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Ref: T2-OSS/2.7

MSC.1/Circ.1251
19 October 2007

GUIDELINES ON THE CONTROL OF SHIPS IN AN EMERGENCY

1 The Maritime Safety Committee (the Committee), at its eighty-third session (3 to 12 October 2007), approved the Guidelines on the control of ships in an emergency for Member Governments, shipmasters, companies, salvors and others engaged in a maritime emergency, with a view to providing them with a framework of authority within which they would be expected to operate.

2 Member Governments are invited to bring the Guidelines to the attention of shipmasters, companies, salvors and other interested parties in the shipping industry as they deem appropriate.

3 The Committee also decided to review the annexed Guidelines in the future, with a view to improving them on the basis of new technical developments and in the light of experience gained from their application.

ANNEX

GUIDELINES ON THE CONTROL OF SHIPS IN AN EMERGENCY

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1 INTRODUCTION

1.1 It is recognized that, in an emergency, the lines of command and control must be clear and the responsibilities of each of the parties involved must be unambiguous.

1.2 There are two major issues:

- .1 having a clear chain of command in an emergency is essential if efforts to save life and property and prevent pollution are to be maximized; and
- .2 there has been a growing tendency for those involved in an incident to be treated as if they have committed a crime; these Guidelines will help to clarify the issues related to the fair treatment of seafarers.

1.3 Where safety of life is involved, the provisions of the SAR Convention should be followed. Where a ship is in need of assistance but safety of life is not involved, these Guidelines should be followed. However, the MRCC should always be kept informed about actions to enable the MRCC to determine if there is a need for them to declare an emergency phase.

1.4 In the event that the ship in need of assistance requires a place of refuge, these Guidelines should be followed in conjunction with the Guidelines on places of refuge for ships in need of assistance (resolution A.949(23)).

2 PURPOSE OF THESE GUIDELINES

2.1 The purpose of these Guidelines is to provide Member Governments, shipmasters, companies, salvors and others engaged in a maritime emergency with a framework of authority within which they will be expected to operate.

3 DEFINITIONS

Ship in need of assistance means a ship in a situation, apart from one requiring an operation co-ordinated by a MRCC in accordance with one of the three emergency phases; uncertainty, alert and distress phase, that could give rise to loss of the vessel or an environmental or navigational hazard.

Company means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all duties and responsibilities imposed by the International Safety Management Code.

IAMSAR MANUAL means the International Aeronautical and Maritime Search and Rescue Manual.

UNCLOS means the United Nations Convention on the Law of the Sea, 1982.

Intervention Convention means the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil (1973).

ISM Code means the International Safety Management Code, made mandatory under SOLAS regulation XI/3.1.

Place of Refuge means a place where a ship in need of assistance can take action to enable it to stabilize its condition and reduce the hazards to navigation, and to protect human life and the environment, as defined in resolution A.949(23).

MRCC means Maritime Rescue Co-ordination Centre.

MAS means the Maritime Assistance Service as defined in resolution A.950(23).

SAR Convention means the International Convention on Maritime Search and Rescue, 1979.

4 GENERAL GUIDANCE

4.1 During the search and rescue (SAR) phase of a maritime emergency, there is an assumption within the SAR Convention that co-ordination of the SAR response will be carried out either by the MRCC or by an on-scene co-ordinator who will not normally be the Master of the ship in distress. However, the underlying premise is that the Master remains in command of the ship and co-operation with the SAR operation is assumed.

4.2 If, once the SAR phase of an emergency is over, or a ship does not require any action from SAR services but is still in need of assistance, the role and responsibilities of the various parties are less clear. Any actions at sea on salvage should be conducted in close co-operation with the responsible MRCC or other relevant authority as notified by the MRCC to enable them to assess the situation and if needed declare an appropriate emergency phase.

4.3 The ISM Code, section 5, Master's Responsibility and Authority, states that:

“The Company should establish in the safety management system that the Master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the Company's assistance as may be necessary.”

4.4 This indicates that the Master has the authority and responsibility to take decisions in an emergency and to speak with the Company as necessary. However, it does not deal with the responsibilities and duties of a coastal State which may have legislation governing the conduct of a maritime emergency in waters under its jurisdiction or which wishes to exercise its powers to intervene to avoid pollution arising from maritime casualties, in particular beyond the territorial sea.

4.5 At no time should the Master be prohibited from taking action which, in the Master's judgment, is required to protect the lives of crew and passengers or others on board.

5 GUIDELINES FOR COASTAL STATES

5.1 Resolution A.950(23) outlines the situations in which the services of the MAS are involved; they are:

- .1 the ship is involved in an incident (e.g., loss of cargo, accidental discharge of oil, etc.) that does not impair its seakeeping ability but nevertheless has to be reported;
- .2 the ship, according to its Master's assessment, is in need of assistance but not in a distress situation (about to sink, fire developing, etc.) that requires the rescue of those on board; and
- .3 the ship is found to be in a distress situation and those on board have already been rescued, with the possible exception of those who had remained aboard or have been placed on board to attempt to deal with the ship's situation.

These are the situations which these Guidelines seek to address.

5.2 The MAS serves mainly as the point of contact during the resolution of the situation, however, the resolution recommends that national instructions should at least indicate to the organization discharging MAS functions:

- .1 the authority or organization to which it transmits the information obtained from a ship; and
- .2 the authority or organization from which it receives instructions concerning its action and the particulars to be transmitted to the ship.

5.3 When more than one coastal State is involved, the States concerned should agree between themselves which will co-ordinate the operation and be responsible for transmitting orders and information.

5.4 Some States have legislation which allows them to intervene more actively in the situations outlined in 5.1 when a ship is in waters under their jurisdiction. A State intending to use its powers under such legislation should ensure that:

- .1 the chain of command within its shore organization is clear and each level of the chain has procedures setting out what actions it should take and the limits of its powers;
- .2 the Master of the ship, the Company and any salvage team are told clearly what the shore command structure is;
- .3 the flag State is informed as early as possible in the proceedings and its advice sought;
- .4 the Master of the ship, the Company and any salvage team involved are told clearly what degree of responsibility remains with them and what limitations are being placed on their freedom of action;
- .5 when an order is issued, it is clear to the recipient who issued the order, to whom it is addressed and under what authority;

- .6 it is preferable for all orders from ashore to pass through a single focal point to ensure a consistent approach. All messages from the ship should pass through the same focal point;
- .7 the freedom to take necessary action to resolve a situation is not removed from the people on the ship unless deemed to be necessary to resolve the situation; and
- .8 unless time pressures make such communication impossible, the Master is allowed to speak with the Company in accordance with the ISM Code provisions.

5.5 Article 221 of UNCLOS recognizes the right of coastal States “pursuant” to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty, which may be reasonably expected to result in major harmful consequences”. The right of States to intervene in the high seas to prevent or reduce pollution damage as a consequence is also regulated by the Intervention Convention. States may take measures beyond their territorial sea in accordance with customary international law of the sea.

5.6 States taking measures in accordance with paragraph 5.5 should indicate that they are doing so in accordance with UNCLOS, and/or the Intervention Convention [or international customary law as applicable through their national legislation. In doing so, States should follow the guidance in paragraph 5.4.

6 GUIDELINES FOR MASTERS

6.1 At the earliest possible stage in an emergency, the Master should inform the appropriate coastal State authorities¹, including that of the nearest coastal State, the flag State and the Company, of the nature of the emergency and what assistance is required.

6.2 Unless specifically instructed otherwise the Master has the authority and responsibilities specified in the ISM Code as in paragraph 4.3 above.

6.3 If the Company engages a salvor to attempt to save the ship, a contract will be signed which sets out the respective responsibilities of the parties involved. When a salvage Master has been appointed to supervise the salvaging of a ship, the Master should co-operate with the salvage Master to the maximum extent.

6.4 When a ship requiring assistance is in waters which are under the jurisdiction of a coastal State and that State has laws allowing it to intervene in an emergency and wishes to do so, then the Master should:

- .1 ask for clarification as to who is exercising the coastal States powers;
- .2 if necessary and time permits, speak with Company as in paragraph 4.3;

¹ Refer to MSC/Circ.892 on Alerting of Search and Rescue Authorities.

- .3 seek clarification of the extent to which the Master can still exercise authority in relation to the operation and salvage of the ship;
- .4 ask the coastal State for an expert assessment of the condition of the ship if in doubt about the actions being taken; and
- .5 if still in doubt or in disagreement with the actions or instructions given by the coastal State, clearly state so.

6.5 If a State is intervening in accordance with paragraphs 5.5 and 5.6 when a ship is on the high seas, the guidance under paragraph 6.4 should be followed.

6.6 It is most important that a ship should keep the most accurate records of events possible. Where a VDR is fitted, the limitations of the period of time covered by its recording should be borne in mind. A separate chronological order of events should also be kept.

7 GUIDELINES FOR SALVORS

7.1 The first requirement of any salvor is to be provided with the most reliable information about the vessel, the nature of the casualty, the situation of the persons, cargo and bunkers on board.

7.2 In particular this information will include:

- .1 vessel plans;
- .2 cargo manifest, including hazardous cargo list;
- .3 stowage plan and nature/position of dangerous goods on board;
- .4 position and quantity of remaining bunkers on board;
- .5 general casualty information relating to position, damage and condition of the vessel; and
- .6 any emergency towing procedures adopted by the Organization.

7.3 The salvor's obligations are to use their best endeavours to save the vessel and its cargo, and whilst engaged in such operations, to avoid or minimize damage to the environment.

7.4 The salvor should communicate and co-ordinate with the Master and the coastal State to the maximum extent possible.

7.5 The salvor should advise the Company/Master and the coastal State authorities as soon as possible of their salvage plan, and the personnel and equipment that will be utilized to carry out the salvage operations.

7.6 The salvor should nominate a focal point to provide 24-hour contact with the Master Company and coastal State authorities.

7.7 The coastal State exercising authority should allow the salvor access to the vessel.

7.8 The salvor should ensure that the salvage plan and actions represent the best environmental option for the Company and the coastal State(s) concerned.

7.9 In the event that the casualty needs to be taken to a place of refuge in order to carry out necessary salvage operations, such as diving, patching, transfer of cargo, etc. the salvor should comply with section 2 of the IMO Guidelines on places of refuge for ships in need of assistance, as should the Master/Company and seek similar compliance by the coastal State(s) as under section 3 of the same Guidelines.
