

# BCSEA Project Training for Flag State Inspectors, 20-23 May 2019

Relevant International organizations & legal framework

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IMO – ILO – European Union

UNCLOS

IMO III Code

# IMO STRUCTURE

**Assembly**

**174** members  
**64** Intergovernmental  
Organizations (observer status)  
**81** International Non-  
Governmental Organizations  
(NGOs) (consultative status)

**Council**



Maritime  
Safety  
Committee  
(MSC)

Marine  
Environment  
Protection  
Committee  
(MEPC)

Legal  
Committee  
(LEG)

Technical Co-  
operation  
Committee  
(TC)

Facilitation  
Committee  
(FAL)

Sub-  
committees



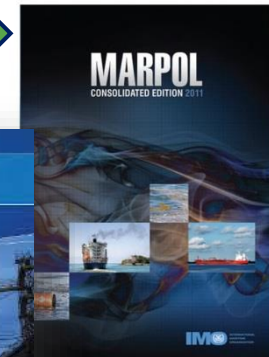
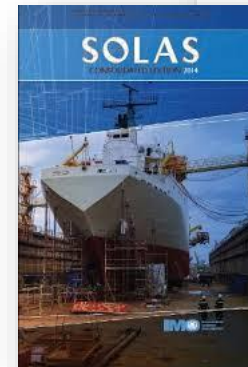
# IMO MANDATORY INSTRUMENTS 50 CONVENTIONS AND PROTOCOLS

Adopted by:  
Diplomatic Conference

Maritime safety

Prevention of  
marine pollution

Liability &  
compensation



Entry into force after sufficient ratifications by:

- X Member States with Y% of the world tonnage
- Ratification requires national (implementation) legislation in many Countries
- Takes many years (some to never.....)


# OTHER IMO INSTRUMENTS: more than 1000 RECOMMENDATIONS

Adopted by:  
Assembly, MSC, MEPC resolutions



## CODES, GUIDELINES, RECOMMENDED PRACTICES

- supplement mandatory instruments
- ensure unified interpretation
- assist national administrations in the implementation
- often are made mandatory through a Convention

 **IMO Res A.911(22)** useful guidance for a uniform wording for referencing IMO instruments. Can be used for establishing if an IMO document is mandatory or recommended



## A 22/Res.911

### **IMO instruments to be treated as mandatory**

2 When Contracting Governments or Parties to an IMO convention have decided that full effect should be given to the provisions of certain codes or requirements under that convention in the same manner as the regulations of the convention themselves, such instruments should be treated as mandatory and have the same legal status as the parent convention.

3 The most appropriate method for referencing, in an IMO convention, instruments determined to become mandatory under the parent convention is to follow the SOLAS provisions used for making the IBC and IGC Codes (under chapter VII) and HSC Code (under chapter X) mandatory, i.e.:

- .1 to refer expressly to such instruments in the text of the relevant convention regulations;
- .2 to provide expressly that future amendments to such instruments should follow the amendment procedures laid down in the relevant article of the parent convention; and
- .3 to prescribe expressly in the text of the relevant convention regulations that "such requirements shall be treated as mandatory" in case the word "should" has been used in such instruments instead of "shall".

## A 22/Res.911

### Performance standards and technical specifications in IMO instruments

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7 In referencing such standards and specifications, the expressions shown in the following examples should be used:

- "equipment shall conform to performance standards not inferior to those adopted by the Organization";
- "equipment shall be tested in accordance with specifications at least equivalent to those developed by the Organization"; or
- "the manual shall be drawn up to a standard at least equivalent to that developed by the Organization."



## A 22/Res.911

### **IMO instruments to be treated as recommendations**

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14 Instruments of recommendatory status should be referred to in the footnote accompanying the relevant regulations of the parent convention. In such cases:

- .1 clear expressions should be used in the regulation indicating the recommendatory status of the instrument, e.g. "... shall be approved by the Administration, taking into account the recommendations developed by the Organization" or "...., based on the guidelines developed by the Organization"; and
- .2 self-contradictory expressions, such as "shall comply with the recommendations", should be avoided.

## IMO instruments to be treated as recommendations

### Example: SOLAS 2004 Ch V Reg. 34

#### Regulation 34

#### Safe navigation and avoidance of dangerous situations

1 Prior to proceeding to sea, the master shall ensure that the intended voyage has been planned using the appropriate nautical charts and nautical publications for the area concerned, taking into account the guidelines and recommendations developed by the Organization\*.

\* Refer to the Guidelines for Voyage Planning, adopted by the Organization by resolution A.893(21).



## Legal basis

**1919 ILO constitution**

**1919** the first  
International Labour  
Conference

**1920** located in  
Geneva

**1946** first specialized  
agency of the UN

## Membership

187 members

## Tripartite structure

Employers

Workers

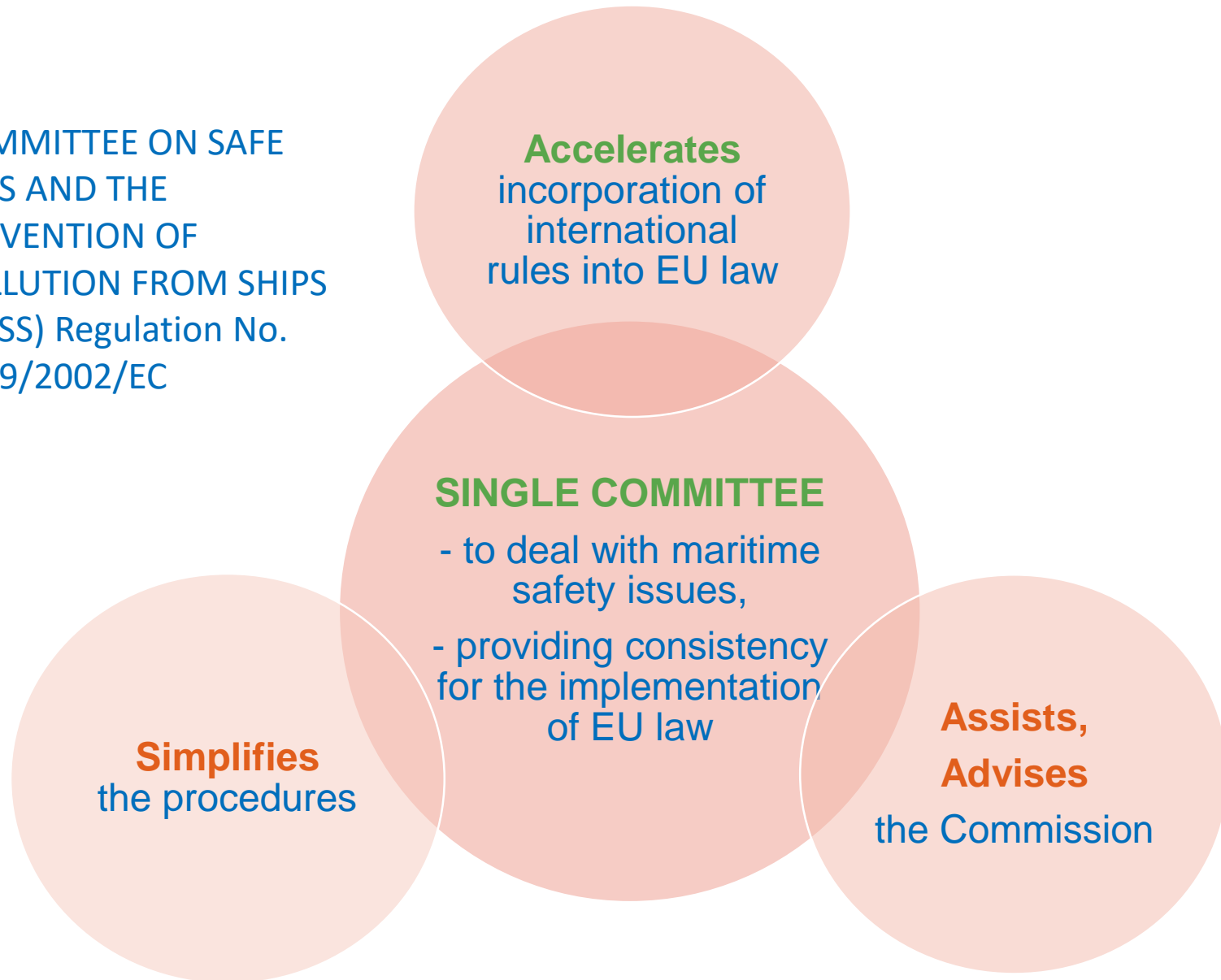
Member States

International labour standards for seafarers  
Around 180 conventions, 190 recommendations

## **Maritime Labour Convention (MLC)**

- entered into force 20 August 2013
- updated and consolidated 68 existing instruments
- “bill of rights” for seafarers
- address almost all aspects of work
- compliance and enforcement components

COMMITTEE ON SAFE  
SEAS AND THE  
PREVENTION OF  
POLLUTION FROM SHIPS  
(COSS) Regulation No.  
2099/2002/EC







## United Nations Convention on the Law of the Sea



Logo of the Convention

<b>Signed</b>	10 December 1982
<b>Location</b>	Montego Bay, Jamaica
<b>Effective</b>	16 November 1994 <sup>[1]</sup>
<b>Condition</b>	60 ratifications
<b>Signatories</b>	157 <sup>[2]</sup>
<b>Parties</b>	168 <sup>[2][3]</sup>
<b>Depositary</b>	Secretary-General of the United Nations
<b>Languages</b>	Arabic, Chinese, English, French, Russian, and Spanish

Primacy of the Flag State in all matters related to nationality and operation of ships

The Flag state shall effectively exercise jurisdiction and control over administrative, technical and social matters over ships flying its flag

A state is required to take such measures for ships under its flag as are necessary to ensure safety at sea with regard inter alia to use of signals and maintenance of communication and the prevention of collision.

Each state is required to conform to the generally accepted international standards and to take any steps which may be necessary to ensure their observance

Only a flag state has the power to arrest or detain a ship 'even as a measure of investigation' after a collision or any other incident of navigation on the high sea.

## Article 94

### *Duties of the flag State*

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular every State shall:
  - (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
  - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:
  - (a) the construction, equipment and seaworthiness of ships;
  - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
  - (c) the use of signals, the maintenance of communications and the prevention of collisions.
4. Such measures shall include those necessary to ensure:

- (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
- (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
- (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

In taking the measures called for in paragraphs 3 and 4 each State is to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to their observance.

A State which has clear grounds to believe that proper jurisdiction control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to the installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by either State into any such marine casualty or incident of navigation.

### **Resolution A.1070(28) IMO Instrument Implementation (III) Code**

- ☐ Part 1 – Common Areas
- ☐ Part 2 – Flag State
- ☐ Part 3 – Coastal State
- ☐ Part 4 – Port State

**Entered into force on 1 January 2016 – mandatory!**

**Forms the basis of the IMO audit standard**

### Objective (para 1 – 2)

- ❑ To enhance global maritime safety and protection of the marine environment and assist States in the implementation of instruments
- ❑ An Administration is only bound by the instruments to which it is Party
- ❑ By virtue of geography and circumstance, States may have a greater role as flag / port /coastal States

### Strategy (para 3)

- ❑ develop an overall strategy to ensure that its international obligations and responsibilities as a flag, port and coastal State are met;
- ❑ establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and
- ❑ continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability as a flag, port and coastal State





### Scope (para 6)

- ☐ safety of life at sea
- ☐ prevention of pollution from ships
- ☐ load lines
- ☐ tonnage measurement of ships
- ☐ regulations for preventing collisions at sea
- ☐ standards of training, certification and watchkeeping for seafarers





### Scope: para 7 – areas that should be considered

- ☐ jurisdiction;
- ☐ organization and authority;
- ☐ legislation, rules and regulations;
- ☐ promulgation of the applicable international mandatory instruments, rules and regulations;
- ☐ enforcement arrangements;
- ☐ control, survey, inspection, audit, verification, approval and certification functions;
- ☐ selection, recognition, authorization, empowerment and monitoring of recognized organizations, as appropriate, and of nominated surveyors;
- ☐ investigations required to be reported to the Organization; and
- ☐ reporting to the Organization and other Administrations.

### Initial actions (para 8-9)

#### The Government should:

- ☐ Have the ability to promulgate laws
- ☐ Have a legal basis for the enforcement of its national laws and regulations
- ☐ Have the availability of sufficient personnel with maritime expertise
- ☐ communicate the strategy (incl. national legislation) to all



### Records, para 10

- ☐ Established and maintained;
- ☐ Purpose: to provide evidence of conformity to requirements and effective operation of the State;
- ☐ Legible, readily identifiable and retrievable;
- ☐ Documented procedures to define the controls needed for the identification, storage, protection, retrieval, retention time and disposition of records



### Implementation (para 15-16)

**Implement policies and assign responsibilities**

**Establish resources and processes capable of administering a safety and environmental protection programme**

- ☐ Administrative instructions or interpretative national regulations may be needed to implement applicable international rules and regulations
- ☐ Audit and inspection programme
- ☐ “to the satisfaction of the Administration” – Should be addressed in legislation/regulation/policy and procedures
- ☐ Compliance with STCW Convention – i.e. training, certificates and monitoring

### Para 16 (cont.)

### “To the satisfaction of the administration” - Example

#### SOLAS– Chapter II-2 Regulation 9 - *Containment of fire*

2.2.3.1. In addition to complying with the specific provisions for fire integrity of bulkheads and decks of passenger ships, the minimum fire integrity of all bulkheads and decks shall be as prescribed in tables 9.1 and 9.2. Where, due to any particular structural arrangements in the ship, difficulty is experienced in determining from the tables the minimum fire integrity value of any divisions, such values shall be determined **to the satisfaction of the Administration**.

### Delegation of authority, para 18-21

- ☐ Authorizations to be regulated in accordance with SOLAS regulation XI-1/1 which makes RO Code mandatory
- ✓ *Written agreement*
- ✓ *Issue instructions (for example those to be followed in case a ship is found unfit to proceed)*
- ✓ *Provide national law and interpretations (for example on “to the satisfaction of the administration”)*
- ✓ *Require adequate resources and maintenance of records*
  
- ☐ Establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its recognised organisation(s)



### Enforcement, para 22-27



- ☐ take all necessary measures to secure observance of international rules and standards by ships entitled to fly its flag and by entities and persons under its jurisdiction
  - ✓ *Prohibiting ships entitled to fly its flag from sailing until compliant with rules*
  - ✓ *Periodic inspection*
  - ✓ *Penalties of adequate severity in national law*
- ☐ develop and implement a control and monitoring programme, as appropriate

### Enforcement, para 22-27 (cont.)

- ☐ Provide an appropriate number of qualified flag State surveyors
- ☐ Provide an appropriate number of accident investigators
- ☐ Ensure training and oversight of the surveyors and investigators
- ☐ When a ship is detained under PSC oversee the appropriate corrective action to bring her in immediate compliance with Conventions
- ☐ Issue or endorse certificates only when a ship meets all applicable instruments

### Flag State surveyors, para 28-37

- ☐ Minimum qualifications
- ☐ Minimum experience
- ☐ Formal training programme
- ☐ Appropriate practical and theoretical knowledge of ships
- ☐ Other personnel assisting to have appropriate training
- ☐ Documented system for qualifications
- ☐ Identification document



### Flag State investigations, para 38-41

- ☐ conducted by impartial and objective investigators, who are suitably qualified and knowledgeable in matters relating to the casualty
- ☐ Recommended to ensure ready access to expertise
- ☐ Should be investigated and reported to IMO:
  - ✓ Resolution MSC.255(84) “Casualty Investigation Code”
  - ✓ Resolution A.1075(28) “Guidelines to assist investigators in the implementation of the Casualty Investigation Code”



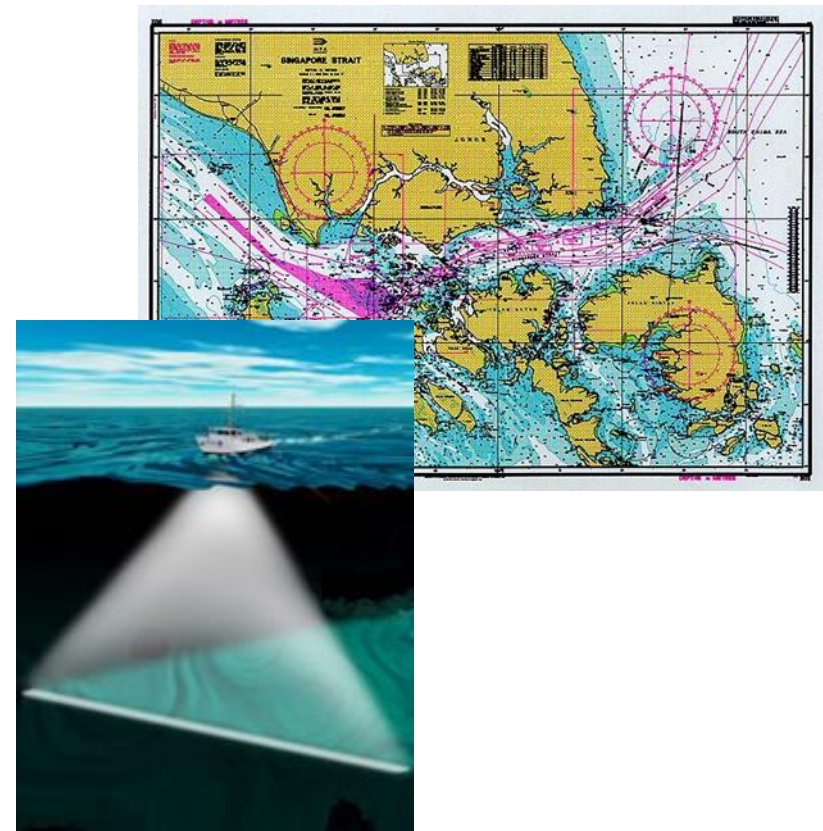
### Evaluation and review, para 42-44

- ☐ Evaluate its performance on a periodic basis
- ☐ Measures to evaluate the performance should be place
- ☐ Several areas recommended for regular review:
  - ✓ *fleet loss and accident ratios*
  - ✓ *detained ships*
  - ✓ *incompetence or wrongdoing by certificates holders*
  - ✓ *responses to PSC deficiency reports*
  - ✓ *investigations into serious & very serious casualties*
  - ✓ *results of inspections, surveys & control of ships*
  - ✓ *investigation of occupational accidents*
  - ✓ *incidents & violations occurred under applicable international legislation*
  - ✓ *suspensions or withdrawals of certificates, endorsements, approvals*



## Rights, obligations and responsibilities may include, inter alia:

- ☐ Radio-communication services
- ☐ Meteorological services
- ☐ Search and rescue services
- ☐ Hydrographic services
- ☐ Ships' routing
- ☐ Ship reporting systems
- ☐ Vessel traffic services
- ☐ Aids to navigation





### Rights, obligations and responsibilities may include, *inter alia*:

- ☐ provision of appropriate reception facilities or capability to accept all waste streams
- ☐ keeping a register of fuel oil suppliers
- ☐ port State control

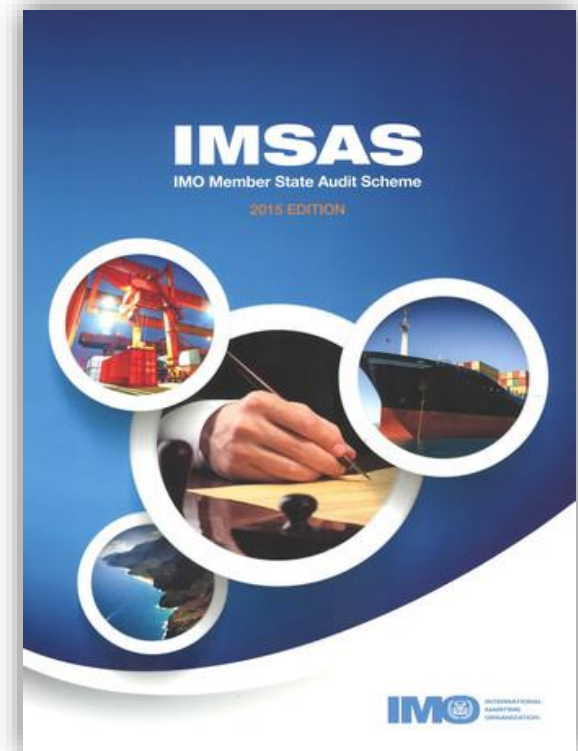


## Resolution A.1121(30) - 2017 Non-exhaustive list of obligations under instruments relevant to the IMO Instruments Implementation Code (to be kept under review):

A 30/Res.1121 Page 0	
Annex	
<b>2017 NON-EXHAUSTIVE LIST OF OBLIGATIONS UNDER INSTRUMENTS RELEVANT TO THE IMO INSTRUMENTS IMPLEMENTATION CODE (III CODE)</b>	
(This Non-exhaustive list of obligations takes into account the amendments to the IMO instruments relevant to the III Code which have, or are expected to have, entered into force by or on 1 July 2018)	
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Annex 6:	SUMMARY OF AMENDMENTS TO MANDATORY INSTRUMENTS REFLECTED IN THE NON-EXHAUSTIVE LIST OF OBLIGATIONS (ANNEX 4)
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Annex 2		
SPECIFIC FLAG STATE OBLIGATIONS		
The following table contains a non-exhaustive list of obligations, including those obligations imposed when a right is exercised.		
SPECIFIC FLAG STATE OBLIGATIONS		
SOURCE	SUMMARY DESCRIPTION	COMMENTS
<b>TONNAGE 1969</b>		
Article 6	Determination of tonnages	
Article 7(2)	Issue of certificates	
Article 9	Form of certificate	
Annex I, Reg. 1(3)	Novel types of craft – determination of tonnage and communication to IMO on method used	
Annex I, Reg. 5(3)(b)	Change of net tonnage – alterations or modifications deemed by the Administration to be of a major character	
Annex I, Reg. 7	Measurement and calculation	

- ❑ Mandatory audit since 1 January 2016
- ❑ Resolution A.1067(28) Framework and Procedures for the IMO Member State Audit Scheme
- ❑ III Code forms the basis of the audit standard



## MEMBER STATES SCHEDULED TO BE AUDITED IN 2019

NO.	MEMBER STATE	Audit period	Remark
76	Eritrea	January	Audit confirmed
77	Viet Nam	January	Audit confirmed
78	<del>Portugal</del>		(Audited in 2016)
79	Algeria	September	Audit confirmed
80	United Republic of Tanzania	February	Audit confirmed
81	Tuvalu	March	Audit confirmed
82	Comoros	March	Audit confirmed
83	Uganda		No audit proposed. For decision of C 120
84	Croatia"		Voluntary audit carried out, moved to the back of the list
85	Zimbabwe		No audit proposed for decision of C 120
86	Iceland	June	Audit confirmed
87	Tonga	May	Audit confirmed
88	Solomon Islands	June	Audit confirmed
89	Saint Vincent and the Grenadines"		Voluntary audit carried out, moved to the back of the list
90	Libya	April	Response received
91	Saudi Arabia	November	Audit confirmed
92	The former Yugoslav Republic of Macedonia		No audit proposed. For decision of C 120
93	Mozambique	July	No response yet
94	Kuwait	October	No response yet
95	Dominica	September	No response yet
96	Montenegro	November	No response yet
97	Syrian Arab Republic		Postponement proposed for decision of C 120
98	Guatemala	October	Audit confirmed
99	Haiti	December	No response yet
100	Palau	December	Audit confirmed



# Thank you for listening

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