The Legal Challenges in Implementing Maritime Security

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ABSTRACT

Following the 9/11 attacks in the United States it had became clear that the shipping industry needs a new, more stringent and more comprehensive set of measures to address the measures of maritime security. The purpose of the International Ship and Port Facility Security Code is analysed, stressing the important role of the company and the ship, ship security officer, the port facility and its control and compliance, with the responsibility of contracting governments. The author points out that implementation is the key issue and that significant and far-reaching measures cannot be implemented at no cost. In author's opinion it is important to achieve balance between the new security regime and ensuring that disruption of global trade is kept to a minimum, as well as to reach balance between the freedom of navigation and the need for special protection.

1. INTRODUCTION

Shipping has traditionally been confronted not only to confront with natural perils of the sea, but also with the man-made threat of crime at sea, which is often violent and brutal, along with international terrorism. As long ago as the late 1970s IMO was forced to turn its attention to unlawful acts such as barrass, the unlawful seizure of the ships and their cargoes, and other forms of maritime frauds, as well as the acts of piracy and armed robbery against ships in various parts of the world.

Following the 9/11 attacks in the United States it had became clear that the shipping industry needs a new, more stringent and more comprehensive set of measures to address the measures of maritime security. The paper focuses on maritime security, the vulnerability of the shipping industry and the implementation of the International Ship and Port Security (ISPS) Code, as well as the Croatian Act on Security of Merchant Ships and Port Facilities Open to International Traffic.

2. INTERNATIONAL MARITIME SECURITY MEASURES INTRODUCED BY THE INTERNATIONAL SHIP AND PORT FACILITY SECURITY (ISPS) CODE

International Maritime Organization's (IMO) efforts to improve maritime security have been part of an all-embracing initiative across UN system to tackle terrorism. UN Security Council resolution 1368 was adopted the day after 9/11 attacks and, since then, several more UN resolutions have been adopted to counter terrorism. Security Council resolution 1456, for example, adopted in January 2003, requested the States to assist each other to improve their capacity to prevent and fight terrorism and invited Counter-Terrorism Committee to facilitate the provision of technical and other assistance by developing targets and priorities of global action. This resolution also calls on international organizations, such as IMO, to evaluate
ways in which they can enhance the effectiveness of their action against terrorism, including those by establishing dialogue and exchanges of information with each other. IMO’s work on maritime security intensified following the 9/11 attacks in the United States. It became clear that the shipping industry needed a new, more stringent and more comprehensive set of measures to address the question of maritime security.

At the same time, Contracting Governments to the Safety of Life at Sea Convention (SOLAS) attending the Assembly agreed to hold the diplomatic conference on maritime security to adopt the new regulations that might be deemed necessary to enhance ship and port security and prevent shipping from becoming a target of international terrorism.

The Diplomatic Conference of Maritime security was of crucial significance not only to the international community but the world community as a whole, given the pivotal role shipping plays in the conduct of world trade. The outcome of the Conference was a new, comprehensive security regime for international shipping.

The International Ship and Port Facility Security (ISPS) Code is the International Maritime Organization response to the perceiving increase in of terrorist threat to ports and shipping. The sense of urgency was such that many states were not willing to wait the time necessary for a regular procedure of drafting and ratifying of the new convention. Namely, as almost all the trading and shipping nations already are the signatories to the International Convention for the Safety of life at Sea (SOLAS), the code could be quickly implemented as a part of SOLAS. Consequently a brand new Chapter XI-2 (Special measures to enhance maritime security) is added after a renumbered Chapter XI-1 of the SOLAS.

The purpose of the Code is to provide a standardized framework for evaluating the risk, enabling the governments to offset changes in the threat that changes the vulnerability for ships and port facilities. Namely, it takes the approach that ensuring the security of ships and port facilities is basically a risk management activity and that to determine what security measures are appropriate, an assessment of risks must be made in each particular case.

Each Contracting Government was required to conduct security assessments. First, they must identify and evaluate important assets and infrastructures critical to port facility, as well as those area structures, that, if damaged, could cause significant loss of life or damage to the port facility’s economy and environment. Then the assessment must consider the most likely threats to the crucial assets and infrastructure in order to prioritise security measures. Finally, the assessment must address vulnerability of the port facilities by identifying its weakness in physical security, structural integrity, protection systems, procedural policies, communication systems, transportation infrastructures, utilities, and other areas within a port facility that may be a likely target. Once the assessment has been competed, the Contracting Government can accurately evaluate risk.

The Contracting Governments set the appropriate security level i.e. security levels 1, 2 and 3 correspond to normal, medium and high threat situations, respectively. The security level creates a link between the ship and the port facility, since it triggers the implementation of appropriate security measures for ships and for the port security.

3. THE CROATIAN ACT ON SECURITY OF MERCHANT SHIPS AND PORT FACILITIES OPEN TO INTERNATIONAL TRAFFIC
As a signatory of the SOLAS Convention the Republic of Croatia enacted the Act on Security of Merchant Ships and Port Facilities Open to International Traffic which provides for security of merchant ships of Croatian nationality in international navigation and port facilities in the Republic of Croatia open to international traffic, the obligations of the bodies of state administration, companies, port authority and concession licensees in the special-purpose ports, as well as of other natural and legal persons responsible for security, the measures for ensuring the safety of ships and ports, the procedure in case of safety threat, the control of implementation of the security measures, as well as maritime offences.

The Croatian Act on Security of Merchant Ships and Port Facilities open to International Traffic shall apply to passenger ships, including high-speed passenger ships in international navigation, cargo ships, including high-speed cargo ships of 500 gross tons plus in international navigation, mobile offshore drilling units registered in relevant registers in the Republic of Croatia, except when located in internal waters and territorial sea of the Republic of Croatia, as well as mobile offshore drilling units regardless of nationality, when located in the continental shelf of the Republic of Croatia, that is the protected fishing and ecological zone of the Republic of Croatia, as well as the ports open to international traffic.

A system of measures and procedures other than that set out in this Act may be established by way of international treaties for the ships operating on short international regular service routes. The system of measures must provide for the nearly equivalent protection level established by this Act and must not put at risk the protection level of other ships and ports achieved by implementing the measures and procedures set out in this Act. The violation of provisions of this Act shall constitute maritime offence.

3.1 The responsibility for security of maritime ships and ports

The Croatian ministry competent for maritime affairs shall be obliged to advise the International Maritime Organisation on the measures undertaken pursuant to provisions of Chapter XI-2 of SOLAS Convention. The ministry competent for internal affairs shall establish the security level for ports in the Republic of Croatia. The security level to be applied by ships flying Croatian flag shall be established by the ministry competent for internal affairs with prior approval of the ministry competent for external affairs. The ministry competent for internal affairs shall be obliged to advise immediately the directorate competent for safety at sea and National search and rescue coordination and navigation watch centre about the security level established and of all modifications thereto.

The notification concerning the alteration to the security level must contain at least the date and time of the modification, the newly established security level, a short description of the grounds for security level modification, the port or ports to which the security level applies, the protection measures that must be implemented besides the measures set out in the security plan of the ship and/or port, if any, the time of coming into force and the deadline for application.

The shipmaster may propose agreeing the Declaration of security (DoS) as a written agreement between the ship and the port or between two ships establishing the security measures that each one of them shall apply. When a ship is in the port that needs not to have the port facility security plan, that is for which no port facility officer has been appointed, the Declaration of security shall be agreed with a person designated by the port master of a competent port authority in each particular case. The agreeing of the Declaration of security
The records aboard the ship must be kept about the drills performed, registered incidents and ship safety.

Inventory and ship safety.

The shipmaster must give priority to those requirements necessary for maintaining the ship and navigation security. When according to expert evaluation of the shipmaster, the ship and navigation security is at risk, the shipmaster or, if he is not present, the person in charge of the ship, must proceed as necessary to ensure the measures of security to be taken are consistent with the required level of security. The company or any other person may not prevent the shipmaster to undertake the measures.

The ship owner and the port security plan.

The ship owner shall establish the special interest in security, it is proposed or required by international and national regulations and shall not be possible to establish the special interest in the same form as set out in the ship security plan or the approval of the ship security plan is required. The ship owner shall set out in the ship security plan, the special interest in security, the level of security, the risk assessment, and the special measures to be taken, in a consistent and clear manner over a limited time period.

The ship security plan (SSP) is the plan of measures about the ship governing the protection of property and other crews member whilst being held or proceed pursuant to the security level.

The company shall establish and other crew members shall be obligated to proceed pursuant to the security level.

In technical rules of the Groningen Register of Shipping.

The security system is established in technical rules of the Groningen Register of Shipping. The security system must be documented and approved by the ship owner. The security system shall be observed by the company, the port security plan and the approval of the ship security plan.

The security plan (SSP) is the plan of measures about the ship governing the protection of property and other crews member whilst being held or proceed pursuant to the security level.

A company security officer shall be obligated to provide for the development of the ship security plan.

3.2 Ship security.

The security officer shall be accountable for the development of the ship security plan and for implementation of the ship security plan on board the ship. The security officer shall be accountable for the development of the ship security plan and for implementation of the ship security plan on board the ship. The company security officer shall be accountable for the development of the ship security plan and for implementation of the ship security plan on board the ship. The company security officer shall be accountable for the development of the ship security plan and for implementation of the ship security plan on board the ship. The company security officer shall be accountable for the development of the ship security plan and for implementation of the ship security plan on board the ship.

The ship security officer (SSO) is the officer aboard the ship designated by the ship owner who is accountable for the development of the ship security plan and for implementation of the ship security plan on board the ship.
Convention, the ISPS Code and this Act shall be carried out at certification of the ship. The certification of ships shall be carried out following inspection of the ship in a manner and at the time laid out in technical rules of the Croatian Register of Shipping.

When the certification survey establishes that the ship meets the requirements of SOLAS Convention, the ISPS Code and this national Act on security of merchant ship and port facilities open to international traffic, the Croatian Register of Shipping shall issue the International Ship Security Certificate to the ship.

3.3 The company
The company is the shipowner or any other legal or natural person, including the charterer, who has taken from the shipowner the responsibility for operation and management of the ship and who has by taking over such responsibilities adopted all the duties and responsibilities set out in the International Safety Management (ISM) Code. In the ship security plan the company must expressly state that the shipmaster has an ultimate authority and responsibility in making the decisions concerning ship protection and security and the right to request assistance from the part of the company or any SOLAS Convention contractual government.

The company security officer (CSO) is the person designated by the company to ensure the implementation of ship security assessment, drawing up and implementation of the ship security plan and for communication with port facility security officers and the ship security officer. The company must ensure that the company security officer, the shipmaster and the ship security officer are rendered the necessary support in fulfilling their duties and responsibilities pursuant to this Act.

3.4 Port facility security
The port facility security officer (PFSO) is the person designated for drawing up, implementation, amending and maintaining of the port facility security plan and for communication with ship security officers and company security officers. The port facility security officer shall be appointed by the competent port authority or concession licensee in the special-purpose port for a period of five years. The appointment decision must establish the scope of responsibility of the port facility security officer.

Each port open to international traffic must have the port facility security assessment. The port authority or trade company licensee of the concession in special-purpose port shall be responsible for developing the port facility security assessment. The port facility security assessment shall be developed by the recognised port facility security organisation.

Based on the port facility security assessment the port facility security plan (PFSP) is the plan of measures governing the protection of a port facility, ships, persons, cargo, cargo transport units and ship stores within the area of a port facility from incidents posing a threat to security or security threats. Any person staying within the area of a port shall be obliged to proceed pursuant to instructions and in accordance with the port facility security plan and security levels in effect in a particular port.

The port master, the port authority security captain, another authorised person from the Ministry or the port facility security officer may demand from the ship intending to put in the
port to advise the expiry date of the International Ship Security Certificate, the security level of the ship, the security level of the ship applied in the preceding ten ports, the special and additional protection measures that the ship has undertaken in the preceding ten ports, other additional notifications relating to protection, except for details referred to in the ship security plan.

3.5 The role of the Croatian National maritime search and rescue and navigation watch centre

The National maritime search and rescue and navigation watch centre as well as the maritime communication system operator shall be responsible for receipt of a notification concerning the incidence of a security threat or risk that the ship may dispatch using the ship alert system. The maritime communication system operator shall be obliged to advise the National maritime search and rescue and navigation watch centre concerning the receipt of a notification concerning the incidence of a security threat as soon as possible.

Maritime search and rescue and navigation watch centre shall be obliged to notify the ministry competent for maritime affairs as well as the operational and communication centre of the competent police department on the territory where the ship vulnerable to security threat is located or the operational and communication centre of the ministry competent for internal affairs, insofar as the ship at the moment of dispatching the notification is located outside the internal waters and territorial sea of the Republic of Croatia.

On the measures and procedures undertaken in case of receipt of a notification concerning the incidence of security threat to the ship, the authorised person from the ministry competent for internal affairs shall be obliged to advise timely the port master of the competent port authority or National maritime search and rescue and navigation watch centre insofar as the ship is located in the area of internal waters and territorial sea of the Republic of Croatia. The ministry competent of maritime affairs or National maritime search and rescue and navigation watch centre insofar as the ship is located out of internal waters and territorial sea of the Republic of Croatia, the persons responsible for port facility security, insofar as the ship is located in the port area or intends to sail therein.

In the case of receipt of notification concerning the incidence of security threat to any port on the territory of the Republic of Croatia, the ministry competent for maritime affairs shall be obliged to inform the body competent for establishing the security level and the operational and communication centre of the ministry competent for internal affairs or competent police department. The authorised person from the ministry competent for internal affairs shall be obliged to advise timely on the measures and procedures undertaken in case the of incidence of security threat the Ministry, the port master of the competent port authority, the port facility operator or operators, the master of a ship or ships insofar as one or several ships are vulnerable to threat, all other services, institutions or persons whose assistance in eliminating the threat or its consequences might be necessary.

3.6 The certificates and inspection controls

The ship security officer, the company security officer and the port facility security officer must have the authorisation confirming their fitness for performing the tasks and duties. All the officers and other crewmembers must within 7 days from the date of embarkation aboard the ship acquire the knowledge of basic duties pursuant to the ship security plan. In order to ensure reliable implementation of the integral ship security plan, a general drill of all or
The majority of measures set out in the ship security plan must be conducted at least once a year. The time interval in between the two general drills may not exceed 18 months. In order to check the implementation of the port facility protection plan, a drill testing the capacity of timely application of a particular measure or procedure set out in the port facility security plan shall be conducted at least one every three months. The consecutive test drills must encompass all the measures and procedures set out in the port facility security plan, except for the measures and procedures whose checking is not appropriate.

Port authority navigation security captains, ministry competent for maritime affairs superintendents, and other authorised employees from the ministry shall carry out the control over application of relevant provisions of the SOLAS Convention, the ISPS Code and this Act aboard ships. The inspection control of the ship may be basic or detailed. When on occasion of the basic inspection the navigation security captain establishes that the ship has no valid certificate issued pursuant the relevant provisions of the SOLAS Convention or there is a suspicion that the ship does not meet the respective provisions of the SOLAS Convention, the ISPS Code or this Act, the navigation security captain may embark upon a detailed inspection control and arrest the ship or undertake any other measure set out in the Ordinance on the navigation safety inspection control.

4. IMPLEMENTATION OF LEGAL PROVISIONS HOLDS THE KEY

There is no doubt that the mere existence of a new regulatory maritime security regime will provide no guarantee that the act of terrorism against shipping may be prevented and suppressed. It is a the wide, effective and uniform implementation of the new measures that will ensure shipping does not become the soft underbelly of the international transport system.

The rationale behind the ISPS is that the ship and port security is a risk management activity imposing a number of responsibilities on the contracting governments, the port facilities and shipping companies to carry out a detailed risk assessment of each port facility and ship and to lay the procedures for dealing with any increased treat. As a preamble to the Code states, as threats increase, the only logical counteraction is to reduce vulnerability – and the Code provides several ways to reduce vulnerabilities, such as monitoring and controlling access, monitoring activities of people and cargo, ensuring security communications are readily available and requiring certain types of equipment, depending on the security level operation.

The implementation of the Croatian Act on Security of Merchant Ships and Port Facilities Open for International Trade includes increased cost to assist with security assessment, train security officers and obtain and maintain the required security certification. It includes the cost of managing the bodies competent for the procedure applicable in case of the security threat and the cost of inspection control. Such cost could be significant particularly for less prosperous countries.

In enacting the Act on Security of Merchant Ships and Port Facilities Open to International Traffic the Republic of Croatia did fulfil its obligation in accordance with the new provisions of ISPS Code. Only effective and uniform implementation of new international and domestic measures will ensure the final goals of the new provisions.

5. CONCLUSIONS

The implications of the ISPS Code are only now becoming clear as national authorities, flag states, ports and ship operators prepare to put this code into practise. Namely, the implementation is the key issue and significant and far-reaching measures cannot be
implemented at no cost. The vulnerability of the seagoing ships and ports did result in the new ISPS Code dealing with the legal responsibility for security of seagoing ships and ports. In author's opinion it is important to achieve the balance between the new security regime and ensuring that disruption of global trade is kept to a minimum, as well as to reach the balance between the freedom of navigation and the need for special protection.

The Croatian Act on Security of Merchant Ships and Port Facilities Open to International Traffic makes the reference to the SOLAS and ISPS Code and contains provisions in accordance with the convention under auspices of the International Maritime Organization. Its implementation, considering that ship and port security is a risk management activity, demands a strong financial support by the state and an investment in human resources.

In author's opinion the improved reporting procedure and stricter security requirements can be seen as an investment in assets of the shipping industry itself and, in a long term, may even help to improve the efficiency of the industry. The industry will, for security reasons again, ensure the invariable high standards of documentation.

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