

Obligations of Authorities Investigations towards the Improvement of procedures of Marine Accident Investigation

Dr. Ahmed Hany M. Abuelenin

Assistant Prof.-at Faculty of Maritime Studies- King Abdulaziz University- Saudi- Arabia

E-mail: draha4@yahoo.com

Received: September 1, 2016 Accepted: October 2, 2016 Published: October 7, 2016

doi: 10.5296/jsss.v4i1.9976

URL: <http://dx.doi.org/10.5296/jsss.v4i1.9976>

Abstract

In this study the provisions of international maritime conventions related to marine accident investigation are reviewed. Authorities Investigations are determined also in accordance with such provisions. The Responsibility of Authorities Investigation In the case of fault or negligence in the investigation of Marine accidents are focused on also. Finally, the importance of sending the investigation report to the International Maritime Organization is demonstrated.

Keywords: International conventions, Marine accident investigation, Authorities investigations, Maritime law

1. Introduction

Maritime Transportation is already the most dangerous of all the world's great industries, where billions of tons of cargoes and merchandise are to be moved from one country to another on the high seas every year, as the millions of miles are walked, so shipping should be said to be safe industry.

Many types of marine or Shipping accidents resulting from technological development in the maritime field such as marine pollution casualties are focused on by international authorities, so the Maritime Environmental Protection Committee (MEPC) adopted the International Convention for the Prevention of Pollution from Ships, 1973/1978 "(MARPOL)" concluding many articles relating to marine accident investigation.

Maritime safety and security are increasingly importance to international industry, where main accidents have wide - reaching impacts. "the overall industry picture is one of continual improvement with Lloyds List Casualty Survey noting an 18% decrease in the number of

accidents and the International Union of Marine Insurers recording a continuing downward trend both in tonnage and the percentage of the world fleet lost since 1980 (over the past 30 years)".

Generally, accidents that include loss of property, death, injury, or environmental damage are subjected to investigation, often with the objective of identifying liability and culpability.

The IMO adopted many conventions relating to maritime safety. Includes International Convention for the Safety of Life at Sea "(SOLAS)", 1974, as amended also concluding regulation relating to marine accident.

The Maritime Safety Committee (MSC) adopted a marine accident "investigation code 1997 as amended, RESOLUTION MSC.255 (84) (adopted on 16 May 2008)", therefore, accident research code has been accepted as an obligation in the 84th meeting of (MSC), which was held by (IMO) in London on dates between 07th and 16th May 2008. Such code includes a "safety research, recommended practices and international standards for marine accidents or marine incidents".

In this study the provisions of international maritime conventions related to marine accident investigation are reviewed. Authorities Investigations are determined also in accordance with such provisions. The Responsibility of Authorities Investigation In the case of fault or negligence in the investigation of Marine accidents are focused on also. Finally, the importance of sending the investigation report to the International Maritime Organization is demonstrated.

2. The International Obligations for Marine Accident Investigations

The investigation of marine casualties and incidents are focused on by the member states of IMO to encourage the co-operation between states, and to create a common approach to marine accident investigations.

As a result of such international interest there are different international maritime conventions includes: "The United Nations Convention on the Law of the Sea (UNCLOS)", "the conventions on Safety of Life At Sea (SOLAS)", Marine Pollution (MARPOL), and "load Line Convention (LL Convention)".

The IMO adopted the Code for "the Investigation of Marine Casualties and Incidents, adopted in November 1997 by the International Maritime Organization (the Organization), by resolution A.849(20)".

On 25 November 1999, the IMO adopted guidelines as amendments of resolution A.849(20) to "provide practical advice for the systematic investigation of human factors in marine casualties and incidents and to allow the development of effective analysis and preventive action".

The obligations of shipowners, the master, and the safety officer under the international maritime conventions mentioned above are discussed as follow:

2.1 The Obligation of Shipowners

According to the International Labour Organization (ILO)'s Prevention of Accidents (Seafarers) Convention, Shipowners should inform the competent authority about diseases, occupational accidents, and dangerous occurrences in accordance with international regulations, and national laws.

“All accidents to seafarers resulting in loss of life or serious injury should be reported forthwith to the competent authority and an investigation of these accidents should be carried out”.

2.2 The Obligation of the Master

According to “SOLAS”, the master is obligated to do the investigation of all marine accidents, to record, and to report them to the competent authority in accordance with international regulations, and national laws.

According to “The international Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM)” Code, a main part of the ISM Code is the “safety management system”, (SMS), masters should be aware of all problems that may affect the safety on board ship. Masters also should maintain a regular accurate record of times and facts of any accident report and investigation.

2.3 The Obligation of the Safety Officer

According to the “ILO”, the safety officer should maintain the requirements of (ISM) code in accordance with national law, and carry out the shipowner’s health rules and safety.

To prevent the recurrence of marine accidents, the safety officer also should investigate accidents and make the convenient recommendations implementing the instructions of the master.

3. Authorities Investigations

In this section, the authorities investigations determined by the international maritime conventions , “UNCLOS” , and the Casualty Investigation Code are represented as follow:

3.1 The Coastal States

The coastal states are one of authorities investigations according to article 2 of UNCLOS which establishes the right of coastal states to exercise its sovereignty to “investigate the cause of any marine casualty occurring within their territorial seas (12miles) which might pose a risk to life or to the environment, involve the coastal State’s search and rescue authorities, or otherwise affect the coastal State”.

3.2 The Flag State

The performance of flag state plays an essential role in implementing the requirements of the (ISM) code regarding the safety and the quality of sea- going ships all over the world , so “several organizations publish guidelines on flag State performance. These include bodies such as the International Chamber of Shipping (ICS), the Maritime International Secretariat Services (MARISEC) and the International Transport Workers’ Federation (ITF). These guidelines provide indicators to enable performance measurements in a number of key areas for example the enforcement of the international maritime treaties, maritime security, seafarers’ welfare and movement of ships between flags”.

The flag State exercises its sovereignty over its vessels to investigate the accident in matters of collision or any other incident of Navigation in accordance with the following international conventions:

1) The flag State is encouraged by “paragraph 7, article 94 of the (UNCLOS)”, to co-operate with the other state in the conduct of any marine casualty investigation. Such article provided that:

“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”.

2). Article 97 of (UNCLOS) regarding penal jurisdiction in matters of collision or any other incident of navigation provided that:

a. “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, 60 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”.

b. “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”.

c. “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”.

iii. The code for the investigation of marine casualties and incidents (resolution A.849(20) recognizes the obligations to flag states to “ensure that investigations are carried out into all casualties occurring to its ships”.

3). “According to SOLAS regulation I/21 and MARPOL articles 8 and 12” “each Administration undertakes to conduct an investigation into any casualty occurring to ships under its flag subject to those conventions and to supply IMO with pertinent information concerning the findings of such investigations”.

3.3 Port States

According to “section 4 of article 218 of UNCLOS”, “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”.

3.4 A State Which Has Interests

According to UNCLOS article 94, section 7. “An investigation should be started as soon as practicable after the casualty occurs. Substantially should, by mutual agreement, be allowed to join an investigation conducted by another substantially interested State at any stage of the investigation”.

3.5 The Maritime Administration

A national maritime administration can be constructed depending on the consideration of “the country’s political systems, traditional practices or otherwise where it fits best in the Government structure. For instance it could be a project or division within a ministry, a department of a ministry, statutory authority or an executive Agency, such an administration

could be self-supporting or supported by the Government but not limited by the public service conditions. In that mode it is believed that decision-making process is more facilitated”.

According to literature “the object of a maritime administration within the framework of a country’s overall maritime activities is to provide the Government with the machinery which would enable it to satisfactorily and efficiently undertake those functions which are embodied within the country’s Merchant Shipping Legislation (i.e. National Maritime Laws)”.

“These functions would include the implementation of the requirements of International Maritime Conventions, and National Rules and Regulations framed under the Authority of the Merchant Shipping Act”. “For that meaning, a maritime administration can be more described as the national body, which is responsible for and dedicated to ensuring the safety of ships, the protection of life and property at sea and the marine environment, and compliance with applicable national laws and regulations. It directly derives its authority from the national maritime legislation and the minister concerned and it usually conducts its activities in accordance with the duly granted authority”.

3.6 Casualty or Incident Occurs on the High Seas

According to the (resolution A.849(20)): “Where a marine casualty or incident occurs on the high seas, a flag State should carry out an investigation into a casualty to, or on, any of its ships. If that casualty is a collision involving a ship of another flag State, then the States should consult with each other and agree which will be the lead investigating State and determine the best means of co-operation under this Code. In line with article 9.1, if another State is a substantially interested State by virtue of the nationality of the ship’s crew, passengers or other persons, or the location of the casualty, that State or States should be invited to take part in the investigation”.

4. Report of Marine Accident

In this section the importance of reporting the marine accident investigations is demonstrated according to the Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20)): “The objective of any marine casualty investigation is to prevent such casualties in the future. Investigations identify the circumstances of the casualty under investigation and establish the causes and contributing factors, by gathering and analyzing information and drawing conclusions. Ideally, it is not the purpose of such investigations to determine liability, or apportion blame. However, the Investigating Authority should not refrain from fully reporting the causes because fault or liability may be inferred from the findings”.

Also the IMO. MSC- MEPC.7/ Circ.7 of October 2008, imparts guidance on near accident reporting.

Reports of a marine accident should be “completed as quickly as practicable, and be made available to the public and the shipping industry in order to enhance safety of life at sea and protection of the marine environment through improved awareness of the factors which combine to cause marine casualties”.

5. Conclusions and Suggestions

5.1 Conclusions

The provisions of international maritime conventions related to marine accident are reviewed. Authorities Investigations are determined also in accordance with such provisions. The

Responsibility of Authorities Investigation In the case of fault or negligence in the investigation of Marine accidents are focused on also.

5.2 Suggestions

This study deduced the fact that: it requires the unification of the investigation procedures in the world, to achieve implementation the provisions of international maritime conventions through the establishment of a regional center under the sponsorship of the International Maritime Organization contains a unified database containing all information about marine accidents in the world, and qualified investigators are well-trained, to perform these procedures achieving the prevention of marine accidents and the limitation of its harmful environmental and economic effect.

Finally the reports adopted by the regional center specializing in the investigation of marine accidents should have authoritative legal to the national and international judge.

References

- Arendt, F. Haasis, H., & Lemper, B. (2010). *Shipping statistics yearbook 2010: shipping market, shipbuilding, ports and sea canals*. Institute of Shipping Economics and Logistics. Bremen.
- Baker, C. C., & Seah, A. K. (2004). *Maritime Accidents and Human Performance: The Statistical Trial*.
- Gordon, R., Flin, R., & Mearns, K. (2005). Designing and evaluating a human factors investigation tool (HFIT) for accident analysis. *Safety Science*, 43, 147-171. <http://dx.doi.org/10.1016/j.ssci.2005.02.002>
- IMO. (2005). Casualty-Related Matters Reports on Marine Casualties and Incidents, London.
- IMO. (2010). Retrived from <http://www.gisis.imo.org>
- Shaaban, A. (2009). Maritime Law and Legislation in the Context of Administration of Maritime Affairs. Faculty of Law, Lund University. Retrieved from <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1555379&fileId=1563639>
- United Nations Convention on the Law of the Sea - Part VII. Retrived from http://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm
- W. A. O'Neil. (2003). The human element in shipping. *Journal of Maritime Affairs*, 2(2), 95-97. <http://dx.doi.org/10.1007/BF03195037>

Copyright Disclaimer

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/3.0/>).