



International Journal of Multidisciplinary Research and Development



IJMARD 2014; 1(7): 27-29
www.allsubjectjournal.com
Received: 01-09-2014
Accepted: 27-11-2014
e-ISSN: 2349-4182
p-ISSN: 2349-5979

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The principles of ISPS

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Abstract

The system of security for ship and port facilities (International Ship and Port Facilities Security Code or ISPS Code) has come into force since 1 July 2004, because until 1 January 2004 there was no member of International Maritime Organization (IMO) which had objection to provisions and principles of ISPS Code. Republic of Indonesia itself has already given its consent to be bound through declaration of acceptance on 18 June 2003. ISPS Code is an amendment of SOLAS Convention 1974, since this convention isn't successful to ensure safety of ship together with its load (passengers and goods) when the ship stops in any ports or roadsteads and when it sails in the middle of the sea. A guarantee on the safety and security of ship and goods is not sufficient with implementing SOLAS Convention and the other Convention on maritime affairs, because in fact there are many attacks and violences which fall on the ships stopping in any ports and sailing at sea. To address or solve any deficiency or weakness existing in such the conventions, then ISPS Code stipulates variable obligations imposed on the ship's owner or operator, port's authority, and the government of IMO members which have already made declaration of implementing ISPS Code.

Keywords: Criminal Action, Flag state, Government, Owner or operator of ship, Port state, Security.

1. Introduction

The principal objective of IMO, as stated in its Constitution, is to provide machinery for co-operation among Governments in the field of governmental regulations and practices relating to shipping engaged in international trade. For this purpose the Organization is enjoined to encourage the adoption of the highest practicable standards in a number of specific fields, that is inter alia efficiency of navigation, maritime safety^[1]. Each state remains free in theory to create and apply its own legal standards relating to maritime safety or safety of shipping to ships flying its flag and, to a more limited extent, to foreign ships entering its ports or territorial sea. Nevertheless there would be chaos if these standards varied widely or were incompatible. Fortunately the international community has perceived the need for a set of uniform international standards to promote the safety of shipping. These standards are contained in a number of international conventions, most of which are the work of IMO. The shipping safety standards dealt with by these conventions consist of some factors, inter alia seaworthiness of ships^[1].

The main convention dealing with the seaworthiness of ships is the 1974 International Convention for the Safety of Life at Sea (SOLAS Convention), the latest in a succession of SOLAS Conventions, the first of which was inspired by the sinking of the Titanic. The Convention regulates standards relating to the construction of ships, fire-safety measures, life-saving appliances, the carriage of navigational equipment and other aspects of the safety of navigation, etc. In reality SOLAS Convention is not sufficient to ensure the maritime safety because there were many criminal actions, including terrorism conducted towards shipping activities some years ago. Ships of various countries operating both in the waters of flag states and of port states or of international waters are not in safe and secure condition from any threats and attacks committed by a group of criminals and terrorists. The violence threats and attacks are directed not merely to the ships of various kinds, such as ships of commerce, cargo and passenger, but also and even are directed to war ships in target. In general the hazardous threats and attacks emerge in areas of port facilities, since the security around the areas concerned doesn't attain a proper attention from security guarantee point of view. Such the condition motivates International Maritime Organization to revise or amend SOLAS Convention in order to promote more protection to certain ships and port facilities all over the world. That is why international community represented by IMO was successful in designing and issuing a Resolution on International Ships and Port Facilities Security Code (abbreviated as ISPS Code).

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Based on description of such the background, this article is focused to propose any facts constituted the background of the birth of ISPS Code; to put forward the scope of ISPS Code and the aims of establishment of the Code; to put forward all the requirements needed to reach such the aims; finally to explain the implementation committed by Republic of Indonesia.

2. The Background of ISPS Code Establishment

The provisions of ISPS Code have been adopted by IMO since December 12th, 2002 and have already been ratified by majority of its members, including the Republic of Indonesia. It is expected that its provisions could be implemented by each state. According to the ISPS provisions, the final limit of enacting such these provisions effectively was determined on 1 July 2004, provided that there was no objection conducted by a greater part of IMO members until the beginning of January 2004 [3].

The content of ISPS Code constitutes a revision or amendment of international rules regarding safety of life at sea which so far is mentioned as the Convention for the Safety of Life at Sea 1974 (SOLAS Convention 1974/1988) on minimum security arrangements for ships, ports and government agencies. Having come into force in 2004, it prescribes responsibilities to governments, shipping companies, shipboard personnel, and port or facility personnel to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade. Such the Code is instituted by international society to face the increased variable threats of security which can occur wherever and whenever, mainly threats to security of ships and port facilities all over the world. Development and implementation were speeded up progressively in reaction to the tragedy occurred in September 11th, 2001 and to the bombing of the French oil tanker Limburg. Before the tragedy 9/11 (nine eleventh), ISPS Code was created as part of the international community's response to the hijacking of the Italian cruise ship Achille Lauro on October 7, 1985, where during this event a Jewish American disabled passenger was killed. The US Coast Guard, as the lead agency in the United States delegation to the International Maritime Organization, advocated for the measure. The Code was agreed at a meeting of the 108 signatories to the SOLAS Convention in London in December 2002. The measures agreed under the Code were brought into force on July 1, 2004. Studies conducted by IMO stated that there have been some factors motivating an increase of criminal action towards commerce and passenger ships for many years beforehand. The factors concerned might be mentioned, such as the ships used by the criminals operating in the sea more longer and more higher in their speed so that they could easily pursue the commerce and passenger ships and a target of a kind. Furthermore the other factors bringing about the increase of criminal action were the limited capability of commerce ships to protect themselves that they weren't possible to face any attack of the criminals, particularly of the pirates and other violence actors. The criminals certainly had and brought complete weapons in such a way that they could easily overcome the crews. There were some cases regarding with any attacks emerged to the commerce and passenger ships, even to war ships in various areas of international waters indicating intensive increase of these attacks. One of the cases which has been ever occurred was an hijacking incident of commercial ship M.S. Columbia Eagle in national waters of Thailand in 1970 [1]. Besides this case, the attack of terrorism toward USS Cole (warship of

United States) within waters of Aden harbor. The attack of a kind was directed not only to interest of United States, but also to the ships of another states. The hijacking the passenger ship Achille Lauro occurred beyond the Egyptian coastline in 1985. The hijacking of a passenger ship called M.S. Trabzon in the waters of Turk was conducted by a terrorist group supporting the Russian separatist movement. The whole configuration of crimes conducted toward commercial ships around the world indicated an increasing year-by-year trend. Among the reported cases to IMO on 2001, there were 16 incidents of piracy documented and this organization stated that 3 ships were lost, whereas many sides recognized that there were more cases which were unreported to IMO. This condition emerged, since the cases which occurred within waters of certain states and were reported by ships' owners or operators didn't gain any response of local authorities as expected. Further such the report was usually too late to be sent by the competent institution. That is the historical background concerning the establishment of International Ship and Port Facilities Security System (ISPS).

3. The Objectives of ISPS

The essential objectives of the ISPS are: 1) to detect security threats and implement security measures; 2) to establish roles and responsibilities concerning maritime security for governments, local administrations, ship and port industries at the national and international level; 3) to collate and promulgate security-related information; 4) to provide a methodology for security assessments so as to have in place plans and procedures to react to changing security levels.

4. The Requirements Needed

Furthermore regarding the requirements existing within the ISPS Code, the Code doesn't regulate in details any specific measures which have to be taken by each port and ship in order to ensure the safety of such the facilities in fighting the terrorism, because of the many different types and sizes of these facilities. Otherwise the ISPS Code outlines a standardized, consistent framework for assessing any risk, enabling the governments to suppress or offset changes in threat with changes in vulnerability for ships and port facilities. The requirement standards which have to be completed by any ships embrace 1) ship security plans; 2) ship security officers; 3) company security officers; 4) certain onboard equipment.

For port facilities, the requirements embrace 1) port facility security plans; 2) port facility security officers; 3) certain security equipment. Nevertheless there are still additional requirements which have to be completed for security of ships and for security of port facilities, such as 1) monitoring and controlling access; 2) monitoring the activities of people and cargo; 3) ensuring security communications are readily available. Therefore the ships which provide any services for routes of international navigation have to plan and secure themselves maximally, with preparing security officers and their equipment in such a way that they have capability to conduct a deterrence of all of the threats and terrorism attacks. In this case any ship is obliged to own and bring early-warning instrument system, to prepare a high technological communication's network, device detecting any threats or terrorist attacks and any other threats. ISPS Code offers any greater discretion and competence as well to such the ships to maintain themselves in order to face any physical threats and attacks which may be committed by a group of criminals in

shipping. Therefore the ships concerned are given authorities to use all the methods to fight the attacks, including to commit any movement of vessel and to use any device of security existing on board maximally.

5. Implementation of ISPS

Respecting the problem of implementation and application of ISPS Code's provisions within national law of a state, it is put forward inter alia that the United States has issued regulations to enact the provisions of the Maritime Transportation Security Act of 2002 and to align and unify domestic regulations with the maritime security standards of SOLAS and the ISPS Code [2]. These regulations can be found in Title 33 of the Code of Federal Regulations Parts 101 through 107. Part 104 contains vessel security regulations, including some provisions that apply to foreign ships in national waters of the state.

There are some typical ships experiencing difficulties for implementing the provisions of ISPS Code, particularly cargo vessels with small crews undergoing cargo operations. Assigning tasks to a crewmember or ship's crew to be continuously at the entrance to the vessel whilst undergoing cargo operations leaves less crew available for other work. In some cases this condition could lead to dangerously low levels of crewmembers attending a hazardous operation. However hiring shore-based personnel to perform guard duties can alleviate this problem. Nevertheless hiring action may not be possible in some countries, since it is not unknown that usually security guard is a job of criminals. Passenger vessels and cruise ships typically have a much larger crew including designated security staff and do not suffer from this problem. That is more or less the difficulty to implement ISPS Code's provisions.

As a member state of IMO Republic of Indonesia has ratified ISPS Code and committed an acceptance declaration of ISPS Code since June 18th, 2003. Based on this declaration Indonesian country is obliged to implement the provisions of the code and to apply the principles of security of ships and port facilities on all the Indonesian ships and port facilities which have international status. The Government of Indonesian Republic has been intensively preparing some preliminary basic activities since mid year 2003. Such the activities which have already been conducted are that the Indonesian Government has been socializing the security standards for ships and port facilities and some aspects relating with ships and port facilities. Such the activity of socialization is communicated to maritime society. The other activity is that the Government has already chosen some port facilities in a context of application of ISPS Code's provisions. Furthermore the Government has already established security organization or recognized security organization. The Government has already issued a declaration on the application of ISPS Code. It is necessary that Indonesian Government had better select some international ports to certify. Such the selection needs to be committed, since the available time is not sufficient to certify all the international port facilities of which their number is about 141 ones existing within Indonesian territory. The Government of Indonesian Republic has to focus and take into account of the security aspect at respective port, inter alia regarding threat level from the lowest scale until highest level through surveying an incident to security or terrorist attack potentially occurred at every port facility. The evaluation on the security level concerns not only land side of the port facility, but also waters around the port, including area of landing and internal waters.

6. Conclusion

Declaration of implementation of ISPS which was committed by Government of Indonesia ten years ago is aimed at enhancing national economic growth through activities of international trade. The trade's activities among states implicates variable sectors, inter alia the sector of transportation via land, air and sea. An effectivity of sea transportation certainly is not separated from issue of navigation safety, since without any guarantee of navigation safety is it impossible that the transportation activities could be running efficiently and effectively in framework of serving and promoting the economic growth. Without the navigation safety's guarantee will be giving a contribution to an emerging awkwardness in this country in achieving freedom idealism established in article 33 of Constitution 1945. It is necessary that the issue regarding safety of navigation is given a serious attention with the result that in ensuring the safety of navigation the Government of Indonesia shall control any implementation or performance of the ISPS provisions by any shipping company (ship's owner or operator), the authority of port facilities and offshore installations. When the Indonesian shipping company which doesn't implement ISPS, then any ships flying Indonesian flag aren't allowed by any destination state, but this state has already implemented the provisions of ISPS, to enter into any port facilities belonging to the destination state. When the port facilities existing in Indonesia have already implemented ISPS, any ships of flag state which didn't implement or has not implemented the ISPS yet, then such the ships are not allowed to enter into Indonesian port facilities.

7. Reference

1. Brown ED. Brown and R.R. churchill, The UN Convention on the Law of the Sea : Impact and Implementation, Honolulu, The Law of the Sea Institute, William S. Richardson School of Law University of Hawaii.
2. Churchill RR, Lowe AV. The Law of the Sea, Manchester UK, Manchester University Press.
3. Wikipedia, the Free Encyclopedia, www.google.com.