

ISPS CODE: THE SECURITY DECADE 2004–2014



Aftermath of the attack on MT Limburg, (Source : courtesy of Svitzer, Netherlands)



Fire Fighting and Salvage efforts for MT Limburg, (Source : courtesy of Svitzer, Netherlands)

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1. TEN YEARS OF SECURITY?

This century has been, and continues to be dominated by security concerns, and the shipping industry is one of those most affected by changes in law, culture and practice. Gone are the days of the carefree port visits that older seafarers like to recall from when they were just starting out on their careers. Port calls these days tend to be short and intensive, and in many places seafarers do not receive the warm welcome of old.

Underpinning the regulatory framework for security in the shipping industry is the IMO's ISPS Code, which first came into force in 2004. While some may see it as "just another regulation" that has to be complied with by way of paperwork, it is a key part of the process of a ship's security and her ability to trade effectively across many different jurisdictions. In particular, but not exclusively, the US Coast Guard (USCG) takes compliance very seriously.

The reported attack on a Container vessel passing through the Suez in 2013, and the earlier attacks on the USS Cole, the M/T Limburg, and the Superferry 14 made international headlines – and gave graphic illustration to the threats that shipping, mariners and passengers can be exposed to. Regrettably the list of all such incidents is much longer.

Yet, dramatic incidents aside, it is the day to day security when calling at a Port that Members and their Ships and Crews need to pay consistent attention to, or risk unauthorised persons coming on board to undertake unlawful activities leading to losses, costs, delays and reputational consequences for Ship-owners and their Managers.

It is at this stage where Ship-owners, Masters and Crew have the best chance to exercise control and mitigate risks by taking a disciplined approach to loss prevention and regulatory compliance.

A failure to comply with the ISPS Code or to take these matters seriously can have a severe impact on the safety of the crew, a vessel's ability to trade, and the reputation of her Owners and Managers.

Most recently it has been the tragic outbreak of Ebola in West Africa that has again highlighted the need to ensure the ISPS Code is understood and adhered to in practice, as vessels seek to protect themselves against possible infection by limiting shore side interaction as well as being alive to an increased risk scenario involving stowaways from countries particularly affected by the outbreak.



An attempted breach of a Port's Security fence. [Source :The Friday Times]

2. WHAT IS THE ISPS CODE?

The “International Ship and Port Facility” Code, ISPS for short, is mandated by virtue of Chapter XI-2 of SOLAS (Safety of Life at Sea Convention) and applies to:

- Passenger vessels
- Cargo vessels of 500 GT or greater
- Mobile Offshore Drilling Units
- Port Facilities engaged on international voyages

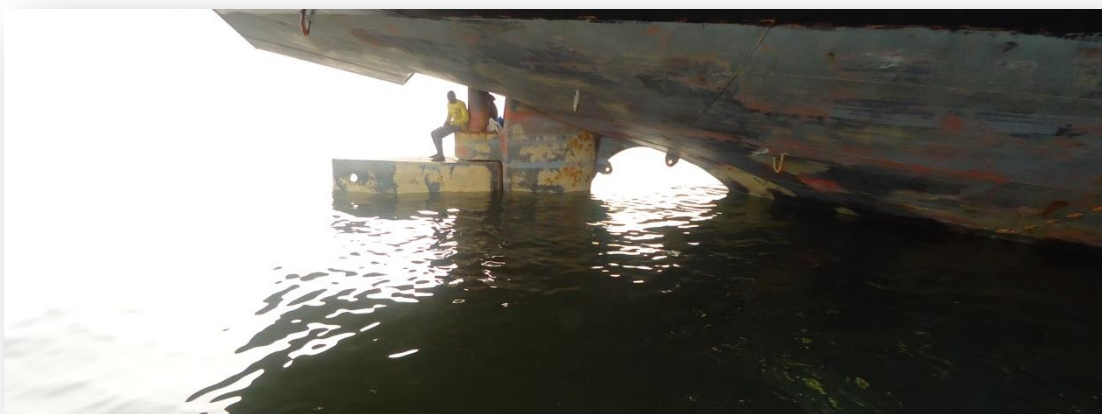
The Code provides for 3 security levels, with one being the default position and 3 an advanced stage where there may be a very high level of risk including imminent risk to the actual vessel itself. Pursuant to Reg. 3 and 7 of Chpt. XI-2 of SOLAS, it is the Flag, Port and Coastal States that must set these security levels and to ensure vessels are kept informed.

In practice this means that vessels need to be prepared to ensure that only those with due authorization can seek access and be present on the vessel and equally that any cargo, stores and supplies to the vessel are legitimate in their own right and do not become a “Trojan horse” for contraband items.

Enforcement can be very strict as can be the decision to impose penalties by a PSC should a security breach have occurred.

Skuld Case Study: Even if the crew had taken steps to ensure that stowaways do not gain access to the vessel, should they nonetheless manage to get on board, the Vessel is at risk of being alleged of a ISPS code breach and be fined by Port State Control Inspectors.

The Association has had direct experience of this after a vessel called in West Africa and found 6 stowaways on board prior to arriving in a South American country, where the vessel was detained and fined (albeit without being able to repatriate said stowaways, who had to remain on board for 2 more months and 4 more Ports of call).



Unexpected Passengers found on the Rudder of a vessel preparing to depart Dakar. (Source : Correspondents Budd)

3. HOW TO COMPLY

The Code is a detailed document with significant compliance requirements going far beyond the scope of this article, including the physical changes to vessels for the installation of AIS and Ship Security Alert Systems.

Furthermore vessels must carry their Ship Security Plan (Section 9 ISPS), an International Ship Security Certificate, "SSC", (Section 19 ISPS and Reg. 4 Chpt. XI-2 of SOLAS) and a continuous Synopsis Record (Reg. 5 Chapt. XI-1) to provide an onboard history of the ship, as well as being possibly asked for further information.

The SSC is important in an additional respect as it is a requirement of International Group P&I Cover that a vessel has such a certificate and that it remains valid during the period of the insurance. For more details on P&I Cover, please see Section 11 below.

Ultimately compliance, however, comes down to the action or inaction of the 'human element', being shore-based and on-board personnel tasked with establishing and working the Ship Security Plan.

That plan includes the need to check and provide procedures for:

- who may have access to the ship
- what are restricted areas on the ship
- the handling of cargo, stores and visitors

Furthermore the ship's security officer will have to ensure maintenance of a security log that includes details of ports of call, ship and shore security arrangements, and a record of any person who came on board.

These matters however, cannot be treated as one-off exercises; regular drills and checks need to be undertaken in order to ensure both ship-side and shore technical support are familiar with company procedures, and that these are actually being followed in practice. Such drills and their frequency are also within the Code.

Important to note is also that the Master always has the final authority to take such action as may be necessary in his professional judgment to maintain the safety and security of the ship – and he cannot be constrained in this regard by the Ship-owner, the Charterer or any other person (Regulation 8 of SOLAS Chapter XI-2).



Armed Guard demonstrating a weapon on a vessel.

[Source: a Skuld Member]

This "final authority" resting with the Master is a repeat issue with respect to the use of Armed Guards on board vessels. Although that topic is beyond the scope of the present article, it is something an Owner should always check for when considering the terms of a contract with a Private Security Contractor. Even the use of force, must be within the province of the Master's authority. More on this issue can be read in Skuld's dedicated Piracy Resource Centre on Skuld's website, here: [Piracy Insight](#).



Ship's personnel mustering for a Security Drill. (Source: Courtesy of a Skuld Member)

The STCW Code requirements

Part of the “loss prevention” message is that Ship-owners, their Technical Managers and Crew Managers, must continue to keep themselves up to date with developments in respect to ISPS compliance.

We cannot stress enough that these matters are not a “one-off” exercise, or simply form filling and completion of checklists.

Proper, certified, training of crew is essential to compliance. Following the implementation of the “Manila” amendments to the Standards of Training, Certification and Watchkeeping for Seafarers Code (the “the STCW” Code), effective 1st January 2012, mandatory security training for all Seafarers (in accordance with STCW 2010) was required as from 1st January 2014.

The IMO reviewed the implementation of these requirements and found that a lot of Seafarers had difficulty in accessing approved training course or were otherwise unable to receive the necessary certification in accordance with regulation VI/6 of the STCW and section A-VI/6 of the STCW Code.

Given these challenges, the IMO has decided that until 1st July 2015, where a seafarer does not yet have the necessary certification, then it will be sufficient to meet the requirements of Section 13 of the ISPS Code.

The IMO also sought to ensure that Port State Control authorities were aware of the issue and would take that into account when conducting inspections and assessing a vessel's compliance under Article X and regulation I/4 of the STCW Convention.

With respect to the above, it must be kept in mind that individual Port State Control authorities will not be bound by recommendations from the IMO.

A PSC Officer who has concerns about whether crew are sufficiently trained and educated with respect to the ISPS Code (or indeed any other regulatory matter) may thus decide to conduct further and more detailed investigations which could delay the vessel, even if ultimately she is not formally detained for a PSC deficiency.

Furthermore, it is not a given and must not be assumed that any further extension will be granted and as such Ship-owners, Technical Managers and Crew Managers should endeavour to have all of their crew comply with the STCW requirements in advance of the 1st July 2015 or risk the consequences of PSC inspections, delays, detentions and fines.

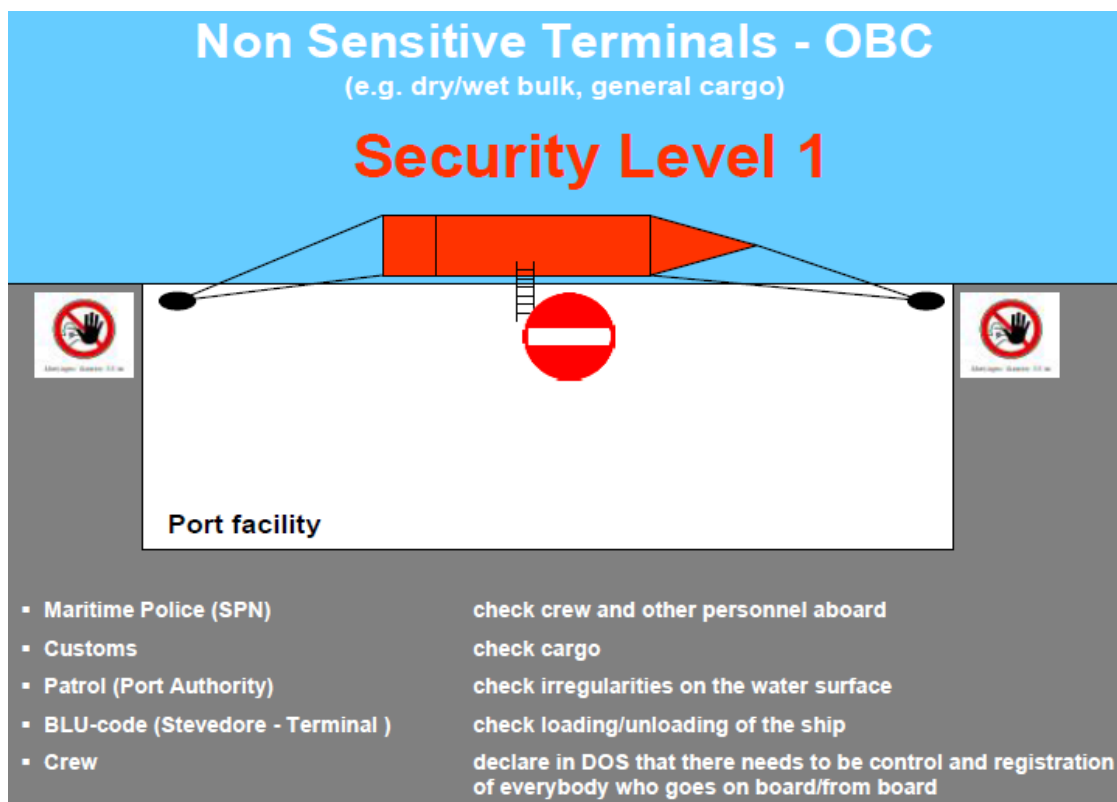


Illustration from training materials of the ITMMA / RBSA Course conducted by Capt. Dirk Vernaeye, Port Commander, Ghent Port Company

Maritime Labour Convention 2006

The Shipping Industry has now been “live” with the MLC 2006 for over a year and it has already become clear that this is a very important regulation which Owners and Managers need to comply with.

For some it has not meant big changes, but for others it has not least because the MLC is “location effective”, by which we mean that all vessels calling at a Port in a MLC ratified country have to be compliant irrespective of whether the Flag State or home state of the crew has implemented the Convention.

It is also clear that a number of countries, particularly Australia, Canada and Denmark (among others) have begun rigorous enforcement of the MLC rules for vessels calling at their Ports. This has led to dramatic consequences for non-compliant vessels in some circumstances.

To date 65 countries representing close to 80% of the world gross tonnage have ratified the Convention. Most significant absences remain China, India, the U.S. and Brazil, but their flagged vessels would have to comply should they call in a MLC country.

The MLC relates to the ISPS in the following important ways:

- a. the Convention requires that under Article IV :

“Every seafarer has the right to a safe and secure workplace that complies with safety standards.”

As such it is a broad statement compelling Owners to ensure the crew can work and live in safety, and that means not just a safe working environment on board, but also safety with respect to the risk of physical threats originating from outside the vessel.

It is also mentioned under Regulation 2.7 (Manning Levels) that due regard must be given to security standards, and that vessels need to be manned accordingly.

- b. further the Convention provides for minimum hours of rest and maximum hours of work (similar to the most recent SCTW provisions, 2010 Manila Amendments) and it is important to keep in mind that :
 - i. Seafarers’ work schedules, especially if in a Port with a raised ISPS alert level, need to be organised so that they have the necessary rest and yet comply with the ISPS requirements for securing the vessel – this can be challenging given that cargo operations and other matters will of course also need to be dealt with;
 - ii. Seafarers with poor rest will be more likely to commit errors or miss something, which not only imperils their safety and that of others, but is also likely to mean that the necessary rigor will not be applied to the security tasks.

The Association has in the past advised Members repeatedly of the need to pay close attention to the “Human Element” when it comes to safe vessel operations, and most recently the need to ensure that Seafarers get more than just “rest”, but proper sound sleep that allows them to do their work well rested.

For further detailed information please see the following Skuld publications:

- i. Loss Prevention Article : The importance of a Good Night's sleep :

<http://www.skuld.com/topics/people/mlc-2006/mlc-2006/seafarer-fatigue-the-importance-of-a-good-nights-sleep/>

- ii. STCW 2010 – Hours of Work and Rest :

<http://www.skuld.com/topics/people/mlc-2006/mlc-2006/stcw-2010-manila-amendments---hours-of-rest/>

- iii. MLC 2006 Insight :

<http://www.skuld.com/topics/people/mlc-2006/insight/insight---mlc-2006/entry-into-force/>

- iv. Safely with Skuld – Human Fatigue :

<http://www.skuld.com/upload/News%20and%20Publications/Publications/Safely%20with%20Skuld%202005/Human%20fatigue.pdf>

- v. Skuld Edition of “The Human Element” :

<http://www.witherbyseamanship.com/human-element-skuld-2.html>

With due care and attention being paid to these issues, Owners and their Managers will find that their vessels will operate more safely physically and be ready to meet regulatory inspections by PSC and Flag successfully. All of which ensure that vessels operate safely, smoothly and profitably.



Essential to Loss Prevention ...

4. CONSEQUENCES FROM A FAILURE TO COMPLY

The Port State Control (PSC) officers of contracting states to SOLAS/ISPS have the power to investigate vessels and conduct on board inspections with a view to determining compliance.

Failure to comply can lead to:

- detentions and demands for rectification
- locally mandated PSC fines
- the vessel being directed to proceed to specific areas for further inspection or otherwise having movements controlled
- the ordering of Guards (possibly armed) to be placed on board for the duration of a call (this is a particular issue for U.S. port calls)
- be denied entry in to a port or be expelled from a port

With respect to PSC inspections, the mere compliance of documentary requirements is not enough if the inspecting officer believes that, as a matter of practice on board the vessel or from the shore side technical management, the Code and the vessel's security plan are either not being properly followed or implemented.

While there are regulatory safeguards, in practice the power of a Coast Guard or PSC officer is quite wide under Reg. 9.2 of Chapt. XI-2 of SOLAS to order control measures or additional safety measures, such as directing vessels to specific anchorages and / or obliging it to carry on board security personnel, possibly armed, (at vessel's cost) for the duration of the Port of Call. The latter is something that is not an infrequent requirement of the U.S.C.G.

It is such measures that have often caused the additional delay and expense that ultimately led to disputes between owners and charterers as to whom may have to bear that cost.



A vessel undertaking a Container cargo operation. Following closer inspection, one of the boxes was found unsecured. Inside a stowaway was found, fortunately still alive. A full ship search was conducted subsequently, but no one else was found.

(Source : Correspondents Budd)

5. A SPECIAL SITUATION: U.S. LAW

The position of the U.S. is worth particular attention as it is one of the most security-focused countries in the world. For well-known reasons it has one of the most rigorous enforcement regimes with respect to maritime security. Indeed it was the event of 11th September 2001 which was the main catalyst for a review of the security of ships and their potential use by Terrorists and other persons engaged in unlawful activities, which lead to the IMO developing the amendments to SOLAS and the ISPS Code.

The U.S. position is in part based on The Maritime Transportation Security Act of 2002 (MTSA) which mandated that the United States Coast Guard (U.S.C.G.) evaluate the effectiveness of anti-terrorism measures in foreign ports and provides for the imposition of conditions of entry on vessels arriving to the United States from countries that do not maintain effective anti-terrorism measures (MTSA, 46 USC § 70108).

For vessels seeking to trade to the U.S. therefore, the compliance with the ISPS Code is only the beginning as it will also be necessary to comply with US national law and the rules and recommendations of the U.S.C.G.

In practice therefore the ISPS Code has proven to be very important for the continued physical and legal safe trading of a vessel. To highlight the real life impact of the ISPS, we can consider the following recent U.S. Coast Guard directions for vessels having called at Libya.

The U.S.C.G. published a list of recommendations for vessels calling at any Port in Libya which included the minimizing of Ship – Port interface and the taking of measures that are consistent with Security Level 2, including the guarding of access points to the vessel commensurate with such security level.

The reason being that the U.S. did not consider that Libyan authorities were ensuring that security was being sufficiently addressed by the shore side.

Vessels calling at U.S. Ports after calling at Libya would need to record specific actions taken as per Part 10 of Section A of the ISPS and communicate these to the appropriate U.S.C.G. Port Captain prior to arrival.

Vessels not being able to comply with these requirements may find that they are subject to greater scrutiny, delays and security requirements on arrival in the U.S. Such further requirements may include the mandating of security personnel on board during the entire period of the time in U.S. waters and restrictions or prohibitions on shore.

Issues and disputes that may arise from such a matter include:

- are Ports in Libya safe, within the terms of the safe Port warranty in a Charterparty
- if a vessel fails to comply with the U.S. Coast Guard recommendations and suffers additional expense and delay at a following U.S. Port call, who will bear the cost as between an Owner and a Charterer
- what if the vessel complies, but is still subject to greater scrutiny by the U.S. Coast Guard on arrival, who would bear that risk

- if on inspection by the U.S.C.G, a vessel is found to be in violation of the Code, whether on paper or in practice, what impact may this have if she is a Tanker on charter to an Oil Major or other Oil Major's approval

The Association's previous advices with respect to Libya can be found here:

[U.S.C.G. requirements following calls at Libyan Ports](#)

In respect of Libya today, the security situation continues to be highly volatile and any Owner considering trading the vessel to or from Libyan Ports should carefully check the situation in advance and during any call as it may change and deteriorate rapidly and without warning.

Additional U.S. Security Measures and Regulations

Additional issues and regulatory compliance matters pertaining to U.S. trading include the Customs Trade-Partnership Against Terrorism (C-TPAT), Automated Manifest System, the International Carrier Bonds, and the Container Security Initiative amongst others.

These, however, are beyond the scope of the present article.

They are, however, matters that anyone trading to or from the U.S. should be very familiar with, and for any new entrants to the market it would be very important to ensure these are understood and complied with before starting the trade.



U.S. Coast Guard Cutter Diamondback engaged in exercise with Royal Caribbean International's "Monarch of the Seas", as part of exercise Black Swan conducted at Freeport Grand Bahama on April 2013.

[Source : U.S. Coast Guard News Release April 2013]



Members of a U.S. Coast Guard Maritime Security Response Team on USNS Sister after "storming" the vessel as part of exercise "Frontier Sentinel" held off Norfolk, Virginia, June 2006.

[Source : U.S. Military Seaflit Command]

6. BEYOND SECURITY: THE WIDER IMPACT OF THE ISPS CODE

While no one in Shipping seriously doubts the need to have good security on board vessels and at Ports, it has become an issue over whether Seafarers receive fair treatment at foreign Ports or are regarded with intense suspicion and subjected to detailed scrutiny just because they seek shore leave.

The extra work load that the ISPS imposes on vessels, which can be significant, does not impact the provisions of Regulation 13 of Chapter V of SOLAS which is concerned with safe manning levels from the point of view of the safe navigation of the Ship. Equally, the demands of the ISPS Code, and the Ship Security Plan, especially when there is a Level 3 Security situation in effect may sit at odds with the requirements for maximum work and minimum rest levels as may be mandated by the Maritime Labour Convention 2006 or the STCW 2010 / Manila amendments.

Separately, a frequent complaint from Ship-owners has been the view that security standards have been applied very inconsistently across the world, with very strict standards in certain places, but in other areas a much less rigorous approach appears to be taken. Given, however, that local approaches are very much dependent on any particular country, or perhaps Port, this is to be expected in part, but does not make compliance any easier for ships and crews.

Another critique is that the Code may not go far enough – in that it only applies to ships over 500 gross tonnes employed in international voyages. This may mean a large number of vessels, in fishing, domestic trading and even offshore servicing may not be caught by its application even though, arguably, they can present a security risk or should take security measures for the same reasons as larger vessels. In some countries, like Singapore this has led to specific local regulation to address such concerns.

These are ongoing issues for the industry to which no clear and universal answer have yet been found. In the meantime the recommendation must be that the safety of the crew and the vessel are and continue to be paramount in all circumstances and that where these are imperilled, a Master should always have the freedom (as indeed he must have under SOLAS) to take such steps as he considers reasonably necessary to ensure the safety of his crew and vessel.

Ship-owners and Managers must note, however, that just because an operating environment is challenging does not equate to a right to overrule otherwise clear Charterparty terms with respect to the trading liberties of a vessel. Therefore careful consideration needs to be given in advance to ensuring that a vessel and her crew are indeed ready and able to follow the Charterer's lawful orders.

That means being aware of possible visa and shore leave restrictions on crew at certain places or greater demands on shift work depending on ISPS alert levels.

Failure to plan ahead carefully could see an Owner breach both regulation as well as charter terms, with losses no doubt following.

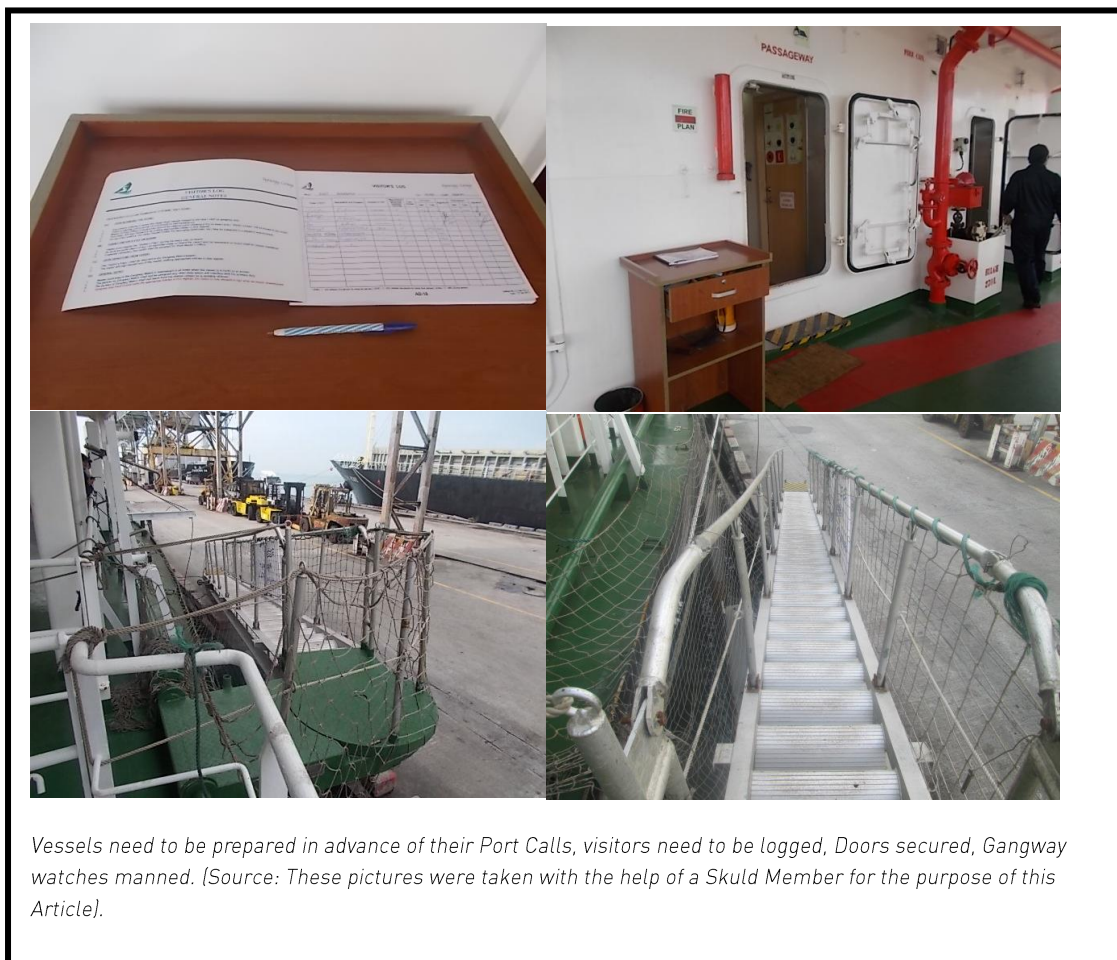
7. THE ISPS IN PRACTICE

The ISPS Code can impact on a vessel in a number of ways, and that includes (although is not limited to) the following situations:

1. General Access to the Vessel when in Port, at Berth, Anchorage or otherwise
2. Access to the Vessel when in transit, say passing through a Canal
3. Stowaways seeking access or having been found on a vessel
4. The vessel being directed by an authority to assist distressed persons at sea or assisting distressed persons found at sea, possibly persons who may seek Refugee or Asylum status (for further information on this please see the following Association Bulletins : [Mediterranean Refugees](#) and [End of Operation Mare Nostrum](#)).

The following is a brief overview of feedback received from the Association's Correspondents about how the ISPS Code works in practice at different places in the world.

This is meant to give an overall impression only, and for actual operational purposes it is strongly recommended that local Agents are contacted well in advance of arrival to check the latest procedures at any given Port and Country.



a. Port of Incheon, Korea

It should be expected that Port security is considered as a serious matter for the National Defense of the Republic of Korea and since the 1950s the access to Ports has always been a matter of tight security arrangements.

After its implementation, the ISPS code lead to a further strengthening of surveillance and restriction of access to port area in order to meet the new international standards.

The Association's Correspondents advise that organized special security systems have been operating in all Korean coastal ports for the purpose of fulfilling the ISPS code.

The special security system is designed to operate in collaboration with the concerned government bodies including National Intelligence Service, Coast Guard, Navy, military bomb disposal unit, and harbor fire stations, etc. Full and precise details may, for obvious reasons, not always be in the public domain.

All of the Korean coastal ports are currently running 24-hour surveillance system with CCTV-monitoring, etc., by a specialized body called the Pier Management Corporation.

Moreover, as per Specific Guideline for Port Access Control, which is regulated in Korea's ports, any person/truck/car must be issued a regular or temporary pass to access a port. Accordingly, access of a visitor is strictly regulated by port security officers, through stringent verification of identification and issuance of a pass (regular or temporary).



Port of Incheon (Source : Incheon Port Authority)

b. New Orleans and the lower Mississippi River

Given that this is a U.S. location, it should not be surprising that some of the most stringent enforcement and checks are to be expected from the local Port, the U.S.C.G. and indeed other concerned U.S. enforcement agencies such as the Department of Homeland Security.

The U.S.C.G. Sector New Orleans covers the LMR (Lower Mississippi River) system, including the Port of Greater Baton Rouge, Ports of South Louisiana, New Orleans, St. Bernard and Plaquemines.

In order for a person, say a Surveyor instructed by a P&I Club, to gain access to a vessel or facility on the LMR, he or she must possess a valid Transportation Worker Identification Card (TWIC) issued by the Transportation Security Administration of the U.S. Department of Homeland Security, which is subject to verification prior to access being given. In some places like New Orleans Port Complex, it will also be necessary to have the local Agent ensure the name of the visitor is added to the Gate List of the Guard House. Calling at a vessel at anchor may not necessarily require a TWIC, but at the very least another form of valid I.D. document.

Needless to say, U.S. checks on persons prior to the issuing of any Pass or Document will be extensive and rigorous.

As for persons seeking to disembark a vessel at a U.S. Port, unless they are a U.S. citizen with a U.S. Passport, it is very likely that unless a Visa has been obtained in advance this will not be possible, subject to obtaining special permission in case of medical emergencies (something the Association has experience in dealing with).



Port of New Orleans (Source : Port of New Orleans, Educational Section)

c. the Panama Canal

With the Canal being one of the key Shipping transit points for the world, it is certain that both the Country and specifically the Canal Authority have taken a keen interest in the ISPS Code and its practical implementation.

The Canal Authority periodically updates its Notice to Shipping on the Implementation of the Code and its Requirements, with the most recent being Notice No. N-13-2014.

If vessels do not fully comply with the requirements or arrive without providing the proper advance notification, then they shall be considered in violation and the Authority may then implement Control and Compliance measures. The advance notice must be given at least 96 hours prior to arrival.

Such Control and Compliance measures can include:

- the assignment of resources at the vessel's expense (which means security guards)
- detailed inspections and other delays
- denial of transit
- fines and additional measures as may be deemed appropriate by the Authority

Staff from the Panama Canal Authority (ACP) will present official identification Cards which the crew can see on request, but which will not be surrendered to the vessel. It is good practice for crews to always check the I.D. of any person seeking access and to record the details of any visitors coming on board.



Car Carrier at Panama (Source : Correspondents Fernie & Co.)

d. Port of Richards Bay

The Port is well aware of the continued risk of possible stowaways (often, but not exclusively Tanzanian) seeking to gain access in order to make it on to a ship. While the surrounding countryside includes heavy bush and a lake, the Port perimeter is extensively fenced and supported by both motion sensors as well as Cameras.

Access to vessels is checked on a regular basis by Port security, with rail and road entrance to the harbour area guarded and supported by cameras. Access to the Port is by permit only, and all people and vehicles are checked for this permit prior to entry.

Workers at the Port need the Transnet National Ports Authority (TNPA) which includes a photograph, name and national identity number as well as company details. All Stevedores should have a Permit that can be checked.

Details of the Permit can be found in the following Association Loss Prevention bulletin: [Port Permit for Richards Bay](#)

A practical measure for vessel safety and ISPS compliance is to collect all Stevedore ID Cards on boarding and to return them only on departure.

Single day visitors to the Port need a company letter stating the reason why the invitee should be granted access and any such person is processed through the Port Security Department before being granted access. This process may include a 30 minute safety video instruction if the person will come close to a ship or loading facility.



A sample Transnet ID Card. (Source : Skuld Correspondents P&I Associates, South Africa)

e. Port of Rotterdam

One of the world's most advanced and busiest Ports, it provides helpful information in the public domain about its Security Level as well as the implementation of the ISPS Code in practice at the Port. (for further details please follow this link <http://www.portofrotterdam.com/en/Shipping/rules-regulations/Pages/port-security.aspx>).

The Port conducts quarterly drills and annual exercises and provides access to further materials such as the "European Handbook of Maritime Security Exercises and Drills" as well as a "Handbook on Port Security Awareness", both prepared by the Port of Antwerp:

- (a) <http://www.portofrotterdam.com/nl/Scheepvaart/wet-regelgeving/Documents/European%20Handbook%20of%20Maritime%20Security%20Exercises%20and%20Drills.pdf>
- (b) <http://www.portofrotterdam.com/nl/Scheepvaart/wet-regelgeving/Documents/PORT%20Security%20awareness.pdf>

Agents of Vessels arriving at the Port need to give their notice at least 24 hours in advance, and the website of the Port provides further detail on reporting requirements as well as relevant contact details.



Port Authority in action, Port of Rotterdam. (Source : Port of Rotterdam, Freek van Arkel)

f. Port of Singapore

Singapore is a country that takes security very seriously, as any visitor or indeed resident can attest to. Singapore's container terminals in fact started complying with the ISPS code significantly before the original deadline. Singapore also became the first country to participate in the U.S. Coast Guard's International Port Security Programme (IPSP).

Given that the Code only applies to vessels over 500 gross tonnes, engaged in international voyages, Singapore implemented the Harbour Craft Security Code to ensure that security standards applied to smaller ships, too. Given the nature and volume of local traffic in this region, that was a necessity.

In practice the Maritime and Port Authority of Singapore (MPA) works alongside the Singapore Navy, the Police Coast Guard, Immigration Services, Police Force as well as the intelligence services, in order to ensure the daily safety of the Singapore Ports. Vessels calling at Singapore should expect rigorous enforcement of rules and checks.

Any person seeking entry to Port premises must be cleared with full I.D. documentation via the local Shipping Agent, although regular callers such as Surveyors can undergo security screening to be issued longer term passes.

Skuld Case Study: A real life experience of a Skuld Member was the attendance by an Inspection Officer who sought to gain access to a vessel by showing an invalid I.D. document. This was a test to see if the Crew was sufficiently alert to carefully check any I.D. presented by an unknown person. Fortunately the Crew was able to pass the test on this occasion.



Passenger and Container Terminal, Singapore (Source: Skuld Singapore)

8. CASE STUDIES

Over the last 10 years, the Association has had to deal with many cases which had an ISPS angle, often these concerned stowaways, but there have been security issues at Ports, attempts at Drug Smuggling and the strict enforcement of security by the United States Coast Guard to contend with. The following are some examples from the cases we have dealt with to further illustrate the practical issues:

a. The Drug Smuggling Pilot in South America

Before departure from the Port, while the vessel was traversing a river leading to the Sea, she was approached by a Boat which ostensibly was bringing the outward Sea Pilot on board.

The Crew lowered the gangway and permitted the person on board without checking his identification. The person was carrying with him a large duffel bag, and he quickly disappeared inside the Accommodation block on the vessel. Thereafter he was not seen again on the vessel. No member of the Crew followed him or checked where he was.

A short while later a second Boat approached, also claiming to bring the Sea Pilot to the vessel. The Master then ordered a search for the first person, but the only thing that was found was the Duffel bag, which was found to contain drugs. This was then reported to the Police who seized the contraband, but who did not arrest the vessel or any of the crew.

While the vessel's procedures were in breach of the ISPS because an unidentified person had been allowed on board, and had been given seemingly free reign, the Master's prompt reporting of the incident assisted in deflecting suspicion from the crew of having been involved in the matter.

It must be kept in mind that not all national authorities are so forgiving and in particular in Venezuela there is a significant risk of crew arrest and vessel confiscation, which has led to the International Group of P&I Clubs to issue the following warning:

[Venezuela - IG Circular](#)



Do you know who is getting access to your vessel? Make sure you check and control all access thoroughly.

[Source: A Skuld Member]

b. Drug Smuggling in Central America

A Member's vessel called at a Central American Port and is subjected to a random drug search. No drugs were found and nothing else untoward was discovered.

Very quickly after the first search was conducted a second search was undertaken and drugs were "found" in a fire-fighting equipment compartment on the deck of the vessel. It was clear that the Police Officers conducting the second inspection did not make a general search of the vessel, but instead appeared to know exactly where to look.



Drug Smugglers knew where to hide them, but the Police appeared to know where to find them.

[Source : a sample picture taken by a Skuld Member for this article].

Although there was no immediate evidence to prove that any of the crew were involved in this matter, the majority were promptly arrested and under the local law had to prove their innocence, rather than the Prosecution having to positively prove their guilt.

There was, however, following investigation by the Association ample evidence to suggest that a 3rd party had been responsible for placing the drugs on the vessel rather than the crew, against whom there was no evidence other than being employed on the vessel at the material time.

It was not possible to prove, however, which of a number of possible 3rd parties had been involved.

While typically criminal matters are outside the scope of P&I cover, the Association exercised its discretion following Management review and successfully secured the eventual release of the crew and their repatriation home.

The Port in this matter is likely to have suffered, at the material time, significant security lapses which permitted the unknown 3rd party to bring in the contraband and place it on

board.

This will have been a definite ISPS lapse on the part of the Port, but on investigation it was possible to rule out such a lapse by the Crew which had shown both a good understanding and practical ability to fulfil their ISPS obligations.

A further example of the efforts that Smugglers may go to and advice can be found here:

[Drug Smuggling Loss Prevention Bulletin](#)

c. 6 Stowaways from West Africa to South America

On a call at a West African Port, the Member's vessel had conducted stowaway checks during her call and prior to departure. Nevertheless 6 stowaways were ultimately discovered as they suddenly appeared on deck after the vessel was already out to sea.

It took over 2 months and several Ports of Call until the vessel was finally able to disembark the men and have them repatriated to their home country.

The most significant consequence for the Ship-owner was that on arrival at the next Port of Call, which was in a South American country, the local authorities charged the vessel with immigration offences in relation to the 6 stowaways and imposed a fine.

It was possible, however, with the assistance of the local Correspondent to dissuade the authorities from escalating the case to a full criminal matter which they first considered on the basis that they suspect the crew of being engaged in people smuggling.

Investigations revealed that the security procedures for stowaway checks on departure of the vessel needed to be tightened in order to be ISPS compliant, given that one of the men had clearly hidden under the grill flooring in the engine room – an area he should never have been able to penetrate unseen.



It was surprising that the Stowaway had succeeded to penetrate this far in to the ship unseen.

(Source : a Skuld Member, routine vessel inspection)

d. More Stowaways from Africa

The Association assisted a Ship-owner who had “picked up” some stowaways at a Port in Africa.

With the help of local Correspondents it was possible to establish that the Port had poor security as:

- i. the security fencing at the Port was in poor condition and easily penetrated
- ii. the gate which separated the actual cargo operational areas from the rest of the Port had poor security
- iii. Port security staff were lax in their duties and may have even assisted the Stowaways to gain access to the vessel side area of the Port

With this evidence in hand it was possible to argue that the Port was “unsafe” and given that there was an absolute Charterparty warranty in place, the Owner successfully recovered costs and other losses from the Charterers in this case.

The failures of the Port were clear ISPS Code failures.

e. And yet more Stowaways from Africa

The Club was notified of locating a stowaway after the ship had set sail from a Port in Africa. The local correspondent investigated the matter and found out the stowaway boarded the ship with the assistance of stevedores.

As significant costs were incurred, the Owners sought to make recovery against the Charterers under terms of the applicable Charterparty. While the Charterers did not deny that there may be a charter provision allowing the Owner to do that, they did seek strict proof that the vessel had complied with its own ISPS obligations and that the stowaway gained access despite such compliance.

Unfortunately, on investigation it was revealed that:

- the stowaway had gained access with a fake pass that should not have stood up to proper scrutiny at a gangway check
- while the vessel said the stowaway came on board as a stevedore, no stevedore uniform was found with the stowaway
- vessel procedures for challenging and identifying persons coming on board were not in accordance with the standard of the ISPS Code
- the vessel’s logbook did not contain any record of the vessel conducting the necessary ISPS checks and stowaway checks during the Port of call

As such it was ultimately not possible to successfully pass the costs of the case on to the Charterers as the evidence was not strong enough to demonstrate that the stowaway had gained access to the vessel despite full ISPS compliance by the ship and her crew.



Stopping Stowaways starts here. (Source : a picture for the purpose of this article by a Skuld Member)

f. U.S. Coast Guard Restrictions

A vessel was chartered to undertake a voyage from the eastern Mediterranean to the U.S., and during her call at the U.S. there was a requirement for security guards to be placed on board at some significant cost.

A dispute arose between the Owner and the Charterer as to who should bear that cost, with the Charterparty including an older version of a BIMCO ISPS clause.

The Arbitrators concluded that the parties were free to agree to the use of older clauses from organisations like BIMCO and it was not to be assumed that the latest provisions would always apply, unless the charter was drafted in such a way.

Furthermore it was not negligent for an Owner to have the vessel arrive without all crew having a U.S. Visa as long as there was no planned shore leave or other disembarkation of the crew during the U.S. call.

The case (discussed further below in section 9 on Charterparty Advice) is a reminder to always carefully pay attention to both the terms of a Charterparty that means checking old pro forma terms for possibly outdated clauses and being precise in specifying which clause is meant when several versions exist.

It also highlights the need to understand who takes on what responsibility, as between Owners and Charterers when planning to call at a country that is likely to impose conditions and restrictions on foreign crew arriving by way of the chartered vessel.

9. CHARTERPARTY ADVICE

In many Charterparties one can find one or more of the following provisions which impact on the ISPS code and the respective contractual obligations of Owners and Charterers to each other as well as potentially to 3rd parties, these include:

- a. trading liberties, which determine between which countries and ports a vessel may be ordered to trade by Charterers
- b. safe port (and indeed berth and anchorage) provisions, which can be absolute or subject to due diligence terms and which put potentially significant obligations as well as liability risks on the Charterers
- c. physical readiness provisions, whereby Owners undertake to ensure a vessel is actually able to perform her service, including in being manned by a competent and trained crew
- d. general regulatory compliance terms which seek to oblige Owners to be broadly responsible for ensuring the vessel complies with such matters as SOLAS, ISPS, Class and Flag rules
- e. specific regulatory compliance terms such as specific ISPS clauses
- f. specific liability apportionment provisions for matters like the question of who will be responsible for the presence of stowaways and the cost of disembarking / repatriating the same
- g. boiler plate terms that seek to incorporate relevant Charterparty provisions in to cargo documents such as Bills of Lading

While it is not possible in the scope of this article to discuss in detail each of these terms, or indeed the further possibly related clauses, the following broad principles need to be stated and adhered to in order to ensure a voyage is on the right track before the fixture is concluded:

- i. Owners and Charterers need to be aware of the fact that ISPS compliance is very important and that a number of possible trading locations may be subject to enhanced ISPS requirements, such requirements may arise from the local state of the Port being called or indeed other countries like the U.S.
- ii. Charterparty templates should be thoroughly reviewed in advance of each fixture to ensure that the most appropriate and up to date clauses are used. Indeed where older clauses are used unwittingly it may have unforeseen and unintended consequences as can be seen in this educational Arbitration case:

[Interpretation of a BIMCO ISPS Clause](#)

The extra time spent on ensuring the pro forma / rider terms are up to date and appropriate for the intended fixture will yield significant dividend by way of reduced risk of misunderstanding and dispute between the parties later on. That applies to both short term and long term Charterparties.



Truck and Container undergoing Radiation detection, from training materials of the ITMMA / RBSA Course conducted by Capt. Dirk Vernaeye, Port Commander, Ghent Port Company

10. PRACTICAL LOSS PREVENTION ADVICE

Advance briefing

If a vessel is going to a Port where she will meet an enhanced ISPS alert level, face the risk of stowaways or other untoward actions by 3rd parties, or indeed it is a Port that gives cause for concern in subsequent calls (again, see the U.S. response: [US Compliance](#)) then it is prudent to undertake an advance briefing of the crew to discuss and check:

- that the crew have a clear understanding of the vessels security plan
- the crew be afforded a clear and frank appraisal of the conditions at their next port of call
- crew working schedules and rosters are planned in advance to ensure vessels can comply with regulations like the ISPS, the STCW and the MLC as well as physical demands of cargo operations and the overall port call
- specific security risks are identified and addressed
- checks are made in advance to ensure vessels are properly secured on arrival
- throughout the call, crew and officers work together to ensure plans are complied with and to address any situation that arises
- to have a clear chain of command and communication to respond to emergency situations



Visitor Log book in use on board a vessel. (Source : picture taken by Skuld Member for this article)

People Count

This is a basic, but very important step that needs to be carefully observed. Especially at the more busy, less organised, places where large number of Stevedores may be boarding and departing the vessel at berth during the course of the cargo operations.

A suggestion may be, where possible, to collect ID Cards from Stevedores (if available) on boarding and to return these prior to disembarkation. If no ID Cards are available then an ad hoc pass / tally system should be arranged.

The procedure for such should be arranged in advance to avoid misunderstandings.

In any event vessel crew must be robust enough, and be supported, to ensure that if the situation is chaotic due to the number of people seeking to come on / off at any one time, to call a halt to proceedings and re-start the same in a more ordered fashion.

Otherwise there is the risk that crew become overwhelmed and lose track of who may have come on board, be on board, or have left the vessel at any one time.

A Charterer may complain of the ship causing delay, but if the situation is such that there is a risk of a security compromise being risked, the Master is well within his rights to prioritise the safety of the crew and his ship.



A precise on / off count is essential to ship security.

Cargo Inspection

It will of course depend significantly on the type of cargo to be laden and the intended speed of the cargo operations, but where possible the crew should seek to check the cargo coming on board for signs that there may be something untoward happening.

The Association is aware of matters including the presence of stowaways in Containers and the hiding of drugs in cases of bananas.

In many instances it is of course impossible for the crew to check these matters or check them in detail, but regrettably that has not stopped vessels and crews being held responsible for the same later.

The advice therefore must be that if the crew does spot anything suspicious or out of the ordinary it is better to call for a stop of proceedings and investigate. A short stoppage will have far fewer implications than the alternative scenarios.

Masters and crews need to be reassured by the shore side that they have the full support of Owners and Managers when pursuing these duties.

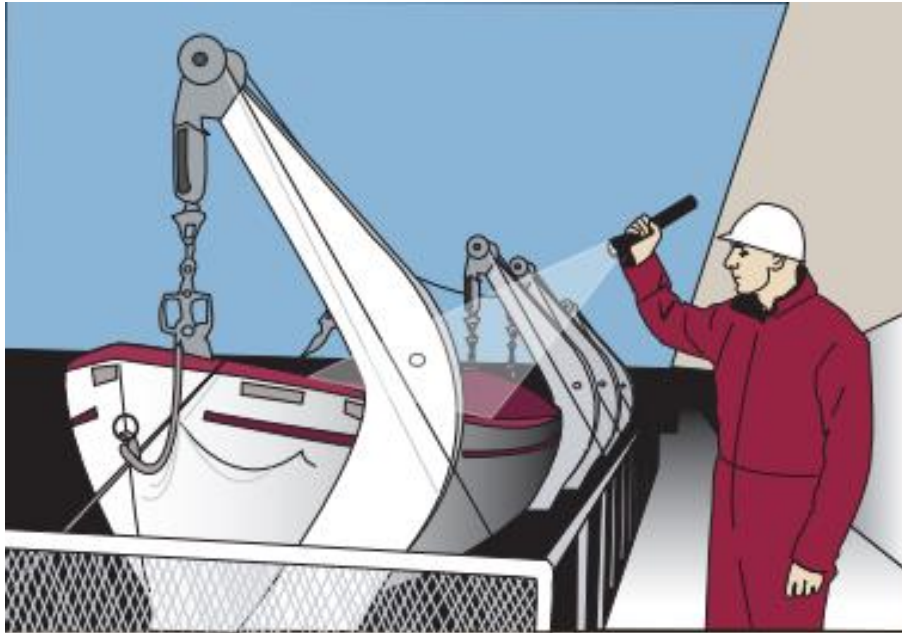


Absent a clear sign of an impaired condition, it is not possible for the crew to check every box on a ship. In this case stowaways were found when they called for help. [Source: Correspondents France P&I]

Post Port Call Searches

Stowaway searches need to be conducted during and after a Port of call. It has been the experience of the Association that Stowaways often come out of hiding after the vessel has left because they may quickly run out of food and water supplies.

Signs to watch out for are doors being left open, food and other supplies going missing, lifeboats appearing to have been accessed, unusual noise or smells.



Thorough Searches are key to dealing with this issue. (Source : Safely with Skuld)

Sniffer and Search dogs :

To be sourced from reputable local security companies, these can greatly increase the chance of finding unauthorised persons and contraband on a vessel as they may be able to access more places and “sniff out” more than the crew or security personnel.

It is important, however, to check in advance what resources are available locally and one must keep in mind that if Muslim Seafarers are on board a vessel that the use of dogs may have cultural implications that need to be addressed.

Modern Technology Solutions

There are many new technological solutions, some of which are shore, some ship based, and some which can be used in both places.

These include X-Ray machines, CCTV, Heat detection cameras and devices, Carbon dioxide detectors and other equipment designed to detect people and particular types of objects or substances.

It is likely that Members will encounter these at the shore side only at the most modern of Ports and that in those places where they may be most needed, they may not be available at all.

In this case self reliance remains the best policy for vessels to stay safe.



Keeping the vessel safe and secure will come down the crew. Deck Inspection at Singapore (Source : Skuld Member)

What to do if Stowaways are found

The Association has given previous advice on this issue which can be accessed here:

[Safely with Skuld - Stowaways](#)

Furthermore there is a resource page which includes additional information on Stowaways and Seaborne Refugees here:

[Stowaways and Refugees](#)

Priorities include:

- isolate and separate the stowaways
- confine them in secure locations
- search the stowaways : watch out for drugs and weapons
- seize any identification documents
- deal with medical emergencies
- search the ship again
- contact the Owner, Managers, and P&I Club
- if still at or close to Port, contact the P&I Correspondent and Shipping Agents
- do not use the stowaways as labour on board
- provide sufficient food and water
- be humane, but do not establish friendly relationships
- use force only if the crew and vessel are threatened

- document any injuries or illnesses
- use photographs and videos
- keep a close watch on all confined persons
- fully co-operate with authorities at future ports of call



Stowaways need to be treated humanely, but the safety of the crew remains paramount.

[Source : Safely with Skuld].

11. P&I COVER

Compliance with International Regulations, including SOLAS and the ISPS Code are part of the conditions subject to which a vessel can enjoy P&I coverage from an International Group P&I Club.

The reason for this is that all the IG Clubs are active in promoting safety and security for their Members and entered vessels, as well as to promote compliance with Laws and Regulations which have as their aim to reduce risks, minimise losses and avoid accidents, all of which benefit Ship-owners, both directly and indirectly through being part of a mutual insurance Association.



Skuld offers bespoke Insurance Terms for Owners, Charterers and Fixed Premium Owner Members. [Source : Skuld]

The Mutual Rules of the Association of Assuranceforeningen Skuld (Gjensidig) of the Policy Year 2014 / 15 provide for the following:

28. Conditions Precedent

28.4 Classification & certification

It shall be a condition precedent of the insurance cover,

28.4.3 that the member shall maintain the validity of all statutory certificates issued by or on behalf of the state of the vessel's flag in relation to the ISM Code and ISPS Code.

28.4.4 In the event of any failure to comply with any of the above requirements, the member shall not be entitled to any recovery from the Association in respect of any event occurring during the period of non-compliance.

29. Other Conditions

29.1 The member shall,

29.1.4 comply with all statutory requirements of the state of the vessel's flag, relating to the construction, adaptation, condition, fitment, equipment, manning, operation, security and management of the entered vessel (including applicable requirements of the ISM and ISPS codes) and maintain the validity of all statutory certificates issued by or on behalf of the vessel's flag state in relation to such requirements,

29.1.10 In the event of any failure to comply with the requirements set out in Rules 29.1.1 - 29.1.9, the member shall not be entitled to any recovery from the Association, except insofar as the member can prove that liabilities, losses, expenses or costs would have been incurred in any event and would have been covered by the Association if the member had complied with those requirements.

A failure to comply with the ISPS Code, be it by not having valid certificates or by failing to ensure the Flag State's requirements for the actual day to day compliance with the Code are met, may be prejudicial to a Member's P&I cover. This could be another significant consequence in addition to those discussed earlier in this article.

If a Member is concerned about a situation on one of their vessels and whether it may impact on their regulatory compliance, it will be worth making early contact with the Association so that this can be discussed further.

Often it is possible to take remedial steps before a situation develops significantly, but that requires the Association to be aware of it. Often Skuld was able to help keep a situation from becoming serious because the Member took prompt steps to get in touch without delay.



Truck and Container undergoing Non-Intrusive Scanning, from training materials of the ITMMA / RBSA Course conducted by Capt. Dirk Vernaeye, Port Commander, Ghent Port Company

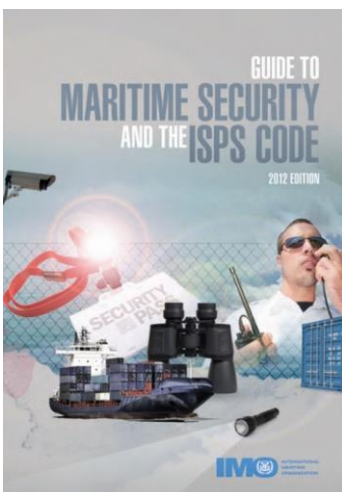
12. CONCLUDING THOUGHTS

Enhanced security rules and practical measure are now a fact of everyday life, and it is unlikely we will ever see a significant reduction in these.

The future is likely to see more rather than less security concerns as both traditional threats of conflicts between nations and asymmetrical threats of terrorism and organised crime continue to be ever present. Add to that the continuing period of significant civil unrest across many nations, which can flare up at short notice, the focus on security is a necessity not a regulatory burden or luxury.

Primary responsibility for regulatory compliance will always rest with the Ship-owner and to a certain degree on their Technical and Crewing Managers. While some responsibilities and liabilities may be the subject of Charterparty risk apportionment, and while P&I Clubs can help to assist Owners that are facing a potential liability situation, the best approach is and remains that an ounce of prevention is worth a ton of cure.

Ship-owners are therefore well advised to treat the ISPS Code with the due respect it deserves and to ensure that they are and remain in full compliance. This helps to ensure the safety of vessels, the safety of crews, but also reduces the risk of delays, extra costs and potentially difficult charterparty disputes.



The ISPS Code – ensure you comply.

By

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Research Material:

International Ship & Port Facility Security Code

International Chamber of Shipping "Guidance for Ship Operators" on the IMO ISPS Code

IMO Publications, News and Circulars

The Association is also grateful to all Members that have provided feedback and information on their real life experiences with the ISPS Code, which greatly assisted the Association in preparing this Loss Prevention Article.

Should Members have further queries, they are asked to contact the Association: lossprevention@skuld.com