



INTERNATIONAL MARITIME  
ORGANIZATION



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Agenda item 11

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RESOLUTION A.637(16)

adopted on 19 October 1989

CO-OPERATION IN MARITIME CASUALTY INVESTIGATIONS

THE ASSEMBLY,

RECALLING resolution A.173(ES.IV) concerning participation in official inquiries into maritime casualties, and further recalling resolution A.440(XI) concerning exchange of information for investigations into marine casualties,

NOTING the provisions contained in the United Nations Convention on the Law of the Sea, 1982 (article 94(7); article 217(5); article 223), regarding the conduct of casualty investigations, which reflect an established international determination to achieve greater investigative co-operation between States,

NOTING ALSO the advantages to be gained by elaborating procedures and practices derived from the foregoing resolutions in order to increase the level of co-operation between States in official investigations into maritime casualties, whether or not such casualties result in pollution of coastlines,

RECALLING ALSO the provisions of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (article 12), and the International Convention for the Safety of Life at Sea, 1974 (annex, chapter I, regulation 21),

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RECOGNIZING the importance of maritime casualty investigations in promoting maritime safety and preventing pollution, and the need for both full co-operation between States in the conduct of investigations and the exchange of information regarding investigations, so that the purpose of such investigations may be fully realized,

RESTATING the objective of ensuring that all States having a substantial interest in maritime casualties shall have the opportunity to be informed of the facts and be represented at formal investigations into such casualties,

DESIRING to encourage greater consistency in international practice in relation to such official investigations, and

CONSCIOUS that national rules and bilateral international agreements must be taken into consideration when these deal directly with the matters which are the subject of this resolution,

1. URGES States to fulfil their obligations to carry out investigations of maritime casualties;
2. RECOMMENDS that, on the basis of mutual respect for national rules and practices, States implement as fully as possible the following procedures for the conduct of maritime casualty investigations held for reasons of maritime safety and/or protection of the environment:

1. Consultation

- (a) Flag States and other States having a substantial interest in a maritime casualty should consult at the earliest opportunity to determine which State or States will conduct an investigation into the casualty and to determine details of co-operation in conducting the investigation(s).
- (b) To provide the most efficient use of resources, and to minimize conflicts over access to witnesses and evidence, agreement upon a co-ordinated investigation procedure, with attendance and/or participation by other States as provided in paragraph 2, is desirable. However, nothing in this paragraph shall prejudice the right of any State to conduct its own investigation.

- (c) If more than one State desires to conduct an investigation of its own, those States should co-ordinate the timing of such investigations to avoid conflicting demands upon witnesses and access to evidence.

2. Conduct of the investigation

- (a) An investigation into a maritime casualty, whether held by the Administration of the flag State or by that of another State, should be so conducted that:
- (i) a State having a substantial interest is allowed to attend and, where practicable, the public is allowed to attend (subject to national rules requiring or permitting hearings or portions of hearings to be held in camera);
  - (ii) arrangements are made which allow representatives of States having a substantial interest to participate, subject to applicable national rules and to the reasonable discretion of the authority conducting the investigation, at least to the extent of:
    - a. questioning witnesses or causing questions to be put through the authority conducting the investigation;
    - b. viewing, examining, and obtaining photographs of material objects and copies of relevant documents; and
    - c. making submissions in respect of the various elements of the investigation, including suggesting witnesses to be called by the authority conducting the investigation;
  - (iii) Subject to the national rules of the State conducting the investigation, States with a substantial interest in the casualty participating in the investigation are provided, on a reasonable cost basis, with a copy of the transcript of the hearing (or its equivalent), when such is prepared for the purposes of the State conducting the investigation, and with a copy of the final report. The transcript of proceedings and the report may be

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withheld if required by national rules for the purpose of criminal proceedings, or its release delayed if, in the determination of the State conducting the investigation, the release will substantially prejudice the rights of a party in subsequent civil or criminal proceedings or proceedings in respect of the revocation or suspension of licences or certificates or the imposition of non-criminal penalties. The State conducting the investigation should consider the possibility of providing the transcript and final report to other substantially interested but non-participating States upon an assurance of confidentiality, if necessary to avoid prejudice to the rights of other parties.

- (b) In implementing these procedures, States are encouraged to provide for maximum participation in the investigation by all States with a substantial interest in the casualty.

### 3. Exchange of information

- (a) States should readily exchange, with the State conducting an investigation, any information relevant to the casualty.
- (b) If an investigation is being conducted by a substantially interested State, the flag State of a vessel involved in a maritime casualty should, to the extent permitted by its national rules, encourage the co-operation of the crew of the vessel with the State conducting the investigation.

### 4. Substantially interested States

- (a) A State has a substantial interest in a maritime casualty if:
  - (i) it is the flag State of a vessel that is the subject of the investigation; or
  - (ii) the casualty occurred within the internal waters of that State or its territorial sea; or

- (iii) the casualty caused or threatened serious harm to the environment of the State or within those areas over which the State may exercise jurisdiction as recognized under international law; or
  - (iv) the consequences of the casualty caused, or threatened, serious harm to that State or to artificial islands, installations, or structures over which it may exercise jurisdiction.
- (b) A State may have a substantial interest in a maritime casualty if:
- (i) the casualty resulted in loss of life or serious injury to the nationals of that State; or
  - (ii) that State has at its disposal important information that may be of use to the investigation.
- (c) Nothing in subparagraphs 4(a) and 4(b) precludes a State from establishing a substantial interest in the casualty based upon the special circumstances of the incident or of the ship or ships involved.
- (d) Whether a State has a substantial interest in a casualty in circumstances other than those enumerated in subparagraph 4(a) shall be determined by the State conducting the investigation.

#### 5. Exceptions

- (a) These procedures do not apply to or affect the holding of the following types of proceedings:
- (i) preliminary or informal investigations into the cause of the casualty (except for the provisions of paragraph 3);
  - (ii) criminal proceedings;

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- (iii) proceedings conducted exclusively with respect to the revocation or suspension of licences or certificates or to the imposition of non-criminal penalties; or
  - (iv) private litigation to ascertain civil liability for the casualty.
- (b) Notwithstanding subparagraph 5(a)(i), States are encouraged to consult with other States and to permit those having a substantial interest to attend and/or participate in preliminary or informal investigations, where national rules allow such participation.
- (c) A flag State conducting an investigation into a casualty involving a vessel flying its flag may exclude from participation in the investigation any other flag State involved which does not co-operate in the investigation or whose crew is not available to be examined in the investigation.

#### 6. Contact between Administrations

To facilitate implementation of this resolution, States should inform the Organization of the responsible authorities within their Governments that may be contacted regarding co-operation in casualty investigations.

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