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VOLUNTARY IMO MEMBER STATE AUDIT SCHEME

Further development of the Audit Scheme

Note by the Secretary-General

SUMMARY

<i>Executive summary:</i>	This document contains the analysis for the further development of the Audit Scheme requested by C 101
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.2.1
<i>Planned output:</i>	2.2.1.3
<i>Action to be taken:</i>	Paragraph 36
<i>Related documents:</i>	C 101/D, C 101/6/1, C 101/SR.2 and SR.3

BACKGROUND

1 The Council, at its 101st session in November 2008, considered a Note by the Secretary-General (document C 101/6/1) containing a synthesis of the Audit Scheme in its current form and its possible transition into an institutional process within the relevant mandatory instruments of the Organization.

2 In paragraphs 21 and 22 of that document, the Secretary-General had expressed a twofold concern, namely that:

- * “whilst, at the beginning of the Audit Scheme’s life, in its present voluntary form, there was a rush by Members to offer themselves for audit, it now seems that the desire first shown is waning – resulting in only 9 Members volunteering to do so this year. Thus, only one quarter of Members have so far declared their intention to be audited and, if due attention is not paid to this trend, it might well be that the Scheme may lose its strength of purpose and, eventually, deprive the causes of

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enhanced safety at sea and environmental protection of the invaluable services the Scheme aims at rendering;¹ and also that:

- * if action were not taken to move the Scheme into a new phase in the short term, it might well become ineffective in the sense that Members not joining the exercise may deprive themselves of the opportunity to enhance their capacity to serve safety and environmental protection by not benefiting from the contribution the Scheme is undoubtedly able to make.”

3 The debate that ensued focused on whether and how the Scheme should be developed to best achieve its objectives and, to such an end, the Council requested the Secretary-General to prepare a holistic and detailed proposal on the way forward to further develop the Scheme, taking account of the statements made, including collection and analysis of information from Member States and the Secretariat on perceived difficulties with the implementation of the Scheme; a possible timeframe for the necessary preparatory work; and information on any associated implications for this to happen.

4 Pursuant to that request, this document elaborates on the various facets associated with the implementation of the voluntary Audit Scheme and provides a holistic and detailed review of a possible way forward for the further development of the Scheme.

SYNOPSIS OF COMPLIANCE MONITORING IN INTERNATIONAL TRANSPORT SECTORS

The IMO case

5 Paragraphs 6 to 11 of document C 101/6/1 provided a succinct analysis of the benefits attainable from participation in the Audit Scheme, whilst, at the same time, identifying some of the constraints associated with it in its current form. The analysis and conclusions reached therein were based on the preparatory work for audits and post-audit activities by both the Secretariat and Member States that had been audited and the findings from audits. The Council acknowledged and agreed with the conclusions reached in the aforementioned paragraphs.

6 To expand further on the analysis already provided, it should be recognized that the continuous and successful implementation of the voluntary Audit Scheme depends exclusively on individual Member States' acceptance and commitment to provide resources for their audit. This reliance on individual States as the core component for the implementation of the voluntary Scheme is *ad hoc* and, at best, unpredictable in the short term. Whilst there has been an appreciable response of Member States to the Scheme so far, a conclusion from those that have offered themselves for audit is that, in the main, they are Member States with the resources to do so.

¹ The following table shows the numbers of Member States that volunteered for audit and those audited since the inception of the Scheme.

Table 1

Year	States	
	Volunteered	Audited
2005	6	-
2006	19	4
2007	13	14
2008	7	10
2009 (to date)	2	2
Total	47	30

This aspect does not support the principles of universality and inclusiveness that were envisaged in the Framework of the Scheme and presents a significant impediment to planning and delivery by the Secretariat of an efficient and effective Audit Scheme.

7 An Audit Scheme that provides for all Member States to be audited, in conformity with certain agreed guidelines/conditions, will not only facilitate the attainment of the objectives pursued in relation to enhanced safety, security and environmental protection, it will also lend itself well to the development of an overall audit timetable that is time-bound and effective in meeting the set objectives of the Scheme. It will, furthermore, provide for the determination of resource requirements, both human and financial, which can then be shared properly amongst all Member States. This would promote a greater sense of ownership by all and remove one of the major impediments to a substantial number of States not volunteering to be audited under the current Scheme.

8 A credible international regulatory regime relies on the acceptance, in good faith, that each of its members is carrying out all its duties and responsibilities under such a regime. In the case of international shipping, the principal determinant of good faith is the acceptance by parties to the various IMO treaties that each party implements fully and effectively the provisions of those treaties. Thus, ships flying the flag of parties to these treaties continue to enjoy unfettered access to ports of other parties to these treaties on the presumption that the ship and its flag State comply fully with the treaties' obligations.

9 Whilst port and coastal State duties and responsibilities are not numerous within IMO instruments, they are of equal importance to those of flag States in ensuring that global maritime transport is safe, efficient and environmentally sound. However, as these duties and responsibilities are primarily carried out within national jurisdictions, there is no mechanism for determining whether they are being implemented as indispensable components of the global maritime regulatory regime.

10 The absence of an explicit mechanism within the various IMO treaties to validate compliance by parties with their full range of duties and responsibilities means that the true extent of compliance by each party has not, so far, been properly assessed, nor has there been an independent determination as to whether State practices in the implementation and enforcement of maritime regulations are effective.

An existing comparable monitoring regime

11 Unlike the international shipping regulatory regime adopted through IMO, the Convention on International Civil Aviation (the Chicago Convention), which was adopted in 1944, already contained provisions for some degree of compliance monitoring. Chapter II of that Convention (dealing with flights over the territory of Contracting States) assigns certain rights to a State to explicitly grant permission or authorization for scheduled air services from another State to operate over or into its territory. This empowerment, which has existed for decades, was used by States that had the ability to determine the degree of compliance of other Contracting States to the provisions of the Chicago Convention when granting permission or authorization for aircraft from other States to operate within their territory. This ability is now available to all Contracting States through the Universal Safety Oversight Audit Programme (USOAP) of ICAO, which is a mandatory audit programme. Although shipping regulatory treaties (e.g., SOLAS, MARPOL, etc.) do not contain such provisions, the establishment of a global compliance monitoring regime would provide assurance that compliance with treaty obligations is effective, whilst, at the same time, States experiencing difficulties in fully complying with their duties and responsibilities under conventions to which they are party can be assisted to address any shortcomings.

12 There is no compelling reason for State practices in the implementation and enforcement of international treaties in one sector of global transport (aviation) being subject to a mandatory compliance monitoring regime (as is the case with ICAO's 190 Contracting States) while another sector of global transport (shipping) is not, for the time being, regulated in a similar accountable manner with respect to State practices in the corresponding implementation and enforcement of international treaties of its own responsibility. Not to move to change the *status quo* may well embolden the critics of shipping, whilst, at the same time, the significant efforts made by States to achieve full compliance with their duties and responsibilities are likely to remain unacknowledged.

RESOURCE IMPLICATIONS

13 There are mainly two areas on which questions have been raised in relation to the establishment of a compliance monitoring regime, namely, the resources required for the smooth operation of an audit scheme in a mandatory form and resources that should be available for any action necessitated under the scheme (corrective action).

Estimated resources needed for the operation of a mandatory audit scheme

Financial resources

14 Under the voluntary Scheme, audit team costs are borne by the Member State being audited, averaging at approximately £11,000². Under a mandatory Scheme, resources for audit teams will have to be budgeted for and funds made available to ensure that audits are conducted in accordance with an overall audit timetable. With an IMO membership of 168 States and three Associate Members, an audit cycle of seven years could be considered for the completion of a full round of audits. This would equate to about 24 audits per year. At the cost of £11,000 per audit, the total annual funding requirement for audit teams would be about £264,000. In addition, after the second year of audits, the budgetary requirement would need to increase by about £6,000 for every follow-up audit undertaken, thus requiring an additional appropriation of £144,000 per year.

Human resources

15 The availability of trained auditors to undertake the required number of audits per year is also of significance. Under the existing Scheme and with the modest number of audits currently being carried out, difficulties can arise in forming audit teams in the future, either because of non-availability of suitable auditors or because of other limitations, such as language and experience. The limited capabilities of the existing IMO Scheme should be compared with the system ICAO runs, whereby a number of auditors are seconded to ICAO Headquarters in addition to full time ICAO staff involved in the audit programme – not to mention staff in ICAO's regional Bureaux, who also provide additional core audit capacity.

16 In the case of IMO, the delivery of 24 audits a year, with an average audit team of three (72 auditors a year) for about 11 days per audit (including travel time) would equate to 792 man-days. A critical component of this resource would be the audit team leaders. To execute the 24 audits suggested above, per year, a core of 30 audit team leaders would have to be identified and advance commitment received from their nominating States of their availability to undertake the tasks assigned to them. With regard to the other two members of each team,

² Fifty per cent of cost is affected by currency exchange movement.

there is some latitude in their selection and commitment to undertake these audit duties, as is currently the case. Notwithstanding the foregoing, the issue of availability of auditors will have to be considered and Member States would have to commit to providing this critical resource for the Scheme to function smoothly.

17 At the moment, the Secretariat resources in support of the Audit Scheme are very limited, as the Council is aware. Thus far, the Secretariat has responded to its duties and responsibilities concerning the delivery of the Scheme by limiting the extent to which its input is provided. For example, a considerable amount of time is spent on editing draft audit interim reports and audit final reports to ensure accuracy and some degree of consistency. References to the Code for the implementation of mandatory IMO instruments, as well as to requirements in other relevant mandatory instruments, have to be checked for correctness and findings of non-conformity or observations validated to ensure they are appropriate and justified. Furthermore, the Secretariat prepares draft audit summary reports – an exercise, which entails a precise summary of the audit final report, which is then used by team leaders to obtain final agreement with the Member State audited. All of these activities and the associated administrative support are core activities that will remain a function of the Secretariat. To provide the necessary support for the smooth and effective operation of the Scheme, adequate Secretariat resources are needed and will have to be provided in due course.

18 To expand on the possible Secretariat resource requirement, it would be safe to assume, at this stage, that one audit professional staff member would be capable of handling five audits a year from the start of the preparatory work through to the finalization of the various audit reports, including any follow-up audits. The participation in the audit team of an audit professional staff member as an auditor or observer is assessed as being crucial and a key component to ensuring consistency and thoroughness of the audit – which is also the practice with ICAO USOAP. Additionally, general administrative support staff would be required – but fewer in number than the professional staff.

19 Based on the above assumption, a core Secretariat human resource requirement, additional to the existing staff in the respective section of the Secretary-General's Office, would be four professional and two general service staff members, at an annual cost of about £430,000. However, secondment of audit professionals by Member States, as part of that core resource requirement or to complement same, remains an option, which should be properly explored during the initial stages of the Scheme in its developed form.

Estimated resources for corrective action

20 The provision of technical assistance to Member States in need of such in order to prepare for audits and/or implement corrective measures in response to audit findings has been highlighted throughout the development and implementation of the current voluntary Audit Scheme. Recourse to such a facility would apply even more in the case of a mandatory system. IMO's Integrated Technical Co-operation Programme (ITCP) contains, at present, programmes to provide such assistance, which, however, have not been fully utilized by Member States in need of assistance to participate in the Scheme. In addition to the delivery of training courses, these programmes provide funding for experts to assist Member States on matters related to the audit; funding of part of the cost of the audit; and the general availability of technical assistance to address findings from audits.

21 In previous Council discussions on the provision of technical assistance to Member States to implement corrective action, reference was made to ICAO's International Financial Facility for Aviation Safety (IFFAS), with a request that the IFFAS establishment and operation be

studied. To this effect, a joint submission (TC 52/2/3) by Cyprus, the Philippines and Vanuatu to the fifty-second session of the Technical Co-operation Committee was appreciated as highlighting the issue.

22 TC 52, discussed extensively this joint submission and the outcome was reported in document TC 52/14. Subsequently, the Secretariat submitted to TC 54 document TC 54/INF.2 containing information on the establishment of IFFAS. IFFAS is not a novel idea that is substantially different in terms of fund raising for regular technical assistance programmes. IFFAS resources come from voluntary contributions from ICAO Contracting States and interested parties. What is different is that IFFAS provides a soft loan facility to Contracting States to remedy deficiencies in aviation safety. Loans are provided based on the requesting State or group of States providing a rigorous business plan for the repayment of the loan to IFFAS.

23 This ICAO funding mechanism has its legal basis in Articles 69 and 70 of the Chicago Convention, which empowers the ICAO Council to make arrangements with Contracting States relating to the financing of air navigation facilities. As the Council knows, no such mandate is provided for in the IMO Convention. However, the absence of an explicit provision in the IMO Convention for financial arrangements to be made to address maritime safety and pollution prevention needs of Member States has not precluded the Organization from soliciting and providing assistance through its ITCP or through the establishment of Trust Funds for specific purposes, such as the International Maritime Security Trust Fund and the International Search and Rescue (SAR) Fund.

24 Contingent on the foregoing, any demand for additional sources of funding beyond those provided, at present, through the ITCP, will only be known when the results of audits have demonstrated shortcomings in crucial maritime structures, which, if not attended to, would pose a significant risk to the safety and security of international maritime transport services and the attendant need to protect the marine environment.

THE WAY FORWARD

25 In document C 101/6/1, the Secretary-General had provided an analysis of two options for the institutionalization of the Scheme. One option (with significant disadvantage) was a new treaty; the other was the introduction of requirements within the applicable mandatory instruments to make the *Code for the implementation of mandatory IMO instruments* (the “implementation Code”) and audits mandatory. During debate at C 101, the latter option was generally viewed as the possible way forward and, in furtherance of that, a more detailed review of the way forward has been carried out as outlined in this document.

26 Introducing requirements to make the Code and audits mandatory, through the amendment procedures enshrined in the relevant treaties of the Organization, would, first and most importantly of all, result in the application of the Scheme to an overwhelming majority of the Member States. To highlight how audits could have a wide coverage of Member States, the table below provides a breakdown of the ten treaties presently covered by the Scheme; the number of Member States that have ratified each instrument; and the percentage of the world tonnage covered by each of them at the time of writing.

Table 2

Treaty instrument	Member States	% of world tonnage
SOLAS 74	156	99.04%
SOLAS PROT 1978	114	96.16%
SOLAS PROT 1988	89	93.63%
MARPOL 73/78	146	99.00%
MARPOL PROT 1997	51	82.65%
STCW 1978	149	99.00%
LL 66	155	99.01%
LL PROT 1988	86	93.85%
Tonnage 1969	147	98.85%
COLREG 1972	149	98.35%

27 From the table above, it emerges that there are 156 Member States of IMO with an aggregate of 99.04% of world shipping tonnage that are Contracting Governments to the 1974 SOLAS Convention compared with the total of IMO's 168 Member States. Therefore, inclusion, in SOLAS, of a mandatory requirement for audits will make them applicable to that overwhelming majority of the entire membership. A similar application to each parent treaty listed in the table would capture at least 146 States as a minimum. Therefore, it can be reasonably argued that an audit scheme with coverage of 146 to 156 Member States would be a much more effective regime than a new "stand-alone" treaty instrument requiring explicit acceptance and ratification – not to mention the length and uncertainty of time that might be required for such a new "stand-alone" instrument to enter into force. Also, the introduction of the requirement in each instrument provides greater latitude for the inclusion in an audit scheme of each instrument, and of those not currently covered by the present Scheme, as and when it is opportune to do so by Member States and parties to those instruments.

28 Concern was expressed at C 101 about the possibility of the implementation Code being subjected to amendments by different bodies of the Organization with responsibility for the mandatory instruments concerned and that such dispersion of competence could undermine the coherent and effective implementation of the Audit Scheme. Whilst this is a theoretical possibility, in practice, a piecemeal approach to amending a Code that is common to a number of treaties is highly unlikely. As was stated in document C 100/6/1, the Code has become a very useful tool for the proper and effective organization and operation of maritime administrations. It provides a well-structured approach which, once properly implemented, would promote a culture for the systematic monitoring and evaluation by the States concerned of how well they meet, or otherwise, their obligations and responsibilities under the relevant mandatory IMO instruments to which they are parties. Therefore, any attempt to compartmentalize proposed amendments to the Code by the various bodies of the Organization would undermine the concept of the Code and would be unproductive.

29 At present, three IMO bodies are involved with the mandatory instruments currently covered by the Scheme, namely, the Assembly, MSC and MEPC. Even if other committees were to become involved, based on the instruments to be covered, the actual competence for dealing with the issues arising out of the Code will continue to be the FSI Sub-Committee and it should be through this body alone that any and all proposals to amend it should be handled in the first place, with the outcome therefrom being reported to the committees concerned.

30 The annexes to the Code, which contain the non-exhaustive list of obligations stemming from the mandatory IMO instruments concerned and which are currently updated every two years to account for amendments to treaties that have entered into force, are not integral parts of the Code as they are references to provisions that are already treaty obligations. It is, therefore, the narrative of the Code (Parts 1 to 4), which contains a coherent approach for managing and administering maritime treaty obligations, that may be subjected to amendments. Future amendments affecting general principles would be approved by the various bodies responsible for the mandatory instruments concerned; thus any conflict between treaties and parties to them would be avoided.

31 Any concern that the Council's role in directing and monitoring the implementation of the Scheme may be impacted by the Code being dealt with by other bodies of the Organization, cannot be substantiated since, as things stand, the Council has had no explicit role in the development of the Code. It has, however, been regularly apprised of recent developments through the reports of the MSC and MEPC thus being given the opportunity to provide direction in as far as the Code constitutes the Scheme's audit standard. The Council's principal role in the documentation of an institutionalized Scheme would continue, in so far as issues associated with the Framework and Procedures for the Scheme are concerned, and any changes thereto could be handled through a joint working group of the committees concerned as was done previously.

32 As was stated in paragraph 15 of document C 101/6/1, in making the Code mandatory, a requirement should be included in each relevant mandatory instrument calling for the legislation, implementation and enforcement of the provisions of the Code and of the mandatory instrument concerned to be audited in accordance with the Framework and Procedures developed by the Organization. In this respect, the Framework and Procedures could remain as an Assembly resolution and need not be made mandatory as they contain only modalities and procedures for the conduct of audits. Additionally, this approach would eliminate the need for such procedural matters to be exposed to different interpretations and application by parties to the various treaties as well as to an array of amendment procedures.

A POSSIBLE TIMEFRAME ON THE WAY FORWARD

33 To bring to fruition an institutionalized audit scheme, a thoroughly considered, phased-in approach should be elaborated, recognizing fully the views expressed in the Council on the need to gain further experience with the implementation of the Scheme in its voluntary form. Therefore, a five-year process (up to 2014) for the institutionalized Audit Scheme to be established and made operational would not be unreasonable. To arrive at that point, several milestones have to be achieved and the table below provides a possible schedule for that to happen.

Table 3

IMO Body	Timing	Action
C/ES.25	November 2009	Approves draft Assembly resolution on the way forward
A 26	November 2009	Adopts resolution on the way forward
MSC and MEPC	First half of 2010	Instruct FSI to consider ways of making the Code and auditing mandatory, including provision for auditing
MSC and MEPC	Second half of 2010	Identify conventions in which the Code and auditing should be made mandatory
Council	End 2010	Establishes Joint Working Group (JWG) to review the Framework and Procedures
FSI	2011 and 2012	Develops provisions to make the Code mandatory in the conventions identified by the Committees
Assembly 27	November 2011	Receives a progress report submitted by C/ES.26
JWG	2011 and 2012	Reviews the Framework and Procedures
JWG	2013	Finalizes the Framework and Procedures, taking into account the finished product on the Code and conventions' provisions
Council	First half of 2013	Approves the Framework and Procedures for submission to Assembly for adoption
Committees	2013	Adopt amendments to the conventions for entry into force on 1 January 2015
A 28	2013	Adopts resolution on the Framework and Procedures for the Scheme
Council, Committees and Secretariat	2014	Preparatory work for the commencement of an institutionalized audit scheme

34 From the timeframe and schedule provided in the table above, it emerges that there will be ample time to consider and address the various issues that have been raised in previous discussions or new issues relating to the institutionalization of the Scheme. What is important, at this stage, is for Member States to accept the way forward for the further development of the Scheme and agree on the timeframe for this to happen.

35 The Secretary-General is convinced that the way forward, in order for the Organization to benefit, in its endeavours to serve its objectives, from the maximum potential of the Audit Scheme, should be a one-way path leading to a mandatory scheme. He considers that the gains towards enhanced safety and environmental protection by far outweigh the financial burden that will accrue from a move from a voluntary to a mandatory scheme. Furthermore, he assesses that, apart from honouring their obligations under the IMO conventions to which they are party, the benefits all States (flag, port and coastal) will reap from such a move are worth the increased contribution Member States will have to bear under the Scheme in a mandatory form. Therefore, he has no hesitation to commend the move to the Council, hoping that it will share his views and act accordingly.

ACTION REQUESTED OF THE COUNCIL

36 The Council is invited to take note of the information, comments and proposals provided in this document and, in particular, to:

- .1 agree to a phased-in introduction of the Organization's Audit Scheme through institutionalization, as proposed in paragraphs 25 to 31;
 - .2 decide that the institutionalization referred to above should proceed through the introduction of appropriate requirements in the relevant mandatory IMO instruments (paragraph 32);
 - .3 approve the timeframe and schedule of activities outlined in Table 2 above (paragraph 33); and
 - .4 in the event of a positive response to .1, .2 and .3 above, take any other action it may deem appropriate, including requesting the Secretary-General to prepare a draft Assembly resolution delineating the way forward, together with a proposed timeframe and schedule for the further development of the Scheme, for consideration and approval by C/ES.25, for submission to the twenty-sixth regular session of the Assembly for adoption.
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