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**INTERIM MEASURES FOR COMBATING UNSAFE PRACTICES ASSOCIATED
WITH THE TRAFFICKING OR TRANSPORT OF MIGRANTS BY SEA**

1 The Maritime Safety Committee, at its sixty-ninth session (11 to 20 May 1998), being concerned about the unsafe practices associated with the trafficking or transport of migrants by sea and recalling resolution A. 867 (20) on Combating unsafe practices associated with the trafficking or transport of migrants by sea, in particular operative paragraph 6 thereof, established a correspondence group to prepare Interim Measures for combating unsafe practices associated with the trafficking or transport of migrants by sea, which were eventually considered and approved by the Committee, at its seventieth session (7 to 11 December 1998) and disseminated by means of MSC/Circ.896.

2 To prevent and suppress unsafe practices associated with the trafficking or transport of migrants by sea, the Committee invited Member Governments to promptly convey to the Organization reports on relevant incidents and the measures taken, to enable the updating or revising of that circular, as necessary.

3 The Committee, at its seventy-third session (27 November to 6 December 2000), established a biannual reporting procedure; instructed the Secretariat to issue biannual reports (MSC.3/Circ. series); and urged Governments and international organizations to promptly communicate all unsafe practices associated with the trafficking or transport of migrants by sea.

4 The Committee, at its seventy-fourth session (30 May to 8 June 2001), in the light of reports recorded and proposals made by Governments, approved amendments to the annex to MSC/Circ.896, the revised text of which is given at annex.

5 The use of the report format given in the Appendix to the annex is recommended for conveying information for the purposes mentioned in paragraphs 12, 15 and 22 of the Interim Measures.

6 Member Governments are invited to bring this circular and annex to the attention of all parties concerned.

7 The circular will be further revised in the light of the consideration of incident reports received by IMO and further submission by Member Governments, following the adoption, in December 2000, of the Convention against transnational organized crime, developed by the United Nations Commission on Crime Prevention and Criminal Justice together with the Protocol against smuggling of migrants by land, sea and air.

ANNEX**INTERIM MEASURES FOR COMBATING UNSAFE PRACTICES ASSOCIATED WITH THE TRAFFICKING OR TRANSPORT OF MIGRANTS BY SEA**

1 Pending entry into force of a Convention against transnational organized crime including trafficking in migrants this circular provides interim, non-binding measures for the prevention and suppression of unsafe practices associated with the trafficking or transport of migrants by sea.

Definitions

2 For purposes of this circular:

2.1 "Ship" means every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary, or other ship owned or operated by a Government and used, for the time being, only on government non-commercial service;

2.2 "Organization" means the International Maritime Organization; and

2.3 "unsafe practices" means any practice which involves operating a ship that is:

- .1 obviously in conditions which violate fundamental principles of safety at sea, in particular those of the SOLAS Convention; or
- .2 not properly manned, equipped or licensed for carrying passengers on international voyages,

and thereby constitute a serious danger for the lives or the health of the persons on board, including the conditions for embarkation and disembarkation.

Purpose

3 The purpose of this circular is to promote awareness and co-operation among Contracting Governments of the Organization so that they may address more effectively unsafe practices associated with the trafficking or transport of migrants by sea which have an international dimension.

Recommended actions by States

Compliance with international obligations.

4 Experience has shown that migrants often are transported on ships that are not properly manned, equipped or licensed for carrying passengers on international voyages. States should take steps relating to maritime safety, in accordance with domestic and international law, to eliminate these unsafe practices associated with the trafficking or transport of migrants by sea, including:

- 1 ensuring compliance with the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS)¹;
- .2 collecting and disseminating information on ships believed to be engaged in unsafe practices associated with trafficking or transporting migrants;
- .3 taking appropriate action against masters, officers and crew members engaged in such unsafe practices; and
- .4 preventing any such ship:
 - .1 from again engaging in unsafe practices; and
 - .2 if in port, from sailing.

5 Measures taken, adopted or implemented pursuant to this circular to combat unsafe practices associated with the trafficking or transport of migrants by sea should be in conformity with the international law of the sea and all generally accepted relevant international instruments, such as the United Nations 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.

6 States should take, adopt or implement such measures in conformity with international law with due regard to:

- .1 the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship; and
- .2 the rights and obligations of the coastal State.

7 If any measures are taken against any ship suspected of unsafe practices associated with trafficking or transport of migrants by sea, the State concerned should take into account the need not to endanger the safety of human life at sea and the security of the ship and the cargo, or to prejudice the commercial and/or legal interests of the flag State or any other interested State.

¹ It is recalled that:

- regulation 1 of chapter I of SOLAS Convention provides that SOLAS applies to ships engaged on international voyages;
- regulation 2 of the same chapter defines as:

international voyage, a voyage from a country to which the present Convention applies to a port outside such country, or conversely.

passenger ship, a ship which carries more than twelve passengers.

cargo ship, any ship which is not a passenger ship.

The trafficking of migrants will normally constitute an international voyage. When this practice occurs on board cargo ships, multiple infringements of the SOLAS Convention are therefore committed.

Co-operation.

8 States should co-operate to the fullest extent possible to prevent and suppress unsafe practices associated with the trafficking or transport of migrants by sea, in conformity with the international law of the sea and all generally accepted relevant international instruments. It is consistent with international law for a flag State to authorize a vessel flying its flag to be boarded and inspected by a warship of another State, as described in paragraphs 12 and 20 below.

9 States should consider entering into bilateral or regional agreements to facilitate co-operation in applying appropriate, efficient and effective measures to prevent and suppress unsafe practices associated with the trafficking or transport of migrants by sea.

10 States should also encourage the conclusion of operational arrangements in relation to specific cases.

Measures and Procedures.

11 A State, which has reasonable grounds to suspect that a ship which:

- .1 is flying its flag or claiming its registry, or
- .2 is without nationality, or
- .3 though flying a foreign flag or refusing to show its flag is, in reality, of the same nationality as the State concerned,

is engaged in unsafe practices associated with the trafficking or transport of migrants by sea, may request the assistance of other States in suppressing its use for that purpose. The States so requested should render such assistance as is reasonable under these circumstances.

12 A State which has reasonable grounds to suspect that a ship exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another State is engaged in unsafe practices associated with the trafficking or transport of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed², request authorization from the flag State to take appropriate measures in regard to that ship. The flag State may authorize the requesting State to, *inter alia*:

- .1 board the ship;
- .2 inspect and carry out a safety examination of the ship, and
- .3 if evidence is found that the ship is engaged in unsafe practices, take appropriate action with respect to the ship, persons and cargo on board, as authorized by the flag State.

A State which has taken any action in accordance with this paragraph should promptly inform the flag State concerned of the results of that action.

² If registry is refuted, the situation is that described in paragraph 11.2 above.

13 A flag State may, consistent with paragraph 8, subject its authorization to conditions to be mutually agreed between it and the requesting State, including conditions relating to responsibility and to the extent of effective measures to be taken including the use of force. A State shall take no additional actions without the express authorization of the flag State, except those necessary to relieve imminent danger or those that follow from relevant bilateral or multilateral agreements.

14 A State should respond expeditiously to a request from another State to determine whether a ship that is claiming its registry or flying its flag is entitled to do so, and to a request for authorization made pursuant to paragraph 12.

15 When a ship is found engaged in unsafe practices associated with the trafficking or transport of migrants by sea, States should:

- .1 immediately report the findings of the safety examinations conducted pursuant to paragraph 12 to the administration of the State whose flag the ship is entitled to fly or in which it is registered; and
- .2 immediately consult on the further actions to be taken after giving or receiving reports on the ship involved.

16 When there are reasonable grounds to suspect that a ship is engaged in unsafe practices associated with trafficking or transport of migrants by sea and it is concluded in accordance with the international law of the sea that the ship is without nationality, or has been assimilated to a ship without nationality, States should conduct a safety examination of the ship, as necessary. If the results of the safety examination indicate that the ship is engaged in unsafe practices, States should take appropriate measures in accordance with relevant domestic and international law.

17 When evidence exists that a ship is engaged in unsafe practices associated with the trafficking or transport of migrants by sea, States, in taking action pursuant to paragraphs 12 or 16, should:

- .1 ensure the safety and the humanitarian handling of the persons on board and that any actions taken with regard to the ship are environmentally sound; and
- .2 take appropriate action in accordance with relevant domestic and international law.

18 States should take required steps, in accordance with international law including SOLAS regulation I/19(c), to ensure that a ship involved in unsafe practices associated with the trafficking or transport of migrants by sea does not sail until it can proceed to sea without endangering the ship or persons on board, and to report promptly to the State whose flag the ship is entitled to fly, or in which it is registered, all incidents concerning such unsafe practices which come to their attention.

19 Contracting Governments to SOLAS 1974, as amended, should ensure that, when a request is received to transfer a ship to their flag or registry, the requirements listed in regulation I/14(g)(ii) are met, and appropriate inspections and surveys are conducted to ensure the ship will be used for the service specified in the certificates issued in accordance with chapter I of the 1974 SOLAS Convention.

20 Any action taken at sea pursuant to this circular shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

21 Each State should designate an authority or, where necessary, authorities to receive reports of unsafe practices, and to respond to requests for assistance, confirmation of registry or right to fly its flag and authorization to take appropriate measures.

22 Notwithstanding paragraph 20, ships providing assistance to persons in distress at sea, as required by the international law of the sea including SOLAS regulation V/10, and ships providing assistance in accordance with this circular, should not be considered as engaging in unsafe practices associated with the trafficking or transport of migrants by sea.

Reports

23 To prevent and suppress unsafe practices associated with trafficking or transport of migrants by sea, reports on incidents and the measures taken should be provided to the Organization by States concerned as soon as possible. This information will be used for the purpose of updating or revising this circular, as necessary.

24 Use of the report form given in the Appendix is recommended for conveying information for the purposes mentioned in paragraphs 12, 15 and 22.

APPENDIX

**REPORT ON UNSAFE PRACTICE ASSOCIATED WITH THE TRAFFICKING
OR TRANSPORT OF MIGRANTS BY SEA**

Date: _____ Time: _____

Ship Name: _____ Name on Hull? Y/N

Official/Document Number: _____

Flag: _____ International Call Sign: _____

Homeport: _____ Homeport on Hull? Y/N

Description: _____

Type of Propulsion/Horsepower: _____ Gross Tonnage: _____

Location: _____ N/S _____ E/W _____

Last Port of Call (include date/time of departure): _____

Next Port of Call (include date/time of departure): _____

Owner/Charterer: _____

Master: _____ Nationality: _____ Date of Birth: _____

Number of Crew/Nationality(ies) (if identified among persons on board): _____

Number of Migrants and other persons on board/ Nationality(ies): _____

Number of Male Adults: _____ Number of Female Adults: _____

Number of Male Minors: _____ Number of Female Minors: _____

Brief Description of Incident and Measures taken (include date/time as necessary): _____

Additional comments and recommendations (if any): _____

Maritime Authority: _____
