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PROTECTION OF VITAL SHIPPING LANES

Outcomes of MSC 90 and related meetings

Note by the Secretary-General

SUMMARY

Executive summary: This document reports on the outcomes of the Ministerial Meeting of the Djibouti Code of Conduct States (14 May 2012), the IMO Conference on Capacity-building to Counter Piracy off the Coast of Somalia (15 May 2012), the High-level segment, of MSC 90, on arms on board (16 and 17 May 2012), and MSC 90

Strategic direction: 6.2

High-level action: 6.2.2

Planned output: 6.2.2.1

Action to be taken: Paragraph 15

Related documents: C 108/14 and Add.1; MSC 90/WP.1 and Add.2

The Ministerial Meeting of the Djibouti Code of Conduct States

1 The Ministerial Meeting of the Djibouti Code of Conduct States (the Meeting) was held at IMO Headquarters on Monday, 14 May 2012 in order to:

- .1 provide a forum for signatory States to discuss making the Djibouti Code of Conduct concerning the repression of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden (the Code) a binding agreement;
- .2 review the lessons learned and experience gained over the last two years;
- .3 discuss the effectiveness of the Code in the region; and
- .4 assess the need for amendments to the Code.

2 High-level representatives of 17 States from the region, including 14 of the then 18 signatory States, participated in the Meeting and:

- .1 agreed that consultations in accordance with article 13 of the Code had been completed and that the Code should remain a non-binding agreement, at this stage;
- .2 agreed to revisit the status of the Code in two years after the meeting with interim consultations within that period, namely at the annual consultation meeting for the implementation of the Code between signatory, participating and donor States, as suggested in the governance structure proposed by the Secretary-General of IMO as may be amended to reflect comments made during the Meeting;
- .3 confirmed that the Code should not be changed to cover other maritime security threats or other countries, whilst noting that much of the implementation programme will indeed enhance capabilities and capacities to counter other maritime security threats;
- .4 noted that under the framework of the Code, IMO is entering into partnerships with other international and regional organizations (United Nations Office on Drugs and Crime (UNODC), United Nations Political Office for Somalia (UNPOS), World Food Programme (WFP), Food and Agriculture Organization of the United Nations (FAO) and the European Union (EU)) in a combined effort to counter piracy;
- .5 noted the initiative to focus the implementation of the Code on developing maritime situational awareness and building of operational capability, inter alia, in the southern high risk area near the Mozambique Channel, with a number of caveats on the format this may take and noted the need for liaison with African organizations such as Southern African Development Community;
- .6 noted that the role of the national focal points was vital to the success of the Code's implementation programme, and IMO had requested that two focal points be nominated per State to divide the policy from the operational aspects of the work. The Meeting also noted that the policy national focal point should have direct access to other stakeholder ministries that are involved in counter-piracy (e.g. Justice, Transport, Defence, Interior, Foreign Affairs) to ensure the cross-government engagement needed for effective implementation and, in particular, for training, legal, and maritime law-enforcement matters; and
- .7 noted that the Secretary-General of IMO, in discussions with the Secretary-General of the United Nations, had agreed to be part of the combined United Nations efforts on the ground in Somalia. The strategy will be based on the Somalia Roadmap and the Transitional Federal Government's National Security and Stabilization Plan and is currently progressing through preliminary meetings with a number of Somali agencies. The Meeting noted that this strategic approach will be, to a great extent, conducted under the provisions of the Code. The Meeting also noted that there may be a need for a step by step approach to build the foundations to establish a maritime coast guard network in Somalia, when conditions allow.

3 On Tuesday, 15 May 2012, South Africa signed the Code, bringing the total number of signatory States to 19.

The Conference on Capacity-building to Counter Piracy off the Coast of Somalia

4 During discussions between the Secretary-General of IMO and United Nations Secretary-General Ban Ki-moon at a meeting at the United Nations Headquarters in New York in January 2012 (C 108/14/Add.1, paragraphs 1 to 3), it was noted that, if piracy is to be brought to an end in the western Indian Ocean and the Gulf of Aden, IMO should focus on: building effective counter-piracy capacity and infrastructure in the affected region; the development of proper legal and jurisdictional infrastructures; undermining the pirate economy and its associated financial model; and helping to develop viable, alternative sources of income for those who have been, or may be, tempted to turn to crime.

5 In order to enhance cooperation amongst Member States, the United Nations agencies and international organizations with respect to their capacity-building activities, including the development of land-based initiatives to strengthen Somali and regional maritime and law enforcement capacity, the Conference on Capacity-building to Counter Piracy off the Coast of Somalia was held at IMO Headquarters on Tuesday, 15 May 2012.

6 During the Conference, which was attended by some 300 delegates from States as well as a number of organizations, strategic partnerships were signed with the FAO, UNPOS, UNODC and WFP. A further agreement was signed on Wednesday, 16 May 2012 with the European Union, acting through its European External Action Service (EEAS).

7 These joint commitments to combat piracy in the western Indian Ocean and Gulf of Aden area reaffirm the mutual commitments to improving coordination at all levels and across all relevant programmes and activities, with a view to strengthening the anti-piracy and maritime capacity of States in the western Indian Ocean and Gulf of Aden area and developing viable and sustainable alternatives to piracy in Somalia.

High-level segment of MSC 90 addressing arms on board

8 The Secretary-General convened a high-level segment of the Maritime Safety Committee on the opening day of the ninetieth session (16 May 2012) with a view to provide an opportunity for high-level debate on piracy and armed robbery against ships in general, and issues relating to the deployment of privately contracted armed security personnel (PCASP) on board ships, in particular.

9 Following this high-level debate, MSC 90 agreed that:

- .1 the carriage of firearms by seafarers continues to be strongly discouraged;
- .2 the use of PCASP was an exceptional measure to be used only in exceptional circumstances in the High Risk Area and that use of armed personnel on board ships should not become institutionalized;
- .3 the carriage of armed personnel on board ships for enhancing their protection should be left to flag States to decide, once a thorough risk assessment exercise has been carried out and following consultations with the shipowners concerned;

- .4 Governments should decide, as a matter of national policy and taking into account the guidance developed by the Organization, whether ships entitled to fly their flag should be authorized to carry PCASP and, if so, under what conditions, and urged all Governments to promulgate that information widely, including to the Organization;
- .5 guidance to private maritime security companies (PMSC), to complement existing related guidance to flag, port and coastal States and to shipowners, ship operators and shipmasters, should be developed by IMO;
- .6 this further guidance is needed to assist policy development at the national level and facilitate greater harmonization of policies at the international level related to the issue of arms on board. The development of such guidance does not constitute a recommendation or an endorsement of the general use of PCASP;
- .7 the guiding principles for standards for PMSC and PCASP on board ships should be developed by IMO; and
- .8 IMO should work closely with the International Organization for Standardization (ISO) in the development of international standards for PMSC and PCASP to ensure consistency with the Organization's guidance on the matter.

10 In considering the content and nature of the guidance, MSC 90 took the following principles into account:

- .1 flag States should take into account the possible escalation of violence which could result from the use of firearms and carriage of armed personnel on board ships when deciding on their policy;
- .2 flag States should provide clarity to Masters, seafarers, shipowners, operators and companies with respect to the national policy on carriage of armed security personnel;
- .3 the Master should be involved in the decision-making process, and the documented command and control structure should provide a clear statement that at all times the Master remains in command and retains the overriding authority on board;
- .4 the use of PCASP should not be considered as an alternative to Best Management Practices (BMP) and other protective measures. Use of armed guards is one of a graduated range of options. Placing armed guards on board as a means to secure and protect the vessel and its crew should only be considered after a risk assessment has been carried out. It is also important to involve the Master in the decision-making process;
- .5 the flag State has jurisdiction over ships entitled to fly its flag operating on the high seas and thus any laws and regulations imposed by the flag State concerning the use of PMSC and PCASP apply;
- .6 Governments should do everything in their power to ensure that ships entitled to fly their flag that are carrying PCASP promptly advise the Maritime Security Centre Horn of Africa (MSCHOA) when registering their

intention to transit the waters off the coast of Somalia, including the Gulf of Aden and the western Indian Ocean area;

- .7 it is essential that all PCASP have a complete understanding of the rules for the use of force as agreed between the shipowner, PMSC and Master and fully comply with them. PCASP should be fully aware that their role is the protection of life of persons on board and the ship from armed pirate attacks. PMSC should provide a detailed graduated response plan to a pirate attack as part of their teams' operational procedures; and
- .8 PMSC should require their personnel to take all reasonable steps to avoid the use of force. If force is used, it should be in a manner consistent with applicable law. The use of force should never exceed what is strictly necessary and reasonable in the circumstances. PMSC should require that their personnel must not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.

11 Having considered issues related to concerns of coastal and port States, MSC 90 agreed that:

- .1 Masters, shipowners and companies should be aware that ships entering the territorial sea and/or ports of a State are subject to that State's legislation. It should be borne in mind that importation of firearms is subject to port and coastal State regulations;
- .2 Governments should decide, in their capacity as port or coastal States, if applicable, and taking into account the recommendations and guidance developed by the Organization, their national policy on the embarkation, disembarkation and carriage of PCASP and of the firearms, ammunition and security-related equipment to be used by such security personnel on board ships;
- .3 Governments should make known their policies and procedures on the embarkation, disembarkation and carriage of PCASP of related firearms, ammunition and security-related equipment to the shipping industry, the providers of PCASP and all Member Governments in order to enable flag States to act accordingly; and provide relevant information to the Organization;
- .4 the differing customs or security requirements for the carriage and importation of firearms should be considered, as taking any type of firearm into the territory of some countries may be considered an offence; and
- .5 firing weapons at suspected pirates may impose a legal risk for the Master, shipowner or company. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he or she has acted in self-defence.

12 During MSC 90, some delegations stated that, consistent with paragraph 8.15 of the BMP, they only authorized the use of military vessel protection detachments when considering the use of armed guards but nonetheless were supportive of greater international harmonization and standardization for PCASP. Some delegations expressed their concerns

related to the practice of private security companies having logistical platforms situated close to the territorial sea of a State, in order to embark and disembark PCASP and firearms.

13 In addition to the development of standards and guidance detailed above, MSC 90 agreed to instruct the Secretariat to support the broad dissemination of Government policies related to PCASP by, inter alia, publishing the Member State policies and procedures it received on its website.

Outcome of MSC 90

14 Following on from the high-level segment, MSC 90 (MSC 90/WP.1 and MSC 90/WP.1/Add.1, section 20), inter alia:

- .1 approved MSC.1/Circ.1443 on Interim guidance to private maritime security companies providing privately contracted armed security personnel on board ships in the High Risk Area;
- .2 approved MSC.1/Circ.1444 on Interim guidance for flag States on measures to prevent and mitigate Somalia-based piracy;
- .3 approved MSC.1/Circ.1405/Rev.2 on Revised interim guidance to shipowners, ship operators and shipmasters on the use of privately contracted armed security personnel on board ships in the High Risk Area; and
- .4 agreed that reference should be made in MSC.1/Circ.1406/Rev.1 and MSC.1/Circ.1408 to the new guidance for PMSC (MSC.1/Circ.1443), and instructed the Secretariat to make the necessary minor consequential amendments to those circulars and to MSC.1/Circ.1333 and MSC.1/Circ.1334 to take into account the new guidance on PMSC and PCASP, and to release revised versions of these circulars.

Action requested of the Council

15 The Council is invited to take note of the information contained in this document.
