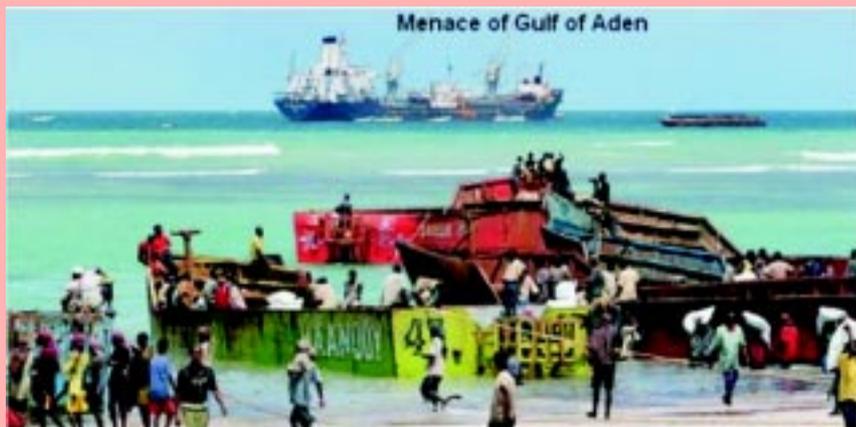




## Reviving an Old Maritime Practice - Somali Pirates



According to history, Vikings were the masters of the game, if not the pioneers. They did not only loot the properties in the high seas or on shores off vessels, but also extended the ruthless skills far beyond the then vaguely-defined boundaries of sea piracy by invading the countries of western Europe and then settling down en masse - to pursue farming and deal with anything that got in the way to achieving it.

Modern-day Scandinavians may have never thought that the acts committed by their ancestors would be reinvigorated or modelled on a less-violent scale in the 21st Century by some inhabitants on the Gulf of Aden - to kick off a dusty cloud of embarrassment and unease.

It is reported that Somali pirates hijacked the third foreign ship this week in spite of patrolling conducted by more than a half-a-dozen powerful navies. By all accounts, the pirates are getting bolder, richer and even funnier - branding themselves as 'gentlemen' in front of television crews who dared to meet them.

Clan-based Somalia has been without a functioning government for well over decade: the West abandoned it by classifying it as un-governable; the Americans had an unpleasant experience when they were in pursuit of one of the main warlords in Somalia - Mohammed Farrah Aidid - who, in a bizarre twist of fate, happened to be a naturalized US citizen and an ex-marine.

In the absence of a civil administration - elected or otherwise - an ever growing number of warlords took the law - and powerful guns too - into their own hands and the result was predictable - a menace on unimaginable scale for both Somalia's battered neighbours and international shipping lines,

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as the route through Gulf of Aden has been one of the busiest in the world.

The fate of three ships in a week shows the gangs of pirates are vigilant enough to exploit even the slightest drop of guard; the Christmas and New Year commitments may have compelled the international navies to take the eye off the ball - and pirates struck with enviable efficiency.

According to past notable piracy incidents at the hands of Somalis, the latter seem to be emulating the street traders in the region to the core by displaying the aptitude for constructive bargaining: the original demand always is in the region of millions and comes down, perhaps, faster than the sails of old tall ships, when reality kicks in. Of course, they threaten the hapless crews with 'consequences' in the event of their masters not honouring their part of 'deals'. However, the executions are not heard of.

The operations carried out by Somali pirates follow a familiar pattern: they lurking around potential targets in small boats in the guise of fishermen while concealing their sophisticated weapons - the only form of protection against the potential attacks by international navies; then they get close enough to fire RPG's to frighten the crew; and finally, they board the ship and order it close the Somali coastline where the problem is endemic; once the crew are under detention, the demands are made through professional negotiators while leaving a sufficient room for bargaining.

The biggest problem for the international navies is what to do with the captives; the pirates can't be tried in Somalia for obvious reasons. If they are to be taken to a Western country, say the Netherlands, there are two cumbersome possibilities: the pirates may enjoy a relatively luxury life in a western prison - hardly a deterrent; after the end of a possible short-lived jail term, he may ask for political asylum in the host country by ingeniously exploiting the existing system to do so.

As the West is mired in legal wrangling - or lack of it about what to do with the menace - yet another phase of piracy is mushrooming in Somalia. The good money that the bounty inevitably brings in has made the looters rich and a serious force to reckon with in the fiercely-tribal Somali society. So, the youth look up to them as role models and the piracy turns dangerously magnetic by attracting scores of them as new recruits for the vile practice.

Somalia has a feeble administration which loves to be called a government. It says it is doing its level best to tackle the problem with the very limited resources it has at its disposal. However, when the tentacles of this administration are shrinking in towards Mogadishu, the capitol of Somalia, the role of the boss of the very institute becomes more of a mayor than that of a prime minister.

The West seemed to have learnt one lesson with regard to the lawless country - not to introduce democracy in

a hurry to a society that thrives on tribalism. That is why they let them 'get on' with their affairs for over a decade. The trouble is Somalia doesn't seem to be reciprocating - letting the West get on with its own affairs by allowing the ships to cross safely the waterway near their country.

That is why ordinary Somalis always fear the worst - a series of air strikes by the West against hotspots of 'piracyland'. The response by the West so far has been very gentle - arresting the culprits and then confiscating the weapons or conducting a few trails. If a response gets tougher, then the moral responsibility lies with the tribal elders who boast about keeping the society 'in order' by following the rigid 'traditions'.

The dwindling number of incidents of piracy in the other parts of the world - near the Philippines and Indonesia - is a welcome development. It indicates a determined government - not necessarily a perfect government - can take effective measures to curb the activities of the pirates to a significant level despite their tentacles of power running into many layers of the society in that part of the world.

While Somali government can learn some lessons from them, international shipping companies can show some responsibility by not giving into the demands of the pirates easily by offering cash as the first resort. After all, some of irresponsible acts committed by certain shipping companies provide the pirates with a perfect excuse to carry on their vile practice - dumping waste in their waters and stealing fish stock.

The model of boomerang exists in the sphere of international trade too, as the evidence of this kind faintly develops a picture of cause-and-effect in the ethical radar.

## **A message to the world's seafarers**

The International Maritime Organization has decided to dedicate next year to you by choosing, as the theme for World Maritime Day, "2010: Year of the Seafarer". Our intention is to pay tribute to you, the world's 1.5 million seafarers - men and women from all over the globe - for the unique, and all too often over-looked, contribution you make to the wellbeing of all of us. We will

do so with deep appreciation and recognition of the extra service you render every day of your professional life, frequently under dangerous circumstances, in delivering, to the more than 6.5 billion people of the world, the wheat that makes our daily bread, the gas and oil that warms our homes or moves our vehicles and the gifts we will share and enjoy



(contd. on page 4)

## From the Editor's Desk



### Wishing our valued readers, "A Peaceful, Happy and Prosperous New Year 2010".

Make up your mind. O Arjuna! Great is the person who can use his mind to control his senses and do his karma without any attachment. It is better to do your duty than to remain without doing anything. Action is important because we cannot even maintain our own body without it. .... Bhagavad Gita 3.7-8

Education without human values, does not produce the right citizens..

*Rights of the seafarers suppressed. Changing their perspectives and convincing them to approach issues in new ways. Leadership/ Management Training Programmed must view as an important means to transform the outlook of the present day reformers. Every one in their professional service has an aspiration to think at times, of them superior. Yes, some are considered better than others.*

*But in the end of the day, one should realize that they exist, all for the public service, have mutual respect for each other, live and let live. Most of the self proclaimed superior services in plum jobs, in monopolistic life-style, are suffering from a false superiority phobia. Hence, to comment on maritime administration, known to old-timers of marine officers / engineers (Ship Captains and Chief Engineers) from those opted for job ashore, inducted into the office of the Directorate General of Shipping, as Class One Officers, posted in MMD's, owing to their unique professional sea service, though generally those days old timers with their poor academic background-under-graduates, credibility given to their trade 'Certificate of Competency to man ships at sea' which they qualify through set paper exams. They quickly forget themselves of their seafaring life, possibly because of lesser sea service and try to harass the seafarers with their egoistic life-style, failing them not after few attempts but for several years/months. As though, the examiner has fallen from the sky. They build-up scare amongst the candidates unlike exams conducted overseas. Neither have they provided solutions to the candidates besides, hurt the sentiments of their fellow men who continue to work with professional hazards, hard-work at sea with risks and sacrifices. All this attitudinal changes, sooner-after their getting into govt. service, proclaims themselves in the marine department of the shipping ministry, in par with the IAS/IPS/IFS cadre. What is most disgusting is for them to continue comparing the high salary of the seafarers, which is a compensation for seafarer's risks and sacrifices, out at sea. Ref: Editorial of March 2009 Issue of Marine Waves monthly, International Maritime Newsletter. Hence, much of the MMD services needed to be privatized for reasons better known to the readers, who have been harassed for basic services rendered to Indian seafarers.*

*India and USA being partners in progress are cooperating in many fields of science and technology. Why not cooperate, in the area of governance which impacts the life of every citizen? Ref: open government initiative from the executive office of president of United States of America. Dec. 8, 2009 m-10-06. Memorandum for the heads of executive depts. and agencies FROM: Peter R. Orszag, Director. \*Govt. of USA having announced the "Open Government Initiative" Policy for transparency, participation and collaboration. Why not a similar initiative by India adopting what is good to us all. "Transparent Government (TransGov) Initiatives for ensuring accountability in India"?*

*The onerous responsibility of keeping this country united through upholding Rule of Law after independence, have failed in the discharge of their obligation, owing to clouded and polluted state of affairs. Infact, the government may privatize, keeping bare minimum important work process operations with it. How can Mariners inducted into DGS proclaim themselves as cream of the nation comparing with IAS, IPS, IFS etc. amongst all India services, while they coolly enter without much competition unlike other all India services, owing to 'no wide publicity for inducting mariners into the department', credited for their unique sea service, those seafarers actively working out at sea with high salary are for their risks and sacrifices, their families get used to hi-fi life, having later reached a stage that they find themselves difficult to adjust and compromise, with the Indian salary and pay tax additionally. Such of those seafarers on foreign flag vessels instead continue to bring in substantial foreign-exchange, valuable to their country. The quality of service rendered by Captains and Chief Engineers on foreign flag vessels, are far superior and challenging, being not distracted from home-ports. They are more with their job with rich and long sea-experience keeping abreast with updates, technically competent, far superior than those working and doing mere administrative jobs in MMD's, of the Directorate General Shipping, with lesser sea service, placed as senior officers, claiming false superiority over others, doing more harm to the active seafarers, harassing them in their monopolistic work-styles, which is not citizen- friendly. Anything done with a good-service motive has to thrive.*

- *Transparency: To implement principles of transparency, participation by all relevant stake holders. Transparency promotes accountability by providing the public with information about what the Government is doing, for awareness of services rendered to the public.*
  - *Participation allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society. Relevant inter-action will produce better results.*
  - *Collaboration improves the effectiveness of Government by encouraging partnerships and cooperation within across levels of government, between the Government and private institutions. Such open policy directive establishes deadlines for action with follow-ups, to advance their open government initiatives, well ahead of the deadlines.*
- a. *Valuing TIME of the government machinery and the public, service-provider in Governments Departments to Publish Government Information Online, for wider and larger awareness. To increase accountability, promote informed participation by the public, and create economic opportunity, each agency shall take prompt steps to expand access to information by making it available online in open formats. Thus minimizing process time, improved quality service from practical feedbacks. Timely publication of information is an essential component of transparency. Delays should not be viewed as an inevitable and insurmountable consequence of high demand. With respect to information, the presumption shall be in favor of openness (to the extent permitted by law and subject to valid privacy, confidentiality, security, or other restrictions).*
  - b. *To the extent practicable and subject to valid restrictions, agencies should publish and update information online in an open format that can be retrieved, downloaded, indexed, and searched by commonly used web search applications. An open format is one that is platform independent, machine readable, and made available to the public without restrictions that would impede the re-use of that information. To the extent practical and subject to valid restrictions, agencies should proactively use modern technology to disseminate useful information, rather than waiting for specific request.*
  - c. *Providing a Forum to interact and share best practices on innovative ideas to promote transparency, including system and process solutions for information collection, aggregation, validation and dissemination. Includes, how to make service changes with new technologies.*
  - d. *Nation to take advantage of expertise and insight of people, both inside and outside the government and form high impact collaborations with researchers, the private sector and civil society.*

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[www.themarinewaves.com](http://www.themarinewaves.com) \* view highlights and back issues of editorial contents, to convince you all about what "Marine Waves" does to the society's well-being, as a member of the Humanist Party of India.

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with our families and friends over this Festive Season. At IMO, we are ever-conscious of the important role you play in helping us achieve safe, secure and efficient shipping on clean oceans - the goals that we, as the United Nations specialized agency charged with the regulation of international shipping and as a member of the global maritime community, have set ourselves. And so, we will celebrate next year's World Maritime Day theme with much pride in your contribution to our objectives, to the facilitation of more than 90% of the world's trade, and to sustainable human development. In so doing, we also seek to reassure you, at the "sharp end" of the industry, that we, who are responsible for the international regulatory regime and who serve shipping from ashore, do understand the extreme pressures that you face and that, as a result, we approach our own tasks with a genuine sympathy for the work that you carry out.

At the same time, we will seek to add impetus to the "Go to Sea!" campaign, which we launched in November 2008 to attract new entrants to the shipping industry and, in particular, to encourage young people to follow in your footsteps by becoming the seafarers of tomorrow. We launched that campaign in association with the International Labour Organization, the "Round Table" of shipping industry organizations (International Chamber of Shipping, International Shipping Federation, BIMCO, International Association of Independent Tanker Owners and International Association of Dry Cargo Shipowners) and the International Transport Workers' Federation, all of whom will be joining us in celebrating the Year of the Seafarer. Last, but mostly importantly, we want to convey to you a clear message that the entire shipping community understands and cares for you - as shown by the efforts we make to ensure that you are fairly treated when ships on which you serve become involved in accidents; are looked after when you are abandoned in ports; are not refused shore leave for security purposes; are protected when your work takes you into piracy-infested areas; and are not left unaided when you are in distress at sea.

1.5 million seafarers serving the daily needs of more than 6.5 billion citizens of the world! It is a fact that goes unnoticed or is taken for granted by most, but one that should be trumpeted loud and clear. For seafarers the world over deserve our respect, recognition and gratitude and, during 2010, we at IMO are resolved to ensure that the world does take notice of your exceptional role and contribution and of the special debt that all of us owe to you. We thank you for that! With best wishes for the Festive Season and the Year of the Seafarer - and a safe return home! – **E.E. Mitropoulos**, Secretary-General-I.M.O.

**Seafarer sacrifices:** As the shipping industry packs its collective bags and heads home for Christmas, it is worth reminding ourselves of the seafarers who cannot. More than 250 seafarers are being held hostage following pirate attacks this year. Many have been held captive for several months in dire conditions with no contact with the outside world. Their plight has slipped from the headlines, but for their families and those trying to secure their release behind the scenes, it is a daily struggle that will not be forgotten. Sadly, they are not alone in their concern for loved ones. This year has seen a worrying increase in reported cases of crew abandonment as owners go out of business and ships are taken out of service.

The International Transport Workers' Federation says at least 370 seafarers have faced abandonment this year, although the number is difficult to quantify and 370 could be a conservative estimate. The year ahead has been designated the year of the seafarer by the International Maritime Organization to pay tribute to the unique contribution seafarers make to society and to recognise the extreme risks they shoulder in the execution of their duties in an often hostile environment. The dedication is a welcome reminder of the unique hazards confronting the 1.5m seafarers of the world, but it should also be an opportunity to spur action. The shipping industry has a moral and legal duty to protect its employees, who must not be forgotten or taken for granted.

#### **41 dead as Panamanian-Flag Livestock Carrier capsizes:**

It is now feared that 41 seafarers died when the 1976-built, Panamanian-flag livestock carrier Danny FII capsized off Lebanon on Thursday night (17 December). According to reports 38 sailors were rescued by Lebanese naval vessels, a UK military helicopter from Cyprus and three ships belonging to the United Nations peacekeeping force in South Lebanon -UNIFIL.UNIFIL said the 24,731 gt ship had sailed from the Syrian port of Tartous after discharging 43,000 sheep from Uruguay. It has been established that the British master died during the sinking. The ship had an international crew including seafarers from UK, Australia, Russia, Lebanon, Syria, Pakistan, the Philippines, UK and Uruguay. According the the Equasis database the ship was managed by Cairo, Egypt, -based Royal Logistics Services and owned by Falconpoint International Corp.Given the Panama Maritime Administration's recent crackdown on substandard tonnage and its efforts improve quality there will be considerable interest in shipping circles in the way Panama investigates this casualty.

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**Damage to government (public) property to be severely dealt with by the Police to maintain Law & Order:**

Ask the miscreants to damage their own household property first. Instill discipline among students first to groom them as good citizens. Innocent Tax Payers are aggrieved that they are paying more Tax, funds to be used fairly, religiously. Peoples Government should curtail the expenditure from damages and wastages. Nothing free be distributed but for basic amenities, used from the State/National Exchequer. View the young un-employed rather than considering the retired for re-employment. Make man-power more productive. – **Dr.Chandran Peechulli**, Ph.D; F.I.E. (India), Chennai.

**BBC apologises over Probo Koala claim:**

We read courtesy of David Hughes Anderimar News that the BBC apologised on Thursday 17 December in the English High Court to London-based trading house Trafigura for making false allegations in May of this year on the programme Newsnight and in a related website article. The Newsnight stories concerned the discharge from the Probo Koala, a Trafigura-chartered vessel, in August 2006 of gasoline "slops" in Abidjan in the Ivory Coast in West Africa. The slops were then dumped illegally by an independent company called Compagnie Tommy. Trafigura describes the Ivory Coast company's action as "deplorable action" and as something which Trafigura did not and could not have foreseen. The BBC stories stated that Trafigura's actions had caused a number of deaths, miscarriages and serious and long-term injuries in Abidjan in what Newsnight claimed "may be the biggest incident of its kind since...Bhopal." Trafigura says in a statement: "Faced with such grave, yet wholly false, allegations, Trafigura was left with no alternative but to commence libel proceedings. The BBC initially attempted to justify its allegations. However, having carried out a detailed further review of the available evidence and of Trafigura's detailed response in its formal Reply, the BBC has...confirmed that the allegations were simply wrong. At no stage did the BBC ever attempt to argue that the stories were defensible as "responsible journalism"."

Eric de Turckheim, founder and director of Trafigura, said: "Trafigura has always maintained that the slops cannot have caused the deaths and serious injuries alleged by the BBC. We informed Newsnight of the detailed evidence before the programme was aired - yet they chose to proceed with their highly damaging and false assertions. We are pleased the BBC has now acknowledged that it was wrong." He added: "Trafigura accepts that the Probo Koala incident is a matter of public interest. However, there is no public interest in the BBC reporting damaging untruths. Such is the international reach and high-regard of the BBC, we were left with little choice but to bring these proceedings - the only libel claim we have brought anywhere in the world against any media outlet. "With the benefit of the facts, Mr Justice MacDuff advised the media earlier this year to take note of the evidence and approach their reporting of these matters more responsibly. We hope that, in future, they do." The link below is to an article in the Times which contains some robust comments on the steadfastness of the BBC's management. Several questions have arisen in the case. Such as why the company reached a settlement with local claimants and the government which by the standards of such things was pretty high.

**Easy to dismiss but it could potentially happen. Open for thoughtful consideration and discussion:**

The head of Chinese shipping giant Cosco has suggested that container ships should be powered by nuclear reactors in order to reduce greenhouse gas emissions from shipping, said to account for 4% of the global total. Shipping companies have gradually been introducing 'super slow steaming', a measure designed to cut fuel consumption and substantially reduce emissions by running engines at very low speed. However, Wei Jiafu, Cosco's president and CEO, speaking at the Senior Maritime Forum of the China International Maritime Exhibition (Marintec China) in Shanghai, said that introducing nuclear-powered ships could be an even cleaner solution. He said, "As they are already onboard submarines, why not cargo ships?" He said that Cosco is in talks with China's nuclear authority to develop nuclear powered freight vessels. Besides safety issues (specialized crew, accidents, piracy, etc) and Political ramifications, would Cosco purchase ships/plants from U.S. shipyards?



**Industry has to take a wider view:**

Bunkerworld recently conducted a survey. We asked a wide audience from the bunker and shipping industry when the shipping industry will return to its pre-2008 glory days in terms of freight volumes and new vessel orders. Of course, all the responses to our questionnaire are just 'feelings' and ideas, but there is a lot of agreement about some time-lines for recovery. I want to use the survey to make some further observations about the future; I am not making predictions, just looking at what is happening and drawing some conclusions. I hope you find them interesting. There are a few optimistic people who think the shipping sector will recover by the end of 2010, and that the recovery is already in progress. While some parts of the world may indeed be peeking up again - maybe Germany, for example - I think most people will consider these optimists to be wearing rose-tinted glasses or even to be, like ostriches, sticking their heads hopefully in the sand! By a small margin in the poll, the biggest slice of opinion, 42%, is those who think the recovery will come between 2011 and end-2012, while 40% think it will be between 2012 and 2015. That is 82% who expect the downturn to last at least another two years. Most of these think the bottom for the shipping industry has not been reached yet. As you would expect, a small minority of real pessimists say recovery will never happen (4% of the total). But whatever you think about other people's opinions, there is a big question now not about the 'when' of an upturn, but more basically about what 'recovery' might mean. Is there really a 'norm' that we will return to? Or is there actually something else going on in the world economic dynamic? Personally, I don't think there is any going back now as everything has changed. That's really what I will be writing about in this blog.

In many ways we have seen fundamental changes in world trade and in the banking system that supports it. These are really basic changes and who knows what our industry will look like

when we emerge from the present storm. Just recently, the Chairman of one of the world's biggest banks, HSBC, was speaking openly about some very fundamental changes needed in that sector. Just consider that hydrocarbon prices are likely to continue to rise in the medium/longer term - with Goldman Sachs' much derided forecast in early 2008 of a US\$200 barrel of oil now maybe not looking so silly if you look ahead.

Alternative power sources (green fuel, kites and all sorts of other ideas that today still look more or less like fantasy) are going to become much more significant in the future when we really do start to face a situation where oil is scarcer and more expensive (it is, after all, a finite resource and add to that the fact that the places where it is found will continue to be politically dangerous hot-spots with terrorist-driven war an increasing threat to supply).

We will also surely see big changes in world trade, as it strikes home that a lot of what is being shipped around the world now is actually unnecessary and damaging. Vegetables shipped from Africa to Europe bring tons of precious water from a continent that cannot afford to lose it. Shipping lamb and apples from New Zealand to the UK, which grows its own, will soon seem ridiculous. Bringing textiles and garments from Asia to the West, which has its own closer sources of raw material and manufacturing capacity (for example in Eastern Europe), will become less attractive.

One thing seems certain, that eventually - in three years, five years, maybe ten years - the cost of transportation will rise. This may be because oil becomes more expensive, or because international regulation to curb noxious emissions really gets serious, but at some point it will go up and quite apart from moral issues, the cost of transportation will push world trade into different patterns. Surely we will see an increase in coastal and short sea trade, and possibly higher numbers of smaller ships appearing in the world fleet. The economies of scale derived from building ever larger ships - in the tanker, dry bulk and container sectors - makes sense if large volumes are being shipped over long distances. What if that pattern alters? It will not be an overnight change, but I do think we will see this as a long term trend. This will affect the bunker supply industry directly, and most players with good judgement will be already looking at their future strategies.

As countries and regions begin to adjust their agricultural and manufacturing strategies, so we may well see not just increasing regionalisation, but maybe also a fall in world trade overall. Clearly, these changes will take time to work through, but they will come. The past is now gone and we really are looking at a new era in the not too distant future. Even if one of the predictions above is correct, things will change. Already it is the case that only the really niche operators in the shipping universe are making money. Will small be beautiful again?

If too many people using a swimming pool do not wash before entering, the unwashed will soon start to suffer the effects of their pollution directly just like the responsible ones who do wash. It will become harder in the future just to feather our own nests and not worry about how our activities affect the rest of the industry and the world.

Now turning to the nearer future, whatever one believes the longer term to bring (and I don't expect everyone to agree with me!), it really does look as if the days of cheap bunkers are gone. So there are some serious short-term issues for the bunker supply sector to contend with. With emission controls plus increased refining efficiency reducing supply of residual fuel produced price rises could lead quite soon to a situation where

the cost of fuelling a ship will be 70% of overall operating cost. Freight rates may rise at some point, but they are still dragging along the bottom and below levels of operational viability across most sectors, and even if they do go up, bunker prices will surely rise too. Governments had to step in to save the banks - are they now going to have to do the same to the shipping sector? It's already happening.

So right now there are still huge pressures on the capacity for a ship operator to pay his bunker bills. And this may well not be a short term problem. Like everything else, bunker trading and bunker credit are changing and we need to start thinking of new ways to look at credit rating and reporting in the maritime world. As you can imagine, Ocean Intelligence is already working on radically new developments to assist the bunker industry into the future - they will be announced very soon.

## **Delhi blocks toxic US ship: Will Dhaka wake up?**

New Delhi: Following the discovery by the Basel Action Network (BAN) and Indian Platform on Shipbreaking that the national registry and flag of an aged American cruise liner had been falsified, the Indian government has ruled against allowing the US flagged ship, Platinum II, from being beached on the infamous shipbreaking beaches of Alang, India.[1] The Indian Ministry of Environment and Forests (MOEF) cited the precautionary principle and the fact that the ship not only appeared to arrive in India with false documentation but also the fact that the U.S. Environmental Protection Agency (EPA) took legal action against Global Marketing Services (GMS) and sister company Global Shipping LLC (GSL), both companies set up by the notorious ship breaker Mr. Anil Sharma, for exporting the ship from San Francisco, California in 2008 in violation of the U.S. Toxic Substances Control Act (TSCA)[2].

Responding to the order Office Memorandum on US Ship "Platinum -II", Dated November 9th, 2009 the Minister of State (Independent Charge) of Environment & Forests which was issued yesterday, Gopal Krishna of the Indian Platform Shipbreaking. said, "It has established that post September 6, 2007 order of the Supreme Court, the post of registry of most of some 200 ships have not been properly investigated before desk clearance. It creates a compelling logic to do so now both with regard to previous ships and any new ship in future. It is noteworthy that the order categorically states, the order on the issue in question has been passed "with the approval of the Minister of State (Independent Charge) of Environment & Forests", Jairam Ramesh. He has demonstrated that he would not let any agency compromise with the security of our environmental borders. One hopes that the concerned ministry officials would give up their old habits now. The intelligence reports have suggested in eth past that the current regulations seem to allow dead ships innocent passage through the entire stretch of Indian waters unscrutinized by the security agencies. Besides environmental security, maritime security, national security also seems to be a casualty. Notably, minutes of the Inter-ministerial committee on shipbreaking refers to security threats from the Alang based industry." The Platinum II formerly known as the SS Oceanic (and originally, the SS Independence) arrived in Indian waters for scrapping on 8 October 2009 with papers saying its flag was that of the Republic of Kiribati and that it was owned by Platinum Investment Services of Monrovia, Liberia. But BAN received official confirmation from the Operations Manager at Kiribati Ship Registry, Liau Siew Leng, that the registration was a forgery. The Kiribati Ministry of Communications, Transport & Tourism Development Office further confirmed the falsified documents.

"Today's order by the Ministry of Environment & Forests advising against beaching is a victory in the fight against toxic trafficking and dumping on third world countries," said Jim Puckett, Executive Director of the Basel Action Network, a member organization of the NGO Platform on Shipbreaking. "Until now, India has been reluctant to expose the horrors of its shipbreaking industry. Hopefully they are beginning to realize that this industry is not worth the legacy of toxic waste, occupational disease and death, and illegality it leaves in its wake." The fraudulent ship registry is likely a violation of maritime law of the United States, India and Kiribati. The United States Maritime Administration (MARAD) allowed the vessel to be sold to a non-citizen in April 2008 under the blanket approval in 46 C.F.R. 221.13. This general approval however did not grant approval for the sale of the vessel for scrapping in a foreign country. The vessel remains under the US flag and cannot be scrapped without MARAD's approval. It is suspected that avoidance of US government scrutiny and denial of reflag permission for the purposes of scrapping is the rationale for the falsified re-registration. Further, the MOEF publicly released a report of the Central Technical Team on 5 November 2009 (internal release 26 October 2009) in which authorities confirmed the presence on board the ship of asbestos and polychlorinated biphenyl (PCBs) as part of the vessel's construction.

This finding confirms what environmental groups and the EPA have alleged since February 2008. GMS and GSL paid a settlement to the EPA of almost a half million dollars early this year without admitting a violation of the law. Exporting PCB material from the US is a violation of the Toxics Substances Control Act. After BAN blew the whistle on the ship export in 2008, GMS and GSL denied that the ship was being exported for scrap and said instead that it was being sold to an entity interested in reusing the ship. The ship sat for many months anchored off Dubai before suddenly appearing in Indian waters in October of this year under tow. The relationship between GMS's Mr. Sharma and the new owners is not clear. However, Mr. Dimitrios Koukas, President/Director of Platinum Investment Services, is also Managing Director of Optima Shipbrokers Ltd., and is listed as a business "reference" on GMS' website[3]. In Alang, India, it was known that Platinum Investment Services was selling the vessel to Leela Ship Recycling Pvt Ltd upon its arrival in India for \$4,851,000 for breaking. Leela is owned by Komal Sharma, Anil Sharma's brother.

"This blatant attempt to skirt US law must not go unchallenged," said Jim Puckett. "It's time for the United States to stand strong against these corporate shams and in support of global environmental justice."

**Territorial sea - A coastal belt, of varying thickness:** The territorial sea is the belt of coastal water extending from a nation's baseline over which the nation exercises sovereignty. The baseline is usually the shoreline, defined more precisely as the mean low-water mark. In certain places, such as the mouth of a river or bay, an artificial baseline is drawn across the opening. The width of the territorial sea has varied over time. Originally, it was loosely defined as the area that the nation could physically defend by force of arms from the shore. This came to be called the cannon-shot rule and roughly worked out to three nautical miles, which was about as far as a cannon ball could be fired from a coastal fortress. Later, most nations accepted the idea that the territorial sea should be a uniform three nautical miles in width, whether or not there was a fortress nearby. Some nations, though, traditionally espoused different claims. Iceland claimed two nautical miles, Norway claimed four,

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Spain claimed six, and Mexico claimed nine. Within the territorial sea, the coastal nation exercises sovereign rights, with one exception. Ships of other nations are allowed to peacefully transit through the territorial sea while passing from one portion of the high seas to another: so-called "innocent passage". The traditional concept of the territorial sea was enshrined in the 1958 International Convention on the Territorial Sea. Because a consensus could not be reached regarding the breadth of this zone, none was defined in the Convention. The international community met again in 1960 to define the breadth of the territorial sea. While the majority favored a six-mile limit, again a consensus could not be achieved. As offshore fishing became more intense in the 1960s and 1970s, various coastal nations (particularly in Latin America) reacted by claiming expansive territorial seas of 200 or even 300 miles. These claims were only enforced, if at all, against foreign fishing vessels. Finally, agreement was reached in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) that the territorial sea should not exceed twelve miles in breadth. The United States, though not a party to UNCLOS, claims a 12-mile Territorial sea for international purposes and a 3-mile territorial sea for many domestic purposes.

### **Piracy in waters off the coast of Somalia:**

In 2008, the number of reported piracy attacks off East Africa rose astronomically. Barely a day seemed to pass without a new incident being reported. Figures compiled by IMO show that, in the first quarter of 2008, there were 11 piracy attacks in that region, rising to 23 in the second quarter and rocketing to 50 in the third and 51 in the fourth quarters, making a total of 135 attacks during 2008, resulting in 44 ships having been seized by pirates and more than 600 seafarers having been kidnapped and held for ransom. Any act of piracy and armed robbery can impact on human life, the safety of navigation and the environment. Piracy is a criminal act, which not only affects the victims but also has severe financial repercussions. The three areas of concern to IMO, particularly relevant to the situation off Somalia and in the Gulf of Aden, can be summed up as:

- the need to protect seafarers, fishermen and passengers;
- the need to ensure the uninterrupted delivery of humanitarian aid to Somalia effected by ships chartered by the World Food Programme; and
- the need to preserve the integrity of the Gulf of Aden - a lane of strategic importance and significance to international shipping and trade, both east and west of the Suez Canal, which is used by some 22,000 vessels annually, carrying around 8% of the world's trade, including more than 12% of the total volume of oil transported by sea, as well as raw materials and finished goods.

Regional cooperation among States has an important role to play in solving the problem of piracy and armed robbery against ships, as evidenced by the success of the regional anti-piracy operation in the Straits of Malacca and Singapore. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (RECAAP), which was concluded in

November 2004 by 16 countries in Asia, and includes the RECAAP Information Sharing Centre (ISC) for facilitating the sharing of piracy-related information, is a good example of successful regional cooperation which IMO seeks to replicate elsewhere.

In January 2009, an important regional agreement was adopted in Djibouti by States in the region, at a high-level meeting convened by IMO. The Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden recognizes the extent of the problem of piracy and armed robbery against ships in the region and, in it, the signatories declare their intention to cooperate to the fullest possible extent, and in a manner consistent with international law, in the repression of piracy and armed robbery against ships.

The signatories commit themselves towards sharing and reporting relevant information through a system of national focal points and information centres; interdicting ships suspected of engaging in acts of piracy or armed robbery against ships; ensuring that persons committing or attempting to commit acts of piracy or armed robbery against ships are apprehended and prosecuted; and facilitating proper care, treatment, and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to acts of piracy or armed robbery against ships, particularly those who have been subjected to violence.

Implementation of the Djibouti Code of Conduct will help to:

- improve communications between States;
- enhance the capabilities of States in the region to deter, arrest and prosecute pirates;
- improve States' maritime situational awareness; and
- enhance the capabilities of local coast guards.

IMO has also revised the guidance on measures to take to deter piracy, to include region-specific guidance based on industry best management practice.

IMO is also seeking additional support from States able to provide warships and maritime patrol aircraft for the Gulf of Aden and Western Indian Ocean area and is focusing on bringing the recently opened Maritime Rescue Coordination Centres in Mombasa and Dar es Salaam into the counter piracy role.

In the longer term, IMO is seeking to promote international action to stabilize the situation in Somalia through the UN Security Council, the UN Political Office for Somalia, the UN Development Programme, the Contact Group on Piracy off Somalia, and others.

In the case of the situation off Somalia, developments ashore are probably the only way to resolve this problem in the long term.

In the meantime, it is essential to maintain support from States able to provide warships and maritime patrol aircraft until the political situation is resolved.

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## **Ocean shipping/cargo security: GAO report indicates 100 percent cargo scanning has a long way to go:**

WASHINGTON- A report released by the United States Government Accountability Office this week stated that container scanning efforts made by the U.S. Department of Homeland Security's Customs and Border Protection (CBP) group have made "limited progress."

The report's findings center on the CBP's Secure Freight Initiative (SFI), a pilot program at seven foreign seaports that deploys radiation detection networks and imaging equipment. The GAO said that since the inception of SFI, "CBP has not been able to achieve 100 percent scanning at any participating port." It added that while CBP has been able to scan a majority of the U.S.-bound cargo containers at the comparatively low volume ports it has not achieved sustained screening rates above five percent at the comparatively larger ports. Other factors impeding progress on this front are the global nature of supply chains, costs, and a lack of sophisticated technology.

The impetus for cargo scanning was laid forth when former President George W. Bush signed into law H.R. 1 Implementing Recommendations of the 9/11 Commission Act of 2007 in August 2007. The bill calls for the 100-percent scanning of maritime cargo before it's loaded onto vessels heading for the United States to be required by 2012. The bill also calls for specific annual benchmarks on the percentage of maritime cargo containers headed for the U.S., an analysis of how to best incorporate existing maritime security initiatives, including the Container Security Initiative and C-TPAT, and an analysis of the scanning equipment, personnel, and technology needed to reach the 100-percent container scanning objective.

According to the GAO report, CBP has not developed a plan to scan 100 percent of U.S.-bound container cargo, although it does have a strategy to expand SFI to select ports, where it will mitigate the greatest risk of Weapons of Mass Destruction (WMD) entering the U.S. And it added that CBP does not have a plan to scan container cargo at all ports, because "according to agency officials, challenges encountered thus far in implementing SFI indicate that doing so worldwide will be difficult to achieve."

The report also noted that since CBP will not meet the original 2012 deadline to scan all U.S.-bound cargo containers, DHS plans to issue a blanket extension to all foreign ports by July 2012 to be in compliance with the 9/11 Act.

"These findings are absolutely not surprising at all," said Albert Saphir, president of international trade consultants ABS Consulting in Fort Lauderdale, Fla. "Any practical on the ground study, approach or discussion certainly all point in the same direction in that the mandate that was put out...cannot be met. We cannot impose U.S. law onto foreign soil. If we wanted to scan 100 percent of containers once they arrive in the U.S., we can do a lot of things. But the way the law was written with 100 percent needing to be scanned before a vessel can enter a U.S. port is in limbo between a foreign country and the U.S. Where are we going to scan?"

And Senator Jay Rockefeller (D-WV) and Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation, opined that while the 100-percent scanning mandate was well-intentioned, it does not appear to be doable at this point.

"Without a better understanding of the feasibility of such a

policy to international commerce and security, a mandate of global proportions was unquestionably well intended, yet premature," said Rockefeller in a statement. "The transportation of hazardous cargo, small vessel security, and most certainly cybersecurity all remain significant vulnerabilities where much more needs to be done. Both Congress and the Administration must balance important but competing needs-maintaining an efficient flow of commerce while ensuring no terrorists can enter our country by land, sea, or air. We must work toward a more reasonable balance to focus our assets and resources in the best possible manner to protect the American people."

Yesterday, a hearing was held by Rockefeller's Senate committee on "Transportation Security Challenges Post 9-11."

At the hearing DHS Secretary Janet Napolitano cited myriad challenges that come with 100 percent cargo scanning. Some of the challenges she cited were limitations that are inherent in available technology, including technology which can detect suspicious anomalies within cargo containers that should trigger additional inspection and costs.

To deploy the required scanning equipment would require an investment of about \$8 million per lane for the more than 2,100 shipping lanes at the more than 700 global ports that ship to the U.S., she said, with operating costs also being very high, too.

"It is also important to keep in mind that about 86% of the cargo shipped to the United States is sent from only 58 of those more than 700 ports. Installing equipment and placing personnel at all of these ports-even the tiny ones-would strain government resources without a guarantee of results," said Napolitano. "[And] in order to implement the 100% scanning requirement by the 2012 deadline, DHS would need significant resources for greater manpower and technology, technologies that do not currently exist, and the redesign of many ports. These are all prohibitive challenges that will require the Department to seek the time extensions authorized by law."

**12 stranded Filipino seafarers in Greece helpless: TWELVE Filipino seafarers stranded on MV Aetea Sierra in a port in Greece seek justice for their sorry situation.** MANILA, Philippines-The 12 Filipino seafarers stranded in Greece since July this year have not been paid their agreed salary, and live on dole-outs and the minimal allowance of food and water given to them by their employer. "Our situation here is so difficult. Right now, our food is good enough only for three days and the drinking water is rusty," said third engineer Jesus Hantic in a text message to INQUIRER.net. He was reacting to a story that came out in the website which said that he and his fellow Filipino seafarers are about to be repatriated soon. "We are in a floating prison," Hantic said describing their situation on MV Aetea Sierra. "We didn't know that we would be going home because nobody has told us so," he added.

The 11 others with him are: second officer Jose Cardenas, second engineer Gardner Monte, able-bodied seamen Constancio Cubay, Florvic Labaco, and GilJhun Moneva; Julius Cesar Flores; oilers Ricleand Camino and Wilfredo Ranara; second cook Primo Fernando; and merchant marines Erolin Choing and Jerry Laride. "We all want to go home. We demand our salaries and our back pay. We are now deep in debt," he said. Hantic also belied the statement of the Department of Foreign Affairs that Philippine embassy personnel in Greece have visited them and have looked after their welfare. "We were

visited by the embassy only once, by Attorney (George) Eduvala of the Overseas Workers Welfare Administration," Hantic said.

"Only Akbayan and Kasapi are helping us here," Hantic said. Ellene Sana, executive director of Center for Migrant Advocacy who connected INQUIRER.net to the seafarers, said the seafarers could not simply leave because not only are their travel documents with their employer, but also leaving the ship with its \$11-million worth of cargo (20,000 of steel coil) would mean they have abandoned their jobs.

In a related development, Akbayan party-list Representative Walden Bello, who was in Greece for the Global Forum on Migration and Development, asked the Philippine embassy in Greece to "act decisively to rescue" the stranded seamen. "Good publicity will not hide the fact that they have been sitting on this case for a long time at the expense of our stranded countrymen," Bello said in a statement.

"The overarching issue that the embassy and the Department of Foreign Affairs have to address is this long-standing issue of foreign employers abusing Filipino workers, depriving our seafarers of adequate pay, decent working conditions, and the benefits and privileges accorded to them by law and through international treaties," he added.

### **DoLE eyes psycho-social counseling for seamen:**

The Department of Labor and Employment (DoLE) said Monday it plans to provide psycho-social counseling and support services to families of abducted seafarers in Somalia and the Gulf of Aden. "The department also intends to give emergency financial assistance to the families as part of its measures to help the sailors and address the impact of piracy affecting mostly Filipino seafarers," said Labor and Employment Secretary Marianito Roque. "These are just among the measures that were discussed with the tripartite partners in the manning industry. The tripartite meeting will serve as a blueprint to protect seamen from the continuing hijacking incidents in Somalia area," according to Roque..

"The piracy in Somalia has come to an alarming proportion affecting not only the Philippines, but other European countries and the United States as well. We hope for strict monitoring of compliance to the rules set by the POEA Governing Board Resolution No. 5 s. of 2009," he added. According to a POEA Board resolution, ship owners, managers and manning agencies hiring Filipino seafarers should ensure that vessels transiting through the Gulf of Aden "shall pass only within the Maritime Security patrol area;" submit an appropriate security plan to all ships passing through the area; and provide training to their crew on how to avoid, react and cope with piracy and other related incidents.

Manning agencies are also required to immediately report to the Department of Foreign Affairs (DFA) and the DoLE any incidents of piracy involving their ships and share their experiences in handling these incidents. Roque said he already instructed the Philippine Overseas Employment Authority (POEA) and Overseas Workers Welfare Administration (OWWA) to spearhead this effort to put in safety nets to protect the country's sailors. "While some have measures in place, we want to set stronger safety nets for our seamen," he said.

**More nuclear ships in the future?** Maritime London member Lloyd's Register is exploring the possibility of the reintroduction of nuclear propulsion for merchant ships. LR says research is focused on the application of nuclear propulsion

to tankers, bulk carriers, container ships and cruise ships Early in 2007, LR began research into the implications of nuclear propulsion for merchant ships. The UK-based classification society says the initiative was built on LR's extensive experience in the traditional nuclear industries and from studies which led to the formation of its Rules for the Nuclear Propulsion of Ships.

The Rules, available from 1966 until 1976, were developed in response to the interest shown in nuclear propulsion in the early 1960s, which resulted in ships such as Savannah and Otto Hahn, two ships that were technically successful. At that time, LR says, operational and economic conditions were not conducive to commercial success of nuclear propulsion. But both ships, nevertheless, traded worldwide for some years. Over the years, there has been a steady, slow development of nuclear propulsion for merchant ships -- principally with ice breakers -- but also extending to a lash barge carrier and a containership. Indeed, two nuclear ice breakers presently are utilised on popular passenger cruises.

However, LR believes, the steady increase in the price of fuel oil -- and the probable introduction of either a carbon-emissions trading scheme or a related tax -- now presents the possibility that nuclear propulsion could be more competitive. LR's research programme is revisiting the technical challenges of nuclear propulsion for ships, as well as refuelling and waste-disposal issues.

The scope of the programme has been expanded to include public health, manning, training, operational, risk and regulatory requirements. The principle maritime sectors of focus are how these propulsion systems could benefit tankers, bulk carriers, container ships and cruise ships, although a range of other ship types may also benefit. "The technology is there to commence building nuclear ships.

"The issues regarding their acceptability and the need for a cultural step-change in shipping still need to be addressed so that society is comfortable any risk is being managed", commented John Carlton, global head of LR's marine technology & investigations.

### **Antarctic nations plan tough new shipping controls:**

WELLINGTON, New Zealand - Countries that manage Antarctica plan tough new controls on ships visiting the southern oceans and the fuels they use to reduce the threat of human and environmental disasters as tourist numbers rise, officials said Saturday.

The new code will reduce the number of ships carrying tourists into the region by requiring that all vessels have hulls strengthened to withstand sea ice. Officials and ship operators said a ban on heavy fuel oil will effectively shut out big cruise ships.

Experts from among the 47 signatory nations to the Antarctic Treaty - the world's main tool for managing the continent - and the International Maritime Organization discussed plans to impose a mandatory Polar Code to control all shipping in the region at a meeting in the New Zealand capital, Wellington.

The safeguards are seen as necessary to limit accidents in the region, where blinding sleet, fog, high winds and treacherous seas pose major dangers for ships and huge problems for rescuers located thousands of miles (kilometers) from remote Antarctic waters.

The code will cover vessel design, safety equipment, ship operations and crew training for ice navigation, meeting

chairman and New Zealand Antarctic policy specialist Trevor Hughes said.

The nearly completed Polar Code is expected to be in place by 2013, he said. Once approved, it would operate on a voluntary basis until it is ratified by treaty states and becomes legally binding.

While existing rules bar tourists or tour operators from leaving anything behind - like garbage or human waste - and require protection of animal breeding grounds, there are no formal codes on the kind of vessels that can use the waters or the kinds of fuel and other oil products they can carry.

In March, the International Maritime Organization, the United Nations' shipping agency, is to ratify a ban on the carriage or use of heavy fuel oil in Antarctica. It is to come into effect in 2011.

The moves follow a huge growth in tourist traffic as people flock to see the world's last great wilderness.

Annual tourist numbers have grown from about 10,000 a decade ago to 45,000 last year. Tourists can pay between \$3,000 and \$24,000 for a two-week trip. Some travel on ships carrying up to 3,000 passengers that also take many tons of heavy fuel oil, chemicals and garbage that can pollute the region.

Nathan Russ, operations manager of Antarctic eco-tourism company Heritage Expeditions, said the proposed heavy fuel ban "will most likely regulate the biggest cruise ships out of Antarctic operations" because of the costs involved in switching to lighter fuel.

The Antarctic Treaty, first signed in 1959, is the main tool for regulating what is the world's only continent without a native human population. New Zealand is one of the dozen founding members of the treaty, along with the United States, Russia and Britain. The treaty now has 47 signatories.

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## What is the ISPS Code?

The International Ship and Port Facility Security Code (ISPS Code) is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States.

The ISPS Code is implemented through chapter XI-2 Special measures to enhance maritime security in the International Convention for the Safety of Life at Sea (SOLAS). The Code has two parts, one mandatory and one recommendatory.

In essence, the Code takes the approach that ensuring the security of ships and port facilities is a risk management activity and that, to determine what security measures are appropriate, an assessment of the risks must be made in each particular case.

The purpose of the Code is to provide a standardised, consistent framework for evaluating risk, enabling Governments to offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures.

### Who has to comply with the ISPS Code?

The ISPS Code is part of SOLAS so compliance is mandatory for the 148 Contracting Parties to SOLAS - see Status of Conventions complete list for list of SOLAS Contracting Governments.

### Is there a black list of countries not in compliance with the ISPS code?

No. IMO does not issue a "black list" of any kind. There is no IMO list of ports or flag States which are not in compliance.

The ISPS Code database contains the information required by SOLAS regulation XI-2/13 as supplied by Contracting Governments. Lack of inclusion in the database should not be construed automatically as failure to comply with the requirements in SOLAS.

### Are all IMO Member States obliged to comply with the ISPS Code?

No. Only States who are Contracting Governments to SOLAS have a legal obligation to comply with the requirements of the ISPS Code and to submit information to IMO.

### What are the different security levels referred to in the ISPS Code?

Security level 1: normal, the level at which the ship or port facility normally operates. Security level 1 means the level for which minimum appropriate protective security measures shall be maintained at all times.

Security level 2: heightened, the level applying for as long as there is a heightened risk of a security incident.

Security level 2 means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident.

Security level 3: exceptional, the level applying for the period of time when there is the probable or imminent risk of a security incident.

Security level 3 means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target. Setting security level 3 should be an exceptional measure applying only when there is credible information that a security incident is probable or imminent. Security level 3 should only be set for the duration of the identified security threat or actual security incident. While the security levels may change from security level 1, through security level 2 to security level 3, it is also possible that the security levels will change directly from security level 1 to security level 3.

### Where can I get a copy of the ISPS Code? You can purchase the ISPS Code from IMO Publications.

What are the other measures adopted in addition to the ISPS Code? The measures adopted in 2002 include: Modifications to SOLAS Chapter V (Safety of Navigation) contain a new timetable for the fitting of Automatic Information Systems (AIS). Ships, other than passenger ships and tankers, of 300 gross tonnage and upwards but less than 50,000 gross tonnage, will be required to fit AIS not later than the first safety equipment survey after 1 July 2004 or by 31 December 2004, whichever occurs earlier. Ships fitted with AIS shall maintain AIS in operation at all times "except where international agreements, rules or standards provide for the protection of navigational information."

The existing SOLAS Chapter XI (Special measures to enhance maritime safety) has been re-numbered as Chapter XI-1. Regulation XI-1/3 is modified to require ships' identification numbers to be permanently marked in a visible place either on the ship's hull or superstructure. Passenger ships should carry

the marking on a horizontal surface visible from the air. Ships should also be marked with their ID numbers internally.

A new regulation XI-1/5 requires ships to be issued with a Continuous Synopsis Record (CSR) which is intended to provide an on-board record of the history of the ship. The CSR shall be issued by the Administration and shall contain information such as the name of the ship and of the State whose flag the ship is entitled to fly, the date on which the ship was registered with that State, the ship's identification number, the port at which the ship is registered and the name of the registered owner(s) and their registered address. Any changes shall be recorded in the CSR so as to provide updated and current information together with the history of the changes.

### **New Chapter XI-2 (Special measures to enhance maritime security)**

A new Chapter XI-2 (Special measures to enhance maritime security) is added after the renumbered Chapter XI-1.

This chapter applies to passenger ships and cargo ships of 500 gross tonnage and upwards, including high speed craft, mobile offshore drilling units and port facilities serving such ships engaged on international voyages. Regulation XI-2/2 of the new chapter enshrines the International Ship and Port Facilities Security Code (ISPS Code). Part A of this Code is mandatory and part B contains guidance as to how best to comply with the mandatory requirements. Regulation XI-2/3 requires Administrations to set security levels and ensure the provision of security level information to ships entitled to fly their flag. Prior to entering a port, or whilst in a port, within the territory of a Contracting Government, a ship shall comply with the requirements for the security level set by that Contracting Government, if that security level is higher than the security level set by the Administration for that ship.

Regulation XI-2/8 confirms the role of the Master in exercising his professional judgement over decisions necessary to maintain the security of the ship. It says he shall not be constrained by the Company, the charterer or any other person in this respect. Regulation XI-2/6 requires all ships to be provided with a ship security alert system, according to a strict timetable that will see most vessels fitted by 2004 and the remainder by 2006. When activated the ship security alert system shall initiate and transmit a ship-to-shore security alert to a competent authority designated by the Administration, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised. The system will not raise any alarm on-board the ship. The ship security alert system shall be capable of being activated from the navigation bridge and in at least one other location.

Regulation XI-2/10 covers requirements for port facilities, providing among other things for Contracting Governments to ensure that port facility security assessments are carried out and that port facility security plans are developed, implemented and reviewed in accordance with the ISPS Code. Other regulations in this chapter cover the provision of information to IMO, the control of ships in port (including measures such as the delay, detention, restriction of operations including movement within the port, or expulsion of a ship from port), and the specific responsibility of Companies

### **What has changed since 1 July 2004?**

The biggest change is that the Contracting Governments to the 1974 SOLAS Convention are able to formally exercise of control over ships in accordance with the provisions of chapter XI-2 and of the ISPS Code.

At the same time, the Contracting Governments are obliged to address all the objectives and functional requirements of the ISPS Code and to ensure that appropriate security measures and procedures are in place in the port facilities and waterways located within their territory.

The new requirements form the international framework through which Governments, ships and port facilities can co-operate to detect and deter acts which threaten security in the maritime transport sector.

The new regulatory maritime security regime will have a huge impact for those port facilities and ship operators who had not already taken on board the increased threat to maritime security in the current climate. They will need to catch up, according to the rules and guidelines in the ISPS Code.

For those Governments and ship operators who have already implemented enhanced security regimes, the ISPS Code formalises and standardises globally the security measures.

The point is that there is a very real threat. We have already seen attacks on maritime infrastructures elsewhere (such as Yemen and Iraq).

The whole idea of the ISPS Code is to reduce the vulnerability of the industry to attack, thus countering the threat and reducing the risk.

There are potential commercial benefits to the maritime industry in implementing the Code. It seems clear that, in the long run, implementation of the Code should provide considerable cost-benefit for the port industry as a whole and for individual ports. By putting in place an effective and compliant security regime, ports will be able to continue to participate fully in global trade and, of course, the potential economic consequences of a major security breach, which might result in disruption or even port closure, are serious indeed.

### **What does implementing the ISPS Code involve?**

Ship and port facility security is a risk management activity. As with all risk management efforts, the most effective course of action is to eliminate the source of the threat. Eliminating the source of the threat, which in this case is those that would commit acts of terrorism or otherwise threaten the security of ships or of the port facilities, is essentially a Government function. 100% security is an aim but cannot be guaranteed - hence the risk reduction approach to lessen possibilities to the lowest practicable

In order to determine what security measures are appropriate, Governments must assess the threat and evaluate the risk of a potential unlawful act. The ISPS Code provides a standardized, consistent framework for managing risk and permitting the meaningful exchange and evaluation of information between Contracting Governments, companies, port facilities, and ships.

Because each ship and each port facility is subject to different threats, the method by which they will meet the specific requirements of this ISPS Code will be determined and eventually be approved by the Administration or Contracting Government, as the case may be.

In order to communicate the threat at a port facility or for a ship and to initiate the appropriate response actions the Contracting Government must set the appropriate security level. The security level creates a link between the ship and the port facility, since it triggers the implementation of appropriate security measures for the ship and for the port facility.

As threat increases, the only logical counteraction is to reduce vulnerability. This ISPS Code provides several ways to reduce vulnerabilities. Each ship and each port facility will have to

determine the measures needed to intensify its security measures to appropriately offset the threat by reducing its vulnerability.

After 1 July 2004 ships and port facilities will be required to demonstrate that they are implementing proper and standardized risk management procedures.

#### **Are the new security measures be effective?**

It has to be remembered that the new security requirements are part of a wider United Nations strategy for combating terrorism and should not be seen in isolation.

As with all other aspects of shipping regulated through multilateral treaty instruments the effectiveness of the agreed requirements is dependant on how the relevant provisions are implemented and enforced. Thus, the matter is in the hands of Governments and the industry. If the special measures to enhance maritime security are implemented and enforced effectively we will be successful in protecting ships and ports facilities from unlawful acts.

It may take some time before someone may be able to argue and convince that a deep rooted comprehensive and effective security net is in place. Although a ship or a port facility may operate in accordance with an approved security plan, unless all Contracting Governments put in place and maintain the necessary arrangements to address all the objectives and the functional requirements of the ISPS Code, the actual level of security will not be enhanced.

The ISPS Code requires Governments to gather and assess information with respect to security threats and exchange such information with other Contracting Governments. Shipboard and port facility personnel need to be aware of security threats and needs to report security concerns to the appropriate authorities for their assessment. Governments need to communicate security related information to ships and port facilities. Therefore, in effect we are talking about establishing an entirely new culture amongst those involved in the day-to-day running of the shipping and port industry.

#### **What would happen to ships if they do not comply with the ISPS Code requirements and if they do not have the Certificate?**

Those ships, which do not comply with the aforesaid requirements, should not be issued with International Ship Security Certificates (or after the 1 July 2004, if they qualify, with an Interim International Ship Security Certificate).

In the strict legal sense and bearing in mind that we are talking about security, all Contracting Governments should direct those ships flying their flag and which are required to comply with the requirements of chapter XI-2 and the ISPS Code and which have not been issued with the required certificate by the 1 July 2004 to immediately discontinue operations until they have been issued with the required certificate.

A ship, which is required to comply with the requirements of chapter XI-2 and the ISPS Code, is subject to control and compliance measures when in a port of another Contracting Government by officers duly authorised by that Government. IMO has issued MSC/Circ.1111 Guidance relating to the implementation of SOLAS chapter XI-2 and the ISPS Code

This circular includes:

- ANNEX 1 GUIDANCE RELATING TO THE IMPLEMENTATION OF SOLAS CHAPTER XI-2 AND THE ISPS CODE
- ANNEX 2 RESOLUTION MSC.159(78) INTERIM GUIDANCE ON CONTROL AND COMPLIANCE MEASURES TO ENHANCE MARITIME SECURITY

In simple terms, if a ship does not have a valid certificate that ship may be detained in port until it gets a certificate. Of course, the port State has various other options available at its disposal if a ship does not have a certificate. It may expel the ship from port, it may refuse the entry of the ship into port, it may curtail the operations of the ship. In effect the measures which are in place have been designed in such a way to ensure that those ships which do not have certificates find themselves out of the market in the shortest possible time.

The consequences of either initially failing to comply or of failing to maintain continuous compliance with IMO's special measures to enhance maritime security will be serious and far reaching. It should come as no surprise if, after July 1st, we see Governments exercising, in the interest of their own national security and in order to protect the business operations of their ports and thus their trade, the rights laid down within the framework of the control and compliance measures established in chapter XI-2 and the ISPS Code. Hence, Governments may refuse entry into their ports to those ships which have failed to comply with the ISPS Code. In addition and for the same reasons, ships which call at port facilities which have failed to comply with the ISPS Code, although they may hold a valid International Ship Security Certificate, may be faced with additional security requirements at subsequent ports of call, leading to delays and possibly denial of port entry.

With such possible scenarios looming on the horizon, owners and charterers may decide to instruct ships not to proceed to port facilities which have not complied with the requirements of the ISPS Code, primarily because of the problems such ships may encounter at subsequent ports of call. While failure to ensure compliance may have catastrophic consequences on human life and the environment, it will also damage the commercial interests of the countries concerned, will have harmful repercussions on international trade and will negatively impact the world economy.

Terrorism is not a matter of concern to one country or a group of countries - it is a global issue and we should address it as such. The Secretary-General of the United Nations, Mr. K. Annan, has put it in similar terms: "Terrorism is a global scourge with global effects." In this particular case, maybe more than in others, prevention is better, much better, than cure. The comforting yet complacent argument that some of us may hope never to become victims of a terrorist act is of no value here. With the interdependence of the world's economies today, the chain reaction that such an act may trigger will have a major negative impact on trade and the global economy - we will all be victims; as we would certainly have been if the attack on the Basra oil terminal had not been foiled and we would now suffer the repercussions of the major impact it would have on oil pricing - more than it has already had.

#### **What would happen to ships, having visited ports where the ISPS Code is not implemented properly, when they intend to enter ports where the ISPS Code is implemented vigorously?**

To address this question one has to examine two possible scenarios.

The first scenario presupposes that the Government at the next port of call has reliable information that the security measures at a particular port facility are inadequate. In such a case a responsible approach will be for the two Governments to communicate and to resolve the issues of concern.

The second scenario, assumes that, during the stay of a ship at a particular port facility, the ship and/or someone representing the port facility or the Government where the ship is to proceed

next are able to assess the security measures which the particular port facility was implementing during the stay of the ship. In this respect, one has to bear in mind that in a lot of cases the security measures in place may be of a covert nature and a third party may not be able to identify or to appreciate them.

MSC 78 has considered the issue of security concerns, where a ship has concerns about the security of a port facility, which is supposed to operate in accordance with an approved Port Facility Security Plan. In this respect the Committee decided to draw the attention to the fact that certain of the security measures may be of a covert nature and may not be easily identified. Thus, the Committee recommended that the ship, as a first step, should contact the port facility security officer (PFSO) and discuss the matter. If no remedial action is agreed then the ship should contact the authorities of its flag State and raise the matter with them for their consideration and action.

In any case, if a ship has concerns about the security measures in places at a particular port facility and the ship has not been able to resolve such concerns with the particular PFSO, the ship should establish appropriate security measures and procedures and should document them. When asked at any subsequent port of call, the master of the ship should present the record it has kept on the matter for the consideration of the relevant authorities.

Of course in all cases the ship is subject to control and compliance measures at subsequent ports of call and what might happen to a ship is dependant on the attitude the particular Government might take on the matter depending on the merits of each case. This may range from a requirement for inspection prior to entry into port to an outright refusal of entry into port.

See also MSC/Circ.1111 Guidance relating to the implementation of SOLAS chapter XI-2 and the ISPS Code

This circular includes:

- ANNEX 1 GUIDANCE RELATING TO THE IMPLEMENTATION OF SOLAS CHAPTER XI-2 AND THE ISPS CODE
- ANNEX 2 RESOLUTION MSC.159(78) INTERIM GUIDANCE ON CONTROL AND COMPLIANCE MEASURES TO ENHANCE MARITIME SECURITY

#### **How can I find out if a ship or port is compliant?**

A ship that is compliant should have an International Ship Security Certificate (ISSC).

The "ISPS Code Database", which forms an integral part of the Organization's Global Integrated Shipping Information System (GISIS), contains the information required by SOLAS regulation XI-2/13 as supplied by Contracting Governments, including national maritime security contact points. The ISPS Code database has a section listing ports including whether or not they have an approved port facility security plan (PFSP).

#### **What are major security concerns and potential threats? Are they real or imaginary?**

The threat of terrorist acts against the shipping and port industry are real and not imaginary. It is for these reasons the Assembly of IMO, in November 2001, decided that the Organization should review measures and procedures to prevent acts of terrorism which threaten the security of passengers and crew and the safety of ships. It is also obvious that the Contracting Governments to the 1974 SOLAS Convention, when they adopted the special measures to enhance maritime security in December 2002, were well aware of potential threats.

Chapter XI-2 and the ISPS Code provide a methodology of addressing security threats and managing potential risks which

ships and ports involved in the international trade may face. IMO is of the view they are adequate to protect the shipping and the port industry if implemented and enforced wisely and effectively in conjunction with the wider United Nations counter terrorism strategy. Ships engaged on domestic voyages and ports which serve such ships need to be addressed by each Government individually and each Government needs to put in place appropriate security measures and procedures to this end based their assessment of the security threats.

Security threats change from day-to-day. Governments need to monitor changes and to offset them, as they occur, by communicating appropriate information and guidance to ships and port facilities. Security is not a static issue and requires continuous awareness, vigilance and prompt response.

The IMO has provided a methodology in addressing the matter by introducing a global minimum standard. Individual Governments can use these as a basis for expansion as appropriate.

What additional/specific security measures and actions would be required at local/regional level to further raise the defence against threats?

All appropriate measures should be taken in accordance with the perceived local needs.

Some examples might include regular and intensive patrolling at the local level in identified vulnerable sea/port areas. In addition, joint patrolling and exchange of real time intelligence and threat perception among countries at a regional level would have a meaningful impact in preventing incidents of piracy and armed robbery against ships.

For measures to be applied for container security, it is important to put in place the necessary measures for shippers and container packers to secure the "real content" of containers. This area is beyond the scope of IMO and necessary measures have been under consideration at the World Customs Organization (WCO).

#### **Will the new security measures imposed after 1 July 2004 will help reduce the piracy and armed robbery incidents?**

Logically it should be so. In the months leading up to the 1 July 2004 deadline of the ISPS Code, there has been a reduction in the number of incidents reported to have occurred during the first quarter of 2004. There could be a possible correlation between the two but only a careful monitoring over a longer period would give a firm indication of the long-term trend in this respect.

Chapter XI-2 includes a regulation addressing threats to ships at sea. This regulation requires Governments to set security levels and ensure the provision of security level information to ships operating in their territorial sea or having communicated an intention to enter their territorial sea.

Where a risk of attack has been identified, the Government concerned shall advise the ships concerned and their flag State of the current security level; of any security measures that should be put in place by the ships concerned to protect themselves from attack; and of the security measures that the coastal State has decided to put in place.

Thus, at least the international framework has been put in place to address the matter. Now is up to Governments to implement it.

#### **What are the security concerns and potential threats to oil tankers navigating in narrow straits?**

IMO Secretary-General Mr. Efthimios Mitropoulos has stressed

the importance of ensuring that strategically important international shipping lanes are protected from the threat of terrorism and remain open for trade at all times and has emphasized the need to ensure that shipping lanes, particularly those of strategic significance and importance, are kept open under all circumstances.

Maritime security experts have identified a number of scenarios: loaded oil tankers could well be hijacked and grounded at environmentally sensitive sea areas to cause pollution or run aground intentionally in narrow channels to block navigation channels. In addition, loaded oil tankers could be used as potential incendiary devices by terrorists near ports and large anchorage areas.

SOLAS regulation XI-2/7 relating to threats to ships at sea requires littoral States to advise the ships concerned and their flag State of the current security level; of any security measures that should be put in place by the ships concerned to protect themselves from attack; and of the security measures that the coastal State has decided to put in place.

### **How will the code specifically affect ports and shipping in different regions of the world?**

The ISPS Code is applicable in the same way to all shipping nations - flag States and port States - globally and universally. All 148 Parties to SOLAS must ensure their ships and port facilities comply with the requirements.

### **Do these measures go far enough for port and shipping security?**

The maritime security provisions of SOLAS chapter XI-2 and the ISPS Code are part of a wider initiative to counter terrorism, including action by the Counter Terrorist Committee of the UN Security Council through resolution 1373, co-operation with the WCO on container security, joint initiatives with the ILO on port security and identification documents etc.

It is better to have a tool that we can refine and improve over time, than nothing at all. After all, those who would wish to spread terror, should they choose to launch an attack against shipping, would surely look to strike where they detect the greatest weakness.

The Maritime Safety Committee and its subsidiary bodies are continuously working on additional elements of and guidance for the mandatory requirements, i.e. Ship Security Alert Systems (SSAs), long-range identification and tracking (LRIT) of ships, control and compliance measures, training and certification of security officers, etc.

### **Who has to implement the ISPS Code?**

It is for the SOLAS Contracting Governments to implement the measures - detailed implementation of the Code is a matter for individual national governments.

We are all aware of the changing world around us and the threat to the maritime industry as demonstrated by the attacks on maritime infrastructure which have taken place. We cannot afford to be complacent.

The ISPS Code was adopted in December 2002 - but IMO had already initiated its regional awareness seminars - seven regional seminars during 2002 - so the idea of security was out there. Although all parties concerned knew that the time frame was very tight, the industry and Governments had sufficient time to prepare. There is no leeway in SOLAS for extensions of the deadline.

### **What penalties will there be on any Governments who do not ensure compliance with the ISPS Code?**

IMO will not impose any penalties - it is not within its remit to do so.

It is to be anticipated that market forces and economic factors will drive compliance.

But the consequences of either initially failing to comply or of failing to maintain continuous compliance with IMO's special measures to enhance maritime security, could be serious and far reaching.

### **What guidelines are there for dealing with ships/ports that are not compliant after 1 July 2004?**

The Maritime Safety Committee (MSC) at its 78th session adopted Guidelines on Control and Compliance Measures to Enhance Maritime Security - MSC/Circ.1111 Guidance relating to the implementation of SOLAS chapter XI-2 and the ISPS Code includes:

- ANNEX 1 GUIDANCE RELATING TO THE IMPLEMENTATION OF SOLAS CHAPTER XI-2 AND THE ISPS CODE
- ANNEX 2 RESOLUTION MSC.159(78) INTERIM GUIDANCE ON CONTROL AND COMPLIANCE MEASURES TO ENHANCE MARITIME SECURITY

### **Why isn't the IMO directly responsible for the ISPS code and its implementation?**

The ISPS Code and other security amendments were adopted under the SOLAS Convention. The Convention itself does not allow for IMO as a body to impose penalties. It provides for individual Contracting Governments to adopt the rules into their own national legislation. So there is no remit under the Convention for IMO as a body to monitor compliance or to go beyond the role set out for it under the Convention.

### **Is the ISPS Code be a big hindrance to international trade and shipping?**

The consequences of either initially failing to comply or of failing to maintain continuous compliance with IMO's special measures to enhance maritime security will be serious and far reaching. But IMO's goal remains the efficiency of shipping.

Regulation XI-2/9 on Control and compliance measures states that when Contracting Governments exercise control:

- 1 all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained, or delayed, it shall be entitled to compensation for any loss or damage suffered; and
- 2 necessary access to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes.

### **Why did the IMO leave so much of ISPS open to interpretations?**

The ISPS Code is a very detailed document. It includes a mandatory part and a recommendatory part. The recommendatory part is intended to address those areas where very specific characteristics of a ship or port facility may mean that "one size" does not "fit all".

### **What about the issue of master as a ship security officer?**

The Maritime Safety Committee (MSC) has confirmed that neither the drafting of the definition of the SSO nor the provisions of the ISPS Code relating to his responsibilities, training etc. were aimed at preventing the master from being designated as SSO.

According to the ISPS Code, it is the responsibility of the Company and the Company Security Officer to appoint the SSO. This naturally has to be endorsed by the Administration of the flag State and/or the Recognized Security Organization through the approval of the Ship Security Plan and issuing of the International

Security Shipping Certificate and/or the relevant training certificate by the Administration as appropriate.

The definition of the SSO should be viewed in conjunction with SOLAS regulation XI-2/8 on "Master's discretion for ship safety and security", which makes it clear that the master has ultimate responsibility for safety and security.

The phrase "accountable to the master" in the definition of SSO is intended to cover those situations, for example on large passenger ships, where the SSO is not the master, by reaffirming that the master has overall responsibility for security. There is implicitly no intention of preventing the master from assuming the duties of SSO, as this would be inconsistent with SOLAS regulation XI-2/8.

It is, of course, for the national Administrations to decide if they wish to impose particular restrictions on who may serve as SSOs on ships flying their flag. This should, however, not be imposed by national Administrations on ships not flying their flag through port State control measures, since this is clearly the prerogative of the Contracting Government of the flag State concerned.

#### **What has IMO done to help developing countries implement the ISPS Code?**

In 2002, IMO initiated a major programme under its Integrated Technical Co operation Programme (ITCP) to assist developing countries to contribute to the global effort to protect shipping from terrorist attacks. A sum of US\$2,145,000 was set aside in the ITCP for 2002-2003 with a further US\$500,000 allocated in 2004-2005 to undertake the work involved.

More than 60 regional and national seminars and workshops on maritime security, together with a number of advisory and assessment missions, have already been undertaken and more are planned. A Maritime Security Trust Fund has been established and financial support and pledges from a number of Member Governments have been received.

#### **Which maritime security model courses are available?**

IMO has developed the following Model Courses:

ISPS - Company Security Officer, 2003 edition

This model course aims to provide knowledge to those who may be designated to perform the duties and responsibilities of a Company Security Officer (CSO).

ISPS - Port Facility Security Officer, 2003 edition

This model course aims to provide knowledge to those who may be designated to perform the duties and responsibilities of a Port Facility Security Officer (PFSO).

ISPS - Ship Security Officer, 2003 edition

This model course aims to provide knowledge to those who may be designated to perform the duties and responsibilities of a Ship Security Officer (SSO).

#### **What led to the development of the ISPS Code?**

In November 2001, two months after the "9/11" attacks, IMO's 22nd Assembly adopted resolution A.924(22) Review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships, which called for a thorough review of all existing measures already adopted by IMO to combat acts of violence and crime at sea.

The Assembly agreed to hold a diplomatic conference on maritime security in December 2002, to adopt any new regulations that might be deemed necessary to enhance ship and port security and prevent shipping from becoming a target of international terrorism and it also agreed to a significant boost to the Organization's technical co-operation programme of £1.5 million,

to help developing countries address maritime security issues.

The ISPS Code and other maritime security measures were developed by IMO's Maritime Safety Committee (MSC) and its Maritime Security Working Group before being adopted by a Conference on Maritime Security in December 2002, with entry into force set for 1 July 2004.

#### **What maritime security measures existed before the ISPS Code and other measures were adopted?**

The existing measures prior to the adoption of the ISPS Code included guidelines adopted following the 1985 Achille Lauro incident, in which Palestinian terrorists hijacked an Italian cruiseship and killed a passenger before agreeing terms to end their siege.

Assembly resolution A.584(14) on Measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crew, adopted in 1985, invited the MSC to develop detailed and practical technical measures to ensure the security of passengers and crews on board ships, taking into account the work of the International Civil Aviation Organization in the development of standards and recommended practices for airport and aircraft security. In December 1985, the United Nations General Assembly called on the IMO to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures.

In 1986, IMO issued MSC/Circ.443 on Measures to prevent unlawful acts against passengers and crews on board ships gave guidelines on the steps that should be taken, with particular reference to passenger ships engaged on international voyages of 24 hours or more and the port facilities which service them.

In November 1986, work began in IMO's Legal Committee on the preparation of a convention on unlawful acts against the safety of maritime navigation. In March 1988 a conference in Rome adopted the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988.

In 1996 the MSC adopted MSC/Circ.754 on Passenger ferry security.

#### **What issues are under discussion at the Legal Committee with a view to amending the SUA Convention?**

The Legal Committee at its last session in April 2004 continued its consideration of a draft protocol to the SUA Convention and Protocol

Most delegations stated their support for the revision and strengthening of the SUA Convention in order to provide an answer to the increasing risks posed by terrorism to maritime navigation. Nevertheless, several delegations referred to the need to ensure that the prospective SUA Protocols do not jeopardize the principle of freedom of navigation and the right of innocent passage which are guaranteed by the 1982 United Nations Convention on the Law of the Sea (UNCLOS), as well as basic principles of international law and the operation of international commercial shipping.

#### **What measures have been adopted in the security communication field?**

In order to achieve its objectives, the ISPS Code embodies a number of functional requirements. These include, amongst others, a requirement for the maintenance of communication protocols for ships and port facilities and requirement for means for raising the alarm in reaction to security threats or security incidents.

Neither chapter XI-2 nor the ISPS Code expand, for good reasons, on security communications and the matter is left to the discretion of Governments.

### **What role would AIS and ship security alert system play?**

#### **Ship Security Alert System (SSAS)**

The ship security alert system is designed to raise the alarm ashore in reaction to security threats or security incidents by notifying the flag State of the ship without alerting ships or coastal States in the vicinity or giving any indication on board. Use of the ship security alert system is a recognition that security is political and requires different response to a distress or emergency situation on board.

**AIS:** Operation of AIS in certain sea areas would cause security concern because information broadcast through AIS could be collected by pirates or terrorists. Because of this concern, the last Assembly adopted resolution A 956(23) which allow ship masters to switch off the AIS in specific areas where threat of attack by pirates or terrorists are imminent. IMO has taken an action to cover this area of concern. Should IMO should be worried about the implications of terrorists or criminals using AIS derived information to target vessels?

IMO has taken an action to cover this area of concern, i.e. that operation of AIS in certain sea areas would cause security concern because information broadcasted through AIS could be collected by pirates or terrorists. Because of this concern, the last Assembly in November 2003 adopted resolution A 956(23) Amendments to the Guidelines for the onboard operational use of shipborne automatic identification systems (AIS) resolution A.917(22) which allows ship masters to switch off the AIS in specific areas where threat of attack by pirates or terrorists are imminent.

AIS is the broadcasting device and information will be made available for everyone without any discrimination. That information will be available for the coast safety agencies and authorities and could equally be available for ill-minded people. AIS itself is a tool used in an information collection system and we can not prevent people misusing that information.

However, AIS is also useful for monitoring the situation over any particular sea area by the security authorities within the security system established by those security authorities.

Concern over the security implication of the operation of AIS can only be overcome by tightening the security control measures to be enforced by the coastal security authorities.

### **When do ordinary container ships and ro/ros have to fit Ship Security Alert Systems?**

New container ships and new ro-ro cargo ships (i.e. container and ro-ro cargo ships constructed on or after 1 July 2004) are required to comply with the requirements of regulation XI-2/6 on ship security alert systems on the date they enter service.

Existing container ships and existing ro-ro cargo ships (i.e. container and ro-ro cargo ships constructed before 1 July 2004) are considered, for the purpose of regulation XI-2/6, as other cargo ships and are required to comply with the requirements for ship security alert system not later than the first survey of their radio installation after 1 July 2006.

Passenger ships includes ro-ro passenger ships. Thus, new ro-ro passenger ships (i.e. ro-ro passenger ships constructed on or after 1 July 2004) are required to comply with the requirements of regulation XI-2/6 on ship security alert systems on the date they enter service. Existing ro-ro passenger ships (i.e. ro-ro passenger ships constructed before 1 July 2004) are required to comply with the requirements for ship security alert system not

later than the first survey of their radio installation after 1 July 2004.

Regulation I/3(a)(vi) states that the present regulation (the term regulation is defined in regulation I/2(a) as meaning the regulations contained in the annex to the 1974 SOLAS Convention), unless expressly provided otherwise, do not apply to fishing vessels. Regulation XI-2/2.1 indicates the classes of ships to which the special measures to enhance maritime security apply and does not include fishing vessels. Thus, fishing vessels, irrespective of their size, are not required to be provided with ship security alert systems. However, nothing prohibits a State requiring the fishing vessels flying its flag to be provided with ship security alert systems.

The Maritime Safety Committee has recognized that in a number of occasions certain container ships may meet, in terms of speed, the definition of a high-speed craft. However, such container ships should be treated as cargo ships and not a high-speed crafts falling under the scope of the High Speed Craft Codes.

### **What is the current situation at WCO in relation to container security?**

When adopting the amendments to the 1974 SOLAS Convention and the new ISPS Code concerning special measures to enhance maritime security in 2002, the SOLAS Conference, being aware of the competencies and work of the World Customs Organization (WCO), also adopted a resolution (Conference resolution 9), which, inter-alia, invites the WCO to consider, urgently, measures to enhance security throughout international movements of closed cargo transport units (CTUs). In response to the call for action from the Group of eight (G8) and IMO, the WCO adopted the Resolution on Supply Chain Security and Trade Facilitation in 2002, which addresses a series of steps to protect the international trade supply chain from acts of terrorism. Since the adoption of the resolution, the WCO Task Force was established and developed a package of measures, including:

- an amended WCO data Model and a list of 27 essential data elements for identification of high risk consignments;
- Customs guidelines for Advance Cargo Information (ACI Guidelines) to enable the advance (pre arrival) electronic transmission of customs data (Title of these guidelines has recently been changed to "Integrated Supply Chain Management Guidelines" (ISCM Guidelines);
- WCO High Level Guidelines for Co-operative Arrangements between Members and private industry to increase supply chain security and facilitate the flow of international trade; and
- a new International Convention on Mutual Administrative Assistance in Customs Matters to assist Members in developing a legal basis to enable the advance electronic transmission of customs data.

WCO is currently working on further development of supplementary instruments for the implementation of the above mentioned major WCO instruments, with a view to finalizing them by the end of 2004.

Measures to be taken by all parties in the supply chain (e.g. shipper, consolidator, terminal operators, warehouse operators etc) for the security of closed cargo transport units (CTUs) have been addressed in principle in the "WCO High Level Guidelines for Co-operative Arrangements between Members and private industry" and more detailed guidelines for each business sector are currently under development by WCO.

### **What about seafarers identification documents?**

Conference resolution 8 (Enhancement of security in co-operation with the International Labour Organization) adopted by the 2002

maritime security conference invited the ILO to continue the development of a Seafarers' Identity Document as a matter of urgency, which should cover, among other things, a document for professional purposes; a verifiable security document; and a certification information document, and invited IMO and the ILO to establish a joint ILO/IMO Working Group to undertake more detailed work on comprehensive port security requirements.

The Seafarers' Identity Documents Convention (Revised), 2003 was adopted in June 2003 and it becomes effective as from 9 February 2005.

## **RELATED MATERIAL**

### **Assembly resolutions**

Resolution A.955(23) Amendments to the Principles on Safe Manning (Resolution A.890(21))

Resolution A.956(23) Amendments to the Guidelines for the onboard operational use of ship borne automatic identification systems (AIS) (Resolution A.917(22))

Resolution A.959(23) Format and guidelines for the maintenance of the Continuous Synopsis Record (CSR)

### **MSC Resolutions**

Resolution MSC.136(76) Performance standards for a ship security alert system

Resolution MSC.147(77) Adoption of the Revised performance standards for a ship security alert system

Resolution MSC.159(78) Interim guidance on control and compliance measures to enhance maritime security

### **MSC Circulars**

MSC/Circ.1067 Early implementation of the special measures to enhance maritime security

MSC/Circ.1072 Guidance on provision of ship security alert systems

MSC/Circ.1073 Directives for Maritime Rescue Co ordination Centres (MRCCs) on acts of violence against ships

MSC/Circ.1074 Interim Guidelines for the authorization of RSOs acting on behalf of the Administration and/or Designated Authority of a Contracting Government

MSC/Circ.1097 Guidelines for the implementation of SOLAS chapter XI-2 and the ISPS Code

MSC/Circ. 1104 Implementation of SOLAS chapter XI-2 and the ISPS Code

MSC/Circ. 1106 Implementation of SOLAS chapter XI-2 and the ISPS Code to port facilities

MSC/Circ. 1109 False security alerts and distress/security double alerts

MSC/Circ. 1110 Matters related to SOLAS regulations XI-2/6 and XI-2/7

MSC/Circ. 1111 Guidance relating to the implementation of SOLAS chapter XI-2 and the ISPS Code

MSC/Circ. 1112 Shore leave and access to ships under the ISPS Code

MSC/Circ.1113 Guidance to port State control officers on the non-security related elements of the 2002 SOLAS amendments

### **Model Courses**

IMO Model Course 3.19 Ship Security Officer

IMO Model Course 3.20 Company Security Officer

IMO Model Course 3.21 Port Facility Security Officer

### **Circular Letters**

Circular Letter No. 2514 Information required from SOLAS Contracting Governments under the provisions of SOLAS regulation XI-2/13

Circular Letter No. 2529 Information required from SOLAS Contracting Governments under the provisions of SOLAS regulation XI-2/13.1.1 on communication of a single national contact point

### **Other material**

ILO/IMO Code of Practice on Security in Ports

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988.

## **Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988**

Adoption: 10 March 1988

Entry into force: 1 March 1992

The Protocol extends the requirements of the Convention to fixed platforms such as those engaged in the exploitation of offshore oil and gas.

### **Introduction**

Concern about unlawful acts which threaten the safety of ships and the security of their passengers and crews grew during the 1980s, with reports of crews being kidnapped, ships being hijacked, deliberately run aground or blown up by explosives. Passengers were threatened and sometimes killed.

In November 1985 the problem was considered by IMO's 14th Assembly and a proposal by the United States that measures to prevent such unlawful acts should be developed by IMO was supported.

### **Resolution A.584(14)**

The Assembly adopted resolution A.584(14) Measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crew which notes "with great concern the danger to passengers and crews resulting from the increasing number of incidents involving piracy, armed robbery and other unlawful acts against or on board ships, including small craft, both at anchor and under way."

The IMO Assembly directed the Maritime Safety Committee to develop, on a priority basis, detailed and practical technical measures, including both shoreside and shipboard measures, to ensure the security of passengers and crews on board ships. The measures were to take into account the work of the International Civil Aviation Organization (ICAO) in the development of standards and recommended practices for airport and aircraft security.

In December 1985 further support came from the United Nations General Assembly which called upon IMO "to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures."

### **MSC Circular**

The MSC in 1986 issued a Circular (MSC/Circ.443) on Measures to prevent unlawful acts against passengers and crews on board ships - which states that Governments, port authorities, administrations, shipowners, shipmasters and crews should take appropriate measures to prevent unlawful acts which may threaten passengers and crews. The Circular gives guidelines on measures that can be taken - with application to passenger ships engaged on international voyages of 24 hours or more

and port facilities which service them.

In November 1986 the Governments of Austria, Egypt and Italy proposed that IMO prepare a convention on the subject of unlawful acts against the safety of maritime navigation 'to provide for a comprehensive suppression of unlawful acts committed against the safety of maritime navigation which endanger innocent human lives, jeopardize the safety of persons and property, seriously affect the operation of maritime services and thus are of grave concern to the international community as a whole."

#### **Convention aims**

The proposal was supported, and in March 1988 a conference was held in Rome which adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

The main purpose of the convention is to ensure that appropriate action is taken against persons committing unlawful acts against ships. These include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.

The convention obliges Contracting Governments either to extradite or prosecute alleged offenders.

#### **Amendment procedure**

IMO may convene a conference of States parties to the Convention for the purpose of revising or amending the convention, at the request of one third or ten States Parties, whichever is the highest.

#### **2005 Protocols**

Adoption: 14 October 2005

Entry into force: The amended Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation will enter into force ninety days after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.

The amended Protocol requires ratification from three States which are also party to the SUA Convention but it cannot come into force unless the 2005 SUA Convention is already in force.

#### **Status: see Status of Conventions**

Amendments to the Convention for the Suppression of Unlawful Acts (SUA) Against the Safety of Maritime Navigation, 1988 and its related Protocol, were adopted by the Diplomatic Conference on the Revision of the SUA Treaties held from 10 to 14 October 2005. The amendments were adopted in the form of Protocols to the SUA treaties (the 2005 Protocols).

#### **2005 Protocol to the SUA Convention**

Among the unlawful acts covered by the SUA Convention in Article 3 are the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.

The 2005 Protocol to the SUA Convention adds a new Article 3bis which states that a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally:

- when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from any act;
- uses against or on a ship or discharging from a ship any explosive, radioactive material or BCN (biological, chemical,

nuclear) weapon in a manner that causes or is likely to cause death or serious injury or damage;

- discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage;-

- uses a ship in a manner that causes death or serious injury or damage;

- transports on board a ship any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act;

- transports on board a ship any BCN weapon, knowing it to be a BCN weapon;

- any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; and

- transports on board a ship any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.

The transportation of nuclear material is not considered an offence if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non Proliferation of Nuclear Weapons (Subject to conditions).

Under the new instrument, a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence under the SUA Convention or an offence set forth in any treaty listed in the Annex. The Annex lists nine such treaties.

The new instrument also makes it an offence to unlawfully and intentionally injure or kill any person in connection with the commission of any of the offences in the Convention; to attempt to commit an offence; to participate as an accomplice; to organize or direct others to commit an offence; or to contribute to the commissioning of an offence.

A new Article requires Parties to take necessary measures to enable a legal entity (this could be a company or organization, for example) to be made liable and to face sanctions when a person responsible for management of control of that legal entity has, that capacity, committed an offence under the Convention.

#### **Boarding provisions**

Article 8 of the SUA Convention covers the responsibilities and roles of the master of the ship, flag State and receiving State in delivering to the authorities of any State Party any person believed to have committed an offence under the Convention, including the furnishing of evidence pertaining to the alleged offence.

A new Article 8bis in the 2005 Protocol covers co-operation and procedures to be followed if a State Party desires to board a ship flying the flag of a State Party when the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in, the commission of an offence under the Convention.

The authorization and co-operation of the flag State is required

before such a boarding. A State Party may notify the IMO Secretary-General that it would allow authorization to board and search a ship flying its flag, its cargo and persons on board if there is no response from the flag State within four hours. A State Party can also notify that it authorizes a requesting Party to board and search the ship, its cargo and persons on board, and to question the persons on board to determine if an offence has been, or is about to be, committed.

The use of force is to be avoided except when necessary to ensure the safety of officials and persons on board, or where the officials are obstructed to the execution of authorized actions.

Article 8bis includes important safeguards when a State Party takes measures against a ship, including boarding. The safeguards include: not endangering the safety of life at sea; ensuring that all persons on board are treated in a manner which preserves human dignity and in keeping with human rights law; taking due account of safety and security of the ship and its cargo; ensuring that measures taken are environmentally sound; and taking reasonable efforts to avoid a ship being unduly detained or delayed.

### **Extradition**

Article 11 covers extradition procedures. A new Article 11bis states that none of the offences should be considered for the purposes of extradition as a political offence. New article 11ter states that the obligation to extradite or afford mutual legal assistance need not apply if the request for extradition is believed to have been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 12 of the Convention requires States Parties to afford one another assistance in connection with criminal proceedings brought in respect of the offences. A new Article 12bis cover the conditions under which a person who is being detained or is serving a sentence in the territory of one State Party may be transferred to another State Party for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences.

### **Amendment procedure**

Amendments to the Articles in the Convention require acceptance by a requisite number of States. However, the Annex, which lists the treaties under which offences can be considered for the purpose of the SUA Convention, has a special amendment procedure.

The treaties listed are:

- 1 Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970
- 2 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971
- 3 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973
- 4 International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979
- 5 Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979
- 6 Protocol for the Suppression of Unlawful Acts of Violence at

Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988

- 7 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988
- 8 International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997
- 9 International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999

### **2005 Protocol to the 1988 SUA Protocol**

The amendments to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf reflect those in the 2005 Protocol to the SUA Convention.

New article 2bis broadens the range of offences included in the Protocol. A person commits an offence if that person unlawfully and intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act, uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or discharges from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration, that it causes or is likely to cause death or serious injury or damage; or threatens, with or without a condition, as is provided for under national law, to commit an offence.

New article 2ter includes the offences of unlawfully and intentionally injuring or killing any person in connection with the commission of any of the offences; attempting to commit an offence; participating as an accomplice; organizing or directing others to commit an offence.

### **Date of entry into force**

#### **Convention or Code**

#### **1 January 2009**

#### **May 2005 amendments to SOLAS**

A revised SOLAS chapter II-1 is intended to harmonize the provisions on subdivision and damage stability for passenger and cargo ships. The revised provisions in parts A, B and B-1 will be applicable to new ships built after the expected entry into force date of 1 January 2009.

The amendments, which have been intensively developed over the past decade, are based on the "probabilistic" method of determining damage stability, which is itself based on the detailed study of data collected by IMO relating to collisions. Because it is based on statistical evidence concerning what actually happens when ships collide, the probabilistic concept is believed to be far more realistic than the previously-used "deterministic" method.

The revision has taken into account the results of the HARDER (Harmonisation of Rules and Design Rational) research project: a project undertaken by a consortium of European industrial, research and academic institutions to study the probabilistic approach for assessing a ship's damage stability and to develop new criteria and indexes for subdivision based on probability of survival, taking into account effects from waves, heeling

moments, cargo shift, transient effects and equalization arrangements.

Also, new SOLAS regulations XI-1/3-1 and amendments to regulation XI-1/5 on the mandatory company and registered owner identification number.

And amendments to add the IMO unique company and registered identification number to relevant certificates and documents in the International Management Code for the Safe Operation of Ships and for Pollution Prevention (the ISM Code) and International ship and Port Facility Security (ISPS) Code.

#### **December 2006 amendments**

Amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code), relating to fire protection and fire extinction, and the revised chapters 17 (Summary of minimum requirements), 18 (List of products to which the code does not apply) and 19 (Index of Products Carried in Bulk). Entry into force on 1 January 2009.

#### **1 July 2009**

#### **October 2007 amendments to SOLAS**

Amendment to SOLAS chapter IV, to add a new regulation 4-1 on GMDSS satellite providers. The new regulation provides for the MSC to determine the criteria, procedures and arrangements for the evaluation, recognition, review and oversight of the provision of mobile satellite communication services in the Global Maritime Distress and Safety System (GMDSS).

Amendment to SOLAS chapter VI, to add a new regulation 5-1 on material safety data sheets (MSDS), to require ships carrying MARPOL Annex I cargoes (oil) and marine fuel oils to be provided with a material safety data sheet prior to loading such cargoes. The regulation refers to the Recommendation for material safety data sheets (MSDS) for MARPOL Annex I cargoes and marine fuel oils, adopted by the Organization through resolution MSC.150(77).

Amendments to forms contained in the appendix to the Annex to the 1988 SOLAS Protocol to add a section to cover alternative design and arrangements (Passenger Ship Safety Certificate, Cargo Ship Safety Certificate, Cargo Ship Safety Construction Certificate and Cargo Ship Safety Equipment Certificate). Also, similar amendments to the forms for the Nuclear Passenger Safety Certificate and the Nuclear Cargo Ship Safety Certificate contained in the appendix to the Annex to the 1974 SOLAS Convention.

#### **1 December 2009**

The 2007 amendments to the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs)

#### **Replacement of annex IV Distress signals**

#### **1 January 2010**

#### **October 2006 amendments to MARPOL - revised Annex III**

The revised MARPOL Annex III Regulations for the prevention of pollution by harmful substances carried by sea in packaged form. The Annex has been revised to harmonize the regulations with the criteria for defining marine pollutants which have been adopted by the UN Transport of Dangerous Goods (TDG) Sub-Committee, based on the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

#### **1 July 2010**

#### **October 2008 MARPOL amendments - revised Annex VI**

Amendments to the MARPOL Annex VI regulations to reduce harmful emissions from ships even further.

The main changes to MARPOL Annex VI will see a progressive

reduction in sulphur oxide (SO<sub>x</sub>) emissions from ships, with the global sulphur cap reduced initially to 3.50% (from the current 4.50%), effective from 1 January 2012; then progressively to 0.50 %, effective from 1 January 2020, subject to a feasibility review to be completed no later than 2018.

The limits applicable in Sulphur Emission Control Areas (SECAs) will be reduced to 1.00%, beginning on 1 July 2010 (from the current 1.50 %); being further reduced to 0.10 %, effective from 1 January 2015.

Progressive reductions in nitrogen oxide (NO<sub>x</sub>) emissions from marine engines were also agreed, with the most stringent controls on so-called "Tier III" engines, i.e. those installed on ships constructed on or after 1 January 2016, operating in Emission Control Areas.

The revised Annex VI will allow for an Emission Control Area to be designated for SO<sub>x</sub> and particulate matter, or NO<sub>x</sub>, or all three types of emissions from ships, subject to a proposal from a Party or Parties to the Annex, which would be considered for adoption by the Organization, if supported by a demonstrated need to prevent, reduce and control one or all three of those emissions from ships.

#### **1 July 2010**

#### **May 2006 amendments to SOLAS**

#### **Amendments to SOLAS Chapter II-2 - Fire protection**

These include amendments relating to Regulation 9 - Containment of fire, so as to include a requirement for water-mist nozzles which should be tested and approved in accordance with the guidelines approved by the Organization; and in Regulation 15 - Arrangements for oil fuel, lubricating oil and other flammable oils, new text relating to the application of the regulation to ships constructed on or after 1 February 1992 and on or after 1 July 1998.

#### **Amendments to SOLAS Chapter III - Life-saving appliances and arrangements**

In Regulation 7 - Personal life-saving appliances, the amendments add a new requirement for infant lifejackets. For passenger ships on voyages of less than 24 hours, a number of infant lifejackets equal to at least 2.5% of the number of passengers on board is to be provided; and for passenger ships on voyages of 24 hours or greater, infant lifejackets are to be provided for each infant on board. A further amendment relates to the provision of lifejackets for larger passengers and states that, if the adult lifejackets provided are not designed to fit persons with a chest girth of up to 1,750 mm, a sufficient number of suitable accessories are to be available on board to allow them to be secured to such persons.

#### **Amendments to SOLAS Chapter IV - Radiocommunications**

The amendments relate to the provision of radio equipment, in Regulation 7, to require ships to carry an EPIRB capable of transmitting a distress alert through the polar orbiting satellite service (COSPAS-SARSAT) operating in the 406 MHz band; and, in Regulations 9 and 10, to clarify that the means of initiating ship-to-shore distress alerts may be through the Inmarsat geostationary satellite service by a ship earth station.

#### **Amendments to SOLAS Chapter V - Safety of navigation**

The amendment adds a new paragraph to Regulation 22 - Navigation bridge visibility to allow ballast water exchange at sea, provided that the master has determined that it is safe to do so and takes into consideration any increased blind sectors or reduced horizontal fields of vision resulting from the operation to ensure that a proper lookout is maintained at all times. The

operation should be conducted in accordance with the ship's ballast water management plan, taking into account the recommendations on ballast water exchange. The commencement and termination of the operation should be recorded in the ship's record of navigational activities.

#### **Amendments to the International Code for Fire Safety Systems (FSS Code)**

The amendments replace the text of Chapter 5 Fixed gas fire-extinguishing systems with a revised text.

#### **Amendments to the International Life-Saving Appliance Code (LSA Code)**

The amendments include the requirement that all life saving appliances should withstand in stowage an air temperature range of 30°C to +65°C and personal life-saving appliances should remain operational throughout an air temperature range of -15°C to +40°C. The colour of life-saving appliances is now specified to be "of international or vivid reddish orange, or a comparably highly visible colour on all parts where this will assist detection at sea". The existing section 2.2 on General requirements for lifejackets is revised and replaced. Further amendments relate to specifications for immersion suits and anti-exposure suits.

#### **Amendments to Guidelines for the authorization of organizations acting on behalf of the Administration (Resolution A.739(18))**

The amendments to the guidelines, which are mandatory under SOLAS chapter XI-1, add a new paragraph 2-1 to require the use of only exclusive surveyors and auditors for surveys and certification, although radio surveys may be subcontracted to non-exclusive surveyors.

#### **December 2006 amendments to SOLAS**

##### **Revised passenger ship safety standards**

The package of amendments to SOLAS were the result of a comprehensive review of passenger ship safety initiated in 2000 with the aim of assessing whether the current regulations were adequate, in particular for the large passenger ships now being built.

The work in developing the new and amended regulations has based its guiding philosophy on the dual premise that the regulatory framework should place more emphasis on the prevention of a casualty from occurring in the first place and that future passenger ships should be designed for improved survivability so that, in the event of a casualty, persons can stay safely on board as the ship proceeds to port.

The amendments include new concepts such as the incorporation of criteria for the casualty threshold (the amount of damage a ship is able to withstand, according to the design basis, and still safely return to port) into SOLAS chapters II-1 and II-2. The amendments also provide regulatory flexibility so that ship designers can meet any safety challenges the future may bring. The amendments include:

- alternative designs and arrangements;
- safe areas and the essential systems to be maintained while a ship proceeds to port after a casualty, which will require redundancy of propulsion and other essential systems;
- on-board safety centres, from where safety systems can be controlled, operated and monitored;
- fixed fire detection and alarm systems, including requirements for fire detectors and manually operated call points to be capable

of being remotely and individually identified;

- fire prevention, including amendments aimed at enhancing the fire safety of atriums, the means of escape in case of fire and ventilation systems; and
- time for orderly evacuation and abandonment, including requirements for the essential systems that must remain operational in case any one main vertical zone is unserviceable due to fire.

#### **1 July 2010**

##### **May 2008 amendments to SOLAS**

Amendments to SOLAS chapter II-2, regarding drainage of special category and ro-ro spaces to prevent accumulation of water on the vehicle deck of ro-ro ships;

Amendments to SOLAS Chapter XI 1 to add a new Regulation 6 (Additional requirements for the investigation of marine casualties and incidents) to make mandatory parts I and II of the new Casualty Investigation Code;

A new SOLAS regulation II-1/3-9 (Means of embarkation on and disembarkation from ships), to require ships built after its adoption and entry into force to be provided with means of embarkation and disembarkation, such as gangways and accommodation ladders;

A new SOLAS regulation and amendments to SOLAS regulation II-1/3-4 (Emergency towing arrangements on tankers), to extend the regulation to ships other than tankers. The MSC also approved Guidelines for owners/operators on preparing emergency towing procedures; and

Amendments to regulations III/6, III/26 and IV/7 to replace requirements for "radar transponders" with a requirement for a "search and rescue locating device".

##### **Amendments to 1988 SOLAS Protocol**

Amendments to the 1988 SOLAS Protocol, to replace the reference to "radar transponders" with a reference to "search and rescue locating devices", in the form of safety certificate for passenger ships and forms of safety certificate for cargo ships.

##### **December 2008 amendments to SOLAS - 2008 IS code**

Amendments to the SOLAS Convention and to the 1988 Load Lines Protocol to make mandatory the International Code on Intact Stability, 2008 (2008 IS Code).

The 2008 IS Code provides, in a single document, both mandatory requirements and recommended provisions relating to intact stability, taking into account technical developments, in particular regarding the dynamic stability phenomena in waves, based on state-of-the-art concepts. The Code's mandatory status, under both the SOLAS Convention and the 1988 Load Lines Protocol, will significantly influence the design and the overall safety of ships.

#### **1 January 2011**

##### **December 2008 amendments to SOLAS**

Amendments to SOLAS chapter VI to make mandatory the International Maritime Solid Bulk Cargoes Code (IMSBC Code) The IMSBC Code will replace the Code of Safe Practice for Solid Bulk Cargoes (BC Code), which was first adopted as a recommendatory code in 1965 and has been updated at regular intervals since then.

The aim of the mandatory IMSBC Code is to facilitate the safe stowage and shipment of solid bulk cargoes by providing information on the dangers associated with the shipment of

certain types of cargo and instructions on the appropriate procedures to be adopted.

### **June 2009 amendments to SOLAS**

#### **ECDIS and BNWAS to be made mandatory under SOLAS**

Amendments to SOLAS regulation V/19, to make mandatory the carriage of Electronic Chart Display and Information Systems (ECDIS) and Bridge Navigational Watch Alarm Systems (BNWAS), under SOLAS chapter V, Safety of Navigation. The requirements will be mandatory for new ships and phased-in for existing ships.

#### **Other SOLAS amendments adopted**

- an amendment to SOLAS regulation II-1/3-5.2, to prohibit all new installations of asbestos on board ships, without exceptions; and
- amendments to the title of Chapter VI to read, Carriage of Cargoes "and Oil Fuels" and to Regulation VI/5-1 on Material safety data sheets (MSDS) to require MSDS to be provided for ships carrying oil or oil fuel, prior to the loading of such oil as cargo in bulk or bunkering of oil fuel. The MSC also approved Recommendations for material safety data sheets (MSDS) for MARPOL Annex I type cargoes and oil fuels.

### **July 2009 amendments to MARPOL**

#### **MARPOL Annex I - transfer of oil cargo between oil tankers at sea**

#### **Amendments to MARPOL Annex I for the prevention of marine pollution during some ship-to-ship (STS) oil transfer operations.**

The new chapter 8 on Prevention of pollution during transfer of oil cargo between oil tankers at sea will apply to oil tankers of 150 gross tonnage and above and will require any oil tanker involved in oil cargo STS operations to have, on board, a plan prescribing how to conduct STS operations (the STS Plan), which would be approved by its Administration.

Notification to the relevant coastal State will be required not less than 48 hours in advance of the scheduled STS operations although some relaxation to this rule is allowed in certain, very specific, cases. The regulations are not intended to apply to bunkering operations.

Consequential amendments to the International Oil Pollution Prevention (IOPP) Certificate, the Supplement to the IOPP Certificate and the Oil Record Book.

#### **MARPOL Annex I Oil residue (sludge)**

Amendments to MARPOL Annex I regulations 1, 12, 13, 17 and 38, relating to the on board management of oil residue (sludge). The amendments clarify long standing requirements and remove existing ambiguities in order to facilitate compliance by ships' crews. Definitions for oil residue (sludge), oil residue (sludge) tanks, oily bilge water and oily bilge water holding tanks are introduced for the first time.

Related amendments to the Supplement to the IOPP Certificate, Form A and Form B, and to the Oil Record Book.

**Ship Arrest Conference:** All of a sudden the ship arrest conference is fashionable again; After a few years where it became a modest and clubby affair, this year saw 50-odd delegates from many countries and many different parts of the shipping industry convene for a close look at the current state of ship arrest around the world at the Informa Lloyd's

ship arrest conference on 7-8 December. Given the current state of shipping markets there seems little doubt that people expect more, perhaps much more, such activity. Once again 2010 is expected to be a very rough year indeed. The demise of Rule B attachments was a major topic, and it was noted that Rule B had by no means gone away, but as the topic was well covered in last week's edition there is no need to say more. But Rule B remains a dynamic and fast-moving area in New York and there will be many more surprises before it settles down again, as addressed by Michael Frevola of Holland & Knight's New York office in his presentation, The Federal Court of Appeals in New York in the Jaldhi decision held that it must follow New York law but failed to address the most recent New York State Appeals Court decision on the issue. How this issue plays out in subsequent cases remains to be seen.

AS Rule B recedes for the moment, a new US judgment has appeared with the capacity to make life very difficult for debtors in New York, whether or not they have actual property there. Brought to the conference's attention by Michael Frevola, this is the 'Koehler' judgement enforcement decision by the New York Court of Appeals which provides that a garnishee bank (or other entity, such as a party owing money to the judgment-debtor) located in New York can be ordered to turn over property of a debtor with a US presence, even when that property is not located in the USA. This has enormous potential, and is not limited to marine cases. Enforcement of arbitration awards elsewhere, when they can be converted to US enforcement, are an obvious example. The conference provided somewhat of a world tour of arrest jurisdictions, some good and some less so. Gibraltar, highlighted by Christian Hernandez of Isolac, is as accommodating, quick and effective as ever, but much the same can be said of most common law jurisdictions. Holland, introduced again by Haco van der Houven van Oordt of now re-named AKD, remains a helpful place to arrest and sell ships even if the auction process is strange to common law practitioners. South Africa's associated ship provisions, introduced by Tony Norton of Garlicke & Bousfield are as helpful as ever and it appears the country is a busy place for ship arrest and sale. Courtesy of its geographic location and helpful laws, it seems likely to remain so. Then there is a descending order of convenience around the world. France remains good for the arrest, at least from Monday to Friday, but the follow-up can be slow. Scandinavia varies, with Finland somewhat more difficult. China, as highlighted by Kevin Cooper of Ince & Co is more modern than might be expected and not bad but can be uncertain, and as for Mexico, introduced by Omar Olvera Monroy, it sounds like a difficult place to be kept clear of - in ship arrest terms, anyway. The UK's freezing orders were discussed by David Semark of Quadrant Chambers, and for those of us who have used them in the past, the range of complications sounded more formidable than might have seemed at the time. But where there is a genuine fear that assets may be disposed of or moved out of the country, the remedy can be quick and effective. By no means least in the packed two day session, Bob Toney of National Maritime Services looked at the practical issues around ship arrest - managing ship and crew affairs, maintaining the condition and value of assets, insurance cover etc. And the factors a foreclosing bank has to consider: flag, ownership, value, is the arrest worth it, other claims (remembering that not all jurisdictions rank the mortgage first) the general suitability of any jurisdiction for the arresting party's purposes. Which was what the conference was about and illuminated so well.

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