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

1 The Maritime Safety Committee (the Committee), at its seventy-ninth session (1 to 10 December 2004), recognizing the need for additional information to assist SOLAS Contracting Governments and the industry with the implementation of, and compliance with SOLAS chapter XI-2 and the ISPS Code, developed the Guidance relating to the implementation of SOLAS chapter XI-2 and of the ISPS Code, as set out at annex.

2 The Guidance addresses a series of issues which have arisen, following the entry into force on 1 July 2004 of the special measures to enhance maritime security, as a result of the implementation or interpretation of the provisions of SOLAS chapter XI-2 and the ISPS Code.

3 SOLAS Contracting Governments and all those who may be involved with the implementation or interpretation of the provisions of the special measures to enhance maritime security are reminded that paragraph B/1.5 of the ISPS Code states that the reader of the ISPS Code is advised that:

“nothing in part B of this Code should be read or interpreted in conflict with any of the provisions of either SOLAS chapter XI-2 or part A of this Code and that the aforesaid provisions always prevail and override any unintended inconsistency which may have been inadvertently expressed in part B of this Code. The guidance provided in part B of this Code should always be read, interpreted and applied in a manner which is consistent with the aims, objectives and principles established in chapter XI-2 and part A of this Code.”

4 SOLAS Contracting Governments, international organizations and non-governmental organizations with consultative status are invited to bring the attached Guidance to the attention of Designated Authorities, Administrations and all parties concerned and responsible for the implementation of special measures to enhance maritime security.

ANNEX**GUIDANCE RELATING TO THE IMPLEMENTATION OF
SOLAS CHAPTER XI-2 AND THE ISPS CODE****SETTING AND RESPONDING TO SECURITY LEVELS**

1 Security levels can only be set by a SOLAS Contracting Government (Contracting Government).

2 Under SOLAS regulation XI-2/3, on Obligations of Contracting Governments with respect to security, Contracting Governments, in their capacity as Administrations, set the security levels applying to their ships (SOLAS regulation XI-2/3.1) and Contracting Governments set security levels applying to port facilities within their territory and to ships prior to entering a port or whilst in a port within their territory (SOLAS regulation XI-2/3.2).

3 Administrations have to ensure that security-level information is provided to ships entitled to fly their flag and Contracting Governments have to ensure that security-level information is provided to port facilities located within their territory and to ships prior to entering a port and when in a port within their territory. Security-level information has to be updated as circumstances dictate.

4 Under SOLAS regulation XI-2/7, on Threats to ships, Contracting Governments set the security levels applying to their territorial sea and have to ensure the provision of security-level information to ships operating in their territorial sea or having communicated their intention to enter their territorial sea. It is for the ship to determine what action it takes having received security-level information applying to all, or part, of a State's territorial sea.

5 The same security level can apply to all an Administration's ships or different security level can apply to a particular ship or a group of ships as determined by the Administration.

6 A Contracting Government can set the same security level to apply to all its ports and port facilities or apply different security levels to a specific port or port facility, to a group of ports or port facilities or to part of a port or a port facility. Similarly a Contracting Government can set the same security level to apply to all of its territorial sea or different security levels to apply to different parts of its territorial sea.

7 Under SOLAS regulation XI-2/4.3 a ship prior to entering a port or when in a port within the territory of a Contracting Government shall comply with the requirements for the security level set by that Contracting Government if the security level is higher than that set by the ship's Administration. Under section A/7.6 of the ISPS Code, prior to entering a port or whilst in a port within the territory of a Contracting Government, ships shall confirm to the port facility security officer (PFSO) the initiation of the implementation of the appropriate measures and procedures as detailed in the ship security plan, and shall report any difficulties in implementation. A ship can never have a security level lower than that applying to the port or port facility the ship is entering or is in (paragraph B/4.12 of the ISPS Code).

8 SOLAS regulation XI-2/4.5 also requires ships to report to the appropriate competent authority if they cannot comply with the security level set by their Administration or by a Contracting Government and applicable to that ship. MSC/Circ.1097 on Guidance relating to the implementation of SOLAS chapter XI-2 and the ISPS Code provides further guidance on this requirement.

9 If a ship entering a port or within a port, is operating at a security level set by its Administration which is higher than that set by the port's Contracting Government, arrangements have to be agreed with the PFSO to allow the ship to continue to operate at the security level set by its Administration. A Contracting Government or PFSO cannot require a ship to reduce that ship's security level.

10 Notwithstanding the set security level applying to a ship, to a port or a port facility or to a territorial sea, if a threat emerges or an incident occurs the ship or port facility will have to respond to the security threat or incident as it develops, in accordance with the ship or the port facility security plan, without waiting for the Administration or Contracting Government to set a higher security level. The initiation of an appropriate response to an emerging threat or actual incident cannot, and should not, await change of the security level by the Administration or Contracting Government. The ship or port facility should report the threat or incident, and the action taken, to the Administration and/or Contracting Government at the earliest practicable opportunity.

DECLARATION OF SECURITY

11 Under SOLAS regulation XI-2/10.3 Contracting Governments determine when the submission of a Declaration of Security (DoS) from a ship is to be required by a port facility. Section A/5.2 of the ISPS Code specifies when a ship can request a DoS from a port facility. Paragraphs B/5.1 to B/5.6 of the ISPS Code offer guidance in relation to DoS. The practice of requiring or responding to requests for a DoS should be set out in the Port Facility Security Plan (PFSP) and that on requesting a DoS in the Ship Security Plan (SSP).

12 Though a ship has to comply with a request from a port facility to complete a DoS, a port facility does not have to comply with a request for the completion of a DoS from a ship, though a request from a ship to complete a DoS has to be acknowledged by the port facility (section A/5.3 of the ISPS Code). In the same way another ship does not have to comply with the request for a DoS though it should acknowledge receipt of the request (section A/5.3 of the ISPS Code).

13 The DoS is intended to be used in exceptional cases usually related to higher risk, when there is a need to reach an agreement between the port facility and the ship as to the security measures to be applied during the ship/port interface because, either the provisions of the PFSP and of the SSP did not envisage the situation or SOLAS chapter XI-2 and part A of the ISPS Code have not anticipated the specific circumstances as listed in section A/5.2 of the ISPS Code. There should be a security-related reason relating to the specific ship/port interface or ship-to-ship activity for requiring or requesting completion of a DoS.

14 Experience since entry into force of the special measures to enhance maritime security has shown that DoS are being frequently requested by ships, in part because ships anticipate being requested to produce DoS covering previous port visits or ship-to-ship activities by duly authorized officers by a Contracting Government (duly authorized officers) during control and

compliance measures pursuant to the provisions of SOLAS regulation XI-2/9. However, while a ship can request a DoS the port facility or other ship is not required to complete one.

15 Unless there are specific security reasons for doing so relating to the specific ship/port interface or ship-to-ship activity, a ship should not request a DoS. The circumstances specified in section A/5.2 of the ISPS Code should apply. A DoS should not normally be completed if both the ship, port facility or other ship covered by the ISPS Code are operating at security level 1.

16 Under section A/5.2 of the ISPS Code a ship can request completion of a DoS when:

- .1 the ship is operating at a higher security level than the port facility or another ship it is interfacing with;
- .2 there is an agreement on a Declaration of Security between Contracting Governments covering certain international voyages or specific ships on those voyages;
- .3 there has been a security threat or a security incident involving the ship or involving the port facility, as applicable;
- .4 the ship is at a port which is not required to have and implement an approved port facility security plan; or
- .5 the ship is conducting ship to ship activities with another ship not required to have and implement an approved ship security plan.

17 Duly authorized officers can inspect those DoS that have been completed during the last 10 calls at port facilities and any evidence that the request by a ship for a DoS, during the period of the last 10 calls at port facilities, where applicable, was acknowledged by a port facility or another ship even though the port facility or the other ship did not comply with the request. Duly authorized officers should not expect ships to have DoS covering all previous port calls or ship-to-ship activities.

THE NEED FOR AND THE BENEFITS FROM AN EFFECTIVE AND CONTINUING DIALOGUE

General

18 Effective and continuing dialogue between Company and Ship Security Officers and PFSOs, duly authorized officers and control authorities is central to the efficient implementation of the security regime established under SOLAS chapter XI-2 and the ISPS Code. Without such dialogue issues can arise which could lead to possible misunderstandings and the risk of delay or disruption to ship/port interfaces, the ability of shipboard personnel to exercise effective access controls to their ship or undertake essential safety-related inspections or safety exercises.

19 In most cases dialogue on security-related matters will be between the ship and the PFSO. If issues arise which are the responsibility of Government control authorities operating at the port facility, the PFSO should seek to facilitate dialogue between the ship and such authorities, for example by providing the contact details of the relevant authority.

20 To the extent that such dialogue involves the exchange of security-related information including, for example, information on the security level the ship is operating, details of the ship's access controls or the timing of ship related exercises they should be conducted by secure means and, if possible, the transmission of such information using VHF radio communications should be avoided.

21 All ships to which SOLAS chapter XI-2 and the ISPS Code apply are required to exercise appropriate access controls in accordance with their SSPs. The purpose of such dialogue is to secure agreement on the procedures to be followed when the ship is in port. Examples of situations where such dialogue and agreement would be beneficial include, but are not limited to:

- pilots;
- stevedore identification;
- safety-related inspections undertaken by the shipboard personnel requiring access to the immediate vicinity of the ship;
- undertaking lifeboat and evacuation drills and exercises; and
- access to the ship by shore based personnel, by owner's representatives, safety inspectors or auditors, maintenance and repair personnel and representatives of seafarers' welfare and labour organizations.

Control of access

22 Control of access by shore based personnel to ships when in port should be regulated under the provisions of the respective PFSP. The circumstances when access to ships through the port facility is restricted, or denied, to owners' representatives, safety inspectors or auditors, maintenance and repair personnel and representatives of seafarers' welfare and labour organizations should be specified in the PFSP and approved by the Contracting Government. In general every effort should be made to facilitate such access unless there are specific security-related reasons specified in the PFSP for not doing so.

Identification is required

23 The ISPS Code requires all those wishing to board the ship to have a means of identification which is acceptable to that ship. This includes stevedores and other port workers. Stevedores and other port workers should carry identification issued by the port facility or a local authority responsible for the engagement or employment of stevedores. The dialogue between the ship and the PFSO should establish how access to the ship by stevedores and other port workers is to be controlled. In cases where the stevedores, or other port workers, do not carry identification issued by either the port facility or a local authority the ship may issue its own temporary identification before allowing access.

Reading of draught marks and safety-related inspections

24 The visual reading of draught marks by the shipboard personnel is an essential safety requirement. Shipboard personnel is required to carry out a varied of safety-related inspections

and maintenance of the ship which require access to the immediate vicinity of the ship. In cases where the shipboard personnel may not possess the appropriate documentation to allow them access to the territory of the Contracting Government or country, arrangements should be agreed to allow them to undertake such activity. Such arrangements will require co-ordination between the PFSO and the relevant control authorities and there should be a presumption that they will be facilitated unless a specific security threat exists at the port facility. In such cases alternative arrangement to allow the accurate reading of draught marks or other safety-related inspections and maintenance by the shipboard personnel should be in place.

Lifeboat and evacuation drills and exercises

25 Lifeboat and evacuation drills and exercises are essential to the safe operation of the ship and are most safely undertaken when a ship is in port. If such drills or exercises are planned when the ship is in port, the arrangements to allow them to be undertaken should be agreed in advance by the ship, the PFSO or control authorities. There should be a presumption that such drills or exercises will be facilitated unless a specific security threat exists.

FAMILIARIZATION OF THE SHIP SECURITY OFFICER

26 It is a fundamental requirement that the Ship Security Officer (SSO) should have adequate training and be familiar with the security arrangements on the specific ship on which the SSO serves. In cases where changes in shipboard personnel involve the replacement of the serving SSO it is the responsibility of the Company to ensure that the replacement SSO has an appropriate opportunity to become familiar with the particular ship, and its SSP, on which SSO is to serve before taking over and assuming their security-related duties and responsibilities.

CONTACTING THE COMPANY SECURITY OFFICER

27 The position of Company Security Officer (CSO) is a 24-hour responsibility. However, the CSO does not have to directly undertake all the duties and responsibilities of the CSO and their delegation is acceptable. In most instances the direct point of contact between a ship and its Company will be through the duty officer of the Company, who, if not the actual CSO, can alert the Company official undertaking the duties of the CSO. If duly authorized officers wish to confirm the procedures under which the ship can contact the CSO it would appear appropriate that a reasonable test would be the speed with which the ship can contact the duty officer of the Company and receive a response from either the CSO or the Company official acting on the behalf of the CSO.

CONTROL MEASURES OR STEPS

28 If the imposition of control measures or steps against a ship, pursuant to the provisions of SOLAS regulation XI-2/9, is considered necessary these should be based, as far as possible, on a thorough assessment of the prevailing security risks. Such assessments should be undertaken on a non-discriminatory basis. When action is being considered on the basis of information provided anonymously, or from non-official sources, every effort should be made to confirm the authenticity of the information.