

IMO MEMBER STATE AUDIT SCHEME

SAFEMED IV Training on the implementation of the III Code

LEGISLATING FOR A TREATY

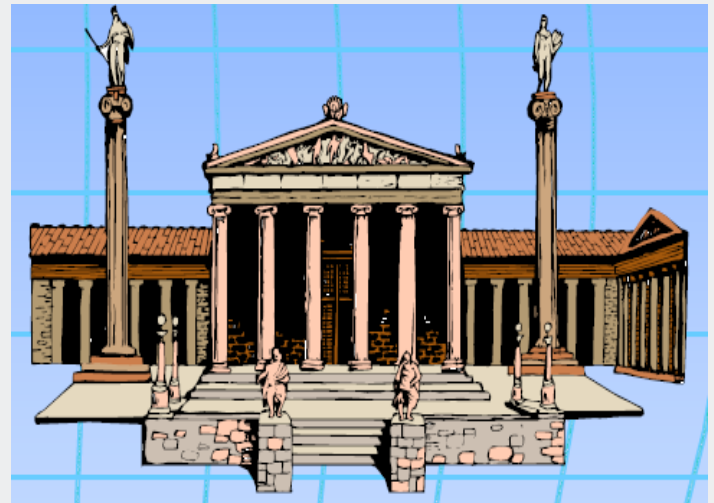


Content

- Maritime conventions
- Functions of a maritime administration
- Member State's legislation
- Legislative process
- Legislation – examples
- Conclusion

Maritime conventions

- Adoption of a maritime convention
 - Signature
 - Ratification
 - Acceptance
 - Approval
 - Accession
- Entry into force
 - After period of grace



Effectiveness of maritime conventions

Ultimate effectiveness of any convention depends upon States successfully executing the following:

- Becoming a Party to the convention
- Enacting related national legislation
- Implementing
- Enforcing
- Reporting as required

Maritime administration

Responsible for:

- Establishing national maritime policy
- Initiation of national maritime legislation
- Representation in international forums
- Communication with IMO on specific information required by the conventions
- Formal links with other ministries/departments/agencies within the government

Maritime administration (cont.)

- Preparation of technical aspects of national maritime legislation
- Implementation of international and national requirements
- Investigation of casualties, pollution incidents and other offences
- Consultation with other departments
- Collection and processing of data relating to the implementation of national requirements

Maritime administration (cont.)

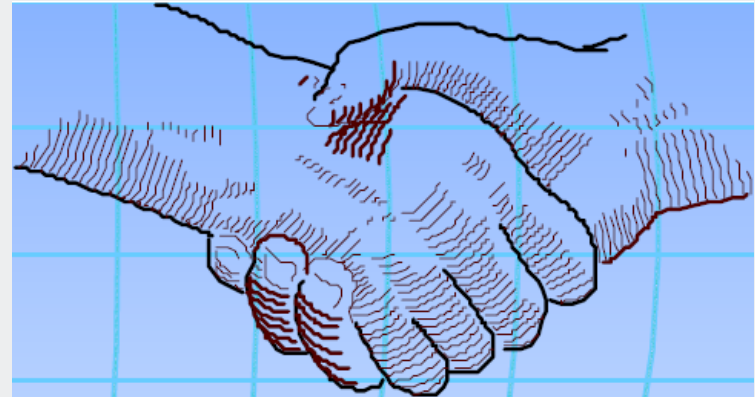
Minimum functional structure:

- Appropriately recruited and trained personnel
- Clearly defined responsibilities
- Clearly defined administrative processes
- Adequate control and reporting mechanisms in respect of its legal obligations and responsibilities

Maritime administration's partners

In developing policies and enacting legislation maritime administration may include other interested parties of the State:

- Ship owners
- Port authorities
- Seafarers
- Associated industries
- Academic and MET institutions



Interests of partners

- Shipowners – primary responsibility for the maintenance and safe operation of their ships in accordance with established standards
- Port authorities – functions differ according to national government system, usually include some or all of the following:
 - Control of ship movements approaching and entering the port
 - Provision of services to shipping using the port
 - Navigation aids in port areas
 - Reception facilities
 - Crew amenities

Interests of partners (cont.)

- Seafarers – national influence depends on:
 - Number of seafarers
 - Level of organization
 - Economic strength
 - Importance for national economy
- Associated industry includes various interests – shipbuilders, equipment manufacturers, classification societies, etc.

General Principles in legislating

- Reviewing existing legislation
- Actively follow amendments to IMO instruments
- Active participation at IMO to understand, track and monitor issues
- Adequate powers to enforce
- Roles & responsibilities clearly defined – no conflicts
- Involvement of interested parties in legislating process, where appropriate
- Ensure legislation and other preparatory work are completed before a convention comes into force

Member State's legislation

- Different structure of national legislation in Member States
- Often there is a two-tier system, for flexibility and efficiency:
 - Primary legislation - statutes, acts or codes
 - Subsidiary legislation - regulations, orders, decrees and other regulatory issuances

Member State's legislation (cont.)

- Statutes, Acts and Codes - usually passed by Parliament or Legislature
- Subsidiary legislation – usually passed by Ministers or Government agencies, under authority of the "parent Act":
 - Subject to frequent amendments
 - Technical & detailed
 - May incorporate text of IMO resolutions, guidelines, interpretations, amendments to IMO instruments
 - Mandatory IMO codes and guidelines may be given effect by direct reference in subsidiary legislation

Member State's legislation (cont.)

Different methods of transposition of the provisions of treaties', mostly two general models:

- **Specific provisions** giving full effect to requirements of the mandatory IMO instruments in national legislation (*primary*)
- **Direct references** to treaties (as amended) incorporated in national legislation (*primary*)

Note: Penal provisions and responsibilities should be provided in both cases

Legislative Process

Possible sequence

STAGE 1: STUDY CONVENTION & ITS APPLICATIONS (? months)

1. Identify implications & obligations of being a Party
2. Determine manpower, resources & training needs of staff
3. Prepare recommendations
4. Seek Management's approval to start accession process

STAGE 2: ACCESSION & IMPLEMENTATION PLAN (? months)

1. Formation of a Working Group
2. Schedule of preparatory work
3. Identify type of legislation required & time needed to complete legislation
4. Obtain approval for accession & implementation plan

STAGE 3: CONSULTATION, if applicable (? months)

Consult affected industry parties & relevant Govt. agencies & seek their support

Legislative Process (cont.)

STAGE 4: APPROVAL (? months)

1. Prepare & submit to Minister or Cabinet a memo
2. Upon Minister's or Cabinet's approval, inform all relevant parties

STAGE 5: LEGISLATION (? months)

1. Prepare draft legislation and obtain necessary approvals
2. If a bill required (to enact or amend an Act), prepare it and obtain approval of competent Government entities or Cabinet to table a bill at Parliament
3. Ensure legislation ready for promulgation
4. Arrange Gazette notification for bringing legislation into force (if required)

Legislative Process (cont.)

STAGE 6: INSTRUMENT OF ACCESSION (? months)

1. Prepare instrument of accession
2. Deposit instrument of accession with SG of IMO
3. Mandatory reporting to IMO

STAGE 7: NOTIFICATION & SEMINARS (? months)

1. Issue circulars & press releases
2. Liaise with relevant parties to organize seminars/workshops
3. Conduct internal briefings or training for staff
4. Need to update training materials, syllabus etc. for seafarers?

Legislative Process (cont.)

- The same sequence applicable for legislating for each treaty (SOLAS 1974, MARPOL 73/78, LL 1966, etc.)
- Additional guidelines/instructions/procedures may be necessary to assist in implementation and enforcement, especially:
 - Requirements left to the satisfaction of Administration
 - Instructions to surveyors
 - Procedures for surveys, inspections and issuance of certificates
 - Procedures/criteria for granting of exemptions /equivalents /dispensations, etc.

Legislative Process (cont.)

Example – Exemptions

LL 1966, article 6

- Certain ships that are subject to ICLL may still be exempted on basis of:
 - Voyage
 - International voyages between close neighbouring countries who have a mutual agreement
 - "Positioning" voyage (single voyage exemption to allow transit to another port)
 - Design
 - Novel features for research & development

Legislative Process (cont.)

Example – Equivalents

LL 1966, article 8

- Administrations may allow any fitting, material, appliance or apparatus to be fitted, or any other provisions to be made in a ship, if an alternative arrangement is "at least as effective as" that required by the Convention.
- Administrations must report to IMO the nature and rationale for allowing an equivalent
- These, in turn, are circulated to all other States by IMO as "Load Line Circulars"

Legislation – State A

Possible framework for an Act – specific requirements included in national legislation:

1. GENERAL PROVISIONS (definitions, scope, exemptions/equivalents, delegation)
2. SUBSTANTIVE PROVISIONS
 1. technical requirements regarding structure, machinery, equipment and maintenance, in accordance with the mandatory IMO instruments
 2. operational requirements regarding stability, stowage, loading, ballasting, pollution prevention, etc.
 3. requirements regarding ship's log book and entries, drills and exercises, etc.
 4. linkage with and status of class rules and regulations
 5. manning level
 6. requirements related to standards of training, certification and watchkeeping
 7. provision of reception facilities in ports, etc.

Legislation – State A (cont.)

3. REQUIREMENTS FOR FOREIGN SHIPS IN WATERS UNDER JURISDICTION OF FLAG STATE

4. SURVEYS AND CERTIFICATION

1. surveys, interval, authority to be entrusted with surveys
2. issue of certificates and entrusted authority
3. issue of certificates by other Governments on request
4. acceptance of foreign certificates
5. period of validity of certificates and formats
6. suspensions, withdrawal, loss and return of certificates
7. RO surveys and certificates

Legislation – State A (cont.)

5. RIGHTS AND OBLIGATIONS OF OWNER/OPERATOR, MASTER AND SEAMEN

1. prohibition to make alterations to a ship without the permission of the competent authority
2. duty to maintain condition of the ship during the voyage
3. duty to notify competent authority on damage sustained
4. duty to report discharges of harmful substances
5. prohibition against the master going to sea, unless
 1. the ship complies with the relevant requirements
 2. the ship is provided with valid certificates and safe manning document, log and record books
 3. the ship is manned in accordance with the requirements

Legislation – State A (cont.)

5. RIGHTS AND OBLIGATIONS OF OWNER/OPERATOR, MASTER AND SEAMEN (cont.)

- 6. prohibition to serve on board without appropriate endorsement
- 7. duty of the owner to enable the master to carry out his obligations
- 8. right of crew members to complain to competent authority and duty of authority to investigate complaints

Legislation – State A (cont.)

6. ENFORCEMENT

- designation of authority entrusted with enforcement
- carrying out random inspections/supplementary surveys
- rights and powers of surveyors (Administration and ROs)
- duty of master to produce certificates to surveyor
- duty of owner and master to cooperate during surveys
- power to withdraw certificates and to detain a ship
- detention and release procedures
- duty of master if the ship is detained abroad

Legislation – State A (cont.)

7. PENALTIES

1. penalties for non-compliance, operational violations, contravention of a prohibition
2. penalties on the owner who incites the master to violate any of the provisions

8. APPEAL

1. right to appeal from decisions of the competent authority
2. appeal procedures

9. INVESTIGATION OF MARINE CASUALTIES

10. COSTS AND FEES

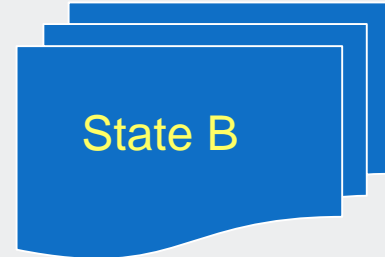
Legislation – State A (cont.)

- Detailed technical requirements can be provided in a number of regulations, decrees, orders – subsidiary legislation
- Penalties:
 - may be contained in a general law (not maritime)
 - should be of adequate severity to discourage violations (financial, imprisonment)



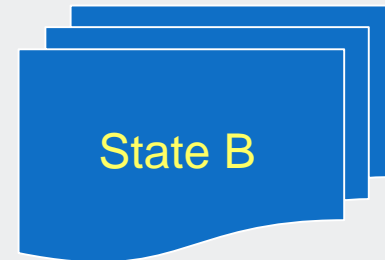
Legislation – State B

- Direct references to treaties included in primary legislation
- National legislation should still contain:
 - Responsibilities of State entities
 - Enforcement provisions
 - Any national interpretations
 - Delegation of authority (if applicable)
 - Penalties



Legislation

- Advantages?
- Drawbacks?



Legislation – Examples of Findings (FDs) from IMSAS audits

Example FD 1

Transposition of applicable mandatory IMO instruments and their amendments into national legislation, including those amendments entering into force under the tacit amendments procedure, was not carried out prior to their entry into force. A legal basis for the enforcement of the national legislation, including the associated investigative and penal processes was not adequate. There was no system in place for reviewing new amendments adopted by IMO, including those entering into force under the tacit amendment procedure, in order to ensure their timely transposition into national legislation. The Administration did not have sufficient personnel with maritime expertise to assist in the promulgation of the necessary national laws and to discharge all the responsibilities of the State, including reporting as required by the respective conventions (SOLAS 1974, article I; MARPOL, article 1; STCW 1978, article I; III Code, paragraph 8).

Legislation – Examples of Findings (FDs) from IMSAS audits

Example FD 2

Transposition of applicable mandatory IMO instruments to which the State is a Party and their amendments into national legislation, including those amendments entering into force under the tacit amendments procedure, was not carried out prior to their entry into force. Furthermore, there was no system in place for reviewing new amendments adopted by IMO, including those entering into force under the tacit amendment procedure, in order to ensure their timely transposition into national legislation (SOLAS 1974, article I; MARPOL, article 1; STCW 1978 article 1; LL 1966, article 1; TONNAGE 1969, article 1; COLREG 1972, article I; III Code, paragraph 4; III Code, paragraph 8).

Legislation – Examples of Findings (FDs) from IMSAS audits

Example FD 3

No evidence could be established that requirements of applicable IMO instruments, including their amendments, have been given full and complete effect through their transposition/incorporation into national legislation, including promulgation. There was no mechanism in place for monitoring of amendments to the mandatory IMO instruments in order to keep national legislation up-to-date. The availability of sufficient personnel with maritime expertise to assist in the promulgation of the necessary laws, could not be demonstrated (SOLAS 1974, article I; MARPOL, article 1; LL 1966, article 1; TONNAGE 1969, article 1; COLREG 1972, article I; III Code, paragraph 8).

Example of RC - FD 1

A comprehensive mechanism for the transposition, implementation and updating of national legislation, including enacting those amendments entering into force under the tacit amendments procedure, was not given institutional priority. The competing priorities at the government drafting office impacted the development and promulgation of maritime related legislation. Lack of awareness and knowledge of the requirements of the relevant IMO instruments, including the non-availability of qualified and competent personnel have contributed gravely to this finding.

Example of RC - FD 2

There was no documented procedure in place for tracking amendments to IMO instruments, responsibilities of a person/entity was not assigned and the legislative process is slow regarding the incorporation of international conventions into domestic legislation.

Example of RC - FD 3

The following factors contributed to this finding:

- .1 It had not been considered an institutional priority to document and validate the process used by the principal government entity and other involved bodies to ratify conventions or adopt new amendments.
- .2 There was a lack of resources and a lack of awareness of the need to monitor amendments to the mandatory IMO instruments adopted through the tacit amendment procedure, as well as a lack of supervision to monitor their promulgation.
- .3 The delay in implementing conventions or their amendments was due to the complexity of the national legal process.

Example of CA - FD 1

Transposition of mandatory IMO instruments into the national legislation will be prioritized, which will also ensure appropriate provisions are provided for enforcement measures and penalties. The existing mechanism in the State for ratification of IMO conventions and for the adoption of new amendments will be validated, with a view to enable the State to introduce appropriate national legislation in a timely manner. Procedures within the administrative system of the responsible government entities will be modified to clarify roles and responsibilities for reporting to IMO. National capacity building and outreach programs between enforcement agencies and key associated agencies will be facilitated to harmonize implementation of national legislation, including its efficient functioning. Reorganization of the Maritime Safety Administration is being considered to facilitate optimal governance of maritime administration. A supervisory mechanism will be established to oversee and monitor the administration of the mandatory IMO instruments. This corrective action will be completed by XXX.

Example of CA - FD 2

The responsible entity of the maritime administration has developed a procedure that includes the assignment of responsibility to specific officers for tracking and recording amendments to relevant IMO instruments. Furthermore, a system will be established to ensure systematic follow-up of new mandatory IMO instruments and amendments to existing ones and to monitor the date of their entry into force, in order to ensure their transposition into national legislation in a timely manner. Measures will be taken to expedite the transposition of IMO instruments and their amendments into national law through subsidiary legislation and many outstanding regulations have already been drafted. This corrective action will be completed by XXX.

Legislation – Examples of Corrective Actions (CA) for FDs from IMSAS audits

Example of CA - FD 3

The maritime administration will implement the following corrective actions:

- .1 A legal procedure will be developed and implemented for enactment of national law for various mandatory IMO instruments, related codes, and amendments thereof, adopted through the tacit amendment procedure. The use of a dynamic reference to specific convention/instrument, as amended, in national legislation will be considered. All mandatory IMO instruments included in scope of the Scheme will be given full and complete effect through their incorporation into national legislation, including promulgation.
- .2 Guidance for the process of monitoring and implementing of new amendments adopted through the tacit amendment procedure to existing and new/future mandatory IMO instruments will be developed through new legislation, along with the related working instructions and procedures. A process of coordination between involved departments of the Ministry responsible for transport and cooperation with other relevant State entities will be established. This process will also be included in the QMS of the Maritime Office.
- .3 An in-house training programme will be developed and organized for personnel of all involved departments of the Ministry responsible for transport to improve competence and awareness on monitoring of amendments.
- .4 Sufficient resources will be provided for implementation and translations to ensure this process is effectively carried out.

Discussion

Feedback from participants - systems in place in their maritime administration for:

1. Laws and any subsidiary legislation
2. Legislative process
3. Interpretation/criteria for the term "to the satisfaction of Administration"
4. Dealing with exemptions/equivalents/dispensations

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