

Protecting seafarer's rights – The need to review the implementation of the ISPS code

Alsnosy BALBAA

*Nautical Department, College of Maritime Transport and Technology
Arab Academy for Science, Technology and Maritime Transport,
Alexandria, Egypt*

Abstract

The International Ship and Port facility Security Code (ISPS) has many measures of maintaining the security of the ship and port. In addition, a required port security plan facilitates the access of visitors, land-based labourers and workers, and seafarers' welfare to ships in ports. Certainly the code will enhance maritime security on board and in ports, but extra work has fallen on an already overburdened crew and master. Although the seafarers' support has increased maritime security, they are most likely considered to be victims of terrorist attacks, pirates and armed robbers. Piracy procedures are incorporated into the ship security plan; also stowaways should be prevented through the ship's own security system. Therefore, they will have extra work required to maintain the required level of security and to detect the threat. On the other hand, the security measures implementation in some countries is creating problems for seafarers to go ashore, and apply for individual visas. In addition, seafarers should maintain ship safety and protect the marine environment. Certainly the code will enhance maritime security and keep the sea and seafarers secure, but there is a need for proportionate measures that protect seafarers' fundamental rights and freedom.

Keywords: Seafarers' rights, shore leave, ISPS code, piracy, extra workload, seafarers' identity document.

1 Introduction

Ship-borne trade is an indispensable pillar of the global economy. The global economy relies on a productive and efficient maritime sector. Seafarers play a vital role in maintaining stability and promoting sustainable growth in the

maritime sector [4]. The rights and welfare of seafarers constituting the human element of the shipping industry must be respected and given priority by all the parties involved (flag states and port states).

The ISPS code is designed to improve security and better protect people and cargo, as well as ports and international shipping, against terrorism through its identity and transparency. The code deadline passed without any difficulties. There are many positive aspects of the code, but its implementation has revealed some negative points, especially for the seafarers on board the ship as well as in some countries. Difficulties that face the seafarers are the refusal of shore leave, extra loads, piracy procedures and stowaway prevention. Certainly it is very important to look forward to keeping the seafarers' rights to encourage them to join such a field at a time when the industry is already short of quality officers worldwide.

2 Historical Background

The hijacking of the Italian cruise liner ACHILLE LAURO, in October 1985, marked one of the first actual terrorist acts recorded in modern maritime history. Following this incident, the International Maritime Organisation adopted resolution A.584 (14) on measures to prevent unlawful acts that threaten the safety of ships and security of their passengers and crews. The International Maritime Organisation did not stop working towards the development and adoption of conventions and security regulations, IMO adopted, in March 1988, the Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation [1]. The Organisation had adopted some other security instruments such as: MSC\Circs.622 and 623, as revised, on the guidelines for administrations and industry on combating acts of piracy and armed robbery against ships; MSC\Circ.754 on passenger ferry security, providing recommendations on security measures for passenger ferries on international voyages shorter than 24 hours, and ports; Assembly resolution A.871 (21) on guidelines on the allocation of responsibilities to seek the successful resolution of stowaways cases;

Since the tragic events of September, 11, 2001 in the United States, Assembly resolution A.924 (22) (November 2001) called for a review of the existing international legal and technical measures to prevent and suppress terrorist acts against ships at sea and in port, and to improve security on board and ashore, aiming to reduce risks to passengers, crews, and personnel on board ships and in port areas.

IMO responded swiftly and firmly by developing new requirements under the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, namely the new chapter XI-2 on the special measures to enhance maritime security and the International Ship and Port Facility (ISPS) Code which was adopted by the SOLAS conference in December 2002. The new provisions entered into force on 1 July 2004, only 18 months after their adoption.

3 ISPS Code and Parties Responsibilities

The purpose of the ISPS code is to improve a standardised framework for evaluating risks, enabling governments to offset changes in the threat levels with changes in vulnerability for ships and port facilities. Through a number of minimum security requirements for ships and port facilities, the ISPS code will enhance security.

3.1 Contracting Governments' Responsibilities

Under SOLAS chapter XI and part A of the Code, Contracting Governments can establish Designated Authorities within Government to undertake their security responsibilities under the Code.

The setting of the security level is the responsibility of Contracting Governments and should apply to their ships and port facilities.

The code defines three levels for international use:

- Security level 1, normal
- Security level 2, lasting for a period of time when there is a heightened risk of a security incident; and
- Security level 3, lasting for the period of time when there is a probable or imminent risk of a security incident.

As mentioned in SOLAS chapter XI-2 and the ISPS Code, certain information should be provided to IMO, effective communication between company, ship security officers and the port facility security officers responsible for the Port Facility their ships serve should be made available.

3.2 The Company and the Ship Responsibilities

The Company Security Officer should be appointed by any shipping company operating ships to which the Code applies. IMO recommends that ship operators appoint an officer (who could be the master) to be responsible for the security of the individual vessel (the ship security officer).

The responsibilities of the ship security officer are:

- Advising the master on the threat assessment for the voyage and agreeing the ship's response.
- Regular security inspections of the ship.
- Implementing and maintaining the ship's security plan
- Proposing modifications.
- Encouraging security awareness and vigilance on board the ship.
- Liaising with port security officers during the ship's visit and with the ship's operator.
- Reporting, as appropriate, all occurrences and suspected occurrences of unlawful acts.
- Co-ordinating the implementation of the ship security plan with the appropriate port security[2].

The responsibilities of the Company Security Officer are ensuring that a Ship Security Assessment (SSA) is undertaken and that a Ship Security Plan (SSP) is prepared to which the code applies. The Company and Ship Security Officer are required to monitor the continuing effectiveness of the plan, including undertaking independent internal audits.

3.2.1 Master as Ship Security Officer

The master will bear the majority of administration and communication burdens. The SSO (if not the master) will still have to clear any decisions taken with CSOs and PFSOs on any security related issues with the master, and although he has overriding authority, this could lead to delay, confusion and duplication of efforts at critical times.

3.3 The Port Facility

Contracting Governments should undertake a Port Facility Security Assessment (PFSA) of their Port Facilities. The responsibilities of the Port Facility Security Officers are defined in the ISPS Code, as are the requirements for training they require and the drills they will be responsible for undertaking. The Port Facility Security Officer is responsible for the preparation of the Port Facility Security Plan (PFSP).

4 Current Realities

July first came and went without significant problems: a few detained ships only. The United States Coast Guard reported that only 19 vessels out of 1378 inspected were denied entry during the first week, and only 30 were detained in port. The cost to the world shipping industry of the ISPS code so far has been \$2.6 billion and there will be about \$1.5 billion to pay each year. On the plus side, the efficiency gains and reduction in theft and fraud will far outweigh the costs.

On 28 July 2004, IMO confirmed that 89.5% of more than 9000 declared port facilities had had their port security plans approved and that more than 90% of ships had been issued with IMO approved security certificates[3]. Also information suggests that almost 94% of the contracting governments to the SOLAS convention have approved security plans for 97% of the declared port facilities, which in total number in excess of 9600 worldwide.

5 ISPS Code and Seafarers Rights

It is known that seafarers work in a truly global industry, often falling between the gaps in national and international laws. The ISPS code came into being to enhance the maritime security and protect the passengers and crew on board. To take such measures, it was required from seafarers to do some tasks to keep the standards, but these tasks have added extra loads onto the seafarers in addition to the other tasks they perform: maintaining safety and protecting the marine

environment. The improper implementation of the ISPS code in some countries created some difficulties to the seafarers such as shore leave, identity cards, piracy and stowaways. These difficulties are discussed in the following sections.

5.1 Shore Leave, Visa and Seafarers

The need to afford special protection to seafarers is a major task. The seafarer's welfare is the most important issue, and shore leave is the most important element to keep seafarers welfare in the best condition. Nowadays, in some ports the seafarers face refusal to go on shore leave even for medical care; they might feel somehow rejected or their services not sufficiently recognized. As known, the maritime industry is short of quality officers worldwide and is also short of numbers in both officers and ratings as shown in Table 1. On the other hand, as known to all of us, a ship's stay in port has become very short and the seafarers' free time has become very limited, so, it will be worthy if the port authorities treat seafarers as partners in the fight against terrorism, and facilitate their access to ports and shore facilities. This treatment by the port authorities will provide every opportunity to relax and recover before seafarers again have to take their ships out to sea in pursuit of their peaceful objectives in the service of world trade.

In one recent example the chief officer of a tanker was deported from the USA and ban for ten years for going down the gangplank to take a draft reading. In another, a Russian officer, whose visa was in order but had not been checked by port officials, spent a night in jail before being deported for going ashore to make a call from a public phone only meters from his ship[8]. In some countries, they ask for individual visas; seafarers have to pay more costs to apply for visas and other related costs, although many seafarers do not know whether they will visit such countries asking for that kind of visa during their period of service on board.

District	Year 2005				Year 2010			
	Senior officers		ratings		senior officers		Ratings	
	Demand		supply		Demand		Supply	
OECD	162000	231000	129000	169000	166000	233000	113000	150000
East Europe	36000	40000	62000	122000	37000	40000	62000	138000
Africa \ Latin America	131000	157000	39000	95000	134000	156000	44000	102000
Far East	89000	148000	134000	332000	91000	147000	140000	342000
India Sub-continent	15000	26000	35000	115000	15000	26000	39000	127000
Total	432000	602000	399000	832000	443000	603000	397000	858000

Table 1: The estimation of supply and demand of world seafarers
source: BIMCO\ISF 2000

5.2 Identity Cards and Seafarers

Seafarers need access to port facilities for welfare purposes, in order to enable them to carry out their international moves; these facilities could be shore leave, joining or transferring to a ship and repatriation. The Seafarer's Identity Document Convention, 1958 (No.108) [5] requires a government to issue a seafarer's identity document to each of its nationals who is a seafarer. This entitles the seafarer to go on land for shore leave in another state which has ratified the convention, and may also enable the seafarer to transit without a visa to join his ship or for repatriation purposes. The function of the identity card is very important and could solve many problems met by the 1.2 million seafarers who will then be given the freedom of movement necessary for their well-being and for their professional activities if it is implemented in the right manner. The ILO Convention No. 185 Seafarers' Identity Document Convention (Revised), 2003 came into force on 09.02.2005.[6] It contains many facilities for seafarers including the upholding the principle that seafarers should not be required to hold a visa for the purposes of shore leave. On the other hand there are some statements in some articles that should be more accurate, defined and specified to avoid personal misunderstandings (Clear ground "1 -Article 6, national security).

5.3 Piracy, Stowaways and Seafarers

Seafarers and the maritime industry have been threatened by a growing piracy problem in many parts of the world; the total number of piracy and armed robberies against ships so far reported to IMO is 3.674, an increase of 21 since 30 September 2004[7]. The piracy procedures are incorporated into the ship security plan where it is required for the ship's crew to fight such piracy through the piracy procedures.

The ISPS code contains procedures to prevent stowaways reaching ships via ports, which means that a ship's own security system will have to try and prevent stowaways from boarding the vessel. Fighting piracy and preventing stowaways are tasks of a ship's crew; the owners seem to cover themselves and apply the international and national measures by issuing copious instructions for crew on extra watches, extra lookouts, extra pre-planning and post-incident response, but no word about extra crew to carry out all this extra work is added to seafarers, beside the other main tasks relating to safety and marine pollution prevention. At the same time the code will do little to address the piracy problem because piracy is directed against ships and not sovereign states. We must ensure that we do not increase the workload of already overburdened seafarers and that their fundamental rights, freedoms and basic dignity are protected.

5.4 Psychological Aspects and Seafarers

Nowadays, it is clear that the shipping industry (ports, coastal states, nations...etc.) treat seafarers as potential terrorists, the placing of armed guards at the foot of the gangway is rightly offensive to seafarers. A Russian officer, whose visa was in order but had not been checked by port officials, spent a night in jail before being deported for going ashore to make a call from a public telephone only meters from his ship; OECD workshop [9].

5.5 Ship Owners and Seafarers

Some ship-owning companies have even been required to pay for armed guards to prevent foreign seafarers from leaving their ships. In some countries the owners have to apply for a crew list visa and pay its cost; many ship operators try to reduce crew levels to a minimum and are reluctant to provide extra security staff or install new technology [10].

6 IMO and Seafarers

IMO has asked for a proper balance between enhancing security and protecting human rights. On June 7, 2004, IMO adopted an international circular (MSC/Circular 1112) that provides guidance to countries on shore leave and access to ships under the ISPS code. IMO has asked the International Christian Maritime organisation, governments and other non-governmental organisations to report to IMO any instances where the implementation of the ISPS code has adversely affected seafarers. The positive side of the ISPS code is that it will do for

security what the ISM Code did for safety and ship management, which is to put the whole subject under one standard set of rules and procedures.

6.1 Security Measures Raising Fatigue Concerns

Seafaring is an isolating job. Separation from family and relatives for long periods of time, the working and social environment are unnatural and no training can prepare crew for the vagaries of life at sea, dislocation and increased isolation, since unreasonable implementation of the ISPS code will significantly impact upon the seafarer's health and well being and the safe operation of the ship. It is widely accepted that subjective perceptions, performance and psychological change are core symptoms of stress and this is a major contributor to fatigue. 11]

7 Conclusions

Differences in interpretation of the Code in some countries:

1. The need for consistent interpretation of the ISPS Code is a major demand.
2. Denying shore leave to ship staff worsens their fatigue and loneliness.
3. A reasonable number of crew on board is a major concern to avoid extra loads.
4. The correct implementation of the Code should be observed and controlled by IMO, avoiding the restrictions of the national security rules.
5. Problems concerning piracy and stowaways should be given more international importance, especially with the national states.
6. The ISPS code will do for security what the ISM Code did for safety and ship management.
7. Intervention papers from seafarers and ship-owners are required at maritime safety committees.
8. Convention 185 should be fully corrected and implemented with the observation and control from IMO and ILO.

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