

Contribution from the International Maritime Organization (IMO)

IMO activities focussed on maritime security and the prevention of the use of ships for transport of weapons of mass destruction

IMO measures do not explicitly focus on “preventing terrorists from acquiring weapons of mass destruction” but on maintaining the security of the ship at all times to prevent use of the ship for a terrorist purpose.

Maritime security is an integral part of IMO's responsibilities. A comprehensive security regime for international shipping entered into force on 1 July 2004. The mandatory security measures, adopted in December 2002, included a number of amendments to the 1974 Safety of Life at Sea Convention (SOLAS), the most far-reaching of which enshrined the International Ship and Port Facility Security Code (ISPS Code), which contains detailed security-related requirements for Governments, port authorities and shipping companies in a mandatory section (Part A), together with a series of guidelines about how to meet these requirements in a second, non-mandatory section (Part B).

In essence, the Code 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 the risks must be made in each particular case.

The purpose of the Code is to provide a standardized, consistent framework for enabling governments to offset changes in assessed threat with pre-planned preventive security measures in order to reduce vulnerability and thus to manage the risk for ships and port facilities.

This risk management concept has been embodied in the Code through a number of minimum functional security requirements for ships and port facilities. For ships, these requirements include:

- ship security plans
- ship security officers
- company security officers
- certain onboard equipment

For port facilities, the requirements include:

- port facility security plans
- port facility security officers
- certain security equipment

In addition the requirements for ships and for port facilities include:

- monitoring and controlling access
- monitoring the activities of people and cargo
- provision of security communications
- training, drills and exercises.

What has changed since 1 July 2004?

The biggest change is that the Contracting Governments to the 1974 SOLAS Convention are able to formally exercise of control over ships in accordance with the provisions of chapter XI-2 and of the ISPS Code.

At the same time, the Contracting Governments are obliged to address all the objectives and functional requirements of the ISPS Code and to ensure that appropriate security measures and procedures are in place in the port facilities and waterways located within their territory.

The requirements form the international framework through which Governments, ships and port facilities can co-operate to detect and deter acts which threaten security in the maritime transport sector.

The maritime security provisions of SOLAS chapter XI-2 and the ISPS Code are part of a wider initiative to counter terrorism, including action by the Counter Terrorist Committee of the UN Security Council through resolution 1373; co-ordination with other UN agencies and Interpol through the UN Counter-terrorism implementation task force; co-operation with the WCO on container security; and joint initiatives with the ILO on port security and identification documents etc.

The Maritime Safety Committee and its subsidiary bodies are continuously working on additional elements of and guidance for the mandatory requirements, e.g. Ship Security Alert Systems (SSAS), long-range identification and tracking (LRIT) of ships, control and compliance measures, training and certification of security officers, etc.

2005 Protocol to the SUA Convention

Among the unlawful acts covered by the 1988 SUA Convention in Article 3 are the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.

The 2005 Protocol to the SUA Convention adds a new Article 3bis which states that a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally:

- when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from any act:
 - uses against or on a ship or discharging from a ship any explosive, radioactive material or BCN (biological, chemical, nuclear) weapon in a manner that causes or is likely to cause death or serious injury or damage;
 - discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage;
 - uses a ship in a manner that causes death or serious injury or damage;
 - transports on board a ship any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act;
 - transports on board a ship any BCN weapon, knowing it to be a BCN weapon;

- any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; and
- transports on board a ship any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.

The transportation of nuclear material is not considered an offence if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non Proliferation of Nuclear Weapons (Subject to conditions).

Under the new instrument, a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence under the SUA Convention or an offence set forth in any treaty listed in the Annex. The Annex lists nine such treaties.

The new instrument also makes it an offence to unlawfully and intentionally injure or kill any person in connection with the commission of any of the offences in the Convention; to attempt to commit an offence; to participate as an accomplice; to organize or direct others to commit an offence; or to contribute to the commissioning of an offence.

A new Article requires Parties to take necessary measures to enable a legal entity (this could be a company or organization, for example) to be made liable and to face sanctions when a person responsible for management or control of that legal entity has, that capacity, committed an offence under the Convention.

The amended Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation will enter into force ninety days after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.

10 States have ratified or acceded to the 2005 SUA Protocol.

In addition to the development of legal instruments and associated training and guidance material, IMO has focussed on assisting Governments to implement the provisions of SOLAS chapter XI-2 and the ISPS Code through its technical cooperation programme. Such activities have included conducting training courses, needs assessment missions, seminars and workshops on regional and national bases.