LEGAL RESPONSIBILITY FOR SECURITY OF SEAGOING SHIPS AND PORTS

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ABSTRACT

After the incident of September 11, 2001 in New York, new provisions of the XI-2 SOLAS International Convention for the Safety of Life at Sea, 1974 and Part A of the International Ship and Port Facility Security Code (ISPS Code) as a mandatory code of the said Convention have been enacted in order to insure improvement of maritime safety. Said new requirements constitute a framework by way of which the ships and port facilities must cooperate in order to detect and eliminate actions that pose a threat to security of seaborne trade. The paper analyses new Croatian Act on the Security of Merchant Ships and Port Facilities Open to International Traffic as a comparative survey of the implementation of international law arrangements. Legal bases of responsibility as well as achievable scope of the Act in implementing the upgrading of security of Croatian nationality ships and Croatian ports open to international traffic are discussed.

1. INTRODUCTION

Following the September 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 to terrorist attacks and elaborates the Croatian Act on Security of Merchant Ships and Port Facilities Open to International Traffic, as an implementation of the International Ship and Port Security (ISPS) Code on a national level.

2. THE REASONS FOR INTRODUCING THE INTERNATIONAL SHIP AND PORT FACILITY SECURITY (ISPS) CODE

Historically, the shipping industry has regarded the prospect of terrorist attack unlikely. However, after the September 11 incident the US government requested a general increase in the level of security awareness.

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 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 put the procedures for dealing with any increased threat.

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 concessions 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 measures of security, as well as maritime offences.

This Act 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.

All ships of Croatian nationality referred above must no later than 1st July 2004 provide for the International Certificate on Ship Security and have the ship security officer. All ports in the Republic of Croatia referred above must within the said deadline secure the approved security state assessments and approved security plans. This Act applies to foreign ships entering ports in the Republic of Croatia since 1st July 2004, and in the protected fishing and ecological zone since 3rd October 2004.

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 States bodies, public institutions, legal and natural persons responsible for security of maritime ships and ports

The 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 may also be proposed by a port facility security officer or port master of the competent port authority when, pursuant to the port facility security assessment, the circumstances relating to putting in of a particular ship, embarking and/or disembarking of passengers or loading and/or unloading of the cargo or other circumstances indicate to higher security level.

The agreed Declaration of Security shall be kept aboard the ship for no less than 6 months from the date of its departure from the port in which it was agreed or until departure from the tenth port counting from the port in which it was agreed, whatever is later. The port facility security officer must provide for adequate keeping of the Declarations of security agreed and other records under this Act for no less than three years.

3.2 Ship security

The ship must have a ship security officer. The ship security officer (SSO) is the officer aboard the ship designated by the shipping company as a person responsible for security of the ship, including the implementation and maintaining of the ship security plan and for communication with the company security officer and the port facility security officer. The security officer shall be accountable for his/her work directly to the shipmaster.

The ship must have the ship security assessment. A company security officer shall be
International Ship Security Certificate to the ship.

Preliminary to the report on international standards, the creation Register of Shipping shall issue the
Connection to the ISPS Code and this national Act on security of merchant ships and port
When the certification survey establishes that the ship meets the requirements of SOLAS

The Records above the ship must be kept about the ship’s performances, registered incidents

Certification and ship safety:

measured and ship safety shall give priority to those requirements necessary for maintaining the
there is a conflict between the requirements for security and those for navigation and ship
security to express certification of the ship.

The protection of port security, the ship’s personnel, and the ship shall be provided in such a manner that

The company of any other person may provide the ship’s personnel with the necessary information to

Plan

Vulnerable to security threats, the ship’s personnel shall set up in the ship security plan and the port facility security
security measures apply over a limited time period when the overall security threat is
security norm. The security level 3 (SL3) is the level in which the port security plan and port facility
security levels 3 (SL3) and 2 (SL2) are levels in which the port security plan and port facility

The ship’s master and other crew members shall be able to proceed pursuant to the security

Connection to the ISPS Code and this national Act on security of merchant ships and port

The ship security plan (SSP) is the plan of measures adopted by the ship’s master to ensure the security

Crew and Register of Shipping

Ship security assessment must contain at least the elements stated in technical rules of the
security plan, including those parts for proving that the ship meets the security requirements from the

Ship security assessment must be documented and approved by the company security officer. The

obliged to provide for the development of the ship security assessment. The ship security

Legal responsibility for security of seagoing ships and ports
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 procedure applicable in case of security threat

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, training for security tasks and drills

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 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.

3.7 Inspection controls

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. THE IMPLICATIONS OF RESPONSIBILITY FOR SECURITY OF SEAGOING SHIPS AND PORTS

The purpose of the ISPS Code is to provide standardized, consistent framework for evaluating the risk, enabling governments to offset changes in the threat with the changes in vulnerability for ships and port facilities. It is a basically 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 is required to conduct port facilities security assessments. First, they must identify and evaluate important assets and infrastructures critical to port facility and those areas or structure that, when damaged, could cause significant loss of life or damage. Then, the assessment must consider the most likely threats in order to prioritise security measures. Finally, the assessment must identify its weakness in physical security, structural integrity, protection system, procedural policies communication systems, transportation infrastructure, utilities and other areas within the port that may be a likely target. Once the assessment is completed, the Contracting Government sets the appropriate
security level correspondent to normal, medium and high treat situation respectively.

In author's opinion 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. But there is no doubt that the mere existence of new regulatory maritime security regime focused on legal responsibility for security of seagoing ship and ports will provide no guarantee that the act of terrorism against shipping may be prevented and suppressed. Only effective and uniform implementation of new international and domestic measures will ensure the final goals of the new provisions.

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.

4. CONCLUSIONS

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 legal and practical 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 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.

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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Axel Luttenberger was born in Opatija, Croatia in 1957. After completing his secondary education in Opatija, studied at the University of Rijeka, where he took a degree in Law in 1980. Was working at the District Court in Rijeka (1981-1982) and practiced law for and on behalf of marine insurance company (1983-1993) having the Bar Examination (1996). Went on to specialize in Law of the Sea and Maritime Law at the University of Split receiving the Master Degree (1983) and Ph.D. (1993). His academic carrier begun at the University of Rijeka in the Department of Law of the Faculty of Tourism and Hotel Industry in 1993, where he worked, as Lecturer, presently as assistant professor. While lecturing, from 1993 to 2001 he was Mayor of Opatija, and from 1995 to Member of Parliament and its Law Committee. From 2002 he is an assistant professor and in charge of Maritime Law at the Faculty of Maritime Studies in Rijeka.