

Controversies surrounding the isps code assignment



IMO was formed in 1948 with after acknowledgement of the need to improve safety at sea through development of international regulations. IMO is a permanent international body and an agency of the United Nations, which in brief, regulates the shipping industry. IMO promotes maritime safety through development of international regulations which are to be followed by all shipping nations. IMO plays a key role in ensuring that lives at sea are not put at risk and that the marine environment is not polluted by shipping – as summed up in IMO's mission statement: Safe, Secure and Efficient Shipping on Clean Oceans¹.

It can be seen from IMO's mission statement that maritime safety is directly related to maritime security. Only a secure environment would be safe.

Security was not much of a concern till the tragic event of 9/11 attacks on the US. All sectors of the society and industry raised eye brows and security became a prime concern in all walks of life. Shipping industry also reciprocated to the uproar. International Ship and Port Facility Security Code (ISPS Code), an internationally agreed upon regulatory framework that seeks to address maritime security, was enacted immediately after 9/11 terrorist attacks.

ISPS code was made mandatory under the SOLAS Convention – this is how IMO linked safety to security. ISPS Code came into force on 1st July 2004. Today it has been more than 5 years since the implementation of the ISPS code. This paper will examine the controversies surrounding the ISPS Code, its rationale and safety objectives and whether these have been met, how it affected the industry and conclude recommendations for reconstruction of the policy so as to enhance maritime security and safety. A number of <https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

websites and online databases were referred to for the purpose of this study and have been appropriately referenced in the endnotes. TABLE OF

CONTENTS 1. IDENTIFICATION OF POLICY 2. THE CONTROVERSY 3.

RATIONALE BEHIND THE ISPS CODE 4. SAFETY OBJECTIVES OF THE ISPS

CODE 5. SIDE EFFECTS OF SOMALI PIRACY - FINANCIAL IMPACTS 6.

RECONSTRUCTION OF THE ISPS CODE 6. 1 EXISTING MEASURES TO CURB

SOMALI PIRACY 6. 2 EFFECTIVENESS OF EXISTING MEASURES TO CURB

SOMALI PIRACY 6. 3 FURTHER MEASURES REQUIRED TO CURB SOMALI

PIRACY 6. 4 RECOMMENDATIONS FOR RECONSTRUCTION OF THE ISPS CODE

2 1. IDENTIFICATION OF POLICY IMO's policy to enhance maritime security through implementation of ISPS Code will be discussed in this assignment.

ISPS Code was formulated after the catastrophic 9/11 terror attacks on the US. Many innocent lives were lost due to a lapse in security. Need to enhance maritime security was then felt by the shipping industry. The need for a policy or regulation for enhancing maritime safety was mainly at the behest of US government concerned about the possibility of terrorist organisations doing something like turning a liquid propane tanker into a floating suicide bomb and setting it off in a major American port². Such an incident could have had catastrophic results.

SOLAS Convention, which was primarily concerned with Safety Of Life At Sea and seaworthiness of vessels, was amended to include ' measures to enhance maritime security' and these amendments are known as the ' International Ship and Port Facility Security Code' (ISPS Code). ISPS contemplates other threats like the hiring of terrorists onto ship crews and the smuggling of explosives and detonators onto vessels³. The last decade <https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

saw an increased focus on maritime security. ISPS Code was formulated and made mandatory within a very short span of time, merely 18 months after its adoption.

Following the 9/11, Assembly resolution A. 924(22) in 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 aboard and ashore⁴. The aim was to reduce risks to passengers, crews and port personnel on board ships and in port areas and to the vessels and their cargoes and to enhance ship and port security and avert shipping from becoming a target of international terrorism⁵.

SOLAS conference adopted the ISPS Code in December 2002 and the Code came into force on 1st July 2004⁶. 3 2. THE CONTROVERSY Like any other policy, the implementation of ISPS Code within a very short span of time is also surrounded by controversies. Of these, the most notable controversy as to the justification of ISPS Code is created due to the extraordinary increase in Somali pirate activity and hijacking of ships in recent years. Acts of piracy, armed robbery and hijacking of ships is one of the main concerns of IMO and is the shipping community today and these concerns are addressed in IMO's measures to improve maritime security and in the ISPS Code. Section 8. 9. 2, Part B of the ISPS Code recognizes ' hijacking or seizure of the ship or of persons on board' as a threat to maritime security. Implementation of the ISPS Code should have reduced the incidents of piracy and armed robbery at sea but the statistics prove otherwise. Transiting Gulf of Aden and the Somali waters is not less than a nightmare for seafarers and ship owners. Many

ships have been hijacked and seafarers have been held hostage for ransom in recent years.

Such acts have considerably affected the safety of life at sea and placed a question mark on the ISPS Code. Effective implementation of the provisions of ISPS code on board ships should not render them as easy targets for the hijackers. The actual situation is however on the contrary and ISPS compliant ships are easily targeted and hijacked by the Somali pirates. All efforts to apprehend the piracy activity in the region appear to be futile. Though IMO and the shipping community at large have been seriously addressing the situation, results are not being achieved as desired.

Figures compiled by IMO show that, in the first quarter of 2008, there were 11 piracy attacks in that region, rising to 23 in the second quarter and rocketing to 50 in the third and 51 in the fourth quarters, making a total of 135 attacks during 2008, resulting in 44 ships having been seized by pirates and more than 600 seafarers having been kidnapped and held for ransom⁷. Global piracy statistics reveal that in the first nine months of 2009, 114 vessels were boarded, 34 vessels hijacked and 88 vessels fired upon. A total of 661 crewmembers were taken hostage, 12 kidnapped, six killed and eight reported missing⁸.

Number of incidents Chart 1: Type of attacks;
 Jan Jan-Sept 2005-2009 160 140 120 100 80 60 40 20 0 Attempted Boarded
 Fired upon Hijacked Rise in Firing incidents 2005 2006 2007 2008 2009 Rise
 in Hijacking incidents Years Source: Compiled from data provided by I

International Maritime Bureau PRC 4 The controversy here is that the ISPS Code has not been successful in eliminating acts of terrorism against the ships. Ship owners having spent huge amount of money for effective

<https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

implementation of ISPS Code onboard ships, still find their ships prone to terrorist activities. . RATIONALE BEHIND THE ISPS CODE The purpose of the ISPS Code is to provide a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat levels with changes in vulnerability for ships and port facilities⁹. ISPS Code is based on the perception that in order to determine appropriate security measures to ensure maritime security, assessment of risks shall be made for each particular case. Security measures then taken will therefore be ' case specific' and not ' general' in nature.

Figure 1: Risk Management Concept for ISPS Code applicable to ships Ship Security Assessment Certain Onboard Equipment ISPS Code Ship Security Plan Company Security Officer + Ship Security Officer 4. SAFETY OBJECTIVES OF THE ISPS CODE The ISPS code is a necessary first step in establishing a global maritime security framework. Any act of piracy and armed robbery can impact on human life, the safety of navigation and the environment. Piracy is a criminal act, which not only affects the victims but also has severe financial repercussions¹⁰.

ISPS Code aims to improve maritime safety through enhancing maritime security. For IMO, balance had been a recurring theme throughout the entire process of developing and implementing the new maritime security regime, where the concern had been expressed that, if the focus were placed too heavily on " security" and less attention was paid to the other 5 parts of IMO's responsibilities, i. e. " safety", " the environment" and the " facilitation of maritime traffic", then this would have detrimental effects¹¹. IMO has been successful in achieving the desired objectives of the ISPS Code.
<https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

However the recent scourge of piracy in Somali waters has considerably tainted the accomplishments of ISPS Code in enhancing maritime security. Violent acts of piracy and hijacking in Somali waters are on the rise. Ship's crew is being hijackings held hostage for ransom thus seriously jeopardizing safety of life at sea. Following graph illustrates the recent hike in seafarers being held hostage for ransom. Chart 2: Types of violence to crew; Jan Jan-Sept 2005-2009

Year	Number of Crew Assaulted	Number of Crew Held Hostage	Number of Crew Injured	Number of Crew Kidnaped	Number of Crew Killed
2005	600	500	400	300	200
2006	700	600	400	300	200
2007	700	600	400	300	200
2008	700	600	400	300	200
2009	800	700	400	300	200

Rise in crew held hostage 0 2005 2006 2007 2008 2009 Years

Source: Compiled from data provided by I International Maritime Bureau PRC

5. SIDE EFFECTS OF THE SOMALI PIRACY - FINANCIAL IMPACTS Mr. E. E.

Mitropoulos, Secretary Secretary-General of IMO, speaking at the 6020th meeting of the UN Security Council on 20th November 2008, stated that " Notwithstanding IMO's prime concern " Notwithstanding over the safety of life of seafarers, whose ships sail off the coast of Somalia, the strategic importance and significance of the Gulf of Aden makes it imperative that this shipping lane (that serves more than 12% of the total volume of oil transported by sea - not to mention commodities carried by bulk carriers and finished goods transported by containerships) is adequately protected against any acts that might disrupt the flow of traffic through. " there If the present situation in the Gulf of Aden persists, ship owners might opt for an alternative route which will cause tremendous hike in the freight rates. The three areas of concern to IMO, particularly relevant to the situation off Somalia and in the Gulf of Aden, can be summed up as:

- the need to protect seafarers, fishermen and passengers;
- the need to ensure the

uninterrupted delivery of humanitarian aid to Somalia effected by ships chartered by the World Food Programme; and the need to preserve the integrity of the Gulf of Aden - a lane of strategic importance and significance to international shipping and trade, both east and west of the Suez Canal, which is used by some 22, 000 vessels annually, carrying around 8% of the world's trade, including more than 12% of the total volume of oil transported by sea, as well as raw materials and finished goods.

The alarming issue here is that horn of Africa is such a strategic location that all ships heading for Suez Canal have to pass through it. Gulf of Aden connects Mediterranean to the Indian Ocean. Closure of Gulf of Aden would stand for closure of Suez Canal. Ships will have to sail around the southern tip of Africa and incur heavy costs. 6. RECONSTRUCTION OF THE ISPS CODE

The recent uproar in the piracy situation in Somali waters call for an amendment in the ISPS Code, which would enable seafarers to protect themselves from the violent attacks of pirates.

Much work has been done by the IMO and shipping community to avert hijackings in Somali waters but the undesirable pirate activity is expanding well beyond the Somali waters and posing a serious threat to international shipping. Figure 2: Map of Somalia Piracy Activity Source: ICC International Maritime Bureau, Piracy and Armed Robbery against Ships Report for the period 01 January - 30 September 2009 7 It would be worth noting that Somali pirates are not the traditional lot who board and hijack vessels with knives and daggers etc. they use and fire Automatic weapons viz. AK AK-47 rifles and Rocket Propelled Grenades (RPGs). The following graph illustrates the types of weapons used by pirates in different parts of the world. Number <https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

of incidents Chart 3: Types of arms used by geographical location Jan - Sept

2009 160 140 120 100 80 60 40 20 0 Guns Knives Other Weapons Not

Stated Geographical location Source: Compiled from data provided by I

International Maritime Bureau PRC 6. 1 EXISTING MEASURES TO CURB

SOMALI PIRACY

International shipping community has responded to the alarming rise in Somali piracy and a number of measures have been taken in this respect, few of which are listed as follows follows; • • • • • Establishment of “ Internationally Recognized Transit Corridor” (IRTC) in Gulf of Aden and Group Transits offered by the Navy (EUNAVFOR). IMO Circular MSC. 1/Circ. 133 - Best Management Practices to deter piracy in the MSC. 1/Circ. 1335 Gulf of Aden and off the Coast of Somalia. International Maritime Bureau - Maritime Security Hotline.

EU Naval force ‘ Maritime Security Centre Horn Of Africa’ website www. mschoa. org Establishment of UK Maritime T Trade Operations (UKMTO) in Dubai Dubai. Establishment of Maritime Liaison Office (MARLO) in Bahrain. Patrolling of Naval craft from France, Russia, India, Malaysia, China, NATO and avar most notably the EU (EUNAVFOR ATALANTA). 6. 2 EFFECTIVENESS OF EXISTING MEASURES TO CURB SOMALI PIRACY Sincere efforts of IMO and the industry to restrain the piracy and hijackings in Somali waters have not been as successful as desired.

There is no doubt that the mere existence of the new regulatory maritime security regime will provide no guarantee that acts of terrorism against 8 shipping may be prevented a suppressed¹³. Existing maritime security

<https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

legal and safety reasons. It has been debated that carriage m 9 of armed private security guards may lead to an escalation of violence¹⁶. On the other hand, use of non-lethal weapons to combat armed pirates is proving to be of little success. IMO Circular MSC. 1/Circ. 1335 - ' Best Management Practices to deter piracy in the Gulf of Aden and off the Coast of Somalia', section 2. . ii, recommends review of the Ship Security Assessment (SSA) and implementation of the Ship Security Plan (SSP) as required by the International Ship and Port Facility Code (ISPS) to counter the piracy threat¹⁷. An honest review of the Ship Security Assessment would call for an armed response to any pirate attack.

6. 4 RECOMMENDATIONS FOR RECONSTRUCTION OF THE ISPS CODE

The latest development in the US following the attacks on ' Maersk Alabama' and ' Liberty Sun' is to enact an act allowing mariners to defend their vessels and be protected by law as well.

The introduction of HR 2984 " US Mariner and Vessel Protection Act", which if passed will provide US Mariners with immunity in US Courts if they wound or kill pirates whilst responding to a pirate attack¹⁸. The Bill directs the US Coast Guard (USCG) to certify firearms training for merchant vessels and provides for any trained mariner using force plus Owner, Operator, or Master of the said vessels to be exempt from liability in US courts as a result of that use of force¹⁹. This immunity shall not only be granted to US mariners. Seafarers belong to an international community and shall be treated equally in terms of their human rights.

IMO and the shipping industry shall collaborate on amending the ISPS Code and other relevant international treaties, enabling arming of seafarers to

<https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

defend themselves and be exonerated from judicial proceedings arising there from. Such an amendment to ISPS Code, if agreed upon by the international shipping community, would take considerable time to come into effect. Carriage of armed security guards onboard merchant ships in piracy prone waters shall be considered as a transitional measure. 10 CONCLUSION

Recent piracy situation in Somali waters pose a very serious risk to the shipping industry from both safety and commercial aspects.

Though a number of efforts have been initiated, the situation is escalating at an alarming rate. International shipping has to continue and the plague of piracy will remain with it, as has been since ancient times. However, the modern day piracy and hijacking of ships involve use of automatic weapons which gravely endanger the lives of seafarers. Sore memories of those who have been held for ransom or have been attacked by the pirates will take years to fade. Self still remembers the traumatic experience of a foiled pirate attack in the Gulf of Aden in 2008.

Having considered all existing measures in place to deter piracy, an armed response to the pirates seem to be the most practical solution, though this has been surprisingly rejected by the key players of shipping industry. It may be argued that when airlines can employ marshals, why ships can not follow the suit. ISPS Code, being a comprehensive legislation to enhance maritime security, shall be amended in order to provide provisions for seafarers to be armed or to have privately contracted armed security guards on board while transiting high risk Somali waters.

Placing armed security guards on board will have a financial impact on the ship owners nevertheless it will be much lesser than the amount paid as ransom for release of hostages and the ship.

11 BIBLIOGRAPHY International Maritime Organisation, World Wide Web, <http://www.imo.org> ICC International Maritime Bureau, Piracy and Armed Robbery against Ships Report for the period 01 January - 30 September 2009 International Chamber of Commerce, International Maritime Bureau Piracy Reporting Centre, World Wide Web, <http://www.icc-ccs.org> Jackson, Eric, Maritime lawyers vs. Mireyistas on ISPS certification process, World Wide Web, http://www.hepanamanews.com/pn/v_10/issue_05/business_01.html Hesse, Hartmut & Charalambous, Nicolas L. , ' New Security Measures for the International Shipping Community', WMU Journal of Maritime Affairs, Vol. 3, No. 2, (2004) Maritime Security Centre Horn of Africa, World Wide Web, <http://www.mschoa.org> Lloyd's list, World Wide Web, <http://www.lloydslist.com>

12 ENDNOTES 1 International Maritime Organisation, World Wide Web, <http://www.imo.org/>, (accessed 25 Dec 2009) 2 Jackson, Eric, Maritime lawyers vs. Mireyistas on ISPS certification process, World Wide Web, http://www.hepanamanews.com/pn/v_10/issue_05/business_01.html (accessed 24 Dec 2009) 3 Jackson, Eric, Maritime lawyers vs. Mireyistas on ISPS certification process, World Wide Web, http://www.thepanamanews.com/pn/v_10/issue_05/business_01.html (accessed 24 Dec 2009) 4 Hesse, Hartmut & Charalambous, Nicolas L. , ' New Security Measures for the International Shipping Community', WMU Journal of Maritime Affairs, Vol. 3, No. 2, (2004), pp. 123-138. 5 Hesse, Hartmut & Charalambous, Nicolas L. , ' New Security Measures for the International Shipping Community', WMU Journal of Maritime Affairs, Vol. , No. 2, (2004), pp. 123-138. 6 <https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

Maritime Organisation, World Wide Web, <http://www.imo.org/>, (accessed 25 Dec 2009) 7 International Maritime Organisation, World Wide Web, http://www.imo.org/home.asp?topic_id=1178, (accessed 25 Dec 2009) 8 International Chamber of Commerce, International Maritime Bureau Piracy Reporting Centre, World Wide Web, http://www.iccccs.org/index.php?option=com_content&view=article&id=376:unprecedented-increase-insomali-pirate-activity&catid=60:news&Itemid=51 (accessed 24 Dec 2009) 9 Hesse, Hartmut & Charalambous, Nicolas L. 'New Security Measures for the International Shipping Community', *WMU Journal of Maritime Affairs*, Vol. 3, No. 2, (2004), pp. 123-138. 10 International Maritime Organisation, World Wide Web, http://www.imo.org/home.asp?topic_id=1178, (accessed 25 Dec 2009) 11 Hesse, Hartmut & Charalambous, Nicolas L. , 'New Security Measures for the International Shipping Community', *WMU Journal of Maritime Affairs*, Vol. 3, No. 2, (2004), pp. 123-138. 12 International Maritime Organisation, World Wide Web, http://www.imo.org/home.asp?topic_id=1178, (accessed 25 Dec 2009) 13

Hesse, Hartmut & Charalambous, Nicolas L. , 'New Security Measures for the International Shipping Community', *WMU Journal of Maritime Affairs*, Vol. 3, No. 2, (2004), pp. 123-138. 14 Fairplay daily news, Union slams UK pirate policy, World Wide Web, <http://www.mschoa.org/FairplayStoryDisplay.aspx?articlename=dn0020091223000008>, (accessed 28 Dec 2009) 13 15 Lloyd's list, Pirates fire on SCI tanker off west India, World Wide Web, <http://www.lloydslist.com/ll/news/pirates-fire-on-sci-tanker-off-westindia/20017732255.htm>; [jsessionid=8B1E2DB874CA83AFD34A8B7632A1C7CB.d25bd3d](http://www.lloydslist.com/ll/news/pirates-fire-on-sci-tanker-off-westindia/20017732255.htm)

<https://assignbuster.com/controversies-surrounding-the-isps-code-assignment/>

240cca6cbb6e6afc8c3b5655190f397f, (accessed 28 Dec 2009) 16

International Maritime Organisation, World Wide Web, <http://www.imo.org/>,

(accessed 25 Dec 2009) 17 International Maritime Organisation, World Wide

Web, http://www.imo.org/includes/blastDataOnly.asp/data_id

%3D26641/1335.pdf, (accessed 25 Dec 2009) 18 ICC International Maritime

Bureau, Piracy and Armed Robbery against Ships Report for the period 01

January - 30 September 2009, pp. 39-40. 19 ICC International Maritime

Bureau, Piracy and Armed Robbery against Ships Report for the period 01

January - 30 September 2009, pp. 39-40. 14