



MARITIME SAFETY COMMITTEE
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FLAG STATE IMPLEMENTATION

Draft Code of the international standards and recommended practices for a safety investigation

Submitted by Brazil, China, Cyprus, Greece, Philippines, South Africa, International Chamber of Shipping (ICS), the International Shipping Federation (ISF), the International Transport Workers' Federation (ITF), BIMCO, INTERTANKO and INTERCARGO

SUMMARY

Executive summary:	This submission comments on the provisions of the draft Code of the international standards and recommended practices for a safety investigation into a marine casualty or marine incident
Action to be taken:	Paragraph 6
Related documents:	MSC 83/15; FSI 15/18, FSI 15/18/Add.1; resolutions A.930(22), A.931(22), A.947(23) and A.987(24); C 98D, paragraph 12.1(v) and Circular letter No.2711

1 The co-sponsors of this paper are concerned about some of the provisions in the draft chapter 12 (Obtaining evidence from seafarers). In particular, the formulation of the second sentence in paragraph 12.2:

“Further, a Seafarer from whom evidence is sought shall be informed, or allowed access to legal advice, regarding:

- (a) *Any potential risk that they may incriminate themselves in any proceedings subsequent to the Marine Safety Investigation;*
- (b) *Any right not to self-incriminate or to remain silent; and*
- (c) *Any protections afforded to the Seafarer to prevent the evidence being used against them if they provide the evidence to the Marine Safety Investigation.”*

is open to a number of interpretations. The use of the word “or” suggests that there are alternatives, some of which may not be compatible with international human rights instruments and which would be used to undermine the fundamental rights and freedoms of seafarers established by instruments of international law addressing human rights and in various IMO instruments as more fully described below.

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2 It should be recalled that resolution A.987(24) on Guidelines on fair treatment of seafarers in the event of a maritime accident, *inter alia*, contains the following paragraphs:

“SERIOUSLY CONCERNED about the need to ensure the fair treatment of seafarers in view of the growing use of criminal proceedings against seafarers after a maritime accident,

AWARE ALSO that seafarers may not be familiar with the law and processes of a port or coastal State and the impact those national laws may have on them,

CONCERNED ALSO that in some cases the detained seafarers have been subject to conditions in which their basic human rights appear not to have been fully respected,

CONSIDERING that, given the global nature of the shipping industry, seafarers need special protection,”

3 In this regard it is also important to recall that IMO Assembly resolutions A.930(22), A.931(22), and resolution 11 of the 2002 SOLAS Conference on human element-related aspects and shore leave for seafarers, which considered that, given the global nature of the shipping industry, seafarers need special protection, and resolution A.947(23), on the Human element vision, principles and goals for the Organization, as well as the decision of the eighty-ninth session of the Council (document C 89/D, paragraph 12.1(v)) to:

- .1 *instruct the Committees of the Organization and through them their subsidiary bodies, when developing new instruments or amendments to existing ones, to ensure that these are compatible and not in conflict with other instruments of international law and that they cannot be interpreted or used in a way that conflicts with such instruments and in particular the ones addressing human rights;*

4 It should also be recalled that the Organization has developed and adopted Guidelines on fair treatment of seafarers in the event of a maritime accident (Circular letter No.2711). The co-sponsors consider that it is essential that there is coherence between the IMO/ILO Guidelines on fair treatment of seafarers and the Code of the international standards and recommended practices for a safety investigation into a marine casualty or marine incident and that one does not undermine the other. While the scope of the two instruments is different, there are considerable overlaps between them. We are particularly concerned that the draft Code does not reflect the principles in the adopted IMO/ILO Guidelines on fair treatment of seafarers in the event of a maritime accident, in paragraphs 9, 10 and 11 generally and the principles in paragraphs 9.6 and 9.7 in particular.

5 The aforesaid provisions recognize the fundamental importance of ensuring that the seafarer is provided with information and access to legal advice concerning any potential risk of self-incrimination when providing information or giving evidence. The co-sponsors are concerned that the provisions of the second sentence of paragraph 12.2 undermines this principle and gives rise to ambiguity as to what the seafarer will be entitled to when assisting with any investigation. The co-sponsors propose that the easiest way to correct this ambiguity in this sentence is to replace “or” by “and”.

Action requested of the Committee

6 The Committee is invited to note the information provided and to decide as appropriate, in particular, to:

- .1 agree with the principles in paragraph 4 above; and
- .2 to adopt the amendment proposed in paragraph 5 above.