

Identification and Analysis of the Legal Status of International Maritime Organization Instruments

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Abstract : Identifying which international maritime legal instruments are mandatory or recommendatory is complicated task even for maritime regulatory bodies. Although International Maritime Organization (IMO) had tried to ease the complexity by adopting guidelines on uniform wordings for making reference to other instruments in IMO parent conventions, there has still been some confusion identifying the mandatory status of IMO instruments. The aim of this study was to map out a step-based guideline to resolve the complexity of the mandatory status of IMO instruments to the maximum extent possible. This study reviewed the history of IMO rule-making process to find the root cause of the problem, then analyzed the approaches of regulatory enforcement bodies to check the practices. In conclusion, readers are directed to find such information as to legal status of IMO instruments and an improvement is proposed to enhance the transparency of information sharing for maritime industry to make better informed decisions.

Key Words : International Maritime Organization, Mandatory instrument, Recommendation, Flag State, Classification society

1. Introduction

From the early 19th century, with the wide spread of ocean-going ships, maritime states started to realize the necessity to regulate the activities of ships and their interactions, such matters like signaling and collision prevention. Britain was the front runner of introducing national maritime law for the safety of their ships. Some of these national maritime laws also applied to foreign ships operating in British waters. Other maritime states started making their own national law by modeling British maritime laws. From the early 20th century, these national laws for regulation of shipping started to transform into codified international maritime laws and resulted in approximately 60 mandatory International Maritime Organization (IMO) instruments (Mansell, 2009). The IMO is the source of approximately 60 legal instruments that guide the regulatory development of its member states to improve safety at sea and protect the maritime environment (IMO, 2001). The most well-known IMO instruments are the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention for the Prevention of Pollution from Ships (MARPOL). In general, IMO instruments consists of four layers in terms of implication to maritime industry:

- The top layer consists of IMO Conventions such as SOLAS, MARPOL, the Convention on the International Regulations for Preventing Collisions at Sea (COLREG), the International

Convention on Load Lines (ILL).

- The second layer consists of mandatory codes such as the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC), the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC), the International Safety Management Code (ISM), the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines (NOx).

- The third layer consists of technical resolutions and circulars which gives interpretations and guidance to the above top and second layers.

- The fourth layer can be defined as standalone resolutions and circulars.

However, identifying which IMO instruments are mandatory or recommendatory is not strait forward as it supposed to be. With the top layer, it is relatively easy to recognize the mandatory application because all IMO conventions are mandatory in nature. However, it is not the case with IMO codes in the second layer, because there are some exceptions that are recommendatory even though most codes are mandatory. Similarly, in the third and fourth layers, there are a few mandatory resolutions whilst most of resolutions are recommendatory. As such there is no clear way to recognize the mandatory application of the instruments by the category of the documents or by the name of document. Moreover, some instruments in the third and fourth layers, which are considered as having a non-mandatory nature for treaty purpose,

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can turn into mandatory requirements in the implementation stage. In these cases, the determination of mandatory application is done by the maritime regulatory implementation bodies such as flag States and Classification Societies as far as ship survey is concerned. In some cases, such policies of flag States or Classification Societies have been on a case-by-case basis, causing more confusion to the maritime industry. For instance, with the same recommendatory instrument some flag States mandate it as a national statutory requirement whereas other flag States still treat it as a recommendatory requirement. This situation requires ship builders to change their design to meet different statutory requirement according to the statutory requirement of the chosen flag States. In some cases, this results in huge cost implications to ship builders if the different implementations were found at a later stage of the ship building project. Therefore, it is very important to the maritime industry to distinguish the mandatory or recommendatory nature of IMO instruments. Although IMO once tried to ease this complication by adopting a guideline in the past, however, it turned out that the effort of IMO had not been sufficient. That is mainly because the IMO guideline only focused on the rule-making stage with some suggested uniform wordings to indicate the mandatory nature of the instruments. In addition, the lack of clarity of the IMO guideline at the rule implementing stage has resulted in different approaches between flag States when they establish national regulations.

Unfortunately, there has been no research and detailed study on IMO instruments in terms of identifying the mandatory and recommendatory in practice because it requires a comprehensive understanding of IMO instruments in general and their application by the regulatory bodies in practice.

The aim of this study is to map out a step-based guidelines to resolve such complexity to the maximum extent. To achieve the goal, this paper begins by examining how IMO instruments have evolved in recent decades to understand where the complexity started. To this end, the working papers of the 66th session of IMO Maritime Safety Committee (MSC) were closely reviewed to find the root causes of the complexity. In addition, the practices in the industry in the implementation stage were thoroughly examined by comparing the policies and practices of the main regulatory bodies. Consequently some experts from flag Administrations and Classification Societies were interviewed about the practical application of IMO Resolution A.911(22)¹⁾ in the real world. As

the main finding of the study, a step-based approach to identify the mandatory IMO instruments is presented which would serve as a commonly accepted guiding principle in the maritime industry.

2. Structure and legal status of IMO instruments

2.1 The relation of Convention and Codes

The most important IMO instruments are the IMO conventions which are negotiated, adopted and ratified by the IMO Member States. All the adopted IMO conventions are considered legally binding by all Member States as mandatory requirements for international shipping. Supplementing and elaborating on the conventions, the IMO has also adopted several technical codes, typically dealing with a specific technical area. Having some separate codes under the parent convention was necessary when IMO faced two issues. First, over the late 20th century the volume of conventions had increased dramatically. Second, there was increased complexity with too crowded treaty for those interested to digest. Therefore, the IMO has produced a separate "code" under the convention and then made reference in the parent convention. Thus, a code from a parent convention is considered an integral part of the convention and is given the same legal status. However, there are several codes that are referred to in the convention footnotes that are not considered as mandatory instruments under any conventions, for example, Code of Alerts and Indicators, Code of Safe Practice for Cargo Stowage and Securing (CSS), Code of Safety for Special Purpose Ships (SPS). They are all recommendatory in nature.

Therefore, it is impossible to determine whether an IMO code is mandatory or non-mandatory (i.e. recommendatory) only by looking at the title of the instrument. In other words, even though the title of an instrument such as CSS and SPC is "code", it is not actually mandatory for treaty purposes. This fact has caused confusion even among some experts in the maritime industry.

2.2 Legal status of Resolutions and Circulars

Apart from the conventions and codes, the IMO has also issued thousands of resolutions and circulars. Some of these are named as performance standards, guidance, guidelines or recommendations that are not considered suitable for regulation by formal treaty instruments. Whilst majority of these are recommendations from a legal point of view, there are some mandatory instruments that are directly referred to by conventions providing the same mandatory status as the conventions themselves. For example,

1) Uniform wording for referencing IMO instruments, Adopted on 29 November 2001 by Assembly 22nd session.

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Resolution A.739(18)², A.789(19)³ and A.744(18)⁴ are all mandatory resolutions under the relevant provisions of SOLAS and/or MARPOL.

Similar to the IMO codes mentioned above, there is no 'one size fits all' principle to judge the mandatory status of IMO resolutions. In contrast, in terms of IMO circulars it is relatively simple to distinguish the legal status. It can be safely said that all IMO circulars have a recommendatory nature from a legal point of view.

Nevertheless, the complexity on how to treat IMO instruments in terms of mandatory application causes much confusion as all those conventions, codes, resolutions and circulars are mixed together in the implementation stage. In order to draw a clear map for this complicated puzzle, the history of the IMO rule making process up to the present is examined in the next chapter of the paper.

3. Evolution of IMO rule making process

3.1 IMO practice before Resolution A.911(22)

Around early 1990s the IMO had become increasingly aware of the confusion caused by the variety of methods and wordings used in the SOLAS and MARPOL Conventions for referencing mandatory and recommendatory instruments. This was mainly because there was no principle on how to reference the mandatory instruments in parent conventions. Thus, the wordings of such references were decided by the preferences of those participants who drafted the clauses each time. It could be considered as patchwork on a case-by-case basis and inconsistent wordings were used. For instance, the same referencing wordings in the parent convention were used in some case for mandatory instruments, and in other case for non-mandatory instruments. In cases with IMO codes, the recommendatory wording 'should' was used in the mandatory codes. The typical example is the IGC Code which was a mandatory treaty under SOLAS Convention since 1986, but the wording 'should' was used until 2014 amendments (IMO, 2014) that finally changed the wording to 'shall' to clearly indicate the mandatory status of the code.

To solve these long-standing problems, MSC at its 65th session

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- 2) Guidelines for the Authorization of Organizations Acting on Behalf of the Administration
 - 3) Specifications On the Survey and Certification functions Of Recognized Organization Acting on Behalf of the Administration
 - 4) Guidelines on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers

in 1995 decided to address the problem of identifying the criteria that could form the basis for determining which IMO instruments are mandatory nature (Ringbom, 1997). In reviewing the rule making practice of IMO, the MSC observed that, in general, expressions such as 'shall comply with', 'in accordance with', 'in compliance with' and 'not in inferior to' were used in the existing regulations to refer to mandatory instruments, whereas 'taking into account', 'having regard to' and 'based on' were used to refer to recommendations (IMO, 1996).

3.2 IMO practice after Resolution A.911(22)

After long discussions, the MSC finally produced the draft guidelines on methods for making reference to IMO and other instruments in IMO conventions in 2000. The draft guidelines were further reviewed by the Legal Committee (LEG), the Marine Environment Protection Committee (MEPC) and the Facilitation Committee (FAL). In November 2001, the IMO Assembly formally adopted Resolution A. 911(22) under the title 'Uniform wording for referencing IMO instruments' (IMO, 2002). The main purpose of this resolution was to ensure that, where reference is made to IMO instruments, a uniform wording is used so as to indicate clearly the legal status of the instruments referred. The Resolution A. 911(22) suggests, in particular, that the best method for making IMO instruments mandatory is to follow the methods of SOLAS Chapters VII and X for making the IBC, IGC and the International Code of Safety for High-Speed Craft (HSC) codes mandatory. To prevent any misunderstandings in the future, the use of such titles as 'guidelines' or 'guidance' should be avoided for any mandatory instruments.

Since then the IMO has followed this procedure for any new instruments and amendments, thus eliminating the inconsistency existed in the past. At least this procedure provided clear indication of the IMO's intention in the first place whether the instrument was meant to be mandatory or recommendatory.

Among IMO instruments, there are recommendations such as guidelines, manuals, guidance, best practices that usually support the smooth implementation of mandatory conventions and codes. To clearly indicate the recommendatory nature, Resolution A.911(22) suggests that recommendatory documents be referred to in the footnotes but in terms clearly expressing their recommendatory nature. For example, the wordings like 'shall be approved by the Administration, taking into account the recommendations developed by the Organization' or '...., based on the guidelines developed by the Organization' should be used in

the text of the relevant convention.

The most clear indication and very simple way to distinguish the mandatory nature is highlighted in paragraph 3.3 in the Annex of Resolution A. 911(22). Where a referenced mandatory instrument had not been written appropriately, that is. the word 'should' has been used instead of 'shall', it is temporarily suggested to remedy the inconsistent situation by prescribing expressly in the text of the relevant convention regulations to read 'such requirements shall be treated as mandatory'. The very example of this kind was the IGC code as discussed above. As time went by, the necessity of this temporary procedure has diminished as all old treaties such as the IGC code have been amended with the word 'shall'. Now, it is safe to say that any requirements in IMO instruments with the word 'shall' is mandatory, similarly, any requirement with the word 'should' is recommendatory at least for treaty purposes. This is the first and important step to distinguish the legal status of any IMO instruments. After this principle is made clear, the next step is to identify mandatory application in practice from those recommendatory instruments with the word 'should'.

3.3 Quasi-mandatory IMO instruments

Among IMO instruments, there are performance standards and technical specifications for equipment to which reference is made in footnotes of IMO conventions. Such performance standards and technical specifications referred to in the footnotes are not considered as mandatory instruments for treaty purposes because they do not appear in the authentic text of the parent conventions. Therefore, they do not constitute an integral part of the parent conventions. Consequently, they are written with the recommendatory wording 'should'.

However, when referring to performance standards and technical specifications, such as performance standards for equipment of, navigational equipment, radio communication system, oil discharge and monitoring systems, etc., somewhat stronger expressions are used, e.g., "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"; "the manual shall be drawn up to a standard at least equivalent to that developed by the Organization." These strong wordings urge each flag States to establish national standards not inferior or at least equivalent to those developed by IMO. This different wording mechanism makes the performance standards and technical specifications practically

mandatory requirement. Unless any flag States come up with at least equivalent standards themselves, they are obliged to comply with IMO performance standards. It is widely accepted by the maritime community to consider those performance standards and technical specifications as quasi-mandatory instruments.

In summary, IMO instruments can be grouped in three tiers regarding the mandatory requirements for treaty purposes:

- the top tier is the mandatory instruments that include:

A. Conventions such as SOLAS, MARPOL, COLREG, ILL, etc.

B. Mandatory codes that are made mandatory by parent conventions such as IBC, IGC, ISM, NOx, etc.

C. Mandatory resolutions that are made mandatory by parent conventions such as Resolution A.739(18), A.789(19) and A.744(18).

- The second tier includes the quasi-mandatory instruments such as performance standards for radio equipment in SOLAS Chapter IV, performance standards for navigational equipment in SOLAS Chapter V, performance standards for oil discharge and monitoring systems in MARPOL Annex I & II, etc.

- The third tier includes the recommendatory instruments such as recommendations, guidelines, manuals or guidance, etc.

4. Mandatory application of IMO instruments in practice

4.1 The role of Flag States in making IMO instruments mandatory

The enforcement of IMO conventions is up to the enforcement of the flag States as far as their own flagged ships are concerned. The IMO conventions are not actually laws, rather they are internationally agreed 'templates' that Member States use as a base for enacting their maritime legislation. This does not mean that all Member States should have exactly the same maritime law because some of the states modify and others do not even make them national legislation. But it helps to avoid inconsistent maritime legislation, and thus on important issues such as safety and environment most maritime countries now have almost the same maritime law (Stopford, 2009).

In principle, the role of flag States is predominant in the enforcement of IMO conventions. All flag States need to take their responsibilities under IMO instruments either by discharging their duties themselves or by delegating the authority to some reliable

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Recognized Organizations (ROs). However, by the 1970s, there were the growing number of ships registered in some of flag States which don't have enough ability or human resources to implement IMO instruments to their legislation appropriately, and these States were not enforcing international maritime regulations. Due to the failure of the flag States to fulfill their duties in enforcing international maritime regulations, the importance of the roles of the port State control (PSC) was emerged. From the 1990s, the roles of the port States have expanded significantly as the port States have tightened the control measures for ships calling at their ports by inspecting general condition of ships to check if the ship is in compliance with the terms of statutory certificates (Anderson, 1998). If deficiencies of foreign ships are discovered by PSC officers, the ships are subject to control measures such as rectification of deficiencies before departure or possible detention in some cases. A number of IMO conventions provide the legal ground for such PSC activities. The SOLAS Convention, for example, states that "the officer carrying out the control shall take such steps as will ensure that the ship shall not sail until it can proceed to sea without danger to the passengers or the crew". This can be done if "there are clear grounds for believing that the condition of the ship and its equipment does not correspond substantially with the particulars of that certificate".

This means that port States have a right to impose mandatory requirements of those instruments to ships registered in non-Party countries (Hosanee, 2009). Therefore, even if the flag State is not a party to an international convention, or did not make it national law, the port States have control power to enforce mandatory IMO instruments to foreign vessels calling at its sovereign territory waters.

This PSC mechanism along with 'no more favourable treatment' principle has made IMO instruments implemented globally on all internationally trading ships irrespective of whether any flag States have enacted IMO instruments or not. Therefore, it is important to recognize which IMO instruments are mandatorily applicable to all internationally trading ships regardless of flags they fly. As observed in the previous section 3.2 of this paper, it is relatively easy to determine the mandatory status with the top tier IMO instruments, that is. all IMO conventions, mandatory codes and a few mandatory resolutions.

As for the second tier, that is, quasi-mandatory instruments, these are considered practically mandatory requirements unless any flag States come up with at least equivalent standards themselves. In practice, as there are few such flag States who formally

developed their own standards against IMO standards, it could be concluded that all IMO performance standards and technical specifications are mandatorily applied in practice to ships operating internationally.

However, with the third tier recommendatory instruments such as recommendations, guidelines, manuals or guidance, there are many different approaches in terms of mandatory applications. Although these are recommendatory in principle, it is up to flag States decision as far as ships registered in that State are concerned. They may still choose to enforce recommendatory IMO instruments as mandatory requirement through their national legislation. In case a flag Administration made an IMO guidance as its national law, it becomes mandatory for its flagged ships. However, the guidance is still recommendatory for other countries.

As a general rule, it is the responsibility of shipowners and shipbuilders to check the national legislation for an individual ship for compliance with such national regulations. For that purpose, nowadays many maritime administrations provide their website with relevant national regulations, but it is still difficult to consult those national laws as they are usually long and complicated. Even some national laws are written in local language which makes it difficult to find the right information. One way to solve the problem of identifying which recommendatory IMO instruments are made mandatory is to consult the 'country file' of some Classification Societies. The usage of the country file is further discussed in Section 4.2 along with the role of the ROs in implementing IMO instruments in practice.

4.2 The role of ROs in making IMO instruments mandatory

The flag States, given the responsibilities under the IMO conventions, can either conduct a survey of the flagged ships by their own inspectors or delegate the ship survey to a number of ROs. SOLAS and other IMO conventions permit flag Administrations may choose to delegate the survey of ships to their ROs. In reality, almost all flag States have delegated authority to a number of Classification Societies for statutory inspection and surveys under mandatory IMO conventions and its national legislation. This is mainly because most flag Administrations do not have adequate technical capacity, human resources or worldwide coverage to conduct all the necessary statutory surveys by its own inspectors (IACS, 2011).

To assist each flag Administration in delegating such survey functions to appropriate ROs, the IMO produced two important mandatory instruments in early 1990s: 1) Resolution A.739(18) -

Guidelines for the authorization of organizations acting on behalf of the Administration; 2) Resolution A.789(19) - Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration. Furthermore, in 2013, IMO updated these two Resolutions, by adopting the Code for Recognized Organizations (RO Code) (IMO, 2013). In delegating the responsibility of flag States to their ROs, the paragraph 8.5 of the RO Code clarifies that the flag State should specify whether the flag State's standards go beyond convention requirements for its flagged ships. This means that the national laws beyond the convention requirements can only be mandatory for their flagged ships. If there are any such additional requirements, it is necessary for the flag State to notify the specific information to its ROs. To this end, ROs can clearly identify the additional requirements applicable to ships registered in that flag State. To capture these flag-specific additional requirements, most Classification Societies have their own version of a 'country file'. The information in the country file is widely available to the maritime industry to consult with. This is where the shipowners and shipbuilders could get the information about flag State enforced mandatory IMO instruments. However, this mechanism is not perfectly working for every flag States because there are some flag States who do not follow the RO Code, and there are some ROs who do not produce an appropriate country file. Given the circumstances, consulting a good quality of country file from some well-established Classification Societies is the best practical way to identify any IMO instruments that a flag State mandated out of recommendatory instruments. In this regard, Classification Societies have made a significant contribution toward easy identification of mandatory IMO instruments that are mandated by individual flag States.

Additionally, Classification Societies have their own policy in implementing IMO instruments. Although each Classification Society has its own unique policy that may differ from others, there are some common practices among them that the maritime industry can depend on. It is evident that they all stick to mandatorily implementing the top tier IMO instruments, that is, all IMO conventions, mandatory codes and a few mandatory resolutions. As for the second tier, that is, quasi-mandatory instruments, it is also common practice that these instruments are considered as mandatory requirements unless any of the flag States instruct otherwise. However, with the third tier, that is, recommendatory instruments such as recommendations, guidelines, manuals or guidance, the practices of each Classification Society differ regarding implementation.

In principle, whenever making any statutory related decisions, ROs need to get agreement from the flag States. In practice, however, when the flag States delegate the statutory work to ROs, some amount of discretion is also given. Therefore, ROs may make their own decision to some extent when implementing recommendatory IMO requirements without seeking agreement from the flag States each time. In most cases, unless the flag State instructed not to apply the specific recommendatory instrument, ROs usually make their professional judgement in accordance with their internal policy. As a result, each RO or Classification Society has its own way of making decisions. For instance, some ROs are reluctant to convert recommendations into mandatory requirements, whereas others have a simple policy to treat recommendations as mandatory requirements.

As a few Classification Societies distinguish some resolutions or circulars from others as a so-called 'the recommendations for supporting mandatory requirements'. These recommendations are usually referred to in the footnote of the conventions but under a specific regulation with expressions such as "shall be approved by the Administration, taking into account the recommendations developed by the Organization". They treat these instruments differently and usually determine to apply these instruments, unless the flag State instruct the Classification Societies otherwise. Having determined that these documents are to be applied to their classed ships, if there is a request from the industry not to apply these requirements, they would require a demonstration that the proposed means of compliance is equivalent to the requirements of the appropriate circular and meet the goals of the regulation. In the absence of a documented equivalency, they would decline the request and insist on the application of that circular. This is the way how Classification Societies treat the recommendations as mandatory requirements in practice. On the contrary, there is a category of standalone resolutions/circulars in the publication of IMO conventions/codes that have appeared in the footnotes but without any reference in a regulation's text. These are resolutions/circulars that represent 'best practice'. In most cases, ROs do not insist on their application of these standalone documents unless there is a direct instruction from a flag State.

As a result, there are recommendatory IMO documents that are in practice mandatorily applied by ROs, whereas there are recommendations ROs would not insist to comply with. Therefore, it is difficult for industry practitioners to identify which requirements they need to comply with on their ships. At present there is no clear way to identify such cases. Unlike the country

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files with information on flag States enforced mandatory instruments, there is no such place to find out Classification Society enforced IMO mandatory instruments. This is probably because these policies are considered to contain business sensitive information of a Classification Society that cannot be revealed to its competitors. The only way to know the details is to contact the Classification Society inquiring its position on the specific IMO documents when the question arises on a case-by-case basis.

Thus, the author is of the opinion that it is necessary for ROs to publish their policy on the treatment of IMO instruments similar to how they produce country files for flag-specific information. By understanding the policy documents of Classification Societies, the industry practitioners will easily know which IMO instruments are mandatory from Classification Society point of view, as they would know the flag State point of view from the country files.

4.3 Four step approach to IMO instruments

After reviewing the transition history of the IMO rule-making process and analyzing the approaches of regulatory enforcement bodies (flag States and Classification Societies), this study suggests a step-based approach to identifying mandatory application of IMO instruments to aid the maritime industry in making better informed decision in practice as follows:

Step 1: If any regulations of IMO instruments are written with wording 'shall', they are all mandatory for treaty purposes. In contrast, any regulations with 'should' are non-mandatory from a strict legal point of view. These are the top tier IMO instruments which include all IMO conventions, including most codes such as IBC, IGC, ISM, NOx, etc. In addition, any instruments that were expressly referred to as mandatory in the text of the relevant convention are mandatory instruments such as Resolutions A.739(18), A.789(19) and A.744(18).

Step 2: Among those non-mandatory regulations with wording 'should', if such wordings as 'not inferior to' or 'at least equivalent to' are used in the regulations referencing performance standards and technical specifications, these are categorized as so-called quasi-mandatory instruments. For instance, performance standards for radio equipment, navigational equipment, oil discharge and monitoring systems are treated as mandatory instruments in practice.

Step 3: The rest of IMO documents other than mandatory instruments determined in Steps 1 and 2 are categorized as third tier recommendatory instruments such as recommendations, guidelines, manuals or guidance, etc. Flag States still can mandate

to comply with them on their registered ships. Further information on flag State specific mandatory IMO instruments can be found by visiting at the flag States' website or by consulting the country files.

Step 4: In addition to the mandatory instruments identified in Steps 1, 2 and 3, there is still a possibility that some of the recommendations turn into mandatory requirements by Classification Societies in exercising their discretion while implementing a particular instrument. In general, they tend to enforce such resolutions or circulars that are considered as 'the recommendations for supporting mandatory requirements'. Nevertheless, it is common practice to treat the so-called standalone resolutions/circulars as recommendatory.

5. Conclusions and suggestions

Identifying which IMO instruments are mandatory or recommendatory is complicated task even for maritime regulatory bodies. In the past this was mainly because IMO instruments were not written based on the agreed procedure from the beginning, rather they were largely patchwork of those participants who drafted the clauses each time, thus resulting in inconsistencies with mixed wording of references in the regulations' text. The complexity has been relaxed since 2001 when the IMO adopted Resolution A.911(22) which provided a clear guideline on wordings in the parent IMO conventions to make referenced instruments mandatory. However, Resolution A.911(22) solved the problem partly, as it only provided the distinction between mandatory and recommendatory for treaty purposes. There is still confusion about how to treat non-mandatory instruments in practice.

After reviewing the transition history of the IMO rule-making process and analyzing the approaches of regulatory enforcement bodies this study suggests a four-step approach as follows:

Step 1: If any regulations of IMO instruments are written with the wording 'shall', they are all mandatory for treaty purpose. In contrast, any regulations with 'should' are non-mandatory from a strict legal point of view.

Step 2: Among those non-mandatory regulations with wording 'should', if such wordings as 'not inferior to' or 'at least equivalent to' are used in the regulations referencing performance standards and technical specifications, these are categorized as so-called quasi-mandatory instruments.

Step 3: The rest of IMO documents other than mandatory

instruments determined in Steps 1 and 2 are categorized as third tier recommendatory instruments such as recommendations, guidelines, manuals or guidance, etc. The Flag States can still mandate their compliance for their registered ships.

Step 4: In addition to mandatory instruments identified in Steps 1, 2 and 3, there is still a possibility that some of recommendations are turned into mandatory requirements by Classification Societies in exercising their discretion in implementing a particular instrument.

While the information about flag State-mandated instruments can be found in the respective country files, there is no such place to find out Classification Societies enforced IMO mandatory instruments. Therefore, it is suggested that Classification Societies need to publish their own policy on the treatment of IMO instruments just as they produce country files for flag State-specific information. In the long run, this effort will enable the maritime industry to make better informed decisions in practice for their full compliance with any IMO instruments without confusion, the need of interpretation, and time-consuming arguments between maritime stakeholders concerned.

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