

# Maritime Casualty Investigation

In view of United Nations Convention on the Law of the Sea, 1982  
IMO and EU regulations

## 5.2.1 Overview about Applicable Regulations in IMO Instruments

### SOLAS

#### Chapter I, Regulation 11, Maintenance of conditions after survey

(a) The condition of the ship and its equipment shall be maintained to conform with the provisions of the present regulations to ensure that the ship in all respects will remain fit to proceed to sea without danger to the ship or persons on board.

(b) After any survey of the ship under regulations 7, 8, 9 or 10 has been completed, no change shall be made in the structural arrangements, machinery, equipment and other items covered by the survey, without the sanction of the Administration.

(c) Whenever an accident occurs to a ship or a defect is discovered, either of which affects the safety of the ship or the efficiency or completeness of its life-saving appliances or other equipment, the master or owner of the ship shall report at the earliest opportunity to the Administration, the nominated surveyor or recognized organization responsible for issuing the relevant certificate, who shall cause investigations to be initiated to determine whether a survey, as required by regulations 7, 8, 9 or 10, is necessary. If the ship is in a port of a Contracting Government, the master or owner shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such a report has been made.

#### Chapter I, Regulation 21, Casualties

(a) Each Administration undertakes to conduct an investigation of any casualty occurring to any of its ships subject to the provisions of the present Convention when it judges that such an investigation may assist in determining what changes in the present regulations might be desirable.

(b) Each contracting Government undertakes to supply the Organization with pertinent information concerning the findings of such investigations. No reports or recommendations of the Organization based upon such information shall disclose the identity or nationality of the ships concerned or in any manner fix or imply responsibility upon any ship or person.

### MARPOL

#### Article 12, Casualties to ships

(1) Each Administration undertakes to conduct an investigation of any casualty occurring to any of its ships subject to the provisions of the regulations if such casualty has produced a major deleterious effect upon the marine environment.

(2) Each Party to the Convention undertakes to supply the Organization with information concerning the findings of such investigation, when it judges that such information may assist in determining what changes in the present convention might be desirable.

### Load Line

#### Article 23, Casualties

(1) Each Administration undertakes to conduct an investigation of any casualty occurring to ships for which it is responsible and which are subject of the present Convention when it judges that such an investigation may assist in determining what changes in the Convention might be desirable.

(2) Each contracting Government undertakes to supply the Organization with pertinent information concerning the findings of such investigations. No reports or recommendations of the Organization based upon such information shall disclose the identity or nationality of the ships concerned or in any manner fix or imply responsibility upon any ship or person.

### STCW

#### Regulation I/5, National provisions

1 Each Party shall establish processes and procedures for the impartial investigation of any reported incompetency, act or omission, that may pose a direct threat to safety of life or property at sea or to the marine environment, by the holders of certificates or endorsements issued by that Party in connection with their performance of duties related to their

certificates and for the withdrawal, suspension and cancellation of such certificates for such cause and for the prevention of fraud.

2 Each Party shall prescribe penalties or disciplinary measures for cases in which the provisions of its national legislation giving effect to the Convention are not complied with in respect of ships entitled to fly its flag or of seafarers duly certificated by that Party.

3 In particular, such penalties or disciplinary measures shall be prescribed and enforced in cases in which:

.1 a company or master has engaged a person not holding a certificate as required by the Convention.

.2 a master has allowed any function or service in any capacity required by these regulations to be performed by a person holding an appropriate certificate, to be performed by a person not holding the required certificate, a valid dispensation or having documentary proof required by regulation I/10, paragraph 5; or

.3 a person has obtained by fraud or forged documents an engagement to perform any function or serve in any capacity required by these regulations to be performed or filled by a person holding a certificate or dispensation.

4 A Party, within whose jurisdiction there is located any company which, or any person who, is believed on clear grounds to have been responsible for, or to have knowledge of, any apparent non-compliance with the Convention specified in paragraph 3, shall extend all co-operation possible to any Party which advises it of its intention to initiate proceedings under its jurisdiction.

**5.2.2 Resolution A.849(20): Code for the Investigation of Marine Casualties and Incidents, as Amended by Resolution A.884(21)**

**5.2.3 MSC/Circ.827 (updated by MSC/Circ.953/MEPC/Circ.372): Reports on marine casualties and incidents. Harmonized reporting procedures - Reports required under SOLAS regulation I/21 and MARPOL 73/78 articles 8 and 12**

**5.3.1 Directive 2002/59/EC of 27 June 2002 establishing a Community vessel traffic monitoring and information system**

## **Article 10**

### **Voyage Data Recorder**

1. Member States shall monitor and take all necessary and appropriate measures to ensure that ships calling at a port of a Member State are fitted with a voyage data recorder (VDR) system in accordance with the rules laid down in Annex II(II). Any exemptions granted to ro-ro ferries or high-speed passenger craft under Article 4(1)(d) of Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services<sup>(1)</sup> shall terminate on 5 August 2002.

2. Data which have been collected from a VDR system shall be made available to the Member State concerned in the event of an investigation following a casualty occurring within the waters under the jurisdiction of a Member State. Member States shall ensure that such data are used in the investigation and are properly analysed. Member States shall ensure that the findings of the investigation are published as soon as possible after its conclusion.

## **Article 11**

### **Casualty investigation**

Without prejudice to Article 12 of Directive 1999/35/EC, Member States shall comply with the provisions of the IMO Code for the investigation of marine casualties and incidents when conducting any marine casualty or incident investigation involving a ship referred to in this Directive. Member States shall cooperate in the investigation of marine casualties and incidents involving ships flying their flag.

### 5.3.2 Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services

#### Article 12 Accident Investigation

1. Member States shall define, in the framework of their respective internal legal systems, a legal status that will enable them and any other substantially interested Member State to participate, to cooperate in, or where provided for under the Code for the investigation of marine casualties, to conduct any marine casualty or incident investigation involving a ro-ro ferry or high-speed passenger craft.
2. 'Substantially interested State', 'lead investigating State' and 'marine casualty' shall have the same meaning as in the Code for the investigation of marine casualties.
3. When a ro-ro ferry or high-speed passenger craft is involved in a marine casualty, the investigation procedure shall be launched by the State in whose waters the accident or incident occurs or, if in other waters, by the last Member State visited by the ferry or craft. This State shall remain responsible for the investigation and coordination with other substantially interested States until such time as it is mutually agreed which is to be the lead investigating State.
4. Member States conducting, participating in or cooperating with such investigations shall ensure that the investigation is concluded in the most efficient way and within the shortest possible time taking into account the Code for the investigation of marine casualties.
5. Member States shall ensure that reports resulting from such an investigation are made public in accordance with point 12.3 of the Code for the investigation of marine casualties and notified to the Commission.

**Remark:**  
EMSA is currently preparing a Directive on maritime casualty investigation in Europe.

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### 5.1.1 United Nations Convention on the Law of the Sea, 1982

#### Relevant regulations:

#### Article 2 Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil

1. The sovereignty of a coastal State extends, beyond its land territory and international waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

#### Article 27 Criminal jurisdiction on board a foreign ship

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:
  - (a) if the consequences of the crime extend to the coastal State;
  - (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;

(c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or

(d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

## 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.

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.

## **Article 97**

### **Penal jurisdiction in matters of collision or any other incident of navigation**

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.
2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.
3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

## **Article 218**

### **Enforcement by port States**

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.
2. No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.
3. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, as far as practicable, comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.
4. The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.

## **Article 220**

### **Enforcement by coastal States**

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.
2. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.
3. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.

5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.

7. Notwithstanding the provisions of paragraph 6, whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal State if bound by such procedures shall allow the vessel to proceed.

8. The provisions of paragraphs 3, 4, 5, 6 and 7 also apply in respect of national laws and regulations adopted pursuant to article 211, paragraph 6.

## **Article 221**

### **Measures to avoid pollution arising from maritime casualties**

1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

## **Article 226**

### **Investigation of foreign vessels**

1. (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:

- (i) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;
- (ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or
- (iii) the vessel is not carrying valid certificates and records.

(b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.

(c) Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with Part XV.

2. States shall cooperate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.