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MSC/Circ.1097
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**GUIDANCE RELATING TO THE IMPLEMENTATION OF SOLAS CHAPTER XI-2
AND THE ISPS CODE**

1 The Conference of Contracting Governments to the International Convention for the Safety of Lives at Sea (SOLAS), 1974 (London, 9 to 12 December 2002), adopted amendments to the Annex to the Convention, as amended, in particular new chapter XI-2 on Special measures to enhance maritime security; and, the new International Code for the Security of Ships and Port Facilities (ISPS Code).

2 The Maritime Safety Committee, at its seventy-seventh session (28 May to 6 June 2003), recognizing and considering the need for additional information to assist Contracting Governments and the industry with the implementation of, and compliance with new SOLAS chapter XI-2 and the ISPS Code, directed its Maritime Security Working Group to examine and provide additional guidance on specific aspects of the measures to enhance maritime security.

3 The guidance relating to the implementation of SOLAS chapter XI-2 and the ISPS Code, as approved by the Committee, is given at annex.

4 Reference is also made in this context to MSC/Circ.1067 on Early implementation of measures to enhance maritime security regarding the importance of early action by all parties to ensure that the new security regime is implemented by 1 July 2004.

5 Member Governments and international organizations are invited to bring this circular to the attention of national Designated Authorities, Administrations and all parties concerned and responsible for the implementation of maritime security measures.

ANNEX

GUIDANCE RELATING TO THE IMPLEMENTATION OF SOLAS CHAPTER XI-2 AND THE ISPS CODE

GENERAL

1 The ensuing paragraphs are lifted from the report of the Maritime Security Working Group (MSC 77/WP.15) at MSC 77 and are considered to be of valuable guidance for the implementation of SOLAS chapter XI-2 and the ISPS Code on relevant topics.

Mobile and immobile floating units

2 Paragraphs 3.1.1.1 to .3 of part A of the ISPS Code specify the vessels and mobile offshore drilling units subject to SOLAS chapter XI-2 and ISPS Code requirements. Advice was sought on the position of floating production, storage and offloading units (FPSOs), floating storage units (FSUs) and single buoy moorings (SBMs).

3 The Committee agreed that neither of the two types of floating production, storage and offloading units (FPSOs) and floating storage units (FSUs), were ships subject to the provisions of the ISPS Code, but that they should have some security procedures in place to prevent “contamination” of ships and port facilities subject to the ISPS Code.

4 It was concluded that such units, when attached to a fixed platform, should be covered by the security regime in force for the platform.

5 Such units, when engaged in periodic short voyages between the platform and the coastal State, should not be considered to be ships engaged on international voyages.

6 The Committee also agreed that single buoy moorings (SBMs), attached to an offshore facility would be covered by that facility’s security regime and if it was connected to a port facility it would be covered by the port facility security plan (PFSP).

7 In all cases the intention was to provide sufficient security to maintain the integrity of ships and port facilities covered by SOLAS and the ISPS Code.

International Ship Security Certificates (ISSC)

8 The Committee recognized that part B of the ISPS Code was albeit recommendatory, a process all parties concerned needed to go through in order to comply with part A. It was concluded that paragraph 9.4 of part A of the ISPS Code required that in order for an ISSC to be issued, the guidance in part B would need to be taken into account.

9 The Committee further specifically considered that an ISSC would not be issued unless paragraphs 8.1 to 13.8 of part B of the ISPS Code had been taken into account.

Issue of the International Ship Security Certificate

10 The Committee concluded that a Certificate should only be issued:

- .1 when the ship has an approved ship security plan (SSSP); and
- .2 there was objective evidence to the satisfaction of the Administration that the ship is operating in accordance with the provisions of the approved plan.

11 Certificates should not be issued in cases where minor deviations from the approved plan or the requirements of SOLAS chapter XI-2 and part A of the ISPS Code existed, even if these deviations did not compromise the ship's ability to operate at security levels 1 to 3.

Subsequent failures or suspensions

12 Any subsequent failure of security equipment or systems, or suspension of a security measure that compromises the ship's ability to operate at security levels 1 to 3 have to be reported immediately, together with any proposed remedial actions, to the Administration or the RSO, if the ISSC was issued by an RSO, and the appropriate authorities responsible for any port facility the ship is using, or the authorities of any coastal State through whose territorial seas the ship has indicated it intends to transit, and instructions requested.

13 Any failure of security equipment or systems, or suspension of a security measure that does not compromise the ship's ability to operate at security levels 1 to 3 have to be reported without delay to the Administration or the RSO, if the ISSC was issued by an RSO, and if so decided by the Administration, for their consideration with details of the equivalent alternative security measures the ship is applying until the failure or suspension is rectified together with an action plan specifying the timing of any repair or replacement.

14 The Administration or the RSO, if the ISSC was issued by an RSO, and if so decided by the Administration, may approve the alternative security measures being taken and the action plan, require amendments to such measures, require additional or alternative measures, speedier repair or replacement or take other appropriate action.

15 The International Ship Security Certificate should be withdrawn or suspended if:

- .1 the alternative security measures are not, in fact, in place; or
- .2 an approved action plan has not been complied with.

16 Company and Ship Security Officers and Administrations should be aware of the possible cumulative effect of individual failures or suspensions which could impair the ship's ability to operate at security levels 1 to 3.

Records

17 The Committee underlined the importance of maintaining the records required under the ISPS Code.

Training and Certification

18 Guidance on training, drills and exercises on ship security is to be found in 13.1 to 13.8 of part B of the ISPS Code. The issue of evidence that Ship Security Officers and ship security personnel had, in fact, received adequate training was discussed by the Committee.

19 As an interim measure, the Committee recommended that the ISSC be accepted as *prima facie* evidence that training has been conducted in accordance with the ISPS Code. The flag State was responsible for deciding how that training was to be conducted, and if any additional certification was required. If a port State control inspection detected a lack of training, further action could be taken. It was anticipated that States would develop and introduce further measures after 1 July 2004, which may include the introduction of individual certificates or other documentary evidence of training.

Reporting requirements and communication of information

20 The Committee agreed that it was essential that the information set out in regulation 13.1.1 to 13.1.5 of SOLAS chapter XI-2 was readily available to the international shipping community.

21 Contracting Governments providing information to the Organization are, therefore, requested to confirm that they are content for the information provided under 13.1.1 to 13.1.5 to be passed by the Organization to a central source for dissemination to the worldwide shipping community.

Inspections Prior to Entering Port

22 SOLAS regulation XI-2/9.2.5 allows inspection of a ship, if the ship is in the territorial sea of the Contracting Government the port of which the ship intends to enter. Clarification was sought from the Committee on the circumstances in which an inspection could be initiated under SOLAS regulation XI-2/9.2.5.3.

23 With regard to the inspection envisaged by SOLAS regulation XI-2/9.2.5.3 the Committee, bearing in mind the requirement for “clear grounds” in regulation XI-2/9.2.4, agreed that this kind of inspection would be expected to be undertaken normally when there was information / intelligence, usually received before arrival of the ship, suggesting that there were “clear grounds” for suspecting that the ship was not in compliance with the provisions or posed a threat to the port facility.

24 Contracting Governments are considered to have the right to carry out inspections of ships, intending to enter their ports, to search for possible suspicious persons, such as terrorists, on board. The inspections would be carried out within the scope of the SOLAS Convention.

Immediate Threat

25 Clarification was also sought on the interpretation of the term “immediate threat” found in SOLAS regulation XI-2/9.3.3.

26 On the question of what was understood to be an “immediate threat” in regulation XI-2/9.3.3, the Committee agreed that this could cover two scenarios: firstly, that the ship did not comply with the provisions of SOLAS chapter XI-2 and part A of the ISPS Code and therefore was considered to be a threat, or secondly, as in paragraph 23 above, intelligence or other information had been received indicating that the ship posed an immediate threat or was under threat itself. The Committee recognized that there may be other scenarios where, under international law, Contracting Governments could take additional measures outside of SOLAS regulation XI-2/9 for national security or defence, even if a ship fully complied with SOLAS chapter XI-2 and part A of the ISPS Code.

Responsibility for the exercise of Control Measures

27 With regard to the responsibility for control measures taken by the Contracting Governments, the Committee recognized that this might indeed differ from State to State, subject to the distribution of responsibilities to the various Government agencies of the country concerned. It was conceivable that all control measures would be undertaken by one control authority while, in other countries, traditional port State control would be conducted by PSC authorities and the security related additional control and compliance measures would be the responsibility of other designated authorities (i.e., immigration, police, navy, etc.).

Ship Identification Numbers

28 The Committee confirmed that the ship identification number (SOLAS regulation XI-1/3) to be permanently marked on the hull of the ship was the prefix “IMO” followed by the 7 digit number in accordance with resolution A.600(15).

Verification of Security Systems

29 In considering the question of how detailed the verification of security systems would have to be, the Committee confirmed that for all technical equipment, specified in the SSP, 100% verification was necessary, while for all operational (non-technical) security measures a sample audit would be sufficient, to the level necessary for the auditor to verify the whole operating system.

Voluntary nature of reporting by ships intending to enter the Territorial Sea

30 The Committee clarified that, with regard to SOLAS regulation XI-2/7, ships operating in, or intending to enter the territorial seas would report to the relevant coastal State on a voluntary basis, triggered by the ship, and that this regulation did not establish a mandatory reporting system.

Declarations of Security

31 With regard to the completion, on request of the ship, of a Declaration of Security (DoS) when interfacing with a port facility or a ship not covered by a security plan, the Committee confirmed its working assumption that, for port facilities not covered by the regulations, the coastal State would have to ensure that a contact point was to be provided ashore, with whom the ship could communicate and who would be empowered to sign the DoS while, for a ship not covered by a security plan, again there should be a designated contact point ashore (in the coastal State) or on the ship designated to sign the DoS.
