

International Maritime Conventions and the IMO's Casualty Investigation Code

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Abstract

The International Maritime Organization (IMO) has promoted and developed several international conventions, all of great significance. Some of these are the pillars of the international maritime regulatory framework. This article reviews the main conventions, highlighting their impact on the conduct of maritime accident investigations.

Introduction

The reason why there are several conventions rather than just one is that they cover different areas of application (types of ships, geographical zones, certifications, etc.) and pursue various specific objectives (prevention of pollution from ships, training and certification standards, safety in ship construction, safeguarding human life at sea, among others). Additionally, some States have not ratified all of the conventions.

In all the cornerstone conventions, obligations have been established for the IMO member States (hereinafter also referred to as "the Organization") to conduct investigations into accidents and incidents; however, the objectives of the investigations are not all the same. Nonetheless, they are specified in each of those instruments.

There is no doubt that the International Convention for the Safety of Life at Sea (SOLAS)¹ is the Organization's most important convention regarding safety. Besides, it is the only one that makes the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty² or Marine Incident (Casualty Investigation Code, or simply CI or CIC Code) mandatory through the introduction of Regulation XI-1/6³, which provides additional requirements for the investigation of marine casualties and incidents.

It should be clarified that the CI Code is the only instrument of the Organization including mandatory standards and recommended practices for member States to conduct safety marine accidents and incidents investigations, with the sole purpose of preventing future occurrences, without attributing blame or determining responsibility.

Therefore, whenever the Organization establishes obligations for States to conduct marine safety investigations, regardless of the instrument from which such directives originate, the use of the CI Code is the appropriate supporting tool established by the IMO for carrying out these tasks.

Similarly, the CIC is also applicable to instruments from other organizations where obligations are imposed on States to conduct maritime safety investigations in accordance with the mandatory standards and recommended practices set by the IMO.

Obligations of the Conventions for the Investigation

In this context, it is important to analyze each of the articles in the conventions that outline obligations for States to conduct investigations, in order to determine in which international conventions the CI Code applies and in which it does not.

UNCLOS. United Nations Convention on the Law of the Sea (United Nations, UNCLOS, 1982).

- Article 94, subsection 7. Duties of the flag State:

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.

The subsection applies to casualties occurring on the high seas (beyond the internal waters, territorial sea, exclusive economic zone, or archipelagic waters of a State) involving a vessel of one of the parties that have caused serious or very serious consequences to citizens or facilities of another State or to the marine environment.

However, UNCLOS provides the legal framework for other possible cases, as it establishes the rights and obligations of States within their own maritime areas regardless of the flag of the vessel involved⁴, as well as for cases involving vessels authorized to fly their flag regardless of their location⁵.

SOLAS. International Convention for the Safety of Life at Sea (IMO, SOLAS, 1974).

- Regulation I/21, subsection a. Casualties:

Each Administration undertakes to conduct an investigation of any casualty occurring to any of its ships subject to the provisions of the present

1. In order to facilitate reading, the conventions are mentioned without their years or protocols.

2. The terms "casualties" and "occurrences" mentioned in IMO instruments are equivalent to the words "accidents" and "incidents," as referenced in JST documents.

3. The combined format of Roman and Arabic numerals separated by a slash is used in SOLAS to indicate: on the left of the slash, the chapter; and on the right, the rule number.

4. For more information, see UNCLOS, Article 2, paragraph 1.

5. For more information, see UNCLOS, Article 94, paragraph 1.

Convention when it judges that such an investigation may assist in determining what changes in the present regulations might be desirable.

This regulation establishes that the primary responsibility for conducting investigations rests with the flag State rather than the coastal State.

It is worth mentioning that this text was already included in the 1948 version of SOLAS under Regulation I/20. Furthermore, the original version of the 1914 convention emerged as a result of the recommendations from the investigations into the sinking of the RMS Titanic; therefore, SOLAS is a result of maritime safety investigations, not the other way around.

It is clear that this regulation specifies what needs to be done and for what purpose, but it does not clarify how to do it. Therefore, since the introduction of this regulation, each State has developed its own regulatory framework for conducting such investigations, often based on legal principles. Given this diversity of approaches, the IMO introduced Regulation XI-1/6 in 2010, which made adherence to the CI Code mandatory. This was done to ensure a common approach and a framework for international cooperation in conducting maritime safety investigations by all member States.

MARPOL. International Convention for the Prevention of Pollution from Ships. (IMO, MARPOL 1973).

- Article 12, subsections 1 and 2. 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.

In this case, it is important to mention that the IMO has established general guidelines stating that any incident involving the spill of at least 50 tons of hydrocarbons should be considered a very serious maritime accident due to its environmental consequences.

However, the Organization also acknowledges that each State has the right to establish specific criteria to determine the scope of the concept of significant harmful effects within its jurisdictional waters.

As we can see, what this MARPOL regulation does is, to some extent, expand the scope of SOLAS Regulation I/21 (which was already in effect) to also include the Convention for the Prevention of Pollution from Ships.

LL. International Convention on Load Lines (IMO, LL1966).

- Article 23, subsection 1. Casualties:

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

It is worth mentioning that the background to this convention includes the establishment of a Commission

in England in 1873 to investigate ships with poor seaworthiness and address the issue of the load line. This Commission conducted a study recording the drafts and freeboards of vessels. Subsequently, in 1883, a Commission on the load lines of ships was appointed. After two years of investigation, it issued a safety report, which led to the enactment of the British Merchant Shipping Act of 1890. This law made it mandatory to mark the load line disk according to the Load Line Committee's Tables published in 1885.

***“The IC Code is the only instrument containing mandatory standards and recommended practices for Member States to conduct safety investigations into marine accidents and incidents.*”**



On the other hand, LL amended includes the Intact Stability Code, which applies to certain types of ships that were not originally covered by the convention, such as specific classes of fishing vessels. Article 23 of the LL is essentially an extension of SOLAS Regulation I/21.

CTA. Cape Town Agreement of 2012 (IMO, CTA 2012):

- Attachment 2. Articles of the Torremolinos Protocol of 1993. Article 7, subsection 1. Casualties to fishing vessels.

1. Each Party shall arrange for an investigation of any casualty occurring to any of its vessels subject to the provisions of the present Protocol, when it judges that such an investigation may assist in determining what changes in the present Protocol might be desirable.

In a way, this convention can be interpreted as an attempt by the IMO to adopt an instrument similar to SOLAS, but specifically applicable to fishing vessels, given that these vessels are often not covered by most of SOLAS regulations.

According to the Organization, when the Cape Town Agreement enters into force, it will contribute to safe, legal, and sustainable shipping. The agreement is expected to enhance safety standards for more than 64,000 fishing vessels of 24 meters in length worldwide. Its aim is to facilitate better control of fishing vessel safety by port States, flag States, and coastal States. The Agreement is also anticipated to help combat illegal, unreported, and unregulated (IUU) fishing and to prevent marine pollution from plastic waste resulting from discarded fishing gear and other equipment.

The IMO also established that for the Cape Town Agreement to enter into force, it is necessary for it to be ratified by 22 States with a minimum of 3,600 fishing vessels of 24 meters in length or more operating on the high seas.

It is important to clarify that although the CTA is from 2012, this article was incorporated from the articles of the Torremolinos Protocol of 1993, related to the International Torremolinos Convention for the Safety of Fishing Vessels of 1977. Therefore, its origins precede the CI Code.

So far, we have seen that the articles of the SOLAS, MARPOL, LL, and CTA conventions stipulate that every flag State has the duty to conduct a maritime safety investigation into any accident or incident involving one of its flagged vessels. This obligation arises if the State believes that the investigation could help determine potential changes to the rules of these instruments or if the incident has caused significant harmful effects to the environment.

We have also described that these rules all predate the mandatory implementation of the CI Code, and that the introduction of the CI Code addressed the need to clarify how to conduct maritime safety investigations. This is because the obligation to carry out such investigations was already in effect for member States under the aforementioned conventions.

STCW. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (IMO, STCW 1978).

- Regulation I/5, subsection 1. National provisions:

1. Each Party shall establish processes and procedures for the impartial investigation of any reported incompetency, act, omission or compromise to security 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.

“When the Cape Town Agreement enters into force, it is expected to improve the safety standards of more than 64,000 ships of 24-meter vessels worldwide.”



This convention deals with the qualifications and certifications of seafarers; therefore, its scope does not cover ships but rather the personnel on board. This instrument is applicable to all crew members performing functions on ships covered by the SOLAS Convention.

STCW-F¹¹. International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (IMO, STCW-F 1995).

- Article 7, subsection 1. 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.

In this case, the difference from the STCW Convention is that the scope of STCW-F encompasses the crews of fishing vessels, which were not included in the original STCW instrument.

In both the STCW and STCW-F conventions, there are obligations for member States to conduct investigations related to the certificates or endorsements they issue. However, these investigations do not aim to determine potential needs for modifying these conventions. Instead, they are intended to impose penalties or prevent fraud in qualifications, certifications, and endorsements.

Based on the above, it can be stated that the CI Code is applicable to investigations arising from the IMO conventions analyzed in this article with the following exceptions:

- a. STCW Convention.
- b. STCW-F Convention.
- c. Cases where, regardless of the applicable convention, the acts or omissions were intentional and aimed at endangering the safety of a vessel, a person, or the environment.

Finally, by way of a corollary, it is worth mentioning that Law 27,514, Article 6, paragraph (e) states that:

The Transportation Safety Board (JST) intervenes in maritime and inland Waters casualties whose investigation is mandatory according to the International Maritime Organization, as well as those that need to be investigated according to the criteria established by the JST. This applies to casualties occurring in the seas, rivers, lakes, and other navigable waters of the Nation or involving vessels or naval artifacts flying the Argentine flag, with the exception of military and police vessels.

In this regard, the JST has issued its investigation criteria incorporating all the obligations and principles derived from the aforementioned international instruments, where the CI Code is applicable, including the CTA, even though it has not yet been signed by Argentina nor has it entered into force internationally. Additionally, the criteria also cover transportation by vessel in jurisdictional river and lake waters.

