues identified by the Committees". Despite the limitations and differences, all stakeholders have to be supportive of IMO in order to achieve the basic goals of ship safety, security and marine environmental protection, and maybe this is exactly what this questionnaire is about.

CHAPTER 7

7. RECOMMENDATIONS AND THE FUTURE DEVELOPMENT OF VIMSAS

7.1 Member States that have volunteered to be audited

The IMO, by adopting VIMSAS has provided decisive leadership which the maritime sector urgently needed. The IMO adopted this multi-faceted audit approach through national and regional seminars, conferences, workshops, and development of training courses. As of July 2007, thirty-two (32) Member States have so far volunteered for audits. It is recommended that all maritime administrations have to undertake this audit and if audited must implement all the recommendations. A new attitude in willingness of States to submit to the audit has been observed, and the number of States which have communicated willingness to be audited has increased. The scheme has been a bold vision from the beginning. Though the projected number of States that were anticipated to participate in the audit has not been met, yet many States are rising to the challenge of undertaking the audit.

The burning question is whether VIMSAS would succeed to put on hold the adoption of new amendments. Time will tell if the impact of compliance by Member States will translate the conventions, resolutions, codes and guidelines being implemented⁵² into good flag State, coastal State and port State performance. Quoting⁵³ W.A. O'Neil, former Secretary General of IMO, who said, "I think one point we could all agree on is that the solution does not necessary lie in creating more and more legislation. Over the last three and a half decades, IMO has adopted several shelves full of rules and regulations. They have certainly helped to improve the situation.

⁵² Resolution A.777 (18), adopted on 4 November 1993, *Work Methods and Organization of work in committees and their subsidiary bodies*; section 4 invites the attention of the committees to resolution A.500 (XII), and in particular its recommendation that proposal for new conventions or amendments to existing conventions to be entertained only on the basis of clear and well-documented compelling need, and having regard to the costs to the maritime industry and the burden of the legislative and administrative resources of Member States.

⁵³ Keynote address presented during the Conference on *Quality Shipping: Market Mechanisms for Safer Shipping and Cleaner Oceans*.

However; regulations are only effective if they are put in practice and are enforced and there is no doubt that many IMO conventions and other standards are not implemented as vigorously as they should be. Before adopting still more regulations, we should, therefore, concentrate on assuring that the ones that already exist are, in fact, applied to all ships throughout the world". Also R.C. Oldham has the same view when he spoke about *Tanker Quality: The Oil Industry Perspective*⁵⁴. He said, "the objective of eliminating sub-standard shipping will be most achieved by using the legislative tools already in place. There is no lack of legislation. We have plenty of it. What is lacking is proper enforcement". He added that, "to achieve a level playing field, a sensible and effective regulation should be developed by IMO and then stringently and uniformly applied by flag, port States and others with responsibility, such as classification societies". The Voluntary IMO Member State Audit Scheme has the global consensus to achieve such a unique possibility.

Playing the blame game and apportioning blame is easy, but the bigger challenge is what constitute or does not constitute sub-standard ship. It is hoped that VIMSAS would promote the implementation of existing instruments, rather than maintaining the traditional status quo of developing new conventions at every maritime incident. VIMSAS now assign a new role to IMO in monitoring or assessing how Member States execute treaties they are party to. This has been the problem in the past but is now changing. The IMO will be successful if contracting governments are willing to help it succeed.

7.2 Advantages to be expected from the audit scheme

Feedback from the audit scheme will help Member States to meet their obligations and enhance their ability to implement IMO instruments. It will impose uniform standards as to what is internationally required and therefore any unaccepted practices found during the audit could be rectified. This would assure transparency and foster consistent implementation of IMO standards and practices in all States.

⁵⁴ See Conference on Quality Shipping: *Market Mechanisms for Safer Shipping and Cleaner Oceans*, edited by H.E.Haralambides (1998). R.C. Oldham is the director of OCIMF and presented papers on the topic, *Tanker Quality: The Oil Industry Perspective*.

Each Member State takes years to inform IMO about enacting appropriate national legislation for controlling and monitoring existing regulations. Feedback from VIMSAS will be an invaluable barometer to 'gauge' whether the implementing process of Member States is in line with the objectives of the IMO.

7.2.1 Eligibility for technical assistance

Individual States have their respective internal problems when it comes to the implementation, enforcement and control of IMO mandatory instruments. These problems would not be known unless the scheme is successful. Through the audit, assistance needed as a result of a corrective action plan will be known. Resources will be better focussed in the right places to achieve the desired results. At the current level of implementation, some Member States encounter logistics difficulties in fully meeting their obligations. Developing countries may need more technical co-operation programmes to assist them by means of capacity building in training courses, workshops, seminars, consultancy and technical advisory services than the developed countries.

7.2.2 Improving Member State performance.

Pre-existing measurement standards which have been practised by many countries will give way to new improved standards. Most Member States have self-audit systems in place, and that embracement of VIMSAS by States should not be a pretext for Member States to abandon self-auditing. The VIMSAS will enhance the performance of flag, coastal and/or port States through the audit follow-up. Without doubt, this scheme will definitely force Member States to wake up to their responsibilities and obligations. Other departments or ministries which have hitherto not been in existence or non operational will definitely be set up.

7.2.3 Member States making sense of national legislation

It is a well known fact that States accede to IMO treaties without enacting the appropriate national legislation. The national authority (Chowdhury 2005) in any state will derive its role, powers and functions from the national legislation. Anytime a country appends its signature to international treaties and protocols, it does not mean anything unless they are reflected in the national legislation. Unless this is done, the maritime administration has no legal basis to enforce or prevent violations in its jurisdiction. Other countries have an elaborate complex law making system which takes years simply to enact common legislation. For example, national legislation to support mandatory instruments in some countries requires elaborate parliamentary approval. With respect to flag, coastal and port State which has no stringent regulations, it is apparent therefore that administrative control and monitoring of ships registered under its flag are not strengthened due to lack of measures to enforce compliance.

7.3 Why are Member States queuing for VIMSAS?

- Member States want to demonstrate to the rest of the world that they have adopted the various conventions and are actually implementing them to realise the IMO objectives of safe, secure and efficient shipping.
- Other Member States like Denmark, Sweden, United Kingdom, Ireland, Liberia etc have been audited. This is an indication to other States of their support of the audit scheme and their commitment to implement it.
- The audit scheme will boost the image of a Member State previously on the black or grey list, as it is a clear demonstration of its new policy of monitoring and implementing IMO instruments.
- The audit scheme is to enhance maritime safety, environmental protection, and last but not least security standards. Eventually, a Member State has to undergo this scheme due to the pressure from the international community.
- Participating in the audit scheme will help a Member State to identify the lapses and shortcomings that should be amended to improve procedures and performance in their administration.

- As a Member State is only audited in respect of the implementation of those instruments which it is party to, this serves as an incentive for States to volunteer for an audit.
- There is no scale measuring the conduct of the audit. The intention of IMO to show only non-conformities and not failing any Member State has prompted more countries to go for the audit.
- There is an element of 'name and shame' and it is expected to encourage member states to meet the standards and get the seal of approval from IMO (Chowdhury 2005).

7.4 Why are Member States reluctant to participate in VIMSAS?

- Some of the maritime administrations have inefficient and inexperienced personnel. This hampers the administration performance. Such a maritime administration usually does not volunteer for an audit, though this will enable the government to identify and learn of its weaknesses. The audit will however expose such an administration and there is total fear of staff losing their jobs.
- Another factor is that there is fear of requesting the central government for funds. Most Governments are not likely to fund a maritime administration merely because it wants to go for a voluntary audit.
- Many Member States are unable to enact or change national laws to enforce appropriate conventions. This will let a country delay an audit until the necessary national legislation has been passed.
- If the maritime administration has no plans or resources to establish competent departments or entities to provide the necessary implementation and enforcement, it will be hindered to implement these changes.
- Some Member States apply for the audit only when their interests are best served by internal audit rearrangements, and sure to receive a positive assessment from IMO.
- Other Member States are very cautious and first undertake self-assessment or pre-audit to identify weaknesses, and amend them before submitting to the main audit.

- Other Member States seem to wait for the outcome of audited countries that have been assessed to provide them with feedback and advice on their current performance.
- Many Administrations and governments do not normally submit themselves to any external audit. So the 'wait and see' tactics is employed to learn more about the audit scheme before putting an application forward for auditing.

7.5 Conclusion

The strength of the audit scheme is based on two resolutions, Res.973 (24) and Res.974 (24), which have been adopted for auditing Member States. As at now none of the audited Member States have in one way or the other failed in the process of auditing. Every state where the audit has been undertaken was carried out successfully. Based on the findings of this research, it could be concluded that many countries only enter the scheme after intense preparation to amend lapses and weaknesses in the first place. Putting things right is also limited to what are stipulated by the two resolutions. It may be premature to predict or anticipate how this scheme will be expanded and maintained in years to come. In the meantime, how States which have been audited would fare in the future without reverting to the old ways of defaulting on obligations is yet to be seen. It is hoped that the audit scheme will improve on past failings and make amends in the future. Useful proposals for improvement are often contained in the feedback analysis, so frequency of audits within set time frames has to be initiated to move the audit scheme forward.

Throughout this work, VIMSAS has been analysed in relation to IMO, Member States and all the stakeholders in the maritime field. Maritime administrations were given the questionnaire, and their answers have been presented. Feedback from the respondents showed on-the-spot picture of the audit scheme. The analyses of this questionnaire, including pie-chart presentations, show the agreements and disagreements of the respondents. This has produced an overview mindset and perception of the respondents, and has given an insight of what to expect from VIMSAS in the future.

In concluding this chapter, recommendations have been given based on the outcome of this research portraying why a Member State does or does not undertake the audit scheme. Also it has been suggested in this chapter and in the appendices what should be done to move forward the audit scheme. The best result will be achieved by the maritime world working together, in order to make VIMSAS a workable audit scheme for the shipping industry.

7.6 Recommendations

The factors already mentioned make it obvious that there is need to monitor the operations of VIMSAS. What are lessons learnt from the audit scheme so far? Although problems encountered within this short period could be overestimated or underestimated, they will indeed have real influence on future amendments. These recommendations are therefore submitted to strengthen the audit scheme.

7.6.1 The corrective action plan for Member States

Since there is no immediate means to verify the result of a corrective action plan early, checking compliance after one to two years following an audit is not sufficient, as a Member State can simply revert to the old ways of doing things after it has successfully passed the audit in the first place. It is recommended that a timetable for a follow-up should be drawn at least twice in a year to make sure the corrective action plan is in place and functional.

7.6.2 When will VIMSAS be mandatory?

Although Member States are not mandated to go for the audit but could volunteer, it takes time to establish the general structure for other administrative entities. Making the scheme mandatory will expedite or compel states to set up general standards to

Resolutions A.973 (24) and A.974 (24) as quickly as possible. The audit scheme should be made mandatory⁵⁵ within the next five years.

7.6.3 Selection of audit team members

The number of auditors for VIMSAS is inadequate. It is acceptable that the training of auditors will mean that it cannot be done overnight, and it will be a while before IMO come up with a credible number. The number of Member States for future audits, investigation of the corrective action plan will increase over time and time table for follow-ups will become extensive, therefore more regional training centres should be set up to increase the number of auditors.

7.6.4 How big is the technical assistance?

Many Member States will need technical assistance in order to prepare for the audit scheme and to address audit findings. It is recommended that the IMO should be clearer on the quantum of assistance it is willing to offer to facilitate the conduct of the audit. Technical co-operation will be an incentive and the IMO Secretary-General (E.E.Mitropoulos 2006) rightly mentioned it at the World Maritime Day 2006. He said, "IMO technical co-operation programme is, therefore designed to assist Governments that lack the technical knowledge and resources needed to oversee a shipping sector successfully. Thus by fostering capacity-building⁵⁶ in the maritime sector, IMO's technical co-operation activities help countries to ensure safe, secure and effective shipping services and protect their waters and coasts from the

⁵⁵ Adam Corbett published in the Tradewinds (2006, March 10) that the new scheme was lauded as the final link in the shipping-safety chain by auditing the individual performance of flag States. But the lack of a mandatory requirement left critics claiming that it would receive a poor response from IMO member states.

⁵⁶ See www.lloydslist.com/art/1114180581272. Given that IMO's goal is to secure global acceptance and uniform compliance with its international rules, it is logical that it should provide a technical co-operation programme to assist developing countries in this process. David Edwards, IMO director for the technical co-operation division explains that 'capacity-building' in practise, means providing technical assistance advisory service, fielding IMO-appointed consultants to conduct needs assessments, organising training courses, workshops and seminars, and if necessary providing advice on developing national legislation. Mr Edwards highlighted the steady rise in the level of delivery of the technical co-operation programme from \$8m in 2000 to \$14m in 2004.

environmental degradation that can be caused by ships and related maritime activities". Without this technical co-operation, some countries will not be in the position to participate in the audit scheme.

7.6.5 Security related matters

The audit scheme does not have the ISPS Code in the Code for the implementation of the IMO mandatory instruments. In accordance to Res.A 975 (24), in sections 1 and 2, security related matters is to be included in the future development of VIMSAS. This is necessary and is recommended that special assessment should be given to security related matters and its inclusion in the audit scheme as early as possible.

7.6.6 Duration of the audit scheme

Looking at the timeline of the audits of Denmark (18-25 September 2006), Sweden (22-29 January 2007), and the United Kingdom (13-20 November 2006), it is observed that the duration of the entire audit is about one week or seven days. This short duration will put much stress on the auditors and the audited Member States. It is recommended that the duration of the audit scheme be increased to two weeks or 14 days in future audits.

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APPENDIX 1

QUESTIONNAIRE - VIMSAS

Dear Sir/Madam,

This is a questionnaire/survey forms a part of research regarding the importance of the Voluntary IMO Member State Audit Scheme (VIMSAS). The research is in the context of a dissertation being undertaken as part of a Master of Science programme at the World Maritime University.

The overall purpose of the questionnaire is to collect data/opinions regarding the VIMSAS. There are not right and wrong answers. Your opinion is very valuable and specific comments are sought and appreciated. You can also attach extra sheets with your comments.

All answers to this questionnaire will be treated confidentially.

Please indicate whether you can be quoted in the dissertation

- I object to being quoted*
 I have no objections to being quoted

Kindly send the completed questionnaire to the address below by **15th of June 2007**.

Return address

Anthony Kwaku Afriyie
World Maritime University
P. O. Box 500,
S-20124 Malmö
Sweden

Email: s07049@wmu.se (*For electronic version of questionnaire*)

Thank you very much for your time and efforts.

Country

Name

Position.....

1. Has your country put itself forward to be audited through the IMO voluntary Member State Audit scheme?

Yes No

2. Have you, personally, taken part in an audit scheme (VIMSAS) exercise for your country?

Yes No

2.1. If yes, in what capacity did you represent your country?

.....
.....

3. How soon does your country plan to undertake this audit scheme

In 2 years time In 2-5 years time In more than 5 years time

4. Is your Maritime Administration waiting for feedback from other audited States to be able to assess its own potential to have a positive outcome from an audit?

Yes No

5. In the event of your country being audited in the future, are you likely to be a member of your government representation?

Yes No

6. Please indicate why you think your country should undergo VIMSAS

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7. If your country has no intention to apply for the IMO voluntary Member State Audit Scheme in the near future, kindly indicate what the reasons are.

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8. VIMSAS is intended to replace self-auditing as sovereign states open their doors for other Member States' auditors. This will demystify the issue of 'national sovereignty' and draw states together under one common audit scheme.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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9. There are other means other than VIMSAS to assess Member States' compliance with IMO instruments?

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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10. Selection of auditors has to be done by the Secretary General as a means to make the auditing transparent.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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.....

11. The selection of auditors by the Secretary General, without reference to countries to be audited, can create a conflict of interest for auditors.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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12. Countries to be audited should have the right to determine the composition of the audit team.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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13. Auditors selected from developed countries will audit other countries with standards prevailing in the developed settings.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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14. Audit teams must be comprised of members from both developed and developing member states to create standardisation/uniformity of VIMSAS.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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15. The final official report, corrective action plan and any unresolved issues resulting from VIMSAS should be made available only to the Secretary General, the Member State and the Audit team.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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16. Some countries that have already been audited have publicised the final report and corrective action plan on the internet for public perusal. This is a good example for other member States to emulate.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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17. VIMSAS will be effective in making sure all Member States implement and enforce the relevant IMO conventions.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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18. After undergoing the audit scheme, maritime administration should be considered as responsible Flag, Coastal and/or Port States.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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19. The ratification, implementation and enforcement/control of IMO mandatory instruments have significant costs in terms of financial, infrastructural and human resources. Can your country cope with the requirements?

Yes No

Comments:
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20. VIMSAS is hailed by some as a breakthrough audit scheme. It will live up to expectations of increasing compliance with IMO instruments and the disappearance of substandard shipping.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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21. Possibly, this could have been conceived a long time ago. What do you think caused the delay and why is it now being implemented?

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22. Port State Control (PSC), is focused primarily on documents and compliance with IMO instruments and is limited by time and depth of verification. VIMSAS will help address this by improving both access and depth of enquiry.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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23. One of the perceived reasons for the Flag State delegation of the verification of compliance with IMO statutory instruments to Recognised Organisations is lack of resources for some Flag States. Does your Administration delegate to the Recognised Organisations and if so is lack of resources a factor in the choice to delegate?

Yes No

Any comments
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24. One setback in the scheme is that Recognised Organisations are not audited in accordance with this formal voluntary audit scheme. Recognised Organisations have to be included in the scheme.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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25. VIMSAS is now voluntary. It should be mandatory within five years.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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26. VIMSAS is just another marketing ploy by the developed maritime countries to gain greater control in the shipping business.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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27. VIMSAS is ultimately going to increase the administration costs and burdens for Flag, Coastal and Port States, and the shipping industry and will also lead to over-regulation.

Strongly agree Agree Disagree Strongly disagree Not sure

Comments:
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28. The audit scheme is currently voluntary. As a likely scenario, associations such as BIMCO, INTERTANKO, ICS, ISF and Seafarer Associations will in the future require that their members work with flags which have undergone the VIMSAS. Can such strict membership requirement affect ships flagged in your country?

Yes No

Comments:
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29. What lessons are likely to be learnt from VIMSAS by the following?

29.1. Flag States.....
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29.2. Port States.....
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29.3. Coastal States
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29.4. IMO.....
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29.5. Recognised Organizations.....
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30. Please indicate areas in which you think VIMSAS can be further improved.

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31. Kindly give any other comments you have regarding VIMSAS

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32. Kindly give any comments or views about this questionnaire

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* * *

Thank you very much for your cooperation. Your input is much appreciated.

Please indicate whether you would like a copy of the finding of this limited survey.

Yes, I would like a copy

No, I do not need a copy

Kindly send the completed questionnaire by **15th of June 2007**.

APPENDIX 2

QUESTIONNAIRE SURVEY RESULTS AND COMMENTS

2.1 Introduction

Inputs to the questionnaire are from IMO audit scheme course instructors/auditors, maritime administrators, managers, ISM auditors and Port State Control officers. The intention was to receive feedback from as many regions as possible. The feedback received from maritime Administrations in Europe, Africa, Asia and the Americas surprisingly differ and agree on objectives, scope and procedure of the audit scheme. This explains truly that shipping is global. Though one can't be on the same side to 'sink' the ship, the analysis in this appendix shows that whatever concern the maritime world affect all of us. It is evident and easy to notice this in the respondents' feedback.

2.2 Positive feedback and shortcomings of the Questionnaire

By the 15th June 2007, collection of questionnaires from some respondents became a problem. A remainder was sent to the maritime administrations explaining the confidentiality of the research and this yielded good result. By the 5th July 2007, thirty (30) of the questionnaires⁵⁷ have already been received from fifteen (15) maritime administrations. Although the questionnaire has some weaknesses, the reader must bear in mind the positive comments from the respondents. Whatever is written in this appendix reflects the respondents thinking, attitude and conceptions of VIMSAS, and there cannot be any easy way to get their opinions than this.

⁵⁷ Respondents from the following countries took part in the questionnaire survey; Denmark, Sweden, Germany, Finland, Norway, Ghana, Nigeria, Sierra Leone, Liberia, China, Indonesia, Thailand, Saint Lucia, Bahamas and Marshall Islands.

2.3 Survey questionnaire feedback from respondents

(Q8) VIMSAS is intended to replace self-auditing as sovereign states open their doors for other Member States' auditors. This will demystify the issue of 'national sovereignty' and draw states together under one common audit scheme.

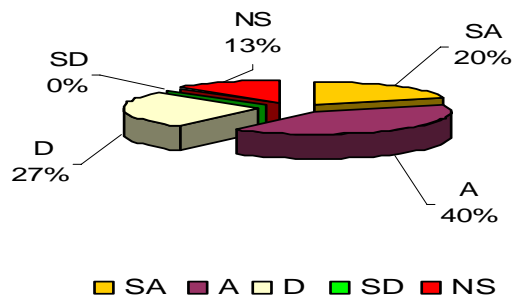


Figure 3 Question 8 data presentation

COMMENTS:

- However, my country will not abandon self auditing.
- The audit team should operate as an independent body. Details of the audit should be kept confidential and not be designed to rank the countries.
- VIMSAS is not mandatory, therefore no need to rash to open national sovereignty.
- I disagree with any mystification of national sovereignty.
- The issue of national sovereignty is not touched, as the audit does not require binding actions.
- This will happen when every audited state makes their result public.
- This is not the primary intention. There is no need to replace self-auditing. VIMSAS covers different fields of work, the state as a whole with all different administration entities.
- While the audit is voluntary, sovereignty will still protect countries from outside interference in their domestic affairs.

(Q9) There are other means other than VIMSAS to assess Member States' compliance with IMO instruments.

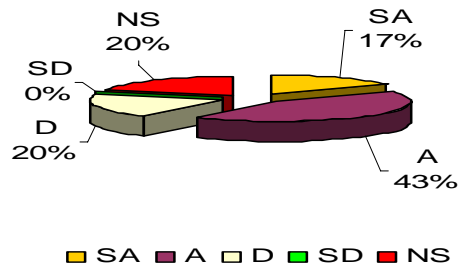


Figure 4 Question 9 data presentation

COMMENTS:

- There are other means, but they are not as comprehensive as VIMSAS.
- The ICF, ISF Performance table and PSC Statistics, even though these are not as comprehensive as VIMSAS.
- PSC and self-auditing equally identifies compliance with IMO instruments.
- ISM, STCW, White List and Casualty Records, etc assess MS compliance.
- Port State Control just gives an indication of other means.
- However, this does not mean we should not use VIMSAS.
- Look at performance of the fleet in PSC regions.
- For the moment, there is no other means which equals VIMSAS.

(Q10) Selection of auditors has to be done by the Secretary-General as a means to make the auditing transparent.

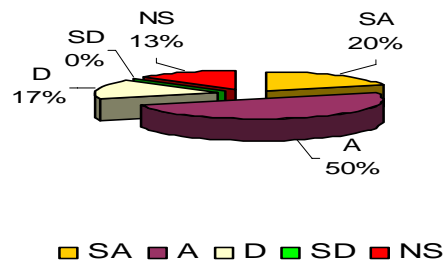


Figure 5 Question 10 data presentation

COMMENTS:

- Yes, but in some kind of consultation. All parties can for some reason be biased.
- Flag state should be able to select from a panel of auditors chosen by the Secretary-general.
- The auditors will always be suggested by the member states. The Secretary-general will have difficulties to nominate auditors on his own.
- This is the only way. Background as an auditor should be the criteria, not any politics.
- The Secretary-general is expected to be neutral.

(Q11) The selection of auditors by Secretary-general, without reference to countries to be audited, can create a conflict of interest for auditors.

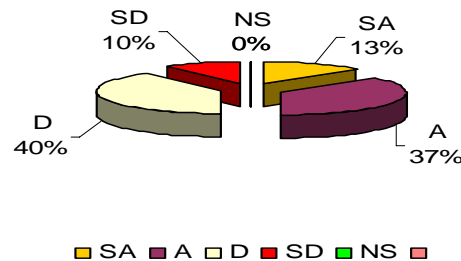


Figure 6 Question 11 data presentation

COMMENTS:

- No, if the auditors are qualified i.e. they should have completed an (IMO) auditor training course or similar. To avoid any conflict of interest, the auditors sign a letter of Confidentiality. Also please refer to the procedures for the VIMSAS audit (Res. A 974(24)).
- The composition of the audit team should be broad based, this will resolve the issue.
- Also reference of auditor's cultural awareness to that of the auditee's culture should be considered.
- Countries to be audited need to be consulted on selection of auditors.
- Auditors should not be competitors.
- Take culture difference into consideration.
- The auditors are professionals and independent. The only conflict would be personal interest, if that person has worked in the administration earlier.

(Q12) Countries to be audited should have the right to determine the composition of the audit team.

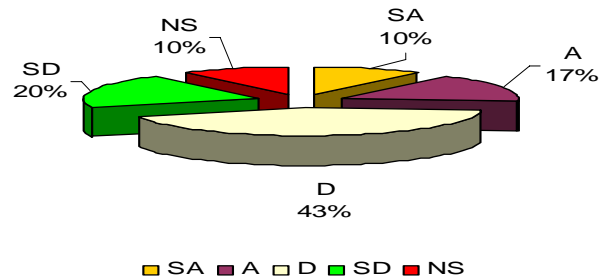


Figure 7 Question 12 data presentation

COMMENTS:

- This is done as per the procedures for the VMSAS audit (A 24/Res.974).
- The IMO should be entrusted to make this determination. However the auditing team have one country representative on the team.
- Better in its interest if audited country can refuse to the auditors' composition.
- They should have the right to be consulted and avoid i.e. persona non grata.
- It is not impartial if they can choose.
- To approve-yes, to select-no.
- Countries should be able to indicate concern over any auditor, given good reasons.
- No, then it is not independent if you can choose.

(Q13) Auditors selected from developed countries will audit other countries with standards prevailing in the developed settings.

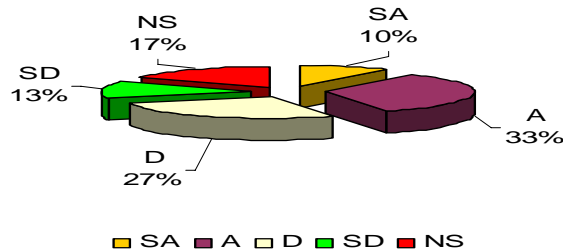


Figure 8 Question 13 data presentation

COMMENTS:

- The audit team is selected as per the procedures for the VIMSAS audit (A 24/Res.974).
- I view this as discriminatory. Education is universal and I understand that an officer from one country may have more experience than another. But anyone trained in elements of auditing can perform the task required.
- I agree that this is an inherent problem. This might be overturned by the way, by proper training of auditors, and by avoiding selecting one-eyed auditors. Different parties might select different solutions for the same problem.
- A level playing field should apply.
- This would help raise IMO standards in the developed countries.
- I think this is not the purpose of the scheme.
- The code is the same for all states. All states will have the same things to improve.
- This is a potential problem where training of auditors should prepare them,
- For the process to have validity, the standards need to be universal not regionally applied.
- The standards are set by IMO, note that same situation prevail in any country.
- I hope not.

(Q14) Audit teams must be comprised of members from both developed and developing member states to create standardisation/uniformity of VIMSAS.

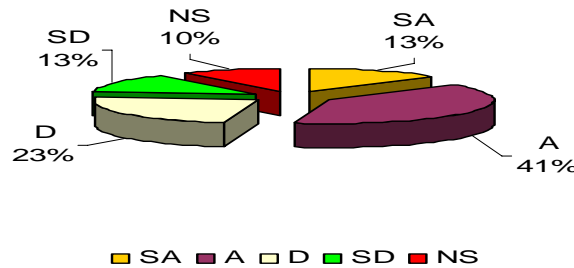


Figure 9 Question 14 data presentation

COMMENTS:

- Not necessary, as the audit team is selected as per the procedures for the VIMSAS audit (A 24/Res 974).
- Just get the right group of individuals for the jobs who are citizens of member states.
- It will be good for sharing experience and for regional balance.
- Auditing should be of equal standard, regardless of auditor profile.
- That would be better and I guess this is the current practise.
- It must be the qualification of the auditors that is the most important.
- Auditing is a process that should be independent of citizenship.
- Auditors no matter their origin should meet the same standard.
- Auditors will share experiences and the less endowed ones learning from the highly endowed ones.
- That is not the point. I would rather prefer a mix of background experience and education than a mix of develop/developing states.

(Q15) The final official report, corrective action plan and any unresolved issues resulting from VIMSAS should be made available only to the Secretary General, the Member State and the Audit team.

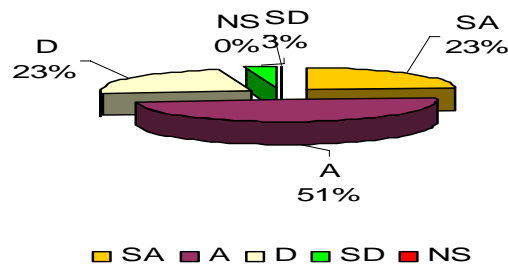


Figure 10 Question 15 data presentation

COMMENTS:

- For openness of information.
- The report should go public after proper handling.
- I know this is the practise right now, but it should be different.
- It should be an open process.
- This is what was agreed when we negotiated the audit scheme and we should stick to it.

(Q16) Some countries that have already been audited have publicised the final report and corrective action plan on the internet for public perusal. This is a good example for other member States to emulate.

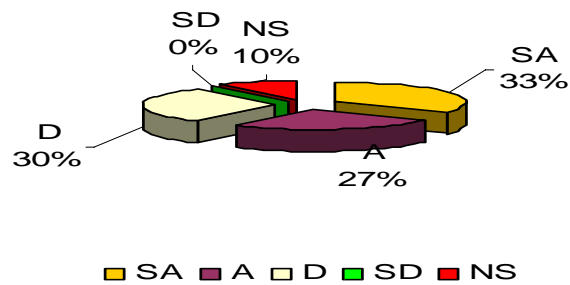


Figure 11 question 16 data presentation

COMMENTS:

- Again as per the procedures for the VIMSAS audit (A 24/Res.974). However, it is our view, that VIMSAS should be as transparent as possible. Therefore my country decided to publish the final audit report including the corrective action plan in March 2007. It's all up to the individual country. This may encourage other countries to take corrective action.
- Also to softly push other audited countries to do same, and provide valuable lessons to all.
- Lessons learned are good to communicate. There is no confidential audit but this might be an issue of states image.
- It must be up to the state to decide on publication of the document.
- We will do so.
- Yes, but still this is not a reason to make all public. Leave it up to the country to decide.
- Individual countries can always choose to make it public as several states have done.

(Q17) VIMSAS will be effective in making sure all Member States implement and enforce the relevant IMO conventions.

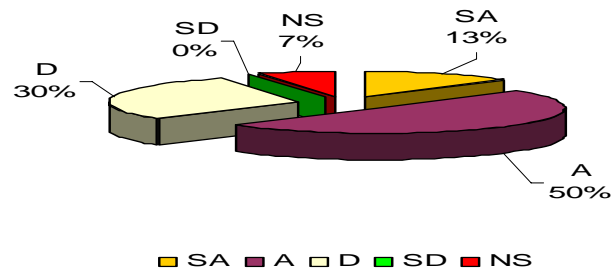


Figure 12 Question 17 data presentation

COMMENTS:

- It should be a matter of time before IMO commences operating as a global regulatory body.
- Identifying your weak points is only a beginning, but to improve is the next big thing.
- Depending on how many states actually participate.
- Audit will assess the effectiveness of implementation. Actual implementation is implicit by the invitation to audit.
- Some states will never be audited.
- Since it is not an open process it will probably not happen.
- Yes, but the audit scheme needs to become mandatory.
- It is a positive step in the right direction, the next step and decision is whether or not to make it mandatory or compulsory.
- It is voluntary so we cannot ensure that member states are implementing the conventions.

(Q18) After undergoing the audit scheme, maritime administration should be considered as responsible Flag, Coastal and/or Port States.

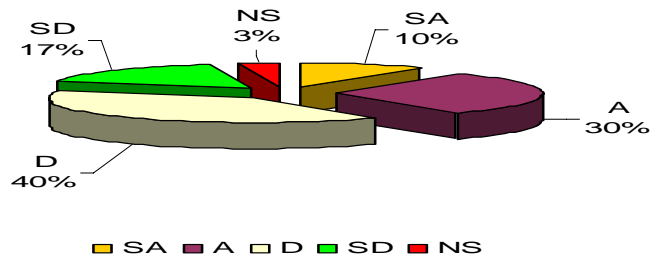


Figure 13 Question 18 data presentation

COMMENTS:

- They should be honoured for their willingness to participate.
- The audit scheme in itself does not improve or change anything. It is the actions on the ground that counts.
- A voluntary audit cannot change the formal status of that administration or country.
- The State must be assumed to be responsible body in such event.
- Depends on the outcome and follow-up to the audit.
- If State is responding to observations and non-conformities.
- It depends on outcome.
- Just undergoing the audit doesn't do this. What do they do with the results? What other measures are there?
- Just being audited does not make the administration compliant, effective or efficient.
- Responsible enough to volunteer, but you can not fail the audit, so you would not know anything of performance.

(Q20) VIMSAS is hailed by some as a breakthrough audit scheme. It will live up to expectations of increasing compliance with IMO instruments and the disappearance of sub-standard shipping.

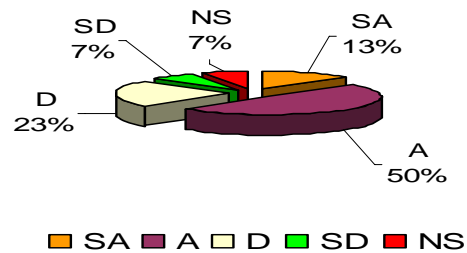


Figure 14 Question 20 data presentation

COMMENTS:

- Not sure for the elimination of sub-standard ships.
- The real breakthrough comes with a non voluntary scheme. This is a major improvement; yes.
- IMO has several instruments including ISM Code, STCW convention etc, yet there is increasing operation of substandard ships.
- There will be a lot of pressure on states not complying with mandatory instruments.
- It is voluntary.
- But it needs to be mandatory after we have used it for a period of time and refined it.
- It surely will bring pressure on flags that don't police sub-standard ships. It is too soon to tell of its effectiveness.
- It is only voluntary; the day it is made mandatory my answer will change.

(Q22) Port State Control (PSC), is focused primarily on documents and compliance with IMO instruments and is limited by time and depth of verification. VIMSAS will help address this by improving both access and depth of enquiry.

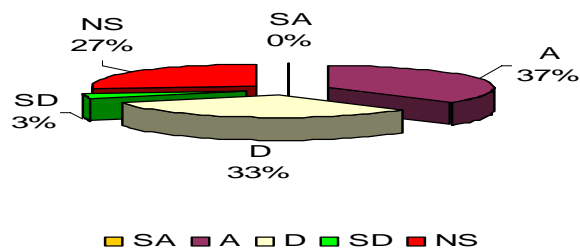


Figure 15 Question 22 data presentation

COMMENTS:

- The compliance with PSC requirements is hopefully verified and if necessary improved through the VIMSAS audit scheme.
- Not exactly clear what it meant. The VIMSAS will not audit ships but Member States. Port State control will still audit ships by PSC officers.
- Current white lists etc are a fairly reliable indicator of flag state performance. Audit results are confidential.
- PSC can do very deep and thorough examination and they also perform and concentrate on specific issues.
- Certainly PSC has the potential.
- It is a multinational problem/issue that needs to be addressed by FSI and other relevant bodies within IMO. The audit scheme will not to my mind directly impact it.

(Q24) One setback in the scheme is that Recognised Organizations (ROs) are not audited in accordance with this formal voluntary audit scheme. Recognised Organizations have to be included in the scheme.

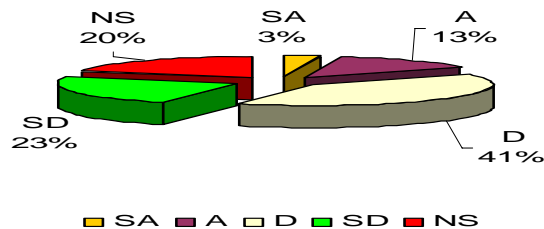


Figure 16 Question 24 data presentation

COMMENTS:

- VIMSAS should only verify the methods for the monitoring of the ROs and compliance with the requirements adopted by IMO. A supplementary audit scheme for ROs should be considered.
- There is no other way to go. Some central agency should be setting the standards.
- It is flag state task to assess ROs.
- The ROs should be audited by the flag state. If IMO is to audit ROs that would be a different audit all together.
- Flag State monitors performance of ROs in any case.
- Within the European Union, ROs are audited every second year by the contracting Government and VIMSAS is there to audit the contracting government.
- ROs have different mandates. In Europe they are audited by EMSA. This could be an example.
- This should be done by the state or in our case by us and the European Commission.
- ROs have an agreement with the flag state and it is the flag state that should audit the RO.
- Not at this time. Could be considered in the future.

- The audit scheme analyses how flag states oversee the delegations to ROs and whether it is effective. IACS ROs undergo a rigorous audit which many flag states including us participate.
- The scheme and the code is the responsibility of the states; a state can choose to delegate but will always have the responsibility for the class. VIMSAS do cover the ROs in this respect, that the state now does the audit.

(Q25) VIMSAS is now voluntary. It should be mandatory within five years.

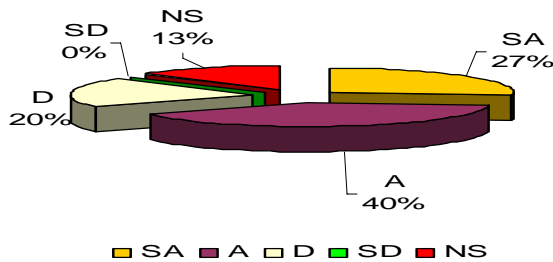


Figure 17 Question 25 data presentation

COMMENTS:

- This should be well thought through and not to be rushed. If IMO decide to make it mandatory so be it.
- Maybe 10 years will be a better schedule.
- I would give it seven (7) years in order for the organization to fully evaluate the findings and effectiveness of the audit scheme.
- This is the aim.
- VIMSAS should be mandatory as soon as possible.

(Q26) VIMSAS is just another marketing ploy by the developed maritime countries to gain greater control in the shipping business.

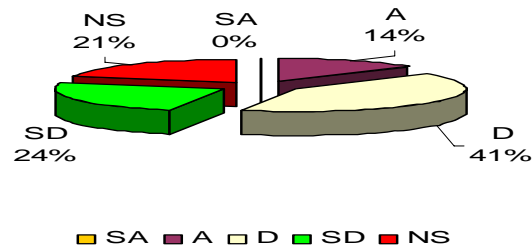


Figure 18 Question 26 data presentation

COMMENTS:

- This is not possible; one country one vote.
- Provided IMO do not offer technical and financial assistance to developing countries.
- There is a strong urge to improve quality of shipping in all flag states, as well as improving conditions for ships wherever they travel. The idea of an international regime is that the industry shall compete on equal terms. New players will have to take this into account. There is little room for trial and error by operating a ship in international voyage.
- I think this is a tool for standardizing procedures and interpretations of IMO regulations.
- In fact if the rules are similar for all players, nobody has competitive advantage and therefore results in fair trade.
- Ships should be operated by safe companies, inspected by safe states. The seafarers safety and the marine environment must be protected.
- Its purpose is to increase the overall quality of shipping worldwide not just through the fleets of traditional maritime nations.
- Rather the opposite. Most developed countries already use internal audit programmes. This is an opportunity for developing countries to get audited

and then receive support needed to improve their systems through the technical co-operation programme.

- Not at all. VIMSAS will enable member states to learn from each other since those established flag states will share their experiences with us.

(Q27) VIMSAS is ultimately going to increase the administrative costs and burdens of Flag, Coastal, Port States, and the shipping industry and will also lead to over-regulation.

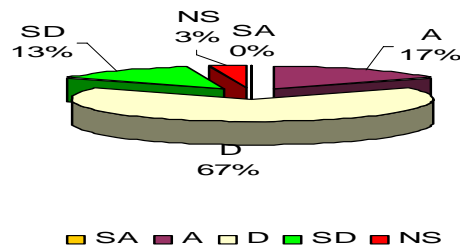


Figure 19 Question 27 data presentation

COMMENTS:

- This is a function of budget and if states are willing to support the audit scheme, they should be willing to pay for it.
- I think the corrective actions will absorb money.
- VIMSAS will increase costs in developed countries. In developing countries the actual cost should be borne by IMO. The cost of doing necessary improvements in the administrations will have to be covered either by national budgets or by Technical Co-operation (TC). It all depends on the nature of deficiencies. The industry will not be overregulated by this.
- It will increase the work load, but hopefully prevent over-regulation.
- Focus on compliance with IMO regulations and make fewer rules in IMO.
- We have been audited, without any changes in cost.

- This is only potentially true for those flag and port states that do not do a responsible job now, and that list is dwindling every day. So in the aggregate I do not see it substantially increasing costs or overregulation.

(6) Please indicate why you think your country should undergo VIMSAS

COMMENTS:

- Such report will provide information to the policy makers and aid in guiding policy decisions.
- Responsible international organizations should have no qualms about being audited.
- In accordance with the objective of the Code for the Implementation of Mandatory IMO instruments.
- I think all member states of IMO should undergo VIMSAS.
- Good for the administration, evaluation of the good work being done.
- To receive comments in which fields we might need to make improvements.
- An external view may detect problems overlooked or missed.
- We have had our audit. It is very positive to improve performance by having a “peer” review.

(7) If your country has no intention to apply for the IMO voluntary Member State Audit Scheme in the near future, kindly indicate what the reasons are.

COMMENTS:

- N/A

(19) The ratification, implementation and enforcement/control of IMO mandatory instruments have significant costs in terms of financial, infrastructural and human resources. Can your country cope with the requirements?

COMMENTS:

- This is a relative matter that depends on the level and state of maritime affairs in a country. Fees levied by state should take such matters into consideration.
- We have to.
- Once you have agreed to a decision in IMO you have agreed also to implement it.

(21) Possibly, this could have been conceived a long time ago. What do you think caused the delay and why is it now being implemented?

COMMENTS:

- Countries were at different state of developments in the maritime sector and did not have human resource to attend to matters of the IMO. The establishment of the World Maritime University (WMU) has resolved this problem and has continued to do so even today. Most countries now have some sort of functioning administrations.
- Sovereignty is a sensitive issue but the sensitivity is sometimes a cover up for lack of will or capability.
- I don't think that sovereign nations were willing to undergo audits until such time as the 'quality' initiative, ala ISO 9000, became commonplace.
- I do not think time was ripe before.
- Auditing flag State is a delicate matter. I guess it needed some time to develop and agree on this idea.
- It has been under development for about 6 years and was a logical development in the evolution of quality shipping.

- There are differences between the various parties with regard to fleet, administration, political interest and abilities to comply in reality with IMO requirements.

(23) One of the perceived reasons for the flag State delegation of the verification of compliance with statutory instruments to Recognised Organisations is lack of resources for some flag States. Does your Administration delegate to the Recognised Organisations and if so is lack of resources a factor in the choice to delegate?

COMMENTS:

- Delegation could be seen as lack of resources, but the primary factor is that administrations rely on the worldwide network of surveyors, which administrations are usually not capable to have. Travel costs for example will increase significantly, if ships are to be surveyed only by surveyors from the administration.
- The reasons why we have delegated to ROs are many, of which one is that the ROs are widely represented geographically and therefore nearer to where our flagged vessels operate.
- How could Administrations be represented worldwide?
- The register has been developed with the intention to implement relevant IMO resolutions and practices, which allow for ROs to carry out survey and certification. It is interesting that some established registers which are not “open registers” per se are also adopting this model.
- Some tasks are delegated but not always because of lack of resources.
- You need to define lack of resources, because this process is used by all manner of flag States including the most resourced such as United States of America.

(28) The audit scheme is currently voluntary. As a likely scenario, associations such as BIMCO, INTERTANKO, ICF, ISF and Seafarer Associations will in the future require that their members work with flags which have undergone the VIMSAS. Can such strict membership requirement affect ships flagged in your country?

COMMENTS:

- Not at this time.
- Highly an unlikely scenario.
- I don't believe that these associations can compel their members to do any such thing. Just having undergone an audit does not make you a responsible flag State.

(29) What lessons are likely to be learnt from VIMSAS by the following?

29.1 Flag State

LESSONS:

- Will provide data which will assist countries in complying with provisions of the International instruments.
- It will point out areas of potential improvement and areas where corrective action is necessary. It will also provide a mechanism for determining compliance with the various convention requirements.
- As per the objectives of the Code.
- It will point out the weaknesses and differences in implementation of flag State requirements.
- Best practices.
- Effective implementation of ratified IMO rules.

- To act as a serious flag State means something more than just having fleet. There must be a professional administration to follow up the fleet – and that means cost, training, integrity etc.

29.2 Port State

LESSONS:

- Same as above
- Equal bases for port State control.

29.3 Coastal State

LESSONS:

- Same as above
- To show the weaknesses in implementation of coastal State rights and obligations.

29.4 IMO

LESSONS:

- Take account of the cost implications and benefits to global shipping from both safety of life and economic standpoint.
- It should provide a good overview of the general level of compliance with the commitments made in the implementation of the various conventions under the purview of IMO. The scheme will ultimately be amended, improved, and modified to provide even better data and indications of compliance.
- To focus on assisting developing countries.
- IMO will gather important information about Member States which may need assistance through the Technical Co-operation projects as well as other information activities.

- Greater control and maybe less rules in future or only after the existing ones have been implemented.
- Whether VIMSAS can be made mandatory.
- IMO will learn about the impediments to implementation of instruments.

(30) Please indicate areas in which you think VIMSAS can be further improved.

COMMENTS:

- Transparency
- It should include security sooner rather than later.
- More and better training of internal/external auditors.
- Scheme should be made mandatory.
- Mandatory follow-up of audit.
- Summary reports should be monitored by IMO member states.

(31) Kindly give any other comments you have regarding VIMSAS.

COMMENTS:

- IMO should proceed with caution as the scheme is being developed.
- No need to think about what will be next after VIMSAS, enough is enough.
- It will detect weak points and will give developing States a good chance to get support to train their personnel.
- One week is a short period for a thorough audit.
- It is a good start and should have good results. It needs to be continually refined and much thought must be undertaken with respect to how it might be made mandatory and what types of sanctions would be applied when it is made mandatory. The one recognition that the scheme does not make is that the overall level of maritime casualties has substantially decreased through

the imposition of IMO conventions. While there are still some flag States that do not do good job, overall safety and environmental picture has dramatically improved.

(32) Kindly give any comments or views about this questionnaire.

COMMENTS:

- Good, just a bit too long.
- Maybe the questionnaire has been presented a bit early in the VIMSAS process.
- Please provide the results of your research since it will be very useful.
- Too many double questions.
- Well done.
- Structure of the questionnaire is excellent.
- I am lecturing for the IMO on this scheme in regional courses and also auditing States. This questionnaire will give some interesting answers on the view of the scheme from other States.
- The questionnaire is acceptable as such. However as many questionnaires it invites to generalities and to a certain extent guess work. When an audit scheme affects parties as defined by ratified Conventions, it requires that all parties concerned have agreed on which conditions such scheme shall function – and not be subject to questionnaires or guess work of any kind.

Appendix 3

PRE- AUDIT QUESTIONNAIRE

I GENERAL INFORMATION		
1 Name of State		
2 Full contact details for the designated single point of contact for audit purposes		
Name and Title		
Address		Telephone No.: Fax No. : E-mail address :
3 Full contact details of government body(ies) covering the following areas of responsibility :		
	Area of responsibility	
	Safety	Environmental Protection
Name of Government Body		
Address		
Telephone No.		
Fax No.		
E- mail address		
4 Please provide an organigram and/or a diagram depending the area of responsibility of each of the above-mentioned government bodies.		

The format of this questionnaire is only presentational and does not restrict the extent or form of responses to questions.

Source : I :ASSEMBLY\24\RES\974.DOC

5 Please indicate the number of employees of each relevant government body* by category:		
* Please provide the information requested below for each relevant government body		
Category	No. of employees	Location
Management		
Technical		
Surveyors		
Legal		
Education		
Support Staff		
Other		
6 Please indicate the number of ships on your State's register according to the following types and nature of the trade in which they are involved. Please provide the information separately for each register, where applicable.		
	Number	Nature of Trade
Passenger		
Cargo		
Fishing		
Other		
7 Please provide information on any relevant State territorial body(ies) and its (their) relationship to the Administration		
8 Please specify the scale and extent of your State's involvement in the following activities:		
.1 port State activities; and		
.2 coastal State activities.		

Source: I:\ASSEMBLY24\RES\974.DOC

II Information on international instruments		
1 Please indicate to which of the following mandatory IMO instruments listed in the Code for the Implementation of mandatory IMO instruments your State is a party.		
Instruments	Party	Has the instrument been incorporated into your State's national legislation?
SOLAS 74	Yes/No	Yes/NO
SOLAS Protocol 78	Yes/No	Yes/No
SOLAS Protocol	Yes/No	Yes/No
MARPOL 73/78	Yes/No	Yes/No
Annex III	Yes/No	Yes/No
Annex IV	Yes/No	Yes/No
Annex V	Yes/No	Yes/No
Annex VI	Yes/No	Yes/NO
1978 STCW as amended	Yes/No	Yes /No
LL 66	Yes/No	Yes/No
LL Protocol 88	Yes/No	Yes/No
TONNAGE 69	Yes/No	Yes/No
COLREG 72	Yes/No	Yes/No
2 Please attach a flow chart illustrating the processes by which international instruments are formally adopted and transposed into your national legislation.		
<p>3 Please provide the following information INDIVIDUALLY FOR EACH OF THE ABOVE INSTRUMENTS to which your State is a party:</p> <p>.1 the government body* responsible for the implementation and enforcement of the instrument;</p> <p>.2 the equivalents/exemptions issued under this instrument and reported, as appropriate, to the IMO;</p> <p>.3 whether other Contracting Governments or Parties have been requested to act on behalf of Your State; and</p> <p>.4 whether information on national laws, etc., has been communicated to IMO.</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>*Note: The responsible body should be clearly indicated in the relevant places in the flow chart provided under question 2 above.</p>		
4 What is your State's policy in respect of the following:		
.1 the term "to the satisfaction of the Administration"; and		
.2 convention requirements that equipment must be of a type approved by the Administration?		
5 If applicable, how are the above – mentioned provisions implemented?		

Source: I:\ASSEMBLY\24\RES\974.DOC

III Information on enforcement	
1	Please give details on how your State implement the enforcement provisions of the Code for the implementation of mandatory IMO instruments.
2	Please provide examples of enforcement action taken by your State against ships entitled to fly its flag, companies and/or seafarers during the preceding twelve months.
3	Please provide details on how statistical information is obtained and how trend analyses are Conducted to indicate problem areas within your State's fleet.
4	Please describe briefly your State's procedures for dealing with ships entitled to fly its flag that Have been detained by port State control.
IV Recruitment and training of surveyors	
1	Please describe or specify your State's recruitment criteria, qualifications and processes for surveyors and other staff engaged in flag and port State duties.
2	Please describe or specify your State's initial training requirements for new entrants surveyors as well as in-service training requirements for experienced surveyors.
3	Please describe or specify your State's management arrangements defining the responsibilities, authority and interrelationship of surveyors and other staff engaged in flag and port State duties.
4	Please describe or specify your State's criteria, e.g. qualification, experience and training, for the appointment of line managers of surveyors.
V Information on recognized organizations (ROs)	
1	Please list the ROs/nominated surveyors authorized to act on your State's behalf.
2	Please specify whether there is a written agreement with each RO, in accordance with MSC/Circ.788-MEPC/Circ.325, and if so, please attach a copy.
3	In the absence of a written agreement in accordance with MSC/Circ.788-MEPC/Circ.325, please specify scope of the authorization(s). A matrix indicating which functions (plan approval, surveys, certification, exemption, and equivalent arrangements) have been Delegated to the RO should be provided.

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<p>4 How does your State verify and monitor the performance of its authorized ROs?</p> <p>Details of audits carried out by your State to monitor its ROs within the preceding two years should be provided, as well as any planned audits and other oversight and guidance procedures applied by your State to ROs.</p>
<p>5 Please indicate the resources allocated to verification and monitoring of RO performance:</p>
<p>VI Information on investigation and analysis of marine casualties and pollution incidents</p>
<p>1 Please describe or provide your States relevant national legislation relating to investigation And analysis of marine casualties and pollution incidents, as appropriate.</p>
<p>2 Please describe your State's organizational structure for casualty investigation and provide an organigram illustrating the national set-up. This should also include a description of how the impartiality and independence of investigators are ensured, against both internal and external influences.</p>
<p>3 Please describe how your State analyses human element contributions to accidents and how the analyses are used in order to improve safety and pollution prevention. Please provide examples of established databases, if appropriate.</p>
<p>4 Please describe how your State carries out the required reporting to IMO.</p>
<p>VII Information on port State control (PSC) activities</p>
<p>1 Does your State carry out port State control?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>2 Please provide a brief description of the relevant sections of your national legislation permitting port State control to be undertaken on foreign ships visiting your ports.</p>
<p>3 Does your State belong to one or more regional port State control regimes?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, specify which regional regime(s) and provide further information on the nature of its Participation in that or those particular PSC regimes.</p> <p>If no, briefly describe your State's procedures for carrying out port State control.</p>

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4	Please describe the arrangement which your State has put in place to enable port State control interventions to be transmitted "forthwith" to all parties concerned.
5	How many PSC inspections have been carried out by your State over the last two years and how many have resulted in detentions? Number of PSC inspections: Number of detentions:
6	Does your State have reception facilities for ship-generated wastes under MARPOL 73/78? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please list and describe them and state whether they are adequate in the context of the requirements of the Convention.
VIII Information on coastal State activities	
1	Please describe your State's national legislation implementing the "force majeure" provisions of SOLAS article IV.
2	Please describe your State's arrangements for promulgating navigational warnings and dangers to navigation.
3	Please describe your State's arrangements for the establishment and maintenance of any navigational aids within waters for which it has responsibility and how information relating to these is promulgated.
4	Please describe any measures your State has put in place which encourage the collection of meteorological data and what use is made of this data.
5	Please describe your State's arrangements for coast watching and for the rescue of persons in distress.
6	Please describe your State's arrangements for investigating reported incidents of pollution.
7	Please describe your State's shipping and pollution prevention legislation as applicable to its EEZ.

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8	Are there any Particularly Sensitive Sea Areas (PSSAs) established within your State's jurisdiction?	Yes	No
	If yes, what are the associated protective measures?		
9	Please describe any maritime traffic routing schemes or restricted areas enforced within waters for which your State has responsibility, and which have not been adopted by the IMO.		
10	What IMO maritime traffic routing system or restricted area does your State enforce within waters under its jurisdiction and how is it managed?		
11	What ship reporting systems or VTS systems adopted by IMO, if any, are in force in your State?		
12	Under what national legislation does your State establish sanctions for violations of mandatory IMO instruments within its jurisdiction?		
13	What methodology does your State employ to enforce its maritime legislation on ships of any flag within its territorial waters?		
14	Please describe your State's arrangements for:		
	.1 hydrographic services; and		
	.2 ship reporting systems.		
15	Please describe any measures undertaken by your State to evaluate its effectiveness in implementing IMO mandatory instruments which are applicable to it as a coastal State (e.g. exercises to test counter-pollution measures, rescue of distressed persons, etc).		
IX	Information on reporting requirements		
1	Please describe your State's system for developing (including information gathering) and submitting mandatory reports to IMO.		

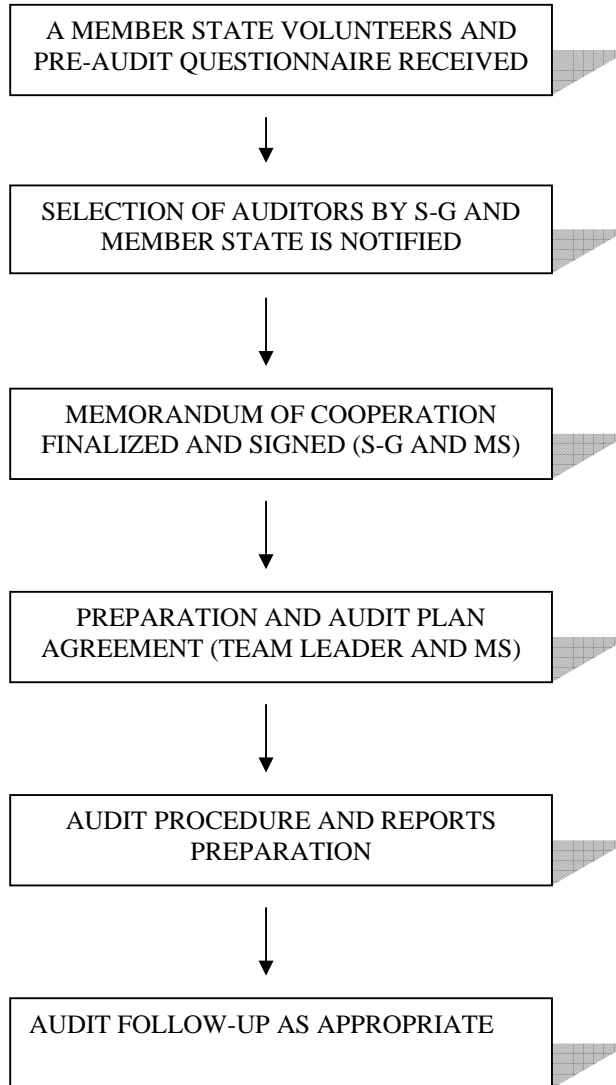
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X Evaluation and review	
1	Please describe how you measure the performance of your maritime administration (i.e. benchmarking the port State control detention rates of ships in your registered fleet; consolidating the results of your inspections of your registered ships; evaluating casualty statistics on your registered fleet; evaluating the effectiveness of the communications and information processes supporting your managerial structure ;evaluating annual loss statistics; and using performance indicators and their effectiveness in determining whether staffing, resources and administrative arrangements (including financial and technical) are adequate to meet obligations under mandatory IMO Instruments).
2	Please describe the methods by which the results obtained from evaluation and review influence your future policies to promote continuous improvement.
XI Information about management systems	
1	<p>Does your State use a recognized quality management system, e.g. ISO 9001:2000, for or all of its activities?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, relevant documentation should be copied and submitted together with this questionnaire.</p>
2	<p>Does your State use other management systems, e.g. internal contracts between management and subdivisions, external contracts between the organization to be audited and its superiors of either a political and/or administrative nature or any other proprietary management system?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, copies of contracts or other relevant documentation (in an appropriate language) should be submitted together with this questionnaire.</p>
XII Scope of the audit	
1	Does your State wish some of the areas included in the Code for the implementation of mandatory IMO instruments to be excluded from the audit (reasons for this could be that it is not a contracting party to some international instruments or has acceded only recently to a particular instrument)?

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APPENDIX 4

AUDIT SCHEME SEQUENCE OF ACTIVITIES



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