

World Maritime University

# The Maritime Commons: Digital Repository of the World Maritime University

---

World Maritime University Dissertations

Dissertations

---

2013

## Implications and impacts of making mandatory the voluntary IMO member state audit scheme : from legal and practical perspectives

Yang Liejun

*World Maritime University*

Follow this and additional works at: [https://commons.wmu.se/all\\_dissertations](https://commons.wmu.se/all_dissertations)



Part of the [Accounting Law Commons](#)

---

This Dissertation is brought to you courtesy of Maritime Commons. Open Access items may be downloaded for non-commercial, fair use academic purposes. No items may be hosted on another server or web site without express written permission from the World Maritime University. For more information, please contact [library@wmu.se](mailto:library@wmu.se).

**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**IMPLICATIONS AND IMPACTS OF MAKING  
MANDATORY THE VOLUNTARY IMO MEMBER  
STATE AUDIT SCHEME: FROM LEGAL AND  
PRACTICAL PERSPECTIVES**

By

**YANG LIEJUN**

**The People's Republic of China**

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

**MASTER OF SCIENCE**

**In**

**MARITIME AFFAIRS**

**(MARITIME LAW AND POLICY)**

2013

## DECLARATION

I 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 necessarily endorsed by the University.

(Signature):



(Date):

14 Oct 2013

**Supervised by: Jens-Uwe Schröder-Hinrichs**

**World Maritime University**

**Assessor: Erin Williams**

**Institution/Organisation: World Maritime University**

**Co-assessor: Hemming Hindborg**

**Institution/Organisation: Danish Maritime Authority**

## ACKNOWLEDGEMENT

I am sincerely grateful to all the people who have assisted and supported me in various ways during the period of my stay and study at World Maritime University (WMU). First, I would like to extend my profound gratitude to my supervisor Professor Dr. Jens-Uwe Schröder-Hinrichs, for the valuable assistance and guidance leading up to my completion of this dissertation. I wish to express my special thanks to my course teachers, especially Professor Dr. Proshanto. K. Mukherjee, Professor Dr. Max Mejia and Assistant Professor Dr. Carolina Romero, for their illuminating lectures on maritime law and policy which inspired me to choose this research topic for my dissertation. My recognition also goes to WMU faculty and staff, Professor Shuo Ma in particular, for their know-how and kind assistance to my study and life at Malmö

I would also like to extend my appreciation to Mr. YANG Zan, Director-General, Mr. JU Chengzhi, former Director-General and Mr. WANG Hongwei, Director of the International Cooperation Department of the Ministry of Transport of China, for giving me this chance and supporting me to further my study at WMU. Thanks are also extended to all my colleagues who provided encouragement and allowed me to take time off the past 14 months to study abroad.

I am also thankful to my dear friends at WMU, especially my Chinese fellow students, for their kind company during the period at WMU. I will always remember and appreciate the good will and encouragement we shared with each other.

Last but not least, I am most grateful to my beloved wife PANG Bo who sacrificed her job and accompanied me during my study at WMU, as well as to my parents, my parents-in-law, my son and my brother, without whose love and encouragement never could I go on with my life and professional career.

## **ABSTRACT**

Title of Dissertation: **Implications and impacts of making mandatory the Voluntary IMO Member State Audit Scheme: from legal and practical perspectives**

Degree: **MSc**

The Voluntary IMO Member State Audit Scheme (“the Audit Scheme”) is on track to become institutionalized and mandatory; however, it still remains controversial due to the fact that there are indeed many legal and practical issues to be properly handled. Though on the other side of the same coin, the opportunities in this regard are seemingly endless. Therefore, it is needed to thoroughly explore and analyze the various factors of importance in respect of making the Audit Scheme mandatory.

This dissertation starts with examining the legal implications and impacts, with a focus on IMO’s monitoring power vs. Member States’ sovereignty and mandatory implementation vs. national legislation. Then the dissertation examines the practical challenges and opportunities, among which those related to IMO Member States’ capacity-building and IMO’s increased workload are mainly discussed.

In particular, a case study on the implementation of the Audit Scheme by the Chinese Government is presented and analyzed in detail, seeking to evaluate and identify possible measures and strategies to be used by IMO Member States, either in the transitional period or after the entry-into-force of the mandatory Audit Scheme. Finally, a conclusion of the findings on this contemporary subject is summed up, together with relevant proposals to promote further development of the mandatory Audit Scheme.

**KEYWORDS:** The Audit Scheme, Mandatory implementation, Legal implications impacts, Practical challenges and opportunities, Transitional period, Strategies and measures.

## TABLE OF CONTENTS

Declaration	ii
Acknowledgement	iii
Abstract	iv
Table of Contents	vi
List of Tables	ix
List of Abbreviations	x
<b>Chapter I     Introduction</b>	<b>1</b>
1.1     A briefing on the Audit Scheme	1
1.1.1     Process of the Audit Scheme	2
1.1.2     Institutionalization of the Audit Scheme	2
1.2     Objectives of the study	4
1.3     Methodology of the study	6
1.4     Organization of dissertation	7
<b>Chapter II     Implications and impacts of making the Audit Scheme                   mandatory</b>	<b>9</b>
2.1     Legal implications and impacts	9
2.1.1     Overview of present and forthcoming resolutions by IMO	9
2.1.2     IMO's monitoring power vs. Member States' sovereignty	13
2.1.3     Mandatory implementation vs. national legislation	15
2.1.4     Other legal issues	19
2.2     Practical challenges and opportunities	20
2.2.1     General views in global shipping	20
2.2.2     Member States' capacity-building	21
2.2.3     Enhanced IMO's role vs increased workload	23
2.3     Brief sum-up	24

<b>Chapter III</b>	<b>Measures and strategies for the mandatory implementation of the Audit Scheme by Member States</b>	<b>26</b>
3.1	A case study on the implementation of the Audit Scheme by China	26
3.1.1	China and the Audit Scheme	26
3.1.1.1	Background	26
3.1.1.2	China's performance in the audit	28
3.1.2	Strategy, policy-making and measures by Chinese Government	31
3.1.2.1	Introduction to MOT and CMSA	31
3.1.2.2	Strategy	32
3.1.2.3	Marine monitoring and legal systems	33
3.1.2.4	Transposition of international conventions into national legislation	35
3.1.2.5	Preparatory work and relevant practice by CMSA	36
3.1.3	Limitation of national policy and practical challenges	39
3.1.3.1	Domestic legislative procedures and regulatory process	39
3.1.3.2	Communication, exchange and cooperation mechanism	40
3.1.3.3	Competent maritime professionals and officers	41
3.1.3.4	Monitoring and oversight of the RO	42
3.1.3.5	Others	43
3.1.4	Standardization and possible national legislation in the long term	43
3.1.4.1	Modify domestic legislative process and improve transposition efficiency	44
3.1.4.2	Enhance forward-looking study and research	44
3.1.4.3	Strengthen coordination and cooperation	45
3.1.4.4	Cultivate professional personnel through shipping diplomacy and effective training	46



3.1.4.5	Normalize monitoring and control over the ROs	47
3.1.4.6	Improve the service functions of port reception facilities	48
3.1.4.7	Set up internal audit and pre-audit mechanisms	48
3.2	Proposed measures and strategies to be used by Member States	50
3.2.1	Short term measures in the transitional period	50
3.2.2	Long term strategy and mechanism	52
3.2.3	Global regime in the future	53
<b>Chapter IV</b>	<b>Summary and conclusions</b>	<b>55</b>
<b>References</b>		<b>60</b>

## **LIST OF TABLES**

Table 1	Audit Process	3
Table 2	Time Frame & Schedule of Activities to Institutionalize the Audit Scheme	5
Table 3	Draft Resolutions to be adopted for making the Audit Scheme mandatory	11

## **LIST OF ABBREVIATIONS**

<b>AIS</b>	Automatic Identification System
<b>CCS</b>	China Classification Society
<b>CCTV</b>	Closed Circuit Television
<b>CMP</b>	Country Maritime Profile
<b>CMSA</b>	China Maritime Safety Administration
<b>COLREG 1972</b>	the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended
<b>EU</b>	European Union
<b>FSS Code</b>	International Code for Fire Safety Systems
<b>GISIS</b>	Global Integrated Shipping Information System
<b>III Code</b>	the IMO Instruments Implementation Code
<b>IMDG) Code</b>	International Maritime Dangerous Goods Code
<b>IMO</b>	International Maritime Organization
<b>ISM Code</b>	International Safety Management Code
<b>ITCP</b>	Integrated Technical Cooperation Programme
<b>JWGMSA</b>	Joint Working Group on the Member State Audit Scheme
<b>LDC</b>	Least Developed Countries
<b>LL 1966</b>	the International Convention on Load Lines, 1966
<b>LL PROT 1988</b>	the Protocol of 1988 relating to the International Convention on Load Lines, 1966
<b>MARPOL 73/78</b>	the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended
<b>MARPOL PROT 1997</b>	the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships,

	1973, as modified by the Protocol of 1978 relating thereto, as amended
<b>MEPC</b>	Marine Environmental Protection Committee
<b>MOT</b>	Ministry of Transport of China
<b>MRCC</b>	Maritime Rescue and Coordination Center
<b>MSC</b>	Maritime Safety Committee
<b>NGO</b>	Non-Governmental Organisation
<b>P&amp;I Club</b>	Protection and Indemnity Club
<b>PRC</b>	the People's Republic of China
<b>PSC</b>	Port State Control
<b>ROs</b>	Recognized Organizations
<b>SAR</b>	Search and Rescue
<b>SIDS</b>	Small Island Developing States
<b>SOLAS 1974</b>	the International Convention for the Safety of Life at Sea, 1974, as amended
<b>SOLAS PROT 1978</b>	the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended
<b>SOLAS PROT 1988</b>	the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended
<b>STCW 1978</b>	the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended
<b>SUA 1988</b>	1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
<b>The Audit Scheme</b>	the Voluntary IMO Member State Audit Scheme

**TONNAGE 1969**

the International Convention on Tonnage Measurement of  
Ships, 1969

**UNCLOS**

United Nations Convention on Law of the Sea

**VTs**

Vessel Traffic Service

## CHAPTER I INTRODUCTION

### 1.1 A briefing on the Audit Scheme

As one specialized UN agency, with its global membership and mandate, the International Maritime Organization (IMO) has developed a large number of technical standards related to maritime safety, security and marine pollution prevention. However, IMO has no enforcement and compliance monitoring role in this regard, and it is the Governments of the flag, port and coastal States that have the duty to implement and enforce those standards. “With the drive for greater transparency and accountability, it has often been said that IMO needs teeth to ensure compliance” (IMO, 2011a, p. 4). Thus, in order to promote maritime safety, security and marine environmental protection through assessing how effectively its Member States have been and/or are implementing and enforcing the applicable mandatory IMO instruments such as SOLAS and MARPOL, IMO adopted in 2003 the Voluntary IMO Member State Audit Scheme (the Audit Scheme). Generally speaking, the Audit Scheme addresses such issues as the followings:

*The conformance in enacting appropriate legislation for the IMO instruments to which a Member State is a Party; the administration and enforcement of the applicable laws and regulations by the Member State; the delegation of authority to Recognized Organizations (ROs); the related control and monitoring mechanism of the survey and certification processes by the Member States* (IMO, 2013f, para. 8).

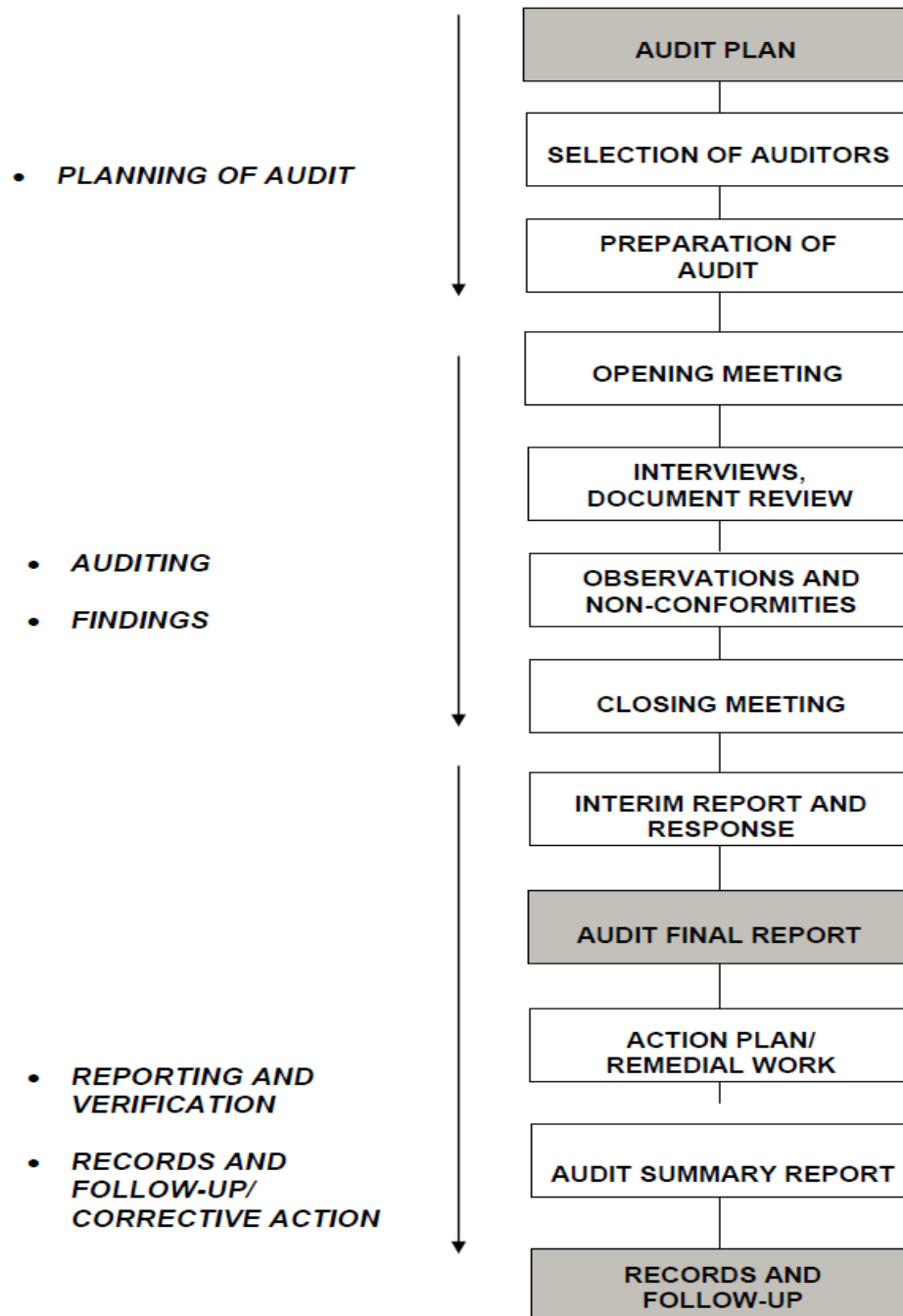
### **1.1.1 Process of the Audit Scheme**

As shown in **Table 1: Audit Process**, the Audit Process contains five steps: Planning of Audit, Auditing, Findings, Reporting and Verification, and Records and Follow-up/ Corrective Action. Once an audit request has been received from one Member State, the IMO Secretary-General will soon appoint an audit team leader to discuss with the Member State the scope of the audit, which usually includes the flag, port and coastal State obligations of the Member State relating to the mandatory IMO instruments to which it has acceded. “By virtue of geography and circumstance some 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 port State than as a flag State (IMO, 2009d, p. 3)”. Then a Memorandum of Cooperation between IMO and the Member State will be signed, specifying the scope of the audit and the relevant responsibilities for the successful completion of the audit. The audit team usually consists of 3 or 4 auditors from different IMO Member States other than the audit-requesting one, and the duration of the audit may last one to two weeks. When the audit is over, the audit team will write an audit report, which will be submitted to IMO and the Member State, offering findings and suggestions for further action to be taken by relevant sides.

### **1.1.2 Institutionalization of the Audit Scheme**

The Audit Scheme is quite successful in that, 67 Member States have shown their readiness to be audited, among which 58 have been audited, respectively representing about 40% and 34% of the total IMO membership (IMO, 2012c). Nevertheless, according to Li and Qiu (2007), due to its voluntary nature, the Audit Scheme cannot generate equal pressure to promote all the Member States to unanimously and fully implement the mandatory IMO instruments. In order to make the Audit Scheme more powerful, the IMO’s highest governing body, the Assembly, decided to make the Audit

**Table 1 Audit Process (IMO, 2005c)**





Scheme institutionalized and mandatory (IMO, 2009c), and the entry-into-force of the mandatory Audit Scheme is expected to be 1 January 2016 (IMO, 2013a). The time frame and schedule of activities to institutionalize the Audit Scheme are demonstrated in the following **Table 2**<sup>1</sup>.

## **1.2 Objectives of the study**

Ever since the very beginning of the proposal for establishment of it, the Audit Scheme has become an issue of great concern in the international maritime community. Especially regarding the developing trend of the Audit Scheme from voluntary to mandatory, many experts and scholars are of different views on such legal and practical issues as IMO's monitoring power vs. Member States' sovereignty, and the mandatory and uniform implementation of the Audit Scheme vs. Member States' capacity-building. Thus this dissertation intends to explore and analyze the challenges and advantages of making the Audit Scheme mandatory. It will attempt to identify the relevant legal and practical implications and impacts, and with a case study on the implementation of the Audit Scheme by China, seek possible solutions to promote its mandatory implementation and further development. The detailed objectives are as follows:

1. To illustrate the current situation and developing trend of the Audit Scheme;
2. To explore and discuss the legal implications and impacts of making the Audit Scheme mandatory;
3. To indicate and analyze the practical challenges and opportunities of making the Audit Scheme mandatory;
4. To explore China's present practice, national policy and practical challenges in preparing for the mandatory implementation of the Audit Scheme, especially its standardization and possible national legislation in the long term;

---

<sup>1</sup> Mainly based on IMO Document: A 26/Res.1018, Further Development of the Voluntary IMO Member State Audit Scheme (25 November 2009).

**Table 2 Time Frame & Schedule of Activities to Institutionalize the Audit Scheme**

<b>IMO Body</b>	<b>Timing</b>	<b>Action</b>
MSC and MEPC	First half of 2010	Consider how to make the Code for the implementation of mandatory IMO instruments mandatory, including provisions for auditing
MSC and MEPC	Second half of 2010	Identify mandatory IMO instruments through which the Code and auditing should be made mandatory
Council	End of 2010	Establish Joint Working Group (JWG) of MSC, MEPC, FAL and TCC to review the Framework and Procedures for the Scheme
MSC and MEPC	2011 and 2012	Develop provisions to make the Code mandatory through the identified mandatory IMO instruments
Council	Second half of 2011	Approve a progress report for submission to A 27
Assembly 27	November 2011	Receive a progress report and decide as appropriate
JWGMSA	2011 and 2012	Review the Framework and Procedures for the Scheme
JWGMSA	2013	Finalize the Framework and Procedures, taking into account the finished product of the Code and the related amendments to mandatory IMO instruments
Council	First half of 2013	Approve the Framework and Procedures for the Scheme, for submission to A 28 for adoption
Committees	2013	Adopt amendments to the mandatory IMO instruments concerned for entry into force on 1 January 2016
Assembly 28	November 2013	Adopt resolution on the Framework and Procedures for the Scheme and amendments to those mandatory instruments under the purview of the Assembly
Assembly, Council, Committees and Secretariat	2014-2015	Transitional period: preparatory work for the commencement of an institutionalized audit scheme
Assembly, Council, Committees and Secretariat	From 1 January 2016 on	Enter into force and implementation of the mandatory Audit Scheme

5. To identify and develop preparatory measures and strategies both in the transitional period and in the post-entry-into-force of the mandatory Audit Scheme;

6. To make proposals and recommendations on effectively carrying out the mandatory Audit Scheme and accelerate its further development.

It is expected that the findings and outcome of this dissertation will be helpful to those concerned with the Audit Scheme, and hopefully it will also be beneficial for maritime Administrations of the IMO Member States to the assessment and possible revision of the existing regulatory framework, policies and regulations on this issue.

### **1.3 Methodology of the study**

In order to achieve the objectives mentioned-above, a research plan was made in early March 2013, and a qualitative method has been taken to obtain all the necessary data available. The relevant literature has been widely reviewed and analyzed, including appropriate IMO documents and circulars, international conventions such as UNCLOS, Government reports and publications, conference and seminar papers, articles from contemporary journals, books and remarks, and information from websites. Besides, the current Chinese national policies, and practical procedures and relevant studies in this regard have been collected, discussed and compared. Contact has been made with the Ministry of Transport of China (MOT), particularly the China Maritime Safety Administration (CMSA) and local branches for the latest reform and policy.

The maritime authorities and officials in charge of this issue, as well as managers from shipping companies in different IMO Member States, especially China, have been interviewed during field studies, by emails or over the phone, so as to identify and examine their legislative positions, practical problems and relevant proposals and recommendations. Visiting experts and professors in this field at WMU have been interviewed as well, to collect information and advice. In addition, during the field study in July 2013, the author went to the Headquarter of IMO in London and obtained

updates from its Secretariat on the current situation of the Audit Scheme and some possible future policies on this issue.

#### **1.4 Organization of dissertation**

The dissertation is presented in four chapters. Chapter I is introductory, in which a briefing on the Audit Scheme, as well as the objectives and methodology of the study, is addressed. In Chapter II, the implications and impacts of making the Audit Scheme mandatory will be analyzed both from the legal and practical perspectives. Regarding the legal implications and impacts, an overview of present and forthcoming resolutions by IMO to institutionalize the Audit Scheme will be presented, and then such legal issues as IMO's monitoring power vs. Member States' sovereignty, and mandatory implementation vs. national legislation, will be discussed; regarding the practical challenges and opportunities, the general views in global shipping will first be demonstrated, and on top of this the focus will be put on Member States' capacity-building and the enhanced IMO's role against its increased workload.

Chapter III is the main body of the dissertation, in which a case study on the implementation of the Audit Scheme by China will be brought forth to show China's performance in the 2009 audit and its new strategy and policy-making and relevant practice in the preparation for the mandatory implementation of the Audit Scheme. The weak points of Chinese national policy and practical challenges in this regard will also be discussed, together with its possible national legislation and other options in the long run. On the basis of this, measures and strategies proposed to be taken by Member States will be put forward both in the short term, i.e. the transitional period, and in the long term. It is also hoped that a global regime will be developed in the future to further promote the development of the Audit Scheme.

Finally, in the fourth Chapter, the findings and outcome on this subject will be summed into conclusions for the whole dissertation.

## **CHAPTER II IMPLICATIONS AND IMPACTS OF MAKING THE AUDIT SCHEME MANDATORY**

### **2.1 Legal implications and impacts**

#### **2.1.1 Overview of present and forthcoming resolutions by IMO**

Ever since the proposal by 19 Member States at the 88th session of the IMO Council in June 2002, of the establishment of an IMO Model Audit Scheme, there have been many important resolutions adopted and draft resolutions to be adopted by IMO, in order to push forward the development of the Audit Scheme. Such resolutions that deserve more words are as follows:

Resolution A.946 (23) *Voluntary IMO Member State Audit Scheme*, through which the Audit Scheme was approved at the 23rd regular session of IMO Assembly in November 2003. The resolution mandated the Scheme to be implemented on a voluntary basis, and requested the development of procedures and other modalities for its implementation.

In November-December 2005, the 24<sup>th</sup> regular session of IMO Assembly adopted three important resolutions, namely, Resolution A.974(24) *Framework and Procedures for the Voluntary IMO Member State Audit Scheme* which was a tool for IMO at its

disposal to achieve harmonized and consistent global implementation of IMO standards, Resolution A.973(24) *Code for the Implementation of Mandatory IMO Instruments* which provided the audit standards, and Resolution A.975(24) *Future development of the Voluntary IMO Member State Audit Scheme* which focused on the future feasibility of the Scheme, for instance, to incorporate the maritime security-related matters and other functions not covered before within the scope of the Scheme. Following the adoption of the above-mentioned resolutions, a number of auditors have been trained and audits of Member States began in 2006.

Subsequently, as a milestone, Resolution A. 1018(26) was adopted at the 26th regular session of IMO Assembly in November-December 2009, setting up a decision to make the Audit Scheme mandatory. According to the decision, the Audit Scheme would be phased in as an institutionalized and mandatory scheme, through the introduction of appropriate requirements in the relevant mandatory IMO instruments.

So far, the IMO Secretariat has drafted such “appropriate requirements” as the IMO Instruments Implementation Code (“III Code”, providing the audit standards) and the revised Framework and Procedures for the Audit Scheme, as well as the draft amendments to relevant mandatory IMO instruments to make the III Code mandatory. The preparatory work for making the Audit Scheme mandatory has made substantial progress with so many draft resolutions ready to be adopted in due time. The following **Table 3** provides a clear picture on the planned involvement of the IMO bodies concerned on making the Audit Scheme mandatory, the final output of which would result in mandatory IMO resolutions, except that among the resolutions to be adopted at the coming 28th regular session of IMO Assembly (A 28) in November-December 2013 there will be three non-mandatory ones. The three non-mandatory draft resolutions likely to be adopted by A 28, respectively on the *III Code*, the *revised Framework and*

**Table 3 Draft Resolutions to be adopted for making the Audit Scheme  
mandatory (IMO, 2013a & 2013c)**

Content of Resolution	Approval	Adoption	Acceptance	Entry into force
III Code	MSC 91 (11/2012)  MEPC 64 (10/2012)	A 28 (11/2013)		
revised Framework and Procedures for the IMO Member State Audit Scheme	C 110 (7/2012)	A 28 (11/2013)		
Transition from the Voluntary IMO Member State Audit Scheme to the IMO Member State Audit Scheme	C 110 (7/2012)	A 28 (11/2013)		
Amendment to SOLAS 1974	MSC 91 (11/2012)	MSC 93 (5/2014)	1/7/2015	1/1/2016
Amendment to MARPOL and its annexes	MEPC 64 (10/2012)	MEPC 66 (3/2014)	1/2/2015	1/1/2016
Amendment to LL 1966	(adoption) MSC 91 (11/2012)	A 28 (11/2013)	unanimous acceptance (3 years) e.g. 10/2016 explicit acceptance	12 months  e.g. 9/2017 12 months
Amendment to LL PROT 1988	MSC 91 (11/2012)	MSC 93 (5/2014)	1/7/2015	1/1/2016
Amendment to COLREG 1972	(adoption) MSC 91 (11/2012)	A 28 (11/2013)	tacit acceptance at a date decided by the Assembly	date as decided by the Assembly [1/1/2016]
Amendment to TONNAGE 1969	(adoption) MSC 91	A 28 (11/2013)	unanimous acceptance (2	12 months



	(11/2012)		years) e.g. 10/2015 explicit acceptance	e.g. 9/2016 12 months
--	-----------	--	--	--------------------------

*Procedures for the IMO Member State Audit Scheme*, and the *Transition from the Voluntary IMO Member State Audit Scheme to the IMO Member State Audit Scheme* will play a vital role to make the Audit Scheme mandatory. The draft amendments to relevant mandatory IMO instruments as listed in the table mainly concern minor editorial wording and technical arrangements for the mandatory Scheme, with their coordinated adoption for entry into force by 1 January 2016. If adopted by A 28, the *III Code* will be the only applicable audit standard for any voluntary audit conducted before the commencement of the mandatory Scheme, which is anticipated to enter into force in January 2016. The *revised Framework and Procedures*, together with such appendixes as pre-audit questionnaire, audit process, audit scheme sequence of activities, and model Memorandum of Cooperation between Member States and the IMO, model appendix forms for audit reports and model executive summary report, will supersede Resolution A.974(24), and exist as the only procedural document for the conduct of audits after A 28. In so doing, the *III Code* and the *Framework and Procedure* for mandatory audits could be tested and fine-tuned through real implementation, and thus relevant measures even strategies taken by IMO and its Member States could be improved over the preparatory period before 1 January 2016, so as to ensure a smooth transition of the Audit Scheme from voluntary to mandatory.

IMO is sparing no efforts to establish a sound legal foundation for the Audit Scheme and are attempting to steer it toward becoming institutionalized and mandatory. Nevertheless, since the mandatory implementation of the Audit Scheme is between IMO and its Member States and the Scheme will be mainly conducted in the territory of its

Member States, a lot of legal issues are still pending and controversial, and further studies and even negotiations are needed in this regard.

### **2.1.2 IMO's monitoring power vs. Member States' sovereignty**

From the view of Barchue (2009), as a specialized agency of the UN, IMO has the responsibility to develop global technical safety, security and pollution prevention standards relating to ships and shipping activities. Governments of the Member States have the duty to implement and enforce these standards. However, in the absence of enforcement powers comes the need for IMO to develop and institutionalize the Audit Scheme to measure the effectiveness of IMO instruments, i.e. how they are implemented and enforced by Member States, and how Member States contribute towards improving maritime safety and pollution prevention by complying with these standards. Due to the voluntary nature of the Audit Scheme, Member States have the free option to choose either to be audited or not, thus the monitoring power of IMO in this regard is rather weak. Nevertheless, if with the mandatory Audit Scheme, its monitoring power is strengthened, IMO could “impose uniform standards as to what is internationally required” (Afni, 2013, p. 15). All Member States should universally follow these established standards and meet their obligations and enhance their ability to implement such standards (instruments), and where a Member State has deviated from a certain standard, an audit might ensure its return to the right way. Thus, the consistent and effective implementation of IMO instruments to which the Member State is a Party could be promoted or even secured, at least from a theoretically legal perspective.

However, the monitoring power must be subject to authorization by the Member States. The IMO Council, in June 2003, took a number of important decisions, including the approval of the five principles of the Audit Scheme as objectives of the Scheme, namely, sovereignty and universality; consistency, fairness, objectivity and timeliness; transparency and disclosure; quality and inclusiveness (IMO, 2003a). Pursuant to Article

2 of *The Charter of the United Nations*, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter;...”. In this sense, among the five principals of the Audit Scheme, to Member States, sovereignty (domestic jurisdiction)<sup>2</sup> takes priority over others. Since the audit must be carried out in the territory of Member States, without authorization from the Member States, IMO could not check or monitor their national implementation of the mandatory IMO instruments. What is more, the release of an executive summary report and Member States’ comments on the implementation of its corrective action plan to the public or other Member States would be subject to the authorization of the Member State concerned prior to the audit, as well (IMO, 2013c).

For another instance, seemingly the mandatory Audit Scheme is a must for every Member State to follow. Regarding the scope of the Audit Scheme, there are three obligations, namely flag, port and coastal State obligations. If the Member State due to whatever consideration but only with an excuse of sovereignty, does not authorize the Audit Team to audit all three obligations, then what shall be done to fully implement IMO’s monitoring power? So far there is no definite solution. Although some Member States are aware that making the Audit Scheme mandatory would be beneficial to their countries and to the whole shipping community, they are quite sensitive and cautious about welcoming the mandatory Scheme since it closely concerns State sovereignty (Du, 2006). Regarding the mandatory implementation of the Audit Scheme, Jacobsson (2013)

---

<sup>2</sup> The concept of sovereignty has been discussed throughout history, from the time of the Romans through to the present day. It has changed in its definition, concept, and application throughout. The current notion of State sovereignty contains such four aspects as territory, population, authority and recognition (Thomas & Cynthia, 1996). In the view of Stephen (2001, pp. 6-12), the term could be understood in four different ways: 1) domestic sovereignty-actual control over a state exercised by an authority organized within this state; 2) interdependence sovereignty-actual control of movement across state’s borders, assuming the borders exist; 3) international legal sovereignty-formal recognition by other sovereign states; 4) Westphalian sovereignty-lack of other authority over state than the domestic authority (examples of such other authorities could be a non-domestic church or political organization, or any other external agent).

explains, “If the Government does not accept, the IMO could do nothing with respect to its supposed mandatory implementation in that State.” In practice, the situation may not be so extreme, but it shows the complexity of the mandatory implementation of the Audit Scheme.

Whether voluntary or mandatory, the Audit Scheme must fully respect the principle of sovereignty, and only on a basis of having gained authorization from a Member State could an audit be carried out in that State. So it is controversial that in principle the audit is mandatory while in practice the grant and authorization from Member States have to be gained first.

Thus, the problem between IMO’s monitoring power and Member States’ sovereignty should be properly solved before carrying out the mandatory Audit Scheme. How can IMO’s monitoring power through the mandatory Audit Scheme be combined with Member States’ authorization through sovereignty? And to what extent could IMO obtain authorization from Member States? These legal questions deserve more study and research even after the mandatory implementation of the Audit Scheme.

### **2.1.3 Mandatory implementation vs. national legislation**

Non-binding instruments are often described by the term “soft law”, as opposed to “hard law” which defines binding instruments. Ringbom (2008, pp. 23-24) holds the view that the recommendations, resolutions, and guidelines adopted by IMO are soft law instruments, and they are normally adopted by consensus and may, therefore, be seen as reflecting a very broad agreement among IMO members. Their legal status may be, and frequently is, upgraded through subsequent references to the main IMO conventions. In some cases the IMO has preferred “soft law” instruments to conventional standards for purely practical reasons. Yet, providing the IMO resolutions with normative implications, i.e. mandatory resolutions, would neither correspond to the formal status of

such standards nor, in many cases, to the intentions underlying their development. The legal significance attached to these instruments will, therefore, in the absence of any specific condition which serves to strengthen their legal status, primarily lie in their *de lege ferenda* (future) effect and in their capacity to affect the way in which the “hard law” rules and standards are understood and interpreted.

However, very often a decision is made by a Member State to convert soft law (which in the international domain is a soft law, because it is a recommendation or a resolution) into hard law - by making it part of the national legislation. In many jurisdictions, for example, the International Maritime Dangerous Goods (IMDG) Code, which was first a resolution in the family of SOLAS instruments, has been made mandatory/compulsory, or converted into hard law, through national legislation.

National legislation is a step for the transposition of the requirements of international instruments into domestic law (UNECE, 2013). The transposition of the requirements which may be included into different pieces of the legislation in Member States could ensure that national authorities organize the practical application of the instruments. The requirements of the instruments can be further strengthened and clarified by specifying in primary or secondary legislation issues such as the responsibilities of different authorities and the rules of procedures of joint bodies.

According to Abbott & Snidal (2000), within a Member State, executive officials should look to hard international law to commit other domestic agencies (especially legislatures) or political groups when those officials are able to make international agreements with little interference or control, and when their preferences differ significantly from those of competing power centers. “Externally, participation in other international legal regimes should enhance credibility: it exposes states to greater reputational costs and makes them more vulnerable to countermeasures. Internally,

strong domestic legal institutions and traditions should enhance credibility” (Abbott & Snidal, 2000, p.430).

As discussed above, the mandatory implementation of the Audit Scheme needs sound and complete national legislation in Member States. “When a new or amended IMO mandatory instrument enters into force for a State, the Government of that State must be in a position to implement and enforce its provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure” (IMO, 2009d, p. 4). *Pacta sunt servanda* (Latin for “agreements must be kept”), as a basic principle of international law, implies that non-fulfillment of respective obligations is a breach of the pact. “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”<sup>3</sup> Therefore, making the Audit Scheme mandatory will generate equal pressure on all the IMO Member States, pushing them to perfect their respective national legislations and improve their implementation of mandatory IMO instruments before and after the audit; meanwhile, it may also enhance the cooperative interrelationship in this regard among flag States, port States and coastal States as well as the Recognized Organizations (ROs) around the world.

The author is of the view that, after being made mandatory, the Audit Scheme will drive the Member States more willingly to improve their national legislation, so as to better meet the requirements of the IMO instruments. However, for many Member States, Small Island Developing States (SIDS) in particular, resources may still remain a challenge, as due to limits in legal expertise, experience, and finance, those States might not push their national legislation as much as they expect. Similarly, due to the discrepancy in political position, national strength, administrative efficiency, attitudes of various stakeholders and other considerations, the strategies and measures taken by

---

<sup>3</sup> Vienna Convention on the Law of Treaties, signed at Vienna on 23 May 1969, entered into force on 27 January 1980, Art. 26.

individual States to meet the needs of the mandatory Audit Scheme will vary from one State to another. Thus, the national legislation and enforcement for the mandatory Audit Scheme will also not be at the same pace, and for certain Member State, it may even still be a problem from time to time, or here and there.

Regarding national legislation for the effective mandatory implementation of the Audit Scheme, taking into account the different circumstances in different Member States, the timing and procedures may vary to a large extent. Although the mandatory implementation will accelerate the awareness and intention of Member States to perfect the related national legislation, sometimes it is difficult to change or optimize the administrative process for legislation, which is usually quite fixed. Additionally, natural disasters or wars could interrupt or delay the legislation for or compliance with the mandatory Audit Scheme.

Ahlberg (2013) states that the work of implementing international standards to domestic law is quite complicated. It should be timely but not increase the administrative burdens. Take Sweden as an example. To implement one international law, it shall go through such procedures as initial phase (including consequential analysis, time plan and steering group approval), drafting phase (involving work and responsibilities of legal advisors, technical experts and language consultants), consultation/hearing phase (including notification to the European Union, which will take about six months for approval), and approval and printing phase. Generally, it takes one year to implement one international instrument. Even if the national legislation is completed for the mandatory Audit Scheme, there may be another challenge as to effective enforcement in this regard.

#### **2.1.4 Other legal issues**

As of 31 July 2013, there have been about 60 mandatory multilateral conventions and instruments made by IMO, a majority of which are effective (IMO, 2013e). However, currently within the scope the Audit Scheme, there are only ten mandatory conventions/protocols, namely: SOLAS 1974, SOLAS PROT 1978, SOLAS PROT 1988, MARPOL 73/78, MARPOL PROT 1997, STCW 1978, LL 1966, LL PROT 1988, TONNAGE 1969, COLREG 1972 (IMO, 2009d, pp. 3-4). Though the ten conventions/protocols represent the major mandatory IMO instruments, the remaining large number of instruments are not covered by the mandatory Audit Scheme. What will be the legal impact on the monitoring power of IMO as a whole to the uniform implementation of all the mandatory instruments? What will be the real legal status of the instruments not covered by the Audit Scheme, and does it mean that the Member States could treat them as less important than the ten instruments within the Audit Scheme?

Furthermore, different Member States will be bound only for the implementation of the mandatory IMO instruments to which they are Contracting Parties. Many Member States have not acceded or ratified all the ten mandatory instruments mentioned above. In this sense, legally speaking, there is not much that can be done to urge/push such States to do so, which could result in negative influence on the effective implementation and enforcement of the ten mandatory IMO instruments.

Even after the audit, with respect to corrective plans and actions for the identified areas in need of further development, there has not been any punitive regulation or regime for non-correction or improper delay. Without a strict legal regime of punishment to prevent non-correction or improper delay from Member States, the mandatory Audit Scheme will not take effect to the extent expected.



## **2.2 Practical challenges and opportunities**

### **2.2.1 General views in global shipping**

In global shipping, maritime safety, security and marine environmental protection are so internationally important that they require all the States to universally and cooperatively implement relevant mandatory conventions, e.g. SOLAS and MARPOL. The IMO Member States that have well implemented the mandatory IMO instruments may still be affected negatively by those that have not done so or even have done worse in this respect. For instance, an oil tanker flying the flag of one of the latter States might spill oil and bring about severe marine pollution in the open sea near the territorial waters of the former States, which will be a big trouble not only to the former States, but also to global shipping. From this point, through the mandatory Audit Scheme that would push all the IMO Member States to fully implement the mandatory IMO instruments and follow the uniform standards, international issues regarding maritime safety, security and marine environmental protection could be more effectively dealt with or prevented from occurring.

To make the Audit Scheme mandatory will indeed have a positive impact on global shipping, especially in respect of navigational safety and marine environmental protection (Sha, 2010). With the introduction of the new concept of quality management to evaluate and monitor the maritime Administrations of Member States, the Audit Scheme could not only ensure navigational safety and marine environmental protection as a whole, but also help to improve interior reform or innovation in the individual maritime Administrations. And also through the mandatory universal audit, the merchant fleets of those States not audited or audited but with a poor performance will be isolated from the standard international instruments, thus pushing global shipping into a new regime with higher technical criteria. In accordance with Du (2006), those developed Member States already with the capacity for mandatory implementation of the Audit

Scheme would prefer to further raise the bar on global shipping through the Scheme, so as to protect their own interests in this regard. However, those developing States would like to adjust themselves for the mandatory Scheme in a step-by-step way, and they ask for more time and technical /financial assistance from either IMO or the developed Member States as well, for they will suffer more economically and technically in the long run if they lag behind. What is more, the poor management of maritime Administrations and the outdated technical conditions of ships will do harm to their national image.

Attitudes toward the mandatory Audit Scheme among the Non-Governmental Organisations (NGOs) are a little different from the above. In one interview<sup>4</sup>, Aron Sorensen, Chief Marine Technical Officer, Marine Department of BIMCO, states that, “accredited as a NGO with all relevant United Nations agencies and other regulatory entities”, BIMCO supports very much the Audit Scheme to be mandatory, as other NGOs or international shipping associations may do, but it could not aid much in this regard if not requested, for the mandatory Scheme is mainly between IMO and its Member States. “In general, BIMCO has to keep neutral, but the mandatory Audit Scheme is the right thing to do, though it may take a long time to go.”

### **2.2.2 Member States’ capacity-building**

The mandatory implementation of the Audit Scheme may play a positive role in promoting the comprehensive capacity-building of the Member States. The mandatory implementation will be carried out with higher and stricter technical standards and legal criteria, which requires more qualified maritime officers/experts and practical experience. Correspondingly, the Member States will automatically, even if unwillingly, increase relevant technical/financial investment, personnel training/exchange, and information/technology sharing and transfer, among different maritime Sectors and/or

---

<sup>4</sup> It took place in the field trip of the author to the Headquarter of BIMCO, at Bagsværd, Denmark, on 24 June 2013.

with maritime Administrations of other Member States. As a result, the overall capabilities and performance of the maritime Administrations of the Member States will be pushed into a new stage, thus promoting national, regional and global shipping development.

With the ongoing the Audit Scheme from voluntary to mandatory, IMO has been providing a lot of technical assistance to Member States. Ever since 2005, IMO has strived to establish a roster of auditors and encouraged Member States to nominate qualified persons. In the IMO Integrated Technical Cooperation Program (ITCP), the auditors' training has become one regular program. Every year, there are two auditors' training courses, together with some workshops for maritime administrations of Member States. Through the ITCP, IMO further provides technical assistance to Member States, which includes funding to meet part of the cost of the audit and funding for experts to assist in matters relating to the audit. Member States could make more proactive use of such technical assistance from IMO to further promote their own capacity-building to welcome the mandatory implementation of the Audit Scheme.

But on the other side of the same coin, there are still some challenges facing the Member States in respect of capacity-building. The whole compliance of mandatory IMO instruments involves such procedures as national legislation (which has been discussed in 2.1.3), enforcement, assessment, monitoring and control, and so on, in which the maritime Administrations of Member States play a vital role. The independence and integration, efficiency and effectiveness, coordination and organization abilities of those Administrations will vary greatly. Member States are in different stages of economic development, and have distinct political positions and diverse social or cultural settings, which will heavily impact the implementation of the mandatory Audit Scheme. The developed Member States will perform better in response to the mandatory Audit Scheme, while the developing and least developed ones may

have inadequacy in resources, funds, technologies, equipment, and expertise. Therefore, to some Member States, particularly the SIDS, capacity-building for the mandatory Audit Scheme is not an easy way to go.

### **2.2.3 Enhanced IMO's role vs. increased workload**

According to the International Commission on Shipping (ICONS), to make the Audit Scheme mandatory is a positive response of IMO to the criticism that “The IMO has established its Member State voluntary audit scheme. It may be a useful beginning but as it is voluntary and there are no mechanisms to deal with non-compliance or avoidance, its value is questionable” (2005, p. 13). To establish such a “mechanism to deal with non-compliance or avoidance” will enhance the role of IMO as a policy implementation body. Now IMO has the “real teeth” and surely, with the mandatory Audit Scheme gradually becoming a reality, the mandatory IMO instruments will be more effectively implemented and IMO's role in driving global shipping will be further increased.

Accordingly, owing to the regular audits and relevant follow-ups, the workload of the IMO Secretariat has been expected to increase constantly. Among the preparatory work for the institutionalized Audit Scheme, the two main areas for IMO to focus on are: a) enhancement of the capacity to provide effective training to sufficient numbers of auditors/lead auditors, as well as workshops for maritime Administrations, in support of their preparation for the audit; and b) development of an electronic tool for effective support of the implementation of audits under the mandatory Scheme (IMO, 2013c). Besides, the average travel cost (i.e. £11,000 to £12,000) of the audit team, currently covered by the audited Member States, would also entail an extra financial burden for the IMO (IMO, 2013c). The mandatory Audit Scheme would require a build-up of the IMO Secretariat, and developing a rational and effective Audit Scheme with minimum resources is also a challenge (IMO, 2012a).

What is worse, IMO is now suffering from administrative burdens, and from 7 May to 31 October 2013, IMO would be in a six-month consultation period to gain widespread input on the administrative burdens that might result from compliance with IMO instruments (IMO, 2013h, p. 9). The intention for IMO to do so is to gather data from various stakeholders from which recommendations on how to lessen administrative burdens could be developed. IMO has recognized that some administrative requirements contained in its instruments might have been unnecessary, disproportionate or even obsolete and it is committed to alleviating their negative impact.

### **2.3 Brief sum-up**

With the purpose of “rather than causing embarrassment to those to be audited by exposing their weaknesses, would instead bring both sides closer together - the one helping the other in pursuit of the common goals of enhanced safety and environmental protection”, stated by E. E. Mitropoulos (2004), former IMO Secretary-General, the Audit Scheme is quite successful on a voluntary basis, and now to make it mandatory serves as a new trend. Along with the objectives of IMO as “safe, secure and efficient shipping on clean oceans”, the mandatory implementation of the Audit Scheme is a must and necessity. Regardless, related issues on sovereignty, national legislation, and capacity-building remain controversial. After becoming mandatory, the binding power of the Audit Scheme will force all Member States to actively participate in audits and to universally and fully implement the mandatory IMO instruments. Though it will not be easy for IMO and its Member States to carry out, the mandatory Audit Scheme is indeed the right thing to do.

Whether legally or practically speaking, to institutionalize the Audit Scheme will entail both good opportunities and big challenges. Pros and cons will be intertwined with the Audit Scheme all the way, even after its mandatory implementation. But there is no doubt that the merits and benefits the mandatory Audit Scheme will bring about would

exceed the disadvantages and problems it may cause, especially in the long run for the global shipping. This is the reason why those resolutions to make the Audit Scheme mandatory have been approved and adopted by a majority of Member States under the framework of IMO.

Comparatively, to those IMO Member States concerned, whether developed or developing, it is more important to get ready for the mandatory implementation of the Audit Scheme rather than argue further in this regard. The Member States shall make up relevant plans, strategies, policies and measures, both for the transition of the Scheme from voluntary to mandatory and for a long-term response after its mandatory implementation, in order to better participate in global maritime trade and develop their own shipping industries. This will be further discussed in the next chapter of the dissertation.

Mutual benefit could work as a comprising option for the mandatory implementation of the Audit Scheme. With the principle of sovereignty fully respected and other principles duly taken into consideration, the concerns on respective interests shall be well coordinated and balanced with negotiation between IMO and its Member States, and also among other Member States and the one audited if there is a need for bilateral/multilateral information sharing among them. More time and efforts shall be spent to communicate, cooperate and coordinate between IMO and Member States, so as to achieve mutually beneficial agreements and promote the mandatory implementation of the Audit Scheme.

## **Chapter III MEASURES AND STRATEGIES FOR THE MANDATORY IMPLEMENTATION OF THE AUDIT SCHEME BY MEMBER STATES**

### **3.1 A case study on the implementation of the Audit Scheme by China**

#### **3.1.1 China and the Audit Scheme**

##### **3.1.1.1 Background**

In terms of the Audit Scheme and its mandatory implementation, China is quite representative among IMO Member States. As one key player in global maritime trade, China is the biggest developing country, and also under the framework of IMO, China is one of the Category (a) States of the 40 IMO Council Members<sup>5</sup>. Among the 10 Council Member States with the largest interest in providing international shipping services, only China and Panama are developing countries, while the others are developed countries.

---

<sup>5</sup> There are three categories of the 40 Council Member States. As per the 27<sup>th</sup> regular session of the IMO Assembly in 2011, the Council Member States for the 2012-2013 biennium include Category (a) 10 States with the largest interest in providing international shipping services: China, Greece, Italy, Japan, Norway, Panama, Republic of Korea, Russian Federation, United Kingdom, United States; Category (b) 10 States with the largest interest in international seaborne trade: Argentina, Bangladesh, Brazil, Canada, France, Germany, India, Netherlands, Spain, Sweden; Category (c) 20 States not elected under (a) or (b) above, which have special interests in maritime transport or navigation and whose election to the Council will ensure the representation of all major geographic areas of the world: Australia, Bahamas, Belgium, Chile, Cyprus, Denmark, Egypt, Indonesia, Jamaica, Kenya, Liberia, Malaysia, Malta, Mexico, Morocco, Philippines, Singapore, South Africa, Thailand, Turkey.

To a large extent, the uniform and mandatory implementation of the Audit Scheme relies mainly on the performance of developing countries, SIDS and Least Developed Countries (LDC). It is easy for the developed States to adjust themselves to the institutional Audit Scheme, while it is much more difficult for those developing States, especially the SIDS and LDC to do so. In many cases it is impossible without technical assistance from IMO or other Member States. Therefore, it is of great importance to make a case study on the implementation of the Audit Scheme by China, on behalf of the majority of developing Member States. Through information sharing and bilateral or multilateral communication and exchanges, the widely mandatory implementation of the Audit Scheme among those developing States can be promoted.

As a big shipping country and key player in global maritime trade, China has played an important role in the development of the Audit Scheme and in the promotion of its implementation. Responding to the proposal for the Audit Scheme based on needs arising from modern maritime trade and merchant shipping practices relating to the implementation of mandatory IMO instruments, China participated in drafting and inter-governmental discussions and negotiations during meetings and at intervals. China has always actively presented in relevant forums, and made due contribution, including a large number of written submissions, together with other Member States involved in the development process of the Audit Scheme and the preparatory work for its mandatory implementation.

China submitted an audit application to IMO in May 2008, and from 7 to 18 November 2009, the IMO audit team carried out an audit on China, covering its maritime Administration's role as a flag, port and coastal State. In this sense, it could be stated that China's comprehensive representation of the developing Member States is based on the fact that its three obligations as a flag, port and coastal State to the mandatory IMO instruments to which China is a Party, were covered in the audit.



Conversely, an audit of Liberia was undertaken in 2007, the scope of which included only the flag State obligations of Liberia relating to the mandatory IMO instruments it has acceded to (IMO, 2008b). In fact, Liberia is also a port and coastal State. Clearly, the scope of China's audit, consisting of flag, port and coastal State obligations, was more inclusive than that of Liberia, limited to the flag State obligations. Thus China is more representative of the developing States.

### **3.1.1.2 China's performance in the audit**

In general, China performed quite well in the 2009 audit. The audit summary report concluded that, "the maritime Administration of China substantially meets its obligations arising from the mandatory IMO instruments set out in the scope of the audit, and to which it is a Party. The audit identified that there were few areas where improvements could be made and there were areas of substantial best practices" (IMO, 2009e, p. 1).

Comparatively, in the audit summary report for Canada (IMO, 2007b), there are only four areas of positive development and five areas for further development; while in the audit summary report for China (IMO, 2009e), there are seven areas of positive development, including four areas of best practices, and also seven areas for further development. From this perspective, even if only the four areas of best practices are referred to, China is a model of the Member States and more words on China's performance in the audit would be beneficial to the continuation and the mandatory implementation of the Audit Scheme.

The four areas of best practices of China (IMO, 2009e, pp. 32-33) are:

*The State has in place a specific procedure for enforcement activities with regard to ships flying the flag of the State leaving for an international voyage. Chinese ships intended for an international voyage have to be inspected before their departure. Such*

*inspections are conducted by the authorized MSA (Maritime Safety Administration) inspectors with the participation of surveyors from RO to prohibit Chinese ships sailing until such ships can proceed to sea in compliance with the requirements of international rules and standards. Such inspections have proved to be effective measures to supervise and confirm the results of surveys conducted by RO. This arrangement prevents Chinese flag ships from proceeding on international voyages with deficiencies, thus preventing PSC (Port State Control) detention in foreign ports.*

*The State has a robust and effective SAR (Search and Rescue) arrangement which should be commended. The MRCC (Maritime Rescue and Coordination Center) center is located in Beijing and supported by 13 regional rescue coordinating centers. MRCC has been developed under the central Government and operates under a Committee of 14 high level organizations and the Ministry of Transport as the leading ministry. MRCC and RCC are well equipped and supported by other relevant entities. They have sufficient technical facilities and modern equipment for SAR activities. Furthermore, PRC conducts its own exercise annually and regional exercises periodically.*

*It was noted that PRC adopted a simplified procedure for the approval or acceptance of the amendments to mandatory IMO instruments, which enter into force following a tacit acceptance procedure. Such simplified procedure covers the process from preparatory, development and consultation stage to the approval or acceptance of amendments. The process of the approval or acceptance of amendments to mandatory IMO instruments, adopted by PRC, has substantially reduced the time required for the State to adopt amendments to its national legislation.*

*User symposia are held every year in order to evaluate adequacy of hydrographic work and AtoN (Aids to Navigation) of the Member State. Pilots, senior mariners and other related users are invited to give their comments and suggestions on nautical*

*publications. User survey is conducted every two or three years to gather the users' opinions and requirements.*

However, as in most of the audit summary reports (IMO, 2010a, *et al*), in the four main audit areas, namely, the common area, the area of flag State activities, the area of port State activities and the area of coastal State activities, the major problems are in the area of flag State responsibilities and obligations followed by the Common Areas. Though due to geography and circumstances some maritime Administrations may have a greater role as a flag State than as a port or coastal State, whilst others may have a greater role as a coastal or port State than as a flag State; in general, the flag State obligations are performed in worse conditions than the port and coastal State obligations because the number of flag State obligations is greater than the port and coastal State obligations. China is also of this sort in the 2009 audit: there are three findings in common areas and four in the area of flag State activities, while there is no major problem in the areas of port and coastal State activities.

In addition, as mentioned by Krilic (2012), by the end of 2012, in all the audits ever taken, the most common underlying causes for findings, as identified by audited States are the following five: a) absence of documented procedures; b) insufficient resources available to maritime Administrations; c) lack of national provisions; d) lack of co-ordination among various entities of the State; e) lack of training programs. In the 2009 audit of China, the non-conformities and observations found were similarly resulted from those causes. For example, in the audit summary report, China was advised to establish a mechanism for internal communication among various entities responsible for implementing the mandatory IMO instruments, and to harmonize the national legislation and regional legislation so as to ensure uniformity of enforcement (IMO, 2009e, p. 33).

In short, taking into consideration China's large volume in international maritime trade and its typical features in merchant shipping under the framework of IMO, to study its performance in the audit and its preparatory work for the mandatory implementation of the Audit Scheme will be of significant importance to promote the uniform implementation and enforcement of the mandatory IMO instruments by the developing Member States, especially the SIDS and LDC. Regarding the mandatory implementation of the Audit Scheme, together with the benefits gained and lessons learned in the 2009 audit, China is working hard on the preparations in a comprehensive manner, and the strategies and measures in this regard will be further explored and discussed in the following sections.

### **3.1.2 Strategy, policy-making and measures by Chinese Government**

#### **3.1.2.1 Introduction to MOT and CMSA**

The Ministry of Transport of China (MOT), with primary oversight of the maritime administration, was established in 2008 by the State Council as one "super ministry" combining the functions of the old Ministry of Communications with those of the Civil Aviation Administration of China and the State Post Bureau. The new MOT is the principal organization overseeing development strategies, regulations, and standards for road, water, and air transportation, and communications. It implements national policy in the area of merchant shipping, and represents the People's Republic of China (PRC) in relevant international organizations.

China Maritime Safety Administration (CMSA), directly functioning under the MOT, is the lead government agency in charge of the implementation of most of the obligations set forth in the mandatory IMO instruments. With the three characteristics: serving the overall transport undertakings, conducting transparent administration and realizing digitalization, CMSA is stepping into a new stage of maritime services, with

the goal of having “navigable ships, competent seafarers, safe and open waters, effective controls, quality services”.

In practice, CMSA does not have the power to promulgate legislation; nevertheless it takes the responsibility to forward legislative proposals and drafts and engages in the amendment activities of maritime legislation. CMSA has 20 regional MSAs covering the entire coast of China, undertaking duties including survey and inspection of ships and offshore installations, ports and channel survey and charting, ship registry, approval of ship statutory survey manuals and documents, ISM audit, and seafarers’ training, examination and certification. Within designated jurisdiction, regional MSAs will perform duties of SAR, emergency response to pollution incidents and casualty investigation into severe maritime incidents and follow-up administrative penalties.

### **3.1.2.2 Strategy**

Following the developing trend of the Scheme from voluntary to mandatory, China is among those IMO Member States that have taken or will take necessary strategies and measures such as strengthening the capacity-building of maritime Administrations, and increasing technical and financial investment, so as to further improve the capabilities and overall performance in the implementation of the mandatory IMO instruments.

As stipulated in part 1, paragraph 3, of the III Code, one of the objectives requires a Member State to develop a strategy in the areas of maritime safety and pollution prevention, which includes the continuous review and verification of the effectiveness of the State in meeting its international obligations. The MOT has a five-year Master Plan, which has been in place since 2005. The MOT and CMSA set up the five-year plan and review it on an annual basis, together with comments and suggestions from some other

governmental organizations involved in maritime administration related work. The 12<sup>th</sup> five-year (from 2011-2015) plan is currently in place. Besides this, the MOT has a long term plan till the year 2020. The current five year plan includes development in maritime safety as well as pollution prevention and marine disaster prevention and mitigation (The State Oceanic Administration of China, 2013).

### **3.1.2.3 Marine monitoring and legal systems**

Ever since the reform of the marine monitoring system in 1998, especially in recent years to meet the needs for the mandatory implementation of the Audit Scheme, China's marine work in monitoring and legal systems as well as managing capacities, has entered a new stage.

Firstly, central vertical management systems of “monitoring system for all waters and every harbor”(IMO, 2009e, p.9) have come into operation for coastal waters and harbors, opening waters to cross-province, cross-autonomous region and cross-municipality, including main areas of inland waters. Local government-controlled management systems are applicable to inland rivers, lakes, and reservoirs, in addition to central government-controlled waters. The integrated outlay of “unify decrees, deployment and supervision” (IMO, 2009e, p.9) has come into being.

Secondly, a marine legal system framework has been preliminarily established, and governance has also been improved. Examples are the following: *The Law of Prevention and Control of Water Pollution of the People's Republic of China*, the legislation of China in respect of pollution prevention, was adopted in February 2008 and entered into force in June 2008, specifying standards, planning and management of water pollution control, and procedures for dealing with a water pollution incident; *The Technical Regulations for Statutory Survey of International Seagoing Ships*, promulgated in November 2007 and becoming effective in March 2008, applying to

ships flying Chinese flag engaged on international voyages, stipulates rules of survey and certification, load line, tonnage measurement.

In addition, capabilities and functions of advanced technologies like VTS (Vessel Traffic Service), AIS (Automatic Identification System), and CCTV (Closed Circuit Television) has been enhanced in critical areas. Maritime staff members' qualifications have been enhanced, and the social influence of the maritime system has advanced. Take as one example the strict control of maritime safety inspectors by CMSA with a three stage certification system. Safety inspectors are those who are in charge of flag State control implementation and are required to meet the following requirements (IMO, 2009e, pp. 20-21):

Class C safety inspectors are authorized for surveys of ships engaged in coastal or inland waterways only, and they should have successfully completed a maritime related professional diploma or above and inspect a minimum of 50 ships under the supervision of a properly qualified safety inspector; Class B safety inspectors are authorized for surveys of ships engaged in coastal or inland waterways, and they should have successfully completed a maritime related diploma or above and have more than 12 months of service as a Class C ship safety inspector qualification or 6 months of ship safety inspection work and 100 ship inspections carried out; Class A safety inspectors are authorized to inspect Chinese flag ships engaged in international voyage and to conduct Port State Control Inspections, and they should achieve a Bachelor degree or above in maritime related studies and have two years of experience as a Class B safety inspector, more than four years of ship inspection work and 100 ships inspections carried out.

#### **3.1.2.4 Transposition of international conventions into national legislation**

The Chinese Government has long been actively involved in the activities of the IMO, and it attaches great importance to the ratification and implementation of the mandatory IMO instruments. China is a party to the majority of the conventions adopted by the IMO, including the ten mandatory instruments covered by the scope of the Audit Scheme.

The mandatory IMO instruments could be roughly categorized into three groups as per the ratification or approval authorities in China: a) those ratified by the Standing Committee of the National People's Congress, to name but a few, the SUA 1988 and the International Salvage Convention 1989; b) the bulk of maritime technical conventions ratified or approved by the State Council, including the ten mandatory instruments in the Audit Scheme; and c) the technical amendments of tacit acceptance approved by the MOT and/or the Ministry of Foreign Affairs, in order to ensure the timely application of the amendments thereof in China (IMO, 2009e, p. 11).

As a civil law country, China adopts a monistic approach towards the transposition of conventions into national law, which means that, the ratification or approval or acceptance process is regarded as a sort of legislative process. The conventions ratified by the Standing Committee of the National People's Congress or by the State Council as well as the amendments approved by the MOT form part of the national legal system and thus could be directly applicable in China without need for further national legislations. The vast majority of the mandatory IMO instruments, such as SOLAS 74, MARPOL 73/78, and the amendments thereto are of this sort. In this regard, the year of 2011 has seen the latest ratification by China of the International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001.



Nevertheless, due to the fact that some mandatory IMO legal instruments are complicated, domestic legislation may be necessary for the effective implementation of the instruments. The ISM and ISPS codes could be quoted as examples. Such domestic legislations as the Rules for Ship Security, the Rules for Port Facility Security and the Provisions Governing Safety Management and Pollution Prevention of Shipping Companies adopted at the Ministerial level, were enacted to specify the detailed requirements for ensuring the effective implementation of those instruments in China.

### **3.1.2.5 Preparatory work and relevant practice by CMSA**

As mentioned above, CMSA is the government body responsible for operational delivery of maritime safety and marine environment protection, and other related services. Authorized by the State Council and the MOT, CMSA is in charge of national water traffic safety oversight and ship-source pollution prevention, survey of ships and offshore installations, navigation guarantee management, administrative legal enforcement and safety production supervision on transportation industries. Regarding the preparatory work and relevant practice for the coming mandatory implementation of the Audit Scheme, as well as in the transitional period of the Audit Scheme from voluntary to mandatory, CMSA has undertaken or is undertaking the following major tasks:

#### **a) Monographic studies**

As early as from the establishment of the Audit Scheme, CMSA has begun to organize monographic studies for the implementation of the Audit Scheme, tracking developments and changes in this regard. Especially since 2009, following China's audit and faced with the Audit Scheme becoming mandatory, CMSA, taking into consideration the actual situation in China, has set up a specialized agency, the Sub-Committee on Comprehensive Implementation of International Instruments in China, as

a counterpart to the IMO's Sub-Committee on Implementation of IMO Instruments<sup>6</sup>. Following the work progress of the Sub-Committee on Implementation of IMO Instruments, the Sub-Committee on Comprehensive Implementation of International Instruments in China functions to organize and carry out domestic research and study in this respect, so as to provide reference to the scientific decision-making by CMSA and thus enhance the implementation of the international instruments in China. The Sub-Committee holds a plenary session once a year, to summarize the work of the previous year, make work plans for the next year and deploy specific research tasks. Also the Sub-Committee carries out professional exchanges such as workshops and seminars on regular or irregular bases, to share specific information and discuss detailed progress. These kinds of monographic studies have played a very important role in China's preparatory work for the Audit Scheme.

#### **b) Launching initiatives and programs**

As an important coordinating means for the uniform implementation of the mandatory IMO instruments, after becoming mandatory, the Audit Scheme will make wide use of ISO quality management criteria to conduct systematic evaluations of those standards in aspects of maritime safety and security, and marine environmental protection, which shall be commonly complied with by the Member States. To this end, CMSA since the end of 2010 has launched several initiatives and programs to promote the implementation of IMO instruments in China, including sorting out the obligation clauses in need of implementation by Member States and mandatory audit by IMO, and then itemizing the measures thereof in China; assessing the current implementation

---

<sup>6</sup> It is one of the seven new Sub-Committees restructured from the original nine. It mainly takes over the functions of the former Sub-Committee on Flag State Implementation. The proposals for restructuring of IMO's Sub-Committees were previously considered and approved by the Marine Environment Protection Committee (MEPC) at its 65th session in May 2013, and agreed by the Maritime Safety Committee (MSC) at its 92nd session in June 2013, with the purpose of dealing more effectively with the technical and operational issues covered by IMO instruments, and as part of a review and reform process initiated by the Secretary-General Mr. Koji Sekimizu.

efficiency and effect, and making up and carrying out improvement measures, identifying and making corrections to the possible performance deficiencies in the coming mandatory audit; and so forth.

### **c) China MSA International Instruments Implementation System**

In order to effectively implement those international maritime instruments that China has acceded to or ratified, and to substantially improve China's maritime management and administration, CMSA is currently striving for the development of a sound "China MSA International Instruments Implementation System"(the System) all over China. For this purpose, based on the IMO Instruments Implementation Code (the III Code), on 7 September 2011 CMSA promulgated the Code on International Instruments Implementation in China and relevant management standards for the System; what is more, one exclusive website for the System, i.e. <http://www.js-msa.gov.cn:9002> has been established to make public the updates and progress in this respect. Even if the System is well founded, along with its operation, continuous improvement will also be made by CMSA, following open comments and suggestions from various stakeholders in China (Sha, 2012).

### **d) Training, courses and competitions**

In the field of international instruments implementation in China, CMSA has also carried out such activities as training, courses and competitions, to cultivate qualified maritime personnel and to expand the awareness of the public to the Audit Scheme and its mandatory implementation. So far, the talent pool for qualified auditors in China is preliminarily formed and a number of auditors have been well selected and designated to the IMO's global pool of competent auditors. Particularly in 2011, one Chinese auditor was first chosen to join the audit team for conducting an audit in Iran (China Ports & Harbours Association, 2011). In 2012, in order to keep China's maritime work consistent

with IMO standards, CMSA undertook one project to translate into Chinese the English versions of over 50 IMO Model Courses developed following the adoption of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, (STCW), 1978, as amended. From March to October 2013, CMSA has been conducting a series of learning activities and competitions in terms of international maritime instruments, which will contribute to laying a solid foundation for the implementation of and compliance with international instruments in China.

### **3.1.3 Limitation of national policy and practical challenges**

However, in the implementation of international maritime instruments in China, there are still some limitations or challenges at the national level and from a practical perspective, such as improper legislative procedures, non-systematic management and passive enforcement. Negatively the existence of such problems would not only hamper the development of China's maritime industry, but also render China lagging behind as regards entry into the "white list" after the mandatory implementation of the Audit Scheme (Zhou & Sha, 2011).

#### **3.1.3.1 Domestic legislative procedures and regulatory process**

Domestic legislative procedures in China for transposition of international instruments are not scientific enough. Since China adopts a monistic approach for the transposition of international conventions into national law, the ratification or approval or acceptance process is regarded as a sort of legislative process. As a result, the domestic legislative procedures for certain international laws may turn out to be very slow. Furthermore, according to Yang (2012), the Law of the People's Republic of China on the Procedure of the Conclusion of Treaties serves as the major legal basis in China for the ratification or approval or acceptance of the international treaties/instruments, whether multilateral or bilateral, following the "direct quotation"

clause of which a lot of international instruments have been transposed into domestic laws of China. Therefore these transposed laws will lack uniform jurisprudence and clear source of origin, and there will also be no specific penalty measures for violation of their provisions, which is another problem arising in the domestic legislative procedures. The embarrassing legal status of such international instruments will impede their full implementation and compliance in China.

As mentioned by IMO (2009e), China has in place a regulatory process which would not delay the timely incorporation of convention amendments, including tacit amendments, into the national law, and it has also taken a systematic method for promulgating various amendments to mandatory IMO instruments e.g. SOLAS, MARPOL 73/78, and various Codes such as FSS (International Code for Fire Safety Systems). However, even though the legislative and regulatory core process is considered comprehensive, it remains difficult to follow the methodology for incorporating certain regulations and amendments in the spectrum of Chinese laws/regulations. For instance, a significant number of mandatory IMO instruments contain the term “to the satisfaction of the Administration”. In order to preserve the integrity of the instruments, in transposing, CMSA has to formulate possible interpretations of the term for the implementation, but in fact some of the interpretations are delegated to the RO, which is not in line with the relevant provisions in mandatory IMO instruments.

### **3.1.3.2 Communication, exchange and cooperation mechanism**

As an entity under the MOT, CMSA is the major government body responsible for operational delivery of maritime safety and marine environment protection, and other related services, i.e. CMSA is the main body which carries out the implementation work of international maritime instruments in China, although the implementation work is also connected to such ministerial government departments as Ministry of Foreign

Affairs, Ministry of Agriculture, Ministry of Environmental Protection and State Oceanic Administration, and their relevant subordinate sectors. Currently, the communication, exchange and cooperation mechanism for the implementation work between MOT and other ministerial departments, and between CMSA and other sectors either within or outside of the MOT is not strong enough (Yang, 2012). To some extent, those Ministries and sectors other than the MOT and CMSA may not treat the implementation work with as much importance as their own major business, thus they will not be as active as the MOT and CMSA for the implementation of the international maritime instruments in China. However, even in the case of a simple event of search and rescue for a missing boat, maritime Administrations, communication sectors, meteorological sectors, and medical assistance sectors, will all be involved with respective tasks. Facing the coming mandatory implementation of the Audit Scheme, as one sovereign country, more effective implementation of the mandatory IMO instruments to which China is a party is highly needed, and various departments and sectors in relation to the implementation of the mandatory IMO instruments in China shall be urged to take due attention and efforts under the above mentioned mechanism in which the specific responsibilities and obligations could be further clarified.

### **3.1.3.3 Competent maritime professionals and officers**

The 2009 audit has helped to train a number of competent and qualified maritime professionals and officers, including some auditors. However, compared with the huge shipping market, there is still a need for such competent and qualified personnel, especially those with advanced international level. Due to historical reasons, the newly founded China in 1949 was not a maritime power from the beginning. But in recent decades, with the prosperous development of the shipping industry in China, there has been an urgent need for maritime management personnel not only with qualified professional background but also holding a master of English language. With the current

economic globalization, China is lacking maritime incident investigators, PSC Officers and marine anti-pollution surveyors for foreign affairs, partially because a lot of such personnel, early cultivated and trained, have embarked on other jobs (Yang, 2012).

#### **3.1.3.4 Monitoring and oversight of RO**

Mainly pursuant to the Law of the People's Republic of China on Maritime Traffic Safety, Regulations Governing the Statutory Surveys of Vessels and Offshore Installations, and technical rules and requirements of relevant IMO conventions, CMSA on behalf of the Chinese government, delegates the authority to China Classification Society (CCS) to perform statutory surveys, audits and certification of ships registered in China, offshore installations established in the jurisdictional waters of China, and ship borne cargo containers owned by enterprises registered in China, as well as related materials and equipment, in compliance with applicable international conventions and applicable instruments. In fact, CCS which is also an entity under the MOT is the only RO authorized by CMSA. Therefore, there may be a remote possibility of CMSA intervention on the function of CCS since both parties are organizations functioning under the same Ministry.

For the monitoring and oversight of RO, CMSA maintains an annual audit scheme at Headquarters and sometimes at the regional offices of the RO. CMSA inspects all foreign going ships twice a year and pre-departure inspections are jointly conducted by regional MSA safety inspectors and a CCS surveyor, whereby China MSA maintains an effective oversight program. However, CMSA does not have full access to the ship survey reports maintained in its RO database for Chinese flag ships and it cannot always verify the expiry date of these certificates or due dates for annual/periodical audits/surveys (IMO, 2009e).

Regarding the implementation of the mandatory IMO instruments in China, since the monitoring and oversight by the MOT of the RO, i.e. CCS, is not functioning well enough, CCS may act incompatibly with its duties and responsibilities with the authorization it has gained. And also there may be such cases in which CCS in the process of implementing compliance makes errors that would have to be borne entirely or partially by CMSA as the competent Authority rather than the authorized CCS. This will definitely result in insufficient implementation and compliance of certain IMO instruments in China.

#### **3.1.3.5 Others**

In some local ports, there are insufficient reception facilities to ensure effective waste disposal according to MARPOL Annexes; CMSA has established a documented procedure, defining the controls needed for the identification, storage, protection, retrieval, retention time and disposal of records, but, on some occasions, the records could not be readily identifiable or retrievable (IMO, 2009e). This is because of the uneven development of the regional areas in China, particularly between the Eastern coastal lines and the Western inland river areas. There is also some discrepancy in the timely and extensive implementation of the mandatory IMO instruments in some Regional MSAs.

#### **3.1.4 Standardization and possible national legislation in the long term**

It is clear that the transitional period is until the expected entry-into-force on 1 January 2016 of the mandatory implementation of the Audit Scheme. So far, China's preparatory work in this regard is relatively effective. However, along with the ongoing of the mandatory implementation of the Audit Scheme, there will be various new changes and developments. The Chinese Government will continue to maintain close tracking and research, and further improve relevant strategies and measures, including possible national legislation in line with the specific situation in China, for the



transposition of the mandatory IMO instruments and the standardization of the existing domestic regulations, mechanisms and practices concerned, so as to pave a better way for the mandatory implementation of the Audit Scheme.

#### **3.1.4.1 Modify domestic legislative process and improve transposition efficiency**

As mentioned in 3.1.2.4, the application of conventions in China is effected through two means. The primary means is the direct application of the conventions in the national legal system after conventions are ratified and become effective for China. The other is indirect application of the conventions, i.e. the conventions become applicable in China through domestic secondary legislation. Due to the means of direct application, the vast majorities of the mandatory IMO instruments which usually provide general provisions, are directly applicable in China without further national legislation. However, in practice, the effective implementation of those IMO instruments in China involves joint participation of such stakeholders as shipping companies, shipyards, marine equipment manufacturers and seafarers, the specific obligations and responsibilities among whom shall be further clarified, taking into consideration their respective concerns, in order to urge and encourage them to actively perform in the mandatory implementation of the Audit Scheme. Thus in the long run, if appropriate and possible, China will modify the domestic legislative process and improve the transposition efficiency to make more detailed regulations and provisions on the obligations and responsibilities of various stakeholders, so as to achieve more effective implementation of the mandatory IMO instruments, though it is not easy to do so immediately (Yang, 2012).

#### **3.1.4.2 Enhance forward-looking study and research**

It is predicted that during the period of the 12th five-year plan, for the effective implementation of the mandatory IMO instruments in China, the Chinese Government

would enhance the forward-looking study and research in this regard, which will contribute to further improving China's capacity-building and compliance abilities to fully perform relevant duties and obligations. Especially after the mandatory implementation of the Audit Scheme, the enhanced forward-looking study and research will cover a wider scope and a deeper analysis for the practical measures and long-term strategies thereof. In general, the Chinese Government will enhance the forward-looking study and research with a close link to all the maritime related industries and also increase the manpower and financial input to track the updates of the mandatory IMO instruments and their amendments. What is more, based on the findings and outcomes of the study and research, China will also actively submit constructive proposals, participate in discussions and negotiations on the revision and/or drafting of IMO instruments, and convey China's views and concerns on various occasions under the framework of IMO to protect the benefits and promote the development of the shipping industry in China, and even of the global shipping industry through proper publication of the findings and outcomes to the international maritime community.

#### **3.1.4.3 Strengthen coordination and cooperation**

Coordination and cooperation between and among various departments and sectors is an important aspect for the effective implementation of the mandatory IMO instruments in China, although CMSA is mainly responsible for this issue. The Chinese Government should strengthen such kind of coordination and cooperation to ensure that all the maritime related departments and sectors are under unified leadership and actively prepare for mandatory audits by IMO. Furthermore, they should undertake follow-ups after the audit, especially setting up clear channels for coordination and cooperation, such as designating a contact person, identifying contact time and methods, as well as holding regular meetings (Yang, 2012).

In this respect, according to Zhu (2011), since after the institutional implementation of the Audit Scheme, it will be one act of the State as a whole to receive the mandatory audit of the State, and the result of the audit will also affect the national interest of that State, it is necessary to strive for support from a higher level to strengthen coordination and cooperation among various departments and sectors. At least in the transitional period, it is the duty of the MOT and CMSA to prepare and respond to the mandatory implementation of the Audit Scheme. However, if there is more stress and support from a higher national level, such as from the State Council, it would be much easier to achieve harmonized positions and uniform measures among relevant departments and sectors, so as to promote the conduct of the mandatory audit in China and expect a successful result thereof.

#### **3.1.4.4 Cultivate professional personnel through shipping diplomacy and effective training**

China has set a target in the 12th five-year plan for maritime affairs (MOT, 2011) to establish and improve one effective mechanism for cultivating and making use of international maritime professional personnel with interdisciplinary and compound abilities, and to recommend them to serve in leading positions such as Chairperson of IMO subordinates and affiliates, especially as auditors of the Audit Scheme. According to Yang (2012), China could cultivate professional personnel through carrying out shipping diplomacy and effective training. On the one hand, competent crew could be encouraged to work and gain advanced experience on ships of foreign nationality in order to reserve qualified maritime personnel for China's maritime management and administration in the future. On the other hand, China could further enhance its influence on the development of global shipping through designating qualified maritime personnel to actively participate in various training programs held by IMO and to serve in IMO research institutions.

With the Audit Scheme becoming mandatory, China should spare no efforts to cultivate high-end professionals as auditors and talents who are familiar with the Audit Scheme. Although a number of qualified professionals have been trained and tested during and after the 2009 audit in China, there is still a need to increase and improve the quantity and quality of the auditors (Zhu, 2011). Only with a sufficient number of auditors, especially with those capable of performing the position of audit team leader, could China have a more positive influence on global shipping after the mandatory implementation of the Audit Scheme.

#### **3.1.4.5 Normalize monitoring and control over the ROs**

By means of identifying and improving relevant authorization documents, agreements, and working and reporting procedures, China will gradually normalize its monitoring and control over the ROs. In terms of the ROs' auditing, ship surveyors' training, certifying and certificating, and related reporting and communication channels and methods, as well as the quality control system in the implementation of statutory surveys on vessels, China is highly recommended to further clarify specific managing procedures and process. Besides, since CCS is only one authorized organization by CMSA, in order to better conduct relevant surveys on the huge number of ships flying the flag of China, CMSA may extend the terms and restrictions to the entrance requirements of the ROs and consider authorizing other organizations as ROs (Yang, 2012), if appropriate, for example, if the legal representative of the organization which would like to make a registry in the territory of China, is also a Chinese citizen.

It is expected that rendering the ROs' authorized powers in compliance with their responsibilities and obligations will ensure that, when in the implementation of the entrusted conduct, the ROs could strictly follow the relevant authorization agreement and procedures. Consequently all the international conventions, especially the

mandatory IMO instruments, could be well implemented after the mandatory implementation of the Audit Scheme scheduled on 1 January 2016.

#### **3.1.4.6 Improve the service functions of port reception facilities**

In order to welcome the mandatory implementation of the Audit Scheme and also maintain and improve the effective implementation of the mandatory IMO instruments in China, especially the MARPOL 73/78 and its Annexes, in terms of port reception facilities, China could further modify and optimize the standards and requirements for the development of those facilities, and the rules and regulations for their operation, with the free and open market-oriented operation as the ultimate target (Sha, 2012). At the same time of actively making preparations in this regard, China could focus on selection and cultivation of reception facilities from those good competitive enterprises, in order to set a model for the whole industry and encourage uniform improvement.

What is also important, in the long run, is a thorough scientific assessment of China's port developments and research and study on foreign ports with similar conditions. Based on judgment in combination with the actual scale of arriving ships, ship traffic, oil consumption and ballast water, timely adjustment, arrangement and equipment in the port reception facilities could be conducted according to demand. Meanwhile, potential expansion of the port and relevant reception facilities should also be taken into consideration, leaving enough land and improving relevant technology and techniques in due manner to meet the need of future development.

#### **3.1.4.7 Set up internal audit and pre-audit mechanisms**

As one of the largest maritime countries, all aspects of China, especially the shipping industry and maritime trade, are quite complex. Thus, in compliance with the Audit Scheme and its mandatory implementation, it is necessary to set up and carry out an internal audit and pre-audit mechanism in China. Objectively, China has such a

preliminary condition. Currently CMSA and its subordinates and affiliates have established their own management systems and subsystems based on, or similar to, the ISO 9000 system, but there is still a lack of one effective domestic auditing mechanism to monitor and evaluate such systems and subsystems. Thus to set up an internal audit and pre-audit mechanism in China will undoubtedly serve as one effective method to put forward the operation of those systems and subsystems (Zhu, 2011). Along with the mandatory implementation and further development of the Audit Scheme, the internal audit and pre-audit mechanism to be set up should become a long-term one. From the view of Sha (2012), there are three reasons in this respect:

a) A relatively stable mechanism and related institutions should be established to constantly and smoothly conduct the preparatory work and solve the early identified problems prior to the audit by IMO. For example, regarding the discrepancy for the timely or extensive implementation of the mandatory IMO instruments in some Regional MSAs due to the uneven development of the regional areas in China, preferential policies and measures could be taken to achieve balanced development and ensure good overall performance for the effective implementation of the mandatory IMO instruments.

b) Even after the audit, there is still a lot of work to be done, such as the tracking and rectification of non-conformities and observations. In the period of time between the previous audit and the next one, self-check and self-improvement could be well undertaken through the internal audit and pre-audit mechanism, so as to secure a sound and comprehensive overall performance in the coming audit.

c) Due to the fact that the mandatory IMO instruments within the scope of the Audit Scheme are in a process of non-stop amendments and revisions, a long-term mechanism must be set up to properly respond and ensure a smooth pass over the audits.

### **3.2 Proposed measures and strategies to be used by Member States**

In view of the development levels of Member States, their respective geographical locations, the specific and even unique economic, political and social environments, those Member States that have gone through the voluntary audit have performed quite differently from one country to another, each with advantages and disadvantages in their roles as flag, port and/or coastal State obligations. Some Member States, especially the developed ones, may perform as well as or even better than China did in the audit. Therefore, the strategies and measures proposed below, mainly based on China's performance and experience, are aimed at providing help to the majority of developing Member States, particularly the SIDS and LDC, and also to the developed Member States if they are in need of some reference. Of course, those developed Member States are also welcome to make comments and suggestions in this regard, in order to commonly promote the mandatory implementation of the Audit Scheme and the overall performance of all Member States in the coming mandatory audits. Besides the four best practices of China as mentioned in 3.1.1.2, those new proposals include:

#### **3.2.1 Short term measures in the transitional period**

1) Sort out all the clauses and provisions for governmental obligations in need of implementation by Member States and of mandatory audit by IMO, and then itemize the implementing, monitoring and controlling measures thereof in the State.

2) Make a positive self-check or self-examination for the Audit Scheme, and if feasible and practical, carry out one internal audit or pre-audit, to assess the current implementation efficiency and effect for the mandatory IMO instruments, and to look for and make corrections to possible performance deficiencies in the coming mandatory audit.

3) Accelerate the transposition of IMO conventions/instruments into national law. According to the actual situation of the Member State, either the approach of “direct quotation” or the further national legislation could be followed. For example, in order to welcome the 2009 audit, combining LL 1966, Tonnage 1969 and other relevant technical requirements, CMSA internalized and promulgated the Technical Regulations for Statutory Survey of International Seagoing Ships in November 2007, which entered into force in March 2008, setting out rules of survey and certification, tonnage measurement, load line, ship safety, and crew accommodation.

4) Strengthen coordination, communication and cooperation between maritime authorities and relevant departments in the field of implementation of mandatory IMO instruments. If there is a good coordination and cooperation mechanism in this regard, maintain and further optimize its functions; if not, try to establish one for the uniform implementation of measures to respond to the audit, thus enhancing overall compliance with IMO instruments.

5) Enhance international exchange, cooperation and information sharing, and through learning from each other and seeking technical assistance and other necessary support from IMO and its developed Member States, perfect to the best possibility the preparation for the mandatory audit and increase media coverage for improving public awareness and participation as well. IMO will further carry out the preparatory work with the two main areas (IMO, 2013c): to provide effective training to sufficient numbers of auditors/lead auditors, as well as workshops for maritime administrations, in support of their preparation for the audit, and to develop an electronic tool for effective support of the mandatory implementation of the Audit Scheme. Developing Member States, especially the SIDS and LDC, should bear this in mind and make best use of it.



### **3.2.2 Long term strategy and mechanism**

1) In line with IMO audit standards, i.e. the III Code, together with the national development strategy, an exclusive long-term maritime strategy and its operational mechanisms for the implementation of mandatory IMO instruments in the Member States should be established, primarily with identified objectives, tasks, vision, planning, and other major initiatives. Meanwhile, the long-term strategy and mechanisms could also be closely combined with the daily work of the maritime Administrations and other relevant departments, and included in the mission statements and objectives of the annual plans thereof, so as to ensure full coverage in respect of national implementation for the mandatory IMO instruments (Zhou & Sha, 2011).

2) The procedures and process for national legislation and enforcement should be gradually improved and further strengthened, and the transposition of the mandatory IMO instruments into domestic laws should be promoted both from the strategic planning and policy-making levels, making a fundamental legal basis for the legislation and enforcement “including the associated investigative and penal processes (IMO, 2009d, p. 4)” for the transposition.

3) One comprehensive international instrument implementation system should be set up by the competent maritime Administration, to conduct relevant training and studies, to make public the updates and progress on the implementation of mandatory IMO instruments by Member States, and to track and respond to relevant development and changes under the framework of IMO.

4) If possible, capital investment should be increased and technology introduced in this regard, and in particular one maritime talent pool for reservation of qualified professionals, experts and officers should be established, so as to ensure “the availability of sufficient personnel with maritime expertise to assist in the promulgation of the

necessary national laws and to discharge all the responsibilities of the Member State, including reporting as required by the respective conventions (IMO, 2009d, p. 4)”, for the long lasting and comprehensive implementation of the mandatory IMO instruments after 1 January 2016.

### **3.2.3 Global regime in the future**

In the future, under the coordination of the IMO, such global regimes for the uniform and effective implementation of the mandatory IMO instruments as the technical cooperation program between the developed and less developed Member States and the free global maritime information-sharing system based on GISIS (Global Integrated Shipping Information System) could be further explored and set up in due course, as stated by Mr. Sha Zhengrong, Deputy Director of Jiangsu MSA, China, in an interview in June 2013.

Actually, in this regard, IMO has made much progress. Since the 62<sup>nd</sup> session of the IMO Technical Cooperation Committee, in order to facilitate the storage and retrieval of data, the IMO Secretariat has developed a new module in the GISIS containing Country Maritime Profile (CMP) data, which is important to identify real needs of developing countries and ensure effective delivery of technical assistance, and according to which all countries would be invited to complete the profile, irrespective of whether they are developing or developed. Regarding the mandatory implementation of the Audit Scheme, the IMO Secretariat is exploring a mechanism to take into account the information provided through the CMPs and enable a linkage to the outcomes of audits as input to programming of technical assistance through the ITCP, i.e. the global programme on the Audit Scheme. This could contribute greatly to maritime capacity-building at regional and global levels, when the Audit Scheme becomes mandatory in 2016. Though the development of CMPs is still in progress, the funding requirement for the ITCP 2014-2015 has been increased by 4.6 per cent, or a little over USD 1 million,

when compared to the ITCP 2012-2013, due to the increasing needs of developing countries as well as needs for assistance in the implementation of several new IMO instruments (IMO, 2013d). The global programme on the Audit Scheme is one of the priority programmes of the ITCP, more so with the expected introduction of the Mandatory IMO Member State Audit Scheme from January 2016. Member States, organizations and industry are urged to make further contributions to support the anticipated increase in the assessed requirements and, consequently, an increase in the overall size of the ITCP and the funds necessary to deliver it.

## **Chapter IV SUMMARY AND CONCLUSIONS**

The subject of the Audit Scheme is still contemporary and controversial, and to make the Audit Scheme mandatory is a relatively new trend in the international maritime community. From the perspective of IMO, to do so is to equip itself with the “real teeth” to generate equal pressure among Member States to promote the uniform and effective implementation and enforcement of the mandatory IMO instruments.

In this dissertation, an attempt has been made to explore and discuss the legal implications and impacts, as well as the practical challenges and opportunities, of making the Audit Scheme mandatory.

Regarding the legal implications and impacts, an overview of the present and forthcoming resolutions by IMO indicates that IMO is striving to establish a sound legal foundation for the Audit Scheme and attempting to drive it on the right path of institutionalization. However, since the mandatory implementation of the Audit Scheme is between IMO and its Member States and will be mainly conducted in the territory of the latter, only on the basis of having gained authorization from a Member State could an IMO audit be carried out in that State, taking into consideration State sovereignty. It is found controversial that, in principal the audit is mandatory while in practice the grant and authorization from Member States have to be gained first. Besides, the mandatory

Audit Scheme will drive the Member States to more willingly improve their national legislation, so as to better meet the requirements of the mandatory IMO instruments. However, many Member States, SIDS and LDC in particular, due to the limits in legal expertise, experience, and finance, might not push their national legislation as much as to the extent expected. In addition, the national legislation and enforcement, as well as relevant strategies and measures taken by individual States to meet the needs of the mandatory Audit Scheme will vary from one State to another.

The dissertation has examined the practical challenges and opportunities, among which those related to IMO Member States' capacity-building and IMO's increased workload have been mainly discussed. The mandatory implementation of the Audit Scheme may play a positive role in promoting the comprehensive capacity-building of the Member States. In general, the developed Member States will perform better in response to the mandatory Audit Scheme, while for the developing and least developed ones, owing to inadequacy in resources, funds, technology, equipment, and expertise, capacity-building in this regard is not an easy way to go. With the mandatory Audit Scheme gradually coming true, the mandatory IMO instruments will be more effectively implemented and IMO's role in driving global shipping will be further increased. In contrast, in light of the regular audits and relevant follow-ups, the workload of the IMO Secretariat is expected to increase constantly, thus developing a rational and effective Audit Scheme with minimum resources is also a challenge.

However, regardless of the fact that such related issues on sovereignty, national legislation, and capacity-building remain, after becoming mandatory, the binding power of the Audit Scheme will force all the Member States to actively participate in the audit and to universally and fully implement the mandatory IMO instruments. A fairly conclusive view that emerges from the international maritime community is that, though

it will not be easy for IMO and its Member States to carry out, the mandatory Audit Scheme is indeed the right thing to do.

At the central core of this dissertation is the intention to identify and develop preparatory measures and strategies for the mandatory implementation of the Audit Scheme by Member States, based on a case study on the implementation of the Audit Scheme by China. An effort has been made to analyze China's representative features among IMO Member States, as well as its good performance with four areas of best practices in the 2009 audit, in respect of the Audit Scheme and its mandatory implementation. Taking into consideration China's contribution in volume to international maritime trade and its typical features in merchant shipping under the framework of IMO, to study its performance in the audit and its preparatory work for the mandatory implementation of the Audit Scheme is of significant importance to promote the uniform implementation and enforcement of the mandatory IMO instruments by developing Member States, especially the SIDS and LDC. Following this, the author has explored the strategy, policy-making and measures by the Chinese Government, and particularly highlighted the preparatory work and relevant practice by CMSA, in preparing for the mandatory implementation of the Audit Scheme. At the same time, an effort has been made to demonstrate the limitations of Chinese national policy and relevant practical challenges. Comparatively speaking, China's preparatory work is effective, especially in the transitional period of the Audit Scheme from voluntary to mandatory, leading up to the anticipated 1 January 2016. But along with the mandatory implementation of the Audit Scheme, there will be various new changes and developments. Thus the author has further explored China's future strategies and long-term mechanisms after 2016, including possible national legislation in China, and the standardization of existing domestic regulations, mechanisms and practices concerned for better overall performance in the future for the mandatory Audit Scheme.

Accordingly, mainly based on China's performance, practice and experience, a set of measures and strategies have been proposed to be taken by Member States to commonly welcome and promote the mandatory implementation of the Audit Scheme. Aimed at providing assistance to the majority of developing Member States, particularly the SIDS and LDC, and also to the developed Member States if they are in need. Those measures and strategies have been identified and classified into three types: a) short term measures in the transitional period; b) long term strategy and mechanism; and c) global regime in the future.

In short, to meet the needs of the mandatory implementation of the Audit Scheme, IMO Member States should, despite their different development stages, further deepen relevant research and studies, set up effective strategies and long term mechanisms, improve national legislation and enforcement, enhance exchange and cooperation among domestic departments and with other IMO Member States for learning and sharing and best practices. In particular, States should endeavor to improve their own capabilities and overall performance through increasing investment in resources, finance and technologies, optimizing administrative capacity and training more qualified maritime law enforcement personnel and experts.

In conclusion, it can be stated that making the Audit Scheme mandatory is a big step in the right direction, despite some of the remaining challenges and problems in this regard. The emphasis and focus for all the Member States should be turned to the preparatory work for meeting the mandatory implementation of the Audit Scheme rather than unreasonable criticism and negative arguments, while positive research and study for the further development of the Audit Scheme is always necessary.

In the view of this author, the ultimate objective of the institutional and mandatory Audit Scheme would be to have a singular and exclusive international regime for monitoring, evaluating and promoting the uniform and full implementation of the

mandatory IMO instruments. As members of the world maritime community, all the parties concerned should strive to make due contribution to promoting the mandatory implementation of the Audit Scheme and accelerating its further development, especially assisting in promoting the joint establishment of the above mentioned global regime in the future. In this regard, besides the proposed measures and strategies to Member States, the author would like to further propose:

IMO should actively improve its administrative efficiency, seek more economical and practical methods in relation to making the Scheme mandatory, and also continue, by and through the ITCP, to provide technical assistance and necessary financial support to its Member States, especially to the developing and least developed ones, with an aim to promoting all the Member States to smoothly and comprehensively meet the needs of the mandatory Audit Scheme.

All the other relevant States (non-members of IMO) and international organizations and agencies should also join together world-wide to provide necessary and due assistance in this regard, so as to commonly realize the “safe, secure and efficient shipping on clean oceans” for global shipping as a whole.

Finally, it is also highly hoped that the content of this dissertation will trigger a process of greater thinking and deeper research on these aspects pertaining to the mandatory implementation of the Audit Scheme. The objective of the process should be not only to review what has already been done in order to make the Audit Scheme as it is, but also to explore what has not yet been put in practice so as to drive the current Scheme to develop for better.



## REFERENCES

- Abbott K. W. & Snidal D. (2000). Hard and Soft Law in International Governance. *International Organization*, Vol. 54, No. 3, pp. 421–456. London: The MIT Press.
- Afni L. H. (2013). IMO Member State Audit Scheme-Progress Made and Auditors View (pp. 5-18). Retrieved 8 June 2013 from <http://niagm2013.lk/presentation/15a.%20Leslie%20Hemachandra%20pdf%20Presentation.pdf>.
- Afriyie K. A. (2007). An Analysis of the Voluntary IMO Member State Audit Scheme. Unpublished MSc thesis. Malmo: World Maritime University.
- Ahlberg A. (2013). Presentation on the work of implementing international standards to domestic law. Swedish Transport Agency, Olai Kyrkogata 35, Norrköping.
- Arab Republic of Egypt Ministry of Transport. (2009). IMO Assembly Agrees to Make Audit Scheme Mandatory. Retrieved 10 July 2013 from [http://www.mts.gov.eg/documents/imo/egypt\\_imo.aspx?level=2&n=4](http://www.mts.gov.eg/documents/imo/egypt_imo.aspx?level=2&n=4).
- Barchue L. D. (2009) The Voluntary IMO Member State Audit Scheme: An Accountability Regime for States on Maritime Affairs. *WMU Journal of Maritime Affairs*, Vol. 8, No.1, pp. 61-70. Malmo: World Maritime University.
- China Ports & Harbours Association. (2011). Chinese Auditor First Carry out Audit in Iran under the Voluntary IMO Member State Audit Scheme. News from the website: <http://www.chinaports.org/info/201111/145424.htm>.
- CMSA. (2011). The 12th Five-Year Plan for China Maritime System. Beijing: China MSA.
- Du A. P. (2006). Actively participating in the transitional period of the Voluntary IMO Member State Audit Scheme. News from [http://www.dss.gov.cn/Article\\_Print.asp?ArticleID=197565](http://www.dss.gov.cn/Article_Print.asp?ArticleID=197565).
- EU. (2009). Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on Compliance with Flag State Requirements. *Official Journal of the European Union*, L 131, 28 May 2009, pp. 132-135.
- ICONS. (2005). Final Report: review of responses to ships, slaves and competition (p.13). Retrieved 19 April 2013 from [http://www.itfglobal.org/seafarers/icons-site/pdfs/Report\\_27072005.pdf](http://www.itfglobal.org/seafarers/icons-site/pdfs/Report_27072005.pdf)

- IMO. (2003a). IMO Model Audit Scheme. C 90/15/add.1 (9 June 2003).
- IMO. (2003b). Voluntary IMO Member State Audit Scheme. A 23/Res.946 (27 November 2003).
- IMO. (2005a). Consolidated Report of the Pilot Audits conducted by France, Iran and Singapore. JWGMSA 3/1 (11 January 2005).
- IMO. (2005b). Comments on the Draft Framework and Procedures of the Voluntary IMO Member State Audit Scheme. JWGMSA 3/4 (24 January 2005).
- IMO. (2005c). FRAMEWORK AND PROCEDURES FOR THE VOLUNTARY IMO MEMBER STATE AUDIT SCHEME. A 24/Res.974 (1 December 2005).
- IMO. (2006a). Regional Training Course for Auditors: Voluntary IMO Member State Audit Scheme (15-19 July 2006, Alexandria, Egypt). London: IMO.
- IMO. (2006b). Report on Regional Training Course for Auditors: Voluntary IMO Member State Audit Scheme (18-22 September 2006, Dar Es Salaam, Tanzania). London: IMO.
- IMO. (2006c). Report on National Training Course for Auditors: Voluntary IMO Member State Audit Scheme (30 October -3 November 2006, Busan, Republic of Korea). London: IMO.
- IMO. (2007a). Report on Regional Training Course for Auditors: Voluntary IMO Member State Audit Scheme (1-6 April 2007, Lagos, Nigeria). London: IMO.
- IMO. (2007b). VOLUNTARY IMO MEMBER STATE AUDIT SCHEME-- AUDIT OF CANADA (final report).
- IMO. (2007c). VOLUNTARY IMO MEMBER STATE AUDIT SCHEME--Auditor's Manual. A 25/8/1 (4 September 2007).
- IMO. (2008a). Report on the second regional training course for auditors: Voluntary IMO Member State Audit Scheme: CIS/Eastern European Region (21-25 January 2008, Szczecin, Poland). London: IMO.
- IMO. (2008b). Voluntary IMO Member State Audit Scheme--Audit of the Republic of Liberia (26 February – 5 March 2007), Final Report, 5 February 2008.
- IMO. (2008c). VOLUNTARY IMO MEMBER STATE AUDIT SCHEME-- Consolidated audit summary report. C 101/6/2 (2 September 2008).

- IMO. (2008d). Report on the second regional training course for auditors: Voluntary IMO Member State Audit Scheme: Arab-Mediterranean Region (3-7 November 2008, Limassol, Cyprus). London: IMO.
- IMO. (2009a). Report on regional training course for auditors voluntary IMO Member State audit scheme -West Africa Region (Monrovia, Liberia, 22 to 26 June 2009). London: IMO.
- IMO. (2009b). VOLUNTARY IMO MEMBER STATE AUDIT SCHEME-- Consolidated audit summary report. A 26/9/1 (7 September 2009).
- IMO. (2009c). Further Development of the Voluntary IMO Member State Audit Scheme. A 26/Res.1018 (25 November 2009).
- IMO. (2009d). Consolidated Version of the Code for the Implementation of Mandatory IMO Instruments, 2007 (pp. 3-4).
- IMO. (2009e). VOLUNTARY IMO MEMBER STATE AUDIT SCHEME--AUDIT OF THE PEOPLE'S REPUBLIC OF CHINA (final report).
- IMO. (2010a). REVIEW OF THE CODE FOR THE IMPLEMENTATION OF MANDATORY IMO INSTRUMENTS--Preliminary Study on the Consolidated Audit Summary Reports. FSI 18/INF.7 (30 March 2010).
- IMO. (2010b). Flag Stage Implementation. Model Course 3.22, 2010 Edition. London: IMO.
- IMO. (2011a). Voluntary IMO Member State Audit Scheme ( pp. 4 & 26). Retrieved 20 May 2013 from [http://www.iho.int/mtg\\_docs/rhc/MACHC/MACHC12/Presentations/SH1%20VIMSAS%20Presentation.pdf](http://www.iho.int/mtg_docs/rhc/MACHC/MACHC12/Presentations/SH1%20VIMSAS%20Presentation.pdf).
- IMO. (2011b). IMO Assembly elects new 40-Member Council. Press Briefings from IMO website: <http://www.imo.org/MediaCentre/PressBriefings/Pages/61-council.aspx>.
- IMO. (2012a). Review of the Procedures for the Scheme--A proposal regarding the need for further consideration towards a rational and cost-effective audit. JWGMSA 5/6 (2 March 2012).
- IMO. (2012b). VOLUNTARY IMO MEMBER STATE AUDIT SCHEME-- Consolidated audit summary report. C 109/5/1 (28 August 2012).

- IMO. (2012c). Voluntary IMO Member State Audit Scheme--Progress report on the implementation of the Audit Scheme. C 109/5 (31 August 2012).
- IMO. (2013a). Consideration of Draft Assembly Resolutions--Draft resolutions on the Framework and Procedures for the IMO Member State Audit Scheme, and on transitional arrangements. JWGMSA 6/3 (18 January 2013).
- IMO. (2013b). SUMMARY OF DECISIONS OF THE SIXTH SESSION OF THE JOINT WORKING GROUP ON THE MEMBER STATE AUDIT SCHEME. JWGMSA 6/WP.1 (12 March 2013).
- IMO. (2013c). VOLUNTARY IMO MEMBER STATE AUDIT SCHEME --Report of the sixth session of the Joint Working Group on the Member State Audit Scheme. C 110/7/1 (16 April 2013).
- IMO. (2013d). REPORT OF THE TECHNICAL CO-OPERATION COMMITTEE ON ITS SIXTY-THIRD SESSION. TC 63/14 (8 August 2013).
- IMO. (2013e). Summary of Status of Conventions (as at 31 July 2013).
- IMO. (2013f). Voluntary IMO Member State Audit Scheme (para. 8). Retrieved 25 March 2013 from IMO website:  
[http://www.imo.org/blast/mainframe.asp?topic\\_id=841#background](http://www.imo.org/blast/mainframe.asp?topic_id=841#background).
- IMO. (2013g). Voluntary IMO Member State Audit Scheme. Retrieved 28 March 2013 from IMO website:  
<http://www.imo.org/ourwork/safety/implementation/pages/auditscheme.aspx>.
- IMO. (2013h). IMO seeks public input on administrative burdens. IMO News, p. 9. Issue 2 • 2013. London: IMO.
- Jacobsson. (2013). *The International Convention on Civil Liability for Bunker Oil Pollution Damage*. Lecture at World Maritime University, 31 May 2013.
- Krilic T. (2012). IMO Member State Audit Scheme. Retrieved 16 May 2013 from  
[http://www.enco.eu/Safetyworkshop/Krilic\\_IMO\\_presentation%20handout.pdf](http://www.enco.eu/Safetyworkshop/Krilic_IMO_presentation%20handout.pdf).
- Kuang X. Y. & Xu H. (2008). How to Tackle the Interim of Voluntary IMO Member State Audit Scheme. Vol. 31 N0.1, World Shipping. Dalian: Dalian Maritime University.
- Lin J. X. (2008). Disputes on the Voluntary and Mandatory IMO Member State Audit Scheme. Retrieved 24 April 2013 from  
<http://www.zgsyzz.com/Article/ShowInfo.asp?ID=662>.

- LI Z. & QIU J. W. (2007). On the Status, Challenge and Developing Trends of Voluntary IMO Member State Audit Scheme. Vol. 30 NO.1, World Shipping. Dalian: Dalian Maritime University.
- Mitropoulos E. E. (2004). Opening Address at the 51st session of Marine Environment Protection Committee: 29 March to 2 April 2004. Retrieved 26 April 2013 from [http://www.imo.org/blast/mainframe.asp?topic\\_id=909&doc\\_id=3790](http://www.imo.org/blast/mainframe.asp?topic_id=909&doc_id=3790).
- Ringbom H. (2008). The EU Maritime Safety Policy and International Law. Leiden: Martinus Nijhoef Publishers.
- Sha Z. R. (2010). Cost-effective Analysis by China MSA on IMO Member State Voluntary Audit. China Maritime Safety, 2010 (1). Tianjin: China MSA.
- Stephen D. K. (2001). Problematic Sovereignty: Contested Rules and Political Possibilities (pp.6-12). New York: Columbia University Press.
- The Charter of the United Nations, UN, New York, 1945.
- The State Oceanic Administration of China. (2013). “12th Five-Year Plan” of National Oceanic Development in China (English Version). From the website of ChinaAbout.net: <http://www.chinaabout.net/12th-five-year-plan-national-oceanic-development-china/>.
- Thomas B. & Cynthia W. (1996). State Sovereignty as Social Construct. Cambridge Studies in International Relations 46. Cambridge: Cambridge University Press.
- UNECE. Transposition into national legislation (Art. 2.2). Retrieved 20 July 2013 from <http://www.unece.org/env/eia/guidance/transp.html>.
- United Nations Convention on the Law of the Sea, UN, New York, 1982.
- Vienna Convention on the Law of Treaties, UN, New York, 1969, Art. 26.
- Yang L. J. (2013). Voluntary IMO Member State Audit. Unpublished MSc essay (24 February 2013). Malmo: World Maritime University.
- Yang Q. J. (2012). Improve the implementation and enforcement of international conventions in China through the Voluntary IMO Member State Audit Scheme. Article retrieved 8 July 2013 from <http://wenku.baidu.com/view/e250a04ee45c3b3567ec8b46.html>.
- Yu H. B. & Bao J. Z. (2007). Analyzing the problems in implementing international maritime conventions involving dangerous goods and prevention of pollution in

China, from the point of view of IMO Voluntary Member State Audit Scheme. Journal: China Water Transport, Vol. 7, No. 12. Wuhan: the Press of Zhongguo Shuiyun.

Zhao Y. B. & Yang Y. L. (2009). Study on the application of IMO Voluntary Audit Scheme in the control work of China MSA. Journal: China Maritime Safety, 2009 (9). Tianjin: China MSA.

Zhou Y. & Sha Z. R. (2011). Study on the IMO Audit Scheme and the Construction of China MSA International Instrument Implementation Management System. Journal: China Water Transport. Wuhan: the Press of Zhongguo Shuiyun.

Zhu W. G. (2011). Study on the mandatory implementation of the Voluntary IMO Member State Audit Scheme. Journal: China Water Transport. Wuhan: the Press of Zhongguo Shuiyun.