RESPONSIBILITIES OF GOVERNMENTS AND MEASURES TO ENCOURAGE FLAG STATE COMPLIANCE

Report of the Working Group

Introduction

1. The Working Group met from 16 to 18 March 2004 under the chairmanship of Mr. J. Franson (Sweden).

2. The working group was attended by delegations from the following Member Governments:

   - BELIZE
   - BRAZIL
   - BULGARIA
   - CHINA
   - CYPRUS
   - DENMARK
   - DOMINICA
   - FRANCE
   - GERMANY
   - GREECE
   - IRELAND
   - ITALY
   - JAPAN
   - LIBERIA
   - MALAYSIA
   - MALTA
   - MARSHALL ISLANDS
   - NEW ZEALAND
   - NORWAY
   - PANAMA
   - POLAND
   - REPUBLIC OF KOREA
   - RUSSIAN FEDERATION
   - SINGAPORE
   - SWEDEN
   - TURKEY
   - UNITED KINGDOM
   - UNITED STATES

   the following Associate Member of IMO:
   
   HONG KONG, CHINA

   and by observers from the following non-governmental organizations:

   INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
   WORLD WIDE FUND FOR NATURE (WWF)

3. The working group was instructed, taking into consideration the comments made and decisions taken in plenary, to:
.1 further develop the draft Code for the implementation of [mandatory] IMO instruments, using documents FSI 12/7/2 and FSI 12/7/5 as the basis, making a distinction between the mandatory provisions which are to be implemented and guidance as to how they may be monitored and taking into account the “Shipping Industry Guidelines on Flag State Performance” submitted to the Assembly (A 23/INF.5), with a view to finalizing the work at FSI 13;

.2 in the context of the development of the draft Code, consider the ways to address the issues of the transfer of ships between States, of improving surveyor’s qualifications and of guidelines on the performance and control of classification societies to enhance supervision by flag State and advise the plenary, as appropriate;

.3 prepare the draft amendment to the Guidelines for the authorization of organizations acting on behalf of the Administrations (resolution A.739(18)) contained in document FSI 12/7, taking into account the use of radio-communication specialists under the supervision of ROs for performing surveys and certification services, for consideration by plenary;

.4 consider the need for the establishment of a correspondence group, taking into account the level of achievement of tasks given to the group and to prepare draft terms of reference, if appropriate; and

.5 present a written report to plenary on Friday, 19 March.

General

4 The group had a general discussion on the progress made by the correspondence group in the development of the draft Code for the implementation of [mandatory] IMO instruments since FSI 11 and the outcome of the discussion of this item in Plenary, in particular, the link between the draft Code and the Voluntary IMO Member State Audit Scheme.

5 The group agreed that the primary objective of the development of the draft Code should be to provide a comprehensive compilation of the obligations of flag, coastal and port States, as stipulated in the relevant IMO instruments. The group further agreed that the draft Code could also contain guidance as to how the States could meet their obligations.

6 The group decided to recommend to the Sub-Committee that the transfer of ships between States should be dealt with independently of the draft Code, as a separate stand alone document (see paragraph 12 below).

Draft Code for the implementation of [mandatory] IMO instruments

7 The group in reviewing the draft Code, contained in document FSI 12/7/2, considered the three different versions proposed by the correspondence group for the qualifications of flag State surveyors. Having agreed that these should provide guidance to flag States, the group felt that version 1 was too prescriptive and version 2 too generic and decided to use version 3 as a basis.

8 The group discussed the general format of the draft Code and agreed that the obligations of flag, port and coastal States should be compiled in three separate tables to be annexed to the Code. In considering “Part 3 – Coastal States” of the draft Code, the group agreed that the obligations of coastal States should also be specified in the text of Part 3 since they are not as
clearly identifiable in the relevant IMO instruments as those for flag and port States. In an effort to assist coastal States in the application of the draft Code, cross references to the relevant instruments were inserted in the text.

9 In the course of its discussion of the ways to address the issues of improving surveyors’ qualifications and guidelines on the performance and control of recognized organizations (ROs) to enhance supervision by flag States, the group noted that guidance on surveyors’ qualifications was given in part 2 of the draft Code and that part 2 of the draft Code contains text regarding the delegation of authority. The group, therefore, agreed that it was premature to develop further guidance on surveyors’ qualifications and guidelines concerning delegation of authority.

10 Having recognized that further work on the referencing of UNCLOS in the draft Code should be done during FSI 13, the group agreed that this should be done in conjunction with the development of preambular text to the draft Code.

11 As a result of its deliberations the group prepared a draft Code as set out in annex 1 and agreed that further work would be needed inter-sessionally. This work would possibly include definitions of certain concepts and terms used.

Transfer of ships between States

12 As a basis for its deliberations, the group used documents FSI 9/5/1 and resolution A.923(22) and, following a general discussion on the issue, found the approach underlying FSI 9/5/1 problematical. It was recognized that in some countries the registration of a ship is a matter of ownership which entitles the ship to fly the flag of a State. Statutory survey and certification of a ship follows its having been registered. Once a ship has left one register and entered into another the flag State of the first register no longer has jurisdiction over the ship. It is, therefore, not possible to conclude agreements between the “loosing” and “gaining” States.

13 The group felt, however, that an attempt should be made to recommend the establishment of a procedure whereby the “gaining” flag State seeks safety-related information from the “loosing” flag State. The group agreed on a procedure against which the transfer of ships between flags should be conducted. The group recommended to the Sub-Committee that the proposed procedures should be circulated under cover of an MSC/MEPC circular. The circular should make reference to the desirability of transparency in the relationship between flag States in the interest of maritime safety. Cross reference to the relevant IMO instruments and documents where transfer of flag is mentioned should be made in the covering note. A draft circular is attached at annex 2.

Guidelines for the authorization of organizations acting on behalf of the Administrations (resolution A.739(18))

14 Taking into account the decision of the Sub-Committee on the use of radio communication specialists under the supervision of ROs for performing survey and certification services, the group prepared a draft amendment to the Guidelines for the authorization of organizations acting on behalf of the Administrations (resolution A.739(18)) set out in annex 3 for appropriate action by the Sub-Committee.
Establishment of a correspondence group

15 The group, taking into account the work completed at this session agreed to recommend that a Correspondence Group on the Development of a Draft Code for the Implementation of [Mandatory] IMO Instruments be established, under the co-ordination of Denmark*, to continue the work intersessionally with the following terms of reference:

1. further develop the draft Code for the implementation of [mandatory] IMO instruments, using as a basis the work done by the Working Group during FSI 12 and, in particular:

   1. review part 1, in particular, the possible need to develop definitions;
   2. review the text concerning surveyors in part 2 of the draft Code;
   3. amend the text of part 3 of the draft Code, if further obligations of coastal States are identified;
   4. develop separate tables of obligations for flag, coastal and port States; and
   5. endeavour to ensure that all relevant obligations are identified and recorded; and

2. to submit a report to FSI 13.

Action requested of the Sub-Committee

16 The Sub-Committee is invited to approve the report in general and, in particular, to:

1. note the progress made on the development of the draft Code and instruct the Secretariat to bring the draft Code to the attention of the Joint MSC/MEPC/TCC Working Group on the Voluntary IMO Member State Audit Scheme (paragraphs 4 to 11 and annex 1);

2. agree with the group’s recommendation that the issue of transfer of ships between States be dealt with independently of the draft Code, as a separate stand alone document (paragraph 6);

3. agree with the procedures developed by the group relating to the transfer of ships between States and invite the Committees to circulate these procedures under cover of an MSC/MEPC circular (paragraphs 12 to 13 and annex 2);

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.4 agree to the amendments to the Guidelines for the authorization of organizations acting on behalf of the Administrations (resolution A.739(18)) and take appropriate action (paragraph 14 and annex 3); and

.5 agree to the establishment of a correspondence group and its terms of reference to further develop the proposed draft Code for the Implementation of [Mandatory] IMO Instruments (paragraph 17).

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ANNEX 1

DRAFT CODE FOR THE IMPLEMENTATION
OF [MANDATORY] IMO INSTRUMENTS

PART 1 – COMMON AREAS

Objective

1. The objective of this Code is to enhance global maritime safety[, security] and protection
   of the marine environment.

2. Different Administrations will view this Code according to their own circumstances. By
   virtue of geography and circumstance some administrations may have a greater role as a flag
   State than as a port State or as a coastal State, whilst others may have a greater role as a coastal
   State or port State than as a flag State. Such imbalances do not diminish, in any way, their duties
   as a flag, port or coastal State.

Strategy

3. In order for a State to meet the objective of this Code a strategy should be developed,
   covering the following issues:

   .1 implementation and enforcement of relevant international mandatory instruments
     and the proper discharge of other international obligations;

   .2 adherence to international recommendations, as appropriate;

   .3 continuous review and verification of the effectiveness of the State in respect of
     meeting its international obligations; and

   .4 the achievement, maintenance and improvement of overall organizational
     performance and capability.

In implementing the aforementioned strategy, the guidance given in this Code should be adhered
   to.

General

   (UNCLOS) and of 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 and is
   manned with competent maritime personnel.
5 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 should be made through rigorous and effective application and enforcement of national legislation, as appropriate.

6 In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another. (UNCLOS, article 195)

**Initial actions**

7 When a convention enters into force for a State, the Government of that State must be in a position to implement and enforce its provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure. This means that a Government must have:

.1 the ability of the 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 ships, safety [, security] and pollution-prevention laws applying to such ships and the making of associated regulations;

.2 a legal basis for the enforcement of the State’s national laws, including the associated investigative and penal processes, including the prohibition of violations (e.g. MARPOL violations); and

.3 the availability in the State of sufficient personnel with maritime expertise to assist in the promulgation of the necessary national laws and to discharge all the responsibilities of the flag State, including reporting as required by the respective conventions.

8 A possible framework for national legislation to give effect to the provisions of relevant IMO instruments can be found in “Guidelines for Maritime Legislation”, a United Nations publication1.

**PART 2 – FLAG STATES**

**Implementation**

9 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 requirements of all safety and pollution prevention conventions they are party to; and

.2 assign responsibilities within their Administration to update and revise any relevant policies adopted, as necessary.

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1 ST/ESCAP/1076
10 Flag States should establish resources and processes capable of administering a safety, [security] and environmental protection program which, as a minimum, should consist of the following:

.1 administrative instructions to implement applicable international rules and regulations as well as develop and disseminate any interpretative national regulations that may be needed;

.2 resources to ensure compliance with SOLAS 74, as amended, MARPOL 73/78, as amended, TONNAGE 69, as amended, COLREG 72, as amended and LL 66 requirements using an audit and inspection programme independent of any entity which has been delegated authority by the flag States to issue the required certificates and relevant documentation;

.3 resources to ensure compliance with the requirements of the 1978 STCW Convention, as amended. This includes resources to ensure, inter alia, that:

.3.1 training, assessment of competence and certification of seafarers are in accordance with the provisions of the Convention;

.3.2 STCW certificates and endorsements accurately reflect the competencies of the seafarers, using the appropriate STCW terminology as well as terms which are identical to those used in any safe manning document issued to the ship;

.3.3 impartial investigation can be held of any reported failure, whether by 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;

.3.4 certificates or endorsements issued by the flag State can be effectively withdrawn, suspended or cancelled when warranted, and when necessary to prevent fraud; and

.3.5 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 entitled to fly its flag. In this regard, particular reference is made to regulations I/2, I/9, I/10 and I/11 of the 1978 STCW Convention as amended; and

.4 resources to ensure the conduct of investigations into casualties and adequate and timely handling of cases of ships with identified deficiencies.

11 Flag States shall ensure that ships entitled to fly their flag are sufficiently and efficiently manned, taking into account the Principles of Safe Manning adopted by IMO.
Delegation of authority

12 Flag States authorizing recognized organizations to act on their behalf in conducting the surveys and inspections required under the IMO conventions must regulate such authorization in accordance with SOLAS regulation XI/1 in order to:

.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 organization which, as a minimum, includes the elements as set out in appendix 2 to resolution A.739(18), or equivalent legal arrangements, and which 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 issue specific instructions detailing actions to be followed in the event that a ship is found unfit 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 and interpretations thereof giving effect to the provisions of the conventions or specify whether the Administration’s standards go beyond convention requirements in any respect; and

.5 require that the recognized organization must maintain records which will provide the Administration with data to assist in interpretation of convention regulations.

13 The flag State should establish or participate in an oversight programme with adequate resources for continuous monitoring of, and communication with, its recognized organizations in order to ensure that its international obligations are fully met, by:

.1 exercising its authority to conduct supplementary surveys to ensure that ships entitled to fly its flag in fact comply with IMO conventions;

.2 conducting supplementary surveys as it deems necessary to ensure that ships entitled to fly its flag comply with national requirements which supplement the IMO convention requirements; and

.3 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.
Enforcement

14 Flag States should take all necessary measures to secure observance of international rules and standards by ships entitled to fly their flag so as to ensure compliance with their international obligations. Such measure should, \textit{inter alia}, include:

1. prohibiting ships entitled to fly 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 entitled to fly their flag to verify that the actual state of the ship and its crew is in conformity with the certificates it carries;

3. that, during the periodic inspection referred to in subparagraph 12.3, the surveyor should ensure that seafarers assigned to the ships are familiar with:
   
   a. their specific duties; and
   
   b. ship arrangements, installations, equipments and procedures.

4. that the surveyor should also ensure that the ship’s complement, as a whole, can effectively co-ordinate their activities in an emergency situation and in performing functions vital to safety or to the prevention or mitigation of pollution;

5. providing in national laws and regulations for penalties of adequate severity to discourage violation of international rules and standards by ships entitled to fly their flag;

6. instituting proceedings – after an investigation has been conducted - against ships entitled to fly their flag which have violated international rules and standards, irrespective of where the violation has occurred;

7. providing in national laws and regulations for penalties of adequate severity to discourage violations of international rules and standards by individuals issued certificates or endorsements under their authority; and

8. instituting proceedings – after an investigation has been conducted – against individuals holding certificates or endorsements who have violated international rules and standards, irrespective of where the violation has occurred.

15 A flag State should consider developing and implementing a control and monitoring programme, as appropriate, in order to:

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; and

3. provide for a timely response to deficiencies and alleged pollution incidents reported by port or coastal States.
16 Furthermore, the flag State should:

.1 ensure compliance with UNCLOS and with applicable IMO instruments through national legislation;

.2 provide an appropriate number of qualified personnel to implement and enforce the national legislation referred to in subparagraph 16.1, including personnel for performing investigations and surveys; and

.3 provide a sufficient number of qualified flag State personnel to investigate incidents where ships entitled to fly its flag have been detained by port States;

.4 provide a sufficient number of qualified flag State personnel to investigate incidents where the validity of a certificate or endorsement or competence of individuals holding certificates or endorsements issued under its authority are questioned by port States; and

.5 ensure the training and oversight of the activities of flag State surveyors and investigators.

17 When a flag State is informed that a ship entitled to fly its flag has been detained by a port State, the flag State should oversee appropriate corrective measures to bring the ship in question into immediate compliance with the applicable international conventions.

18 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.

Flag State surveyors

19 The flag State should define and document the responsibilities, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety[, security] and pollution prevention.

20 Personnel responsible for, or performing, surveys, inspections and audits on convention ships and companies should have as a minimum the following:

.1 relevant qualifications from a tertiary institution recognized by the flag State; or

.2 relevant qualifications from a marine or nautical institution and relevant sea-going experience as a certificated ship officer and holding a valid STCW certificate.

Other personnel assisting in the performance of such work should have education, training and supervision commensurate with the tasks they are authorized to perform.

21 Personnel employed with the above qualifications that possess previous relevant experience in the field of expertise may be taken into consideration. In case of no previous experience, the Administration should provide appropriate field training.
[Flag States may accredit surveyors through a formalized, detailed training programme that leads to the same standard of education [competence] as that required in paragraphs 20.1 and 20.2.]

22 The flag State should have implemented a documented system for qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they are authorized to undertake.

23 The flag State should issue an identification document for the surveyor to carry when performing tasks on board ship.

**Flag State investigations**

24 Investigations should be carried out following a marine casualty or pollution incident. Casualty investigations should be conducted by suitably qualified investigators, competent in matters relating to the casualty. The flag State should be prepared to provide qualified investigators for this purpose, irrespective of the location of the casualty or incident.

25 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.

26 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 developed by IMO*. 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.

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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), as amended by resolution A.884(21).
Evaluation and review

27 The flag States should, on a periodic basis, evaluate their performances with respect to the implementation of administrative processes, procedures and resources necessary to meet its obligations as required by the conventions to which it is party.

28 Measures to evaluate the performance of the flag States may include, inter alia, port State control detention rates, flag State inspection results, casualty statistics, communication and information processes, annual loss statistics (excluding constructive total losses (CTLs)), and other performance indicators as may be appropriate, to determine whether staffing, resources and administrative procedures are adequate to meet their flag State obligations.

29 Measures may include a regular review of:

.1 fleet loss and accident ratios to identify trends over selected time periods;
.2 the number of verified cases of detained ships in relation to the size of the fleet;
.3 the number of verified cases of incompetence or wrongdoing by individuals holding certificates or endorsements issued under its authority;
.4 responses to port State deficiency reports or interventions;
.5 investigations into serious casualties and lessons learned there from; and
.6 financial, technical and other resources committed.

PART 3 – COASTAL STATES

Implementation

30 Coastal States have certain rights and obligations under various mandatory IMO instruments. When exercising their rights under the instruments coastal States incur additional obligations.

31 In order to effectively meet their obligations, coastal States should:

.1 implement policies and guidance which will assist in the implementation and enforcement of their obligations; and
.2 assign responsibilities within their Administration to update and revise any relevant policies adopted, as necessary.

Obligations regarding safety of life at sea

32 Coastal States shall at all times:
.1 respect the principle that ships which are not subject to certain international rules and regulations regarding the safety of life at sea at the time of their departure on any voyage, shall not become subject to these provisions on account of any deviation from their intended voyage due to stress of weather or any other case of force majeure (SOLAS article IV); 

.2 have in place the appropriate resources to bring promptly to the knowledge of those concerns of possible dangers affecting navigation (SOLAS regulation V/4); 

.3 encourage the collection of meteorological data by ships at sea and to arrange for their examination, dissemination and exchange in the manner most suitable for the purpose of aiding navigation (SOLAS regulation V/9.1); 

.4 arrange for the establishment and maintenance of such aids to navigation as, in their opinion, the volume of traffic justifies and the degree of risk requires, and to arrange for information relating to these aids to be made available to all concerned (SOLAS regulation V/13.1); and 

.5 ensure that any necessary arrangements are made for coast watching and for the rescue of persons in distress at sea round its coast and make available information concerning its existing facilities and the plans for changes (SOLAS regulation V/7.2).

Obligations regarding pollution

33 Coastal States under the relevant IMO environmental instruments have certain obligations, in particular they should promptly investigate, to the extent they are reasonably able to do so, the facts whenever there are clear grounds to believe that there have been violations of pollution requirements (MARPOL article 6).

Obligations regarding communications

34 Coastal States are obliged to make available to ships, as they deem practical and necessary, either individually or in co-operation with other States, appropriate shore – based facilities for space and terrestrial radio communication services for sea areas which they have designated off their coasts (SOLAS regulation IV/5.1).

35 Coastal States shall take all steps necessary to ensure, when intelligence of direct dangers to navigation is received, to promptly bring them to the knowledge of those concerned and communicate them to other interested Governments (SOLAS regulation V/2(b)).

36 The transmission of the information required in paragraph 35 shall be free of charge to the ships concerned (SOLAS regulation V/2(c)).

37 Coastal States shall encourage the collection of meteorological data by ships at sea and arrange for their examination, dissemination and exchange in the manner most suitable for the purpose of aiding navigation (SOLAS regulation V/4).
Obligation regarding navigation

38 Coastal States shall adopt measures at an international level concerning routeing and areas to be avoided by ships or certain classes of ships only if these have been adopted and implemented in accordance with the guidelines and criteria adopted by the Organization.

Enforcement

39 Coastal States should take all necessary measures to ensure their observance of international rules when exercising their rights and fulfilling their obligations.

40 A coastal State should consider developing and implementing a control and monitoring programme, as appropriate, in order to:

1. provide for the allocation of statistical data so that trend analyses can be conducted to identify problem areas;

2. provide for timely response to pollution incidents in its waters; and

3. co-operate with flag States or port States, as appropriate, in investigations of maritime casualties.

Evaluation and review

41 Coastal States should periodically evaluate their performance in respect of exercising their rights and meeting their obligations under mandatory IMO instruments.

PART 4 – PORT STATES

Implementation

42 Port States have certain rights and obligations under various mandatory IMO instruments. When exercising their rights under the instruments, port States incur certain obligations.

43 Port States can play an integral role in the achievement of maritime safety, security, and environmental protection, including pollution prevention. The role and responsibilities of the port State with respect to maritime safety, security, and environmental protection is derived from a combination of international treaties, conventions, national laws, as well as in some instances, bilateral and multilateral agreements.

Enforcement

44 Port States should take all necessary measures to ensure their observance of international rules when exercising their rights and fulfilling their obligations.

45 Several IMO conventions, e.g. SOLAS, Load Line, MARPOL, Tonnage and STCW, contain specific provisions that permit port State control.
46 In this respect, SOLAS, MARPOL and STCW also contain provisions that obligate port States to treat non-parties to those conventions no more favourably than those who are parties. This means that port States are obliged to impose the conditions of the conventions on parties as well as on non-parties.

47 When exercising their right to carry out port State control, a port State should establish processes to administer a port State control programme consistent with resolution A.787(19), as amended by resolution A.882(21) or any subsequent amendments to them, on Procedures for Port State Control.

48 Port State control should be carried out only by authorized and qualified port State control officers.

49 Port State control officers and persons assisting them should have no commercial interest, either in the port of inspection or the ships inspected, nor should the port State control officers be employed by or undertake work on behalf of recognized organizations or classification societies.

Evaluation and review

50 Port States should periodically evaluate their performance in respect of exercising their rights and meeting their obligations under mandatory IMO instruments.
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<th>Source of Obligation/Right</th>
<th>Summary Description</th>
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<td>sufficiently manned from a safety of life at sea view.</td>
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<td>Article 4(2)</td>
<td>Violations: A coastal State shall prohibit the violations of the requirements of the present Convention within its jurisdiction and shall establish sanctions under its law. Whenever a violation has occurred the coastal State shall either cause proceedings to be taken in accordance with its law or furnish the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.</td>
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<td>Detection of violations and enforcement of the Convention: Coastal States shall cooperate in the detection of violations and the enforcement of the provisions of the Convention.</td>
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<td>Reports on incidents involving harmful substances: Coastal States shall issue instructions to its maritime inspection vessels and aircraft and to other appropriate services, to report to its authorities an incident referred to in Protocol I to the Convention.</td>
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1 The Maritime Safety Committee, at its [………………] session, and the Marine Environment Protection Committee, at its [………………] session, approved the procedure against which the transfer of ships between flags States might be considered, developed by the FSI Sub-Committee, as set out at annex.

2 The procedure aims at increasing transparency in the relationship between flag States in the interest of maritime safety. The issue of transfer of ships between flag States is covered in a number of IMO conventions and instruments. Currently, these place the obligation for providing information relating to ships on the former flag State at the voluntary request of the new flag State. The recommended procedure, outlined in the annex, attempts to encourage the new flag State to actively seek information.

3 Member Governments are invited to bring this circular and annex to the attention of all parties concerned.
ANNEX

TRANSFER OF SHIPS BETWEEN STATES

Recommended procedure for the transfer of ships between flag States

For a ship engaged on international voyages to enjoy the benefits and privileges, that may be bestowed upon it, it must be under the jurisdiction of a flag State, the flag of which it is entitled to fly. To facilitate transfer of ships between flag States and to increase transparency in the relationships between former and new flag States in the interest of maritime safety, the following procedure is recommended:

1. upon the registration of a ship new to their registries, flag States should endeavour to ensure that the ship in question complies with the applicable international rules and regulations and, if necessary, liaise with the previous flag State;

2. upon the request of the new flag State, the former flag State should promptly provide details of deficiencies, non-conformities with their applicable timescales and any other safety related information.

***
ANNEX 3

DRAFT RESOLUTION MSC. [ ]((..))
(adopted on [...] ……[..])

AMENDMENTS TO THE GUIDELINES FOR THE AUTHORIZATION OF ORGANIZATIONS ACTING ON BEHALF OF THE ADMINISTRATION (RESOLUTION A.739(18))

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

NOTING resolution A.739(18) by which the Assembly adopted the Guidelines for the authorization of organizations acting on behalf of the administration (hereinafter referred to as “the Guidelines”),

NOTING ALSO article VIII(b) and regulation XI/2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (hereinafter referred to as “the Convention”) concerning the procedure for amending the Guidelines,

HAVING CONSIDERED, at its [………………] session, amendments to the Guidelines proposed and circulated in accordance with article VIII(b)(i) of the Convention,

1. ADOPTS, in accordance with article VIII(b)(iv) of the Convention, amendments to the Guidelines for the authorization of organizations acting on behalf of the administration, the text of which is set out in the Annex to the present resolution;

2. DETERMINES, in accordance with article VIII(b)(vi)(2)(bb) of the Convention, that the amendments shall be deemed to have been accepted on [………], unless, prior to that date, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50% of the gross tonnage of the world’s merchant fleet, have notified their objections to the amendments;

3. INVITES Contracting Governments to note that, in accordance with article VIII(b)(vii)(2) of the Convention, the amendments shall enter into force on [………] upon their acceptance in accordance with paragraph 2 above;

4. REQUESTS the Secretary-General, in conformity with article VIII(b)(v) of the Convention, to transmit certified copies of the present resolution and the text of the amendments contained in the Annex to all Contracting Governments to the Convention;

5. FURTHER REQUESTS the Secretary-General to transmit copies of this resolution and its Annex to Members of the Organization, which are not Contracting Governments to the Convention.
ANNEX

AMENDMENTS TO THE GUIDELINES FOR THE AUTHORIZATION OF ORGANIZATIONS ACTING ON BEHALF OF THE ADMINISTRATION (RESOLUTION A.739(18))

Appendix 1

Minimum standards for recognized organizations acting on behalf of the Administration

1 The following new paragraph 2-1 is added after the existing paragraph 2:

“2-1 The organization should perform survey and certification functions of a statutory nature by the use of only exclusive surveyors and auditors, being persons solely employed by the organization, duly qualified, trained and authorized to execute all duties and activities incumbent upon their employer, within their level of work responsibility. While still remaining responsible for the certification on behalf of the flag State, the organization may subcontract radio surveys to non-exclusive surveyors.”