

The fast track to ISPS Code and national security regulation implementation and the implications for marine educators

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Abstract

A literature review, of the national regulations of Canada, the United States, and the United Kingdom have revealed a number of factors which affected the quality of instruction in the field of maritime security. The speed of development and implementation of the ISPS Code is the root cause of a plethora of problems affecting marine educators and trainers (MET). Port state security regulations have not completely matched the ISPS Code and the result has been a struggle to develop training that addresses both. Deviant national regulations have been often passed as 'just-in-time' legislation. For training providers this problem is exacerbated as the seafarer's country of residence, the flag state of the vessel, and the port state visited, are frequently not the same. Many of the training topics listed in the ISPS Code are outside the purview of most maritime lecturers, and the IMO Train-the-Trainer Course has not been conducted in a timely enough manner. A number of administrations recognize the IMO model course outlines while others insist on guidelines and timelines that differ. The myriad of training providers that have surfaced, how such providers are scrutinized, and how the associated course offerings are approved, needs to be uniformly addressed. This may have significant impact on proposed amendments to the STCW Code for Ship Security Officer certification. Port State Control Officers have training, and expectations may vary from country to country or indeed from person to person. *Keywords: ISPS, security training, train the trainer.*

1 Introduction

The events that unfolded in the United States on September 11, 2001 (9/11) have had enormous consequences, and the marine industry has not been immune from the resultant changes. These events lead the Commandant of the United States Coast Guard [1] to address the General Assembly of the International Maritime Organization (IMO), November 2001, and to urge it to implement measures, which addressed security within the maritime industry. The response of IMO [2] was to review, through Resolution A924 (22), the various security measures, and ultimately, through its Maritime Safety Committee (MSC) and Maritime Security Working Group (MSWG), to develop the International Ship and Port Facility Security Code (ISPS) and the associated security measures. These were adopted by a Conference on Maritime Security, December 2002, and were arbitrarily scheduled to come into force on July 1, 2004, a scant one and a half years later.

2 Implementation

In order for Contracting Governments to implement the new security measures, they had to decide whether to apply the ISPS Code in total or to modify it to meet that country's specific objectives. Although 102 countries had agreed to the content of the ISPS Code, upon returning to their own jurisdiction, some determined that the Code did not address that country's concerns. The time taken to design, draft, and amend state legislation often meant that it was not finalized until close to the mandatory implementation date.

The United States had been working on security measures, as of October 2001. It had existing security regulations for passenger vessels, which it used to shape its submission for ISPS and to formulate its own Maritime Transportation Security Regulations (MTSR). It felt an urgency to implement such measures because of the direct attack of 9/11. It was therefore able to publish, for stakeholder feedback, on July 1, 2003, a draft of the national security regulations, and on October 22, 2003 the modified final version.

However, the United States, while formulating such legislation in a timely fashion, created problems for other jurisdictions. The US was concerned that the ISPS Code only identified Part A as compulsory. It was envisioned that without a mandatory use of part B, many vessels and port facilities might only pay lip service to the requirements of the ISPS Code. The US also had concerns with the limited number of ship types to which the Code applied. IMO [3] determined that the ISPS Code was applicable to certain categories of ships engaged on international voyages, namely passenger ships; cargo ships of 500 gross tonnage and upward; and mobile offshore drilling units. The United States expanded the list to include vessels of 100 gross tonnage and upward; certain towing vessels; and certain towed barges, amongst others.

It also had concern that 'international voyage' as indicated by the ISPS Code, and defined by SOLAS, would not include voyages on the Great Lakes and St.

Lawrence Seaway. The USCG [4] therefore required US flag and foreign flag vessels on those voyages to comply with the national regulations.

Other flag states that had vessels trading with the United States were impacted by the US regulations. If those countries applied only the requirements of the ISPS Code, then there would be many vessels not meeting the US threshold and thus, either having to submit security plans to the USCG or running afoul of port state control measures upon attempted entry into the United States.

Canada, which had a heavy reliance on trade with the United States, determined that it was advantageous to draft legislation, which closely followed the American model. On November 26, 2003, Transport Canada [5] issued draft legislation and undertook a cross-country public consultative process. This proposed legislation modified the list of applicable vessels, but not to the extent that the United States had. It included a section on offshore facilities; a section outlining a restricted area security clearance program; and it defined applicable voyages to include those between countries on the Great Lakes and St. Lawrence Seaway. Heavy lobbying by stakeholders resulted in a number of changes including the deletion of sections on offshore facilities, and the restricted area security clearance program. The final version was completed on June 15, 2004, just days prior to the July 1 effective date. As of July 2005 Canada is still in the process of drafting amendments to the Canadian Maritime Transportation Security Regulations (MTSR).

The European Parliament [6] published *Regulation (EC) no 725/2004* on March 31, 2004. This regulation instructed member states to, along with Part A of the ISPS Code, take fully into account the guidance of Part B, but it also identified sections of Part B which were to be treated as mandatory. It defined applicable ships as per the ISPS model but expanded the list to include domestic Class-A passenger ships effective July 1, 2005, and other domestic ships effective July 1, 2007.

This evolving process had obvious implications for marine educators. There were mandatory training requirements for security officers outlined within the ISPS Code and national regulations. As indicated by this representative sampling of regulations, some countries were drafting legislation, which was 'just-in-time' and had variances to the ISPS Code and that differed from country to country. Ship and port facility owners, and training participants wanted relevant training in both the Code and pertinent national regulations. Classroom time was often used, not just reviewing the requirements of the ISPS Code, but also discussing how the various regulations would apply to individual vessels and port facilities. The relevancy of information given to students, particularly regarding national legislation, often depended on the timeliness of enrolment. Proactive companies intent on the early establishment of security plans and the early enrolment of crew or personnel into training courses were, by July 1, 2004, often operating with outdated and inaccurate information. It continues to be a challenging task for educators to deliver up-to-date information, particularly in terms of national legislation and guidance.

3 Participants and clientele

The maritime industry is a global one with seafarers from a multitude of countries, working on vessels flagged by an ever-increasing number of Contracting Governments. These ships visit a countless number of ports worldwide. The mariner may sometimes work on a vessel that requires security certification and at other times on one that does not. Subsequent employment may be found on a vessel of another flag state, with other security requirements. In addition to vessels there are thousands of designated port facilities covered by the new security code and security regulations.

These factors have also created challenges for marine educators. Participants are often trained, during time-off, at their country of residence. However, due to their vessel's flag or due to the port states that the ship is to visit, participants have little interest in the security regulations of their own country. The designated Ship Security Officer wants information that is relevant for their vessel. This will include national regulations for the flag state of their vessel and information regarding port state control measures for applicable port visits. The class composition, in terms of participants, of many courses may cover a number of permutations in terms of the country of residence, flag state, and port state control measures encountered. This has required of the trainer a body of knowledge that is varied, comprehensive, and as indicated previously, ever-changing.

The ISPS Code specifies training requirements for the Ship Security Officer (SSO); the Company Security Officer (CSO); the Port Facility Security Officer (PFSO); those, at both port facilities and onboard ships with security duties and those, at both port facilities and onboard ships without security duties. Each course requires its own learning objectives, and course material. Each may address the educational needs of a different category of learner. These factors have meant increased demands on both institutions and facilitators as they endeavoured to provide relevant training to all, particularly in the months before the mandatory implementation of the Code.

4 Training topics

On July 1, 2004, all applicable ships and port facilities were required to have implemented an approved security plan and to designate the appropriate security officers, and security personnel. Those persons, and in particular the CSO and appropriate shore-based personnel, the SSO, the PFSO and appropriate port facility security personnel, were to have received identified and appropriate training.

The IMO [7] ISPS Code identifies 25 areas of training that may be appropriate, for the position of SSO alone. Some of the listed topics include, relevant government legislation and regulations; methodology of ship security surveys; ship and port operations and conditions; knowledge of current security threats and patterns; recognition and detection of weapons and dangerous devices; methods of physical searches; and crowd management.

Port state control officers have recognized the Ship Security Officer training certificate as proof that the SSO has had the appropriate training. Therefore, as indicated by the IMO Model Course outline, the course is required to cover all of the topics as listed in the ISPS Code. Admittedly, the onus is on the appropriate security officer to include supplemental training where required. However, it would appear incumbent on the educator to have more than a passing knowledge of all the listed topics.

These topics can be divided into marine related topics and security related topics. Institutions have used trainers who have either a marine background or a military/security background and then provided supplemental training in the other general area, or have used a team approach, with a number of trainers with different backgrounds and experiences conducting the same course. In some cases the emphasis has been on life experiences or vocations of the facilitator, and with little emphasis on teaching qualifications.

Cost recovery requirements may necessitate increased course fees to cover the hiring of additional personnel. The ebb and flow of demand for security training may constrain the ability to have staff employed permanently, particularly security specialists, and thus require the availability of a number of contractual employees, which may in turn affect the continuity or quality of the course.

There was recognition by IMO that the mandated topics were not within the purview of most marine educators. Therefore, IMO [7] designed a six-day train-the-trainer security program, with a goal to provide eighteen offerings worldwide, to a target audience of security instructors of national training centres. Unfortunately, the IMO was also affected by the fast pace of implementation of the ISPS Code. According to an IMO [8] press release of August 6, 2004, 89.5 per cent of port facilities had approved security plans in place, and the compliance rate for ships was heralded at 90 percent. However, the train-the-trainer course was not scheduled to start until September of that year. This would imply that these port facilities and vessels had security officers that had not been trained by attendees of the train-the-trainer program.

5 Recognition and certification of training courses

IMO had foreseen that the area of training was to be problematic. In late 2003 the IMO, with the help of the Governments of the United States of America and India, provided model course outlines for courses for the Company Security Officer, the Ship Security Officer, and the Port Facility Security Officer.

Each included the course aims; the objectives; a list of suggested teaching aids; the course outline; a timetable; the learning objectives; and the instructor manual. IMO [9] indicated that the course outline was not intended as a tool to be rigidly followed but rather, “to identify the basic entry requirements and trainee target group for each course in universally applicable terms, and to specify clearly the technical content and levels of knowledge and skill necessary to meet the technical intent” of the ISPS Code. Training institutions were now provided with tools to more quickly formulate the required courses.

Canada decided that the IMO model courses were to be the basis for the required training. Due to time constraints, it was decided that it would not certify training institutions, but that Transport Canada would require those entities that were offering courses in Canada to submit their training packages for review. The agency provided feedback, which was followed with an audit of the course delivery. Those institutions that met the training requirements were listed on the Transport Canada web site, as being 'recognized' training providers.

This approval model focused on the audit of training in Canada versus the audit of training providers that were training Ship Security Officers for Canadian flag vessels. This process left the onus on Contracting Governments to determine which training providers, within their national boundaries were recognized or certified. For port state control purposes it accepted at face value the training certificates of other Contracting Government unless there was 'clear grounds' that there was an identified problem.

In the United Kingdom (UK) the Department for Transport [11] assigned the responsibility for ports and passenger ships to TRANSEC and the responsibility for cargo ships to the Maritime and Coastguard Agency (MCA). TRANSEC was responsible for accrediting and approving training organizations for Port Facility Security Officer training, while the MCA was responsible for SSO and CSO training. The MCA [12] procedure for accreditation of the training organization required the receipt of a letter of application along with an abundance of information, including the course program; lecture notes; visual aids; handouts; assessment forms; and instructor qualifications. The MCA then conducted an on-site audit, and subsequent to a successful evaluation, listed that organization as being certified by MCA.

This model, as applied to ships, focused not on where training had taken place, but rather the registry of the vessel. The SSO of a UK registered vessel would be required to undertake training at an MCA approved training facility. For some ship owners and training facilities, this created certain obstacles. For example, the SSO of a UK registered fishery patrol vessel trading in international waters but only visiting Canadian ports would be required to undergo training at an MCA approved training facility. If the facility were in the UK, training provided little exposure to the Canadian regulations. If the facility were in Canada, that institution would have to follow an approval process that only resulted in certification from the MCA.

If all countries followed this model, it would require training providers to undertake numerous, costly, time consuming, and repetitive auditing procedures. Normally training facilities would not know the flag state of the participant's vessel until the start date of training. If the training received were not recognized by the flag state it would necessitate that the participant receive redundant approved training. Training that is approved by the flag state of one vessel would not necessarily be approved for the SSO when working on a vessel of another flag state. This model leaves the onus on shipping companies and/or participants to determine if training providers are accredited by the appropriate flag state, with no common system in place for certification. Of course the other extreme

would see Contracting Governments without an approval process or guidelines and therefore a limited assurance of quality control of training programs.

The required length of the security courses has caused some confusion. The IMO model courses provided an itemized time tabling, with a course length of three days for each of the CSO and PFSO courses, and two days for the SSO course. Contracting Governments have required course durations, which may vary from this model. The MCA [13] required the SSO course to be of a three-day duration; the CSO course to be of a four-day duration; and a combined course to be of a five-day duration.

This illustrates some of the challenges for training providers in the area of certification. The problem was exacerbated prior to July 1, 2004 as ship and port facility owners, administrations, front-line personnel, and training providers, with significant time constraint, struggled to determine the varying requirements.

6 Seafarers' training, certification, & watch-keeping (STCW)

A Sub-Committee, of IMO [14] in a report to the MSC, January 2005, proposed amendments to the STCW Code. In Annex 6, it outlined new requirements for the certificate of proficiency for the Ship Security Officer. It specified the standards of competence, and detailed transitional provisions through to 2009.

These standards dictated that the candidate provide evidence of demonstrated competence, of appropriate level of knowledge, and of training and experience. The method for demonstrating competence would be through the assessment of evidence obtained from approved training or through examination. The Contracting Government would determine the agency responsible, and the method used for the oversight of approved training.

The transitional provisions determined that competence for existing SSO's would be established through either the approved seagoing service as an SSO; the performance of equivalent security functions; the passing of an approved test; or the completion of approved training.

There was a heavy emphasis on 'approval' in these proposed amendments. Contracting Governments, and training institutions will be required to determine the approval process for each of these identified topics. In some cases this may necessitate another series of review procedures. For example, in Canada, after 9/11, the newly formulated branch of Transport Canada-Security & Emergency Preparedness was responsible for all matters related to maritime security. It was the body, which reviewed all security training. Previously all courses governed by STWC were under the domain of Transport Canada-Marine Safety. Subsequent to the amendments to the STCW Code these two agencies will have to establish guidelines for the new approval process, and determine which department will be responsible.

To complicate matters the Sub-Committee, in Annex 10 of the report, determined that for Company Security Officer training there would be guidelines instead of mandatory requirements. The MSC also determined that there would be no mandatory requirements or guidelines for Port Facility Security Officer training, because the position was shore-based.

Most training institutions have offered training courses for the three identified security positions. In the months before July 1, 2004, they made use of the model courses to organize training and used the outlined procedures, to receive approval for those course offerings. With the adoption of the recommendations of the MSC there may now be a range of standards, and a number of regulatory bodies.

The speed in which the ISPS Code was to be implemented has contributed significantly to these evolving problems. The initial focus was to have approved security plans in place for the identified class of ships, and port facilities by the designated implementation date. It was recognized that training was required but the process appears to have unfolded in a reactive rather than proactive way. The recommended STCW Code changes will necessitate a review of course approvals and may lead to other modifications, which in the extreme, may force companies to spend more time and money on 'approved' training.

7 Port state control measures

Ship owners, CSO's, and SSO's were concerned with port state control measures that could be encountered. This topic was the focal point of discussion in many security course offerings.

The IMO [15] issued guidance in a circular entitled Interim Guidance on Control and Compliance Measures to Enhance Maritime Security. It gave basic guidance for security training and qualifications of port state control officers (PSCO); for ships entering waters of another Contracting Government; for control of ships in port; and for inspections. This information, while of value, was dated June 10, 2004. A high percentage of SSO's, and PSCO's had already undergone training by this date, and therefore did not have this information provided to them during training. In any case, this guidance did not always reflect the type of inspection to be anticipated while visiting various port states.

Some port states were more proactive in identifying port state control measures. The USCG [16] issued guidance on such measures through Navigation & Vessel Inspection Circular (NVIC) 06-03, on December 15, 2003. It introduced guidelines for the port state control targeting and boarding program. It gave the ship owner and Ship Security Officer comprehensive guidance for demonstrating compliance during such an inspection.

Other countries did not have formalized procedures in place. Canada did not fashion the Security & Emergency Preparedness branch of Transport Canada, for marine security, until after 9/11. It previously had an aviation division and subsequently seconded most of the personnel for the marine division from it. As of July 1, 2004, it had not issued formal guidelines for security boarding and inspection, and indeed had to retrain personnel for PSCO duty.

Port State Control Officers reviewed certain documentation in order to determine a vessel's security compliance. One such document is the Declaration of Security (DoS). The ISPS Code gave guidance on the usage of the DoS but stated that the Contracting Government should determine when the use of this instrument is required.

The Canadian MTSR of June 15, 2004 stipulated four scenarios for such use, namely when entities were operating at different MARSEC Levels; when one party did not have a security plan; during an interface with a specific vessel such as a cruise ship; or if the security officer of either had specific concerns.

The USCG issued guidance, May 2004, for DoS usage. It consisted of two tables, which included various permutations of different types of ships and barges, both manned and unmanned, carrying or not carrying certain dangerous cargos; and of different types of port facilities. Ships and port facilities were to use this 'DoS Applicability Decision Tool' to determine if the DoS were required.

The UK, through MCA, also issued guidance as to when a DoS was required. It identified nine specific situations for vessels to request use of a DoS and six situations for port facilities to initiate the DoS.

The fact that port state control guidance was often late in coming or that there were different state requirements for the use of the DoS indicates the challenge for marine educators to provide meaningful information to course participants. Personal experience has shown that reference calls to government representatives often resulted in changing or conflicting advice. It was not uncommon to find PSCO's, custom and immigration personnel, or local authorities in attendance at security courses, attempting to gain relevant information.

8 Conclusions

The events of 9/11 required a drastic and varied response. The drafting of the ISPS Code was the primary one by the maritime industry. As evidenced by examples discussed throughout this paper the speed of implementation created challenges for stakeholders, including marine educators and trainers.

A different approach to the implementation of the ISPS Code, whether by a phased-in approach, or by having an effective date which was further into the future would have allowed training institutions to conduct a proper needs/capability analysis, and to put more emphasis on the appropriate training of personnel. Greater effort, while drafting the ISPS Code, towards ensuring various state requirements were met, would have minimized the current variations in national legislation.

A certification process for security courses, which required only one audit procedure, and that was uniformly accepted by all Contracting Governments, would ensure more cost effective, timely, and uniform course offerings. It would have provided more standard guidelines, which were more conducive to the eventual STCW certification. The IMO Train-the-Trainer Program, while a worthwhile one, would have been more beneficial if offered in a timely fashion. These challenges, notwithstanding, marine educators and trainers will continue to play their part in the implementation of international security measures.

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