



IMO
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**REGULATION TO INCORPORATE THE
INTERNATIONAL SHIP AND PORT
FACILITY SECURITY CODE AND SOLAS
AMENDMENTS 2002 INTO THE LAWS OF
ERITREA
(SHIP AND PORT FACILITY SECURITY REGULATIONS)**

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Submitted By: MEBRAHTU BELAY NEGA (Eritrea)

Supervisor: Mr. Ruben Y. Maceda

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To My Father

EXPLANATORY NOTE

MARITIME SECURITY

General Overview

The security of vessels and ports has always been a problem ever since man first laid eyes on the oceans and used it as the means of transport and international trade. But in the half 20th century, vessels and ports were not only the preserves of pirates, stowaways and thieves; they also became the target of the terrorist. Although International Maritime Organization (IMO) has always been concerned about the security, there was a little motivation in the commercial world to spend money on protecting their vessels or ports, save in the areas where the risk was high. But this scenario was immediately changed following the terrorist atrocities of 11 September 2001 and the world learned that the marine industry has not been immune from the resultant changes. If terrorist could use airplanes as the weapon for their targets, indeed ships could be used as an even more devastating weapon. Moreover the USS Cole and the French tanker Limburg showed that the terrorists had identified vessels, both in port and at sea, as ‘*soft*’ targets.¹

Indeed terrorism on ports and at sea was not a new phenomenon, and the IMO has been looking into the issue of security at sea since the takeover by Palestinian terrorists of the Italian passenger ship *Achille Lauro* in 1985, when an American passenger was killed and his body thrown overboard.² In subsequent years, piracy and the high jacking of ships and their cargoes became more frequent and more pervasive, endangering the lives of seafarers and putting at risk theft of cargoes worth millions of dollars.

In 1985, the IMO adopted Assembly resolution A.545 (13), “Measures to prevent acts of piracy and armed robbery against ships”, to address the specific problems relating to these issues.³ Then, in September 1986, the Maritime Safety Committee (MSC) approved MSC/Circ.443, “Measures to prevent unlawful acts against passengers and crew on board

¹ Atterbury, David; Maritime Security in the 21st century <http://www.simsi.com/Articles/HudsonTridentMS.pdf>, visited on Jan 06, 2010

² Heathcote, Peter, New Measures for Maritime Security Aboard Ships and in Port Facilities, <http://www.iaphworldports.org/new/Heathcote.pdf>, visited on Jan 08,2010

³ Ibid.

ships”⁴, intended for application to passenger ships engaged on international voyages of 24 hours or more and the port facilities which service them.⁵ This was an interim measure until the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA) came into force.⁶

The SUA Convention

Concern about unlawful acts that threaten the safety of ships and the security of their passengers and crews grew during the 1980s motivated states to negotiate and subsequently adopt this treaty. This concern stemmed from reports of crews being kidnapped, ships being hijacked, deliberately run aground, or blown up by explosives.⁷

Due to these developments, especially the 1985 hijacking of the *Achille Lauro*, the UN General Assembly adopted Resolution 40/61 in 1985, urging States to co-operate in contributing to the elimination of causes underlying terrorism and invited the IMO to study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures.

In response to the Achille Lauro incident, the IMO was tasked to prepare a convention on the subject of unlawful acts against the safety of maritime navigation. The organisation continued working towards the development and adoption of conventions and security regulations and eventually adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) in March 1988. The convention provides for a comprehensive suppression of unlawful acts committed against the safety of maritime navigation that endanger innocent human lives, jeopardize the safety of persons and property, or seriously affect the operation of maritime services, which are of grave concern to the international community as a whole.⁸ A later Protocol of the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the

⁴ Measures To Prevent Unlawful Acts Against Passengers And Crews On Board Ships, IMO, http://www.imo.org/includes/blastDataOnly.asp/data_id%3D3827/msccirc443measurestoprevent.pdf, visited on Dec 12, 2010

⁵ Ibid.

⁶ Ibid.

⁷ Convention For The Suppression Of Unlawful Acts Of Violence Against The Safety Of Maritime Navigation http://nuclearthreatinitiative.org/e_research/official_docs/inventory/pdfs/maritime.pdf, visited on Nov 25, 2009

⁸ Heathcote, op. cit. in footnote 2

Continental Shelf, 1988, extended the provisions of the convention to unlawful acts against fixed platforms located on the Continental Shelf.⁹ These two instruments entered into force on 1 March 1992 and both are quite widely ratified by many states.

The main purpose of the SUA conventions is to ensure that appropriate action is taken against persons committing unlawful acts against ships (and fixed platforms on the continental Shelf), which 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.¹⁰ Once jurisdiction has been established, States shall take the offender into custody and immediately make a preliminary inquiry into the facts. States Parties are required to either extradite the offender in custody or submit the case for prosecution.¹¹ States Parties are also required to assist each other in connection with criminal proceedings brought under the Convention.¹²

The Diplomatic Conference on the Revision of the SUA Treaties, held in London from 10 – 14 October 2005, adopted new Protocols to the convention following three years of intensive negotiations. They are the 2005 Protocol to the SUA Convention and the 2005 Protocol to the 1988 SUA Protocol (the 1988 Protocol was related to fixed platforms).¹³

The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005 SUA Protocol to the 1988 SUA Convention)¹⁴ amends the original treaties by broadening the list of offences, such as to include the offence of using a ship itself in a manner that causes death or serious injury or damage and the transport of weapons or equipment that could be used for weapons of mass destruction. As a result it became the first international treaty framework for combating and prosecuting anyone committing such offences. Moreover it introduces provisions for

⁹ Ibid.

¹⁰ Ibid.

¹¹ “IMO Commentary...” op. cit. in footnote 7

¹² Ibid.

¹³ “IMO Commentary...” op. cit. in footnote 7, [The 2005 Protocols take into account developments in the United Nations system relating to anti-terrorism, including the relevant UN Security Council resolutions and other instruments such as the International Convention for the Suppression of Terrorist Bombings, 1997 and the International Convention for the Suppression of the Financing of Terrorism, 1999.]

¹⁴ The 2005 SUA Protocol to the 1988 SUA Convention enters into force ninety days after the date on which 12 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 of IMO.

the boarding of ships where there are reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be, involved in committing of an offence regulated by the Convention.

The Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005 SUA Protocol to the 1988 SUA Protocol) extends the scope of provisions on the new offences to fixed platforms on the continental shelf, as appropriate.

Why is ISPS Code part of the SOLAS Convention?

Obviously when considering the nature of the ISPS Code, there comes a question that if there is a convention dealing with measures to protect ships, ship's crews, passengers and cargoes from unlawful acts at sea (SUA), clearly matters of security, why was then an amendment patently to do with enhancing security introduced through the SOLAS convention that obviously deals with the safety of life at sea.¹⁵

The dire need to quickly implement the provisions of the code could be the reason why it is introduced with the SOLAS convention. Most conventions set the general principles and matters regarding provisions for signature, ratification and acceptance, as well as provisions concerning revision of the Convention and the introduction of amendments in Articles, which do not often require amending.¹⁶ The Regulations, Annexes or Appendices of the conventions usually contain the main technical provisions and it is these that often require frequent amendment. In view of the long time it took in the past to bring amendments into force, it was realized that what was required was a formula whereby amendments to the technical provisions could be made by a more streamlined process.¹⁷ The new formula was known as the "Tacit Amendment Procedure" where

¹⁵ Heathcote, op. cit. in footnote 2

¹⁶ Ibid.

¹⁷ Ibid.

amendments would enter into force on a specific date contained in the amendment, unless a certain specified number of States objected to the provisions.¹⁸

Hence should states remain silent to the amendments, their silence would entail automatic enforcement of that amendment. The SOLAS Convention contains such “tacit acceptance procedure” while the SUA Convention lacks the same.¹⁹ Therefore the proponents of these new security measures felt that SOLAS had to be the vehicle to implement them as soon as possible.²⁰ Moreover the existing SUA Convention was instigated by the hijacking of the Italian vessel Achille Lauro and mainly deals with issues that were raised by that hijacking and with international cooperation in bringing terrorists to justice, such as expediting extradition whereas the new SOLAS provisions incorporate the International Ship and Port Security (ISPS) Code and are primarily in response to the events that took place on 11 September 2001.²¹ The ISPS Code deals with a whole range of measures, including access control, vetting and identification requirements, and even deals with port facilities.²²

Terrorism

In the wake of the tragic events of 11 September 2001 in the United States of America, the issue of international terrorism was brought to the fore, while there were already disputes on the question of its very definition. Undoubtedly for the international community to do anything resolutely against terrorism, policymakers have to move on forward towards the definition of terrorism. However a comprehensive Convention on International Terrorism, including a definition of terrorism, has so far been elusive in the United Nations. Recent efforts to elaborate an international terrorism have been attributed, among others, to diverging political interests and contradicting normative perceptions especially between Islamic states and Western states.²³ This notwithstanding

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ The Islamic states seek the activities of the parties during an armed conflict, including in situations of foreign occupation....are not governed by International Convention on anti-terrorism." Or, as once the Pakistani delegate describes the standoff on behalf of the

be the fact, since 1963 the international community has elaborated 13 legal instruments relating to the prevention and suppression of terrorism.²⁴

Regrettably none of these legal instruments has a generally-accepted, single, inclusive definition of terrorism. Each of these conventions, which relates to various aspects of the problem, tries to describe only the particular or specific acts or subject-matter covered by it.²⁵

In 1937 the League of Nations prepared a draft for the prevention and punishment of terrorism, which defines terrorism in its Article 1 subparagraph 2 as a criminal acts directed against a State and intended or calculated to create a state of terror in the minds of a particular persons or a group of persons or general public.

Although the convention never came into existence and the definition ignores acts against civilians, rather than against the State *per se*, it did serve as a point of reference for later discussion of terrorism when the United Nations and regional intergovernmental organizations dealt with the issue from a legal and political perspective.²⁶

The United Kingdom Prevention of Terrorism Act, 1976 also defines terrorism as the “use of violence for political ends including violence for the purpose of putting the public or any section of the public in fear.”²⁷ Furthermore, the United States Department of State has defined terrorism as “premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine state agents.”²⁸ Maritime security consists of those measures employed by owners, operators and administrators of vessels and ports to protect against terrorism, sabotage, stowaways,

Islamic States, there is a need "to make a distinction between terrorism and the exercise of legitimate right of peoples to resist foreign occupation. [<http://www.eyeontheun.org/facts.asp?l=1&p=61>]

²⁴ Ruperez, Javien, United Nations in Fight against Terrorism. http://www.un.org/sc/ctc/documents/tokyo_lecture.pdf, visited on Dec 08, 2009

²⁵ These are acts against maritime navigation safety, acts against the safety of fixed platforms on the continental shelf, terrorist bombings, aircraft hijacking and sabotage, crimes against internationally protected persons including diplomatic agents, hostage-taking, physical protection of nuclear material, airport violence, and terrorist financing ect...

²⁶ Ruperez, op. cit. in footnote 24

²⁷ Heathcote, op. cit. in footnote 2

²⁸ U.S. Code Title 22, Ch.38, Para. 2656f(d)

illegal immigrants, asylum seekers, piracy and armed robbery at sea, seizure, pilferage, annoyance and surprise.

The lack of agreement on a definition of terrorism, however, does not mean that the international community has made no progress in combating the problem.²⁹

Piracy

The traditional definition of piracy is to be found in Article 101 of UNCLOS, which states that piracy consists of any illegal acts of violence, detention or depredation committed for private ends by the crew or passengers of a private ship³⁰ or aircraft, and directed, on the high seas, against another ship or aircraft or persons or property on board; or against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.³¹ This Article's definition holds three main elements, which constitutes an offence piracy. Accordingly an offence must have a private motive, place of an offence shall be out side the jurisdiction of any state i.e. the high seas and there should be an involvement of at least two ships.

According to Article 490 of draft Eritrean maritime code piracy includes any of the following acts:

- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft, and directed;
 - (i) on the high seas against another ship as aircraft, or against persons or property on board such ship or aircraft; or
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;

²⁹ Ruperez, op. cit. in footnote 24

³⁰ Article 103 – Defines “pirate ship and states that it should be distinguished from “armed robbery against ships”

³¹ Balkin, Rosalie, lectures from IMLI Class.

- (b) any voluntary act of participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in sub paragraph (a) or (b);

Piracy is not a new phenomenon. History shows that, at least since the days of ancient Greece, piracy has been a thorn in the side of maritime trade, affecting at different times each and every maritime region of the world, from the Mediterranean and Northern European seas to Asia, the Middle East, Africa and the Americas.³²

So widespread has the practice of piracy been over the centuries that it is one of the few activities, and indeed one of the earliest activities, to be regarded in international law as an international crime and, in this regard, UNCLOS is merely reflecting what was already customary international law. Every State has not only a right but also a duty to take action to curb piratical activities. This is reflected in Article 100 of UNCLOS³³, which provides that “all States *shall* co-operate to the fullest possible extent in the repression of piracy”.³⁴

The Conference

Prior to the Diplomatic Conference held at IMO headquarters in London from 9 to 13 December 2002, a workshop, sponsored by the IMO, was held in Sydney, Australia, from 2 to 6 September 2002. The purpose of the Workshop was to raise awareness of maritime and ports personnel in government and industry to local acts of terrorism in ports, on ships in ports and on ships at sea, and recent initiatives taken by the IMO to combat the menace.³⁵

³² Ibid.

³³ All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

³⁴ Balkin, op. cit. in footnote 31

³⁵ Heathcote op. cit. in footnote 2

The meeting was also able to recognise the importance of the multi-modal transportation chain and observed that increased security would probably increase costs, but that increased security could benefit shipping and ports by reducing the incidence of piracy, armed robbery at sea, people smuggling and stowaways.³⁶

The Maritime Security Conference, held at the London headquarters of the IMO between 9 and 13 December 2002, was of crucial significance not only to the international maritime community but the world community as a whole, given the pivotal role shipping plays in the conduct of the world trade.³⁷ The measures adopted at the Conference represent the culmination of just over a year's intense work by IMO's Maritime Safety Committee and its Intersessional Working Group since the terrorist atrocities in the United States in September 2001.³⁸

On the Conference, amendments were adopted to the existing provisions of SOLAS, accelerating the implementation of the requirement to fit Automatic Identification Systems and adopt new Regulations in Chapter XI-1 of SOLAS 1974 covering marking of the Ship's Identification Number and the carriage of a Continuous Synopsis Record.³⁹

The provisions of Chapter XI-2 of SOLAS 1974 and the ISPS Code apply to ships and to port facilities. The extension of SOLAS to cover port facilities was agreed on the basis that SOLAS 1974 offered the speediest means of ensuring the necessary security measures entered into force and were given effect quickly.⁴⁰ However, it was further agreed that the provisions relating to port facilities should relate solely to the ship/port interface.⁴¹

Implementation of the provisions will require continuing effective co-operation and understanding between all those involved with, or using, ships and port facilities including ship's personnel, port personnel, passengers, cargo interests, ship and port

³⁶ Ibid.

³⁷ Moth, Peter, ISPS Code 2004 Updates, Foreshore Publications, 2004

³⁸ Ibid.

³⁹ ISPS Code Preamble, pp 4.

⁴⁰ Ibid.

⁴¹ Ibid.

management and those in domestic agencies and organizations with responsibility for national and local security. Existing practices and procedures will have to be reviewed and changed if they do not provide an adequate level of security. In the interests of enhanced maritime security, additional responsibilities will have to be carried by the shipping and port industries and local agencies.⁴²

In implementing the amendments to SOLAS and the ISPS Code, State Parties should aware that any measures must be consistent with proper respect of fundamental rights and freedoms as set out in international instruments, particularly those relating to maritime workers and refugees.⁴³

Furthermore, since the Convention on the Facilitation of Maritime Traffic, 1965, provides that foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, (provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order), maritime administrations and port authorities should pay due cognisance to the fact that ship's personnel live and work on the vessel and need shore leave and access to shore based seafarer welfare facilities, including medical care.⁴⁴

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 Code comprises two parts, the first of which (Part A) contains detailed security requirements for governments, port authorities and shipping companies, together with the second part(the non-mandatory Part B) which contains a series of guidelines about how to meet these requirements.

⁴² Ibid.

⁴³ Heathcote, op. cit. in footnote 2

⁴⁴ Ibid

The Code applies to passenger ships engaged on international voyages, cargo ships of 500 gross tonnage and upwards engaged on international voyages, mobile offshore drilling units and port facilities serving the afore-mentioned ships.

States Parties shall decide the extent of application of the Code to those port facilities within their territory which, although used primarily by ships not engaged on international voyages, are required, occasionally, to serve ships arriving or departing on an international voyage. Warships, naval auxiliaries or other ships owned or operated by Contracting Governments and used only on non-commercial service are exempted from the application of this Code.⁴⁵

The ISPS Code is mainly designed so as to develop the method of protection of ships, ports in particular and the international shipping as a whole, against any act of terrorism. The Code follows the risk management approach in assessing and ensuring the security of ships and port facilities. The main objectives of the Code are establishment of an international framework requiring co-operation between governments, government agencies, local administrations, and the shipping and port facilities to assess security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade; and to establish roles and responsibilities on the above states entities; to ensure efficient and early collection and exchange of information; and to ensure confidence that adequate and proportionate maritime security measures are in place and to provide a methodology for security assessment through plans and procedures enabling the rapid reaction to the changing security levels.

In order to achieve its objectives, the Code embodied a number of functional requirements such as gathering and assessing information with respect to security threats and exchanging such information with appropriate Contracting Governments; requiring the maintenance of communication protocols for ships and port facilities; preventing unauthorized access to ships, port facilities and their restricted areas; preventing the

⁴⁵ Heathcote, *op. cit.* in footnote 2

introduction of unauthorized weapons, incendiary devices or explosives to ships or port facilities; providing means for raising the alarm in reaction to security threats or security incidents; requiring ship and port facility security plans based upon security assessments; and requiring training, drills and exercises to ensure familiarity with security plans and procedures.⁴⁶

The main flaw of the code is that is the inability of the IMO to enforce its Regulations. The Code can only monitor compliance. Enforcement is the domain of Contracting Governments, most often as a part of Port State Control regimes. Hence each Contracting Government is responsible for determining and enforcing appropriate security measures for its ships and ports, there are bound to be significant differences between nations in the standards of those measures. Secondly, some Contracting Governments, particularly Flag of Convenience registries, have been identified as either corrupt (and therefore vulnerable to exploitation by terrorist groups), or as lacking the resources or expertise to enforce acceptable standards.⁴⁷

ISPS Code does not apply to many types of vessels which are vulnerable to terrorist acts. These include fishing vessels, high speed container vessels built prior to July 2001, vessels not engaged in international voyages (including inter-island ferries similar to the ones attacked in recent years in Southeast Asian waters), and cargo ships less than 500 ton. Part B of the ISPS Code advises Contracting Governments to establish security measures for vessels not covered by Part A of the Code, however, this is not mandatory, and is therefore unlikely to be heeded by some nations (particularly Flag of Convenience registries).⁴⁸

One benefit of the ISPS Code over the SUA Convention is the more streamlined approval process involved in making amendments to the Code (due to the ‘tacit acceptance’

⁴⁶ ISPS Code, Part A 1.3 Functional Requirements.

⁴⁷ McNaught, Fiona, Effectiveness of the International Ship and Port Facility Security (ISPS) Code in Addressing the Maritime Security Threat. [<http://www.defence.gov.au/ADC/docs/Publications/Geddes%20Papers%202005/89939%20Defence%209.pdf>] visited on Jan. 23, 2010.

⁴⁸ Ibid.

provision of the SOLAS Convention. This will enable a quicker response to evolving nature of the terrorist threat.⁴⁹

Perhaps the greatest strength of the ISPS Code is the provision of a common baseline for international cooperation on the issue of maritime security. Implementation has gone relatively smoothly to date, indicating a strong drive to proactively and collectively address maritime security. The level of awareness of maritime vulnerability to terrorist attack has been increased through the implementation of Part A of the ISPS Code, and if nothing else, the maritime industry should be better prepared for any future terrorist attacks.⁵⁰

The Levels of Security

The setting of the *security level* applying at any particular time is the responsibility of Contracting Governments and will apply to their ships and Port Facilities.⁵¹ As a brief reminder these are the three ISPS Code security levels.

1. Level 1 – Normal: The minimum appropriate protective security measures must be maintained at all times.
2. Level 2 – Heightened Risk: Appropriate additional protective security measures must be maintained for a period of time as a result of heightened risk of a security incident.
3. Level 3 – Incident Imminent: Further specific protective security measures must be maintained for a period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target.

The great majority of ships and ports operate at Security Level 1.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Trelawney, Chris, Maritime Security: Implementation of the ISPS Code, International Maritime Organization, 3rd Intermodal Africa 2005 Tanzania Exhibition and Conference Dar es Salaam, 3 to 4 February 2005

Company Security Officer

Any shipping company operating ships to which the Code applies shall appoint a ***Company Security Officer (CSO)*** for the company.⁵² This officer has to ensure that a ***Ship Security Assessment (SSA)*** is undertaken and a ***Ship Security Plan (SSP)*** is developed, submitted for approval, and thereafter implemented and maintained, and is responsible for liaison with port facility security officers and the ship security officer.

Ship Security Officer

For ships operating by a company, a special Ship Security Officer (SSO) has also to be appointed by the company.⁵³ This officer is accountable to the Master, and responsible for the security of the ship, including implementation and maintenance of the ship security plan, and for liaison with the company security officer and port facility security officers. A ***Ship Security Plan (SSP)*** is prepared for each ship to which the Code applies to implement measures on board the ship to protect persons on board, cargo, cargo transport units, ship's stores or the ship from the risks of a security incident.

Port Facility Security Officer

Port Facility Security Officer (PFSO) is appointed by the port authority to be responsible for the development, implementation, revision and maintenance of the Port Facility Security Plan (PFSP) and for liaison with the SSOs and CSOs.⁵⁴ The PFSP has to specify measures to protect the port facility and ships, persons, cargo, cargo transport units and ship's stores within the port facility from the risks of a security incident.

The State Party government takes the responsibility of designating which ports will be required to designate a PFSO and for approving the PFSP. The task of conducting the Port Facility Security Assessment and development of the PFSP is done by Port Facility Security Officer; and in turn the government is responsible for the issuance, of a

⁵² The duties and responsibilities of the CSO are outlined in section 11 of the ISPS Code.

⁵³ The duties and responsibilities of the CSO are outlined in section 12 of the ISPS Code.

⁵⁴ The duties and responsibilities of the CSO are outlined in section 17 of the ISPS Code.

Declaration of Security, if necessary. This mostly requested by the ship that is operating at a higher security level than the port facility or another ship that the requesting ship is interfacing with. Master or the SSO may issue such a certificate, as alternative, on behalf of the ship.

Recognised Security Organisation

Governments may delegate port facility security functions to a Recognised Security Organization (RSO), with the exceptions of actual setting the applicable security level, approving Port Facility Security Assessments, determining which port facilities are required to designate a Port Facility Security Officer and approving Port Facility Security Plans.

Many Classification Societies are now working as RSOs, but no one is confident about their knowledge on this field. Besides there exists a conflict of interest when such classification societies engage in conducting security assessment and/or develop a PFSP, and in turn they subsequently auditing of the effectiveness of such plan.⁵⁵

Ship Security Assessment Survey

A Ship Security Assessment (SSA) has to be carried out by the CSO or with people with appropriate skills before an SSP can be developed. This involves an on-scene security survey for the identification of existing security measures, procedures and operations; the identification and evaluation of key shipboard operations that it is important to protect; the identification of possible threats to the key shipboard operations and the likelihood of their occurrence, in order to establish and prioritise security measures; and the identification of weaknesses, including human factors in the infrastructure, policies and procedures.⁵⁶ The Ship Security Assessment must be documented, reviewed, accepted and retained by the company.

⁵⁵ Heathcote, op. cit. in footnote 2

⁵⁶ Trelawney, op. cit. in footnote 51

Ship Security Plan

Ship Security Plan (SSP) can be developed, to be approved by the maritime administration and to be carried on board the ship at all times, when this Ship Security Assessment has been carried out. The plan shall take in to account or shall response to each three security levels on the Code. That means the Plan shall indicate the minimum operational and physical security measures the ship shall take at all times, i.e. while operating at security level 1. The plan will also indicate the additional, or intensified, security measures the ship itself can take to move to security level 2. Furthermore, the Plan will indicate the possible preparatory actions the ship could take to allow prompt response to the instructions that may be issued to the ship by the authorities responding at security level 3 to a security incident or threat.⁵⁷

The need for these plans to be ultimately incorporated in the ISM Code has been acknowledged. The Ship Security Plan must be approved by, or on behalf of, the ship's Administration. The Company and Ship Security Officer are required to monitor the continuing relevance and effectiveness of the Plan, including the undertaking of independent internal audits. Any amendments to specified elements of an approved Plan will have to be resubmitted for approval.⁵⁸

International Ship Security Certificate

SOLAS chapter XI-2 and the ISPS Code comprise provisions relating to the verification and certification of the ship's compliance with the requirements of the Code on an initial, renewal and intermediate basis. The ship must carry an *International Ship Security certificate (ISSC)* indicating that it complies with the Code. The ISSC is subject to *Port State Control (PSC)* inspections but such inspections will not extend to examination of the Ship Security Plan itself.⁵⁹ The ship must carry an *International Ship Security*

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid

Certificate (ISSC) indicating that it complies with the Code. The ISSC is subject to ***Port State Control (PSC)*** inspections but such inspections will not extend to examination of the Ship Security Plan itself. The ship may be subject to additional control measures if there is reason to believe that the security of the ship has, or the port facilities it has served have, been compromised. According to this Code, the ship has to provide information regarding the ship, its cargo, passengers and crew prior to port entry and it is the responsibility of the company that up to date information relating to the ownership and control of the vessel is available on board. There may be circumstances in which entry into port could be denied, if the ship itself, or the port facility it served before, or another ship it interfaced with previously, are considered to be in violation with the provisions of SOLAS chapter XI-2 or part A of the ISPS Code.

Port Facility Security Assessment

Identical to that ship, a Port Facility Security Assessment (PFSA) must be carried out before developing and updating the Port Facility Security Plan (PFSP). The Contracting Governments are required to undertake this assessment. These assessments shall be undertaken by the Contracting Government, a Designated Authority, or the Recognized Security Organization and it shall be reviewed periodically. In any case, the persons carrying out the assessment shall have appropriate skills to evaluate the security of the port facility. The results of the Port Facility Security Assessment, if approved by the Government or Designated Authority, are to be used to help determine which Port Facilities are required to appoint a Port Facility Security Officer (PFSO).

Port Facility Security Plan

Similar to the Ship Security Plan, the ***Port Facility Security Plan*** shall indicate the minimum operational and physical security measures the Port Facility shall take at all times, i.e. while operating at security level 1. The plan should also indicate the additional, or intensified, security measures the Port Facility can take to move to security level 2. Furthermore the plan should indicate the possible preparatory actions the Port Facility

could take to allow prompt response to the instructions that may be issued by the authorities responding at security level 3 to a security incident or threat.

This Plan has to be approved by the port facility's Contracting Government or by the Designated Authority. The Port Facility Security Officer must ensure that its provisions are implemented and monitor the continuing effectiveness and relevance of the approved plan, including commissioning independent internal audits of the application of the plan. The effectiveness of the plan may also be tested by the relevant Authorities.⁶⁰

Training, Drills and Certification

As with the CSO and the SSO, the port facility security personnel must have received training and fully understand their duties and responsibilities, as well as having a thorough knowledge of the port facility security. According to the Code drills and exercises shall be carried out as appropriate to ensure that the PFSA was valid and the effectiveness of PFSP. The government in whose territory the port facility is located approves the PFSP. For ports, there is no equivalent to the ISSC that is issued after the initial or renewal verification, although a Statement of Compliance of a Port Facility might be deemed to be similar.⁶¹

⁶⁰ Ibid.

⁶¹ Ibid.

THE NEED FOR MARITIME SECURITY REGULATIONS

Introduction

The horn of Africa has been one of the busiest maritime trade routes and shipping lanes thousands of years go. It links the Indian Ocean to the Suez Canal. As a result it is a choke point and securing free and safe traffic around this area is internationally important. Eritrea, geographically located near Somalia's coasts, which are now virtually unpoliced and with an increased piracy, together with a multitude of other illegal activities, has a particular interest to adopt, incorporate and implement the security measures as provided in the International Code for the Security of Ships and Port Facilities. Such lack of maritime security has a real impact on economic development, regional security and the stability of the entire region. The two ports of Eritrea serve both the country and landlocked countries in the region. With the rehabilitation and potential busy services of these ports, there would be a need for more stringent security measures for the detection and prevention of any security threats. Maritime security is therefore very important for Eritrea, both in economic and strategic terms by safeguarding against unlawful interference with maritime transport or offshore facilities.

The specific outcomes of maritime securities are:

1. the reduction of the risk of maritime transport or offshore facilities, which are used to facilitate terrorist or other unlawful activities and;
2. effective communication of security information among maritime industry participants and government agencies with security responsibilities for maritime transport and offshore facilities.

Obligation to Implement SOLAS Amendments of 2002 and the ISPS Code

Eritrea is member of the International Maritime Organization (IMO) and party to SOLAS Convention. Eritrean Government always resolutely opposes terrorism and any type of

terrorist activities. The Government supports the combat terrorist activities within the framework of the United Nations. The new Amendments to the SOLAS Convention constitute an obligatory legal instrument and apply to all ports open to international trade, as well as different types of port facilities open to international trades. As a potential leading shipping and port country, Eritrea has to actively and comprehensively fulfill its obligations under the new Code.

Helping Strengthen Management of Ports

The main purpose of port facilities security is to take certain precautions against terrorism, by way of setting up a series of systems and adopting a series of measures, which fall under the responsibility of the operators of port facilities and the National Security Agency. Undoubtedly establishing a port security system is a totally new task and is also a test for the Eritrean port administrations in implementing the system as well as an opportunity for strengthening port management.

With the re-established port administration system and new Port Regulation the port authority is responsible for the over all port management and the Regulations provide the legal basis for the security management role played by port facilities operators. It also makes the National Security Agency responsible for maintaining port security. Security management is an important aspect of the port facilities operators and gives full power to the operators to manage the port.

Security in ports may enable governments, employers, workers and other stakeholders to reduce the risk to ports from the threat posed by unlawful elements.

Maintaining International Political and Economic Interests

In recent years, the shipping and port industry in Eritrea has developed rapidly and has been free from any security treats yet. Unequivocally, if there are not enough precautions taken to prevent terrorism, this would create opportunities or channels for terrorist

activities which would affect the normal operation of Eritrean shipping and port business, which would in turn affect the normal operation of the country's foreign trade. Therefore, by fulfilling Eritrean obligations in accordance with International Conventions this will be helpful in maintaining the country's international image.

THE LAW MAKING PROCESS IN ERITREA

INTRODUCTION

The ratification of the SOLAS Convention by Eritrea does not automatically give the Convention the force of law in the State's jurisdiction and some form of legislative action is required for the implementation of an international convention, following its ratification or accession. This means that, conventions or treaties, though duly ratified by the Government, within the territory of Eritrea, by virtue of the convention or the treaty alone, are not enforceable in the courts of the State. It has to obtain the assent of the National Assembly before becoming laws in Eritrea.

Eritrea is still without any written and implemented constitution whereas in the country is embarking on initiatives for implementing of the Constitution after a draft was ratified in May 1997.⁶²

In the process, the country's National Assembly ratified the draft Constitution with more than two-thirds majority vote. This was the result of an intensive debate and consultation with the Eritrean people living in the country and Diaspora. But regrettably no date was set during the ratification process for when the Constitution would become effective and no one knows when it will be implemented. The People's Front for Democracy and Justice's⁶³ Charter is considered as the State's Transitional Constitution and serves as such.

The State is yet under the transitional period and is subject to the transitional laws promulgated in the year of 1993. These laws (also known as Proclamation No. 37/ 1993)

⁶² As per Macro Policy 1994 (Eritrea) at the Preamble

⁶³ The ruling political party in Eritrea

were meant to establish the Transitional Government of Eritrea, the National Assembly and Judiciary organ.

Article 4(5) of the 1993 Proclamation gives the National Assembly the power, among others, to legislating laws in Eritrea. The Assembly may also select various committees and delegate law making power and accordingly they may draft and present laws.⁶⁴

Ministries, Commissions and Government Authorities has been granted power, by virtue of Article 8 (4) (c), to enact laws necessary for carrying out their day to day functions effectively and draft laws are presented to the “ Cabinet”⁶⁵ for an approval. Article 6 (4) of the Proclamation reiterates that the President shall publish in Gazette and supervise their executions, of an enacted laws by the National Assembly and Ministries and may delegate his power to do so to another organ of the Government.

Accordingly the President has delegated the power of reviewing and legal dressing of acts to the Ministry of Justice. Hence the authority competent for methodology of legislation according to Eritrean administrative law is the Ministry of Justice, specifically the Director General of Legal Affairs. Approval shall be sought and obtained from the Director General of Legal Affairs to this effect after discussion on some important methodological issues like the possibility and feasibility of a layered legislative approach.

Therefore laws prepared by the Ministries are sent to the Ministry of Justice and after approval is sought, it becomes final draft and is published in an official *gazette*.

How is ISPS Code implemented in Eritrea?

As mentioned above, The Ministry of Transport and Communications has the power to enact laws as one of its duties. Article 371 of the Transitional Maritime Code of Eritrea of 1960 empowers the Minister of Transport and Communications, upon the

⁶⁴ Article 4 (6) (d) of Proclamation No. 37/1993

⁶⁵ In Article 5 of the Proclamation No. 37/1993 there is council established led by the Present and commonly called the Cabinet. It is the chief executive of the State in between sessions of National Assembly.

recommendation of the Director General of the Department of Maritime Transport, to make regulations concerning the conditions to be observed for preserving the safety of life at sea. Nonetheless this Code is now outdated and could not cope with the current developments in the field of international maritime law. Moreover it does not include various International Maritime Conventions prepared on the last half century.

In practice it is the Department of Maritime Transport which prepares the draft legislations on behalf of the Minister and has a large measure of freedom in its legislative powers and that there are no methodological limitations in the drafting process. The Ministry of Justice will make its remarks in the usual phase of the legislative process, but of course it may entertain for any question beforehand. The normal procedure however involves the Ministry of Justice only after a draft has been completed by the Department of Maritime Transport.

Often the Ministry of Justice recommends that drafting should be embarked upon straight away, that choices should be made during the drafting and that the Ministry will only judge the whole of the draft proposal, once completed, at its merits.

In this case, when the Minister of The Ministry of Transport and Communications decides to implement the ISPS Code, the draft incorporating this Code shall undergo the above mentioned procedures. After it is approved by the Ministry of Justice, it will be forwarded to the Assembly for approval and publication in an official *gazette*.

Overview of the Draft Regulations

Generally, Part I of these Regulations is designed to implement Chapter XI-2 of the Safety of Life at Sea Convention 1974, 'Special Measures to Enhance Maritime Security', which was adopted on 12 December 2002. The Chapter gives legal effect to the International Code for the Security of Ships and of Port Facilities.

The Regulations specify the functions of the Director-General of the Department of Maritime Transport in respect of Eritrean ships, and the National Security Authority in

respect of port facilities and ships entering them and allow delegation of some of these functions.

Ship operators are required to have ship security plans, approved by or on behalf of the Director-General, and ship security alert systems. Companies operating ships must appoint ship security officers. There are provisions for the verification and certification of ships' security systems and equipment. Ships entering Eritrean ports are subject to control and compliance measures.

The National Security Authority makes, or approves, a port facility security assessment. A port facility security officer must be appointed, and he must make and ensure the implementation of a port facility security plan.

There are supplementary provisions allowing certain alternative agreements, and equivalent security arrangements.

Enforcement provisions include powers of inspection and requirements to provide information, and ancillary offences.

Part II of the Regulations implements the additional Regulation 5 to Chapter XI-1 of the Convention, which requires ships to which the Convention applies to carry a Continuous Synopsis Record, which provides an on-board record of the history of the ship.

The purpose of these Regulations is to provide a standardized legal framework to assess security risks to Eritrean ships and ports and to systematically reduce vulnerabilities.

Other Obligations of Implementing the Code

Although there are only two ports open to foreign trade in Eritrea with various port facilities with a few national flagged ships serving international routes, the security work for the ships and the port facilities is still heavy. The Eritrean Government, the port and the shipping companies in Eritrea are to undertake many works in order fulfill their obligations on the ISPS Code after it is implemented. For instance, provisions of the ISPS

Code require the technologically sophisticated equipment to be used in the detection of dangerous and unwanted materials in the ports area. However taking in to account the structural layout of the ports and the lack of such technological equipment, Eritrea is limited on the use of physical persons and surveillance of port operations to detect and prevent any risky activities in the ports which can lead to a security incident in the ports.

Introduction of the Ship and Port Facility Security Regulations

In accordance with the Amendments to the SOLAS Convention and the ISPS Code, and having taken Eritrean ships and ports situation into consideration, this Ship and Port Facility Security Regulations will come in to force in near future. The requirements for port facility security and ship's security in the Amendments to the SOLAS Convention have been encoded in the Regulation. This could be the good reflection of the adaptation of the Eritrean situation to the requirements of the Convention. It guarantees Eritrea's comprehensive implementation of the SOLAS Convention.

Personnel Training for the Implementation of the Convention

The ships and port facility security work involves various levels of governments, the port facility operators, the shipping companies, the shippers and other relevant parties.

Persons have to be trained in port facility security work and for the implementation of the Regulations relating to the Port Facility Security. Training for ship security work has also to be conducted and measures have to be issued for implementing the Regulations.

Ensuring the Implementation of the Convention on a Regular Basis

After the implementation of Regulations the Eritrean Government has to hold a security practice to test the ship and the ports facilities which demonstrated the implementation of the Convention by Eritrea. It will confirm that Eritrea has implemented, in a comprehensive manner, all of the international maritime security obligations under the SOLAS Convention. Subsequent to this the main task will be to maintain the security for

the ships and port facilities, to ensure the ships and ports smooth operation, to guarantee that the ship and the port security system would function well at the appropriate time, and to maintain the normal operation of the port and shipping industry. The relevant authorities of the Eritrean Government shall be conscientious in their requirement that the implementation of measures be a matter of routine for the ship and port management in order to strengthen the implementation of the Convention and the measures contained in the security plans. The Government shall organize and require that port facilities and ships have regular practices in order to ensure effective implementation at all times.

Finally it is the Government of Eritrea obligation and responsibility to strengthen maritime security and to take the necessary precautions to prevent terrorists targeting maritime activities. The Eritrean Government will, taking the implementation of the Amendments to the SOLAS Convention and the ISPS Code as an opportunity, strengthen port facility and ship security management and guarantee the normal operation of both Eritrean and foreign flagged ships in Eritrean ports. Meanwhile, the Government expects that the governments from all countries in the world will strengthen their cooperation with the industry for the purpose of maintaining international maritime transport security

PREAMBLE

WHEREAS, the security of Eritrean ships and ports may be effectively enhanced by strictly complying the new provisions in the International Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility Code while furthering the implementation and harmonization of the same with national maritime legislations;

WHEREAS, the establishment of regulatory framework through which ship and port facilities can co-operate to detect and deter acts which threaten security in maritime transport involves strict supervision of such regulations, standards and procedures which guarantee the performance quality of the same;

WHEREAS, it is appropriate therefore the implementation of a security regulations ensuring the achievement of the maritime security outcomes and establishment of a working relationship between maritime partners, international organizations and Contracting Governments, which requires a close partnership and co-operative links with the same;

NOW, THEREFORE, it is hereby proclaimed as follows:

SHIP AND PORT FACILITY SECURITY REGULATIONS No..../2010

ARRANGEMENT OF CONTENTS

Preliminary

Article 1.Citation

Article 2.Interpretation

PART I

SPECIAL MEASURES TO IMPLEMENT MARITIME SECURITY

General

Article 3.Application

Article 4.Security measures: the Director-General

Article 5.Security measures: the National Security Authority

Ships

Article 6.Requirements for companies

Article 7.Ship security plans

Article 8.Company security officer

Article 9.Ship security officer

Article 10.Requirements for ships

Article 11.Ship security alert system

Article 12.Threats to ships

Article 13.Master's discretion for ship safety and security

Article 14.Verification for ships

Article 15.Issue, endorsement, duration and validity of certificate

Article 16.Issue and endorsement of certificates by another Government

Article 17.Certificates issued or endorsed on behalf of another Government

Article 18.Interim certification

Article 19.Prohibition on proceeding to sea without appropriate certificate

Control and compliance measures

Article 20.Control of ships in port

Article 21.Ships intending to enter a port

Article 22.Additional control and compliance provisions

Port facilities

- Article 23. Port facilities: National Security Authority responsibilities
- Article 24. Port facilities: duties of port facility operators
- Article 25. Port facility security officers
- Article 26. Drills and exercises

Supplementary

- Article 27. Alternative security agreements
- Article 28. Equivalent security arrangements
- Article 29. Communication of information

Enforcement

- Article 30. Requirement to provide information
- Article 31. Powers of inspection
- Article 32. False statements relating to baggage, cargo etc
- Article 33. False statements in connection with identity documents
- Article 34. Unauthorised presence in restricted zone
- Article 35. Offences relating to authorised persons
- Article 36. Penalties defences etc.

PART II

CONTINUOUS SYNOPSIS RECORD

- Article 37. Continuous Synopsis Record
- Article 38. Transfer of flag by ship
- Article 39. Offences and penalties

Preliminary

Article 1. *Title*

This Regulation may be cited as the Ship and Port Facility Security Regulations No2010.

Article 2. *Definition*

(1) In this Part—

- 1.1. “*The Maritime Code*” means the Transitional Maritime Code for the State of Eritrea;
- 1.2. “*Administration*” means the Department of Maritime Transport of the Ministry of Transport and Communications;
- 1.3. “*authorised person*” means a person authorised in writing by or on behalf of the Director-General or the **National Security Authority** for the purposes of these Regulations;
- 1.4. “*bulk carrier*” means a ship which is constructed generally with single deck, top-side tanks and hopper side tanks in cargo spaces, and is intended primarily to carry dry cargo in bulk, and includes such types as ore carriers and combination carriers;
- 1.5. “*certificate*” means an International Ship Security Certificate or an Interim International Ship Security Certificate issued in accordance with part A of the ISPS Code;
- 1.6. “*chemical tanker*” means a cargo ship constructed or adapted and used for the carriage in bulk of any liquid product listed in chapter 17 of the IBC Code;
- 1.7. “*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 the operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the ISPS Code;
- 1.8. “*company security officer*” means the person designated by the Company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained, and for liaison with port facility security officers and the ship security officer
- 1.9. “*Contracting Government*” means the government of a State which is Party to the International Convention for the Safety of Life at Sea;
- 1.10. “*Declaration of Security*” means an agreement reached between a ship and either a port facility or another ship with which it interfaces, specifying the security measures each will implement;
- 1.11. “*Designated Authority*” means, the organization(s) or the administration(s) identified, as responsible for ensuring the implementation of the provisions of Chapter XI-2 of the Safety Convention pertaining to port facility security and ship/port interface, from the point of view of the port facility and in the case of the Eritrea means the National Security Authority;

- 1.12. “*gas carrier*” means a cargo ship constructed or adapted for the carriage in bulk of any liquefied gas or other liquid product in chapter 19 of the IGC Code;
- 1.13. “*high speed craft*” means a craft capable of a maximum speed in metres per second (m/s) equal to or exceeding:

$$3.7 \nabla^{0.1667}$$

where ∇ : = displacement corresponding to the design waterline (m³);

- 1.15. “*Government*” means the Government of the State of Eritrea;
- 1.16. “*IBC Code*” means the International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk, 1998 edition and any subsequent amendments thereto or deletions thereof;
- 1.17. “*IGC Code*” means the International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk, 1993 together with the 1994 and 1996 amendments and any further amendments thereto or deletion thereof;
- 1.18. “*ISM Code*” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by IMO by Resolution A.741 (18), together with any amendments which may be in effect in respect of Eritrea;
- 1.19. “*ISPS Code*” or “*Code*” means the International Code for the Security of Ships and of Port Facilities, as adopted, on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 and any amendments that may be in effect for Eritrea;
- 1.20. “*mobile offshore drilling unit*” means a vessel capable of engaging drilling operations for the exploration for or the exploitation of resources beneath the sea-bed such as liquid or gaseous hydrocarbons, sulphur or salt, when not on location;
- 1.21. “*National Security Authority*” is the Designated Authority for Eritrea;
- 1.22. “*oil tanker*” means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers and any “chemical tanker” as defined in Annex II of the MARPOL Convention when it is carrying a cargo or part cargo of oil in bulk;
- 1.23. “*port facility operator*” means any person operating a port facility or such other person as may be designated for the purposes of this Part as port facility operator for one or more port facilities by the National Security Authority;
- 1.24. “*port facility*” means a location, as determined in Eritrea by the National Security Authority, or elsewhere by the relevant governmental authority, where the ship/port interface takes place. This includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate;
- 1.25. “*port facility security assessment*” means an assessment of the security of a port facility (or more than one port facility) carried out in accordance with section 15 of part A of the ISPS Code;

- 1.26. “*port facility security officer*” means the person designated as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officers and company security officers;
 - 1.27. “*port facility security plan*” means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ship’s stores within the port facility from the risks of a security incident;
 - 1.28. “*recognized security organization*” means an organization with appropriate expertise in security matters and with appropriate knowledge of ship and port operations authorized to carry out an assessment, or a verification, or an approval or a certification activity, required by this chapter or by part A of the ISPS Code;
 - 1.29. “*restricted zone*” means a zone to which access is restricted for security reasons pursuant to these Regulations;
 - 1.30. “*security level*” means the qualification of the degree of risk that a security incident will be attempted or will occur; “*security incident*” means any suspicious act or circumstance threatening the security of a ship, including a mobile offshore drilling unit and a high speed craft, or of a port facility or of any ship/port interface or any ship to ship activity;
 - 1.31. “*ship/port interface*” means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods or the provisions of port services to or from the ship;
 - 1.32. “*ship to ship*” activity means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another;
 - 1.33. “*tons*” means gross tonnage.
 - 1.34 “*organization*” means the International Maritime Organization.
- (2) The term “all ships”, when used in Part I, means any ship to which the Part applies.
 - (3) In these Regulations, any reference is made to part A of the ISPS Code, the guidance in part B of the Code in relation to that matter shall be taken into account in construing part A.
 - (4) For the purposes of these Regulations, references in Part A of the Code to the Administration shall, in relation to Eritrean ships, be references to the Director-General.
 - (5) For the purposes of Part I a person is permitted to have access to a restricted zone of a port facility if he is permitted to enter that zone or if arrangements exist for permitting any of his employees or agents to enter that zone.

PART I

SPECIAL MEASURES TO ENHANCE MARITIME SECURITY

General

Article. 3. *Application*

- (1) Subject to sub- article (6), this Part of these Regulations applies to-
 - (a) the following types of ships engaged on international voyages:
 - (i) passenger ships, including high-speed passenger craft;
 - (ii) cargo ships, including high-speed craft, of 500 tons or more; and
 - (iii) mobile offshore drilling units; and
 - (b) port facilities serving such ships engaged on international voyages.
- (2) This Part shall also apply to any port facility specified in a Notice issued by the National Security Authority, which, although used primarily by ships not engaged on international voyages, is required, occasionally, to serve ships arriving or departing on international voyages.
- (3) A Notice referred to in sub- article (2) shall not be issued without a port facility security assessment for that port facility having been done in accordance with section 15 of part A of the ISPS Code. The Notice shall specify the extent of application of this Part and the relevant sections of part A of the ISPS Code to the facility.
- (4) Any Notice under sub- article (2) shall not compromise the level of security intended to be provided by this Part and part A of the ISPS Code.
- (5) Article 20, 21 and 22 also apply to a port facility not falling within sub- article (1) (b) or (2).
- (6) This Part does not apply to –
 - (a) warships;
 - (b) naval auxiliaries; or
 - (c) other ships owned or operated by Parties to the Safety Convention and use only on Government non-commercial service.

Article. 4. *Security measures: responsibilities of Director-General*

- (1) Without prejudice to any other duties under these Regulations, the Director-General shall:
 - (a) in accordance with section 4 of part A of the ISPS Code set security levels and ensure the provision of security level information to Eritrean ships;
 - (b) when changes in security level occur, update security level information as the circumstance dictates;
 - (c) indicate when a Declaration of Security is required for a Eritrean ship;
 - (d) approve the ship security plan and relevant amendments to a previously approved plan.

- (2) The Director-General may delegate his responsibilities under this Part to a recognised security organisation, except the following:
- (a) setting of the applicable security level for ships;
 - (b) exercising control and compliance measures pursuant to articles 20, 21 and 22;
 - (c) establishing the requirements for a Declaration of Security.

Article. 5. *Security measures: responsibilities of National Security Authority*

- (1) Without prejudice to any other duties under this Part the National Security Authority shall:
- (a) in accordance with section 4 of part A of the ISPS Code set security levels and ensure the provision of security level information to port facilities within Eritrea, and to ships prior to entering a port or whilst in a port within the Eritrea.
 - (b) when changes in security level occur, update security level information as the circumstance dictates;
 - (c) determine which of the port authorities located within their territory are required to designate a port facility security officer (PFSO) who will be responsible for the preparation of the port facility security plan;
 - (d) approve the port facility security plan (PFSP) and any subsequent amendments to a previously approved plan.
- (2) The National Security Authority may delegate to a recognised security organisation their duties under these Regulations, except:
- (a) setting of the applicable security level for port facilities or ship to ship interface in Eritrean territorial waters;
 - (b) approving a port facility security assessment and subsequent amendments to an approved assessment;
 - (c) determining the port facilities which will be required to designate a port facility security officer;
 - (d) approving a port facility security plan and subsequent amendments to an approved plan;
 - (e) exercising control and compliance measures pursuant to article 20, 21 and 22; and
 - (f) establishing the requirements for a Declaration of Security.

Article. 6. *Requirements for companies*

- (1) Companies shall comply with the relevant requirements of this Part and part A of the ISPS Code. In Particular, and without prejudice to any other duties under this Part the Company shall ensure that:
- (a) a company security officer is appointed, and is properly trained and qualified in his duties and responsibilities;
 - (b) a ship security officer is appointed for each of its ships and is properly trained and qualified in his duties and responsibilities;
 - (c) each ship has a ship security plan;

- (d) the master has available on board, at all times, information through which officers authorised by any State can establish:
 - (i) who is responsible for appointing the members of the crew or other persons currently employed or engaged on board the ship in any capacity on the business of that ship;
 - (ii) who is responsible for deciding the employment of the ship; and
 - (iii) in cases where the ship is employed under the terms of charter Party or Parties, who are the Parties to such charter Party or Parties.
- (2) Any company which fails to comply with this article shall be guilty of an offence.

Article. 7. *Ship security plans*

- (1) (a) Every ship security plan or amendment thereto shall be submitted to the Director-General, or to a recognised security organisation he authorises on his behalf, for approval in accordance with section 9 of part A of the Code.
 - (b) A recognised security organisation authorised under paragraph (a) shall not have been involved in the preparation of the ship security plan or the amendment in question.
- (2) The Director-General shall determine which changes to an approved ship security plan or to any security equipment specified in an approved plan shall not be implemented unless the relevant amendments to the plan are approved by the Director-General. Any such changes shall be at least as effective as those measures prescribed in this Part and in Part A of the Code.
- (3) Any company which does not comply with sub- article (1), or otherwise fails to comply with section 9 of Part A of the Code, shall be guilty of an offence.

Article. 8. *Company security officer*

- (1) The company security officer shall perform the responsibilities and duties specified in this Part and Part A of the Code, in particular those listed in paragraph 11.2 of Part A.
- (2) Any contravention of this article by the company security officer shall be an offence.

Article. 9. *Ship security officer*

- (1) The ship security officer shall perform the responsibilities and duties specified in this Part and part A of the Code, in Particular those listed in paragraph 12.2 of part A.
- (2) Any contravention of this article by the ship security officer shall be an offence

Article. 10 *Requirements for ships*

- (1) Ships shall comply with the relevant requirements of this Part and of part A of the ISPS Code.
- (2) Prior to entering a port or whilst in a port within the territory of any other State, a ship shall comply with the requirements for the security level set by that State, if such

security level is higher than the security level set by the Director-General for that ship.

- (3) Ships shall respond without undue delay to any change to a higher security level.
- (4) Where a ship is not in compliance with the requirements of this Part or of part A of the ISPS Code, or cannot comply with the requirements of the security level set by the Director-General or by another Contracting Government and applicable to that ship, then the ship shall notify the appropriate competent authority prior to conducting any ship/port interface or prior to entry into port, whichever occurs earlier.
- (5) Where there is a breach of sub- article (1) to (4) in relation to a ship then the company and the master shall each be guilty of an offence.

Article. 11. *Ship security alert system*

- (1) All ships shall be provided with a ship security alert system, as follows:
 - (a) ships constructed on or after 1 July 2004;
 - (b) passenger ships, including high-speed passenger craft, constructed before 1 July 2004, not later than the first survey of the radio installation after 1 July 2004;
 - (c) oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high speed craft, of 500 tons and upwards constructed before 1 July 2004, not later than the first survey of the radio installation after 1 July 2004; and
 - (d) other cargo ships of 500 tons and upward and mobile offshore drilling units constructed before 1 July 2004, not later than the first survey of the radio installation after 1 July 2006.
- (2) The ship security alert system, when activated, shall:
 - (a) initiate and transmit a ship-to-shore security alert to a competent authority designated by the Director-General, which in these circumstances may include the Company, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised;
 - (b) not send the ship security alert to any other ships;
 - (c) not raise any alarm on-board the ship; and
 - (d) continue the ship security alert until deactivated and/or reset.
- (3) The ship security alert system shall:
 - (a) be capable of being activated from the navigation bridge and in at least one other location; and
 - (b) conform to performance standards not inferior to those adopted by the Organization.
- (4) The ship security alert system activation points shall be designed so as to prevent the inadvertent initiation of the ship security alert.
- (5) The requirement for a ship security alert system may be complied with by using the radio installation fitted for compliance with the requirements of the Model Shipping

(Radio Installations) Regulations 2001, provided all requirements of this article are complied with.

- (6) When the Director-General receives notification of a ship security alert relating to a ship entitled to fly the flag of Eritrea he shall immediately notify the State(s) in the vicinity of which the ship is presently operating.
- (7) When the National Security Authority receives notification of a ship security alert from a ship which is not entitled to fly flag of Eritrea, it shall immediately notify the relevant Administration and, if appropriate, the State(s) in the vicinity of which the ship is presently operating.
- (8) Any contravention of sub- article (1) to (4) shall be an offence by the company and the master.

Article. 12. *Threats to ships*

- (1) The National Security Authority shall set security levels and ensure the provision of security level information to ships operating in the territorial sea of Eritrea or having communicated an intention to enter the territorial sea.
- (2) The National Security Authority shall provide a point of contact through which such ships can request advice or assistance and to which such ships can report any security concerns about other ships, movements or communications.
- (3) Where a risk of attack has been identified, the National Security Authority shall advise the ships concerned and their Administrations of:
 - (a) the current security level;
 - (b) any security measures that should be put in place by the ships concerned to protect themselves from attack, in accordance with the provisions of part A of the ISPS Code; and
 - (c) security measures that the National Security Authority put in place, as appropriate

Article. 13. *Master's discretion for ship safety and security*

- (1) (a) The master of a Eritrean ship shall not be constrained by the Company, the charterer or any other person from taking or executing any decision which, in the professional judgement of the master, is necessary to maintain the safety and security of the ship.
 - (b) This includes denial of access to persons (except those identified as duly authorized by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units.
- (2) (a) Where, in the professional judgement of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master shall give effect to those requirements necessary to maintain the safety of the ship.

- (b) In such cases, the master may implement temporary security measures and shall forthwith inform the Director-General and, if appropriate, the Contracting Government in whose port the ship is operating or intends to enter.
- (c) Any such temporary security measures under this article shall, to the highest possible degree, be commensurate with the prevailing security level. When such cases are identified, the Director-General shall ensure that such conflicts are resolved and that the possibility of recurrence is minimised.

Article. 14. *Verification for ships*

- (1) All Eritrean ships to which this Part applies shall be subject to initial, renewal and intermediate verifications in accordance with paragraph 19.1.1 of part A of the ISPS Code.
- (2) The verification of ships shall be carried out by an officer authorised by the Director-General, or, if he entrusts it, by a recognised security organisation.
- (3) The security system and any associated security equipment of the ship after verification shall be maintained to conform with the provisions of article 6 and 11, of part A of the ISPS Code and of the approved ship security plan. After any verification under sub- article (1), no changes shall be made in the security system and in any associated security equipment or the approved ship security plan without the sanction of the Director-General.
- (4) Any contravention of sub- article (1) or (3) shall be an offence by both the company and master.

Article. 15. *Issue, endorsement, duration and validity of certificate*

- (1) When an initial or renewal verification is satisfactorily completed pursuant to article 14 the Director-General or a recognised security organisation acting on his behalf shall issue or, as the case may be, endorse an International Ship Security Certificate.
- (2) The International Ship Security Certificate shall be drawn up in a form corresponding to the model given in the appendix to part A of the Code.
- (3) The duration and validity of an International Ship Security Certificate shall be in accordance with section 19.3 of part A of the Code.

Article. 16. *Issue and endorsement of certificates by another Government*

- (1) The Director-General may request another Contracting Government to verify the ship and, if satisfied that the provisions of section 19.1.1 of the Code are complied with, to issue or authorize the issue of an International Ship Security Certificate to the ship and, where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with the Code.

- (2) A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Director-General and it shall have the same effect as if it was issued by the Director-General.

Article. 17 *Certificates issued or endorsed on behalf of another Government*

- (1) The Director-General may at the request of another Contracting Government verify the ship and, if satisfied that the provisions of section 19.1.1 of the Code are complied with, issue or authorize the issue of an International Ship Security Certificate to the ship and, where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with the Code.
- (2) A Certificate so issued shall contain a statement to the effect that it has been issued at the request of that Government and it shall have the same effect as the Certificate was issued or endorsed by that Government and not by the Director-General.

Article. 18. *Interim certification*

- (1) For the purposes of:
 - (a) a ship without a Certificate, on delivery or prior to its entry or re-entry into service;
 - (b) transfer of a ship from the flag of another Government to the Eritrean register
 - (c) a Company assuming the responsibility for the operation of a ship not previously operated by that Company

until the Certificate referred to in article 15(1), 16(1) or 17(1) is issued, the Director-General may cause an Interim International Ship Security Certificate to be issued, in a form corresponding to the model given in the appendix to Part A of the Code.

- (2) An Interim International Ship Security Certificate shall only be issued if the Director-General or a recognised security organisation on his behalf is satisfied that the conditions specified in section 19.4.2.1 to section 19.4.2.7 of part A of the Code are met.
- (3) An Interim International Ship Security Certificate may be issued by the Director-General or by a recognized security organization authorized to act on his behalf.
- (4) An Interim International Ship Security Certificate shall be valid for 6 months, or until the Certificate required by article 15(1), 16(1) or 17(1) is issued, whichever comes first, and may not be extended.
- (5) No subsequent, consecutive Interim International Ship Security Certificate shall be issued to a ship if, in the judgement of the Director-General or the recognized security organization, one of the purposes of the ship or a Company in requesting such certificate is to avoid full compliance with this Part beyond the period of the initial Interim Certificate as specified sub- article (1).
- (6) For the purposes of article 20, 21 and 22 the National Security Authority may, prior to accepting an Interim International Ship Security Certificate as a valid Certificate, ensure that the requirements of sections 19.4.2.4 to 19.4.2.6 of part A of the ISPS Code have been met.

Article. 19. *Prohibition on proceeding to sea without an appropriate certificate*

- (1) No Eritrean ship required to be verified under this Part shall proceed, or attempt to proceed to sea, unless there is in force a valid International Ship Security Certificate or an Interim International Ship Security Certificate.
- (2) Where a ship proceeds, or attempts to proceed to sea in contravention of sub- article (1) the company and the master shall be guilty of an offence.

Control and compliance measures

Article. 20. *Control of ships in port*

- (1) (a) For the purpose of these Regulations, every ship to which this Part applies is subject to control when in a port in the Eritrea by officers duly authorised by the National Security Authority or surveyors appointed under **the Maritime Code**.
(b) Such control shall be limited to verifying that there is onboard a valid Certificate, which, if valid, shall be accepted, unless there are clear grounds for believing that the ship is not in compliance with the requirements of these articles or part A of the ISPS Code.
- (2) When there are such clear grounds, or where no valid Certificate is produced when required, the duly authorized officers shall impose any one or more control measures in relation to that ship as provided in sub- article (3). Any such measures imposed must be proportionate, taking into account the guidance given in part B of the ISPS Code.
- (3) (a) Such control measures are as follows:
 - (i) inspection of the ship,
 - (ii) delaying the ship,
 - (iii) detention of the ship,
 - (iv) restriction of operations including movement within the port, or
 - (v) expulsion of the ship from port.(b) Such control measures may additionally or alternatively include other lesser administrative or corrective measures.

Article. 21. *Ships intending to enter a port*

1. The National Security Authority may require that ships intending to enter ports in Eritrea provide the following information to duly authorized officers to ensure compliance with this Part prior to entry into port with the aim of avoiding the need to impose control measures or steps:
 - (a) that the ship possesses a valid Certificate and the name of its issuing authority;
 - (b) the security level at which the ship is currently operating;
 - (c) the security level at which the ship operated in any previous port where it has conducted a ship/port interface within the timeframe specified in sub- article (3);

- (d) any special or additional security measures that were taken by the ship in any previous port where it has conducted a ship/port interface within the timeframe specified in sub- article (3);
- (e) that the appropriate ship security procedures were maintained during any ship to ship activity within the timeframe specified in sub- article (3); or
- (f) other practical security related information (but not details of the ship security plan), taking into account the guidance given in Part B of the ISPS Code.

Where requested by the National Security Authority, the ship or the Company shall provide confirmation, acceptable to it, of the information required above.

- (2) Every Eritrean ship to which this Part applies intending to enter the port of another Contracting Government shall provide the information described in sub- article (1) on the request of the officers duly authorized by that Government. The master may decline to provide such information on the understanding that failure to do so may result in denial of entry into port.
- (3) The ship shall keep records of the information referred to in sub- article (2) for the last 10 calls at port facilities.
- (4) (a) Where, after receipt of the information described in sub- article (1), officers duly authorised by the National Security Authority have clear grounds for believing that the ship is not in compliance with the requirements of this Part or part A of the ISPS Code, such officers shall attempt to establish communication with and between the ship and its Administration in order to rectify the non-compliance.
- (b) Where such communication does not result in rectification, or if such officers have clear grounds otherwise for believing that the ship is not in compliance with the requirements of this Part or Part A of the ISPS Code, such officers may take steps in relation to that ship as provided in sub- article (5). Any such steps taken must be proportionate, taking into account the guidance given in part B of the ISPS Code.
- (5) Such steps are as follows:
 - (a) a requirement for the rectification of the non-compliance;
 - (b) a requirement that the ship proceed to a location specified in the territorial sea or internal waters of Eritrea;
 - (c) inspection of the ship, if the ship is in the territorial sea of Eritrea; or
 - (d) denial of entry into port.

Prior to initiating any such steps, the National Security Authority shall inform the ship of its intentions. Upon receipt of this information the master may withdraw the intention to enter that port. In such cases, this article shall not apply.

Article. 22. *Additional control and compliance provisions*

- (1) In the event:
 - (a) of the imposition of a control measure, other than a lesser administrative or corrective measure, referred to in article 20(3); or

- (b) any of the steps referred to in article 21(5) are taken, an officer duly authorized by the National Security Authority shall forthwith inform in writing the Administration specifying which control measures have been imposed or steps taken and the reasons thereof. He shall also notify the recognized security organization, which issued the Certificate relating to the ship concerned and the Organization when any such control measures have been imposed or steps taken.
- (2) When entry into port is denied or the ship is expelled from a port in Eritrea, the National Security Authority shall communicate the appropriate facts to the authorities of the State of the next appropriate ports of call, when known, and any other appropriate coastal States, taking into account any guidelines developed by the Organization. Confidentiality and security of such notification shall be ensured.
- (3) Denial of entry into port, pursuant to article 21(4) and (5), or expulsion from port, pursuant to article 20(1) to (3), shall only be imposed where the duly authorised officers have clear grounds to believe that the ship poses an immediate threat to the security or safety of persons, or of ships or other property and there are no other appropriate means for removing that threat.
- (4) The control measures referred to in article 20(1) and the steps referred to in article 21(5) shall only be imposed, pursuant to articles 20 and 21, until the non-compliance giving rise to the control measures or steps has been corrected to the satisfaction of National Security Authority, taking into account actions proposed by the ship or the Administration or the Director-General, if any.
- (5) When control is exercised under article 20 or steps taken under article 21:
 - (a) 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
 - (b) necessary access to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes.

Port facilities

Article 23. *Port facilities: National Security Authority responsibilities*

- (1) The National Security Authority shall ensure that:
 - (a) port facility security assessments are carried out, reviewed and approved in accordance with the provisions of part A of the ISPS Code; and
 - (b) port facility security plans are developed, reviewed, approved and implemented in accordance with the provisions of part A of the ISPS Code.
- (2) The National Security Authority shall designate and communicate to the port facility operator and the port facility security officer the measures required to be addressed in a port facility security plan for the various security levels, including when the submission of a Declaration of Security will be required.

Article. 24. *Port facilities: duties of port facility operator*

- (1) The port facility operator shall ensure that port facilities shall comply with the relevant requirements of this Part and part A of the ISPS Code.
- (2) (a) In Particular the port facility operator shall appoint a suitably qualified port facility security officer, and ensure that he receives appropriate training, as specified in section 18.1 of part A of the Code.
(b) The port facility operator shall provide the port facility security officer with the resources, assistance and support necessary to enable him to carry out his duties.
- (3) The port facility operator shall ensure that port facility personnel having specific security duties have appropriate knowledge and receive appropriate training as specified in section 18.2 of part A of the Code.
- (4) The port facility operator shall ensure that other port facility personnel have appropriate knowledge as specified in section 18.3 of part A of the Code.
- (5) Any port facility operator, which fails to comply with this article, shall be guilty of an offence.

Article. 25 *Port facility security officers*

- (1) A port facility security officer shall carry out the duties and responsibilities placed on him by this Part and part A of the Code, in Particular those listed in section 17.2 of part A of the Code.
- (2) Any port facility security officer who fails to comply with this article shall be guilty of an offence.

Article. 26. *Drills and exercises*

- (1) To ensure the effective implementation of the port facility security plan, drills shall be carried out at appropriate intervals, taking into account the types of operation of the port facility, port facility personnel changes, the type of ship the port facility is serving and other relevant circumstances, taking into account guidance given in part B of the Code.
- (2) The port facility security officer shall ensure the effective co-ordination and implementation of the port facility security plan by Participating in exercises at appropriate intervals, taking into account the guidance given in part B of this Code.
- (3) Any contravention of sub- article (1) shall be an offence by the port facility operator and the port facility security officer.
- (4) Any contravention of sub- article (2) shall be an offence by the port facility security officer.

Supplementary

Article. 27. *Alternative security arrangements*

- (1) The National Security Authority may, when implementing this Part and part A of the ISPS Code, conclude in writing bilateral or multilateral agreements with other Contracting Governments on alternative security arrangements covering short international voyages on fixed routes between port facilities located within their territories.
- (2) Any such agreement shall not compromise the level of security of other ships or of port facilities not covered by the agreement.
- (3) No ship covered by such an agreement shall conduct any ship-to-ship activities with any ship not covered by the agreement.
- (4) Such agreements shall be reviewed periodically, taking into account the experience gained as well as any changes in the Particular circumstances or the assessed threats to the security of the ships, the port facilities or the routes covered by the agreement.

Article. 28. *Equivalent security arrangements*

- (1) The Director-General may allow a particular ship or a group of Eritrean ships to implement other security measures equivalent to those prescribed in this chapter or in Part A of the ISPS Code, provided such security measures are at least as effective as those prescribed in this chapter or part A of the ISPS Code. The Director-General, where he allows such security measures, shall communicate to the Organization Particulars thereof.
- (2) (a) When implementing this Part and part A of the ISPS Code, the National Security Authority may allow a Particular port facility or a group of port facilities located within its territory, other than those covered by an agreement concluded under regulation 27, to implement security measures equivalent to those prescribed in this Part or in part A of the ISPS Code, provided such security measures are at least as effective as those prescribed in this Part or part A of the ISPS Code.
(b) The National Security Authority, where it allows such security measures, shall communicate to the Organization particulars thereof.

Article. 29. *Communication of information*

- (1) The Government shall, not later than 1 July 2004 or, if later, then the date when chapter XI-2 comes into effect in Eritrea, communicate to the Organization and shall make available for the information of Companies and ships:
 - (a) the names and contact details of their national authority or authorities responsible for ship and port facility security;
 - (b) the locations within their territory covered by the approved port facility security plans;

- (c) the names and contact details of those who have been designated to be available at all times to receive and act upon the ship-to-shore security alerts, referred to in article 11(2)(a);
 - (d) the names and contact details of those who have been designated to be available at all times to receive and act upon any communications from Contracting Governments exercising control and compliance measures; and
 - (e) the names and contact details of those who have been designated to be available at all times to provide advice or assistance to ships and to whom ships can report any security concerns, referred to in article 8(2); and thereafter update such information as and when changes relating thereto occur.
- (2) The Government shall, not later than the date referred to in sub- article (1), communicate to the Organization the names and contact details of any recognized security organizations authorized to act on their behalf together with details of the specific responsibility and conditions of authority delegated to such organizations. Such information shall be updated as and when changes relating thereto occur.
- (3) The National Security Authority shall, not later than the date referred to in sub- article (1), communicate to the Organization a list showing the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval and thereafter shall further communicate when any of the following changes take place:
- (a) changes in the location or locations covered by an approved port facility security plan are to be introduced or have been introduced. In such cases the information to be communicated shall indicate the changes in the location or locations covered by the plan and the date as of which such changes are to be introduced or were implemented;
 - (b) an approved port facility security plan, previously included in the list submitted to the Organization, is to be withdrawn or has been withdrawn. In such cases, the information to be communicated shall indicate the date on which the withdrawal will take effect or was implemented. In these cases, the communication shall be made to the Organization as soon as is practically possible; and
 - (c) additions are to be made to the list of approved port facility security plans.

In such cases, the information to be communicated shall indicate the location or locations covered by the plan and the date of approval.

- (4) The Government shall, at five year intervals after 1 July 2004, communicate to the Organization a revised and updated list showing all the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval (and the date of approval of any amendments thereto) which will supersede and replace all information communicated to the Organization, pursuant to sub- article (3), during the preceding five years.

(5) The National Security Authority shall communicate to the Organization information that an agreement under article 27 has been concluded. The information communicated shall include:

- (a) the names of the Governments which have concluded the agreement;
- (b) the port facilities and the fixed routes covered by the agreement;
- (c) the periodicity of review of the agreement;
- (d) the date of entry into force of the agreement; and
- (e) information on any consultations which have taken place with other Governments;

and thereafter shall communicate, as soon as practically possible, to the Organization information when the agreement has been amended or has ended.

(6) Where the Director-General allows, under the provisions of article 28, any equivalent security arrangements with respect to a ship entitled to fly its flag or with respect to a port facility located within its territory, he shall communicate to the Organization Particulars thereof.

Enforcement

Article. 30. *Requirement to provide information*

(1) Without prejudice to article 21, but subject to section 9.8 of part A of the ISPS Code (ship security plans not subject to inspection except in limited circumstances) the National Security Authority may, by notice in writing served on any of the following persons—

- (a) the owner, charterer, manager or master of any ship which is in, or appears to the National Security Authority to be likely to enter, a port facility,
- (b) a port facility operator,
- (c) any person who carries on operations in a port facility, and
- (d) any person who is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him,

require that person to provide the National Security Authority with such information specified in the notice as the National Security Authority may require in connection with the exercise by the National Security Authority of its functions under this Part.

(2) A notice under sub- article (1) shall specify a date before which the information required by the notice is to be furnished to the National Security Authority.

(3) Any such notice may also require the person on whom it is served, after he has furnished to the National Security Authority the information required by the notice, to inform the National Security Authority if at any time the information previously furnished to, the National Security Authority (including any information furnished in pursuance of a requirement imposed by virtue of this sub- article) is rendered inaccurate by any change of circumstances (including the taking of any further measures for purposes of this Part or the alteration or discontinuance of any measures already being taken).

- (4) In so far as such a notice requires further information to be furnished to the National Security Authority in accordance with sub- article (3), it shall require that information to be furnished to it before the end of such period as is specified in the notice for the purposes of this sub- article.
- (5) A notice served on a person under sub- article (1) may at any time—
 - (a) be revoked by a notice in writing served on him by the National Security Authority, or
 - (b) be varied by a further notice under sub- article (1).
- (6) The Director-General may in like manner require the owner, charterer, manager or master of any Eritrean ship to provide him with information, and sub- articles (1) to (5) shall apply as if references to the National Security Authority were references to the Director-General.
- (7) Any person who—
 - (a) without reasonable excuse, fails to comply with a requirement imposed on him by a notice under this article, or
 - (b) in furnishing any information so required, makes a statement which he knows to be false in a material Particular, or recklessly makes a statement which is false in a material Particular, shall be guilty of an offence.

Article. 31. *Powers of inspection*

- (1) An authorised person shall have power, on production (if required) of his credentials, to inspect—
 - (a) any Eritrean ship,
 - (b) any other ship while in a port facility,
 - (c) any part of any port facility, or
 - (d) any land outside a port facility which is occupied for the purposes of a business by a person who—
 - (i) carries on (or appears to the authorised person to be about to carry on) harbour operations in a port facility for the purposes of that business, or
 - (ii) is permitted (or appears to the authorised person to be about to be permitted) to have access to a restricted zone of a port facility for the purposes of the activities of that business.
- (2) An authorised person inspecting a ship or any part of a port facility or any land outside a port facility under sub- article (1) above shall have power—
 - (a) to subject any property found by him on the ship or, as the case may be, to subject that part of the port facility or any property found by him there or on that land, to such tests,
 - (b) to take such steps—
 - (i) to ascertain what practices or procedures are being followed in relation to security, or
 - (ii) to test the effectiveness of any practice or procedure relating to security, or
 - (c) to require the owner, charterer, manager or master of the ship, the port facility operator or the occupier of the land to furnish to him such information,

as the authorised person may consider necessary for the purpose for which the inspection is carried out.

- (3) Subject to sub- article (4), an authorised person, for the purpose of exercising any power conferred on him by sub- article (1) or (2) in relation to a ship, in relation to a port facility or in relation to any land outside a port facility, shall have power—
 - (a) for the purpose of inspecting a ship, to go on board it and to take all such steps as are necessary to ensure that it is not moved, or
 - (b) for the purpose of inspecting any part of a port facility, to enter any building or works in the port facility or enter upon any land in the port facility, or
 - (c) for the purpose of inspecting any land outside a port facility, to enter upon the land and to enter any building or works on the land.
- (4) The powers conferred by sub- article (3) shall not include power for an authorised person to use force for the purpose of going on board any ship, entering any building or works or entering upon any land.
- (5) Any person who—
 - (a) without reasonable excuse, fails to comply with a requirement imposed on him under sub- article (2)(c), or
 - (b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence.

Article. 32 *False statements relating to baggage, cargo, etc.*

- (1) A person shall be guilty of an offence if, in answer to a question which—
 - (a) relates to any baggage, cargo or stores (whether belonging to him or to another) that is or are intended for carriage by sea—
 - (i) by a Eritrean ship, or
 - (ii) by any other ship to or from the Eritrea, and
 - (b) is put to him for purposes of this Part-
 - (i) by any of the persons mentioned in sub- article (2),
 - (ii) by any employee or agent of such a person in his capacity as employee or agent, or
 - (iii) by a constable,

he makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular.

- (2) The persons referred to in sub- article (1)(b) are—
 - (a) a port facility operator,
 - (b) the owner, charterer or manager of any ship, and
 - (c) any person who—
 - (i) is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him, and
 - (ii) has control in that restricted zone over the baggage, cargo or stores to which the question relates.

(3) In this section—

- (a) "cargo" includes mail;
- (b) "ship" does not include a ship used in naval, customs or police service; and
- (c) "stores" means any goods intended for sale or use in a ship, including fuel and spare Parts and other articles of equipment, whether or not for immediate fitting.

Article. 33 *False statements in connection with identity documents*

(1) A person shall be guilty of an offence if—

- (a) for the purpose of, or in connection with, an application made by him or another for the issue of an identity document to which this sub- article applies, or
- (b) in connection with the continued holding by him or another of any such document which has already been issued,

he makes to any of the persons specified in sub- article (3), to any employee or agent of such a person or to a constable, a statement which he knows to be false in a material particular, or recklessly makes to any of those persons, to any such employee or agent or to a constable, a statement which is false in a material particular.

(2) Sub- article (1) applies to any identity document which is to be or has been issued by any of the persons specified in sub- article (3) for the purposes of a ship security plan or a port facility security plan.

(3) The persons referred to in sub- article (1) are—

- (a) a port facility operator,
- (b) the owner, charterer or manager of any ship, and
- (c) any person who is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him.

Article. 34 *Unauthorised presence in restricted zones*

(1) A person shall not—

- (a) go, with or without a vehicle or vessel, onto or into any part of a restricted zone of a port facility except with the permission of the port facility operator or a person acting on behalf of the port facility operator and in accordance with any conditions subject to which that permission is for the time being granted, or
- (b) remain in any part of such a restricted zone after being requested to leave by the port facility operator or a person acting on behalf of the port facility operator.

(2) Sub- article (1)(a) does not apply unless it is proved that, at the material time, notices stating that the area concerned was a restricted zone were posted so as to be readily seen and read by persons entering the restricted zone.

(3) A person who contravenes sub- article (1) shall be guilty of an offence.

Article 35. *Offences relating to authorised persons*

A person who—

- (a) intentionally obstructs an authorised person acting in the exercise of a power conferred on him by or under these Regulations, or
- (b) falsely pretends to be an authorised person,

shall be guilty of an offence.

Article. 36 *Penalties, defences, etc*

(1) A person guilty of an offence under this Part is liable –

- (a) on summary conviction, to a fine not exceeding 250,000 Nakfas;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(2) It shall be a defence for a person charged under sub- article (1) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) Where an offence under this section is committed, or would have been committed save for the operation of sub- article (2), by any person due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this sub- article whether or not proceedings are taken against the first mentioned person.

PART II

CONTINUOUS SYNOPSIS RECORD

Article. 37 *Continuous Synopsis Record*

(1) This article applies to all ships engaged on international voyages, except-

- (a) ships of war and troop ships;
- (b) cargo ships of less than 500 tons;
- (c) ships not propelled by mechanical means;
- (d) wooden ships of primitive build;
- (e) pleasure vessels not engaged in trade; and
- (f) fishing vessels.

(2) (a) All ships shall be provided with a Continuous Synopsis Record for the purpose of providing an on-board record of the history of the ship with respect to the information recorded therein.

(b) For ships constructed before 1 July 2004, the Continuous Synopsis Record shall, at least, provide the history of the ship as from 1 July 2004.

(3) The Continuous Synopsis Record shall be issued by the Director-General to each Eritrean ship and it shall contain at least, the following information:

- (a) the name of the owner;

- (b) the date on which the ship was registered with in Eritrea;
 - (c) the ship's identification number in accordance with the Proclamation No. 77/1995 (A Proclamation to Regulate the Registration of Eritrean Ships)
 - (d) the name of the ship;
 - (e) the port at which the ship is registered;
 - (f) the name of the registered owner(s) and their registered address(es);
 - (g) the name of the registered bareboat charterer(s) and their registered address(es), if applicable;
 - (h) the name of the Company, its registered address and the address(es) from where it carries out the safety management activities;
 - (i) the name of all classification society(ies) with which the ship is classed;
 - (j) the name of the Director-General or of the Contracting Government or of the recognized organization which has issued the Document of Compliance (or the Interim Document of Compliance), specified in the ISM Code, to the Company operating the ship and the name of the body which has carried out the audit on the basis of which the document was issued, if other than that issuing the document;
 - (k) the name of the Director-General or of the Contracting Government or of the recognized organization that has issued the Safety Management Certificate (or the Interim Safety Management Certificate), specified in the ISM Code, to the ship and the name of the body which has carried out the audit on the basis of which the certificate was issued, if other than that issuing the certificate;
 - (l) the name of the Director-General or of the Contracting Government or of the recognized security organisation that has issued the International Ship Security Certificate (or an Interim International Ship Security Certificate), specified in part A of the ISPS Code, to the ship and the name of the body which has carried out the verification on the basis of which the certificate was issued, if other than that issuing the certificate; and
 - (m) the date on which the ship ceased to be registered with the Eritrea.
- (4) The Continuous Synopsis Record shall be kept on board the ship and shall be available for inspection at all times.
- (5) (a) Any changes relating to the entries referred to in paragraphs (d) to (m) of sub-article (3) shall be recorded in the Continuous Synopsis Record so as to provide updated and current information together with the history of the changes.
- (b) In case of any changes relating to the entries referred to in paragraph (a), the Director-General shall issue, as soon as is practically possible but not later than three months from the date of the change, to the ships entitled to fly the Eritrean flag either a revised and updated version of the Continuous Synopsis Record or appropriate amendments thereto.
- (c) (i) In case of any changes relating to the entries referred to in paragraph (a), the Director-General, pending the issue of a revised and updated version of the Continuous Synopsis Record, shall authorise and require either the Company or the master of the ship to amend the Continuous Synopsis Record to reflect the changes.
- (ii) In such cases, after the Continuous Synopsis Record has been amended the Company shall, without delay, inform the Director-General accordingly.

- (6) (a) The Continuous Synopsis Record shall be in the format developed by the Organization and shall be maintained in accordance with guidelines developed by the Organization. Any previous entries in the Continuous Synopsis Record shall not be modified, deleted or, in any way, erased or defaced.

Article. 38 *Transfer of flag by ship*

- (1) Whenever a ship is transferred to the flag of another State or the ship is sold to another owner (or is taken over by another bareboat charterer) or another Company assumes the responsibility for the operation of the ship, the Continuous Synopsis Record shall be left on board.
- (2) When a ship is to be transferred to the flag of another State, the Company shall notify the Director-General of the name of the State under whose flag the ship is to be transferred so as to enable the Director-General to forward to that State a copy of the Continuous Synopsis Record covering the period during which the ship was under their jurisdiction.
- (3) When a ship is transferred to the flag of another State the Government of which is a Contracting Government, the Director-General shall transmit to the Administration as soon as possible after the transfer takes place a copy of the relevant Continuous Synopsis Record covering the period during which the ship was under Eritrean jurisdiction together with any Continuous Synopsis Records previously issued to the ship by other States.
- (4) When a ship is transferred to the flag of another State, the Director-General shall append the previous Continuous Synopsis Records to the Continuous Synopsis Record the Director-General will issue to the ship so to provide the continuous history record intended by this article.

Article. 39 *Offences and penalties*

- (1) It shall be an offence by the Company, in relation to each of its ships, not –
 - (a) to provide to the Director-General the information required by Article 37(3) if requested by the Director-General;
 - (b) to inform the Director-General of the changes referred to in Article 37(5);
 - (c) to make the changes in the Continuous Synopsis Record as he is required to make under Article 37(5)(c);
 - (d) to inform the Director-General as is required by Article 37(5)(c)(ii); or
 - (e) to ensure the Continuous Synopsis Record is left on the ship and is available for inspection as required by Article 37(4),punishable by a fine not exceeding 700,000 Nakfas.
- (2) It shall be an offence by the master not to -
 - (a) make any changes in the Continuous Synopsis Record he is required to make under Article 37(5)(c);
 - (b) to ensure the Continuous Synopsis Record is left on the ship and is available for inspection as required by Article 37(4),

punishable by a fine not exceeding 350,000 Nakfa.

Dane at Asmara, thisday of April 5, 2010
Ministry of Transport and Communications