

**Resolution A.847(20)**

*Adopted on 27 November 1997*

*(Agenda item 11)*

**GUIDELINES TO ASSIST FLAG STATES IN THE  
IMPLEMENTATION OF IMO INSTRUMENTS**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

RECALLING FURTHER that, at its sixteenth session, it affirmed the contents of resolution A.500(XII) and the assignment of the highest priority to promoting the implementation of relevant international instruments for the improvement of maritime safety and pollution prevention,

RECOGNIZING that international law requires flag States to meet the responsibilities set forth in generally accepted international regulations, procedures and practices contained in IMO instruments and other mandatory instruments, and to take any steps which may be necessary to secure their observance,

REAFFIRMING its desire that ships comply at all times with maritime safety and pollution-prevention standards laid down in relevant IMO instruments,

BEING AWARE of the difficulties some States have in giving full and complete effect to the provisions of IMO instruments,

RECOGNIZING the importance of the ratification and implementation by all flag States of relevant instruments adopted by other international bodies,

DESIRING to assist Member Governments to ensure achievement of the IMO objectives,

HAVING ADOPTED resolution A.739(18) on Guidelines for the authorization of Organizations acting on behalf of the Administration and resolution A.789(19) on Specifications on the survey and certification functions of recognized Organizations acting on behalf of the Administration,

NOTING that, while States may realize certain benefits by becoming party to instruments aiming at promoting maritime safety and the prevention of pollution from ships, these desired benefits can only be obtained when all Parties concerned fully carry out their obligations as required by the conventions,

NOTING FURTHER that the ultimate effectiveness of any convention depends upon all States:

- .1 becoming party to the instruments mentioned above;
- .2 implementing them widely and effectively;
- .3 enforcing them rigorously; and
- .4 reporting to the Organization, as required,

HAVING CONSIDERED the recommendations made by the Maritime Safety Committee at its sixty-eighth session and by the Marine Environment Protection Committee at its fortieth session,

1. ADOPTS the Guidelines to Assist Flag States in the Implementation of IMO Instruments, set out in the annex to the present resolution;

2. REQUESTS the Maritime Safety Committee and the Marine Environment Protection Committee to conduct, with the direct participation of Governments concerned, a comprehensive analysis of difficulties encountered by them in the implementation of IMO instruments, with a view to identifying needs and appropriate solutions;
3. REQUESTS ALSO the above Committees to keep the Guidelines under continuous review and to update them in the light of the results of the comprehensive analysis referred to above;
4. REVOKES resolution A.740(18).

## Annex

### **GUIDELINES TO ASSIST FLAG STATES IN THE IMPLEMENTATION OF IMO INSTRUMENTS**

#### **1 GENERAL**

**1.1** These Guidelines are intended to provide flag States with a means to establish and maintain measures for the effective application and enforcement of the following IMO Conventions:\*

- .1 the International Convention for the Safety of Life at Sea (SOLAS), 1974;
- .2 the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78);
- .3 the International Convention on Load Lines (LL), 1966; and
- .4 the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978.

**1.2** Under the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) and of the above IMO conventions, Administrations are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give these instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended.

**1.3** Administrations should improve the adequacy of the measures which are taken to give effect to those conventions and protocols which they have accepted and ensure that they are effectively monitored. Improvement can be made through rigorous and more effective application and enforcement of national legislation. These Guidelines can help to achieve this improvement.

**1.4** Some flag States have encountered difficulties in fully implementing IMO instruments and in ensuring that prompt and timely surveys are conducted. Reasons for these difficulties include finances, personnel and technical expertise, delegation of authority, division of responsibilities and inadequate supervision of bodies acting on behalf of the flag State.

**1.5** Technical assistance for flag States experiencing difficulties in meeting their international responsibilities or in complying with these Guidelines is available through IMO.

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\* Reference is made to such applicable amendments as may be in force at any time.

## **2 INITIAL ACTIONS**

**2.1** When a convention enters into force for a State, the Government of that State must be in a position to implement its provisions through appropriate national legislation and to provide the necessary infrastructure. This means that a Government must have a functioning legislative body to enact laws applicable to ships flying its flag, and to provide for their subsequent enforcement. Consistent with article 94 of UNCLOS and the relevant provisions of the IMO conventions listed in 1.1, this capacity encompasses:

- .1 the ability of the flag State 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 vessels, safety and pollution-prevention laws applying to such ships and the making of associated regulations;
- .2 a legal basis for the enforcement of the flag State's national laws, including the associated investigative and penal processes; and
- .3 the availability in the flag State of sufficient personnel with maritime expertise to assist in the promulgation of the necessary national laws and to discharge the responsibilities of the flag State, including reporting as required by the respective conventions.

**2.2** A possible framework for national legislation implementing the SOLAS, MARPOL, Load Line and STCW Conventions is given in the appendix.

## **3 IMPLEMENTATION**

**3.1** In order to effectively discharge their responsibilities, flag States should:

- .1 implement policies through the issuance of national legislation and guidance which will assist in the implementation and enforcement of the convention requirements;
- .2 assign responsibilities within the Administration to update and revise the policies as necessary; and
- .3 formally adopt the above within a long-term strategic planning document.

**3.2** Flag States should seek to establish a support infrastructure capable of administering a safety and environmental protection programme which, as a minimum, should consist of the following:

- .1 personnel with appropriate technical expertise and background, qualified to guide, direct and manage the programme, as well as providing the continuity in service. Flag States should recruit and train suitable applicants, taking full advantage of existing training and technical assistance offered by IMO;
- .2 administrative instructions to implement applicable international regulations as well as any interpretative national regulations that may be needed;
- .3 facilities and personnel commensurate with the number, type and tonnage of ships flying their flag. In determining the number and location of offices needed, flag States should consider data collected from the oversight and control programmes below and the amount of work delegated to recognized organizations. It should be noted that evidence of non-compliance may indicate the need for greater focus on those areas to ensure compliance and/or an increase in programme resources;
- .4 resources to ensure compliance with basic MARPOL, SOLAS and LL requirements using an audit and inspection programme independent of the entities which have been delegated authority by the flag State to issue the required international certificates and documentation;
- .5 resources to ensure compliance with the requirements of the STCW Convention, as amended. This includes resources to ensure, *inter alia*, that:
  - .5.1 training, assessment of competence and certification of seafarers are in accordance with the provisions of the Convention;

- .5.2 STCW certificates and endorsements accurately reflect the competencies of the seafarers serving on board each ship flying its flag, using the appropriate STCW terminology as well as terms which are identical to those used in the safe manning document issued to the ship;
- .5.3 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, can be held;
- .5.4 certificates or endorsements issued by the flag State can be withdrawn, suspended or cancelled when warranted, and when necessary to prevent fraud;
- .5.5 administrative arrangements, including those involving training, assessment and certification activities conducted under the purview of another State, are such that the flag State accepts its responsibility for ensuring the competence of masters, officers and other seafarers serving on ships flying its flag. In this regard, particular reference is made to regulations 1/2, 1/9, 1/10 and 1/11 of the STCW Convention as amended; and
- .6 resources to ensure that investigations into casualties are conducted and to ensure adequate and timely handling of cases of deficient ships.

#### 4 DELEGATION OF AUTHORITY

4.1 Many flag States authorize organizations to act on their behalf in conducting the surveys and inspections required under the IMO conventions. Such delegation of authority must be regulated in order to promote uniformity of inspections and maintain established standards. Any delegation of authority to recognized organizations should therefore follow the Guidelines for the authorization of organizations acting on behalf of the Administration (resolution A.739(18))\* and the Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration (resolution A.789(19))† and, in particular, should:

- .1 determine that the recognized organization has adequate resources in terms of technical, managerial and research capabilities to accomplish the tasks being assigned, in accordance with the Minimum standards for recognized organizations acting on behalf of the Administration set out in appendix 1 to resolution A.739(18);
- .2 have as its basis a formal written agreement between the Administration and the recognized organizations which should as a minimum include the elements as set out in appendix 2 to resolution A.739(18) or equivalent legal arrangements, and may be based on the Model Agreement for the authorization of recognized organizations acting on behalf of the Administration (MSC/Circ.710 / MEPC/Circ.307);
- .3 specify instructions detailing actions to be followed in the event that a ship is found not fit to proceed to sea without danger to the ship or persons on board, or is found to present an unreasonable threat of harm to the marine environment;
- .4 provide the recognized organization with all appropriate instruments of national law giving effect to the provisions of the conventions or specify whether the Administration's standards go beyond convention requirements in any respect; and
- .5 specify that the recognized organization must maintain records which will provide the Administration with data to assist in interpretation of convention regulations.

4.2 To ensure that its international obligations are fully met when this type of arrangement is adopted, the flag State should establish an oversight programme with adequate resources for continuous monitoring of, and communication with, its recognized organizations, by:

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\* Resolution A.739(18) became mandatory under SOLAS regulation XI/1 on 1 January 1996.

† Resolution A.789(19) is scheduled to become mandatory under SOLAS regulation XI/1, as amended, on 1 July 1998.

- .1 retaining authority to conduct supplementary surveys to ensure that ships flying its flag comply with any national requirements which supplement the IMO conventions, e.g., occupational safety and health standards, manning levels, working hours and language requirements to assure shipboard communications; and
- .2 providing staff who have a good knowledge of the rules and regulations of the flag State and the recognized organizations and who are available to carry out effective field oversight of the recognized organizations.

## 5 ENFORCEMENT

5.1 To fulfil its international obligations it is essential for a flag State to establish and maintain an effective control over ships flying its flag. The need for this control is set out in article 94 of UNCLOS, and is implied in the IMO conventions listed in 1.1.

5.2 Flag States should take all necessary measures to secure observance of international rules and standards by ships flying their flag so as to ensure compliance with their international obligations. Such measures should, *inter alia*, include:

- .1 prohibiting ships flying their flag from sailing until such ships can proceed to sea in compliance with the requirements of international rules and standards;
- .2 the periodic inspection of ships flying their flag to verify that the actual state of the ship and its crew is in conformity with the certificates it carries;
- .3 instituting proceedings against ships flying their flag which have violated international rules and standards, irrespective of where the violation has occurred; and
- .4 providing in national laws and regulations for penalties of adequate severity to discourage violation of international rules and standards by ships flying their flag.

5.3 A control and monitoring programme should be an integral part of a flag State's maritime safety Administration. Such programmes help in maintaining internal quality standards, in evaluating the effectiveness of a flag State's actions in complying with convention instruments, and in identifying areas in IMO instruments which may need improvement. An effective programme should:

- .1 provide for prompt and thorough casualty investigations, with reporting to IMO as appropriate;
- .2 provide for the collection of statistical data, so that trend analyses can be conducted to identify problem areas;
- .3 provide for a timely response to deficiencies and alleged pollution incidents reported by port or coastal States;
- .4 include a regular review of:
  - .4.1 fleet loss and accident ratios to identify trends over selected time periods;
  - .4.2 the number of verified cases of substandard ships in relation to the size of the fleet;
  - .4.3 responses to port State deficiency reports or interventions;
  - .4.4 investigations into serious casualties and lessons learned therefrom; and
  - .4.5 financial, technical and other resources committed.

5.4 The flag State should:

- .1 ensure compliance with UNCLOS and with applicable IMO instruments through national legislation;
- .2 co-ordinate appropriate action against ships flying its flag which are not in compliance with applicable requirements;
- .3 ensure that an investigation is conducted in such cases;

- .4 provide an appropriate number of qualified personnel to implement and enforce the national legislation referred to in 5.4.1, including personnel for performing investigations and surveys; and
- .5 ensure the training and oversee the daily activities of flag State surveyors and investigators.

**5.5** A sufficient number of qualified flag State personnel should be available to investigate incidents where ships flying its flag have been detained by other port States. The flag State should be prepared to oversee appropriate corrective measures to bring the ship in question into immediate compliance with the applicable international conventions as far as practicable and whenever possible.

**5.6** A flag State, or a recognized organization acting on its behalf, should only issue an international certificate to a ship after it has determined that the ship meets all applicable requirements.

## **6 FLAG STATE SURVEYORS**

**6.1** Flag State surveyors should have the following professional qualifications, wherever possible:

- .1 a certificate issued under the relevant provisions of the STCW Convention, as amended, designating the holder as:
  - .1.1 master, qualified to command a ship of 3,000 GT or more; or as
  - .1.2 chief engineer, qualified to be in charge of machinery installed in a ship powered by main propulsion machinery of 3,000 kW or more; or as
  - .1.3 meeting the provisions of the Radio Regulations or holding an appropriate certificate related to the GMDSS; or
- .2 a university degree or diploma as a naval architect, mechanical engineer, electrotechnical engineer, or other type of engineer whose professional education relates to the maritime industry; or
- .3 not less than five years' service as an officer on board a ship at sea, as a naval architect, or as an engineer in the maritime field; or
- .4 a relevant university degree or diploma, augmented by completion of the following IMO model courses: 3.03 (Machinery), 3.04 (Electrical Installations), 3.05 (Fire Appliances and Provisions), 3.06 (Life-Saving Appliances), 3.07 (Hull), and 3.08 (Navigation) and relevant sea service of not less than six months.

**6.2** While the above qualifications are highly desirable, it is recognized that some countries may not have available a sufficient number of individuals so qualified. Competent surveyors may originate from other backgrounds, but all must be grounded in the same basic skills, taught in classrooms and subsequently reinforced in the field under the guidance of qualified surveyors approved by the flag State. The maritime Administration should develop and oversee the curriculum taught and the follow-up training for every surveyor. In addition to developing courses specializing in IMO conventions and in national laws and regulations, the maritime Administration is responsible for developing a policy to assist its field surveyors.

**6.3** The flag State should ensure that individual surveyors have working knowledge and practical experience in those subject areas pertaining to their normal duties. Additionally, to assist individual surveyors in the conduct of duties outside of their normal assignments, the flag State should ensure ready access to expertise in the following areas, as necessary:

- .1 all aspects of the IMO conventions;
- .2 all aspects of national laws and regulations;
- .3 hull fit-up and repair;
- .4 welding and hot work safety;
- .5 non-destructive testing;

- .6 vessel construction, subdivision, stability, watertight integrity;
- .7 vessel electrical and machinery systems;
- .8 load line and tonnage assignment;
- .9 safety equipment systems, plans, and equipment items;
- .10 fire protection construction methods;
- .11 bridge navigation and communications equipment;
- .12 vessel cargo operations and deck machinery;
- .13 carriage of dangerous chemicals in bulk and liquefied gases in bulk;
- .14 oil pollution prevention systems and procedures, including noxious liquid substances in bulk;
- .15 safe methods of confined space entry;
- .16 safety management systems; and
- .17 evaluation of the effects of the human element.

**6.4** During the first six months of employment within the flag State Administration, the surveyor should perform tasks under the supervision of an experienced surveyor, in accordance with an approved practical training programme.

**6.5** When a surveyor is to be employed for tasks other than those within his or her field of expertise and experience, the surveyor should receive the necessary training and guidance for the new tasks and should perform them for a period of not less than one month, as appropriate, under the supervision of a surveyor with experience in that field.

**6.6** Before a surveyor is employed on tasks relating to special ship types he or she should follow an appropriate training programme related to the particular ship type.

**6.7** When performing tasks on board ship, the surveyor should carry an identification document issued by the flag State. This document should indicate the surveyor's authority to conduct specific tasks on behalf of the flag State, and likewise indicate any limitations on that authority.

## **7 FLAG STATE INVESTIGATIONS**

**7.1** In addition to providing qualified surveyors, the flag State should provide qualified investigators. Consistent with article 94.6 and article 217.4, .5 and .6 of UNCLOS and with the provisions of the relevant IMO conventions, investigations should be carried out following a marine casualty or pollution incident. The flag State should ensure that individual investigators have working knowledge and practical experience in those subject areas pertaining to their normal duties. Additionally, to assist individual investigators in performing duties outside their normal assignments, the flag State should ensure ready access to expertise in the following areas, as necessary:

- .1 navigation and the Collision Regulations;
- .2 flag State regulations on certificates of competency;
- .3 causes of marine pollution;
- .4 interviewing techniques;
- .5 evidence gathering; and
- .6 evaluation of the effects of the human element.

**7.2** Any accidents involving personal injury necessitating absence from duty of three days or more and any deaths resulting from occupational accidents and casualties to ships of the flag State should be investigated, and the results of such investigations made public. Ship casualties should be investigated and reported upon in accordance with UNCLOS, relevant IMO conventions, and the Guidelines currently being

developed by IMO.\* Casualty investigations should be conducted by suitably qualified investigators, competent in matters relating to the casualty. The report on the investigation should be forwarded to IMO together with the flag State's observations, in accordance with the Guidelines referred to above.

## Appendix

### **A possible framework for national legislation implementing the SOLAS, MARPOL, Load Line and STCW Conventions**

National legislation, whether primary or subsidiary legislation, should deal with the matters set out below. Detailed guidance on this subject is given in *Guidelines for Maritime Legislation*, a United Nations publication.

#### **1 GENERAL PROVISIONS**

- .1 definitions
- .2 scope, i.e. to which ships the regulations apply
- .3 power to give exemptions and to allow equivalents
- .4 recognition and authority of classification societies

#### **2 SUBSTANTIVE PROVISIONS**

- .1 structure, machinery and equipment, maintenance
- .2 load lines
- .3 stability
- .4 stowage, loading, ballasting, deballasting
- .5 instructions, documents and other information on board
- .6 practice drills
- .7 linkage with and status of class rules and regulations
- .8 manning level
- .9 safe manning document
- .10 standards of training
- .11 certificates of competence and endorsements
- .12 conduct of examinations, examiners, conditions for admission
- .13 watchkeeping requirements
- .14 hours of work
- .15 medical fitness
- .16 ship's log-book and entries
- .17 prohibition on the discharge of harmful substances
- .18 provision of reception facilities in ports

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\* Refer to the Code for the Investigation of Marine Casualties and Incidents, adopted by the Organization by resolution A.849(20).



### **3 REQUIREMENTS FOR FOREIGN SHIPS IN WATERS UNDER JURISDICTION OF FLAG STATE**

### **4 SURVEYS AND CERTIFICATION**

- .1 surveys, intervals between them, authority to be entrusted with surveys
- .2 issue of certificates and authority entrusted with issuing them
- .3 issue of certificates by other Governments on request
- .4 acceptance of foreign certificates
- .5 period of validity of certificates and formats
- .6 suspension, withdrawal, loss and return of certificates
- .7 class surveys and certificates

### **5 RIGHTS AND OBLIGATIONS OF OWNER/OPERATOR, MASTER AND SEAMEN**

- .1 prohibition against making alterations to a ship without the permission of the competent authority
- .2 duty to maintain condition of the ship during the voyage
- .3 duty to notify competent authority on damage sustained
- .4 duty to report discharges of harmful substances
- .5 prohibition against the master going to sea if:
  - .5.1 the ship does not comply with the relevant requirements
  - .5.2 the ship is not provided with valid certificates and safe manning document, log and record books
  - .5.3 the ship is not manned in accordance with the requirements
- .6 prohibition against serving on board without appropriate endorsement
- .7 duty of the owner to enable the master to carry out his obligations
- .8 right of crew members to complain to competent authority and duty of authority to investigate complaints

### **6 ENFORCEMENT**

- .1 designation of authority entrusted with enforcement
- .2 carrying out random inspections
- .3 rights and powers of surveyors (administration and class)
- .4 duty of master to produce certificates to surveyor
- .5 duty of owner and master to co-operate during surveys
- .6 power to withdraw certificates and to detain a ship
- .7 detention and release procedures
- .8 duty of master if the ship is detained abroad

### **7 PENALTIES**

- .1 penalties for non-compliance, operational violations, contravention of a prohibition
- .2 penalties on the owner who incites the master to violate any of the provisions

**8 APPEAL**

- .1 right to appeal against decisions by the competent authority
- .2 appeal procedures

**9 INVESTIGATION OF CASUALTIES AND ACCIDENTS**

**10 COSTS AND FEES**