



SUB-COMMITTEE ON STANDARDS OF
TRAINING AND WATCHKEEPING
38th session
Agenda item 4

STW 38/4/1
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UNLAWFUL PRACTICES ASSOCIATED WITH CERTIFICATES OF COMPETENCY

Outcome of MSC 81

Note by the Secretariat

SUMMARY

- Executive summary:*** This document reports on the outcome of MSC 81 with regard to unlawful practices associated with certificates of competency
- Action to be taken:*** Paragraph 3
- Related documents:*** MSC 81/25 and STW 37/18

1 The Maritime Safety Committee at its eighty-first session (10 to 19 May 2006) considered the Sub-Committee's recommendation to seek the concurrence of the Council on the need to include the nationality of the individual holding a fraudulent certificate in the proposed reporting format and was advised by the Legal Division of the Secretariat that:

- .1 the nationality should be considered as an extension of individual data. It involved a number of complex issues such as birth, marriage, proof of nationality, dual nationality, conditions upon which nationality was granted, refugee and asylum seeker status, etc. Furthermore, nationality could be acquired through many different ways and was not subject to scrutiny, registration or control similar to the training of seafarers;
- .2 noting a suggestion at STW 36, that such an inclusion would assist in prosecution of the individual identified as the holder of a fraudulent certificate, it should not be expected to be done through documents issued by IMO but by direct presentation of evidence before a competent court. Documents issued by international organizations for statistical purposes should not and cannot be used as evidence in procedures against individuals;
- .3 IMO's mandate extended solely to jurisdiction on the issue of certificates by flag States and control by port States and issues relating to nationality were well beyond its remit; and

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- .4 the Legal Division had offered tentative advice for consideration of the Sub-Committee at its thirty-seventh session. The purpose of this advice was to enable further discussions by the Sub-Committee. However, the Sub-Committee decided to refer the matter to the Council without any in-depth consideration of the technical issues. In light of the foregoing, it was not advisable to include the nationality of the individual identified as holder of a fraudulent certificate in the reports issued by the Secretariat.

Accordingly, MSC 81 agreed that there was no need to include the nationality of the individual identified as the holder of a fraudulent certificate in reports issued by the Secretariat, nor was there a need to refer the matter to the Council.

2 MSC 81, having considered the information provided by the United Kingdom (MSC 81/14/2*) on the investigations conducted by the United Kingdom into the types of fraud associated with certificates of competency and how they might effectively be identified and prevented, including a proposed revised IMO reporting format to assist in focusing the effort on the prevalent types of fraud, invited Member States, Administrations and seafarers' employers to identify fraudulent certificates, and in particular to:

- .1 encourage routine verification of certificates of competency by employers before employing a seafarer;
- .2 encourage training in fraud detection for all personnel involved in certification and inspection, and communicate principles of best practice to industry; and
- .3 work closely together to identify and report incidences of unlawful practice, and take appropriate and effective action to deter fraud,

and referred the document to STW 38 for detailed consideration with a view to updating the reporting format to enable Administrations with a more proactive approach to target fraud prevention.

ACTION REQUESTED OF THE SUB-COMMITTEE

3 The Sub-Committee is invited to take note of the above information and take action as appropriate.

* In view of the relocation of IMO Headquarters and for reasons of economy, delegates are requested to bring their own copies of these documents.