



## TRACECA Workshop – Ratification of Conventions Part 2 – Implementation of Conventions

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# TRACECA Workshop - Ratification of Conventions

## Overview

Development of international maritime conventions

Transformation of conventions into national legislation

Requirements of the IMO III Code

**Implementation of conventions**

International conventions and EU legislation



# 4 – Implementation of conventions

## III Code, Annex, Part 1, Para. 4 & 5

- Reference to duties of maritime States under the United Nations Convention of the Law of the Sea (UNCLOS)
- Duty of administrations to promulgate and enforce safety and environmental protection regulations
- Administrations to ensure a ship is fit for the service intended
- Administrations to adopt measures to prevent, reduce and control pollution and not to transfer damage or hazards from one area to another



# 4 – Implementation of conventions

## Obligations for flag States acc. to UNCLOS art. 94 (I)

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.



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## Obligations for flag States acc. to UNCLOS art. 94 (II)

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 – Implementation of conventions

## Obligations for flag States acc. to UNCLOS art. 94 (III)

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.

# 4 – Implementation of conventions

## Obligations for flag States acc. to UNCLOS art. 94 (IV)

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.
6. A State which has clear grounds to believe that proper jurisdiction and 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.
7. 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 ships or 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 that other State into any such marine casualty or incident of navigation.

# 4 – Implementation of conventions

## Initial Actions – III Code, Annex, Part I, Para. 7-8

- When a new instrument enters into force for an IMO member State the State must be in the position to implement this instrument into national law and enforce it.
- This means the State must have
  - the ability to promulgate laws which permit effective jurisdiction and control in administrative, technical and social matters over ships flying its flag and, in particular, provide the legal basis for general requirements for registries, the inspection of ships, safety and pollution-prevention laws applying to such ships and the making of associated regulations;
  - a legal basis for the enforcement of its national laws and regulations including the associated investigative and penal processes; and
  - the availability of 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.



# 4 – Implementation of conventions

## National legislation

- Many IMO member States have a two-tier system for flexibility & efficiency
  - Tier 1 - Statutes or Acts
  - Tier 2 - Subsidiary legislation or “Regulations”
- Statutes or Acts – passed by Parliament
- Typical examples
  - Act concerning the maritime administration
  - Merchant Shipping Act
  - Act regulating Civil Liability & Compensation for Oil Pollution
  - ...

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## Subsidiary legislation

- Passed by Govt agencies (e.g. MPA) with approval of Minister, under authority of the “parent Act”
- Subject to frequent amendments
- Technical & detailed
- Amendments to IMO instruments transposed to subsidiary legislation
- Mandatory IMO codes and guidelines given effect by direct reference in subsidiary legislation

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## Typical questions related to initial actions

- Which is the lead ministry to start such a process?
- Which other ministries have to be involved?
- What other consultation process take place before a decision about a law is made?
- When is the Parliament involved?
- Who officially needs to sign a new law before it is enacted?
- How does it have to be published?
- How is it officially submitted to IMO?

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## Example Singapore

### **STAGE 1: STUDY CONVENTION & ITS APPLICATIONS (3-6 months)**

1. Identify implications & obligations of being a Party
2. Determine manpower, resources & training needs of staff
3. Conduct initial consultation & prepare recommendations
4. Seek Management's approval on positions to be taken & to start accession process



### **STAGE 2: ACCESSION & IMPLEMENTATION PLAN (2-3 months)**

Prepare & obtain approval for accession & implementation plan, that include:

1. Formation of Working Group
2. Schedule of preparatory work
3. Identify type of legislation required & time needed to complete legislation



### **STAGE 3: CONSULTATION (1-6 months)**

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

# 4 – Implementation of conventions

## Example Singapore



### **STAGE 4: APPROVAL (2-3 months)**

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



### **STAGE 5: LEGISLATION (6-12 months)**

1. Prepare draft legislation for vetting by Legal Dept & AGC, & obtain necessary approvals
3. If Bill required (to enact or amend an Act ), prepare it & obtain approval of MOT, MOF & Cabinet to table bill at Parliament
4. Ensure legislation ready for promulgation
5. Liaise with Legal Dept & S'pore National Printers, & arrange Gazette notification for bringing legislation into force (if required)

# 4 – Implementation of conventions

## Example Singapore



### **STAGE 6: INSTRUMENT OF ACCESSION (1-3 months)**

1. Prepare instrument of accession
2. Forward to MFA, through MOT, for deposition
3. Mandatory reporting to IMO




### **STAGE 7: NOTIFICATION & SEMINARS (1-3 months)**

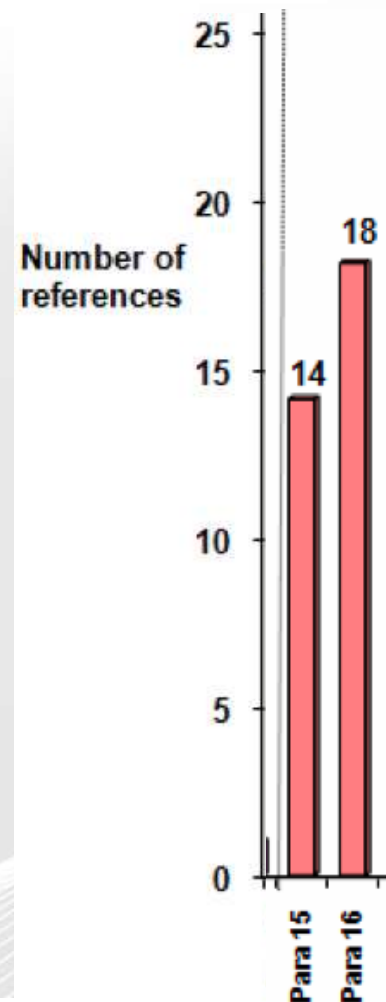
1. Issue circulars & press releases
2. Liaise with relevant parties (SSA, SMF, tertiary institutions or professional bodies) to organise seminars
3. Conduct internal briefings or training for staff

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## III Code, Annex, Part II, Para 15 - 17

- Para. 15 of the code requires flag States to implement policies through the issuance of national legislation and guidance which will assist in the implementation and enforcement of the requirements of all safety and pollution prevention conventions and protocols to which they are party and to assign responsibilities within the Administration
- Para. 16 requires Flag States to establish resources and processes capable of administering a safety and environmental protection programme
- Para. 17 addresses safe manning

 In previous audits deficiencies were noted regularly!







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## Implementation – III Code, Annex, Part II, Para 15

- What does this mean?
  - The international instruments provide for the standards but they do not always provide the necessary guidance needed in order to effectively enforce them
    - Example – Requirement to investigate accidents
      - Guidance needed
        - » What is a suitably qualified investigator
        - » At what intervals training is needed for investigators
        - » What are reporting requirements for accidents
        - » ...



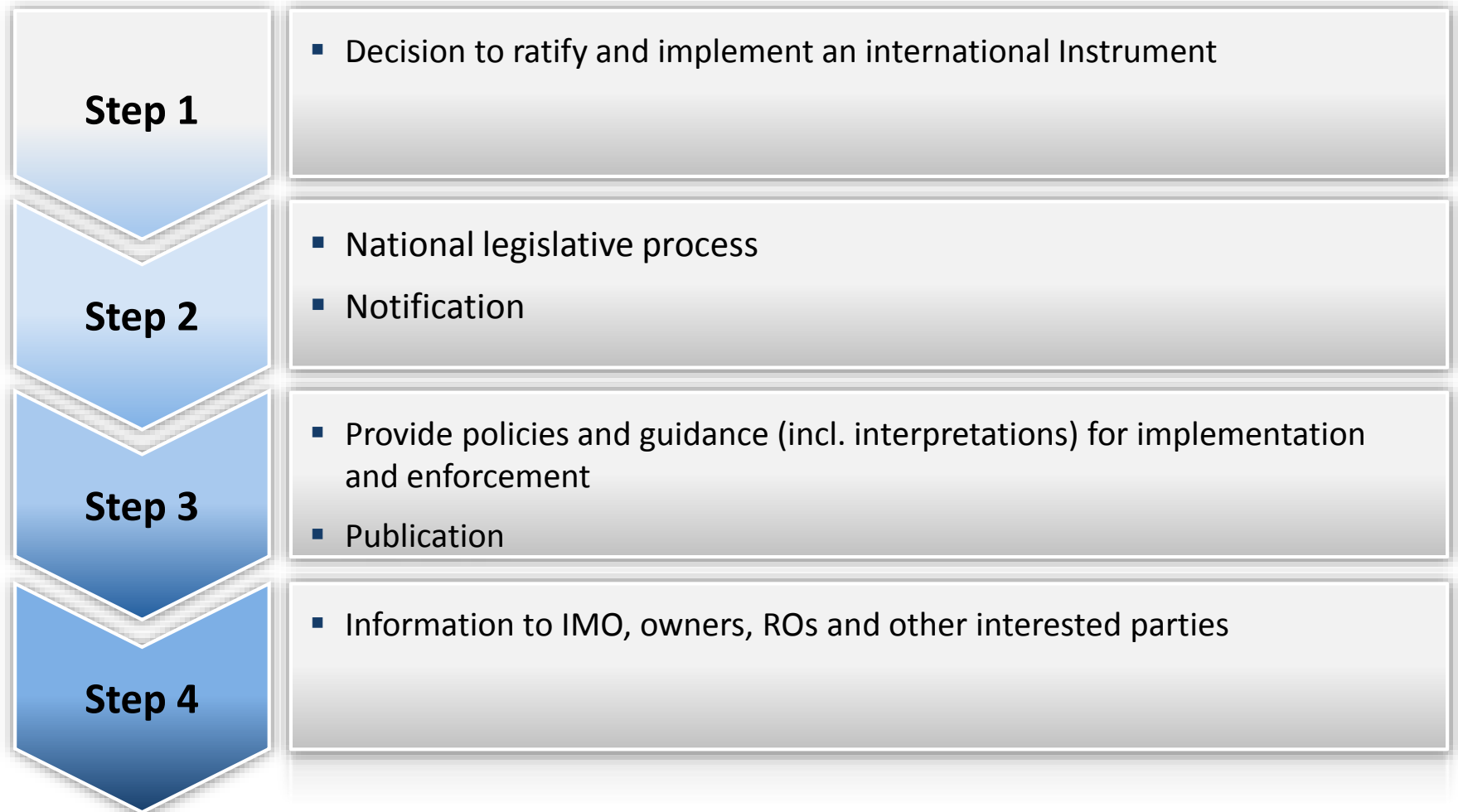
# 4 – Implementation of conventions

## What does this mean?

- Assign responsibilities within the Administration to update and revise any relevant policies adopted, as necessary.
  - ☞ Assign clear responsibility for the instruments where the State is a Party to or intends to become a party or recognizes it by other means (e.g. HSSC)
  - ☞ Analyze the implications for instruments where the State is not a party
  - ☞ Adjust responsibilities and resources according to the needs of actual developments and consider areas of expertise to be developed for new instruments coming into force, such as the BWM Convention, MARPOL Annex VI or the MLC 2006
- Experiences of other flag States shows, that the preparation for the implementation of some of the new instruments require significant resources, in particular the MLC 2006 – even though not an IMO instrument

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## Guidance for the Implementation and Enforcement



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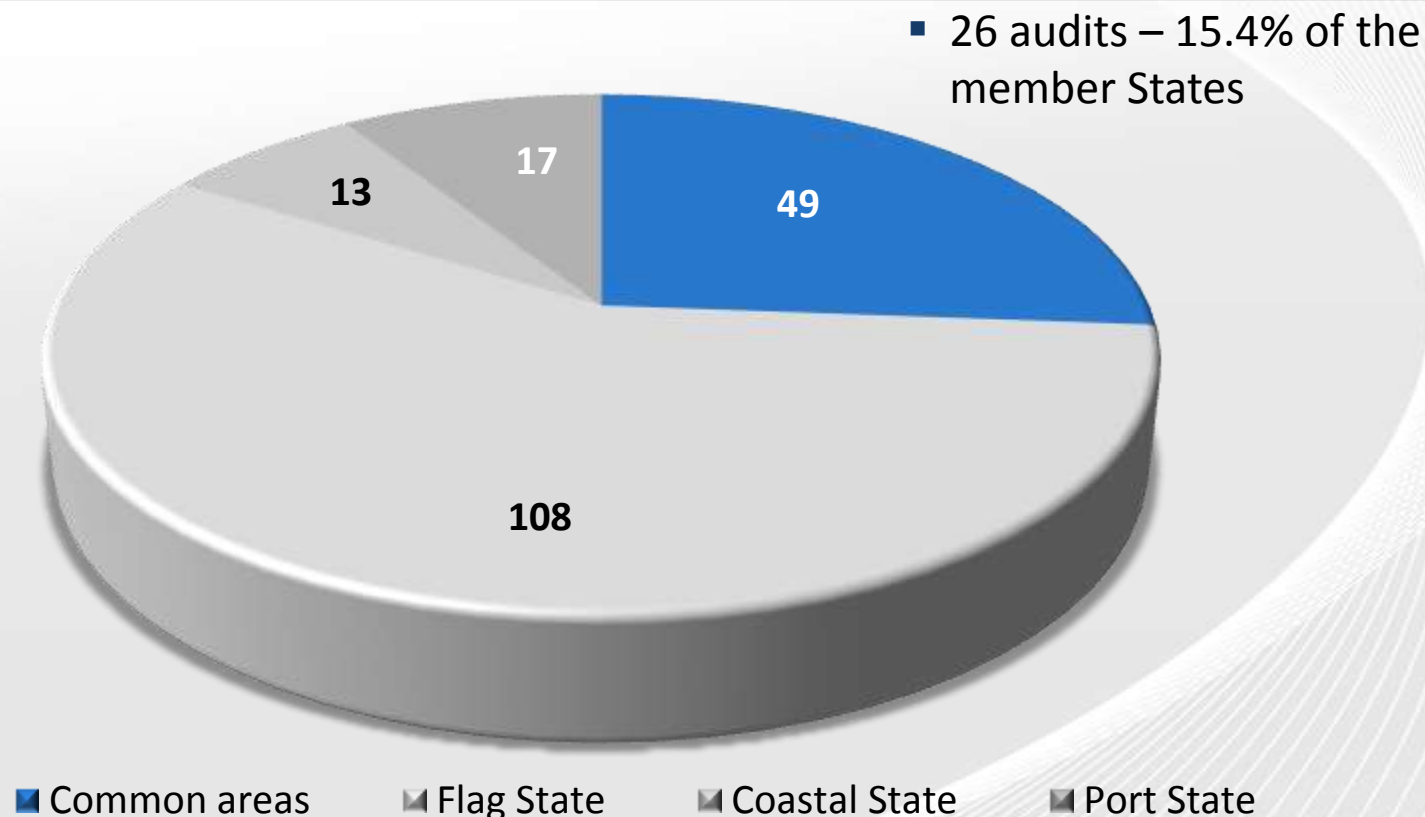
## Experience with the old VIMSAS so far

- Analysis of the Consolidated Audit Summary Reports (CASR) – FSI 18/INF. 7 in 2010
  - Summary of
    - 1<sup>st</sup> CASR (A25/8/1) – 8 audits conducted in 2006 and 2007
    - 2<sup>nd</sup> CASR (C 101/6/2) – 9 audits conducted in 2007
    - 3<sup>rd</sup> CASR (A26/9/1) – 9 audits
  - 26 audit resulting in 187 findings
    - 61 non-conformities
    - 126 observations

# 4 – Implementation of conventions

Source: FSI 18/INF. 7

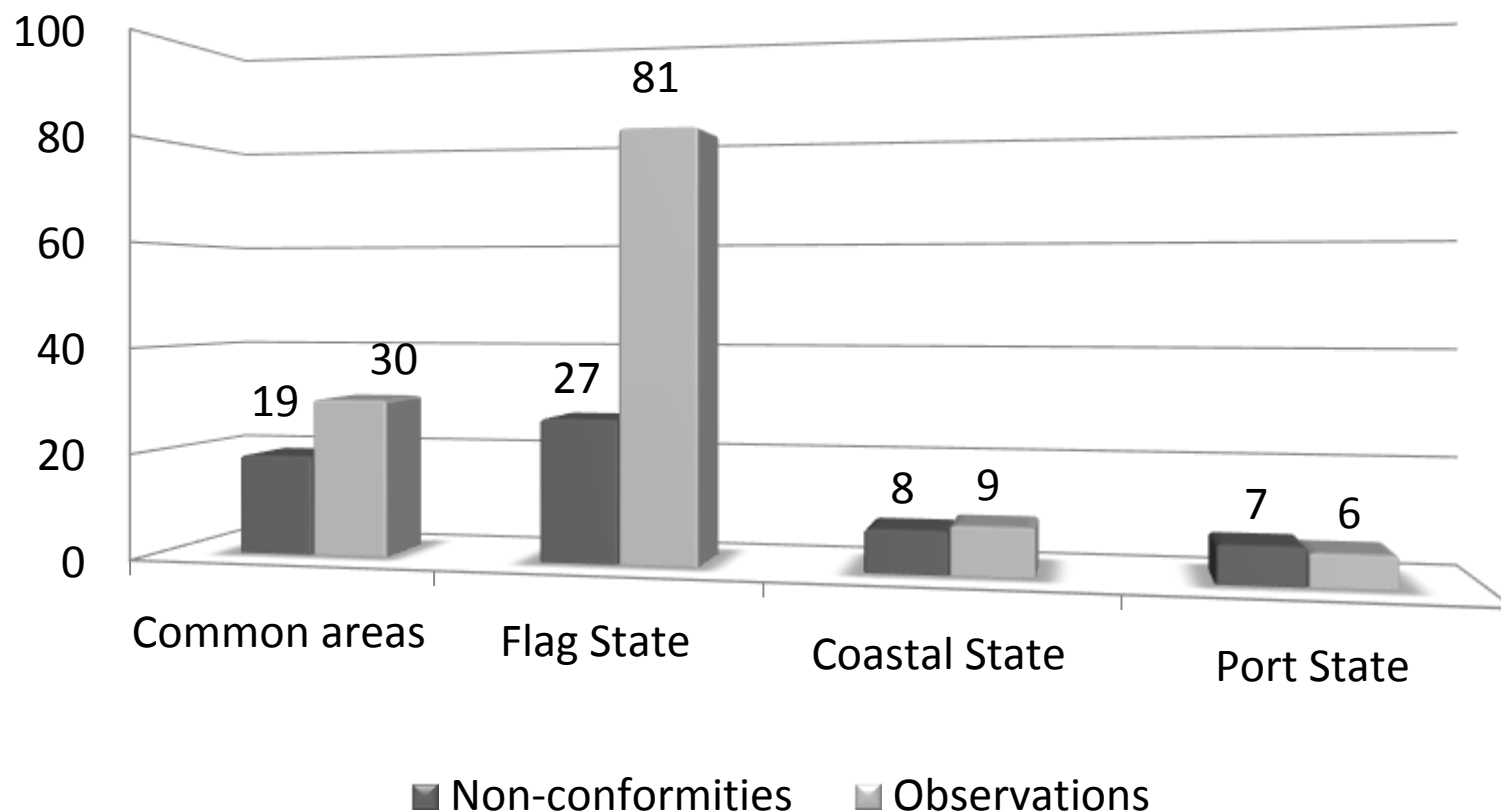
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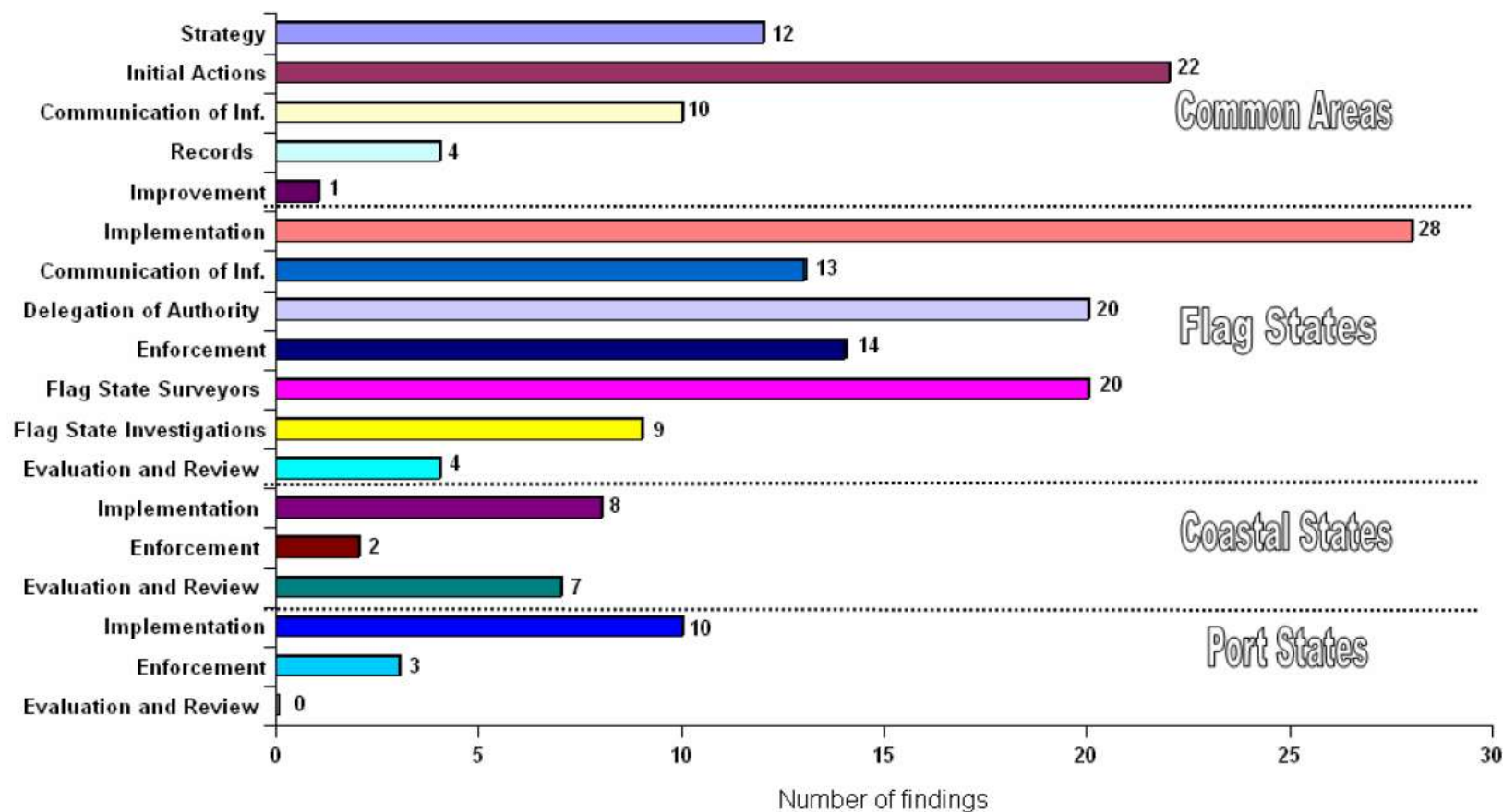
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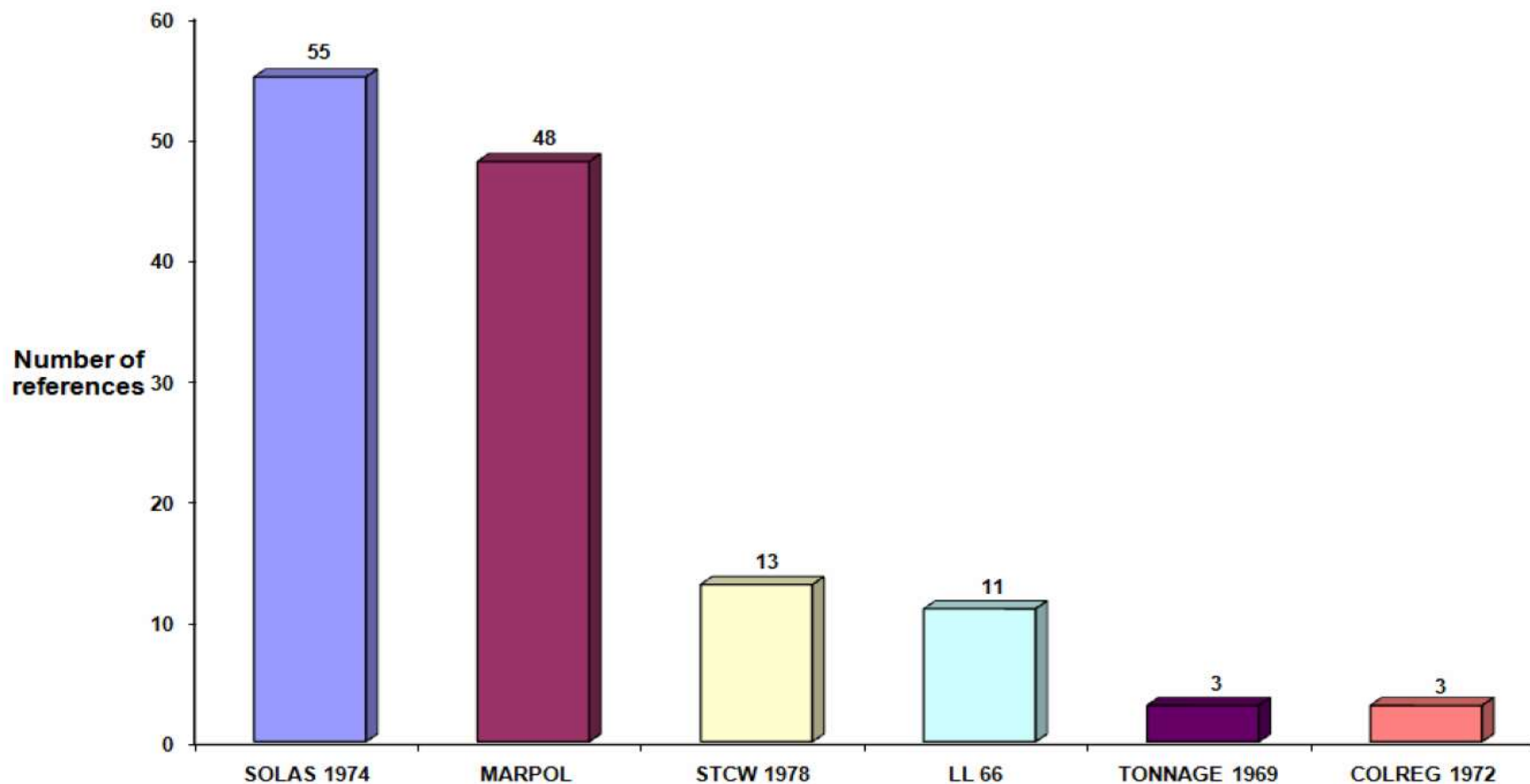
## Experience with the old VIMSAS so far



# 4 – Implementation of conventions

Source: FSI 18/INF. 7

## Experience with the old VIMSAS so far





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## Consolidated audit summary reports

- 7 reports so far
  - 1<sup>st</sup> CASR (A25/8/1) – 8 audits
  - 2<sup>nd</sup> CASR (C101/6/2) – 9 audits
  - 3<sup>rd</sup> CASR (A26/9/1) – 9 audits
  - 4<sup>th</sup> CASR (C105/6/1) – 9 audits
  - 5<sup>th</sup> CASR (A27/8/1) – 11 audits
  - 6<sup>th</sup> CASR (C109/5/1) – 7 audits
  - 7<sup>th</sup> CASR (A28/9/1) – 7 audits

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## Consolidated audit summary reports - examples

- NC
  - A considerable number of applicable mandatory IMO instruments and amendments thereto has not been fully adopted in national law. Furthermore, it was established that amendments were not adopted on a timely basis (SOLAS 1974, article I and MARPOL, article 1).
- Corrective action
  - A new approach will be adopted in which the Merchant Shipping Act will be amended to include direct referencing of relevant conventions, including their amendments adopted through the tacit amendment procedure. This approach will maintain the legislative base up to date and will effectively incorporate the body of conventions into national law. Some regulations will be drafted or amended to incorporate penalties, issue of certification, etc., as well as new requirements such as the Casualty Investigation Code. The deadline for the implementation of this corrective action is 30 June 2012.
- Root cause
  - There was a lack of resources for the development of national regulations and, taking into account the increasing output from IMO, the body of national regulations fell behind

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## Consolidated audit summary reports - examples

- NC
  - Amendments to mandatory IMO instruments were not given the full force of law in a timely manner by the completion of the legal procedure requiring their publication in the Official Gazette (SOLAS 1974, article I; Code, part 1, paragraph 7.1).
- Corrective action
  - A comprehensive plan of amendments to the mandatory IMO instruments, which are to be translated, will be prepared by 31 July 2012. Transposition of amendments into the national legislation is being expedited and will be completed by 31 December 2014. As a mechanism for continuous compliance, a yearly review will be established, through which the transposition of future amendments to the mandatory IMO instruments into the national law will be monitored and necessary resources planned in a timely manner.
- Root cause
  - Resources for translation of the documents were insufficient and continuous monitoring was ineffective.

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## Consolidated audit summary reports - examples

- Non-conformities (NC)
  - In accordance with the national legislation, all amendments to mandatory IMO instruments were automatically applicable and enforceable on the date that they enter into force internationally. Section 2 of the Merchant Shipping Law indicated that SOLAS 1974 and MARPOL, as amended and in force internationally, were in force nationally. However, the Merchant Shipping Regulations on the Certification, Safe Manning, Hours of Work and Watchkeeping, 2004, indicated that the STCW Code, as adopted in 1995, was in force, and the Merchant Shipping Regulations on IBC Code, 1988, indicated that the 1986 edition of IBC Code was in force (SOLAS 1974, article I; STCW 1978, article I(2); Code, part 2, paragraph 15.1).
- Corrective action
  - A review of the maritime legislation is being undertaken by the maritime administration and will be completed by 31 December 2011, to ensure consistency with respect to amendments to IMO instruments subsequent to entry into force of relevant national laws and regulations. Any laws or regulations found to contain a reference to an IMO instrument, without incorporating future amendments, will be amended as necessary through the prescribed procedures, by 29 February 2012. As a mechanism to ensure continuous compliance with this requirement in the future, a legislative drafting policy has been adopted such that any reference to an IMO instrument in the national legislation will include any amendments to that instrument.
- Root cause
  - There was an oversight in the drafting of the legislation.

# 4 – Implementation of conventions

## What are the arrangements in your home country?

- Can you describe your processes to implement an international instrument into national law?
- Which of the IMO instruments covered by the Code has your home country decided to become a party?
- What was the last instrument you have implemented?
- Were there any difficulties during the implementation?
- Where do you see the biggest challenges for the processes involved in initial actions?
- What would be possible solutions to overcome these problems?

**Any questions?**

# Questions & Answers

