

Guidance for the Development of National Maritime Security Legislation

Henrik Juhl Madsen
Technical Officer, Maritime Security
Maritime Safety Division
International Maritime Organization (IMO)

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“Having considered the **need to assist Contracting Governments** to the SOLAS Convention, with the **development of national legislation** related to the implementation of the provisions of chapter XI-2 of the Convention and the **International Ship and Port Facility Security (ISPS) Code.**”



Enabling Legislation

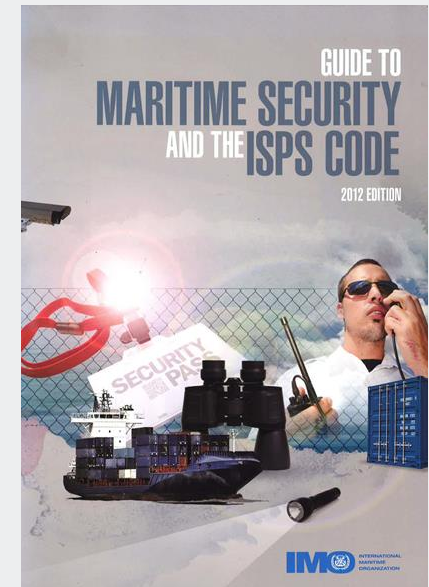
The Maritime Safety Committee, at its 96th session (11 to 20 May 2016) approved the **Guidance for the development of national maritime security legislation** (MSC.1/Circ.1525).



Guidance for the Development of National Maritime Security Legislation

The Guidance is drawn from the following resources:

- The **SOLAS Convention**
- Parts A and B of the **ISPS Code**
- The 2012 IMO “**Guide to Maritime Security and the ISPS Code**”, and
- Related **IMO Resolutions** and **circulars**



SOLAS chapter XI-2 and the ISPS Code in force for 17 years

Many Governments **are still striving to implement** fully the maritime security measures, particularly those pertaining to port facilities

Reasons include:

- the **lack of legal and policy instruments** required to achieve compliance with the ISPS Code
- **jurisdictional issues** between the government agencies (partly as a result hereof)



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Different approaches:

- A number of countries have **yet to be put in place the legal instruments** needed to fully implement the maritime security measures
- National Legislation has generally focused on the **mandatory requirements in part A** of the ISPS Code
- A significant number of governments have enacted legislation making **significant extracts from** the guidance originally provided in **part B** of the ISPS Code mandatory
- Some have made all the guidance in part B of the ISPS Code mandatory



Guidance for the Development of National Maritime Security Legislation

Msc.1/Circ.1525 of May 2016:

- The drafting and enactment of **appropriate national legislation** is essential to the successful implementation and oversight of the maritime security measures.
- The legislation should **specify the powers needed for Government officials to undertake their duties**, including
 - Inspection and testing of security measures and procedures
 - Application of enforcement actions to correct incidents of non-compliance



Voluntary nature

- While the compilation in the new MSC circular provides the framework to assist in the development of national legislation, it is not intended as an auditing or assessment tool
- Further, while this guidance refers to mandatory provisions from the SOLAS Convention, as well as both mandatory provisions and voluntary guidance in the ISPS Code, *the use of this guidance is not mandatory*



Clear distinction between the mandatory and voluntary provisions of the Guidance

Mandatory provisions

1. Mandatory text uses “must” or “shall”, as appropriate

Voluntary provisions

1. *Guidance text uses “may” or “should”, as appropriate*
2. *Optional guidance text, which relates to non-mandatory provisions, has been italicized to further clarify the distinction*

New Provisions

Part 2.4.2 National Maritime Security Committee – Qualifications

2.4.2.1 A national maritime security committee should involve representatives of those regulated: major stakeholders in the port and shipping industries, port workers and seafarers, and cargo and passenger interests



New Provisions

Examples:

Part 2.5.5 RSO Oversight

Part 2.7.5 Security Level Coordination

Part 3.6.7 Communications

Part 3.9.1 Security Incidents

Part 3.9.3 Best Management Practises

New Provisions

Part 2.5.5 RSO Oversight

Governments retain ultimate responsibility for the work undertaken on their behalf by the recognized security organizations that they appoint. They have the authority to modify or revoke their delegations to a recognized security organization which fails to meet agreed performance standards

New Provisions

Part 2.7.5 Security Level Coordination

- *Ships intending to enter a port or port facility should establish the applicable security level through direct contact with the port authority, or the PSO or the PFSO, **prior to entry**.*
- *If a ship is operating at a **higher security level** than that applying at the port or port facility, the information should be passed to the port authority or the PSO or the PFSO prior to entry.*
- *A ship can never operate at a **lower security level** than the one being applied at the port or port facility that it is visiting.*
- *A ship can, however, operate at a higher security level than that applying at the port or port facility it is in, or it intends to enter. The authorities at the port/port facility **should not seek** to have the ship **reduce** the security level set by the ship's government.*

New Provisions

Part 3.6.7 Communications

*Ship Security Officers intending to use a port facility should maintain **effective communication** with the Port Facility Security Officers (PFSOs).*

New Provisions

Part 3.9.1 Security Incidents

- *[The specified organization] is required to specify the types of security incident that have to be reported to them.*
- *In such cases, they should provide guidance on their timing, procedures to be followed and their distribution.*
- *They should include reporting incidents to local law-enforcement agencies when in a port facility or the adjacent coastal State*

New Provisions

Part 3.9.3 Best Management Practises

- *The CSO is encouraged to ensure that a ship security plan is in place for passage through high security risk areas, and that this is exercised, briefed and discussed with the Master and the SSO.*
- *The provision of carefully planned and installed ship protection measures prior to transiting the high risk area is very strongly recommended.*
- *Ship security plans should include specific guidelines on the use of weapons in the vicinity of dangerous goods or hazardous substances. Firearms carried on board ship may have to be reported on arrival in port and may have to be surrendered, or held securely, for the duration of the port visit.*

New Provisions

Part 5 on **Enforcement** represents a new focus, particularly with a view to ensuring that **national legislation is in place**:

*Essential to the successful implementation and oversight of the ISPS Code is the drafting and enactment of the appropriate national legislation to provide for the full implementation and oversight of the maritime security measures. The legislation should **specify the powers needed for government officials to undertake the application of enforcement actions to correct incidents of non-compliance.***



Technical assistance

- Upon approving the new circular, a number of delegations stated that they **had already begun using the guidance** in their national legislative work and believed this guidance would **help overcome implementation challenges** amongst Member States
- Some Member States stated that they would be looking for **assistance to help make use of the new Guidance**, and the IMO Secretariat

Drafting and enactment of appropriate national legislation is essential to the successful implementation and oversight of the maritime security measures

Technical assistance

- The Secretariat provides assistance aimed at **awareness raising** of what the new guidance compromises along with **identification of suggested areas of improvements** in national legislation
- Contact the IMO Secretariat at marsec@imo.org

Awareness raising

Suggested
strategies to
address shortfalls

Identification of
areas of
improvements



International Maritime Organization

4 Albert Embankment
London
SE1 7SR
United Kingdom

Tel: +44 (0)20 7735 7611

Fax: +44 (0)20 7587 3210

Email: www.imo.org

- Maritime Security: marsec@imo.org
- Long Range Tracking and Identification: lrit@imo.org
- Facilitation: falsec@imo.org



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