Issues of Contemporary Interest

The Voluntary IMO Member State Audit Scheme: An Accountability Regime for States on Maritime Affairs

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Abstract
In this article, the issue of monitoring compliance of State obligations and responsibilities that are derived from them being parties to the various international maritime treaties adopted under the purview of the International Maritime Organization (IMO) will be explored. The genesis of why monitoring compliance of State actors is now topical and the development of the Voluntary IMO Member State Audit Scheme in response thereto will be highlighted. The positive outcome of the audits conducted under the voluntary Scheme and the level of participation of Member States in the Scheme have now brought to the fore the need to consider developing a mandatory audit regime applicable to all Member States of the IMO. In this respect, this article will proffer a possible way forward for the further development of the Audit Scheme.

Key words: Responsibilities, Accountability, Member States, Audit Scheme

1 Introduction
The drive to improve and establish recognized accountability regimes for the various actors, which commenced in the early nineteen nineties, saw the establishment of the Flag State Implementation (FSI) Sub-Committee of the IMO, the expansion of port State Memorandum of Understanding (PSCMoU) from the Paris MoU as the sole PSC regime to eight additional PSCMoUs covering the entire globe, the development of the ISM Code and the revision of the 1978 STCW Convention. Although the 1995 amendments to the 1978 STCW Convention had created a degree of State accountability with respect to the requirements of that Convention, the absence of a broader regime for State accountability with respect to their international maritime treaties obligations was viewed as the weak-link in enhancing further the implementation and enforcement of such treaties.

This article will explore some of the contemporary issues associated with the regulatory and enforcement paradigm of international shipping by the principal actors and their roles. The identification and delimitation of the principal actors and their

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roles are based on the author’s first hand experience in dealing with these actors as participants in the development and implementation of the regulatory and enforcement regimes at the international level. It will also provide a perspective of the genesis and current state of play of the Voluntary IMO Member State Audit Scheme, as well as an insight into the possible future development of the Scheme.

2 The Principal Actors and Their Roles in International Shipping

The regulatory and enforcement paradigm of international shipping has five principal actors, namely: the International Maritime Organization (IMO); governments; recognized organizations; shipowners/shipping companies; and seafarers. These actors and their roles are as follows:

- The IMO, as a specialized agency of the UN, has the responsibility to develop global technical safety, security and pollution prevention standards relating to ships and shipping activities.
- Governments have the duty to implement and enforce these standards.
- Recognized organizations (ROs) have a duty to be impartial and exercise due diligence in carrying out statutory tasks delegated to them by governments.
- Shipowners/shipping companies are responsible for the consistent application of the same standards to individual ships.
- Seafarers have the task of putting into operation the various safety, security and anti-pollution measures applicable to the ship.

It is obvious from the mix of actors that regulating and enforcing shipping standards could become disjointed if the actors were to act independently. Fortunately, this does not always happen; but when it does, the result has been loss of life, environmental damage, economic loss, amongst others. It is precisely to eliminate independent regulatory action by individual actors, with the associated consequences, as well as to continuously develop mechanisms to retain confidence amongst nation States that international shipping is safe, secure and environmental sound, that IMO was founded and has been most successful.

Notwithstanding this success, the prevailing situation and modus operandi of the various actors do not provide a mechanism to unequivocally measure the effectiveness of the regulatory and enforcement regime. To highlight this point, one needs to briefly examine the state of play of the principal actors.

Under various treaties, governments are responsible for ensuring compliance by other actors with the provisions of such treaties. However, some of these same treaties provide unrestrained powers to flag States (governments) to delegate statutory work, which also entails compliance verification on other actors. They also provide additional latitude for States to determine their own shipping standards through the phrase “to the satisfaction of the Administration” and equivalency and exemption provisions. As a result, national laws to implement international shipping treaties could vary considerably and this leads to: