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PIRACY AND ARMED ROBBERY AGAINST SHIPS

Guidance for flag States on measures to prevent Somalia-based piracy

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SUMMARY

Executive summary: This paper notes that member States are yet to agree principles that facilitate and support the role of flag States with respect to the implementation of counter piracy initiatives. The paper provides draft guidelines in the annex which invite flag States to implement a number of steps intended to complement the powers already at their disposal to deal with actual or attempted piracy against their ships.

Strategic direction: 6.2

High-level action: 6.2.2

Planned output: No related provisions

Action to be taken: Paragraph 9

Related documents: MSC.1/Circ.1333, MSC.1/Circ.1334, MSC.1/Circ.1390,
MSC.1/Circ.1405/Rev.1, MSC.1/Circ.1406/Rev.1, MSC/Circ.1408

Introduction

1 The authors of this paper note with appreciation the progress that has been made by the IMO Secretariat, IMO Member States and other international bodies in their continuing work on the development and implementation of more stringent counter piracy initiatives. Further, the authors welcome the progress that has been made by States to implement such initiatives consistent with the commitments established in IMO Assembly resolutions.

Proposal

2 The IMO has adopted non-binding guidance regarding the use of privately contracted armed security personnel on board ships in the High Risk Area and industry has developed and adopted best practice guidelines to help mitigate the risk from pirate attacks against ships and hostage taking. However, Member States have not yet agreed principles that facilitate and support the role of flag States with respect to the implementation of counter-piracy initiatives. The Committee is, therefore, invited to explore ways in which

States can assist each other and ships flying their flag, and in particular to explore the possibility to coordinate best practice in the area of counter-piracy through the attached Guidelines.

3 It is suggested that this might be acknowledged through the development of an over-arching document to more fully address the role of the flag State in combating piracy and the protection of ships against pirate attack and assist in the development of individual flag State policy in this important area.

4 In summary, the attached draft guidelines invite flag States to implement a number of steps intended to complement the powers already at the disposal of flag States to deal with actual or attempted piracy against their ships, including taking steps that:

- .1 remove impediments to the application of MSC/Circ.1408 – Interim Recommendations for port and coastal States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area;
- .2 ensure ships apply Best Management Practices for protection against Somalia-based piracy (currently BMP4);
- .3 remove impediments to the Good Practice Guide for Shipping Companies and Manning Agents for the Humanitarian Support of Seafarers and their Families; and
- .4 adopt measures that facilitate cooperation between and with other governments and law enforcement agencies in the investigation, detection, arrest, extradition and prosecution of those involved in piracy.

Background

5 A number of obligations exist under international law that are pertinent to the role of the flag State with respect to piracy, both in general, and specifically with regard to the existing situation in the Western Indian Ocean and Gulf of Aden.

6 United Nations Security Council resolution 2020 (2011), adopted by the Security Council at its 663rd meeting, on 22 November 2011, inter alia:

"Calls upon all States, and in particular flag, port, and coastal States, States of the nationality of victims, and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of all persons responsible for acts of piracy and armed robbery off the coast of Somalia."

7 Recalling UNCLOS article 91 which provides that ships have the nationality of the flag State whose flag they are entitled to fly and, save in a few exceptions, a flag State has exclusive jurisdiction over its ships on the high seas (article 92). Recalling also UNCLOS article 94, flag States have the primary responsibility for the safety of the ship and for ensuring that seafarers have a safe and decent workplace.

Consideration

8 The ever present threat and frequent incidence of piracy has been mitigated to some extent by the effective deployment of naval and military forces to those sea areas where pirate activity is at its most prevalent. Whilst the presence of a naval force has proved

to be an effective deterrent at sea, its presence remains uncertain from year to year. The threat, however, is likely to remain high and until land-based solutions establish the rule of law ashore in Somalia, the shipping industry will need to rely on the deployment of military forces to protect shipping and seafarers, pursue and prosecute pirates and assist law enforcement agencies arrest those financing and organizing the activity. The industry will continue to educate, train and protect seafarers and their ships but industry cannot pursue arrest and prosecute pirates. Whilst the sponsors of this paper welcome States' considerable commitments to resource military assets, they recognize also that flag States could do more to facilitate the application of counter piracy measures on board their ships and arrest and prosecution of pirates.

Action requested of the Committee

9 The Committee is requested to consider the proposals and take action as appropriate.

ANNEX

GUIDANCE FOR FLAG STATES ON MEASURES TO PREVENT AND MITIGATE SOMALIA-BASED PIRACY

Introduction

The purpose of this guidance is to place in a single reference document, the best practices, codes and standards developed by the Organization to date and be consistent with obligations under international law. The guidance lists recommended practices that flag States are encouraged to apply, taking into account their own circumstances and subject to their national law, in order to maximize their efforts to implement counter-piracy measures. The guidance has been prepared pursuant to decisions of the IMO Council and Assembly referring to best management practices, codes and standards as tools that can assist flag States in their implementation of, inter alia, IMO resolutions and which support the wider international counter-piracy effort.

Counter-Piracy Policy

Flag States should develop, implement, publicize and apply a national counter-piracy policy consistent with the customary international law of the sea and national law. Such a policy could include the introduction of systems and mechanisms that will facilitate the protection of ships and permit them to take proportionate and reasonable measures to avoid being hijacked by pirates and mitigate the risk to seafarers serving on such ships. The policy should take into account the changing nature of piracy in the High Risk Area and have in place processes and procedures to ensure it can be adapted to changing threats. Flag State Administrations will be aware of the substantial existing guidance and will incorporate it, as appropriate, into their own counter-piracy policy. The policy could include, but not be limited to, existing guidance established in:

- .1 MSC.1/Circ.1333 — Recommendations to governments for preventing and suppressing acts of piracy and armed robbery against ships;
- .2 MSC.1/Circ.1334 — Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships;
- .3 MSC.1/Circ.1390 — Guidance for company security officers (CSOs) – Preparation of a Company and crew for the contingency of hijack by pirates in the Western Indian Ocean and the Gulf of Aden;
- .4 MSC.1/Circ.1405/Rev.1 — Revised interim guidance to shipowners, ship operators, and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area;
- .5 MSC.1/Circ.1406/Rev.1 — Revised interim recommendations for flag States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area;
- .6 MSC.1/Circ.1408 — Interim recommendations for port and coastal States regarding the use of privately contracted armed security personnel on board ships in the High Risk Area;

- .7 Best Management Practices for Protection against Somalia-based piracy (BMP4), promulgated as MSC.1/Circ.1339 (<http://www.mphrp.org/MPHRP-Good-Practice-Guide.pdf>); and
- .8 Good Practice Guide for Shipping Companies and Manning Agents for the Humanitarian Support of Seafarers and their Families.

Best Management Practices and Pre-Transit Preparation

A State's counter-piracy policy should ensure that ships flying its flag are aware of, and comply with, all relevant aspects of the latest version of BMP, and in particular, ships should:

- .1 complete a risk analysis prior to entering the High Risk Area (as provided for in the BMP); and
- .2 report to UKMTO and register each transit with MSCHOA.

The policy should also describe follow-up procedures for cases where ships are reported as being non-compliant by military authorities in the region.

Capture and Humanitarian Response

A State's counter-piracy policy should contain measures regarding the eventuality that a ship flying its flag is captured, and to ensure that, as far as possible, the humanitarian needs of the crew and families are addressed during the period of captivity and after release. In particular, it should ensure that:

- .1 shipowners operating ships flying their flag are aware of and implement the guidance contained in MSC.1/Circ.1390 Guidance for company security officers (CSOs) – Preparation of a Company and crew for the contingency of hijack by pirates in the Western Indian Ocean and the Gulf of Aden;
- .2 the shipowner or operator of a ship captured by pirates keeps the families of hijacked seafarers informed of relevant developments;
- .3 shipowners look after the welfare of captured seafarers and their families; and
- .4 the Administration takes steps, as appropriate, to facilitate expeditious negotiations for the release of hijacked vessels and crews, recognizing the State's duty of care to seafarers serving on ships flying its flag and the fact that the swift release from captivity minimizes trauma for seafarers and their families.

Suppression of Piracy in the High Risk Area

In order to cooperate to the fullest possible extent in the suppression of Somalia-based piracy, all flag States should exercise their jurisdiction and prosecute pirates and, to the extent possible, contribute appropriate military assets or take equivalent measures.

Reporting

Flag States should provide information to the Organization on the measures they have taken to implement this MSC Circular for circulation to Member States and to Organizations in Consultative Status.
